



House of Commons  
Environment, Food and Rural  
Affairs Committee

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**The Draft Animal  
Welfare Bill**

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**First Report of Session 2004–2005**

*Report, together with formal minutes, and lists  
of oral, written and unprinted evidence*

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## Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

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## Summary

The current law on animal welfare in England and Wales is contained in over 20 pieces of legislation. The key protection is the offence of cruelty to animals, set out in the Protection of Animals Act 1911. This offence has remained fundamentally unaltered since its enactment. Farmed animals are also the subject of additional protection under the Agriculture (Miscellaneous Provisions) Act 1968, which makes it an offence to cause unnecessary pain or distress to livestock.

The Government published the draft Animal Welfare Bill in July 2004. The draft Bill is intended to protect the welfare of companion and kept animals, including farmed animals, and to modernise existing animal welfare law. In addition to retaining the existing cruelty offence, the draft Bill would also introduce a new welfare offence, whereby a keeper's failure to take reasonable steps to ensure an animal's welfare would amount to an offence. The Government has indicated that the new offence is intended to allow action to be taken in respect of foreseeable harm, which is not possible under existing legislation.

We fully support the Government's initiative of seeking to modernise and improve animal welfare legislation, and its introduction of a new welfare offence. However, we consider that the draft Bill raises many important and often complex issues which must be resolved before a final Bill is introduced to Parliament. In this report, we make 101 recommendations suggesting modifications either to the draft Bill itself or the policy underlying it. There is also widespread public interest in the draft Bill: in the course of our examination, we received 220 written memoranda and took oral evidence from 51 organisations or individuals.

The draft Bill would delegate a very broad power, to the Secretary of State in England and the National Assembly in Wales, to make regulations to promote the welfare of kept animals. The Government intends to use this delegated power to regulate on wide-ranging and significant areas of activity, including licensing pet fairs, greyhound racing tracks and the use of performing animals. Tail docking of dogs and rearing of game birds would also be regulated by way of powers delegated under the draft Bill. We are 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. Clearer requirements about the way in which licensing powers are to be exercised should be included on the face of the legislation. We also recommend that the Government should enter into an agreement with us whereby we undertake pre-legislative scrutiny of future draft regulations.

We identify several problems with the definitions used in the draft Bill. The draft Bill defines “animal” to mean all vertebrates (although the offence provisions would not extend this broadly). We recommend that the Government consider extending the draft Bill’s application to octopus, squids and cuttlefish, and to crabs, lobsters and crayfish. The Government intends that the draft Bill should not extend protection to wild animals, living in the wild; we recommend that the Government re-examine whether the draft Bill actually achieves this end. We also consider that the draft Bill risks exposing commercial and recreational fishermen to prosecution.

We raise many concerns about the drafting of the offence provisions in the draft Bill. We are extremely concerned that the Government apparently intends that the cruelty offence should apply only to deliberate infliction of unnecessary suffering, excluding unnecessary suffering which arises as a result of negligence or neglect—this would appear to downgrade existing legal protections. We consider that the tests by which the courts will determine whether the cruelty offence is satisfied are unclear and will create uncertainty in prosecutions. We are concerned that the draft Bill would represent a significant weakening of the current law on the abandonment of animals.

Difficulties also arise in respect of the enforcement and prosecution provisions in the draft Bill. We consider that the gravity of certain offences in the draft Bill should be reflected in increased sentencing powers. We recommend that the most serious animal welfare offences should result in an automatic disqualification order. We conclude that the RSPCA should be able to continue to institute private prosecutions but that the draft Bill should be amended to clarify that prosecution powers under the legislation can be exercised only by a public authority.

Finally, whilst we welcome the opportunity to consider the draft Bill, we are concerned that this draft Bill was not an appropriate candidate for pre-legislative scrutiny by Parliament in the absence of the Government having first conducted its own consultation process. Defra last consulted on the policy proposals underlying the draft Bill two and a half years before its publication. Given the complexity of the draft Bill and the policy underlying it, and the widespread public interest in the legislation, we consider that it should have been subject to further consultation prior to being published for the purposes of pre-legislative scrutiny. We have worked extremely hard on the draft Bill in order to suggest what we consider are significant improvements to it, and we trust that the Government will take up our suggestions.

# 1 Introduction

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## Our examination of the draft Bill

1. The Government published its draft Animal Welfare Bill on 14 July 2004.<sup>1</sup> We decided to examine the draft Bill and, on 14 July, we invited interested parties to submit written memoranda to us by 25 August 2004.

2. We received 187 memoranda from a wide range of interested organisations and individuals. In the course of our examination, 26 of the organisations and individuals who had initially submitted memoranda sent us 33 supplementary memoranda. We also received a great deal of correspondence from interested parties on the progress of our examination of the draft Bill. We wish to thank all those who submitted written evidence and assure them that, in reporting to the House, we have endeavoured to take into account the wide range of points raised in their evidence.

3. In taking oral evidence, we sought to hear from witnesses who represented the wide range of views expressed in written evidence. Although we took a great deal of oral evidence, we were conscious that the Government had expressed its hope that we would report to the House as soon as possible, and preferably before the end of the 2003–04 parliamentary session. This timeframe restricted the amount of oral evidence that we were able to take; we regret that we were unable to hear from any of the organisations who wrote to us during the course of our examination, seeking to be heard by the Committee. We are very grateful to all those who gave oral evidence or otherwise assisted with our inquiry.

4. We took oral evidence from 51 organisations or individuals. They were: the Minister for Nature Conservation and Fisheries, Mr Ben Bradshaw MP, and officials from the Department for Environment, Food and Rural Affairs (Defra); the RSPCA; the Companion Animal Welfare Council; the Kennel Club; the Pet Advisory Committee; the Pet Care Trust; Pets at Home; the Federation of British Herpetologists; the International Fund for Animal Welfare; the BioVeterinary Group; the Captive Animals' Protection Society; BirdsFirst; Mr Duncan Davidson, veterinarian; Animals in Mind; the Council of Docked Breeds; the Anti-Docking Alliance; the Farm Animal Welfare Council; the Meat and Livestock Commission; the National Farmers' Union; the Farmers' Union of Wales; the National Sheep Association; the Rare Breeds Survival Trust; the British Wildlife Rehabilitation Council; the Sea Fish Industry Authority; the National Anglers' Alliance; the Shellfish Network; the National Gamekeepers' Organisation; Animal Aid; the Federation of Zoological Gardens; the Born Free Foundation; the Wildfowl and Wetlands Trust; the National Equine Welfare Council; the International League for the Protection of Horses; Redwings Horse Sanctuary; the Association of Circus Proprietors of Great Britain; Performing Animals Welfare Standards International; the British Greyhound Racing Board; Greyhounds UK; the Society of Conservative Lawyers; the Association of Chief Police Officers; the Chartered Institute of Environmental Health; the Local Authorities Co-ordinators of

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<sup>1</sup> The draft Bill is available at <http://www.official-documents.co.uk/document/cm62/6252/6252.htm>.

Regulatory Services; Ms Paula Williamson, Solicitor, Worcestershire County Council; the Royal College of Veterinary Surgeons; the British Veterinary Association; Mr Mike Radford, Reader of Law, University of Aberdeen; the Country Land and Business Association; the Countryside Alliance; Advocates for Animals; the League Against Cruel Sports; and the Self-Help Group for Farmers, Pet Owners and Others Experiencing Difficulties with the RSPCA. To conclude our taking of evidence, we heard further evidence from the RSPCA and from the Minister for Nature Conservation and Fisheries.

## 2 Background to the draft Bill

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### Current animal welfare law

5. The current law on animal welfare in England and Wales is contained in over 20 pieces of legislation. Key amongst these is the Protection of Animals Act 1911. In effect, the 1911 Act sets the standard below which conduct towards domestic and captive animals becomes unlawful, by defining an offence of cruelty to these categories of animal. This offence has formed the basis for most subsequent animal welfare prosecutions. The offence of cruelty is widely drawn; it applies to all acts done in relation to domestic and captive animals, other than those carried out lawfully under the Animal (Scientific Procedures) Act 1986. The 1911 Act has been amended many times, most recently in 2000, although the key cruelty offence has remained fundamentally unaltered.<sup>2</sup>

6. Following the enactment of the 1911 Act, the law regulating people's conduct towards animals remained virtually unchanged until the 1960s. The 1960s legislation was largely directed towards farmed animals and focussed, for the first time, on the question of their welfare—going beyond defining a standard below which conduct must not fall, to defining how animals ought to be cared for. The Agriculture (Miscellaneous Provisions) Act 1968 was the first legislation to use the term “welfare” in relation to animals;<sup>3</sup> it creates an offence of causing unnecessary pain or distress to livestock, or knowingly permitting such pain or distress to be caused.<sup>4</sup> The 1968 Act also empowers ministers to make such regulations and codes of practice as they think fit for ensuring the welfare of livestock.<sup>5</sup>

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<sup>2</sup> The Acts which have amended the 1911 Act and which are still in force are the: Protection of Animals Act (1911) Amendment Act 1921; Protection of Animals (Amendment) Act 1927; Protection of Animals Act 1934; Protection of Animals (Amendment) Act 1954; Protection of Animals (Anaesthetics) Act 1954; Abandonment of Animals Act 1960; Animals (Cruel Poisons) Act 1962; Protection of Animals (Anaesthetics) Act 1964; Protection of Animals (Penalties) Act 1987; Protection of Animals (Amendment) Act 1988; Protection against Cruel Tethering Act 1988; Protection of Animals (Amendment) Act 2000.

<sup>3</sup> Q 737 [Mike Radford]

<sup>4</sup> Section 1(1) of the 1968 Act; “knowingly” includes knowledge which the offender could reasonably be expected to have.

<sup>5</sup> Sections 2 and 3 of the 1968 Act

7. In addition, many aspects of animal licensing, registration and certification are regulated by statute.<sup>6</sup> For example, a licence is required to run a pet shop,<sup>7</sup> an animal boarding establishment,<sup>8</sup> a riding establishment,<sup>9</sup> a dog breeding establishment,<sup>10</sup> to operate a zoo<sup>11</sup> and to use premises as a slaughterhouse,<sup>12</sup> and exhibitors or trainers of performing animals must be registered with the appropriate local authority.<sup>13</sup>

### Proposals for reform

8. In January 2002, Defra ministers initiated a consultation on whether an animal welfare Bill should be introduced in order to “consolidate and bring up-to-date the legislation that exists in England and Wales to promote the welfare of farmed, domestic and captive animals”. The purpose of the consultation was to find out what consultees would like to see included in such a Bill. The consultation closed in April 2002; 2,351 responses were received. Defra published an analysis of the responses in August 2002.<sup>14</sup> The draft Bill was published on 14 July 2004.

### Need for new legislation

9. In written and oral evidence to us, submitters and witnesses were almost universally supportive of the fact that the Government had put forward a draft Bill on animal welfare. The reason why new legislation is required in this area was best highlighted by Mike Radford, a leading academic in the field of animal welfare law:

... the most important thing [about the draft Bill] is that this is the first occasion on which animal welfare and animal protection legislation has been looked at anew. Your predecessor, Richard Martin MP, in 1822 ... was instrumental in passing the first legislation, and that original Act has been overhauled on three occasions—in 1835, 1849 and 1911. On each of those three subsequent occasions it was essentially a consolidation Act ... This is the first time in which the whole picture has been looked at and ... it is the first time on which the government has thought fit to bring forward such a Bill. On all previous occasions it has been a Private Member’s Bill, so that is important.<sup>15</sup>

### Purpose of the draft Bill

10. The draft Bill is intended to address the current lack of legal protection for the welfare of companion and kept animals, including farmed animals. It is intended to re-enact the substance of the cruelty offence set down in the 1911 Act,<sup>16</sup> but also to introduce a new offence of failing to take reasonable steps to ensure an animal’s

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<sup>6</sup> See Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsibility*, (Oxford, 2001), p 291ff

<sup>7</sup> Pet Animals Act 1951

<sup>8</sup> Animal Boarding Establishments Act 1963

<sup>9</sup> Riding Establishments Act 1964

<sup>10</sup> Breeding of Dogs Act 1973

<sup>11</sup> Zoo Licensing Act 1981

<sup>12</sup> Fresh Meat (Hygiene and Inspection) Regulations 1995 (SI 1995/539)

<sup>13</sup> Performing Animals (Regulation) Act 1925

<sup>14</sup> [www.defra.gov.uk/animalh/welfare/](http://www.defra.gov.uk/animalh/welfare/)

<sup>15</sup> Qq 734–735 [Mike Radford]

<sup>16</sup> See the discussion in paragraph 58 ff.

welfare—set out in clause 3. The key purpose of the clause 3 welfare offence is to enable action to be taken about an animal’s welfare *before* suffering has occurred. Currently, companion and kept animals are protected only by the cruelty offence in the 1911 Act, which requires evidence of unnecessary suffering before action can be taken against an offender.

11. The Government has presented the clause 3 welfare offence as updating the law protecting companion and kept animals in order to bring it into line with the existing law on farmed animals’ welfare. In his initial oral evidence to us, the Minister for Nature Conservation and Fisheries, Ben Bradshaw MP, contrasted the law protecting companion and kept animals with the “laws that govern the welfare of farm animals where we do have the powers to regulate and indeed we do through EU regulations on a fairly regular basis”.<sup>17</sup> The Minister told us that “there is already a duty of care for farm animals which allows intervention to take place before suffering actually occurs and that is the critical difference between the existing legislation and what we hope to achieve with this Bill regarding non-farm kept animals.”<sup>18</sup>

12. The draft Bill would also delegate wide-ranging powers to the Secretary of State and the National Assembly for Wales to legislate in order to promote the welfare of most categories of animal protected by the draft Bill. Defra proposes to use these powers to regulate most animal-related activities that do not involve wild animals, living in the wild. The draft Bill is also intended to extend current powers of enforcement and prosecution, and to address loopholes in existing enforcement provisions.

### **Scope of the draft Bill**

13. The draft Bill is not intended to apply to acts or procedures lawfully carried out under the Animal (Scientific Procedures) Act 1986: these are expressly excluded under clause 50. Responsibility for animal research and the 1986 Act remains with the Home Office, rather than Defra. Clause 50 provides that the clause 1 cruelty offence and the clause 2 fighting offence will apply to animals held in establishments designated under the 1986 Act, although the clause 3 welfare offence will not. This means that a research animal will be protected from offences of cruelty or fighting except where that animal is being subjected to a procedure licensed under the 1986 Act.

14. The draft Bill is also not intended to apply to wild animals, living in the wild. Defra considers that such animals are already adequately protected by existing legislation.<sup>19</sup>

### **Application of the draft Bill**

15. The draft Bill would apply to England and Wales. All powers delegated under the draft Bill would be exercisable, in England, by the Secretary of State and, in Wales, by the National Assembly for Wales—referred to, in the draft Bill and in this report, as the appropriate national authority.<sup>20</sup>

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<sup>17</sup> Q1 [Defra]

<sup>18</sup> Q1 [Defra]

<sup>19</sup> See paragraphs 32 and 33.

<sup>20</sup> Clause 57(4) and clause 54(1)

16. We understand that the Scottish Executive is moving towards developing its own animal welfare legislation. Consultation closed on 2 July 2004 on proposals to revise existing animal welfare legislation; at the launch of the consultation, in March 2004, the Deputy Environment Minister, Mr Allan Wilson MSP, stated that the Executive expected draft legislation based on the consultation to be introduced in the course of the current Scottish Parliament.<sup>21</sup> The Minister for Nature Conservation and Fisheries told us that he was not aware “of any significant differences between the English and the Scottish Bills or in the ensuing secondary legislation ... There is extensive liaison at official level with the devolved administrations which will reduce the risk of inadvertent discrepancies.”<sup>22</sup>

## 3 Definitions

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### Definition of “animal”

17. Clause 53 defines the meaning of “animal” for the purposes of the draft legislation. Clause 53(1) defines an animal as a vertebrate other than man. A vertebrate is any animal with a backbone: this includes mammals, reptiles, birds, fish and amphibians. Clause 53(2) states that the Act would not apply to an animal while it is in its foetal, larval or embryonic form.

18. Clause 53(3)(a) would delegate a power to the appropriate national authority to extend the clause 53(1) definition to include invertebrates of any description. Clause 53(3)(c) would empower the appropriate national authority to extend the application of the Act to an animal while it is in its foetal, larval or embryonic form.

### *Appropriateness of delegated power in clause 53(3)*

19. The RSPCA has pointed out that clause 53(3) does not set out any criteria to be applied by the appropriate national authority in considering whether to exercise powers delegated under that sub-clause. The explanatory note to clause 53 states that the draft Bill is presently restricted to vertebrates because “there is insufficient evidence to show *conclusively* that invertebrates are capable of experiencing pain, suffering and distress”.<sup>23</sup> The RSPCA expressed concern that this implies that:

... animals will not be afforded protection without conclusive evidence that they can suffer. This is an unrealistically high standard to set in the area of scientific knowledge. We feel that a more appropriate standard would be to extend protection where there are reasonable grounds to believe, on the basis of scientific evidence, that animals have the capacity to suffer ...<sup>24</sup>

The RSPCA submitted that such a test should be spelt out on the face of the legislation.

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<sup>21</sup> <http://www.scottishexecutive.gov.uk/News/Releases/2004/03/5320>; given the current Scottish Parliament was elected in April 2003, legislation could be expected to be introduced by the end of 2006.

<sup>22</sup> Q 963 [Defra]

<sup>23</sup> Explanatory notes, para 200 (emphasis added)

<sup>24</sup> Ev 21–22 [RSPCA]

20. We agree with the RSPCA that the legislation should specify the criteria according to which the delegated power in clause 53(3) may be exercised. The definition of “animal” is fundamental to the draft legislation; it would determine the scope of the legislation’s application. It should therefore be clear on what basis the power to extend the Act’s application may be exercised.

21. We endorse the RSPCA’s suggestion that the appropriate national authority should be able to make an order under clause 53(3) only where the authority has reasonable grounds to believe, on the basis of scientific evidence, that the animal to which it is proposed to extend the protection of the Act has the capacity to experience pain, suffering, distress or lasting harm. We recommend that the Government amend clause 53(3) to include words to this effect.

22. It is crucial that these criteria be spelt out on the face of the legislation. It is not sufficient for Defra to give an undertaking that orders will be made under clause 53(3) only on the basis of appropriate scientific evidence. We discuss our reasons for this in detail in part 5 below.

### *Extending the definition to include invertebrates*

23. We heard arguments that the definition of “animal” ought to be extended beyond vertebrates to include certain species of invertebrates which submitters felt experienced pain. Some submitters argued for an extension of the definition in clause 53(1), while others argued for a post-enactment extension by way of clause 53(3).

24. If a non-vertebrate animal were included in the definition of “animal”, by whatever legislative means, then that non-vertebrate animal would attract the protection of the provisions in the draft Bill as they are set out in part 4.

### *Octopus, squids and cuttlefish*

25. The RSPCA, the Born Free Foundation and Advocates for Animals each submitted that the protection of the draft Bill should be extended to octopus, squids and cuttlefish, often referred to as cephalopods.<sup>25</sup> The Pet Advisory Committee referred to “good scientific evidence that some cephalopods show sentience”.<sup>26</sup> The RSPCA argued that, if and when the Bill comes into force, cephalopods ought to be the subject of an order under clause 53(3). It pointed to the position taken on cephalopods by the Animal Procedures Committee (APC), a statutory body set up under the Animals (Scientific Procedures) Act 1986 to advise the Home Secretary on matters connected with the 1986 Act.<sup>27</sup>

26. The 1986 Act regulates scientific procedures which may cause pain, suffering, distress or lasting harm to “protected animals”, which are defined in the Act;<sup>28</sup> it should therefore follow that animals protected under the Act are those capable of experiencing pain, suffering, distress or lasting harm. The definition of “protected

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<sup>25</sup> Ev 9 [RSPCA]; ev 187 [Born Free Foundation]; Q829 [Advocates for Animals]

<sup>26</sup> Ev 42 [Pet Advisory Committee]

<sup>27</sup> Animal Procedures Committee, *Report of the Animal Procedures Committee for 2003*, HC (2003-04) 1017, para 51

<sup>28</sup> <http://www.homeoffice.gov.uk/docs/animallegislation.html>

animals” includes *Octopus vulgaris*, or the common octopus. The APC has recommended to the responsible Minister on several occasions that the protection of the 1986 Act should be extended to all octopus, squids and cuttlefish.<sup>29</sup> The APC has stated that there is nothing unusual about *Octopus vulgaris* as compared with other octopus, squids or cuttlefish—there is no valid functional difference which makes other octopus, squids or cuttlefish less capable of experiencing pain, distress or lasting harm.<sup>30</sup> The APC also noted that the status of these species is being reconsidered in the current review of the EU Directive 86/609/EEC, and that they are covered by animal welfare legislation in other countries. New Zealand’s Animal Welfare Act 1999 applies to any octopus or squid and the Australian Capital Territory’s Animal Welfare Act 1992 covers all cephalopods.<sup>31</sup>

### Arthropods

27. The Born Free Foundation also argued for the inclusion of arthropods in the definition of “animal”.<sup>32</sup> Arthropods include crustaceans, insects, spiders, scorpions and centipedes. Born Free referred to “substantial scientific evidence” to suggest that arthropods can experience pain, suffering and distress.<sup>33</sup>

### Crabs, lobsters and crayfish

28. Although including arthropods in the definition of “animal” would encompass crustaceans such as crabs, lobsters and crayfish, we also took oral evidence from the Shellfish Network, who argued specifically for the inclusion of crustaceans such as crabs, lobsters and crayfish in the definition.<sup>34</sup> The Shellfish Network told us that there was a significant amount of scientific research demonstrating that crabs, lobsters and crayfish suffered in the course of being trapped, transported, sold and killed.<sup>35</sup> The Shellfish Network drew a parallel between the position of crabs, lobsters and crayfish, and farmed animals:

[Crabs, lobsters and crayfish] should be included in the Bill because they are food animals. We are treating these as food animals, and therefore in all aspects we could say that these are similar to farmed animals, because once they have been caught, then they are treated in the same way: they are transported, stored and killed.<sup>36</sup>

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<sup>29</sup> The responsible Minister is currently Caroline Flint MP, Parliamentary Under-Secretary for tackling drugs, reducing organised and international crime in the Home Office.

<sup>30</sup> Animal Procedures Committee, *Report of the Animal Procedures Committee for 2003*, HC (2003-04) 1017, para 53

<sup>31</sup> Section 2 of New Zealand’s Animal Welfare Act 1999; ‘dictionary’ to Australian Capital Territory’s Animal Welfare Act 1992

<sup>32</sup> Ev 188 [Born Free Foundation]

<sup>33</sup> *Ibid.*

<sup>34</sup> Ev 162 [Shellfish Network]. Advocates for Animals (ev 336) also supported the inclusion of some crustaceans in the definition of “animal”.

<sup>35</sup> Qq 370–371 [Shellfish Network]

<sup>36</sup> Q 371 [Shellfish Network]

29. By way of comparison, New Zealand's Animal Welfare Act 1999 applies to any crab, lobster or crayfish; the Australian Capital Territory's Animal Welfare Act 1992 applies to "a live crustacean intended for human consumption".<sup>37</sup>

### *Our position*

30. We believe that a strong case has been made for the inclusion of octopus, squids and cuttlefish, and of crabs, lobsters and crayfish, in the clause 53(1) definition of "animal". The position of the Animal Procedures Committee on octopus, squids and cuttlefish is particularly persuasive in this respect. However, although it seems to us that octopus, squids and cuttlefish, and crabs, lobsters and crayfish, ought to be included in the clause 53(1) definition of "animal", we consider that we have received insufficient evidence on which to base a final conclusion on this matter. We therefore recommend that, prior to introducing a Bill to Parliament, the Government should reassess whether there are reasonable grounds to believe, on the basis of scientific evidence, that octopus, squids and cuttlefish, and crabs, lobsters and crayfish, have the capacity to experience pain, suffering, distress or lasting harm. The Government should have particular regard to evidence relied on by New Zealand and the Australian Capital Territory in choosing to include cephalopods and certain crustaceans in their respective animal welfare legislation. Whilst this assessment is being undertaken a code of practice should be issued giving details of humane ways in which crabs and lobsters should be stunned prior to cooking.

### **Definition of "protected animal"**

31. Clause 54(2) defines a "protected animal" as essentially either a domesticated animal or an animal which:

- is being kept by man (in that a person owns, or is responsible for, or is in charge of, the animal), or
- has ceased to be kept by man but is not (yet) living in a wild state, or
- is "temporarily in the custody or control of man".

32. The definition of "protected animal" is of key importance to the draft Bill because it is intended to determine the extent of the application of the clause 1 cruelty offence. It is also relevant to the extent of the application of the clause 2 fighting offence: an animal fight is defined as involving a protected animal and any other animal (or a human).<sup>38</sup> The definition is intended to exclude wild animals, living in a wild state, from the protection of the draft Bill. The Minister commented on this exclusion as follows:

... the principal reason that we have not included wild animals is that they are covered by other legislation. If you began to injure [for example] the birds that

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<sup>37</sup> Section 2 of New Zealand's Animal Welfare Act 1999; 'dictionary' to Australian Capital Territory's Animal Welfare Act 1992

<sup>38</sup> Clause 2(3)

came to your bird table, you would be committing other offences already. This Bill is primarily about kept animals because that is where the gaps in the law going back to 1911 are.<sup>39</sup>

33. The protection for wild animals in other legislation to which the Minister refers includes:

- an offence of killing, injuring, taking, damaging or destroying wild birds, their nests and eggs<sup>40</sup>
- an offence of intentionally or recklessly killing, injuring or taking certain wild animals which are endangered or require conservation including, for example, dolphins, porpoises and whales, bats, the red squirrel, species of amphibians, mussels, newts, shrimps, snakes and otters, and species of beetles, butterflies, moths, snails and spiders<sup>41</sup>
- an offence of mutilating, kicking, beating, nailing or otherwise impaling, stabbing, burning, stoning, crushing, drowning, dragging or asphyxiating any wild mammal with intent to inflict unnecessary suffering (evidence of unnecessary suffering is not required).<sup>42</sup>

It is important to note that these offences are not strictly offences of cruelty: the clause 1 cruelty offence would arguably have a wider application than the offences outlined above.

### ***“Temporarily in the custody or control of man”***

34. The extent to which the cruelty offence would protect wild animals, living in the wild, would depend to a large extent on the interpretation given to the phrase “temporarily in the custody or control of man”. Defra officials explained to us how they expect the phrase to apply in practice:

the cruelty offence ... does not extend right out to every single animal ... you could have a situation where a boy is cruel to a wild animal, he shoots a catapult at it and hits it just for fun or he is cruel to it or whatever, and that at the moment falls outside the scope of this Bill ... The cruelty offence is much wider in scope than the welfare offence so that you are not allowed to be cruel to an animal that is under your control. That can be a much more temporary relationship than an animal that you are responsible for [that is, in terms of the welfare offence], or at least it is intended to be ...<sup>43</sup>

35. It is not clear to us that the phrase “temporarily in the custody or control of man” would in fact achieve the Government’s intention of ensuring that the cruelty offence is not engaged in situations where unnecessary suffering is caused to a wild animal, living in the wild. Defra seems to expect the courts to place a fairly narrow interpretation on “control”, in particular, yet we can see nothing in the draft Bill that would necessarily

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<sup>39</sup> Q 975 [Defra]

<sup>40</sup> Section 1 of the Wildlife and Countryside Act 1981

<sup>41</sup> Section 9 of the Wildlife and Countryside Act 1981

<sup>42</sup> Section 1 of the Wild Mammals (Protection) Act 1996

<sup>43</sup> Q 977 [Defra]

lead the courts to such an interpretation. The courts could in fact interpret “control” widely, to mean that a person is merely in a position with regard to an animal such as to be able to cause it unnecessary suffering.

### **Other legislative approaches**

#### *Existing legislation*

36. The Protection of Animals Act 1911 defines “animal” as meaning any domestic or captive animal. A domestic animal is defined as one which is tame or tamed for a purpose; a captive animal means a non-domestic animal, including birds, fish and reptiles, which is in captivity or confinement or otherwise hindered or prevented from escaping.<sup>44</sup> The cruelty offences then apply broadly to any “animal”, but are subject to two exemptions, one for acts associated with destroying an animal as food for mankind and the other for hunting or coursing.<sup>45</sup>

#### *Legislation outside Great Britain*

37. The Welfare of Animals Act (Northern Ireland) 1972 refers throughout simply to an “animal”. Section 29(1) of the Act defines an animal as including bird, fish and reptile: no attempt is made to differentiate between animals on the basis of the circumstances in which they are living. The 1972 Act takes a similar approach to the 1911 Act in that it defines offences of cruelty broadly, but then specifies exemptions to those offences.<sup>46</sup> The exemptions are essentially a more modern version of the exemptions in the 1911 Act: they apply to acts associated with destroying an animal as food for mankind, the hunting or coursing of a non-domestic animal, and the capture, destruction or attempted destruction of a wild animal in the course of hunting or coursing.

38. New Zealand’s Animal Welfare Act 1999 also takes an exemption-based approach. It defines an animal broadly, as any live member of the animal kingdom that is a mammal, a bird, a reptile, an amphibian, a fish, an octopus, squid, crab, lobster, or crayfish. It then provides an exemption to the offence provisions in the Act in respect of hunting or killing wild animals or animals in a wild state, including in accordance with certain relevant legislation for pest control or conservation purposes.<sup>47</sup> The Minister has specifically said that Defra has drawn on the experience of countries like New Zealand and Sweden in drafting the draft Bill.<sup>48</sup>

### **Our position**

**39. We support the Government’s position that the protection offered by the draft Bill should not extend to wild animals, living in the wild; such animals are better covered by other, existing legislation. However, we are unconvinced that the phrase “temporarily in the custody or control of man” in the definition of a “protected animal” will achieve the Government’s intended position.**

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<sup>44</sup> Section 15

<sup>45</sup> Section 1

<sup>46</sup> Sections 13 to 15

<sup>47</sup> Section 175 of the Animal Welfare Act 1999 (New Zealand)

<sup>48</sup> Q 978 [Defra]

40. We therefore recommend that the Government adopt the approach taken in the Protection of Animals Act 1911 and in more recent Northern Ireland and New Zealand legislation of:

- adopting a broad definition of what constitutes an animal, but
- limiting the application of the definition by excluding specific activities from the scope of the legislation’s protection, rather than by seeking to define a narrower class of “animal” (a “protected animal”, in this case).

Examples of activities to be excluded would include hunting or killing wild animals or animals in a wild state, including in accordance with relevant legislation for pest control or conservation purposes. We discuss exempting the activity of fishing in the next section.

41. If the Government does not accept our recommendation then, at the very least, a definition of the word “control”, as it is used in the phrase “temporarily in the custody or control of man”, should be included on the face of the Bill. Such a definition should be drawn sufficiently narrowly so as to ensure that the protection offered by the draft Bill would not extend to wild animals, living in the wild.

### *Application of “protected animal” to fish and fishing*

42. Fish are vertebrates and therefore fall within the definition of “animal”. Witnesses have suggested to us that the draft Bill would appear to put both commercial and recreational fishing activities at risk of contravening the clause 1 cruelty offence.<sup>49</sup> The Sea Fish Industry Authority considered that:

... you can construe the Bill as applying to anything, even as [a fish] is herded toward a trawl, for example. From there onwards until the point the fish dies, you can interpret the words in the actual Bill as covering us.<sup>50</sup>

43. It was specifically the draft Bill’s definition of “protected animal” which caused concern: the definition could apply to a fish caught in a net, a rod or put in a keep net, as it could be said to be “temporarily within the custody or control of man”.<sup>51</sup> The clause 1 cruelty offence would therefore be engaged. A similar argument could apply to the definition of “keeper” in clause 3(2), in that a person who catches a fish could be said to be in charge of or responsible for the animal; if a court were to accept that argument, the clause 3 welfare offence would be engaged.

### *Government’s position*

44. The Government maintained that the draft Bill is not intended to interfere with fishing or fishing activities and that its legal advice is that, in practice, the draft Bill would be unlikely to have any impact on traditional fishing or angling practices. The Minister considered that a prosecution for fishing under the legislation would be

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<sup>49</sup> Ev 159 [Sea Fish Industry Authority]; ev 160 [National Anglers’ Alliance, Joint Angling Governing Bodies and the Moran Committee]

<sup>50</sup> Q 346 [Sea Fish Industry Authority]

<sup>51</sup> Q 337 [National Anglers’ Alliance]

unsuccessful.<sup>52</sup> Nevertheless, Defra intends to draft an exemption to clause 3(1) for commercial fishing and angling. The Minister told us that:

... we do propose to exempt specifically these activities from prosecutions under the cruelty and welfare offence. Farmed and ornamental fish will not be exempted ... we have decided ... to do what the New Zealanders have done in their legislation which is to specifically exempt fish[ing] from the remit of this Bill ... We are exempting “fishing” rather than “fish”.<sup>53</sup>

45. Defra officials added to the Minister’s statement by explaining that they intend to “exempt commercial fishing and angling from clause 1, the cruelty offence and what is currently clause 3, the welfare offence, but we will not be changing [clause] 53”.<sup>54</sup> We assume that this extends to clause 54.

### *Our position*

46. **We consider that, as the draft Bill is currently drafted, there is a strong argument that a person catching a fish, both in a commercial and a recreational context, could be liable to prosecution under the clause 1 cruelty offence, which would include the clause 1(4) mutilation offence in the case of fishing hooks and, perhaps, fishing nets. There is also an argument that a prosecution could be brought under the clause 3 welfare offence. We therefore doubt the Government’s position that the draft Bill would be unlikely to have any impact on traditional fishing or angling practices.**

47. **We accept that neither commercial fishing nor recreational angling should fall within the remit of the draft Bill and we therefore support the Government’s intention to exempt fishing as an activity—rather than fish as a species—from the scope of the legislation. Amendment is necessary: even if prosecutions for fishing-related activities were to prove unsuccessful when brought, the fact remains that those prosecutions should not be able to be brought in the first place. However, in exempting fishing, the Government should be careful to ensure that those persons who catch fish are not given *carte blanche* to inflict unnecessary suffering in the course of pursuing this activity; welfare standards should continue to apply where appropriate.**

### **Definitions of “animal”, “protected animal”, “kept by man” and “keeper”**

48. The definition of “animal” is set out in clause 53(1); the definition of “protected animal” is set out in clause 54(2). Both are discussed above.

49. The phrase “kept by man”, which is an integral part of the definition of “protected animal”, is also defined in the draft Bill. An animal is kept by man where a person owns, or is responsible for, or is in charge of, the animal (clause 54(3)). However, “kept by man” is also used separately in the draft Bill: clause 6(1) would delegate a power to

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<sup>52</sup> Q 981 [Defra]

<sup>53</sup> Qq 963 and 981 [Defra]

<sup>54</sup> Q 985 [Defra]

the appropriate national authority to make such regulations as the authority thinks fit for “the welfare of animals kept by man”.

50. “Keeper” is defined twice in the draft Bill, in effectively identical terms. It is defined in clause 1(10)(a), for the purposes of clause 1(2) of the cruelty offence, and then again in clause 3(2), for the purposes of the welfare offence. A person is a keeper of an animal if he or she owns, or is responsible for, or is in charge of, the animal, or if he or she has actual care and control of someone under the age of 16 who owns, or is responsible for, or is in charge of, the animal.

### ***Operation of the definitions***

51. The way in which the definitions of “animal”, “protected animal”, “kept by man” and “keeper” apply within the framework of the draft Bill, and the interrelationship between the definitions, is complex. There is overlap between the definitions of “animal” and “protected animal”: the latter is effectively a subset of the former. The definition of “kept by man” is integral to the definition of “protected animal”, but it is also used in the draft Bill independently. “Kept by man” is also effectively a subset of “keeper”: the definition of “keeper” replicates the definition of “kept by man” but also extends and ‘reverses’ it, to make it into a person-centred definition, rather than an animal-centred definition, for the purposes of the clause 3 welfare offence.

52. The relationship between the definitions and the offence clauses in the draft Bill appears intended to be as follows:

- the clause 1 cruelty offences are intended to apply only to protected animals
- the clause 2 fighting offence is intended to apply to a fight between a protected animal and an animal (or a human)
- the clause 3 welfare offence is intended to apply only to animals which have a keeper
- the clause 4 and 5 offences are intended to apply to animals
- the clause 6(1) delegated power is intended to enable regulations to be made in respect of “animals kept by man”.

53. The draft Bill also appears at times to use “animal” where “protected animal” is meant. For example, clause 5 provides that a person commits an offence if he or she gives an animal to another person as a prize. On the face of it, therefore, the offence extends to giving any vertebrate as a prize. However, for a person to be in a position to give an animal as a prize, that animal would presumably have to be either an animal which a person owns, or is responsible for, or in charge of, or an animal temporarily in the custody or control of man—that is, a protected animal. The draft Bill appears to use “animal”—instead of “protected animal”—where the circumstances of a protected animal must necessarily be inferred from the context in which the word is used.

### *Government's position*

54. The Government seems to have acknowledged that the draft Bill is not as clear as it might be in its use of definitions. Defra officials have indicated that they are considering making the following changes to the draft Bill:

- including the definition of “protected animal” in the clause 1 cruelty offence, rather than in clause 54, to make the relationship between the definition and the offence clear<sup>55</sup>
- changing the references to “kept by man” and “keeper” to “animals for which a person is responsible”, to resolve the fact that the two definitions do not “line up” with each other<sup>56</sup>
- amending clause 6 to make clear that it applies to the same class of animals as the class to which clause 3 applies—at this stage, this would appear to be the class of “animals for which a person is responsible”.<sup>57</sup>

### *Our position*

**55. We consider that the way in which the definitions of “animal”, “protected animal”, “kept by man” and “keeper” apply within the framework of the draft Bill, and the interrelationship between the definitions, is problematic and is likely to prove confusing to many future users of the legislation. ‘Casual’ users of the legislation will need to know the legislation in some detail before they are in a position to understand and apply it.**

**56. We recommend that the Government amend the draft Bill to clarify the interrelationship between these definitions. The changes which the Government has indicated it is considering certainly warrant exploration; in particular, the Government should be careful to make clear the relationship between the clause 3 welfare offence and the clause 6(1) delegated power by using consistent language in the two clauses.**

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<sup>55</sup> Q 999 [Defra]

<sup>56</sup> Q 995 [Defra]

<sup>57</sup> Q 996 [Defra]

## 4 Offences

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57. Clauses 1 to 5 set out the offence provisions of the draft Bill. We discuss clauses 1 to 3 below. We received almost no evidence on clauses 4 or 5, apparently because submitters endorsed the provisions, and we make no comment on them.

58. The approach taken to drafting the offence provisions in the draft Bill has been informed by section 1 of the Protection of Animals Act 1911, as amended by subsequent legislation. Section 1 is the key offence provision in current animal welfare legislation; it contains the core cruelty offences. Clauses 1 and 2 of the draft Bill are based on the offences in section 1 of the 1911 Act. The table below sets out the relevant offences from section 1 and the corresponding clause in the draft Bill.

### *Correspondence between Protection of Animals Act 1911 and draft Bill*

<b>Section 1 of the Protection of Animals Act 1911<sup>58</sup></b>		<b>Corresponding clause in the draft Bill</b>
Section 1(1)	If any person—	
1(1)(a)	shall cruelly beat, kick, ill-treat, over-ride, over-drive, over-load, torture, infuriate, or terrify any animal, or shall cause or procure, or, being the owner, permit any animal to be so used, or shall, by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of any act, cause any unnecessary suffering, or, being the owner, permit any unnecessary suffering to be so caused to any animal; or	Clause 1(1) and (2)
1(1)(b)	shall convey or carry, or cause or procure, or, being the owner, permit to be conveyed or carried, any animal in such manner or position as to cause that animal any unnecessary suffering; or	Caught within clause 1(1), although secondary legislation appears to be anticipated (clause 6(2)(a))
1(1)(c)	shall cause, procure, or assist at the fighting or baiting of any animal; or shall keep, use, manage, or act or assist in the management of, any premises or place for the purpose, or partly for the purpose of fighting or baiting any animal, or shall permit any premises or place to be so kept, managed, or used, or shall receive, or cause or procure any person to receive, money for the admission of any	Clause 2

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<sup>58</sup> As amended by subsequent legislation.

	person to such premises or place; or	
1(1)(d)	shall wilfully, without any reasonable cause or excuse, administer, or cause or procure, or being the owner permit, such administration of, any poisonous or injurious drug or substance to any animal, or shall wilfully, without any reasonable cause or excuse, cause any such substance to be taken by any animal; or	Clause 1(7) and (8)
1(1)(e)	shall subject, or cause or procure, or being the owner permit, to be subjected, any animal to any operation which is performed without due care and humanity; or	Clause 1(9)
	shall tether any horse, ass or mule under such conditions or in such manner as to cause that animal unnecessary suffering	Caught within clause 1(1); code of practice proposed under clause 7 <sup>59</sup>
	such person shall be guilty of an offence of cruelty within the meaning of this Act ...	
Section 1(2)	For the purposes of this section, an owner shall be deemed to have permitted cruelty within the meaning of this Act if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom ...	Clause 1(10)(b)

59. In addition to updating the 1911 Act, the draft Bill would also create a new offence of failing to take reasonable steps to ensure an animal’s welfare, set out in clause 3.

### Clause 1: cruelty offence

60. The offence of cruelty set out in section 1 of the 1911 Act is the bedrock of current animal welfare legislative legislation. It provides the key means by which offenders have been prosecuted for animal welfare offences and, as such, could be described as the key definition of what constitutes acceptable animal welfare standards.

61. Clause 1(1) of the draft Bill would be the nub of the cruelty offence under the draft Bill. It provides that an offence will be committed if a person causes unnecessary suffering to a protected animal, where the person knew, or ought reasonably to have known, that that suffering would result, or would be likely to result, from his or her act or omission to act. Clause 1(1) needs to be read in conjunction with clause 1(3), which lists factors to be considered in determining whether suffering is “unnecessary”, and with clause 54(2), which defines “protected animal”.

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<sup>59</sup> <http://www.defra.gov.uk/animalh/welfare/>

62. Clause 1 also creates other offences, all of which could be described as falling under the umbrella of ‘cruelty’. These other offences can be summarised as follows:

- permitting another person to cause unnecessary suffering to an animal of which you are a keeper; this includes failing to exercise reasonable care and supervision: clause 1(2) and (10)
- mutilating a protected animal, or causing a protected animal to be mutilated, or permitting the mutilation of an animal of which you are a keeper: clause 1(4), (5), (6) and (10)
- administering an injurious drug to a protected animal, or causing an injurious drug to be taken, or permitting an injurious drug to be administered to an animal of which you are a keeper; in each case knowing the drug to be injurious: clause 1(7) and (8)
- performing an operation on a protected animal without due care, or permitting an operation to be performed without due care on an animal of which you are a keeper: clause 1(9).

63. The Government has said that clause 1 “is intended to retain all protection in the 1911 Act which remains relevant today and which has not been provided elsewhere in the [draft Bill].”<sup>60</sup> The Government considers that the provisions of the 1911 Act “no longer reflect modern practice, lack legal certainty in modern circumstances and are not consistent with the [proposed] scheme of protection for vertebrates under the [draft Bill]”.<sup>61</sup> The Government’s intention therefore seems to be re-enact the substance of section 1 of the 1911 Act, in an improved and updated form.

64. Few submitters commented on the provisions of clause 1 in any detail.

### **Complexity of clause 1**

65. Mike Radford described clause 1 as “unduly complicated”, on the basis that it covers several distinct (although related) offences, which are capable of standing alone. He suggested that the various offences in clause 1 should be separated out, to improve clarity.<sup>62</sup>

66. Defra officials agreed that clause 1 “is too unwieldy at the moment” and explained that they “are trying to break it down”:<sup>63</sup>

One way in which we are trying to simplify it is to separate out permitting cruelty as a separate clause ... [in clause 1(2)] a keeper of an animal commits an offence if he permits another person to cause an animal to suffer, separating that out, and possibly then even separating out the other specific things such as administering poisonous drugs to animals as well.<sup>64</sup>

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<sup>60</sup> Explanatory notes, para 23

<sup>61</sup> Explanatory notes, para 23

<sup>62</sup> Q 742 [Mike Radford]

<sup>63</sup> Q 999 [Defra]

<sup>64</sup> Q 999 [Defra]

67. We consider that the clarity and utility of clause 1 would be greatly improved if it were divided into separate clauses, each setting out one offence. We recommend that each of the following sub-clauses or groups of sub-clauses should be separated out:

- sub-clauses (4), (5) and (6) (mutilation)
- sub-clauses (7) and (8) (administering injurious drugs)
- sub-clause (9) (performing an operation without due care).

The Government should consider how the clause 1(10) definition of “keeper”, which is relevant to each of these offences, can best be incorporated into each offence.

68. Although the offences of mutilation, administering injurious drugs and performing an operation without due care are specific cases of the ‘parent’ offence of “causing unnecessary suffering”, rather than new and unrelated offences, the clause 2 offence of fighting is equally a specific case of causing unnecessary suffering, and it has been—helpfully—made into a separate clause. We consider that separating out the cruelty offences will assist clarity and will not affect the ability to bring prosecutions under the various offences.

### **Clarity of clause 1(1)**

69. We expressed our concern to the Minister that the definition of the offence of cruelty set out in clause 1(1) was too complex. We asked why the draft Bill did not simply provide that a person commits an offence if “an act of his or a failure of his to act causes a protected animal to suffer”.<sup>65</sup>

70. Defra officials explained that the offence was drafted so as to break it down into its component parts:

... the way it is drafted is to read that, if you cause an animal to suffer and that, firstly, you knew that you were going cause it to suffer, secondly it is a protected animal and, thirdly, the suffering is unnecessary. All those three things have to happen before you commit an offence. It is not just causing a protected animal to suffer. It has to be unnecessary suffering and you have to have known that you would be causing it.<sup>66</sup>

However, officials did undertake to consider whether the drafting of the offence could be simplified.<sup>67</sup> **We welcome the Government’s undertaking that it will seek to simplify the drafting of clause 1(1).**

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<sup>65</sup> Q 991 [Defra]

<sup>66</sup> Q 992 [Defra]

<sup>67</sup> Q 994 [Defra]

### ***Mens rea of cruelty offence: clause 1(1)—causing unnecessary cruelty***

71. The main cruelty offence can be broken down into two categories: offences where the offender him or herself caused the unnecessary suffering to the animal and offences where the offender procured or permitted the unnecessary suffering to be caused. We deal with these two categories separately; procuring or permitting unnecessary suffering is discussed below.

#### ***Current law***

72. The offence of cruelty set out in the Protection of Animals Act 1911 has both an *actus reus* (or action) element and a *mens rea* (or mental) element. This means that, in prosecuting a charge of cruelty, the prosecution must show not only that the defendant committed the illegal act but that he or she had the requisite ‘guilty mind’ at the time of the offence. The wording of the *mens rea* element of an offence should indicate whether the defendant is to be judged according to a subjective or an objective test. If the former, the prosecution will have to show that, as a matter of fact, the particular defendant before the court knew the consequences of his or her conduct (or must be assumed to have known them, on the basis of the evidence). If the latter, the prosecution will have to show that a reasonable person in the position of the defendant would have known the consequences of his or her conduct—effectively, that the defendant *should* have been aware of the consequences, regardless of whether the defendant *was* in fact so aware.

73. The *mens rea* element of the cruelty offence in section 1(1)(a) of the 1911 Act is indicated by the use of the words “cruelly” and “wantonly or unreasonably doing or omitting to do”. Case law has established that the appropriate test to be applied, in respect of the person directly responsible for the cruelty offence, is an objective test.<sup>68</sup> Crucially, the application of an objective test in respect of this offence means that the offence applies not only to deliberate infliction of suffering but also to suffering which arises as a result of negligence or neglect. This provides protection for animals in a much wider range of circumstances than would be the case if a subjective test were to be applied in respect of this offence, because factors such as a defendant’s ignorance, domestic or financial situation or health or mental state are irrelevant.

#### ***Proposals in the draft Bill***

74. Clause 1(1) provides that a person would commit an offence *where the person knew, or ought reasonably to have known*, that his or her act or omission would cause an animal unnecessary suffering, or that it would be likely to have that effect.

75. The test to be applied in assessing whether the *mens rea* element of the clause 1(1) offence has been satisfied is therefore not entirely clear. Clause 1(1) refers to “ought reasonably have known”, which indicates that an objective test is appropriate. However, clause 1(1) also refers to the concept of ‘knowledge’, which could be argued to indicate a subjective test. Given the approach taken in existing animal welfare law, we would have assumed that the Government intended that an objective test should be

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<sup>68</sup> *Ford v Wiley*, (1889) 23 QBD 203; *Hall v RSPCA*, (unreported, QBD, 11 November 1993)

applied under clause 1(1). However, in the context of discussing the appropriateness of the proposed penalties in respect of the clause 2 fighting offence, the Minister stated:

Cruelty is not lack of attention ... lack of attention comes under the welfare offence. Cruelty is deliberate cruelty which results in pretty serious suffering ...<sup>69</sup>

This clearly suggests that the Government intends that the clause 1(1) cruelty offence should apply only to deliberate infliction of suffering and that it should not extend to suffering which arises as a result of negligence or neglect.

### ***Mens rea of cruelty offence: clause 1(2) and (10)—procuring or permitting unnecessary cruelty***

#### ***Current law***

76. Section 1(1)(a) of the 1911 Act also creates an offence of causing or procuring another person to cause an animal unnecessary suffering or, in the case of an owner, permitting unnecessary suffering to be caused to his or her animal. Section 1(2) of the 1911 Act extends the ‘permitting’ aspect of the cruelty offence by providing that an owner shall be deemed to have permitted cruelty if he or she failed to exercise reasonable care and supervision in respect of the animal; where an owner is convicted in accordance with section 1(2), however, a lesser penalty will apply than in the case of conviction under section 1(1)(a).

77. Case law has established that the appropriate test to be applied, in respect of a person who causes, procures or permits unnecessary suffering, is a subjective test.<sup>70</sup> This means that the offence applies only where the prosecution can establish that the defendant knew, or must be assumed to have known, that unnecessary suffering would result from his or her actions. However, the courts have also held that the 1(2) provision that “permit” includes failing to exercise reasonable care and supervision must be assessed objectively; the section 1(1)(a) offence of permitting unnecessary suffering can therefore be extended to apply to instances of negligence or neglect, by way of section 1(2).

#### ***Proposals in the draft Bill***

78. Clause 1(2) provides that a keeper of an animal would commit an offence if he or she permitted another person to cause the animal unnecessary suffering. Clause 1(10)(b) states that a keeper will be treated as having permitted unnecessary suffering if he or she failed to exercise reasonable care and supervision in respect of the animal.<sup>71</sup>

79. It is therefore clear that, in assessing whether the mens rea element of the clause 1(2) offence has been satisfied, an objective test is appropriate because of the use of the phrase “reasonable care and supervision”. The offence of permitting unnecessary suffering would therefore extend to suffering which arises as a result of negligence or

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<sup>69</sup> Q 1071 [Defra]

<sup>70</sup> *Ford v Wiley*, (1889) 23 QBD 203; *Hall v RSPCA*, (unreported, QBD, 11 November 1993)

<sup>71</sup> The offence of causing or procuring another person to cause an animal unnecessary suffering is effectively subsumed within clause 1(1) of the draft Bill.

neglect on the part of a keeper but *only* where that suffering is caused by another person who is not the keeper.

### *Our position*

80. We are extremely concerned that the Government apparently intends that the clause 1(1) cruelty offence should apply only to deliberate infliction of unnecessary suffering and that it should not extend to unnecessary suffering which arises as a result of negligence or neglect. As currently drafted, unnecessary suffering which arises as a result of negligence or neglect would appear to engage the cruelty offence only where the suffering is caused by another person who is not the keeper, as a result of the keeper's negligence or neglect. The Government's apparent position would represent a backward step in terms of animal protection: it would lessen the current protections in existing animal welfare law and would significantly restrict the scope of the cruelty offence.

81. We assume it is the Government's intention that unnecessary suffering which arises as a result of negligence or neglect should be dealt with under the clause 3 welfare offence. We consider such an approach is inappropriate for two reasons. First, the penalties available under the welfare offence are less serious than those available under the clause 1(1) cruelty offence. Second, and more importantly, we understand the purpose of the welfare offence to be to deal with those cases where the standard of care given to an animal is clearly inadequate, but where it is not possible to demonstrate that the animal has suffered unnecessarily. The distinction between the cruelty offence and the welfare offence should be whether the animal has suffered unnecessarily, not the mental state of the person who caused that suffering. The extent of an offender's mental culpability can best be reflected at the sentencing stage, where we would expect those whose negligence or neglect has caused unnecessary suffering generally to receive a lesser sentence than those who intentionally or recklessly caused such suffering.

82. We therefore recommend that the Government amend the draft Bill to make it clear that the mens rea element of the clause 1(1) cruelty offence should be assessed by means of an objective test, so that the defendant's conduct will be assessed on the basis of what a reasonable person in the position of the defendant would have known about the consequences of his or her conduct.

### *Mental suffering of an animal*

83. The cruelty offence under section 1(1)(a) of the 1911 Act clearly applies not only to causing physical suffering to an animal but also to causing an animal mental suffering, because it includes an offence of infuriating or terrifying an animal. The RSPCA expressed concern that clause 1 of the draft Bill would not clearly cover suffering caused by psychological, as well as physical, factors:

We believe that there should be an express provision to the effect that "suffering" includes suffering caused by physical or psychological factors. This is implicit under section 1(1)(a) [of the Protection of Animals Act 1911] which makes it an offence

to do various things including “infuriate, or terrify an animal”, but in our view it should be made explicit ...<sup>72</sup>

The same concern was raised by Mike Radford: “once you take away “terrify”, there is no specific indication that mental suffering is still relevant.”<sup>73</sup> Mr Radford explained why it is important that the offence of cruelty should apply to mental suffering, as well as physical:

... Mental suffering [on its own] is horrendously difficult to establish beyond reasonable doubt, but certainly it is useful in cases where there is both physical suffering and, if there is bad physical suffering, it can be easier to prove associated mental suffering.<sup>74</sup>

**84. We recommend that the Government amend clause 1 so as to make clear that it is an offence to cause unnecessary mental suffering to an animal, whether or not that mental suffering is accompanied by physical suffering.**

### **Clarity of clause 1(3)**

85. Clause 1(3) sets out the considerations to which “it is relevant to have regard” when determining whether suffering can be described as “unnecessary”, for the purposes of clause 1(1) and (2). The considerations can be summarised as being whether:

- the suffering could reasonably have been avoided (paragraph (a))
- the conduct which caused the suffering complied with law (paragraph (b))
- the conduct which caused the suffering was for a legitimate purpose (paragraph (c))
- the suffering was proportionate to the purpose of the conduct concerned (paragraph (d))
- the conduct concerned was that of a reasonably competent and humane person (paragraph (e)).

86. Clause 1(3) is likely to be applied primarily by prosecutors, seeking to establish whether a prosecution can be mounted under clause 1(1) or (2), and by the courts, in seeking to determine whether a charge has been proven. As the draft Bill currently stands, animal welfare offences would be dealt with in the Magistrates’ Courts.<sup>75</sup>

87. Mike Radford also thought clause 1(3) was unduly complicated and suggested that, in practice, its complexity could make it difficult for a prosecutor to secure a conviction under clause 1(1) or (2). He suggested that the complication arose because of the attempt, in clause 1(3), to reflect two relevant, but separate, lines of case law:

... what is going on there is that [paragraphs] (c) and (d) are taken from one line of case law which dates back to 1889, a case called *Ford v Wiley*, where the court talked

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<sup>72</sup> Ev 11 [RSPCA]

<sup>73</sup> Q740 [Mike Radford]

<sup>74</sup> *Ibid.*

<sup>75</sup> Clause 24

about a legitimate purpose and proportionality, and [paragraph] (e) refers to case law dating from the early 1990s where the High Court laid ... down as a test [whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person].<sup>76</sup>

**88. We consider that clause 1(3) is unclear in its intent and application.** The drafting of the sub-clause raises a number of questions, including:

- Although “it is relevant” for the prosecutor and the courts “to have regard” to these considerations, are they required to do so?
- Must all of the five relevant considerations be met, or is it sufficient that only some of them are met?
- If some of the considerations are met, what weight should be placed on each consideration?
- Is it possible to establish unnecessary suffering if none of the five relevant considerations are met?
- If paragraph (b) is met—that is, the conduct which caused the suffering complied with law—is that an absolute guarantee that the suffering was not unnecessary?

Further confusion is caused by the fact that, if suffering is to be established as unnecessary, paragraph (a) requires a ‘yes’ answer whereas paragraphs (b) to (e) require a ‘no’ answer.

**89. We are concerned that, as presently drafted, the complexity of clause 1(3) will create uncertainty for prosecutors and the courts, which could make it difficult for a prosecutor to secure a conviction under clause 1(1) or (2). We recommend that the Government consider how clause 1(3) can best be clarified.**

### ***Clauses 1(4) and 1(5): mutilation***

90. Clause 1(4) would make it an offence to mutilate a protected animal, or cause a protected animal to be mutilated, or permit the mutilation of an animal of which you are a keeper. The draft Bill does not define “mutilation”. For the clause 1(4) offence to be made out, evidence of suffering as a result of the mutilation would not be required.

91. Clause 1(5) would delegate a power to the appropriate national authority to specify circumstances in which the clause 1(4) ban on mutilation would not apply. Although we discuss aspects of the clause 1(5) delegated power in this section, we deal with the appropriateness of the power more fully in part 5. We discuss evidence we received on proposed exemptions under clause 1(5) in part 9.

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<sup>76</sup> Q 742 [Mike Radford]; references to early 1990s case law are to *Hall v RSPCA* (unreported, QBD, 11 November 1993) and *RSPCA v Issacs* [1994] Crim LR 517.

### Current law on mutilation

92. Defra officials explained that there is currently a great deal of secondary legislation banning or permitting certain mutilations, in certain circumstances:

... certain mutilations are already regulated so some quite unpleasant sounding mutilations are already banned in regulations. There are other mutilations which are regulated in the sense you have to try something else first. So, for example, you are not allowed to do tail docking on piglets as a routine thing. You have to try and address their needs for environmental enrichment to stop them fighting each other first. There are also other mutilations which only certain people can do. For example, only a veterinary surgeon can do a certain operation or only under certain anaesthesia.<sup>77</sup>

93. Officials indicated that the intention behind clause 1(4) and (5) is to bring all these current regulations on mutilations together into one place.<sup>78</sup> The Department confirmed that, if the draft Bill is enacted, clause 1(4) will not come into force until the secondary legislation providing for exemptions, to be made under clause 1(5), is in place.<sup>79</sup> Officials told us that secondary legislation could be put into place fairly promptly because “the vast majority of what is now the situation on mutilations is already in secondary legislation.”<sup>80</sup>

### Scope of clause 1(4) offence

94. Submitters expressed concern about the likely scope of clause 1(4), in particular whether tail docking, wing pinioning or wing clipping were likely to amount to mutilation.<sup>81</sup> Tail docking in dogs is an area on which Defra has put forward a proposed policy; evidence received on specifically on this point is therefore discussed in part 9.

95. We understand that Defra intends to amend the draft Bill so as to include a definition of “mutilation”.<sup>82</sup> The definition adopted will be based on the wording suggested by the Royal College of Veterinary Surgeons, in which mutilation is defined as:

All procedures, carried out with or without instruments, which involve interference with the sensitive tissues or the bone structure of an animal, and are carried out for non-therapeutic reasons.<sup>83</sup>

**96. In order to make the scope of the proposed mutilation offence clear, we consider that it is crucial that a definition of “mutilation” is included on the face of the legislation. Without such a definition, what constitutes “mutilation” would**

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<sup>77</sup> Q 1016 [Defra]

<sup>78</sup> *Ibid.*

<sup>79</sup> Q 1022 [Defra]

<sup>80</sup> Q 1022 [Defra]

<sup>81</sup> For example, ev 394 [Dogs Trust]

<sup>82</sup> Q 1020 [Defra]

<sup>83</sup> Qq 1003 and 1004 [Defra]. The definition is set out in RCVS, ‘Mutilations report’, annex to *Guide to Professional Conduct*; available at [www.rcvs.org.uk](http://www.rcvs.org.uk).

effectively be defined by the appropriate national authority, on the basis of what mutilations the authority chose *not* to exempt from clause 1(4) by means of clause 1(5). The definition should also assist in rendering “mutilation” a less emotive word in the context of animal welfare legislation, because it will have a clear meaning in both a legal and a veterinary context.

### *Likely exemptions under clause 1(5)*

97. There was particular concern amongst farmers’ organisations about which mutilations were likely to be exempted under clause 1(5). The NFU emphasised that “what may be appropriate provision for companion animals is not necessarily appropriate for animals kept for commercial purposes as in farming” and sought reassurance that the draft Bill would not jeopardise farming practices such as “teeth clipping in pigs and castrating animals[,] which are not necessarily normal practices in terms of companion animals”.<sup>84</sup> The NFU also pointed out that, in some circumstances, farmers are required to carry out mutilations:

In terms of taking the horns off cattle, under welfare codes and farm assurance, I have to do that as part of my good farming practice to be a farm-assured farmer ... Surely, what you have to do is make sure that you look at what is necessary for the welfare of the animal ...<sup>85</sup>

98. The RSPCA welcomed the outright ban on mutilation set out in clause 1(4), but then gave a list of ten circumstances which it considered would need to be exempted from the ban. These included neutering domestic animals, microchipping or otherwise marking an animal, disbudding young livestock and docking and castrating lambs, piglets and cattle.<sup>86</sup>

99. We understand that Defra has yet to take any final decisions about which mutilations will be exempted by means of the clause 1(5) delegated power. Defra has told us that the Secretary of State is likely to exempt mutilations that are necessary for reasons of welfare, good management practice, including mutilations used in traditional farming practices, and necessary companion animal mutilations such as castration and neutering.

100. Defra’s position at present appears to be that tail docking in dogs will not be exempted “except for therapeutic or welfare reasons”—that is, tail docking for cosmetic reasons would be an offence under the draft Bill.<sup>87</sup> In respect of wing pinioning, Defra’s intention is currently that an exemption will be provided in respect of waterfowl pinioned for conservation purposes, although:

There is work currently going on within the zoo industry on the best methods of pinioning and also its necessity. We would want to look at the evidence that comes

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<sup>84</sup> Ev 131 [National Farmers’ Union]

<sup>85</sup> Q 260 [National Farmers’ Union]

<sup>86</sup> AW161, B1-B2

<sup>87</sup> Q 1006

out of this work before we make any definite statements on whether or not [wing pinioning] will appear [as an exemption].<sup>88</sup>

101. **On the basis of the evidence we have received, it is evident that the list of exemptions to the clause 1(4) mutilation offence is likely to be lengthy. We have therefore considered whether it is in fact appropriate or meaningful to have an absolute ban on mutilation on the face of the legislation, given that the ban is likely to be considerably less than ‘absolute’ in practice. This is particularly true given that farmed and companion animals can have quite distinct welfare needs and practices in this respect, and any exemptions made under clause 1(5) will need to distinguish between these.**

102. **On balance, we support the inclusion of clause 1(4) on the face of the Bill because it will send a strong message about animal welfare to the courts and the public. The inclusion of mutilation as a separate class of welfare offence is also important for evidential reasons: if acts of mutilation were left to be dealt with by clause 1(1) and (2), evidence of suffering as a consequence of the mutilation would be required.**

103. We discuss the need for consultation on draft orders proposed to be made under clause 1(5) in Part 5, and the appropriateness of likely secondary legislation on tail docking in dogs in Part 9.

## **Clause 2: fighting offence**

104. The offence of fighting is currently contained in the Protection of Animals Act 1911, but is subsumed under the general heading of “offences of cruelty”, in section 1(1)(c). The draft Bill is intended to reproduce the substance of the current offence “but with changes to reflect modern circumstances”.<sup>89</sup> Clause 2(3) defines an “animal fight” to mean an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting. Clause 2 seeks to criminalise all aspects of the organising and staging of an animal fight, including arranging, publicising, attending, recording and giving or receiving money for such a fight.

105. We received very little substantive evidence on clause 2. Submissions relating to the appropriateness of the proposed penalties are dealt with in part 6. Mike Radford raised a question about the drafting of clauses 2(1)(a) to (e), which relate to arranging, publicising, using or keeping a place to be used for a fight, or permitting such use of keeping, and receiving money for admission to a fight. Mr Radford asked whether the prosecution would need to show that a fight actually took place, or whether it would be sufficient to show that a fight was intended to take place.<sup>90</sup> The offences in clauses 2(1)(a) to (e) are all acts likely to take place in the run up to an animal fight; the question is whether an offence would be committed as soon as the act took place, or only once the fight towards which the act was directed took place.

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<sup>88</sup> Q1002

<sup>89</sup> Explanatory notes, between paras 33 and 34

<sup>90</sup> Ev 288 [Mike Radford]

106. We consider that each of the acts specified in clauses 2(1)(a) to (e) of the fighting offence should be deemed to be offences at the time at which each act takes place. Provided that sufficient evidence exists in the absence of the fight, prosecutions should be able to be pursued in respect of such acts without the need for the animal fight to take place. The enforcing authorities should not have to wait for a fight to take place before being able to take enforcement action. We recommend that the Government amend clauses 2(1)(a) to (e) accordingly.

### Clause 3: welfare offence

107. Clause 3 would provide that a keeper's failure to take reasonable steps to ensure an animal's welfare would amount to an offence. Defra has indicated that the key purpose of the new offence is to allow action to be taken in respect of foreseeable harm, which is not possible under current legislation. Where a keeper is treating an animal in such a way that harm is likely to occur *but has not yet occurred*, the draft Bill should enable enforcement action to be taken.

### Analogy with the Agriculture (Miscellaneous Provisions) Act 1968

108. The Government has presented the clause 3 welfare offence as updating the law protecting companion and kept animals in order to bring it into line with the existing law on farmed animals' welfare. The Minister told us that "there is already a duty of care for farm animals which allows intervention to take place before suffering actually occurs and that is the critical difference between the existing legislation and what we hope to achieve with this Bill regarding non-farm kept animals."<sup>91</sup> Similarly, Defra has described section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1968 as imposing "a positive duty to ensure the welfare of livestock situated on agricultural land".<sup>92</sup>

109. The "duty of care" for farmed animals to which the Minister refers is contained in section 1(1) of the 1968 Act, which provides:

Any person who causes unnecessary pain or unnecessary distress to any livestock for the time being situated on agricultural land and under his control or permits any such livestock to suffer any such pain or distress of which he knows or may reasonably be expected to know shall be guilty of an offence under this section.

### Evidence received

110. The Society of Conservative Lawyers commented on this point:

The furthest reach of the ... 1968 [Act] offence is where a person permits livestock that are on agricultural land and under his control to suffer any unnecessary pain or unnecessary distress and he has actual or constructive knowledge of it. This is a much higher threshold for committing an offence than [that proposed under] clause 3(1): the 1968 Act [refers to] causing or knowingly permitting "unnecessary pain" and "unnecessary distress" [which] is much closer to causing "unnecessary

<sup>91</sup> Q 1 [Defra]

<sup>92</sup> Explanatory notes, para 34

suffering” ... than it is to failing to take reasonable steps to ensure an animal’s welfare under clause 3(1) of the draft [Bill].<sup>93</sup>

### *Our position*

111. We commend the Government for the introduction of the welfare offence under clause 3. This clause will allow preventive action to be taken at a point at which harm has yet to occur to the animal in question, something which is not possible under current animal welfare law. It should make a significant and important contribution towards enhancing animal welfare.

112. However, we consider that the Government is being disingenuous in presenting the proposed clause 3 welfare offence as a simple extension, from farmed animals to all kept and companion animals, of an existing duty to ensure welfare. The existing offence on which the Government relies, section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1968, is not analogous to the proposed welfare offence. We consider that clause 3 would in fact extend the protection currently offered by section 1(1) of the 1968 Act. We entirely support this extension, but we consider it is important that the Government should accurately represent to Parliament the nature of the proposals to which it is seeking Parliament’s agreement.

### *Drafting of the clause 3(1) offence*

113. Submitters representing a wide range of interests within the animal sector were almost universally supportive of the introduction of the concept of a so-called ‘duty of care’.<sup>94</sup>

114. Mike Radford made two specific comments in relation to the drafting of clause 3(1). He pointed out that it “is insufficient to use the word ‘welfare’ without qualification. An animal’s welfare can be good, bad, or indifferent; although the clause is clearly intended to be about good welfare, this needs to be specified.”<sup>95</sup> He also noted that clause 3(1) “is already commonly being referred to as ‘the duty of care’; it would be helpful if this concept were to be incorporated into the wording ...”<sup>96</sup>

115. The Society of Conservative Lawyers also considered that, as currently drafted, clause 3(1) does not create a “duty of care”:

... the clause 3(1) offence has been misleadingly publicised. It does not, in fact, impose a positive duty of care, providing that an offence would be committed if that duty is not met. Rather, it is an offence of omission and would be more clearly expressed if the word “commit” was excised: “A keeper of a[n] ... animal shall be guilty of an offence ...”<sup>97</sup>

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<sup>93</sup> Memorandum from Society of Conservative Lawyers [not printed in its entirety], paras 3.25 to 3.26

<sup>94</sup> For example, the Companion Animal Welfare Council (Q 93); the Kennel Club (Q 95); the Pet Advisory Committee (Q 96); the International Fund for Animal Welfare (Q 147); the Federation of British Herpetologists (Q 149); the Animal Protection Agency (Q 173); the Bio Veterinary Group (Q 174)

<sup>95</sup> Ev 288 [Mike Radford]

<sup>96</sup> *Ibid.*

<sup>97</sup> Memorandum from Society of Conservative Lawyers [not printed in its entirety], para 3.27

The Society also commented on the mens rea, or mental, element of the clause 3(1) offence, noting that it:

... appears to be a strict liability offence of omission ... we think it entirely appropriate from a public policy perspective that a mental element of culpability is introduced: a person should only be capable of committing the clause 3(1) offence knowingly or recklessly.”<sup>98</sup>

**116. We recommend that the Government re-consider the wording of the clause 3(1) offence, in order to clarify the nature of the offence. In particular:**

- **A keeper should be required to ensure an animal’s *good* or *beneficial* welfare. As currently drafted, an offence would be committed if a keeper fails to take reasonable steps “to ensure the animal’s welfare”. “Welfare” in itself is a neutral term; clarification of what kind of welfare a keeper needs to ensure is required.**
- **The Government should consider whether clause 3(1) would not be better and more helpfully expressed as a positive duty of care, rather than as an offence of omission.**

**117. We consider it is appropriate that the welfare offence should have only an actus reus (or action) element and no mens rea (or mental) element. This would mean that a keeper who unknowingly or negligently failed to take reasonable steps to ensure an animal’s welfare would be as culpable as a keeper who intentionally or recklessly failed to take such reasonable steps. However, our endorsement of the elements of the clause 3 welfare offence should be read in the context of our comments on the mens rea element of the clause 1 cruelty offence.**

### ***Clauses 3(4) and (5): meeting an animal’s basic welfare needs***

118. Clause 3(4) is a statement of an animal’s basic welfare needs; for the purposes of the welfare offence, an animal’s welfare is to be taken to consist of the meeting of these needs “in an appropriate manner”. The five stated needs are:

- a) the need for a suitable environment in which to live
- b) the need for adequate food and water at appropriate intervals
- c) the need to be able to exhibit normal behaviour patterns
- d) any need to be housed with, or apart from, others of an animal’s own or other species
- e) the need for appropriate protection from, and diagnosis and treatment of, pain, injury and disease.

119. Clause 3(5) sets out the considerations to which a court should have regard in determining whether a defendant has taken reasonable steps to meet an animal’s needs “in an appropriate manner”. An “appropriate manner” is defined as being a manner appropriate to the animal’s species, degree of domestication, and environment and

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<sup>98</sup> Memorandum from Society of Conservative Lawyers [not printed in its entirety], para 3.26

circumstances. Clause 3(5) is intended to address those circumstances in which the clause 3(4) needs are not attainable. Defra has referred to the examples of farmed animals, which often cannot exhibit all of their normal behaviour patterns, and pets, whose normal behaviour patterns are restrained by their ‘unnatural’ environment, such as living in a cage or in a flat.

### *The five freedoms*

120. The needs set out in clause 3(4) are based on the so-called “five freedoms”, which were set down by the Farm Animal Welfare Council (FAWC) in 1993 as a statement of what constitutes good animal welfare.<sup>99</sup> FAWC describes the five freedoms as defining “ideal states rather than standards for acceptable welfare”. The five freedoms are:

- a) *Freedom from hunger and thirst*—by ready access to fresh water and a diet to maintain full health and vigour
- b) *Freedom from discomfort*—by providing an appropriate environment including shelter and a comfortable resting area
- c) *Freedom from pain, injury or disease*—by prevention or rapid diagnosis and treatment
- d) *Freedom to express normal behaviour*—by providing sufficient space, proper facilities and company of the animal’s own kind
- e) *Freedom from fear and distress*—by ensuring conditions and treatment which avoid mental suffering.<sup>100</sup>

### *Evidence received*

121. Although submitters were generally supportive of the inclusion of the clause 3(4) needs on the face of the draft Bill, some reservations were expressed. Some submitters felt that the needs were aspirational, rather than practical, and were therefore not attainable in all circumstances. The RSPCA told us that it understood that Defra might wish to delete clause 3(4) from the draft Bill.<sup>101</sup>

122. The Meat and Livestock Commission was amongst those organisations which welcomed the fact that the draft Bill was “built around” the five freedoms.<sup>102</sup> The RSPCA was also strongly supportive of the inclusion of the clause 3(4) needs on the face of the draft Bill, saying that “it is not just about not being cruel to your animal, it is about actively caring for it”.<sup>103</sup> But the RSPCA argued for the list of needs to be expanded, describing the existing list as “non-exhaustive” and arguing that it should also include “the need for adequate exercise, appropriate environmental enrichment, appropriate freedom to move and the need to provide, whenever reasonably possible,

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<sup>99</sup> FAWC, *Report on Priorities for Animal Welfare Research and Development*, (1993), paras 8 and 9

<sup>100</sup> Available at [www.fawc.org.uk](http://www.fawc.org.uk)

<sup>101</sup> Q 53 [RSPCA]

<sup>102</sup> Q 232 [Meat and Livestock Commission]

<sup>103</sup> Q 74 [RSPCA]

conditions which avoid mental suffering including protection from fear and distress.”<sup>104</sup>

123. The Farm Animal Welfare Council was more cautious, emphasising that the five freedoms are intended to be aspirational:

... the five freedoms are still very robust but we should recognise they are ideals, so one sees them as the target of a system and it gives a very good steer to farmers, stockmen and so on to understand what they should be targeting, but they are a set of ideals. It is not always possible to allow freedom to express normal behaviour because sometimes animals will kill each other if you allow them the freedom to express normal behaviour, so there are limits ...<sup>105</sup>

124. The Federation of Zoological Gardens was concerned that the five freedoms could not be applied entirely sensibly or appropriately to zoos and asked for the draft Bill to include instead, specifically in respect to zoos, the five principles enunciated in the Secretary of State’s “Standards for Modern Zoo Practices”:<sup>106</sup>

[The five principles are] not a subset [of the five freedoms], [they are] an improvement, [they are] less generic. The five principles actually were derived from the five freedoms but they were worded to specifically apply to the keeping of exotic animals, therefore they are more appropriate to apply to zoos than the much less precise five freedoms that are presently listed in the Bill. We think that using those would not be to the benefit of animals in zoos ...<sup>107</sup>

125. Similarly, the Federation of British Herpetologists suggested that the five freedoms might not apply sensibly to animals which exist both in the wild and in captivity; in relation to the need to be able to exhibit normal behaviour problems, the Federation asked how this would relate to feeding captive snakes with live prey: “... snakes in the wild feed on live prey ... so that would mean we are not going to be able to feed them frozen food; we are going to have to feed them live mice ... we would be opposed to having to introduce that”.<sup>108</sup>

126. The RSPCA suggested that clause 3(5) should be amended to mirror the factors set out in regulation 3(3) of the Welfare of Farmed Animal (England) Regulations 2000. Regulation 3(3) reads:

In deciding whether an animal’s needs have been met, the court shall have regard to their species, and to their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge.

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<sup>104</sup> Qq 53 and 87 [RSPCA]

<sup>105</sup> Q 243 [Farm Animal Welfare Council]

<sup>106</sup> Available at <http://www.defra.gov.uk/wildlife-countryside/gwd/>

<sup>107</sup> Qq 464 and 465 [Federation of Zoological Gardens]

<sup>108</sup> Q 162 [Federation of British Herpetologists]

### *Government's position*

127. We understand that the Government is concerned that clause 3(5) could be so broadly drawn that, in practice, it would effectively undermine the protection in clause 3(4). Defra is considering the RSPCA's suggestion of replacing clause 3(5) with the wording used in regulation 3(3) of the Welfare of Farmed Animal (England) Regulations 2000.

### *Our position*

128. **We support the Government's approach of setting out a modified version of the five freedoms on the face of the draft Bill. The five needs in clause 3(4) provide a strong statement of the ideal animal welfare circumstances towards which those responsible for animals should be working. We consider it imperative, however, that the five needs should continue to be framed as aspirational, and therefore not achievable in all circumstances.**

129. **In respect of clause 3(5), we support the RSPCA's suggestion of amending the existing clause 3(5) so that it mirrors the factors set out in regulation 3(3) of the Welfare of Farmed Animals (England) Regulations 2000. The factors listed in regulation 3(3) should be more helpful to the courts in distinguishing the circumstances in which the clause 3(4) needs are not attainable. It also seems sensible to us to aim, wherever possible, for consistency in definitions in animal welfare legislation.**

### *Clause 3(3): abandonment*

130. Abandoned animals are covered in current legislation by the Abandonment of Animals Act 1960. Section 1 provides:

If any person being the owner or having charge or control of any animal shall without reasonable cause or excuse abandon it, whether permanently or not, in circumstances likely to cause the animal any unnecessary suffering, or cause or procure or, being the owner, permit it to be so abandoned, he shall be guilty of an offence of cruelty within the meaning of the [Protection of Animals Act 1911] ...

Clause 3(3) is intended to re-enact the 1960 Act "in substance".<sup>109</sup> It provides that, if an animal has been abandoned, any person who immediately before that time was the keeper of the animal shall continue to be the keeper for the purposes of the clause 3 welfare offence. "Keeper" is defined in clause 3(3).

### *Evidence received*

131. Submitters were concerned about two aspects of clause 3(3): that it was inappropriate to include abandonment within the welfare offence and that it could result in the last *traceable* owner being deemed to be the keeper, rather than the true last owner, and so acquiring all the responsibilities attributable to ownership.

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<sup>109</sup> Explanatory notes, para 37

132. The RSPCA commented that:

[Clause 3(3)] does not, in its application, adequately replace the Abandonment of Animals Act 1960, which created an offence of cruelty. The effect of s3(3) is to downgrade abandonment to a welfare offence. We believe this is inappropriate and that its more serious status should be restored by maintaining within the AWB a specific offence of abandonment. It also seems to us that the welfare offence is committed only when the animal's needs are not met. The old offence of abandonment was committed as soon as the abandonment occurred.<sup>110</sup>

133. The NFU was concerned that clause 3(3) was ambiguous: where person A sold an animal to person B and person B subsequently abandoned the animal *but person B could not be traced*, the NFU considered that clause 3(3) could be read to mean that legal responsibility for the animal would revert to person A, who would be deemed to be the keeper of the animal.<sup>111</sup> The Farmers' Union of Wales (FUW) asked at what point a sheep might be considered to be abandoned, in the context of Welsh farming practices. The FUW noted that there have been hefted sheep on the hills of Wales for generations, with these animals being turned onto the open mountain in early May, to be gathered only for shearing, dipping and weaning the lambs, and suggested that a sheep could be considered to be abandoned only if it was untagged or without an earmark.<sup>112</sup>

### Government's position

134. Defra has indicated to us that it considers the NFU's concerns about responsibility as a "keeper" reverting to the last traceable owner to be unfounded; it considers that only the 'new' owner could be found to be guilty of the welfare offence. We understand that the Government's current intention is nevertheless to delete clause 3(3) from the final Bill altogether, on the basis that the clause 3 welfare offence adequately covers the present legal position without the need for separate provisions specifically relating to abandonment.

### Our position

135. It appears to us that, in the current scheme of the draft Bill, abandonment is mentioned under the welfare offence in order to deal with the difficulty of bringing a person who has abandoned an animal under the current definition of "keeper"; a keeper must either own, or be responsible for, or in charge of, the animal. The mention of abandonment in clause 3(3) would not prevent abandonment forming the basis of a charge laid under the main cruelty offence, clause 1(1).

136. In respect of the clause 3 welfare offence, the Government appears to have concluded that a person who has abandoned an animal will still be able to be brought under the definition of "keeper" even in the absence of clause 3(3); that is, the courts will accept that such a person still owns or is responsible for the animal, as a matter of law. **We do not object to the removal of clause 3(3) provided that the Government is**

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<sup>110</sup> Ev 13 [RSPCA]

<sup>111</sup> Qq 268 to 272 [National Farmers' Union]

<sup>112</sup> Qq 294 and 295 [Farmers' Union of Wales]. Hefted sheep are unfenced, but belong to a certain patch of land.

certain that abandonment of an animal would not serve to divest a person of legal ownership or the responsibilities that follow on from it, and that a charge could therefore be laid and successfully prosecuted under clause 3(1). We have taken no evidence on the law and case law with respect to ownership and are therefore unable to comment on whether the Government's legal advice is correct.

137. However, we are concerned that the draft Bill would represent a significant weakening of the current law on the abandonment of animals. Under the Abandonment of Animals Act 1960, an offence is committed at the time at which abandonment occurs; no evidence of the animal having suffered is required, and a person who is found guilty of abandonment is deemed to be guilty of a cruelty offence within the meaning of the Protection of Animals Act 1911. Under the draft Bill, although an act of abandonment could form the basis of a charge laid under the main cruelty offence, clause 1(1), evidence of the animal having suffered would be required. Evidence of abandonment *without* evidence of the animal having suffered could form the basis only of a charge laid under the welfare offence, clause 3(1), which carries lesser penalties than the clause 1 cruelty offences.

138. We recommend that the Government amend the draft Bill so that the act of abandoning an animal continues to be treated as a cruelty offence without the need for evidence of the animal having suffered as a consequence of the abandonment. The present law presumably does not require such evidence for the very good reason that an abandoned animal may not be able to be traced, in order for its suffering to be able to be demonstrated. No doubt the 1960 Act was enacted in the first place to deal with the requirement in the 1911 Act that unnecessary suffering be demonstrated. The fact that the act of abandonment, in and of itself, constitutes an offence is a key animal welfare protection in current law and it is crucial that it be maintained.

## 5 Delegated powers

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139. Clause 6 sets out the principal delegated power in the draft Bill; clauses 1(5) and 53(3) also contain key delegated powers. Clause 7 contains a power to issue codes of practice.

140. In this part, we primarily consider clause 6. Clause 1(5) provides a delegated power relating to the definition of mutilation: in this part, we consider the appropriateness of the clause 1(5) power and its place in our proposal for pre-legislative scrutiny of draft regulations. Other issues relating to clause 1(5) are discussed in part 4. Clause 53(3) provides a delegated power relating to the definition of an animal and is considered in part 3.

### Clause 6

#### *Operation of clause 6*

141. Clause 6(1) would delegate a power to the appropriate national authority to make regulations setting out such provision as the authority thinks fit for the purpose of

promoting the welfare of animals kept by man. Clause 6(2) lists matters which the appropriate authority may regulate under clause 6(1), although the list is stated to be without prejudice to the generality of the clause 6(1) power. Clause 6(3) provides that regulations made under clause 6 may create offences, provide for fees and, in relation to regulations providing for licensing or registration, may amend or repeal primary or secondary legislation currently regulating this area.<sup>113</sup> Clause 6(6) provides that any regulations made under clause 6 would be subject to the affirmative resolution procedure in each House.

142. At annex L to the Regulatory Impact Assessment (RIA) accompanying the draft Bill, Defra has set out its intended timetable for the regulations and codes of practice which it proposes to make under clauses 6(1), 1(5) and 7 over the next six or so years. Defra has given an indication of its proposed policy direction in relation to some of the planned regulations and codes of practice; these are set out in other annexes to the RIA. We consider the detail of the annexes to the RIA, and the evidence we received on the policy proposals contained in them, in greater detail in parts 8, 9 and 10.

### *Evidence received*

143. A majority of the evidence we received was supportive of clause 6, on the basis that it would allow greater flexibility and responsiveness in law-making, meaning that animal welfare law could therefore be more readily kept up-to-date. However, some submitters were critical of clause 6. Some felt that the Government was in fact proposing to leave many difficult policy decisions to secondary legislation; they suggested that the ‘hard decisions’ likely to be contained in much of the secondary legislation ought instead to be on the face of the Act. For example, Protect Our Wild Animals submitted:

We are very concerned about the absence of radical reforms in the Bill. It appears that instead of outlawing outmoded, unnecessary and unsavoury forms of animal exploitation the government instead seeks to rely on regulations, licences and codes of practice.<sup>114</sup>

Similarly, the Association of Circus Proprietors of Great Britain said it was regrettable that the draft Bill did not seek either to impose standards or to set down a procedure for assessing standards but merely empowered the appropriate national authority to make regulations.<sup>115</sup>

144. Other submitters criticised the breadth of the delegated power. The Countryside Alliance described the powers to be delegated as “virtually limitless in scope” and thought the wording of clause 6(1) was “particularly imprecise”.<sup>116</sup> The Alliance noted that clause 6 “could also be used to prohibit lawful activities, without the need for primary legislation”, pointing in particular to the wording of clauses 6(2)(k), (l) and (m). The National Farmers’ Union drew attention to the “extremely broad” powers in

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<sup>113</sup> Clause 6(3)

<sup>114</sup> Ev 494 [Protect Our Wild Animals]

<sup>115</sup> Ev 216 [Association of Circus Proprietors of Great Britain]

<sup>116</sup> Ev 321 [The Countryside Alliance]

clause 6 and “encourage[d] the public and MPs to monitor very closely the way Ministers behave in the operation of these powers.”<sup>117</sup> The National Sheep Association was “surprised at the lack of precision in some of the drafting” of the draft Bill and described it as “a liars’ paradise, for want of a better phrase”.<sup>118</sup> The National Gamekeepers’ Organisation described clause 6 as giving “almost unlimited scope” for the appropriate national authority to make regulations:

subject only [in England] to rather cursory scrutiny by Parliament (clause 6 (6)). We are uneasy about this and would prefer a stronger system of parliamentary scrutiny of any material changes to be made by the Secretary of State.<sup>119</sup>

145. The Royal College of Veterinary Surgeons was supportive of the breadth of the regulation-making power, but expressed concern about the degree of specificity in clause 6(2).

### **Extent of clause 6(1) delegated power**

146. **The power that would be delegated under clause 6 is very broad.** Clause 6(1) currently reads:

The appropriate national authority may by regulations make such provision as the authority thinks fit for the purpose of promoting the welfare of animals kept by man.

If the Bill is enacted, the appropriate national authority will therefore be empowered to make any regulation which, in the opinion of the authority, will “promote” the welfare of animals which a person owns, or is responsible for, or in charge of.<sup>120</sup>

### **Evidence received**

147. Several submitters put forward suggestions for tightening up the wording of clause 6(1), in order to provide some limits to the regulation-making power. The Society of Conservative Lawyers suggested that clause 6(1) should be re-worded to read:

The appropriate national authority may by regulations make such provision as they *certify* fit for *ensuring* the welfare of animals kept by man.<sup>121</sup>

and the Countryside Alliance suggested an almost identical re-wording.<sup>122</sup> Both organisations considered “ensure” to be a more precise word than “promote”, and noted that “ensure” is already used in clause 3. Both organisations also felt that the requirement for the appropriate national authority to “certify” the draft regulations would ensure that regulations were either justified on the basis of scientific evidence or that they met a genuine welfare need “evidenced by the consultation responses before introducing or

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<sup>117</sup> Q 274 [National Farmers’ Union]

<sup>118</sup> Q 304 [National Sheep Association]

<sup>119</sup> Ev 174 [National Gamekeepers’ Organisation]

<sup>120</sup> “Kept by man” is defined in clause 54(3).

<sup>121</sup> Memorandum from Society of Conservative Lawyers [not printed in its entirety], para 2.19 [emphasis added]

<sup>122</sup> Ev 321 [Countryside Alliance]

amending regulations.<sup>123</sup> A sub-clause setting out the certification procedure would need to be included in clause 6.

### *Government's position*

148. The Minister described the delegated power as necessary if the legislation was “to have the flexibility to meet the changing demands and increases in understanding of the animal welfare field”.<sup>124</sup> The Minister appeared to seek to justify the breadth of the delegated power on the basis that, if some animal welfare matters are to be regulated by secondary legislation—as farmed animals currently are, a situation which the Government proposes to continue—then all animal welfare matters should be:

... in the case of farmed animals, regulation-making powers in the Bill carry over the existing powers in the [Agriculture (Miscellaneous Provisions)] Act 1968 which the Bill will replace. In the case of non-farmed animals, the regulation-making powers will be used largely to replace existing licensing regimes and provide detail on the welfare offences. Performing animals, pet sales, dog and cat boarding, dog breeding and riding schools are all already regulated by Acts of Parliament and these Acts will be repealed as and when their provisions are consolidated, modernised and replaced by new regulations. We believe that there is no justification therefore for having some provisions of the licensing on the face of the Bill, as some of the welfare organisations have advocated, and others in regulations. And it is for that reason that we are seeking to undertake all regulation in secondary legislation while having the parameters of the powers on the face of the Bill.<sup>125</sup>

149. As the Minister states, some primary legislation regulating the keeping of certain animals currently exists: for example, the Performing Animals (Regulation) Act 1925, the Cinematograph Films (Animals) Act 1937 and the Pet Animals Act 1951. The Government's intention seems to be to replace this primary legislation with secondary legislation made under clause 6(1); clause 6(3)(f) allows regulations which make provision for licensing or registration of specified activities involving animals to amend or repeal primary (or secondary) legislation.

150. The Minister and his officials did not accept that the appropriate national authority should be required to certify that draft regulations were justified either on the basis of scientific evidence or because they met a genuine welfare need demonstrated by consultation responses. The legal adviser on the Defra Bill team commented:

To be honest, I am not sure what a certification procedure would add really ... If the Secretary of State makes a regulation that is patently stupid and has no purpose whatsoever in any sort of veterinary justification for actually promoting welfare, then I suspect that people would be queuing up to judicially review those regulations and say that those are unreasonable regulations ... I think it almost goes

<sup>123</sup> Ev 321 [Countryside Alliance]; memorandum from Society of Conservative Lawyers [not printed in its entirety], para 2.20

<sup>124</sup> Q963 [Defra]

<sup>125</sup> Q963 [Defra]. EU Directives regulating farmed animals' welfare are implemented in English law, under section 2 of the Agriculture (Miscellaneous Provisions) Act 1968, by means of secondary legislation.

without saying ... that there would need to be some form of justification, almost certainly taking the form of scientific evidence, or some sensible basis for the regulations.<sup>126</sup>

### *Our position*

151. **We are unconvinced by the Minister’s justification for the breadth of the clause 6(1) delegated power.** In seeking to justify the breadth of the clause 6(1) delegated power, the Minister relied on the fact that the welfare of farmed animals is currently regulated by secondary legislation as the basis for arguing that the welfare of kept and companion animals should be dealt with in the same way. This fails to acknowledge that farmed animals’ welfare is regulated by secondary legislation because this area is governed by EU Directives, which are implemented in English law by way of secondary legislation. Nor does the Minister offer any justification for the proposal to move into secondary legislation those aspects of the welfare of kept animals which are currently regulated by way of primary legislation.

152. **The suggestion that the mechanism of judicial review would provide a sufficient limitation on the exercise of the clause 6(1) power is unacceptable.** If Parliament is to delegate certain of its powers to Government, it is up to Parliament to do so in a clear and defined way, and to ensure that proper limitations are imposed on the way in which the delegated powers may be exercised. If Parliament delegates the power in question in a clear and appropriate way in the first place, the circumstances in which judicial review might become necessary will be greatly reduced.

153. Furthermore, if it “goes without saying” that any draft regulations put forward under clause 6 will be justified on the basis of scientific evidence or because they meet a genuine welfare need evidenced by consultation responses, then why should the Government hesitate to say as much on the face of the legislation? While the present authorities may have the best of intentions with regard to making the regulations planned for the next five years, this is no guarantee that future authorities will adopt a similarly rational approach. The mainstay of current animal welfare legislation, the Protection of Animal Act 1911, has been in force for nearly a century; the present draft legislation may well be in force for a similar period of time. Who is to say how the appropriate national administrations may seek to exercise the clause 6 delegated power in another 50 or 100 years? Again, if Parliament delegates the power in question in a clear and appropriate way in the first place, there should be reduced scope for future abuse of the delegated power.

154. In this context, we note the example of the Food Standards Act 1999. Section 8 requires the Food Standards Agency to monitor developments in science, technology and other relevant fields of knowledge in order to ensure that the Agency has sufficient information to enable it to take informed decisions. Although this example does not directly correspond with the present proposal, to require draft regulations to be justified on the basis of scientific evidence, it nevertheless demonstrates that a public body can be required to base its decision-making on scientific evidence.

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<sup>126</sup> Qq1037, 1040 and 1041 [Defra]

155. We are disappointed by the Minister’s reluctance to consider redrafting the clause 6(1) power in order to limit its breadth. We recommend that the Government amend clause 6 so that:

- a more precise word than “promote” is used: “ensure” seems sensible, provided that it continues to be used in clause 3
- the appropriate national authority must certify that any draft regulation proposed to be made under clause 6(1) is justified either on the basis of scientific evidence or because it meets a genuine welfare need evidenced by the consultation process on the proposed draft regulations.

We discuss the need for such a consultation process further, below.

### *Placing licensing requirements on the face of the legislation*

156. One power which would be encompassed within the clause 6(1) delegated power would be power to make provision for licensing in relation to specified activities involving animals, as it is described in clause 6(2)(h) (although it should be noted that the ‘examples’ given in clause 6(2) are in no way intended to limit the generality of the clause 6(1) power). Licensing powers are likely to be delegated to local authorities.

157. A great many of the concerns raised in the evidence we received related to matters to do with proposals to license activities involving animals, many of which are set out in the annexes to the RIA accompanying the draft Bill. This evidence is discussed in parts 8, 9 and 10. However, it seems to us the concerns raised arose in no small part because the draft Bill itself gives no indication as to the extent or nature of licensing powers to be delegated and yet, under these powers, whole areas of animal ownership and practice could be made legal or illegal, and owners could have additional costs and burdens imposed upon them. Furthermore, as the Bill is currently drafted, there is no guarantee that licensing practices will be uniform between different licensing authorities.

### *Evidence received*

158. We heard helpful evidence on this point from Advocates for Animals, who expressed surprise that the question of licensing did not feature particularly in the draft Bill:

... local authority licensing is one of the real cornerstones of the way that animals are protected in this country ... [most existing statutes] make it absolutely clear that the local authority may and indeed should attach conditions to that licence designed to protect the animal's welfare. My slight worry about the new Bill is that the whole question of licensing is dealt with in a line and a half in clause 6 ... I would feel happier if it made it clear that when formulating a new licensing regime the Secretary of State would have the power to make it clear in the new regime that the authority had the power and possibly even the duty to attach relevant conditions ... Otherwise it would be weaker than the existing licensing regimes.<sup>127</sup>

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<sup>127</sup> Q 832 [Advocates for Animals]

159. Advocates for Animals referred to the precedent of licensing provisions in the Zoo Licensing Act 1981. The 1981 Act sets down requirements relating to the way in which a zoo must apply for a licence, the way in which a local authority must consider the applications, including consultation requirements and relevant considerations, and to the period of time for which a licence shall be granted. The Act also provides that a local authority may attach such other conditions as it thinks “necessary or desirable for ensuring the proper conduct of the zoo during the period of the licence ...”<sup>128</sup> In deciding what conditions to attach, the local authority must have regard to any standards specified by the Secretary of State under the Act: the standards “specify standards of modern zoo practice ... with respect to the management of zoos and the animals in them.”<sup>129</sup>

### *Our position*

160. We support the Animal Protection Agency’s suggestion that more information should be provided on the face of the legislation about licensing conditions, particularly in relation to the need to ensure that welfare conditions are attached to licences. Clearly, individual local authorities cannot each have the expertise to know what welfare conditions should be attached to licences for different activities involving animals: the licensing regime will cover a broad range of activities, including animal fairs, animal sanctuaries, pet shops and greyhound tracks, and many others besides. We therefore consider that the legislation should make it clear that, firstly, a central set of standards exists, in the form of codes of practice issued by the appropriate national authority under clause 7, and, secondly, that licensing authorities are required to have regard to those standards in deciding whether to issue a licence and, if so, what conditions should be attached to it.

**161. We recommend that clearer requirements about the way in which licensing powers are to be exercised should be included on the face of the legislation, rather than being left for the appropriate national authority to specify under delegated legislation. It should be clearly stated that the licensing authority has the power to attach welfare conditions to a licence and to revoke a licence. The legislation should also require the licensing authority to have regard, in issuing a licence, to relevant guidance laid down in the form of codes of practice issued by the appropriate national authority under clause 7.**

### *Specificity of clause 6(2)*

162. Clause 6(2) particularises instances in which the appropriate national authority could choose to make regulations under clause 6(1). Clause 6(2) states that it is “without prejudice to the generality of the power” under clause 6(1). The Royal College of Veterinary Surgeons expressed concern about the degree of specificity in clause 6(2). The College questioned:

... whether it is wise for [clause 6(2)] to go into so much detail about the matters which the regulations may cover. The subsection is expressed to be without

<sup>128</sup> Sections 5(3) and 9 of the Zoo Licensing Act 1981

<sup>129</sup> Section 5(4) of the Zoo Licensing Act 1981; the Secretary of State is empowered to specify standards under section 9. The Secretary of State can also order a local authority to attach a specified condition to a licence: section 5(5).

prejudice to the generality of the regulation-making power, but the clause may nevertheless be in danger of circumscribing the power by giving such specific indications of how it might be used.<sup>130</sup>

163. The nub of the issue raised by the Royal College is whether the courts are likely to interpret clause 6(2) as what might be described as a ‘for example’ clause—the delegated power is contained entirely within clause 6(1) and clause 6(2) is merely a ‘commentary’ on that power—or as an expansion on the clause 6(1) power—setting out the instances in which clause 6(1) should be used, and creating an assumption that it should not be used in other circumstances. **We recommend that the Government re-examine the issue of whether the degree of detail in clause 6(2) could potentially circumscribe the generality of the clause 6(1) delegated power in ways which the Government does not intend.**

### Clause 1(5)

164. The operation of the delegated power contained in clause 1(5) is discussed in greater detail in part 4. Clause 1(5) would empower the appropriate national authority to specify by order circumstances in which the draft Bill’s proposed ban on mutilations would not apply.

165. Our comments about the extent of the clause 6(1) delegated power apply equally to the clause 1(5) delegated power. Although that power is not broad, in that it applies to only one specified area of policy, it is nevertheless open-ended. No directions are given or criteria set down to specify the way in which the power should be exercised. There is nothing, on the face of the legislation, to prevent the appropriate national authority from using clause 1(5) to effectively ‘hollow out’ clause 1(4). Exemptions given under clause 1(5) could be so broadly drawn that the clause 1(4) ban on mutilations would be diminished or meaningless.

166. **We recommend that the Government amend clause 1 so as to require the appropriate national authority to certify that any draft order proposed to be made under clause 1(5) is justified either on the basis of scientific evidence or because it meets a genuine welfare need evidenced by the consultation process on the proposed draft regulations.** We discuss the need for such a consultation process further, below.

### Clause 6 and clause 1(5)

#### *Lack of a duty to consult*

167. Clause 6 contains no requirement for the appropriate national authority to consult appropriately about a draft regulation. Similarly, there is no requirement for the appropriate national authority to consult on a draft order to be made under clause 1(5). Under clauses 8 and 9, however, there is a requirement for the appropriate national authority to consult on a draft code of practice issued under clause 7.

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<sup>130</sup> Ev 276 to 277 [Royal College of Veterinary Surgeons]

168. Regulations made under clause 6, and orders made under clause 1(5), will form part of the law of the land; regulations made under clause 6 may create criminal offences and repeal primary legislation, amongst other things. Codes of practice made under clause 7 will be issued for the purposes of practical guidance and will not be law, although they will carry some evidential weight in proceedings taken under the Act.<sup>131</sup>

169. A number of submitters and witnesses criticised the lack of a duty for the appropriate national authority to undertake any consultation on draft regulations proposed to be made under clause 6. For example, the NFU described a statutory obligation for the appropriate national authority to consult before making regulations as “absolutely vital” and urged that the draft Bill be amended “so as to guarantee that consultation happens”.<sup>132</sup>

### *Government’s position*

170. We raised this matter with the Minister and his officials in the course of taking oral evidence. The Minister rejected our suggestion that a requirement to consult on any draft regulation should be added to clause 6:

... Cabinet Office rules say that we do have to consult. I would be resistant to putting such a commitment on the face of the Bill. You yourself have already indicated that any secondary legislation would have to go through the normal parliamentary process ... At the moment we are not convinced of the need to put an explicit commitment to [undertake] consultation on the face of the Bill ... it is taken as a given that we consult on these things.<sup>133</sup>

Adding to the Minister’s statement, a Defra official described the effect of Cabinet Office rules as being that “consultation is ... built into the procedure in any event”.<sup>134</sup>

171. We questioned the Minister about the apparent anomaly in including an obligation, in clauses 8(1)(b) and 9(1)(b), to consult on draft codes of practice, when there is no equivalent requirement to consult on draft regulations. Defra officials explained that the “historical reason” for the apparent anomaly was that “the need to consult is enshrined in ... the 1968 Agriculture (Miscellaneous Provisions) Act , and it has been carried over [in respect of draft codes of practice]”.<sup>135</sup>

### *Our position*

172. The references by the Minister and his officials to “Cabinet Office rules” are to the Cabinet Office’s code of practice on consultation, which sets out procedures for government departments to follow when undertaking consultation processes. The code of practice states that it is applicable to “all UK public consultations carried out by government departments”. The code “does not have legal force, and cannot prevail over statutory or mandatory external requirements (eg under European Community law)”; nevertheless, it “should otherwise generally be regarded as binding on UK

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<sup>131</sup> Clause 7(4)

<sup>132</sup> Q 275 [National Farmers’ Union]; ev 132 [National Farmers’ Union]

<sup>133</sup> Qq 964 and 1049 [Defra]

<sup>134</sup> Q964 [Defra]

<sup>135</sup> Q1050 [Defra]

departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure from it”. The code of practice also states that, while the devolved administrations are free to adopt the code, it does not apply to consultation documents issued by them unless they do so.<sup>136</sup>

173. The requirement to consult under the Agriculture (Miscellaneous Provisions) Act 1968, referred to by Defra officials, is contained in section 3(1). Section 3(1) requires ministers to consult “with such persons appearing to them to represent any interests concerned as the Ministers consider appropriate” prior to issuing codes of practice about the welfare of livestock situated on agricultural land. It is this provision that the Government claims to be carrying over. Under clause 56 of the draft Bill, Part 1 of the 1968 Act (which includes section 3) would be repealed if the Bill is enacted; section 3 therefore requires replicating if the requirement to consult is to continue.<sup>137</sup> However, section 2(1) of the 1968 Act also imposes a requirement on minister to consult—a requirement which is parallel to the section 3(1) requirement *except that* it is a requirement to consult prior to making *regulations*, rather than codes of practice. Section 2(1) would also be repealed under clause 56 of the draft Bill.

174. The Government’s explanation for the inclusion in the draft Bill of a requirement to consult in respect of codes of practice, but not in respect of regulations, therefore seems to us to be somewhat disingenuous. If the requirement of the 1968 Act for ministers to consult prior to issuing codes of practice merits being carried over, so does the requirement for ministers to consult prior to making regulations.

**175. We endorse the inclusion of a duty for the appropriate national authority to consult on any draft code of practice which the authority proposes to make under clause 7, as set out in clauses 8(1)(b) and 9(1)(b). We believe that an obligation to consult on draft codes of practice should improve the quality and relevance of the final codes.**

**176. Given the Government’s readiness to include a duty to consult on draft codes of practice, we are extremely disappointed by the Minister’s refusal to include a parallel duty to consult on draft regulations. Regulations made under clause 6(1), and orders made under clause 1(5), will form part of the law of the land—regulations made under clause 6(1) may create criminal offences and repeal primary legislation, amongst other things—whereas codes of practice will exist primarily for the purpose of guidance. We do not accept the Minister’s argument that, as Defra intends to consult on draft regulations anyway, there is nothing to be gained by including a requirement to consult on the face of the Bill. The Cabinet Office code of practice has no legal force and cannot require government departments to consult; nor is there any obligation for the National Assembly for Wales—an appropriate national authority under clause 6(1) and clause 1(5)—to adopt the code of practice. If the Minister intends to consult appropriately on all draft regulations anyway, he can have no objection to a requirement to consult being included on the face of the draft Bill. It is possible that the Minister’s refusal to include a requirement to consult arises from a concern that inclusion of such a**

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<sup>136</sup> Cabinet Office, *Code of Practice on Consultation*, January 2004, p 5

<sup>137</sup> See schedule 3 to the draft Bill.

requirement would expose his decisions to judicial review on the grounds of inadequate consultation. If this is indeed the case, we suggest this would constitute a poor reason for his refusal. Provided that the consultation process was undertaken in accordance with the Cabinet Office code of practice, the Minister's decision would be unlikely to be amenable to judicial review on such grounds.

**177. We recommend that clause 6 should be amended to place a duty on the appropriate national authority to consult on any draft regulation which the authority proposes to make under clause 6(1). This duty should be in equivalent terms to the duty for the appropriate national authority to consult on any draft code of practice which the authority proposes to make under clause 7, as set out in clauses 8(1)(b) and 9(1)(b).**

**178. Likewise, we recommend that clause 1 should be amended to place a duty on the appropriate national authority to consult on any draft order which the authority proposes to make under clause 1(5). This duty should be in equivalent terms to the duty for the appropriate national authority to consult on any draft code of practice which the authority proposes to make under clause 7, as set out in clauses 8(1)(b) and 9(1)(b).**

179. In this regard, Defra has indicated to us that it has set up a number of working groups to assist it in deciding the content of the future regulations. We understand that the groups operate earlier in the policy-making process, working on proposals which, if endorsed by the appropriate national authority, will be put out to consultation. We emphasise that working groups are not a substitute for full and appropriate consultation. Although it is not entirely germane to our pre-legislative scrutiny process, we note that we have received a great deal of evidence and correspondence expressing disquiet about the membership of a working group set up by Defra, which reported to Defra on animal fairs, and Defra's means of appointing the group. We make no comment on the membership of that group or the quality of the work done by it. **We suggest to Defra that, if it intends to continue to use working groups to formulate animal welfare policy, then it would be well-advised to formalise the process by which the groups' membership and programme of work is decided, in order to ensure transparency and build confidence in the quality of those undertaking this work.**

### ***Improved parliamentary scrutiny of future draft secondary legislation***

180. Clause 6(6) provides that no regulations shall be made under clause 6(1) by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House. Clause 1(6) makes parallel provision in respect of orders to be made under clause 1(5).

181. As we have discussed above, the power that would be delegated under clause 6(1) is both broad and open-ended; the power that would be delegated under clause 1(5) is open-ended. The recommendations set out above should go some way towards providing appropriate limitations on these powers. However, it is important that any draft regulations made under clause 6(1), and any draft orders made under clause 1(5), should be subject to a greater degree of parliamentary scrutiny than is envisaged by clauses 6(6) or 1(6). The so-called 'affirmative' procedure set out in clauses 6(6) and

1(6) allows either House to do no more than accept or reject a draft regulation or order; neither House can substantively comment on or amend a draft regulation or order. We believe that a procedure is needed which would give this Committee the opportunity to comment substantively on the content of the draft secondary legislation, at a stage of the process where the Committee's comment can be properly taken into account by the Secretary of State before the final regulation or order is made. Such an arrangement would effectively be 'pre-legislative' scrutiny of draft regulations published under clause 6 and draft orders published under clause 1.

182. In oral evidence, the Minister was broadly supportive of such an approach:

You have expressed a desire yourselves as a Committee to engage in pre legislative scrutiny of some of the secondary legislation. That is something that certainly, in principle, I would welcome as someone who believes that pre-legislative scrutiny can always help us improve our laws.<sup>138</sup>

The Minister added that, in terms of its overall workload, the Committee might wish to consider whether it would want to carry out pre-legislative scrutiny of all draft regulations proposed to be made under the draft Bill.<sup>139</sup>

183. If, as we recommend above, a requirement to consult is included in clauses 6 and 1, then regulations or orders would need to be published in draft for the purpose of consultation, and our pre-legislative process could fit in with the consultation process. If our recommendation to include a requirement to consult in clause 6 is not accepted, then some other mechanism would be needed to require the Secretary of State to publish regulations proposed to be made under clause 6 in draft, and orders proposed to be made under clause 1 in draft. The following recommendations are based on the assumption that the final legislation will incorporate our recommendation to include a requirement to consult on draft secondary legislation made under both clauses 6 and 1.

184. **We recommend that the Secretary of State agree to enter into a 'memorandum of understanding' with this Committee, undertaking to:**

- **publish in draft form any regulation proposed to be made under clause 6(1) or order proposed to be made under clause 1(5)**
- **inform the Committee of such publication**
- **allow the Committee a period of 30 sitting days in which to report to the House on the draft instrument**
- **agree that no motion to approve may be made until either the period of 30 sitting days has elapsed or the Committee reported to the House on the draft instrument, whichever occurs first.**

**The memorandum of understanding should make it clear for what period of time such an arrangement should apply. It should also provide for the possibility that an**

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<sup>138</sup> Q964 [Defra]

<sup>139</sup> Q964 [Defra]

**exception could be made to this arrangement in circumstances of genuine emergency.**

185. If such a process were adopted, the Committee would have flexibility to decide either to call for evidence on the draft regulation or order and to examine it thoroughly, or to decide at an early stage that the draft regulation or order did not warrant a thorough examination and to report to the House that it had no matters to raise.

## 6 Enforcement, prosecution and penalties

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### Changes to current law

186. Clause 3 of the draft Bill would introduce a welfare offence which would be committed when there is a failure to take reasonable steps to ensure an animal's welfare; this offence is discussed in part 4. The intention behind clause 3 is to prevent suffering from occurring, rather than waiting for it to occur before action can be taken. This intention is reflected in a number of the enforcement provisions in the draft Bill, which appear intended to allow intervention before suffering occurs.<sup>140</sup>

187. Existing animal welfare law has been criticised for the ease with which offenders have been able to circumvent disqualification orders imposed by the courts. Under section 1 of the Protection of Animals (Amendment) Act 1954, where a person has been convicted of the offence of cruelty to an animal, the court has the power to order that the person be disqualified from “having custody of any animal or any animal of a kind specified in the order.” Offenders have evaded this provision by nominally transferring ‘custody’ to a third party while, in reality, maintaining control of the animal.<sup>141</sup> Defra has acknowledged this issue:

It has proved difficult in practice to determine in many cases when a disqualified person ‘has custody of’ animals such as to place him in breach of a disqualification order and this has limited the effectiveness of such orders.<sup>142</sup>

188. Furthermore, current welfare animal law lacks provisions to empower a court to make orders consequential to disqualification. Such orders might include making provision for the welfare of animals kept or owned by a disqualified person or the removal of animals on conviction. This gap in the existing legislation was highlighted in the recent case of *Worcestershire County Council v Tongue*.<sup>143</sup> The defendants in that

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<sup>140</sup> For example, clauses 11, 14 and 16

<sup>141</sup> For example, *Worcestershire County Council v Tongue* [2004] EWCA Civ 140

<sup>142</sup> Explanatory notes, para 110

<sup>143</sup> [2004] EWCA Civ 140

case had been convicted of cruelty to some of their cattle and were subsequently disqualified from having custody of cattle. The local authority claimants sought an order to enter the defendants' land to remove the livestock present. The court held that an enforcing authority is not currently permitted to enter a person's land to take possession of the owner's animals, despite the owner having been disqualified from owning animals.

### ***Drafting of enforcement, prosecution and penalties provisions***

189. The provisions on enforcement, prosecution and penalties are central to the operation of the draft Bill. However, as currently drafted, they are confusing and difficult to follow. There appears to be a lack of logic as to how the clauses are set out in the draft Bill—provisions on entry, search and arrest which would come into operation before proceedings have been commenced appear *after* the clauses on proceedings; the provisions on entry and arrest are scattered throughout the draft Bill.

190. **We recommend that the clauses on enforcement should be set out in the draft Bill as they would occur chronologically. The current arrangement of the enforcement provisions in the draft Bill does not follow a logical sequence, is unduly complicated and is difficult to follow.**

## **Enforcement powers**

### ***Powers to deal with animals in distress***

191. Clauses 11 to 19 of the draft Bill set out the powers applicable to animals in distress. New preventive powers are proposed, which would enable the enforcement authorities to intervene before suffering has actually occurred caused to an animal.

### ***Period for which an animal taken into possession can be detained***

192. Clause 11 would extend the existing law by permitting a protected animal to be taken into possession and detained by an inspector or constable where it appears that the animal “is likely to suffer or not be properly cared for.”<sup>144</sup> Certification from a veterinary surgeon is normally required before an animal can be taken into possession but in emergency situations this requirement can be dispensed with if it appears “that it is not reasonably practicable to wait for a veterinary surgeon.”<sup>145</sup> Defra states that:

This is intended to cover an urgent situation such as, for example, a dog left in a hot car. Here there is a risk that the animal might die whilst waiting for the veterinary surgeon to arrive. It is anticipated that such a situation will be rare and that generally it will be appropriate to wait for a veterinary surgeon to attend.<sup>146</sup>

193. Once an animal has been taken into possession under the terms of the draft Bill, it can be retained for no more than eight days unless relevant proceedings are commenced before the end of that period or an extension of time is granted by a

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<sup>144</sup> Clause (11)(1)(c)

<sup>145</sup> Clause 11(2)

<sup>146</sup> Explanatory notes, para 53

magistrates' court. The RSPCA submitted that the eight-day retention period was unworkable. It recommended that:

... clause 11 be amended to reflect the present [legal] position. There should not be a time limit on the retention of an animal in distress but its owner should have the immediate right to apply to court for its return.<sup>147</sup>

The National Equine Welfare Council agreed with the RSPCA and submitted that an eight-day retention period was “insufficient” and should be extended to 21 days so that owners or other persons responsible for an animal could be identified.<sup>148</sup>

194. At the outset of our scrutiny process, Defra conceded that further work was required on clauses 11 to 19:

The question of how long animals can be retained before an application needs to go back to the court needs to be reviewed, and ... we are looking at the whole question of how that dovetails into applications that can be made to a court once proceedings have been commenced.<sup>149</sup>

**195. Defra has acknowledged that the period for which an animal taken into possession can be retained needs to be reviewed. We recommend the retention of the existing legal position, whereby there would not be a time limit on the retention of an animal in distress but its owner would have the immediate right to apply to court for its return.**

### *Cost of caring for animals taken into possession*

196. Clause 12 sets out powers to remove and care for an animal in distress that has been taken into possession under clause 11. It permits an inspector or constable to remove the animal to a place of safety and to care for it either on the premises where it was being kept when it was taken into possession or at such other place as the inspector or constable thinks fit. Clause 12(4) authorises the recovery of costs from the owner of the animal incurred in the exercise of the powers under this clause. A number of submissions criticised clause 12(4) for appearing to allow the recovery of unlimited costs from the owner of an animal. The Countryside Alliance submitted:

Only where a court has found that such action was justified should *reasonable* costs be passed on to the owner. This would also act as an important restraint against the abuse of these powers. Unless the power to recover costs is limited, those who own, keep, or are responsible for animals can suffer repeated financial penalties without ever having committed, or have been about to commit, an offence under the provisions of this Bill.<sup>150</sup>

197. The Society of Conservative Lawyers (SCL) shared this view:

There is no check on the amount that is recoverable. There ought to be a court sanctioned proportionality check ... the Protection of Animals (Amendment) Act

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<sup>147</sup> Q 53 [RSPCA]

<sup>148</sup> Ev 202 [National Equine Welfare Council]

<sup>149</sup> Q 17 [Defra]

<sup>150</sup> Ev 322 [Countryside Alliance]

2000 ... does have a costs system which is compliant with human rights, because it does enable the court rather than the constable or the inspector to order the recovery of reasonable costs, and that meets all the requirements we point out.<sup>151</sup>

198. Where a court has made an order for the care, disposal or slaughter of animals, the Protection of Animals (Amendment) Act 2000 provides that the prosecutor is entitled to be reimbursed for any reasonable expenses incurred by him in the exercise of his powers.<sup>152</sup> Later provisions in the draft Bill applicable to prosecutions do provide that the prosecutor is entitled to be reimbursed by the defendant only for *reasonable* expenses incurred.<sup>153</sup>

**199. We recommend that the current provisions on reimbursement of *reasonable* costs in the Protection of Animals (Amendment) Act 2000 should be reflected throughout the draft Bill, so that inspectors and prosecutors are able to be reimbursed only for reasonable costs incurred by them in the performance of their functions under the Bill.**

### *Power to kill an animal*

200. Clauses 13 and 14 set out a number of powers in relation to animals in distress. Clause 13 authorises an inspector or constable to take “such steps as appear to him to be immediately necessary to alleviate” a protected animal’s suffering. The power extends to killing the animal where a veterinary surgeon certifies that there is no reasonable alternative. The requirement to obtain certification from a veterinary surgeon can be dispensed with where the inspector or constable believes that “the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon.”

201. A number of organisations expressed concern that inspectors and constables would be permitted destroy an animal. The Dogs Trust submitted:

While we accept that there may be some situations where animals are *in extremis* and rapid euthanasia is necessary, we do have some concerns that constables and inspectors are authorised to kill an animal without veterinary advice and without any attempt at definition of such circumstances.<sup>154</sup>

202. The Pet Advisory Committee shared this concern:

... we feel that only a veterinary surgeon is properly qualified to make a diagnosis prior to euthanasia. We would like veterinary surgeons to be more explicitly involved in this decision as, whilst an inspector or constable may be acting with the best of intentions when presented with an injured animal, animals can often display or mimic symptoms that make injuries appear worse than they really are.<sup>155</sup>

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<sup>151</sup> Qq 608 and 611 [Society of Conservative Lawyers]

<sup>152</sup> Section 4(a)

<sup>153</sup> For example, clause 20

<sup>154</sup> Ev 395 [Dogs Trust]

<sup>155</sup> Ev 43 [Pet Advisory Committee]

203. We are satisfied it is appropriate that constables and inspectors should be empowered to authorise the killing of a protected animal where there is no reasonable alternative. However, we consider that constables and inspectors would be greatly assisted in their functions if the term “reasonable alternative” was defined in the Bill. Furthermore, we seek assurances from the Government that those persons tasked with animal inspection work will be properly trained in animal behaviour so as to recognise when it will be necessary to kill an animal; constables and inspectors should also be trained to kill an animal in as humane a way as possible.

### *Powers of entry*

204. Proposed powers of entry are contained in a number of clauses scattered throughout the draft Bill. The provisions would permit:

- entry to premises to search for and deal with animals in distress (clause 14)
- entry to search for and take possession of animals kept for fighting (clause 23)
- entry and inspection in connection with licensed activities and farm premises (clauses 37–38)
- entry and search of premises without a warrant (clause 39)
- entry and search by force without a warrant; and entry to and search of any premises with a warrant (clause 41).

### *Entry without a warrant into premises other than private dwellings*

205. Clauses 39 and 40 would allow a constable or an inspector powers of entry without a warrant into premises other than those used as a private dwelling, on the basis of a reasonable suspicion or belief that an offence is being or has been committed or that evidence of a relevant offence is on the premises. The Government has indicated that it is considering deleting clauses 39 and 40. The Government acknowledged that similar powers are not available for offences of equivalent seriousness.

206. We consider that the powers contained in clauses 39 and 40 are appropriate. We believe that the serious nature of offences against animals justifies empowering constables and inspectors to enter premises, other than premises used solely as private dwellings, without a warrant on the basis of reasonable suspicion or belief that an offence is being or has been committed or that evidence of a relevant offence is on the premises.

### *Entry without a warrant into private dwellings*

207. Other than entry and inspection in connection with licensed activities, the draft Bill does not permit entry “into any part of premises which is used as a private dwelling” without a warrant. This phrase seems ambiguous: it could mean:

- either that entry without a warrant is not permitted into a premises where *any part of that premises* is used as a private dwelling
- or that entry without a warrant is not permitted into *any part within a premises where that part is used as a dwelling*—but parts of the premises which are not used as dwelling could be entered.

208. We assume that the former meaning is intended. **To avoid confusion, we recommend that the Government amend the Bill to clarify what is meant by “any part of premises which is used as a private dwelling.”**

209. The Local Authorities Co-ordinators of Regulatory Services (LACORS) made the important point that under the current law, inspectors can enter private dwellings without a warrant only where they are not used solely as a private dwelling. It stressed that:

Officers need power[s] of entry without a warrant to parts of a dwellinghouse that is used in connection with a business, such as a farm, thereby meaning that in practice it forms a part of the business premises. LACORS has concerns that particularly on farms many buildings are used as both business offices and houses. Officers agree that a warrant should be required to gain access to parts of a premises ‘used *only* as a dwellinghouse’. This is a common power in all consumer protection legislation. All references to powers of entry should be amended to say ‘premises used *only* as a dwellinghouse.’<sup>156</sup>

210. The provisions on entry and inspection of farm premises are set out in clause 38 of the draft Bill. They empower an inspector to enter and inspect premises which he or she reasonably believes to be used for the purposes of animal breeding or farming in order to check compliance with the (future) Act. Inspectors would not be authorised to enter into “any part of premises which is used as a private dwelling”.

211. Defra has stated that clause 38 would allow:

... inspectors to enter and inspect farm premises in order to check compliance with regulations made under the Bill and in order to ascertain whether an offence has been committed. In practice this will allow inspectors of the Secretary of State (generally officers of the State Veterinary Service) and local authority inspectors to enter farms in order to ensure the welfare of animals there, whether or not they have evidence of a problem. State inspectors already have such a power under the Agriculture (Miscellaneous Provisions) Act 1968. This clause will extend the powers of local authority inspectors.’<sup>157</sup>

212. Section 6(1) of the Agriculture (Miscellaneous Provisions) Act 1968 currently provides that:

A person duly authorised in writing by the Minister may at any reasonable time enter upon any land, other than premises used wholly or mainly as a dwelling, for

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<sup>156</sup> Ev 257 [Local Authorities Co-ordinators of Regulatory Services]

<sup>157</sup> Explanatory notes, para 160

the purpose of ascertaining whether an offence under this Part of this Act has been committed on the land.

If enacted, the draft Bill would repeal section 6(1) of the 1968 Act.

213. Depending on the interpretation of the phrase “any part of premises which is used as a private dwelling” in the draft Bill, the 1968 Act potentially provides greater powers of entry to persons authorised under that Act than inspectors under the draft Bill. LACORS’ proposal to restrict entry to premises used only as a dwelling would provide greater powers of entry than those currently provided for in the 1968 Act.

**214. We endorse the underlying intention of the powers of entry in the draft Bill, namely that inspectors and constables should not be permitted to enter a private dwelling unless they have first obtained a warrant. We agree with the position proposed by LACORS. We recommend that the Bill should provide greater powers of entry so that entry would not be permitted, without a warrant, to premises used *only* as a private dwelling. This would allow inspectors to enter premises used as both business premises and private dwellings, such as farm premises, without a warrant.**

215. We note the suggestion of the Association of Chief Police Officers (ACPO), that:

It is in the public interest to have one set of justifications setting out when a private dwelling may be entered, instead of different powers in different acts. This would be relatively easy to achieve.<sup>158</sup>

**We recommend that the Government give consideration to implementing the suggestion made by the Association of Chief Police Officers that one set of justifications should be adopted, instead of different powers in different statutes, setting out the circumstances in which a private dwelling may be entered without a warrant.**

### *Powers of entry of inspectors*

216. The draft Bill would give inspectors appointed under it equivalent powers of inspection and entry to those given to the police. Some submitters believed that this was inappropriate. The Countryside Alliance submitted:

The powers of inspection and entry in this Bill give equal powers to inspectors as to the police. In effect this creates an animal police. Yet it is not clear that the provisions of the Police and Criminal Evidence Act (PACE) will apply to inspectors as [they do] to the police. The only direct reference to PACE relates to the application for warrants.<sup>159</sup>

217. The Police and Criminal Evidence Act 1984 makes provision in relation to the powers and duties of the police, including the powers of entry, search and seizure. The Secretary of State must issue codes of practice in connection with the exercise of those

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<sup>158</sup> Q 652 [Association of Chief Police Officers]

<sup>159</sup> Ev 322, [Countryside Alliance ]

powers. Although the police are accountable to the Secretary of State, it is unclear to whom inspectors would be answerable.

**218. Given that both inspectors and constables will be exercising the powers of entry and search under the draft Bill, we recommend that the draft Bill should be amended to include a requirement that the codes of practice issued under the Police and Criminal Evidence Act 1984 in connection with the exercise of those powers should be complied with when exercising search and entry powers under the Bill.**

### ***Appointment of inspectors***

219. Clause 44 provides that inspectors will be appointed by local authorities after taking into account guidance issued by the Secretary of State, in the form of a list of suitable persons for appointment. The draft Bill provides no more detail about what categories of person may fill the role.

220. There was widespread concern amongst submitters about what categories of person would fill the role of inspectors under the draft Bill. The National Farmers' Union (NFU) was concerned that the lack of detail on the face of the draft Bill about the appointment of inspectors could lead to confusion. The NFU stressed that it was “absolutely vital for professional animal keepers to know who the enforcement authorities were and what powers they had”.<sup>160</sup> The British Wildlife Rehabilitation Council believed that “the most obvious source of informed inspectors would be the RSPCA inspectorate.”<sup>161</sup> The BioVeterinary Group acknowledged that the “RSPCA is in a very good position to be an investigative authority” but believed that the RSCPA did “not know what they are looking for”<sup>162</sup> when inspecting unusual or exotic pets. Lack of specialist knowledge was a concern shared by the National Sheep Association:

It is very important that people who are inspectors should be properly qualified and properly examined so that they are [sure to be] of a certain standard and have a standard of knowledge.<sup>163</sup>

221. Bryan Reed, who submitted evidence to the Committee on behalf of a number of parties, stated:

The term “Inspector” needs clarification. While we have the greatest respect for the work of the RSPCA and other NGOs—under no circumstances should entry to any premises be allowed by NGOs without a warrant or without one or more of the following accompanying them: a Constable, Customs and Excise official, Veterinary Surgeon or a Defra Inspector. We appreciate that under *rare* circumstances it may be necessary to enter premises or vehicles without a warrant but anyone doing this should be able to substantiate their actions.<sup>164</sup>

222. The Minister conceded that there was confusion surrounding the issue of appointment of inspectors. He acknowledged that Defra needed “... to do some more

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<sup>160</sup> Q 203 [National Farmers' Union]

<sup>161</sup> Q 329 [British Wildlife Rehabilitation Council]

<sup>162</sup> Q 187 [BioVeterinary Group]

<sup>163</sup> Q 311 [National Sheep Association]

<sup>164</sup> Ev 488 [Bryan E Reed]

work on the whole area of enforcement and the roles of inspectors and their powers of entry”.<sup>165</sup> In respect of the role of the RSPCA, the Minister told us:

... as currently drafted, the Bill does not give [the RSPCA] extra powers. All it enables them and others who are appointed as inspectors by the Secretary of State or by local authorities ... to do is give them powers to intervene before suffering happens ... Let me make it clear that the RSPCA are not being given powers of entry to seize animals. Powers of entry and inspection will be carried out by local authorities (and anyone they appoint under their direction), the State Veterinary Service and the Police. If the RSCPA need to enter premises to seize an animal it will be necessary for them to be accompanied by a police constable and the police constable will need to obtain a warrant from the court in order to obtain entry to domestic premises. The term “inspector” in the Bill means an officer of a local authority (or persons appointed by a local authority) who is accountable to the local authority, or a member of the SVS; it does not mean an RSPCA inspector.<sup>166</sup>

223. Further confusion is caused by the fact the RSPCA refers to its own officers who investigate animal welfare cases as “inspectors”.<sup>167</sup> The RSPCA suggested that the vague terminology in the draft Bill had caused the confusion about its role and echoed the Minister in saying that the term “inspector” was defined in the draft Bill as “a person appointed to be an inspector by the national authority or the local authority; it is not an RSPCA inspector ... Those two are completely separate.”<sup>168</sup>

224. The evidence we have received has revealed widespread confusion surrounding the appointment of inspectors and the role of the RSPCA. **As currently drafted, there is nothing in the draft Bill to prevent an RSPCA inspector, or an employee of any other charitable organisation, from being appointed as an inspector under the legislation, because the Secretary of State is not prevented from including them on a list of suitable persons. We have only Defra’s stated intention that the list will extend to only the State Veterinary Service and local authorities. If this is indeed Defra’s intention, then we recommend that it should be specified on the face of the Bill. Currently, the draft Bill effectively delegates an unlimited power to the Secretary of State to decide who may act as an inspector. At the very least, the Bill should specify the appropriate categories of person or ‘characteristics’ of persons who may be appointed to the role. We further recommend that the draft Bill be amended to specify how inspectors will be appointed in Wales: currently, clause 44 makes reference only to the Secretary of State; no mention is made of the National Assembly for Wales.**

225. The evidence we received revealed deep reservations at the possibility of RSPCA inspectors being appointed as inspectors under the draft Bill. When asked whether an alternative name could be given to inspectors under the draft Bill to distinguish them from RSPCA inspectors, the Minister stated:

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<sup>165</sup> Q 17 [Defra]

<sup>166</sup> Qq 17 and 963 [Defra]

<sup>167</sup> Q 914 [RSPCA]

<sup>168</sup> Q 924 [RSPCA]

... there may be a legalistic reason why we have to use that definition, but I am perfectly happy to look at different bits of terminology to avoid the confusion that arises because the RSPCA calls a lot of its own officers “inspectors” but they are not going to be inspectors for the purposes of this Bill.<sup>169</sup>

**226. We believe that the RSPCA has performed a valuable role in ensuring animal welfare, and that it should be encouraged to continue to do so. Nevertheless, it is a ultimately a charitable body and therefore should have a separate and distinct role from “inspectors” appointed to enforce the draft Bill. To avoid confusion with the RSPCA’s own inspectors, we recommend that the Government consider changing the term “inspector” in the draft Bill to “approved person”, “approved officer”, or some other term that sits appropriately with relevant legislation.**

### *Liability of inspectors*

227. Clause 45 provides that inspectors will not be liable for anything done in the purported performance of their functions under the draft Bill if it is done in good faith and on reasonable grounds. Clause 45 does not refer to constables. The provisions of clause 45 led the SCL to comment that there is nothing in the draft Bill which would hold inspectors to account.<sup>170</sup> The SCL asked Defra to:

... justify why inspectors should be afforded much higher protection from civil action than police officers exercising the same powers or, more generally, other state officers exercising a variety of statutory powers.<sup>171</sup>

**228. We recommend that the draft Bill should be amended to ensure that the standard with which an inspector must comply in order not to be held criminally or civilly liable is the same as the standard applied to constables exercising equivalent powers.**

### *Regional enforcement*

229. Local authorities will play a significant role in the appointment of inspectors, investigation and prosecution of offences under the draft Bill. A number of submitters have emphasised the importance of achieving consistency in enforcement between local authority areas. The Pet Advisory Committee considered that, historically, there had been very little consistency between the various approaches taken by local authorities to carrying out their enforcement responsibilities. It proposed a system of regionalism:

... if we can get a good level of expertise that is shared out around the country, that is going to help with better enforcement and it will give a good sound database which will aid in the training. We feel that training is required both on the enforcement side and for the people selling and dealing in animals, so regionalism would have a structure which would benefit from that.<sup>172</sup>

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<sup>169</sup> Q 1066 [Defra]

<sup>170</sup> Q 620 [Society of Conservative Lawyers]

<sup>171</sup> Memorandum from Society of Conservative Lawyers [not printed in its entirety], para 3.95

<sup>172</sup> Qq 96 and 100 [Pet Advisory Committee]

230. The Companion Animal Welfare Council also stressed the need for enforcement to be “consistent, effective and ... undertaken by people with expertise” and believed there was a strong argument for some degree of regionalisation:

At the moment in local authorities [enforcement] may be undertaken by licensing departments who ... do not necessarily know a lot about animal welfare, or it may be undertaken by an animal welfare person who knows something about animal welfare, but nothing about licensing, or it may be undertaken by ... an environmental health officer who has a vast range of responsibilities. There needs to be a degree of expertise in this area.<sup>173</sup>

231. One proposal from Defra that may assist in achieving greater consistency in regional enforcement is the setting up of a national database for recording animal welfare licences, offences and best practice. Annex K to the RIA, which sets out the proposal, indicates that the RSPCA would be given responsibility for the database: “... it would only require the RSPCA to enter [into the database] on average the details of four people per working day. The RSPCA have confirmed that this would not be a drain on their resources.”

232. Although Jim Clubb, Director of the Heythrop Zoological Gardens, supported the proposals for a database in principle, he opposed the involvement of the RSPCA:

A database of all licensed premises should be held by the government and not by the RSPCA. I don't believe in handing such power to a pressure group, it would be inconsistent with the laws of fairness, especially when the said group campaigns against certain animal industries as a whole.<sup>174</sup>

**233. We consider that it is imperative that there is consistency in animal welfare enforcement between local authorities. It is most unsatisfactory and inequitable to have different standards of enforcement in different regions. We therefore recommend that the Government should adopt a system, such as a database, to ensure that enforcement across licensing departments in England and Wales is consistent. The information should be entered and held by local authorities. Although the RSPCA should be permitted to have access to the information, we consider it wholly inappropriate that the RSPCA should be given responsibility for compiling and maintaining the database. Defra should use its own resources to audit the consistency of enforcement between local authorities.**

### ***Compensation and other protections***

234. Clauses 16 and 17 permit orders for disposal to be made where proceedings are pending against a defendant. Accordingly, it would be possible for an order to be made to dispose of an animal and a defendant to subsequently be cleared of all charges against him or her. Since animals are a form of property, the SCL submitted that this would engage article 1 of the First Protocol to the European Convention on Human Rights, which provides that “Every natural or legal person is entitled to the peaceful enjoyment of his possessions.”

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<sup>173</sup> Q 101 [Companion Animal Welfare Council]

<sup>174</sup> Ev 527 [Jim Clubb]

235. The provisions led groups such as the Reptile and Exotic Pets Trade Association to comment:

We see virtually nothing in the [draft Bill] as regards protection or compensation for people who are wrongly accused. This draft bill leaves much to be desired in this respect and appears to invite exploitation by the strong presence of animal rights extremists ...<sup>175</sup>

**236. We recommend that provision should be made to provide that compensation may be made available to persons whose animals have been dealt with under clauses 16 or 17 but who have subsequently been acquitted of any animal welfare charges. The draft Bill should be amended to specify and limit the circumstances in which a court can order the slaughter of an animal. It should specify that the court can make such an order only where no reasonable or humane alternative exists.**

## Prosecution powers

### *Improvement notices*

237. Improvement notices are a mechanism by which an owner or keeper of an animal who is failing to provide an acceptable level of care for an animal can be directed to improve their standard of care without the need to prosecute. Effectively, they would provide an ‘intermediate’ step in the enforcement process, and would not necessarily lead to prosecutions—indeed, they are intended to circumvent prosecutions in appropriate cases. Legislation on farmed animals’ welfare currently provides for improvement notices to be issued.<sup>176</sup>

238. Some groups who submitted evidence supported the issuing of improvement notice as a prerequisite or a possible alternative to court proceedings. The International League for the Protection of Horses suggested that:

It may be worth considering a form of legal improvement notice to be given to an owner or to a sanctuary, saying that if within two weeks or a month you have not improved your grazing, your fencing, your drainage, your saddle-fitting or whatever, you will be prosecuted, but you have got a month or two weeks or whatever to get it right.<sup>177</sup>

239. It was an approach also supported by the British Veterinary Association and Advocates for Animals.<sup>178</sup> The latter submitted:

This means ... that the authorities, without having to go to the big expense and cumbersome procedures of going to court, can merely serve a notice on somebody saying, “You need to take the following steps about”—shall we say—“the way you are keeping your dog”, which may be in a makeshift shelter in the garden, so that if the dog never has any proper shelter from bad weather, is not having any proper veterinary treatment though it is ill, is not getting proper food, a notice could be

<sup>175</sup> Ev 428 [Reptile and Exotic Pets Trade Association]

<sup>176</sup> Welfare of Farmed Animals (England) Regulations 2000, regulation 11

<sup>177</sup> Q 505 [International League for the Protection of Horses]

<sup>178</sup> Q 684 [British Veterinary Association]; q 829 [Advocates for Animals]

served. I think that would be a helpful addition to the armoury but Defra have said in their notes that they feel it is not appropriate to do so at this stage.<sup>179</sup>

240. When we suggested to the Minister that improvement notices should be provided for under the draft Bill, his response was that enforcement agencies could continue to issue verbal or written warnings as part of the enforcement process and that there was nothing in the draft Bill to prevent them from doing so. He opposed making provision on the face of the Bill for improvement notices to be issued:

... to lay down some hard and fast rule that this should always happen before a prosecution is taken out, I think, would make it more difficult for [the enforcement agencies] or would deprive them of the flexibility to take action immediately if they think a case is serious enough and they do not want to go through that kind of warning process.<sup>180</sup>

241. It is interesting to note that, at least on the evidence of the RIA, Defra appears at some stage to have intended to provide for improvement notices in the draft Bill. Defra comments that:

... improvement notices in farm welfare are still a relatively recent concept (introduced in 2000) and it was therefore considered that it would be better to allow more time for them to bed in before extending their use to all captive and domestic animals. It was therefore considered that the Bill should contain a clause allowing for the introduction of improvement notices once it is decided to issue them. Such a decision would only be made following a round of consultation on the issue of improvement notices.<sup>181</sup>

There does not appear to be a clause in the draft Bill which makes provision for the introduction of improvement notices, unless the Government considers that relevant provisions could be made by way of regulations made under clause 6(1).

242. The Minister is clearly resistant to the idea of making provision for improvement notices in the draft Bill. However, if the Bill remains silent on the issue we consider that there is a risk that enforcement agencies will believe that they have no option but to prosecute in order to ensure an animal's welfare. **We consider that improvement notices would assist in ensuring that proceedings are commenced only in appropriate cases. They would not only save court time but could also encourage owners to improve standards of animal welfare. We recommend that, although enforcement agencies should have a discretion to issue improvement notices for protected animals, that discretion and the relevant procedural requirements should be specified on the face of the Bill. This should include a right of appeal on the part of the person to whom an improvement notice is issued.**

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<sup>179</sup> Q 829 [Advocates for Animals]

<sup>180</sup> Q 1055 [Defra]

<sup>181</sup> RIA, para 11

### **Persons authorised to act as prosecutors under the draft Bill**

243. Clause 15(2) sets out the categories of person authorised to act as prosecutors under the draft Bill. The functions of a prosecutor would be able to performed only by:

- a) a public authority, or
- b) a person acting on behalf of such an authority or in his capacity as an official appointed by such an authority, or
- c) a person authorised by the appropriate national authority to perform the functions of a prosecutor.

244. In addition, there is an existing common law right for any private citizen to bring a prosecution under animal welfare legislation. The RSPCA currently exercise this right in prosecuting animal welfare offences. Defra has indicated that the draft Bill would not affect this right.

245. The prosecution powers contained in the draft Bill are set out in clauses 16 to 19; they include applying to the court for orders in relation to animals in distress. A number of submitters were concerned about the prosecution powers in the draft Bill. The Pet Care Trust strongly opposed the proposals to devolve enforcement powers to other bodies, particularly if the RSPCA were permitted to prosecute on behalf of the Secretary of State. It submitted:

... the pet care industry is not happy with this new approved prosecutor status that the RSPCA has and is fearful it might be extended under the Animal Welfare Bill in due course.<sup>182</sup>

246. Equity, a trade union speaking on behalf of those of its members who perform in circuses, submitted that it “would like to see a neutral statutory body in charge of prosecuting cases under any new regulations, rather than a politically motivated organisation such as the RSPCA.”<sup>183</sup> It believed that only “a body with no pre-disposed opinions” could be a fair judge of complaints.<sup>184</sup> The Federation of British Herpetologists was equally opposed to the devolution of prosecution functions to the RSPCA:

... prosecution should be dealt with by the Crown Prosecution Service ... It would be entirely inappropriate for the RSPCA to continue this position they have. They are a campaigning organisation who are opposed to certain sectors so for them to be in a position to prosecute something they are campaigning against seems extraordinary.<sup>185</sup>

247. The SCL thought that it was wholly inappropriate for a charity such as the RSPCA to be appointed as a prosecuting body as this “would amount to a conflict of interest” with its campaign agenda. The SCL also argued that, as a charitable organisation, the

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<sup>182</sup> Q 141 [Pet Care Trust]

<sup>183</sup> Ev 429 [Equity]

<sup>184</sup> *Ibid.*

<sup>185</sup> Q 170 [Federation of British Herpetologists]

RSPCA's actions would not be amenable to judicial review.<sup>186</sup> The Self-Help Group for Farmers, Pet Owners and Others Experiencing Difficulties with the RSPCA also strongly opposed the appointment of the RSPCA as prosecutors and criticised it for "tak[ing] the law into [its] own hands".<sup>187</sup>

248. The RSCPA responded to these criticisms as follows :

We do not claim and we do not have any authority from local or central government to act as a prosecutor. We act now as a private prosecutor; if the Bill becomes law we will continue to act as a private prosecutor.<sup>188</sup>

The RSPCA told us that prosecution was a very small part of its inspectorate's work. It estimated that, in 2003, RSPCA inspectors investigated about 105,000 complaints, of which about 1,400 were submitted to its prosecutions department. Of that 1,400, it estimated that about 50% were prosecuted. The RSPCA also claimed to have secured convictions from about 96% of prosecutions undertaken in 2003.<sup>189</sup>

249. There also seemed to be some confusion amongst submitters about the RSPCA's current status as what is generally referred to as an "authorised prosecutor" under the Protection of Animals (Amendment) Act 2000. The RSCPA explained the limited nature of this status:

We were invited to become an approved prosecutor because of the significant prosecution work we carry out, but the only real significance of it is that it does not give us an approval to prosecute because the prosecutions are private prosecutions. All it does is give us the opportunity to make an application to the court once we have commenced proceedings to have an order made regarding the disposal of the animals. Those orders are only made with the support of a veterinary surgeon, and made for the benefit of the welfare of the animals in the case.<sup>190</sup>

Under the 2000 Act, the Secretary of State or the National Assembly for Wales must first enter into a written agreement with any person (other than the Director of Public Prosecutions, the Crown prosecutor, government departments and local authorities) who is appointed as an "authorised prosecutor" before that person can exercise functions under the Act.<sup>191</sup>

**250. We recommend that clause 15(2)(c) be deleted from the Bill if the Government is unable to demonstrate a convincing reason for its inclusion. The Government should explain to whom it intends the powers of a prosecutor would be delegated under clause 15(2)(c) if it is not to the RSPCA. We consider it wholly inappropriate that prosecution powers under the draft Bill should be able to be exercised by any organisation other than the Police, the State Veterinary Service and local authorities.**

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<sup>186</sup> Q 593 [Society of Conservative Lawyers]

<sup>187</sup> Q 875 [Self-Help Group for Farmers, Pet Owners and Others Experiencing Difficulties with the RSPCA]

<sup>188</sup> Q 915 [RSPCA]

<sup>189</sup> Q 917 [RSPCA]

<sup>190</sup> Q 925 [RSPCA]

<sup>191</sup> Sections 1(3)(e) and (f) of the Protection of Animals (Amendment) Act 2000

### ***Ability of the RSPCA to bring private prosecutions***

251. The Federation of British Herpetologists suggested that lessons could be learnt from Scotland and the role played there by the Scottish Society for the Prevention of Cruelty to Animals (SSPCA). It submitted:

... the SSPCA do not bring private prosecutions although they have the power to do so; they gather the evidence for any prosecution and pass that evidence over to the Procurator Fiscal for them to decide whether there is an offence and if there is to prosecute it, and we believe that is what should happen here; that the RSPCA should be able to gather the evidence and present that to the Crown Prosecution Service, and the Crown Prosecution Service should bring the prosecution.<sup>192</sup>

252. Mike Radford explained that the differences in the role of the SSPCA could be attributed to the fact that Scotland does not have the same tradition of private prosecutions as England and Wales.<sup>193</sup>

253. We received a substantial amount of evidence opposing the appointment of the RSPCA as prosecutors. However, ACPO stressed that, although the police investigated cruelty offences, they do not play a significant role in investigating and prosecuting animal welfare offences. ACPO's representative explained that:

At the moment almost all of the welfare work is done by the RSPCA with police support where required ... Were the RSPCA, as a charity, to decide next week not to do this work any more none of the rest of us in the public service could pick it up. Animal welfare would not be furthered; it would be significantly disadvantaged.<sup>194</sup>

254. This was a view shared by LACORS, which stressed that most local authorities did not have the resources or the expertise to deal with the welfare of small companion animals in private homes. It submitted:

... we work exceptionally closely with the RSPCA and we have a memorandum of understanding with them which has recently been drawn up. There are communication channels and everything else, but we do traditionally pass all the small animal welfare complaints to the RSPCA.<sup>195</sup>

255. Both ACPO and the Chartered Institute of Environmental Health suggested that they could oversee an accreditation scheme whereby organisations such as the RSCPA would effectively have the power to enforce animal welfare legislation delegated to them. The RSPCA, however, appeared reluctant to change the status quo:

... our position is entirely clear under the Bill. It is exactly what it is now. There has been no change. We would not be seeking powers or to be named in this Bill, not least because that would put us on a different footing with members of the public and we are quite content with the current situation where people invite us into their

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<sup>192</sup> Q 170 [Federation of British Herpetologists]

<sup>193</sup> Q 762 [Mike Radford]

<sup>194</sup> Qq 626 and 639 [Association of Chief Police Officers]

<sup>195</sup> Q 638 [Local Authorities Co-ordinators of Regulatory Services]

homes ... as long as the police have the power to go in and seize or the powers of entry where we are not given access.<sup>196</sup>

256. However, even the current role of the RSPCA as a private prosecutor came under attack by the National Sheep Association. It described prosecutions initiated by the RSCPA as “harassment” and complained that the charity had “put an enormous number of people into a great deal of distress”.<sup>197</sup>

257. The Director of Public Prosecutions (DPP) may at any stage intervene and take over or discontinue any private prosecution. However, in practice, there are a number of prosecutions that the DPP does not make offers to take over and which are not brought to the attention of the Crown Prosecution Service, such as those undertaken by trade bodies or charities. A report by the Law Commission found that “responsible organisations” such as the RSPCA adopted “suitable evidential and public interest tests” and should therefore be exempt from a requirement to notify the CPS of prosecutions brought.<sup>198</sup>

258. We have considered the many submissions opposing the power of the RSPCA and other charities to institute private animal welfare prosecutions. The difficulty with removing this power is that there appears to be no body other than the RSPCA with the requisite experience to undertake animal welfare prosecutions, particularly under the proposed clause 3 welfare offence. Although we consider that a lack of accountability makes it inappropriate that the RSPCA should be appointed as an *authorised* prosecutor under the draft Bill, **we consider that the RSPCA should be able to continue to institute private prosecutions on its own behalf.**

## Powers following conviction

### *Offences are only summary offences*

259. Clause 24 of the draft Bill sets out the powers of the court to imprison or fine a person found guilty of an offence under the Bill. All offences under the draft Bill will be summary only, that is, they will be triable only in the Magistrates’ Court. The maximum sentence that can be imposed under the draft Bill has been increased from six months to 51 weeks to reflect changes implemented under the Criminal Justice Act 2003. The maximum fine for cruelty and fighting offences has been increased from £5,000 to £20,000. Defra initially justified this increase on the basis that it reflected the seriousness of offences such as fighting and cruelty to animals for financial gain.<sup>199</sup> Subsequently, however, Defra told us that the changes were a necessary result of the Criminal Justice Act 2003.<sup>200</sup>

260. Although welcoming the increased penalties under the draft Bill, Paula Williamson, a solicitor with Worcestershire County Council, pointed out that making animal welfare offences summary only meant that they attracted the lesser penalties

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<sup>196</sup> Q 53 [RSPCA]

<sup>197</sup> Q 272 [National Sheep Association]

<sup>198</sup> Law Commission, *Criminal Law: Consents to Prosecution*, LC 255, paras 7.6 to 7.7

<sup>199</sup> RIA, annex J

<sup>200</sup> Q 963 [Defra]

because of the limitations on magistrates' sentencing powers. Ms Williamson suggested that the offences should be made "either way"—that is, summary or indictable—which would mean that they could be dealt with either by the Magistrates' or the Crown Court. This would permit the more serious offences to be transferred to the Crown Court so higher penalties could be imposed.<sup>201</sup>

261. Commenting on Ms Williamson's statement, ACPO stated:

This is as an issue of perception on the bench in a Magistrates' Court and it would change the perception of the serious nature of the most serious offences quite significantly. [Ms Williamson] is quite right, it would raise a higher likelihood of a custodial sentence being implied even in the Magistrates' Court.<sup>202</sup>

### *Government's position*

262. Defra officials told us that it had discussed the appropriateness of the penalties in the draft Bill with the Home Office:

the Home Office considered animal welfare offences in comparison with other types of offences; and the view of the Home Office, which we accepted, was that what we have is proportionate with other types of offences.<sup>203</sup>

263. We questioned the Minister as to why, for example, "kicking the living daylight out of an animal" should be a summary offence, whereas the theft of an animal would be an offence that was triable either way.<sup>204</sup> The Minister undertook to "have another look" at the issue but added that the Government's priority is "... to get these offences prosecuted and get the penalties for them increased."<sup>205</sup>

**264. We consider that the gravity of the offences under the draft Bill should be reflected in increased sentencing powers. We recommend that certain offences should be triable 'either way'—that is, either summary or indictable—in order to give the courts the ability to impose longer sentences in appropriate cases, and we urge Defra to take this matter up with the Home Office. The offences which should be triable 'either way' should be the clause 2 fighting offence and the most serious cruelty offences under clause 1. We note that such offences would necessarily involve premeditation, whereas a welfare offence might not necessarily be intentional.**

### *Disqualification orders*

265. Under clause 25 of the draft Bill, an owner of an animal who is convicted of cruelty, specific fighting offences, an animal welfare offence or breach of disqualification order, would be able to be deprived of ownership of the animal. Clause 26 would permit a court to disqualify a person from engaging in a number of activities following conviction for cruelty, fighting and welfare offences. Those activities are:

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<sup>201</sup> Q 667 [Paula Williamson]

<sup>202</sup> Q 669 [Association of Chief Police Officers]

<sup>203</sup> Q 1067 [Defra]

<sup>204</sup> Q 1072

<sup>205</sup> Qq 1068 and 1073 [Defra]

- a) owning animals
- b) keeping, or arranging for or participating in the keeping of, animals
- c) dealing in animals, and
- d) transporting, or arranging for the transport of, animals.

Disqualification can be imposed in relation to animals in general or to animals of a specific kind.

266. Clause 26 is the Government's attempt to close the loophole in the Protection of Animals (Amendment) Act 1954 which disqualifies a person only from having "custody" of animals. Offenders have circumvented disqualification by transferring ownership and therefore "custody" to a third party, although in reality the owner retains control of the animal. Paula Williamson, a solicitor with Worcestershire County Council, spent three years repeatedly prosecuting individuals who continually circumvented disqualification orders imposed by the courts.<sup>206</sup> Ms Williamson recommended that clause 26 should be expanded to include:

... having custody of an animal where custody includes control of that animal; or, and this is the crucial point, "the power to control that animal". This would catch defendants who try to argue that they have divested themselves of the custody of an animal ... [clause] 26 is fine in so far as it goes, but it does not go far enough. The custody and the control and the power to control an animal is not adequately covered by [clause] 26 in its current form.<sup>207</sup>

**267. We welcome the Government's intention to close the loophole in the current provisions on disqualification by ensuring that an offender cannot circumvent disqualification by transferring ownership and, therefore, custody of an animal. However, we consider that clause 26 does not achieve this intention and we therefore recommend that the activities prohibited by clause 26 of the draft Bill should be extended to include "having custody, control or the power to control animals".**

268. Mike Radford recommended that a person who indulged in animal fighting or baiting should automatically have all their animals (of a relevant kind) confiscated and face a mandatory disqualification, on the basis that "fighting and baiting is cruelty of a different order to negligence or ignorance".<sup>208</sup> In relation to offences other than fighting and baiting, Mr Radford recommended that the discretion of a court to impose a deprivation or disqualification order should be severely limited to emphasise that the orders were animal protection measures rather than part of the punishment.<sup>209</sup>

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<sup>206</sup> Q 653 [Paula Williamson]; *Worcestershire County Council v Tongue* [2004] EWCA Civ 140

<sup>207</sup> Qq 657 and 660 [Paula Williamson]

<sup>208</sup> Q 760 [Mike Radford]

<sup>209</sup> Q 768 [Mike Radford]

269. We recommend that fighting should automatically attract a disqualification order. We further recommend that certain animal cruelty offences carried out for a profit, such as making ‘snuff’ videos, should also attract automatic disqualification to reflect the seriousness of the offence.

## 7 Defra’s Regulatory Impact Assessment

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270. Government departments proposing new legislation are required by the Cabinet Office to produce a Regulatory Impact Assessment (RIA) to support their case for legislative change. RIAs must meet Cabinet Office and National Audit Office (NAO) guidance. Defra has prepared a RIA for the draft Bill, which is published in the same document as the draft Bill.<sup>210</sup>

271. The Cabinet Office describes an RIA as “an assessment of the impact of policy options in terms of the costs, benefits and risks of the proposal.”<sup>211</sup> Cabinet Office and NAO guidance requires that an RIA should also consider the full range of impacts of increased legislation on all stakeholders, including businesses, charities and the voluntary sector.<sup>212</sup> To support the case for legislative change, an RIA should clearly demonstrate that the benefits of proposed legislation exceed the costs.

### Options appraisal and anticipated benefits

272. Cabinet Office and NAO guidance states that departments should carefully consider alternatives to regulation. Defra has identified three options:

- option 1: doing nothing
- option 2: having a voluntary system of self-regulation, and
- option 3: proceeding with the draft Bill.<sup>213</sup>

Defra describes the first two options as having “no benefits”.<sup>214</sup>

273. NAO and Cabinet Office guidance requires that an RIA should include an assessment of costs and benefits, as this is “the central analytical component” and one of the “most essential aspects” of an RIA.<sup>215</sup> The guidance requires departments to quantify costs and benefits as much as possible and, where this is not possible, to offer a detailed qualitative description.<sup>216</sup> The RIA asserts that, if it is enacted, the Bill will improve animal welfare. However, Defra does not quantify or explain the anticipated

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<sup>210</sup> Draft Bill document, pp 74 ff

<sup>211</sup> Cabinet Office, *Better Policy Making: A guide to Regulatory Impact Assessment*, para 1.1

<sup>212</sup> *ibid.*, para 1.6

<sup>213</sup> RIA, paras 25 to 29

<sup>214</sup> RIA, paras 30 to 32

<sup>215</sup> Cabinet Office, *Better Policy Making: A guide to Regulatory Impact Assessment*, paras 2.27 to 2.28

<sup>216</sup> *ibid.*, p17, para 2.39

improvement more specifically. Without such detail, Defra cannot clearly demonstrate that benefits exceed costs, thereby undermining the case for legislative change

**274. Given that Defra has had well over two years since its initial consultation on the draft Bill in January 2002, we are both surprised and concerned that the appraisal of alternatives to regulation in the Regulatory Impact Assessment accompanying the draft Bill is not better developed. Defra’s excessively simplistic assessment of options fails to quantify the benefits of the legislation or its alternatives, which limits Defra’s ability to demonstrate that the benefits of the proposed legislation would exceed the costs.**

### Resource implications

275. The RIA addresses the likely costs to business arising from the draft Bill in some detail. However, the stated costs appear to be based on often weakly evidenced cost assumptions and limited information. Defra intends that “each piece of secondary legislation will be subject to a separate RIA and consultation once it is decided to take forward work on that particular regulation/order”, indicating that there is still much work to be done in assessing the likely resource implications of proposed secondary legislation.<sup>217</sup> Defra also admits it cannot limit the costs of licences and that it does not always know the numbers of organisations likely to be affected by the draft Bill: “it is not clear exactly how many animal sanctuaries there are in England and Wales ...”<sup>218</sup> Estimates used to derive total costs for all organisations could therefore result in significant variations in compliance costs for all businesses affected by the draft Bill.

276. Other cost assumptions are unsupported. For example, it is not clear why circus licences should be two-thirds of the cost of zoo licences.<sup>219</sup> Animal Defenders International and the National Anti-Vivisection Society argued that this figure was far too low: “at just £50 more than a colour television licence for the same period, ADI believes that this gives entirely the wrong message.”<sup>220</sup>

277. Defra describes the likely costs to enforcement authorities of enforcing the new legislation as “negligible”.<sup>221</sup> It does not believe that any additional expenditure will be incurred by local authorities, “as an increase in some responsibilities will be matched with reduced inspection requirements.”<sup>222</sup> Defra fails to explain why it believes that increased regulation and licensing correlate with reduced inspection requirements, particularly as inspections are set out as a compulsory requirement of licensing in annex L. Neither does Defra give an anticipated time scale for the expected reduction in inspections.

278. In the context of enforcement, the RSPCA estimated that, if the Bill comes into force, “there will probably be an extra 100 or so prosecutions to begin with”, due to the

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<sup>217</sup> RIA, para 51

<sup>218</sup> RIA, annex E

<sup>219</sup> RIA, annex A

<sup>220</sup> Memorandum from Animal Defenders International and the National Anti-Vivisection Society [not printed in its entirety], para 129

<sup>221</sup> RIA, annex L

<sup>222</sup> RIA, para 36

effect of the clause 3 welfare offence. However, the RSPCA believed that in the longer term the number of prosecutions brought under the clause 1 cruelty offence could be expected to decline because of the educative effect of clause 3.<sup>223</sup>

279. We received evidence which suggested that many enforcement authorities may lack the resources and skills to implement any Act arising from the draft Bill effectively. The Companion Animal Welfare Council identified three significant enforcement issues:

First the question of resources. There is no indication that central government will make additional funds available, and we do not expect local authorities will have surplus resources readily available. The second issue relates to expertise. We are aware that there are some local government officials who have extensive knowledge and experience of matters relating to animal welfare, and whose work is to a very high standard ... however, it is our impression that in many local authorities, those carrying out work relating to animal protection and welfare have little expertise or relevant training. Finally, we would draw attention to the low priority that this work has in many local authorities. Given their other responsibilities, this may be understandable. Nevertheless, it is clear to us that the present situation is untenable if the legislation is to be effective.<sup>224</sup>

280. Other submitters were concerned that local authority inspectors, vets and even the RSPCA did not have sufficient resources or skills to enforce animal welfare requirements in all situations, for example, at animal fairs. BirdsFirst argued that “most UK vets receive little or no formal instruction in avian medicine before graduating.”<sup>225</sup> The Animal Protection Agency believed that “recognising stress in exotic animals at markets falls outside of the realm of a veterinary inspector and would require a behaviourist who specialised in birds or reptiles—of which there are very few. RSPCA inspectors also lack the necessary expertise to monitor exotic pet markets.”<sup>226</sup>

281. The Minister acknowledged that the draft Bill would impose “extra responsibilities on local authorities”.<sup>227</sup> He told us that Defra was considering the financial help it could give to local authorities, but he anticipated that the “burden will fall on those premises that, as a result of the secondary legislation, for the first time are brought under a licensing or regulatory regime. They will have to pay a fee to cover the full cost.”<sup>228</sup> He was emphatic that local authorities would be expected to operate their licensing services on a cost-recovery basis:

local authorities will be expected to charge for these services and, through any charging mechanism, will be expected to recoup their costs. There is no reason why they should not be able to do this.<sup>229</sup>

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<sup>223</sup> Q 932 [RSPCA]

<sup>224</sup> Ev 37 [Companion Animal Welfare Council]

<sup>225</sup> Ev 87 [BirdsFirst]

<sup>226</sup> Ev 84 [Animal Protection Agency]

<sup>227</sup> Q 1075 [Defra]

<sup>228</sup> Q1077 [Defra]

<sup>229</sup> Q 1075 [Defra]

282. Defra’s assessment of the probable enforcement costs arising from the implementation of the legislation as “negligible” appears to us to be simplistic in the extreme, for the following reasons:

- Defra appears to have ignored the probable increase—at least initially—in prosecution and conviction numbers from the new offences which the draft Bill would create.
- Defra does not appear to have accounted for the fact that proposals in secondary legislation will require appropriately skilled personnel to provide enforcement and inspection services and veterinary expertise in newly regulated areas such as animal sanctuaries, livery yards and greyhound tracks. We received evidence suggesting that there is a significant skills shortage in these areas and we are therefore concerned that the Regulatory Impact Assessment does not quantify what extra resources will be required nor how they will be provided. The Regulatory Impact Assessment states that “each piece of secondary legislation will be subject to a separate RIA and consultation once it is decided to take forward work on that particular regulation/order”, which suggests to us that Defra has given no detailed consideration to the likely resource implications of its proposed secondary legislation.
- Defra has proposed that local authorities should operate their licensing services on the basis of full cost recovery, yet the practicalities of this proposal are nowhere discussed in the Regulatory Impact Assessment.

### The RIA as a whole

283. We consider that the Regulatory Impact Assessment accompanying the draft Bill fails to demonstrate that the benefits of the proposed legislation would exceed the costs, as is required by Cabinet Office and National Audit Office guidance. The Regulatory Impact Assessment shows evidence of a lack of thorough consideration, on the part of Defra, about the likely consequences of enacting the draft Bill. It fails to demonstrate what measurable benefits would arise from enactment and provides only weakly evidenced and limited cost information. We are concerned that Defra’s poor assessment of the likely long-term implications of the draft Bill, together with the extent to which Defra proposes to defer policy decisions to secondary legislation, indicates that Defra is not yet properly prepared to legislate in this area. We therefore consider that the Regulatory Impact Assessment lacks credibility and provides an inadequate basis for pre-legislative scrutiny.

284. Consequently, we recommend that, before a final Bill is introduced to Parliament, Defra produces a new Regulatory Impact Assessment which better meets the requirements of Cabinet Office and National Audit Office guidance. The revised Regulatory Impact Assessment should include:

- a more thorough options appraisal
- a quantification of benefits

- a more comprehensive consideration of costs, including the costs of secondary legislation
- evidence to demonstrate that full cost recovery by local authorities is a realistic operational objective, and
- evidence to demonstrate that sufficient appropriately skilled personnel exist to provide enforcement and inspection services and veterinary expertise in newly regulated areas such as animal sanctuaries, livery yards and greyhound tracks. If such evidence is not available, Defra should explain how it proposes to address this shortage.

285. We also recommend that, in order to gauge whether costs are accurately reflected in its Regulatory Impact Assessment, Defra consults with the appropriate authorities about the likely costs of enforcement, licensing and inspection.

## 8 Proposed and possible secondary legislation and codes of practice

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286. We have already discussed the substance of the delegated powers which the Government proposes to include in the draft Bill. In the following parts we deal with the policy which the Government proposes to implement, or may choose to implement, by way of these delegated powers. The Government has set out most of its proposals for secondary legislation in the annexes to the Regulatory Impact Assessment (RIA) accompanying the draft Bill. The Government has also indicated its position on other possible proposals for secondary legislation in the course of oral evidence.

287. There is clearly a great deal of public interest in these proposals. The bulk of the written evidence we received, and much of the oral evidence we heard, was concerned with commenting on them. In this part, we briefly summarise the evidence received and give our preliminary views. We intend to return to the issues discussed below in more detail when we conduct pre-legislative scrutiny of future draft regulations and orders, assuming that the Minister accepts our recommendation, discussed in part 5.

### Timing of proposed secondary legislation

288. Annex L to the RIA sets out Defra's intended timetable for implementing its current policy proposals. The timetable covers the next six or so years and is based on the assumption that the Bill will be enacted in 2005. Defra intends to introduce the secondary legislation in two tranches: the first tranche within a year of the Bill being enacted and the second tranche by the end of 2010.

289. It is important to emphasise that Defra's policy proposals are just that—proposals. Attaching these proposals as annexes to the RIA does not give these proposals any legal

status. There is no guarantee that the proposals will not change or that they will in fact be implemented at all. Furthermore, there is nothing to prevent Defra bringing forward proposals to regulate areas which are not mentioned in the RIA annexes, if and when the draft Bill is enacted.

290. Most of the policy proposals referred to in annex L are set out in earlier annexes to the RIA. However, some proposals are not referred to anywhere in the draft Bill document. The relationship between annex L and the other RIA annexes is illustrated by the following table. Where it is clear how Defra intends to implement a proposal—by way of regulations, orders or codes of practice—this is indicated.

### *Relationship between annex L and other policy proposals*

Tranche	Proposed regulations/order/code of practice	Proposals annexed to RIA?
First	Licensing of riding schools (regulations)	No
	Licensing of livery yards (regulations)	Annex F
	Licensing of dog and cat boarding (regulations)	No
	Licensing of pet shops (regulations)	No
	Licensing of pet fairs (regulations)	Annex B
	“Other means of selling animals”	No
	Breeding of game birds (code of practice)	Annex I
	Exemptions to ban on mutilations (orders)	Annex G (tail docking only)
	Tethering of horses (code of practice)	Annex F
	“Definition of the welfare offence”	No
Second	Animal sanctuaries (regulations)	Annex E
	Performing animals (regulations)	Annex A
	Racing greyhounds	Annex H

291. We discuss the proposals contained in each of the two tranches below. However, we are unclear what Defra means by its reference in annex L to “definition of the welfare offence”. Our understanding is that the clause 3 welfare offence is a stand-alone provision; secondary legislation would not be required for the offence to have effect. We acknowledge that any regulations made under clause 6(1) would effectively give context to the clause 3 offence, but we do not consider that they are required in order to “define” the offence. **We recommend that, at such time as the Bill may be introduced to Parliament, the Government clarify its reference in annex L to the Regulatory Impact Assessment to regulations it intends to make within a year of the Bill’s enactment that would effectively “define” the clause 3 welfare offence. Such regulations would appear to be in addition to the proposed regulations about which the Government has provided details in the annexes to the RIA.**

292. Similarly, we are unclear what Defra has in mind with its reference to “other means of selling animals”—presumably, a reference to means other than pet shops and pet fairs. The only possible annex of relevance to this reference is annex D, which sets out proposals to regulate the sale of pet animals over the internet and establishments that breed small mammals for the pet trade. **We recommend that, at the same time, the Government also clarify its reference in annex L to regulations it intends to make within a year of the Bill’s enactment in order to regulate means of selling animals, other than pet shops and pet fairs.**

## Secondary legislation and codes of practice

293. If the Bill is enacted in its present form, Defra’s policy proposals will need to be implemented either by way of secondary legislation or by codes of practice. Secondary legislation will form part of the law of the land, and includes regulations made under clause 6(1) and orders made under clause 1(5). Codes of practice made under clause 7 will be issued for the purposes of practical guidance and will not be law, although they will carry some evidential weight in proceedings taken under the Act.<sup>230</sup>

294. Within each of the two tranches, we have organised our discussion of Defra’s proposals in terms of the delegated power in the draft Bill under which Defra proposes to implement each proposal.<sup>231</sup> We deal first with policy proposed to be implemented by way of regulations made under clause 6(1), then with policy proposed to be implemented by way of orders made under clause 1(5), and lastly with policy proposed to be implemented by way of codes of practice issued under clause 7.

## 9 Proposed first tranche of secondary legislation and codes of practice

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295. In this part, we discuss the policy proposals listed below. We understand that these proposals have been included in the first tranche because they are either areas in which some legislation already exists, or they are areas in respect of which policy development is more advanced.

### *Proposals to be implemented by regulations made under clause 6(1)*

- Licensing of riding schools; licensing of dog and cat boarding; licensing of pet shops
- Licensing of livery yards
- Licensing of pet fairs
- General licensing issues
  - Shift to 18-month licences

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<sup>230</sup> Clause 7(4)

<sup>231</sup> Or under which it would presumably seek to implement the proposal in question.

- Frequency of veterinary inspections
- Compulsory information leaflets to be provided by animal vendors
- Use of electronic shock collars and training devices

#### *Proposals to be implemented by orders made under clause 1(5)*

- Allowable mutilations: tail docking of dogs

#### *Proposals to be implemented by codes of practice made under clause 7*

- Rearing of game birds
- Sale of pet animals over the internet

### **Proposals to be implemented by regulations made under clause 6(1)**

296. The following proposals all relate to licensing of animal-related activities. Although Defra does not state by what legislative means it intends to implement these proposals, we assume it intends to do so by way of regulations made under clause 6(1).

#### ***Licensing of riding schools; licensing of dog and cat boarding; licensing of pet shops***

297. Although these proposals are referred to in annex L, no detail about them is given in the annexes, or anywhere else in the draft Bill document. Nor were the proposals discussed in evidence.

298. Riding schools, dog and cat boarding establishments and pet shops are currently subject to legislation which requires them to be licensed.<sup>232</sup> We understand, on the basis of additional information requested from Defra, that the Department set up working groups, which met between April and June, to examine these areas earlier this year.<sup>233</sup> The groups' remits all appear to have been to update existing licensing requirements. Following the groups' reports to Defra, the Department put forward proposals in each of these areas, "in light of [the groups'] conclusions".<sup>234</sup> Defra proposes that licensing of riding schools and dog and cat boarding establishments should be based on existing legislation, whereas licensing of pet shops should be the subject of new legislation, apparently because of the deficiencies in the existing legislation and in order to regulate both pet shops and pet fairs.

299. Subject to our comments below about general licensing requirements, at this stage, we have no comment to make on the areas selected by Defra for future legislation. **We are concerned that Defra has not set out in the draft Bill document any detail on its proposals to license riding schools, dog and cat boarding establishments and pet shops, given that it intends to implement these proposals**

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<sup>232</sup> Under the Riding Establishments Act 1964, the Animal Boarding Establishments Act 1963 and the Pet Animals Act 1951, respectively.

<sup>233</sup> Ev 547 [Defra]

<sup>234</sup> *Ibid.*; Defra's proposals are also available at <http://www.defra.gov.uk/animalh/welfare/bill.htm>. The groups' reports have not been published.

**within a year of the Bill being enacted. A clear indication of the policy which Defra intends to implement in respect of these businesses should be made available if and when the final Bill is introduced to Parliament.**

### ***Licensing of livery yards***

300. Details of Defra’s proposal to license livery yards are set out in annex F to the RIA. Livery yards are currently subject only to a voluntary licensing scheme; Defra’s proposal would introduce mandatory licensing and inspection for all livery yards in England. As with riding schools, dog and cat boarding establishments and pet shops, we understand that a working group set up by Defra examined livery yards earlier this year.<sup>235</sup>

301. The little evidence we received on this issue was supportive of Defra’s proposal. The Home of Rest for Horses described take-up of the current voluntary code as “disappointing”.<sup>236</sup> **At this stage, we support Defra’s proposal to introduce mandatory licensing and inspection for all livery yards in England.**

### ***Licensing of pet fairs***

302. Details of Defra’s proposal to license pet fairs are set out in annex B to the RIA. Defra describes the existing law relating to the sale of animals at pet fairs as “ambiguous”. It states that, under existing legislation, some local authorities ban pet fairs altogether whereas others consider that they can be licensed. Defra proposes that local authorities should be able to license the organisers of pet fairs. It considers that pet fairs should be placed “on a similar regulatory footing” to pet shops, with similar standards of welfare being applied.

303. As with riding schools, dog and cat boarding establishments, pet shops and livery yards, a working group was set up by Defra earlier this year to examine the issue of pet fairs.<sup>237</sup> Defra’s proposals on pet fairs have been prepared in light of this group’s conclusions.<sup>238</sup>

### ***Current law***

304. It is unclear whether pet fairs are legal under the current legislation, the Pet Animals Act 1951. Section 2 of the 1951 Act provides that:

If any person carries on a business of selling animals as pets in any part of a street or public place, or at a stall or barrow in a market, he shall be guilty of an offence.

When applied to pet fairs, the wording of section 2 raises several questions. Who is the relevant person carrying on the business—the person organising the event, the person selling the animals, or both? What constitutes a public place? The 1951 Act does not define this, and the term has several meanings in law. Similarly, what constitutes a market? The 1951 Act does not define this, either.

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<sup>235</sup> Ev 547 [Defra]; Defra’s proposals are also available at <http://www.defra.gov.uk/animalh/welfare/bill.htm>.

<sup>236</sup> Ev 414 [Home of Rest for Horses]

<sup>237</sup> Ev 547 [Defra]; Defra’s proposals are also available at <http://www.defra.gov.uk/animalh/welfare/bill.htm>.

<sup>238</sup> *Ibid.* The groups’ reports have not been published.

305. A further complication is created by section 1 of the 1951 Act, which authorises a local authority to grant a licence to a person “to keep a pet shop at such premises in their area as may be specified in the application.” A pet shop is defined as “the carrying on at premises of any nature (including a private dwelling) of a business of selling animals as pets”—a definition which could arguably catch at least some pet fairs.<sup>239</sup> Consequently, it is unclear, first whether all pet fairs would be caught by the section 2 prohibition and, secondly, even if a pet fair can be said not to be prohibited by section 2, whether it would then come within the ambit of section 1, meaning that a local authority would be empowered to license it.

306. The draft Bill does not propose to repeal or amend sections 1 or 2, although Defra has indicated that, at the time of making regulations on this issue, it intends to use clause 6(3)(f) to repeal the whole of the 1951 Act.<sup>240</sup>

### *Evidence received*

307. Strong arguments were put both for and against Defra’s proposal to legislate so that pet fairs are clearly legal, and able to be licensed. Some witnesses strongly opposed Defra’s proposal. Animal Aid disputed Defra’s description of the current legal position as “ambiguous” and asserted that pet fairs are clearly illegal under current legislation.<sup>241</sup> It described the proposal to license—and thus clearly legalise—pet fairs as a “seriously retrograde” step and claimed that any licensing regime would require a significant increase in local authorities’ resources.<sup>242</sup> Animal Aid was concerned that pet fairs created several problems:

[there are] perhaps dozens of itinerant traders, none of whom are licensed. You do not know the conditions in which the animals are kept before they arrive, you do not know what is going to happen after they depart, the ones that are unsold, etcetera. So it is enormously complex, and who do you prosecute?<sup>243</sup>

308. The Born Free Foundation referred to specific problems with exotic animals being sold at pet fairs:

[If pet fairs are legalised,] there is nothing to stop spontaneous buying and people not knowing how to look after exotic animals that have particular needs and particular environments that they need to live in ...<sup>244</sup>

309. The International Fund for Animal Welfare (IFAW) was also particularly concerned about the possibility of exotic animals being bought and sold at pet fairs, describing pet fairs as:

obviously, temporary; they involve the transport of animals over, often, quite long distances; we are concerned about some of the conditions that they are kept in—in cramped conditions—and we are concerned ... about the potential transfer of

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<sup>239</sup> Section 7 of the 1951 Act

<sup>240</sup> Together with the Pet Animals Act 1951 (Amendment) Act 1983.

<sup>241</sup> Qq 423 and 424 [Animal Aid]

<sup>242</sup> Qq 422 to 424 [Animal Aid]

<sup>243</sup> Q 424 [Animal Aid]

<sup>244</sup> Q 467 [Born Free Foundation]

disease. We believe that shows are separate and if you want to show animals you can show them, but we do not believe that they are necessarily the best way to sell and buy animals, particularly exotics.<sup>245</sup>

IFAW also suggested that there was a risk of disease transmission between animals and humans at these events, referring to an event at which “a bird was found to have psittacosis which is a disease highly infectious to both birds and people”.<sup>246</sup>

310. Like IFAW, BirdsFirst drew a distinction between events at which animals are bought and sold and events staged solely for exhibition purposes:

With the exhibitions a lot of the pet birds have a personal relationship with the person who is their main carer and provider. The bird will know that person as an individual. Even if it is just a canary or a budgie, it has a personal relationship with that person. It is very different for a bird to be driven up from Cornwall, to go to a sale in Newark or somewhere, then to be sold and passed on to somebody perhaps with less knowledge who lives in Carlisle.<sup>247</sup>

311. On the other side of the debate, the Pet Care Trust described pet fairs as:

... an important outlet for hobbyist breeders and essential to many types of animal hobbyist groups to enable them to keep going ... it is a very successful way forward for a group of people who are interested in animals to get together and exchange information as well as animals.<sup>248</sup>

The Pet Care Trust emphasised that “people who go to fairs have the welfare of the animals uppermost in their minds because they are interested hobbyists and the last thing they want to do ... is bring back an infected animal.”<sup>249</sup>

312. The Federation of British Herpetologists (FBH) stated that its guidelines recommend that a vet should be present at every event. The FBH also said that it “always invite[d] the RSPCA to be present” at its events and that “in the last two years when we have had the RSPCA attend our shows they have yet to report a problem.”<sup>250</sup> The FBH did not agree with the suggestion of some witnesses that welfare problems were more likely to arise at events at which animals are bought and sold, as opposed to events staged solely for exhibition purposes:

... the implication seems to be that if you are selling animals you do not care about the animals; you only care about the sale ... that is entirely untrue because if ... you do not care for the welfare of that animal you are going to lose that animal, it is going to die and you are not going to be able to sell it and make a profit. So the

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<sup>245</sup> Q 150 [International Fund for Animal Welfare]

<sup>246</sup> Q 159 [International Fund for Animal Welfare]

<sup>247</sup> Q 180 [BirdsFirst]

<sup>248</sup> Qq 125 and 126 [Pet Care Trust]

<sup>249</sup> Q 128 [Pet Care Trust]

<sup>250</sup> Q 157 [Federation of British Herpetologists]

concern of everybody is in the welfare of those animals, and those shows are inspected.<sup>251</sup>

The FBH also described the suggestion that there was a risk of disease transmission between animals and humans at pet fairs as “overstated”.<sup>252</sup>

### *Our position*

313. It seems to us that the first difficulty to be dealt with in relation to the issue of pet fairs is that of what categories of event fall within the ambit of the term “pet fair”. The term is not defined in law. It appears that it may be used in respect of events staged purely for exhibition purposes, including competitive exhibition purposes, as well as events staged for the purposes of sale and purchase.

314. Defra appears to use the term “pet fairs” to mean those shows run by hobbyists that are open to the public and any other commercial animal fair where commercial trading occurs, with the (sizable) exception of agricultural shows. These are the categories of event in respect of which Defra proposes that a licence will be required. Licences would therefore not be required for events staged solely for competitive showing purposes or for shows run by hobbyists that are member-only events.

315. Our discussion therefore proceeds on the basis that the phrase “pet fair” means an organised event at which animals are bought and sold, regardless of whether this is the primary purpose of the event. The animals bought and sold should not be traded for farming or agricultural purposes.

**316. We consider it vital that the legal status of pet fairs be clarified. Obviously, the confusion caused by the wording of the Pet Animals Act 1951 is most unsatisfactory. Given the current situation is so murky, and that the ethics of pet fairs are so hotly contested, we are extremely concerned that Defra appears to have assumed that it should legislate so that pet fairs are clearly legal, without first consulting widely on this issue.** Defra’s consultation letter on a proposed animal welfare Bill, which was issued in January 2002, asked consultees only whether there should be greater regulatory control over public and private pet fairs—a question which assumed that pet fairs should be legal, and that the only issue was the extent to which they should be regulated. The remit of the working group set up by Defra earlier this year was to produce proposals for the licensing of pet fairs—again, the group was asked to proceed on the basis that pet fairs should be legal. **Defra appears to have proceeded straight to the question of asking *how* pet fairs should be regulated, without first asking whether they *should* be clearly legalised. This is a significant deficiency in the approach adopted by Defra in updating animal welfare legislation. We recommend that, before Defra proceeds to draft regulations which would repeal the 1951 Act and introduce, in its place, a licensing regime on pet fairs, it first consult on whether pet fairs should be made unequivocally legal.**

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<sup>251</sup> Q 157 [Federation of British Herpetologists]

<sup>252</sup> Q 160 [Federation of British Herpetologists]

317. Currently, concerns about legality relate only to events where selling of animals occurs, because of the wording of the 1951 Act. By requiring events to be licensed only where buying and selling of animals occurs, Defra apparently intends to maintain this distinction. Presumably, this is because Defra considers that animal welfare issues do not arise in relation to events where animals are not bought and sold. **We recommend that Defra reappraise the basis on which its proposed regime for licensing pet fairs is predicated.**

### *General licensing issues*

#### *Shift to 18-month licences*

318. Defra states that it is considering introducing 18-month licences in respect of a number of policy areas covered in the annexes to the RIA, including circuses, pet fairs, livery yards and animal sanctuaries. This would represent a change from many existing licensing requirements in animal welfare legislation, which provide that licences must be renewed annually, and would mean that businesses or premises would be inspected every 18 months instead of annually. Defra considers that an 18-month licence would reduce the costs for both businesses and local authorities as well as enabling inspection to be carried out at different times of the year. Defra acknowledges that an 18-month licence may prove “difficult” in respect of pet fairs which are held annually.<sup>253</sup>

319. The evidence we received strongly opposed the proposal to make licences renewable at 18-month intervals, although we acknowledge the possibility that those submitters who supported the proposal did not feel the need to say so. Animal Defenders International and the National Anti-Vivisection Society argued that “setting aside animal welfare for the sake of reducing costs to business goes against the fundamental aims of the Bill.”<sup>254</sup> BirdsFirst described the proposal as “virtually nonsensical with regard to itinerant events”, such as pet fairs, which can be annual events, or can migrate between local authorities.<sup>255</sup>

**320. We do not support Defra’s proposal to introduce 18-month licences, rather than annual licences, in respect of licensing of circuses, pet fairs, livery yards or animal sanctuaries, or in respect of any other business currently licensed under animal welfare legislation. The proposal would reduce the frequency with which businesses or premises would be inspected, and would therefore not promote the highest standards of animal welfare because it would increase the period of time during which breaches of legislation could go undetected. We consider that any possible benefits to business offered by a shift to 18-month licences are outweighed by animal welfare considerations. In particular, we consider 18-month licences would be entirely inappropriate for itinerant, annual, often one-off events, such as pet fairs. We therefore recommend that Defra does not pursue its proposal to replace annual licences with 18-month licences. In respect of pet fairs and similar events, we recommend that a licence for a pet fair should apply to a single event only, and that each separate event should require a separate licence.**

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<sup>253</sup> RIA, annexes A, B, E and F

<sup>254</sup> Memorandum from Animal Defenders International and the National Anti-Vivisection Society [not printed in its entirety], para 126

<sup>255</sup> Ev 88 [Birds First]

### *Frequency of veterinary inspections*

321. The inspection associated with an application for a new licence, or renewal of an existing licence, may or may not include the presence of a vet. In annex L to the RIA, Defra gives some indication of the frequency with which it proposes that a veterinary presence would be required at inspections. Defra proposes that a vet should be required to be present at every 18-month inspection, except in the case of livery yards, animal sanctuaries and dog and cat boarding establishments, where a vet would be required to be present only once every five years.

322. We received evidence expressing concern that the proposed frequency of veterinary attendance at inspections was too infrequent. For example, with respect to livery yards, the British Equine Veterinary Association recommended that a veterinary inspector should be present at “all initial inspections” and that:

Inspections should be carried out every 15 months with a maximum interval of 30 months for veterinary inspections. If the veterinary involvement is diluted further there is a real risk of compromising the quality of these inspections and therefore compromising the welfare of the animals kept in these yards.<sup>256</sup>

323. We consider that a five-year interval between vet-accompanied inspections is too infrequent, particularly in the case of livery yards and animal sanctuaries, in respect of which Defra proposes to legislate for the first time under the draft Bill. Furthermore, the proposed five-year interval appears to us not to mesh with the proposed 18-month licence period—Defra surely intends to require vet-accompanied inspections every four and a half years, or at every third licence inspection. **We recommend that vet-accompanied inspections of livery yards, animal sanctuaries and dog and cat boarding establishments should be required at least every two years, rather than Defra’s proposed requirement of only once every five years. If Defra accepts our recommendation to provide for annual licences, rather than the proposed 18-month licences, then a vet-accompanied inspection should be required every two years—at the time of application and at every second licence renewal thereafter. If Defra proceeds with its proposal to introduce 18-month licences, then a vet-accompanied inspection should be required every 18 months—at the time of application and at every licence renewal thereafter.**

### *Compulsory information leaflets to be provided by animal vendors*

324. In annex C to the RIA, Defra proposes that “all vendors of pet animals” should be required to provide information leaflets, in order to “help educate prospective purchasers in the husbandry and care of the animal(s) they are considering owning”.<sup>257</sup> However, by “all vendors of pet animals”, Defra appears to mean only pet shops and dog breeding establishments. The leaflets would be those which are currently produced by the Pet Care Trust, which Defra describes as “the pet trade representative body”.<sup>258</sup>

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<sup>256</sup> Ev 415 [British Equine Veterinary Association]

<sup>257</sup> RIA, annex C

<sup>258</sup> *Ibid.*

### *Evidence received*

325. Concern was expressed that compulsory information leaflets should not be provided by an industry body such as the Pet Care Trust. The Animal Protection Agency commented that:

Inviting pet dealers to set their own or the public's standards of care may be akin to inviting prison inmates to devise locks! Therefore, only genuine and fully independent expert advice from non-trade-related sources should be invited to devise comprehensive information on pet care.<sup>259</sup>

326. We also heard suggestions from bodies including the British Veterinary Association, Animal Aid and the International Primate Protection League that pet fairs risked an increase in 'impulse' buying of animals by people who lack knowledge of the welfare needs and husbandry of the animal which they are buying.<sup>260</sup> Ken Livingstone stated that he did "not feel that responsible pet ownership can in any way be compatible with pet fairs, which encourage impulse buying and give no recourse to follow-up information on care."<sup>261</sup> Animal Aid argued that cases of cruelty and neglect of exotic animals were increasing as a result of such purchases at pet fairs:

The RSPCA report a shocking 200% increase in the number of exotic animal rescues in 2000 compared with 1999. Most of these cases involved ill-informed owners who were unaware that they were causing any suffering. Our investigations at bird and reptile fairs reveal that the average stallholder possesses neither relevant qualifications nor experience in bird or reptile husbandry. Customers are often given misleading and inaccurate advice about the animal's full-grown size, lifespan and complex physiological and behavioural needs.<sup>262</sup>

### *Our position*

327. **We commend Defra on its proposed scheme to require pet vendors to issue appropriate information about animal husbandry and care at the point of sale. However, we are concerned that Defra has apparently failed to consider extending this requirement beyond pet shops and dog breeding establishments to other vendors of pet animals, such as vendors at pet fairs and at other types of breeding establishments.** It is inconsistent to propose compulsory distribution of written information at some pet animal vending outlets and not others. The limitations of the proposal also risk undermining the purpose of the clause 3 welfare offence, which seeks to promote education about animals' welfare needs. **We therefore recommend that the proposed scheme be extended to other vendors of pet animals. We recommend that the information which vendors are required to provide to prospective and actual purchasers should be able to be provided by the Pet Care Trust only if Defra first institutes a system whereby the information is checked by an independent, expert source prior to being published.**

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<sup>259</sup> Ev 85 [Animal Protection Agency]

<sup>260</sup> Ev 285 [British Veterinary Association]; ev 177 [Animal Aid]; ev 495 [International Primate Protection League (UK)]

<sup>261</sup> Ev 534 [Ken Livingstone]

<sup>262</sup> Ev 177 [Animal Aid]

### *Use of electronic shock collars and training devices*

328. We received a number of submissions commenting on the use of electronic shock collars and training devices. This was despite the fact that Defra has set out no proposals in the draft Bill document with respect to either regulating or banning the use of electronic shock collars and training devices. On the basis of the evidence we have heard, these devices appear to be used on dogs for the purposes of either what might be termed ‘aversion’ training or in order to contain dogs within a particular area without the need for fences. The drafting of clause 6(2)(j) does indicate that Defra intends to use the clause 6(1) delegated power to “make provision for prohibiting or regulating the use of equipment in relation to animals.”

#### *Evidence received*

329. We received evidence representing a wide spectrum of views on the use of electronic shock collars and training devices. Animals in Mind argued for a ban on the general use of these devices because of the dangers of misuse. It described the reactions of dogs when shock collars were used on them as “violent and terrified” and claimed that many police and other working dog units had stopped using electric training collars, “assessing that they are cruel devices.”<sup>263</sup> Guide Dogs for the Blind concurred with Animals in Mind that all electronic shock devices should be banned.<sup>264</sup> Both Animals in Mind and the Kennel Club believed that “unwanted behaviour in dogs is best discouraged by positive training methods” which are more effective and less cruel.<sup>265</sup>

330. Opinion was divided on the appropriateness of using electronic shock collars for the purposes of containing dogs to a particular area—effectively, as a perimeter fence, where the electric wires are buried underground. Animals in Mind argued that the use of electronic shock collars for perimeter fence purposes increased the potential for dangerous situations because dogs are likely to link the shock with the first thing they see at the time of receiving the shock, which could lead to attacks on children, for example.<sup>266</sup> The Kennel Club, however, drew a distinction between using electronic shock collars for training purposes and using them to contain dogs within a particular area without the need for fences. It supported a ban on the former use but was satisfied that the latter use should be permitted to continue.<sup>267</sup>

331. On the other side of the argument, we received evidence from Jennifer Dobson, an animal behaviour consultant, and from Duncan Davidson, a veterinarian, both of whom argued that electric collars are “an irreplaceable last resort method” when all other methods of training a dog, including positive reinforcement, have failed.<sup>268</sup> Ms Dobson stated that, in her experience, electric collars were not “appropriate or necessary for most dogs, or for routine obedience training”; nor were they “suitable or effective as a quick-fix or lazy option” for people who cannot be bothered to train their

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<sup>263</sup> Ev 101 [Animals in Mind]

<sup>264</sup> Ev 493 [Guide Dogs for the Blind]; ev 101 [Animals in Mind]

<sup>265</sup> Ev 42 [Kennel Club]

<sup>266</sup> Ev 103 [Animals in Mind]

<sup>267</sup> Ev 42 [Kennel Club]

<sup>268</sup> Ev 503 [Jennifer Dobson]

pets.<sup>269</sup> Mr Davidson told us that collars are sometimes necessary in cases where other training methods have failed and pointed out that, without the use of a collar, some dogs might have to be euthanased or kept in a way in which welfare implications might arise.<sup>270</sup> Like Jennifer Dobson, Mr Davidson suggested that banning the collars would be difficult and would increase the risk that dog owners might instead use inappropriate equipment.<sup>271</sup>

332. PetSafe Ltd and Electronic Pet Training Systems, a manufacturer of electronic shock collars and perimeter fence devices, argued that its systems were already widely used in the UK, and had been for some time:

This is a boundary fence system used by many families for their dogs and cats for over 13 years now in the UK. Many hundreds of radio fence owners are writing to their MPs to protest about any hint of a ban. They feel that their pets' lives have been saved.<sup>272</sup>

### *Our position*

333. We understand from Defra that it believes the current scientific evidence with respect to these devices to be ambiguous and therefore considers it is not in a position to prepare proposals either to regulate or ban them. Defra has told us it is considering the feasibility of undertaking a research project into the devices, as a matter of priority. **If electronic shock collars and perimeter fence devices have indeed been in use in the UK for 13 years now, as one submitter claimed, then we are surprised that Defra has not yet undertaken sufficient research into these devices in order to have formed an opinion of them, particularly given the controversy surrounding their use. We urge Defra to undertake a process of consultation and research about the possible regulation of these devices as soon as possible.**

334. **At this stage, it seems to us that an appropriate approach to electronic shock collars and perimeter fence devices would be to outlaw their use for purposes of training except, perhaps, with the exception of suitably licensed veterinarians. On the basis of the evidence we have received, we do not oppose the use of these devices to contain dogs within a particular area without the need for fences.** However, we emphasise that this is very much a preliminary view; we would certainly seek to hear further evidence on this issue before taking a view on any future draft regulations seeking to control this area.

### **Proposals to be implemented by orders made under clause 1(5)**

335. The following proposals would constitute exemptions to the ban on mutilations set out in clause 1(4).<sup>273</sup> Such exemptions would need to be implemented by way of orders made under clause 1(5).

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<sup>269</sup> Ev 503–504 [Jennifer Dobson]

<sup>270</sup> Q 191 [Duncan Davidson]

<sup>271</sup> *Ibid.*

<sup>272</sup> Ev 545 [PetSafe Ltd and Electronic Pet Training Systems]

<sup>273</sup> See the discussion in part 4.

### **Allowable mutilations: tail docking of dogs**

336. Details of Defra’s proposal to ban or restrict the docking of dogs’ tails are set out in annex G to the RIA. Defra proposes that the docking of a dog’s tail for prophylactic purposes should be banned or restricted but that there may be arguments for allowing the docking of dogs whose tails are particularly prone to injury, such as certain working dogs. In oral evidence, the Minister told us that tail docking will be banned “except for therapeutic or welfare reasons”.<sup>274</sup> Defra has indicated to us that its rationale for its position is based on strong scientific evidence suggesting that puppies feel pain when docked, and that the benefits of docking for cosmetic reasons do not offset the pain felt.

#### **Current law**

337. Currently, it is illegal for anyone other than a veterinary surgeon to dock a dog’s tail.<sup>275</sup> In deciding whether to dock a dog’s tail, a vet is required to have regard to guidance issued by the Royal College of Veterinary Surgeons (RCVS). The RCVS guidance states that:

The Royal College has for many years been firmly opposed to the docking of dogs’ tails ... unless it can be shown truly to be required for therapeutic or truly prophylactic reasons ... Docking cannot be defined as prophylactic unless it is undertaken for the necessary protection of the given dog from risks to that dog of disease or of injury which is likely to arise in the future from the retention of an entire tail ... docking cannot be described as prophylactic if it is undertaken merely on request, or just because the dog is of a particular breed, type or conformation.<sup>276</sup>

#### **Evidence received**

338. We received a wide spectrum of evidence on this issue. The RSPCA, the All Party Group for Animal Welfare in the National Assembly for Wales, the League Against Cruel Sports and the Anti-Docking Alliance all called for a ban on docking dogs’ tails except for therapeutic reasons.<sup>277</sup> The British Association for Shooting and Conservation and the Union of Country Sports Workers supported a ban with exemptions for therapeutic and, in some cases, prophylactic docking, such as for working dogs.<sup>278</sup> The Kennel Club and the Council of Docked Breeds (CDB) opposed Defra’s proposal;<sup>279</sup> the CDB argued that:

... the likelihood is that a ban on the docking of non-working dogs will result in a substantial number of breeders ceasing to breed dogs of the customarily docked breeds. Registrations of docked breeds will fall, and there will also be a very considerable loss from the dog world of the huge experience built up by

<sup>274</sup> Q 1006 [Defra]

<sup>275</sup> Veterinary Surgeons Act 1966 (Schedule 3 Amendment) Order 1991 (SI 1991/1412)

<sup>276</sup> ‘RCVS position on docking of dogs’ tails’, annex to *Guide to Professional Conduct*; available at [www.rcvs.org.uk](http://www.rcvs.org.uk)

<sup>277</sup> Ev 11 [RSPCA]; ev 486 [All Party Group for Animal Welfare, National Assembly for Wales]; ev 334 [League Against Cruel Sports]; ev 111 [Anti-Docking Alliance]

<sup>278</sup> Ev 509 [British Association for Shooting and Conservation]; ev 424 [Union of Country Sports Workers]

<sup>279</sup> Ev 39 [Kennel Club]; ev 110 [Council of Docked Breeds]

experienced breeders over many decades. It is our view that, in consequence, the breeds themselves will suffer.<sup>280</sup>

339. With regard to the question of whether docking causes puppies pain, we received veterinary evidence supporting both sides of the debate. Joseph Holmes, a veterinary surgeon, said that, in his experience, the operation lasted 10 seconds and puppies went straight back to sleep following the procedure.<sup>281</sup> On the other hand, Professor David Morton told us that very young animals were more likely to feel pain than older animals and argued that tail docking should be allowed only for therapeutic reasons when in the best interests of the individual animal, rather than for prophylactic or cosmetic reasons.<sup>282</sup> Both the British Veterinary Association (BVA) and the Royal College of Veterinary Surgeons (RCVS) believed that docking should not be allowed except for therapeutic or prophylactic reasons. However, both bodies were somewhat unclear about how they proposed that their position on prophylactic docking should be defined in practice. The RCVS commented that:

dogs should not have their tails docked except ... ‘for prophylactic or therapeutic reasons’—therapeutic would be quite simple; if a dog has got a badly damaged tail, that is more than a young puppy, I do not think anybody would argue, providing the veterinary surgeon’s evidence was right and proper. It is the “prophylactic” which is probably going to be the problem.<sup>283</sup>

The BVA submitted that “we need clear scientific evidence which will justify [prophylactic docking]. If that evidence is not available [then] it is not justified.”<sup>284</sup>

### *Our position*

**340. We consider that tail docking in dogs should be banned for cosmetic reasons. Tail docking should continue to be permitted for therapeutic reasons, where it is in an animal’s best welfare interests. The question of allowing an exemption for prophylactic docking for certain breeds or types of working dogs is more difficult. For example, there is a risk that a whole litter of puppies which might one day be used as working dogs could be docked as a precautionary measure. Unless there is a system to guarantee that a docked puppy will be used as a working dog, an exemption for prophylactic docking risks being abused.**

**341. We therefore support Defra’s proposed position on this issue. To prevent an abuse of any exemption for prophylactic docking, we recommend that a puppy’s tail should be permitted to be docked for prophylactic reasons only where the following conditions are met:**

- **as is currently required by law, tail docking should be carried out only by a veterinarian**

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<sup>280</sup> Ev 111 [Council of Docked Breeds]

<sup>281</sup> Ev 391 [Joseph Holmes]

<sup>282</sup> Qq 211 to 212 [Professor David Morton]

<sup>283</sup> Q 700 [Royal College of Veterinary Surgeons]

<sup>284</sup> Qq 697 to 698 [British Veterinary Association]

- the veterinarian should take all reasonable steps to satisfy him or herself that the puppy is of a specified breed of dog, generally used as a working dog, or that the puppy is likely to be used as a specified type of working dog
- the veterinarian should be required to maintain records demonstrating why he or she was satisfied that these conditions were met—for example, a gun licence
- the veterinarian should be required to microchip any puppy which he or she docks; the microchip should contain the details of the veterinarian who docked the puppy, and
- the veterinarian should provide the owner with a certificate endorsing the tail docking; the certificate should include the details of the veterinarian who carried out the procedure.

### Proposals to be implemented by codes of practice made under clause 7

342. Defra appears to intend that the following proposals would be implemented by way of codes of practice made under clause 7.

#### *Rearing of game birds*

343. In annex I to the RIA, Defra states that there is “little concern generally” about the welfare of game birds reared for sport shooting purposes. Despite this, Defra considers that, under clause 7, it would be appropriate to introduce a code of practice addressing the rearing of such birds, in order to “alleviate an apparent anomaly between birds raised for food [currently regulated under the Agriculture (Miscellaneous Provisions) Act 1968] and those primarily raised for sport shooting”. The Game Farmers’ Association (GFA) currently has a code of practice in place for the rearing of game birds; about half of the 300 or so game farms in England and Wales are currently GFA members and are therefore required to comply with the code of practice. Defra intends that the GFA code should form the basis for the proposed statutory code of practice, which would apply to all game farms in England and Wales. Defra states that it has consulted with the game farming industry on this issue.

344. In annex L to the RIA, Defra indicates that, for animal health purposes, game farms are currently subject to inspection by the State Veterinary Service, and that the SVS could therefore be expected to undertake inspections for animal welfare purposes, too.

#### *Evidence received*

345. Evidence from the game farming and shooting industry was generally supportive of Defra’s proposal. The GFA and the National Gamekeepers’ Organisation (NGO) both urged that the statutory code of practice should adopt the existing text of the GFA code without modification.<sup>285</sup> The British Association for Shooting and Conservation (BASC) went one step further, suggesting that Defra had already undertaken to adopt

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<sup>285</sup> Ev 418 [Game Farmers’ Association]; ev 173 [National Gamekeepers’ Organisation]

the existing GFA code as a statutory code of practice: “Defra Ministers have said that they intend to approve the existing [GFA code] ... BASC supports this course of action”.<sup>286</sup>

346. The GFA and NGO expressed concern about “vagaries in the Bill that might lead to unwarranted prosecution of gamekeepers and game farmers” for what appear to be standard game farming practices.<sup>287</sup> For example, they were concerned that the draft Bill should make it clear that clipping a bird’s wing for game farming purposes could not be said to be a mutilation under clause 1(4):

... within game farming the clipping of the feathers of one wing is a very common practice before game birds are released. This detains the bird temporarily for a few weeks within an open top release pen in the woodland. The idea is that the bird in the release pen is safe; it can be looked after by the game keeper while it is acclimatising to the wild. The feathers on the wing that has been clipped will re-grow and, in due course, once it is able to escape and fully adapt into the wild, the bird will flutter out over the open top fence and be released into the wild.<sup>288</sup>

Concern was also expressed that a game keeper might be said to have “abandoned” a bird after it has been released into the wild, and that he or she could therefore continue to be said to have a responsibility to take reasonable steps to ensure the birds’ welfare, under the clause 3 welfare offence.<sup>289</sup>

347. The GFA and NGO also discussed the numbers of game birds reared for sport shooting and what happens to them, once they are released:

Approximately 20 million ... pheasants and partridge are reared and released into this country each year. About 40% of those get shot. There are some figures ... on what happens to the other 50 to 60%. A proportion go on to breed in the wild and become, effectively, part of the wild stock, a proportion are lost to predators, a proportion, obviously, will be taken in road accidents, although that has never been quantified, and some, indeed, a very small proportion, will be caught up again for breeding purposes in subsequent years.<sup>290</sup>

348. By contrast, submitters from outside the game industry were strongly critical of the GFA code. Animal Aid described it as “thoroughly inadequate” and “self-serving”.<sup>291</sup> The League against Cruel Sports (LACS) urged Defra not to accept “the assurances of a self-regulated industry which has thus far failed to resolve the welfare problems it faces” and submitted that failure to abide by the terms of the proposed statutory code of practice should itself be an offence.<sup>292</sup> These organisations were also opposed to certain game rearing practices on welfare grounds, including wing clipping but extending to beak trimming, fitting game birds with spectacles and with bits, which

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<sup>286</sup> Ev 510 [British Association for Shooting and Conservation]

<sup>287</sup> Q 392 [Game Farmers’ Association and National Gamekeepers’ Organisation]

<sup>288</sup> Q 394 [Game Farmers’ Association and National Gamekeepers’ Organisation]

<sup>289</sup> *Ibid.*

<sup>290</sup> Q 402 [Game Farmers’ Association and National Gamekeepers’ Organisation]

<sup>291</sup> Ev 175 to 176 [Animal Aid]

<sup>292</sup> Ev 335 [League Against Cruel Sports]

the Farm Animal Welfare Network (FAWN) described as “devices that are clipped into the birds’ nostrils and fed between the upper and lower beak, so preventing beak closure”; these are apparently used as anti-aggression devices.<sup>293</sup> LACS submitted that:

... things like wing clipping and biting and burning and beak trimming ... all of these are done to the bird because of the conditions in which people try to keep that bird and the problems that are associated with that. In principle, we would much rather they solved those problems than mutilated the bird ... part of the five freedoms is for those animals to be able to express their normal behaviour and if you are going to stop them flying you are not meeting the requirements of the five freedoms.<sup>294</sup>

349. LACS believed that the clause 3 welfare offence draft Bill would apply not only to game birds that are being reared but also to birds beyond “the point of release”—meaning that, under clause 3, gamekeepers would continue to be responsible for taking reasonable steps to ensure the birds’ welfare.<sup>295</sup> Similarly, the Wales Opponents of Pheasant Shooting claimed that gamekeepers continued to provide food, shelter and water for game birds even after they have been released into the wild and that they would therefore continue to be responsible for the birds’ welfare after their release.<sup>296</sup>

350. Animal Aid described the GFA and NGO’s account of the numbers of game birds reared for sport shooting and their fate, once they are released, as:

... a very anodyne presentation of what takes place ... The BASC ... in *Shooting Times* a couple of years ago talked about 35 million birds released. What we are talking about is millions and millions of birds mass-produced inside sheds ... principally for the purpose of being shot, not for eating, but for sport.<sup>297</sup>

FAWN concurred with the view that “a probable thirty million birds are reared annually for shoots” and claimed that, of those, “only a small ... number ... are ‘caught up’ from the wild, [in order] to boost the health status of the millions that are purpose-bred”.<sup>298</sup> The Wales Opponents of Pheasant Shooting claimed that “enormous game bird releases” were necessary to fulfil the BASC’s “recommended maximum bag of 500 birds per day”.<sup>299</sup> On this point, the BASC stated that it has not published a guideline limit, but that “in practice it would advise that no more than 500 birds per team, not per individual, should be shot”.<sup>300</sup> The BASC advised that for the vast majority of shoots—“perhaps 90 or 95%”—bags of a fifth or a tenth of that size would be more typical.<sup>301</sup>

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<sup>293</sup> Ev 497 [Farm Animal Welfare Network]

<sup>294</sup> Qq 848 and 850 [League against Cruel Sports]

<sup>295</sup> Q 846 [League against Cruel Sports]

<sup>296</sup> Ev 480 [Wales Opponents of Pheasant Shooting]

<sup>297</sup> Q 403 [Animal Aid]

<sup>298</sup> Ev 496 [Farm Animal Advisory Network]

<sup>299</sup> Ev 480 [Wales Opponents of Pheasant Shooting]

<sup>300</sup> Memorandum from British Association for Shooting and Conservation [not printed]

<sup>301</sup> *Ibid.*

351. The Farm Animal Welfare Council (FAWC) applauded the Game Farmers' Association's "proactive stance" in producing a voluntary code of practice but expressed surprise that Defra suggested that there are only about 300 game farms in England and Wales. It noted that a "more proactive assessment of stockmanship" on game farms could be needed and that an assessment of game rearing could be the subject of a future FAWC report.<sup>302</sup>

### *Our position*

352. We are disturbed that Defra considers that there is "little concern generally" about the welfare of game birds reared for sport shooting purposes. This conclusion is not supported by the evidence we have received. Defra states that it has consulted with the game farming industry on this issue. If Defra has consulted no more widely than the industry, it is unsurprising that it should have uncovered little concern about the rearing of game birds. We are also concerned by FAWC's suggestion that Defra may have underestimated the scale of game farming in England and Wales. **We recommend that, prior to drawing up a draft code of practice on the rearing of game birds for sport shooting purposes, Defra should ensure that it has consulted with a broad range of groups and individuals with an interest in this area, including those groups which are critical of current game bird rearing practices. The Government should ensure that it has solid data on the numbers of game farms in England and Wales and the scale of these farms.**

353. **On the basis of the evidence we have received, we do not support the existing Game Farmers' Association code of practice being adopted as a statutory code of practice under clause 7 without further consideration first being given to the appropriateness of certain rearing practices, including beak trimming and burning and the fitting of bits, masks and spectacles. We consider that gamekeepers should be required to try other methods first before resorting to these practices, as currently appears to be the requirement in relation to tail docking in piglets.**<sup>303</sup>

354. **We are also concerned that, of the game birds being reared, only 40% end up being shot.** Limiting the numbers of game birds that are able to be reared could perhaps be one way of lessening aggression amongst birds as they are being reared. **However, we have heard insufficient evidence to draw any firm conclusion on this issue.**

355. **We do not consider that gamekeepers should continue to be responsible for taking reasonable steps to ensure the welfare of game birds once they have been released into the wild, in terms of the clause 3 welfare offence. However, as the draft Bill stands, we consider there is scope for prosecutions to be brought in this respect. We recommend that the Government ensure that the protection provided by the draft Bill does not extend to game birds once they have been released into the wild.** We have discussed the difficulties with the clause 3(3) provision on abandonment in greater detail in part 4.

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<sup>302</sup> Ev 122 [Farm Animal Welfare Council]

<sup>303</sup> See paragraph 92.

### *Sale of pet animals over the internet*

356. In annex D to the RIA, Defra states that trading in pet animals over the internet “is not subject to the same provisions that regulate pet shops”.<sup>304</sup> Defra suggests that “a possible option” to deal with internet trading would be a code of practice. Defra appears to intend that the code of practice would require vendors who sell pet animals over the internet in England to comply with minimum welfare standards, although it is not clear if, by “minimum welfare standards”, Defra means anything other than a requirement for vendors to provide information about an animal’s welfare needs.

357. In annex L to the RIA, Defra states that, in its proposed first tranche of secondary legislation and codes of practice, it intends to make provision with regard to “other means of selling animals”. In light of the information given in the annexes to the RIA, we assume this phrase is intended to include Defra’s intended code of practice on internet trading. However, Defra states that its policy with respect to “other means of selling animals” is yet to be agreed.<sup>305</sup>

### *Our position*

358. **We support Defra’s suggestion that vendors who sell pet animals over the internet in England should be subject to a code of practice, issued under clause 7, which would set out minimum welfare standards. However, given that Defra describes its policy in this area as “to be agreed”, we doubt whether Defra will be in a position to issue such a code of practice within a year of any Bill being enacted, as is its stated intention. We recommend that the Government assess whether it is really in a position to issue a code of practice on internet trading within its intended timescale.**

### **Final recommendation on first tranche proposals**

359. **Given the importance of any secondary legislation made under a future Act for the practical operation of the Act, we consider it is important that Parliament should have some indication of what policies the Government is proposing to implement under the delegated powers in the Act. This is particularly crucial given the wide-ranging concerns that have been raised in evidence about many aspects of the policies proposed for implementation in the first tranche of secondary legislation and codes of practice. We therefore recommend that the Government publish revised details of its proposed policies for implementation in the first tranche at such time as it may introduce a final Bill to Parliament.**

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<sup>304</sup> RIA, annex D

<sup>305</sup> RIA, annex L

## 10 Proposed second tranche of secondary legislation and codes of practice

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360. In this part, we discuss the policy proposals listed below. We understand that that these proposals have been included in the second tranche because they deal with previously unregulated, more controversial areas where Defra believes that more extensive consultation is needed.

- Licensing and registration of animal sanctuaries
- Licensing the use of performing animals
- Licensing and registration of greyhound racing tracks

361. None of these proposals could be implemented by means of orders made under clause 1(5). However, in the case of regulation of greyhound racing tracks, it is not clear whether Defra intends that these proposals should be implemented by means of regulations made under clause 6(1) or by means of codes of practice made under clause 7.

### Licensing and registration of animal sanctuaries

362. Defra’s proposals on the licensing and registration of animal sanctuaries are set out in annex E to the RIA. Currently, sanctuaries are unregulated. Defra proposes a two-tier scheme, whereby larger sanctuaries would be required to be licensed but smaller sanctuaries would be required only to be registered, presumably with the relevant local authority. The intention is that smaller sanctuaries would not be burdened by the compliance costs associated with licensing, which could cause some of them to close down.

363. Defra states that “it is not clear exactly how many animal sanctuaries there are in England and Wales” but that a “conservative estimate” is 700.<sup>306</sup> Defra considers that about half of these sanctuaries would be required to be licensed; the other half would be required to be registered.

### *Evidence received*

364. The evidence we received appeared to accept that animal sanctuaries should be subject to some form of regulation. For example, the Dogs’ Trust supported Defra’s proposals, on balance:

There are very many small organisations providing animal welfare services such as rescue and sanctuary, and any legislation which increased their costs might mean some would cease their operations. Any such move would be likely to significantly reduce the overall capacity to provide welfare services and result in the suffering or euthanasia of many animals. However there are undoubtedly some such

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<sup>306</sup> RIA, annex E

organisations with unacceptably low standards and Dogs Trust considers that registration will enable improved monitoring and thus help to raise standards generally. While there will be some costs to Dogs Trust from this proposal, we consider this to be a price worth paying for the overall welfare benefit.<sup>307</sup>

365. A number of submitters and witnesses raised concerns about how an “animal sanctuary” should be defined. Greyhound Rescue Wales considered that clarity was required as to “when an individual taking in a few stray animals might become a ‘sanctuary’.”<sup>308</sup> The National Equine Welfare Council emphasised that all relevant establishments should be captured by any licensing and registration scheme imposed under the draft Bill, as some relevant establishments “believe themselves to be exempt from the proposed licensing/registration [requirements] as they undertake ‘rehabilitation’ work and are therefore not technically a sanctuary.”<sup>309</sup>

366. Although some submitters and witnesses welcomed the proposal that smaller sanctuaries should be exempt from the proposed requirement to be licensed, others raised concerns about whether it was appropriate. For example, the Blue Cross felt that Defra’s proposal to register, rather than license, smaller establishments would “achieve very little”.<sup>310</sup> It said that it was the smaller establishments which were of most concern, because “all too often, the smaller ‘one man band’ facility is mismanaged and administered and whilst the intention may be good, the consequences can be dire for the individual and the animals concerned.”<sup>311</sup> Similarly, Nicolas de Brauwere, a veterinary surgeon employed by Redwings Horse Sanctuary, considered that “the distinction between licensing and registration of animal sanctuaries exempts those sanctuaries most likely to have substandard practices from the level of scrutiny and control most necessary”.<sup>312</sup>

### *Our position*

**367. We recommend that, prior to publishing any draft regulations providing for the licensing and registration of animal sanctuaries, Defra consult widely in order to produce a practical definition of what types of establishment constitute an “animal sanctuary”. As part of this exercise, Defra will need to establish with greater certainty how many animal sanctuaries there are in England.**

368. We are concerned that Defra’s proposed two-tier scheme, whereby larger sanctuaries would be required to be licensed but smaller sanctuaries would be required only to be registered, is likely to result in varying welfare standards among animal sanctuaries. Although larger sanctuaries would be subject to local authority inspections, smaller sanctuaries would presumably not be. There may well be a greater risk of welfare problems arising in the case of establishments run by only one person, where there is no one else present to observe or advise on how the animals in that establishment are treated. On the other hand, we appreciate that some fixed costs will

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<sup>307</sup> Ev 394 [Dogs’ Trust]

<sup>308</sup> Ev 503 [Greyhound Rescue Wales]

<sup>309</sup> Ev 203 [National Equine Welfare Council]

<sup>310</sup> Ev 413 [The Blue Cross]

<sup>311</sup> *Ibid.*

<sup>312</sup> Ev 205 [Nicolas de Brauwere]

be involved if an establishment is to be inspected, in order to cover the cost of the inspection.

**369. We recommend that a licensing scheme should be extended to all animal sanctuaries, regardless of their size. We acknowledge that the imposition of the compliance costs associated with such a requirement may cause some smaller sanctuaries to close down. On balance, however, we consider it is more important that minimum animal welfare standards be ensured across all sanctuaries.** In the case of some sanctuaries which may be forced to close down, such closure may in fact prove beneficial for the animals concerned.

### Licensing the use of performing animals

370. In annex A to the RIA, Defra sets out proposals to regulate several areas in which performing animals are used, including circuses, television, films, theatre and promotional work. Defra proposes that all performing animal acts should be required to be licensed and subject to regular inspection by a local authority.

371. In respect of circuses using performing animals, Defra states that “due to the decline in the use and numbers of performing animals in circuses, it is not proposed to ban the use of animals in circuses”. This is despite Defra’s acknowledgement that there are “a number of high profile welfare groups, including the RSPCA, that would welcome the end of animal acts in circuses”. Defra estimates that there are 10 circuses with animal acts in England and Wales. All performing animal acts are currently required to be registered under the Performing Animals (Regulation) Act 1925 but Defra believes that this legislation is “outdated and almost valueless from a welfare point of view.” Defra also states that the Association of Circus Proprietors (ACP) has produced a voluntary code of practice on welfare in circuses and has called for better regulation.

372. In respect of television, films, theatre and promotional work using performing animals, Defra proposes that those companies which provide animals for these forms of entertainment should be required to be licensed or registered. Defra estimates that this would affect about 120 suppliers and trainers of performing animals, and notes that small amateur theatrical productions would be exempt. Although Defra clearly intends that a licensing scheme should be imposed on such companies, it is not clear what Defra intends by its reference to registration.

### *Evidence received*

373. In respect of circuses, many organisations argued that Defra’s proposals did not go far enough and that circuses should not be permitted to use performing animals. For example, Protect Our Wild Animals called for the use of animals in circuses and other entertainment to be outlawed, and noted that “the decline in performing animals is in fact a very good reason for actually banning the activity!”<sup>313</sup> Advocates for Animals suggested that the use of performing animals in circuses “is in most people’s minds a fairly outmoded use of animals in entertainment and should no longer be

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<sup>313</sup> Ev 495 [Protect Our Wild Animals]

permitted”.<sup>314</sup> West Wales Animal Aid very much regretted that the Government did not propose to use the draft Bill as an “opportunity to end the suffering of animals in travelling circuses” and asked “could circus owners not be told that in five (maybe) years the keeping of wild animals will not be permitted, giving them time to dispose of their animals?”<sup>315</sup>

374. These organisations based their calls for banning the use of performing animals in circuses on their belief that animals suffer in circuses through transportation, temporary accommodation, cruel training methods, barren cages, an itinerant lifestyle and winter quarters.<sup>316</sup> For example, Animal Defenders International and the National Anti-Vivisection Society (ADI) stated that, on the basis of research and observations which it carried out between 1996 and 1998, it believed that it was “not possible for travelling circuses to provide the facilities to adequately care for their animals, and keep them healthy and happy”.<sup>317</sup> The Associate Parliamentary Group for Animal Welfare stated that “research has shown that due to [circuses’] transient nature, the circus environment cannot guarantee the ongoing high standard of care animals require”.<sup>318</sup>

375. The Born Free Foundation provided an estimate of the numbers of circuses using performing animals:

We currently have 12 circuses with performing animals in the UK. About half of those have wild animals, so we still have one circus with an elephant, a couple of circuses with big cats, lions and tigers, and then there are zebra and various other hoof stock ... there are 250 circuses in France with wild animals ...<sup>319</sup>

Born Free drew a distinction between the use of wild animals and domestic animals in circuses. While it advocated an eventual ban on all animals performing in circuses, it called for the Government to “tackle the issue of wild animals first because, obviously, the needs of the wild animal are far greater in most respects to a domestic animal”.<sup>320</sup>

In the context of wild animals, Born Free pointed to the difference between existing legislation regulating zoos and Defra’s proposals for circuses:

... the welfare of animals in circuses has become ... overlooked or in fact ignored, because ... in zoo legislation the needs of the wild animal are looked into, are recognised and are provided for, whereas the welfare of the wild animals in circuses has not been.<sup>321</sup>

376. Criticism was also levelled at the existing ACP code of practice for circuses. ADI condemned it on the grounds that:

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<sup>314</sup> Q 829 [Advocates for Animals]

<sup>315</sup> Ev 430 [West Wales Animal Aid]

<sup>316</sup> Ev 444 [Captive Animals Protection Society]; q 444 [Born Free Foundation]

<sup>317</sup> Memorandum from Animal Defenders International and the National Anti-Vivisection Society [not printed in its entirety], para 89

<sup>318</sup> Ev 439 [Associate Parliamentary Group for Animal Welfare]

<sup>319</sup> Qq 444 and 445 [Born Free Foundation]; see also Q 449 [Born Free Foundation]

<sup>320</sup> Q 448 [Born Free Foundation]

<sup>321</sup> Q 432 [Born Free Foundation]

... there are no mechanisms to set and enforce standards. The ACP is a voluntary organisation and only a small number of the circuses touring the UK are members. The ACP does not have the infrastructure, financial, or other resources necessary to make this code a working document. There is no system of inspection to enforce the code, nor to ensure that members comply with it.<sup>322</sup>

377. We also received evidence from organisations which supported the use of animals in circuses. The Association of Circus Proprietors (ACP) welcomed the proposals to regulate circuses, saying that it had been calling for a long time for regulation of this “surprisingly unregulated industry”.<sup>323</sup> The ACP expressed concern that the fact that the draft Bill “does not seek to either impose standards or set down a procedure for assessing standards but merely empowers the Minister to make regulations” could mean that the use of performing animals could be seriously limited or altogether excluded without full parliamentary debate.<sup>324</sup> The ACP also argued that wild animals in zoos ought to be treated differently from wild animals in circuses, because “zoo animals are just being displayed [whereas] circus animals are being handled and groomed and exercised and ... have this human contact in the exercise.”<sup>325</sup>

378. The ACP also pointed out an inconsistency between annexes A and L to the RIA. Annex A refers to the licensing of circuses “which infers licensing animals”; annex L refers to licensing trainers. The ACP felt that it was therefore unclear “whether there is to be the licensing of the individual circus or trainers or whether the licensing is to be by reference to the specific animals which are used by an individual establishment.”<sup>326</sup>

379. We received considerably less evidence about the issue of the use of performing animals in television, films, theatre and promotional work. Performing Animals Welfare Standards International (PAWSI), which represents animal trainers who work in this area, welcomed the draft Bill. PAWSI called for “all personnel who train, work with, supply and or are responsible for supplying animals to the audio visual industry [to be] licensed”; to this end, PAWSI has developed National Vocational Qualifications (NVQs) Levels 2 and 3 for animal trainers in the audio-visual industries, which will shortly be available.<sup>327</sup> PAWSI mooted the example of the existing Zoo Licensing Act Inspectorate, which is run by Defra, as a model of how personnel who train, work with or supply animals to the audio visual industry should be licensed:

Defra maintain a list of zoo inspectors, they organise training of inspectors. They recommend or nominate inspectors to a local authority to inspectors who are in their area. There is a group of veterinary surgeons, some of who are already zoo inspectors, others who are not but are very experienced at working in the media

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<sup>322</sup> Memorandum from Animal Defenders International and the National Anti-Vivisection Society [not printed in its entirety], para 93

<sup>323</sup> Q 505 [Association of Circus Proprietors]

<sup>324</sup> Ev 216 [Association of Circus Proprietors]

<sup>325</sup> Q 513 [Association of Circus Proprietors]

<sup>326</sup> Ev 216 [Association of Circus Proprietors]

<sup>327</sup> Ev 215 [Performing Animals Welfare Standards International]; q 529 [Performing Animals Welfare Standards International]

industries which can be drawn on to produce such a list. They could be your nucleus of inspectors.<sup>328</sup>

380. Jim Clubb and the Animal Consultants and Trainers Organisation expressed concern that Defra proposed to exempt small amateur theatrical productions from any future regulation.<sup>329</sup> Mr Clubb argued that “exemption promotes the illegal use of animals and is contrary to the objectives of the Animal Welfare Bill.”<sup>330</sup>

### *Our position*

381. We agree with Defra that new regulation is required in respect of performing animals used in circuses, television, films, theatre and promotional work. However, we are concerned that Defra’s proposals do not go further. It is poor logic on the part of Defra to suggest that a ban on performing animals in circuses is not necessary because the number of performing animals in circuses is declining. Welfare standards in those circuses which do remain must still be addressed. Defra does not appear to have considered the distinction between the use of ‘wild’ animals—including wild animals that have been bred in captivity—and domesticated animals in circuses. The welfare needs of wild animals are obviously very different from those of domestic animals, and more difficult for circuses—which are by their nature, itinerant—to meet. **We recommend that Defra amends its proposals to license the use of performing animals in circuses by distinguishing between the use of wild animals and domesticated animals in circuses, with a view to prohibiting the use of the former. Circuses should not be permitted either to bring in new wild animals or to breed from their existing wild animals.**

382. **With this qualification, we support Defra’s proposals to license the use of performing animals in circuses, television, films, theatre and promotional work. However, we recommend that Defra clarify whether it proposes to license the circus/organisation, the trainer or the animal. We also recommend that Defra clarify what use it envisages being made of registration requirements in these circumstances.**

383. **We recommend that any draft regulations proposing to implement a licensing regime for the use of performing animals should specify that all personnel who train, work with, supply or are responsible for supplying animals must be licensed. Such personnel should be required to attain a formal animal training qualification before they can be licensed.**

384. We note that Defra does not state whether it intends to regulate international circuses visiting England. **We recommend that Defra explain whether it intends to regulate international circuses visiting England and, if so, how.**

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<sup>328</sup> Q 531 [Performing Animals Welfare Standards International]

<sup>329</sup> Ev 526 [Jim Clubb]; ev 405 [Animal Consultants and Trainers Organisation]

<sup>330</sup> Ev 526 [Jim Clubb]

385. We recommend that Defra re-examine its rationale for exempting “amateur theatrical productions” from any licensing or registration scheme. The proposed exemption appears to be contrary to the draft Bill’s ultimate objective of improving animal welfare. In this context, Defra should explain how it intends to define which “amateur theatrical productions” it proposes to exempt.

### Licensing and registration of greyhound racing tracks

386. In annex H to the RIA, Defra indicates that it is considering whether it would be appropriate to impose a licensing and registration scheme on greyhound racing tracks. Currently, Defra estimates that there are 50 greyhound racing tracks in England and Wales and that, of those, 30 are registered with the National Greyhound Racing Club (NGRC) and 20 are independent. Tracks registered with the NGRC must comply with the NGRC’s code of practice and are subject to disciplinary action if they do not. The NGRC states that it licenses all track officials, kennel hands, trainers and vets associated with these tracks, and that a vet is required to be in attendance at every race meeting.<sup>331</sup>

387. Defra suggests that self-regulation may be preferable to statutory regulation in the case of the greyhound racing industry.<sup>332</sup> It explains that “over the last few years, there has been a growing impetus within the racing industry to raise welfare standards”.<sup>333</sup> The British Greyhound Racing Board (BGRB), the representative body for greyhound racing in the UK, is drawing up proposals for further reform; in these circumstances, Defra considers that “it is premature for government to assess the extent to which government regulation would be necessary to raise standards”.<sup>334</sup>

388. If Defra decides that regulation of greyhound tracks is appropriate, it is not clear whether it envisages that such regulation should be effected by means of secondary legislation made under clause 6(1) or a code of practice issued under clause 7. Annex H is entitled “Proposal to license/register kennels at dog race tracks”, and imposition of a licensing and/or registration scheme would require secondary legislation.<sup>335</sup> Yet Defra does not refer to regulations in annex H and states only that “one of the options is a code of practice”.<sup>336</sup> To make matters still more unclear, Defra seems to intend that this code of practice would impose a registration requirement on non-NGRC tracks, as annex H refers to a registration fee of £50.

### Evidence received

389. We received a range of views about proposals to regulate the greyhound industry, and the timing of those proposals. The BGRB described Defra’s proposed implementation date of 2010 as “very sensible” and emphasised that change is going on within the greyhound racing industry:

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<sup>331</sup> [www.ngrc.org.uk](http://www.ngrc.org.uk)

<sup>332</sup> RIA, annex L

<sup>333</sup> RIA, annex H

<sup>334</sup> RIA, annex H

<sup>335</sup> See clauses 6(2)(h) and (i)

<sup>336</sup> *Ibid.*

The speed of change at the moment within the greyhound industry, there has been a sea change of attitude and it is backed by hard practical measures. By the time we come to 2010, I think we will be looking at a very different picture. It is entirely appropriate that a law which we hope is going to last a very long time is ... not a snapshot during this period of change.<sup>337</sup>

The BGRB considered that if “a hefty system” of track regulation was imposed now, it would impede the process of change that is going on in the industry.<sup>338</sup>

390. Greyhounds UK was unhappy with the 2010 date because it indicated that the welfare needs of racing greyhounds were “not going to be addressed until 2010, if at all. The implication is that there really is not a problem.”<sup>339</sup> Greyhounds UK called for regulations that would impose independent inspection on the industry:

We have had assurances that things will get better for the last seven years that I have been connected to greyhound racing. It has always been promises: everything will get better in the future ... There should be a rule book; there should be systems; there should be structures and there are not.<sup>340</sup>

391. The British Veterinary Association (BVA), the Society of Greyhound Veterinarians and the Dogs Legislation Advisory Group also argued that the timetable for legislation in this area was too lengthy.<sup>341</sup> The BVA pointed to the problem of the non-NGRC registered tracks:

We very strongly believe that legislation on greyhound racing and inspection of greyhound tracks and kennels should be introduced at the earliest opportunity. While NGRC are making strides on NGRC tracks there are many independent tracks where there is no control, no inspection, and no veterinary surgeon on site when these dogs are racing, and dogs can lie on the side of the track with a broken leg for an hour before somebody arrives, and that is not good enough.<sup>342</sup>

### *Our position*

**392. We are unconvinced by the argument that the greyhound racing industry should be allowed until 2010 to regulate itself and improve its own welfare standards. We accept that the British Greyhound Racing Board and the National Greyhound Racing Club are making significant efforts to improve welfare standards at NGRC-registered tracks, but their best efforts cannot alter the fact that about 40% of greyhound racing tracks are run independently of the NGRC, and therefore apparently operate free from external, independent scrutiny. If these tracks do not wish to register with the NGRC, they cannot be compelled to do so. We therefore consider external, independent regulation of these tracks is essential, and we do not consider that it would be fair to exclude NGRC-registered tracks from such regulation.**

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<sup>337</sup> Q 549 [British Greyhound Racing Board]

<sup>338</sup> Q 565 [British Greyhound Racing Board]

<sup>339</sup> Q 547 [Greyhounds UK]

<sup>340</sup> Q 571 [Greyhounds UK]

<sup>341</sup> Ev 518 [Dogs Legislation Advisory Group]; ev 514 [Society of Greyhound Veterinarians]

<sup>342</sup> Q 733 [British Veterinary Association]

393. As discussed above, if Defra decides that regulation of greyhound tracks is appropriate, it is not clear by what means Defra envisages that such regulation should be implemented—by way of secondary legislation or a code of practice. **We consider that greyhound racing tracks should be subject to a licensing regime, not a code of practice, and we therefore recommend that Defra should publish draft regulations to address this issue as soon as possible. We do not accept that regulation in this area should wait until 2010, or five years after any future Bill is enacted.**

## 11 Comments on the pre-legislative scrutiny process

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394. In the case of this draft Bill, Defra has chosen to rely on our pre-legislative scrutiny process rather than running its own, separate consultation process. Cabinet Office guidelines on consultation state that government departments should consult widely throughout the process of developing a policy, allowing a minimum of 12 weeks for written consultation at least once during the process.<sup>343</sup> Defra last consulted on the policy of developing a draft Animal Welfare Bill in January 2002.

395. In the course of conducting pre-legislative scrutiny, we chose to provide copies of the written memoranda we received on the draft Bill to Defra. Defra officials received these copies almost as soon as we received the memoranda ourselves, and provided us with a helpful summary of the large amount of memoranda received. Defra representatives were also present at all our oral evidence sessions, to listen to the evidence presented. It was apparent from our second oral evidence session with the Minister, which was held two weeks after the conclusion of all other oral evidence, that our pre-legislative scrutiny process had already made a significant contribution towards improving the draft Bill, even prior to the publication of this report. **We welcome the extent to which Defra has chosen to involve itself in our pre-legislative scrutiny process, and the helpful and open-minded attitude adopted by the Minister and his officials in the course of our oral evidence sessions with them.**

396. **However, we consider that this draft Bill was not an appropriate candidate for pre-legislative scrutiny by Parliament in the absence of the Government having first conducted its own consultation process. Defra last consulted on this policy proposal two and a half years before the publication of the draft Bill. Given the complexity of the proposal and the widespread public interest in it, we consider that it should have been subject to further consultation prior to being published for the purposes of pre-legislative scrutiny.** This draft Bill could and should have been published for pre-legislative scrutiny purposes in a more developed state, despite the fact that it seeks to be an enabling framework rather than a fully developed statement of animal welfare law. Examples of the undeveloped nature of the draft Bill include:

- the fact that the Government proposes that Parliament should delegate power to the appropriate national authority to legislate on wide-ranging and significant areas of

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<sup>343</sup> Cabinet Office, *Code of Practice on Consultation*, January 2004; available at [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

human activity which relate to animal welfare, other than those relating to wild animals, living in the wild

- the apparently undeveloped state of Defra’s policy on a number of extremely controversial animal welfare issues which it intends to regulate under the proposed delegated powers, particularly welfare standards at greyhound tracks, the regulation of performing animals and of animal sanctuaries
- the complex, confusing and often inconsistent way in which the definitions of “animal”, “protected animal”, “kept by man” and “keeper” apply within the framework of the draft Bill, a problem which the Government appears to have acknowledged<sup>344</sup>
- the almost random arrangement of the provisions in the draft Bill relating to enforcement, prosecution and penalties; in our initial oral evidence session, the Minister openly agreed that this was an area where there were “real holes in the legislation” and added, “I think that we need to do some more work on the whole area of enforcement and the roles of inspectors and the powers of entry”<sup>345</sup>
- the fact that the Regulatory Impact Assessment accompanying the draft Bill fails to demonstrate that the benefits of the proposed legislation would exceed the costs, as is required by Cabinet Office and National Audit Office guidance.

397. We are surprised that the policy behind the draft Bill is not better developed, given that two years elapsed between Defra’s publication of its analysis of the responses received to its initial consultation, in August 2002, and its publication of the draft Bill, in July 2004. Despite this lack of policy development, the Government appears to be seeking to push forward with this legislation. No doubt this is why Defra chose to rely on our call for written memoranda from interested parties as a substitute for its own consultation process. Had Cabinet Office guidelines been applied, Defra would have had to give consultees 12 weeks from the 14 July publication date—that is, until 6 October—to respond to the draft Bill. As it was, our call for written memoranda closed on 25 August.

398. There does not appear to be any guidance laid down for government departments, setting out how well-developed draft legislation should be before it is published as a draft Bill. Clearly, overlap between the Government’s consultation processes and Parliament’s pre-legislative scrutiny processes is possible, and sometimes desirable. **While it is not always inappropriate for government departments to choose to rely on Parliament’s pre-legislative scrutiny process, rather than conducting a separate consultation process in accordance with Cabinet Office guidelines, we consider the Government should adopt such an approach only where the policy behind a draft Bill has recently been consulted on, or where the draft Bill is minor or uncontroversial. Neither of these conditions were met in the case of the draft Animal Welfare Bill.**

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<sup>344</sup> See paragraph [55].

<sup>345</sup> Q 17 [Defra]

# Conclusions and recommendations

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## Definitions

1. We agree with the RSPCA that the legislation should specify the criteria according to which the delegated power in clause 53(3) may be exercised. The definition of “animal” is fundamental to the draft legislation; it would determine the scope of the legislation’s application. It should therefore be clear on what basis the power to extend the Act’s application may be exercised. (Paragraph 20)
2. We endorse the RSPCA’s suggestion that the appropriate national authority should be able to make an order under clause 53(3) only where the authority has reasonable grounds to believe, on the basis of scientific evidence, that the animal to which it is proposed to extend the protection of the Act has the capacity to experience pain, suffering, distress or lasting harm. We recommend that the Government amend clause 53(3) to include words to this effect. (Paragraph 21)
3. It is crucial that these criteria be spelt out on the face of the legislation. It is not sufficient for Defra to give an undertaking that orders will be made under clause 53(3) only on the basis of appropriate scientific evidence. (Paragraph 22)
4. We believe that a strong case has been made for the inclusion of octopus, squids and cuttlefish, and of crabs, lobsters and crayfish, in the clause 53(1) definition of “animal”. The position of the Animal Procedures Committee on octopus, squids and cuttlefish is particularly persuasive in this respect. However, although it seems to us that octopus, squids and cuttlefish, and crabs, lobsters and crayfish, ought to be included in the clause 53(1) definition of “animal”, we consider that we have received insufficient evidence on which to base a final conclusion on this matter. We therefore recommend that, prior to introducing a Bill to Parliament, the Government should reassess whether there are reasonable grounds to believe, on the basis of scientific evidence, that octopus, squids and cuttlefish, and crabs, lobsters and crayfish, have the capacity to experience pain, suffering, distress or lasting harm. The Government should have particular regard to evidence relied on by New Zealand and the Australian Capital Territory in choosing to include cephalopods and certain crustaceans in their respective animal welfare legislation. Whilst this assessment is being undertaken a code of practice should be issued giving details of humane ways in which crabs and lobsters should be stunned prior to cooking. (Paragraph 30)
5. We support the Government’s position that the protection offered by the draft Bill should not extend to wild animals, living in the wild; such animals are better covered by other, existing legislation. However, we are unconvinced that the phrase “temporarily in the custody or control of man” in the definition of a “protected animal” will achieve the Government’s intended position. (Paragraph 39)

6. We therefore recommend that the Government adopt the approach taken in the Protection of Animals Act 1911 and in more recent Northern Ireland and New Zealand legislation of:
- adopting a broad definition of what constitutes an animal, but
  - limiting the application of the definition by excluding specific activities from the scope of the legislation’s protection, rather than by seeking to define a narrower class of “animal” (a “protected animal”, in this case).

Examples of activities to be excluded would include hunting or killing wild animals or animals in a wild state, including in accordance with relevant legislation for pest control or conservation purposes. (Paragraph 40)

7. If the Government does not accept our recommendation then, at the very least, a definition of the word “control”, as it is used in the phrase “temporarily in the custody or control of man”, should be included on the face of the Bill. Such a definition should be drawn sufficiently narrowly so as to ensure that the protection offered by the draft Bill would not extend to wild animals, living in the wild. (Paragraph 41)
8. We consider that, as the draft Bill is currently drafted, there is a strong argument that a person catching a fish, both in a commercial and a recreational context, could be liable to prosecution under the clause 1 cruelty offence, which would include the clause 1(4) mutilation offence in the case of fishing hooks and, perhaps, fishing nets. There is also an argument that a prosecution could be brought under the clause 3 welfare offence. We therefore doubt the Government’s position that the draft Bill would be unlikely to have any impact on traditional fishing or angling practices. (Paragraph 46)
9. We accept that neither commercial fishing nor recreational angling should fall within the remit of the draft Bill and we therefore support the Government’s intention to exempt fishing as an activity—rather than fish as a species—from the scope of the legislation. Amendment is necessary: even if prosecutions for fishing-related activities were to prove unsuccessful when brought, the fact remains that those prosecutions should not be able to be brought in the first place. However, in exempting fishing, the Government should be careful to ensure that those persons who catch fish are not given *carte blanche* to inflict unnecessary suffering in the course of pursuing this activity; welfare standards should continue to apply where appropriate. (Paragraph 47)
10. We consider that the way in which the definitions of “animal”, “protected animal”, “kept by man” and “keeper” apply within the framework of the draft Bill, and the interrelationship between the definitions, is problematic and is likely to prove confusing to many future users of the legislation. ‘Casual’ users of the legislation will need to know the legislation in some detail before they are in a position to understand and apply it. (Paragraph 55)

11. We recommend that the Government amend the draft Bill to clarify the interrelationship between these definitions. The changes which the Government has indicated it is considering certainly warrant exploration; in particular, the Government should be careful to make clear the relationship between the clause 3 welfare offence and the clause 6(1) delegated power by using consistent language in the two clauses. (Paragraph 56)

## Offences

12. We consider that the clarity and utility of clause 1 would be greatly improved if it were divided into separate clauses, each setting out one offence. We recommend that each of the following sub-clauses or groups of sub-clauses should be separated out:

- sub-clauses (4), (5) and (6) (mutilation)
- sub-clauses (7) and (8) (administering injurious drugs)
- sub-clause (9) (performing an operation without due care).

The Government should consider how the clause 1(10) definition of “keeper”, which is relevant to each of these offences, can best be incorporated into each offence. (Paragraph 67)

13. Although the offences of mutilation, administering injurious drugs and performing an operation without due care are specific cases of the ‘parent’ offence of “causing unnecessary suffering”, rather than new and unrelated offences, the clause 2 offence of fighting is equally a specific case of causing unnecessary suffering, and it has been—helpfully—made into a separate clause. We consider that separating out the cruelty offences will assist clarity and will not affect the ability to bring prosecutions under the various offences. (Paragraph 68)
14. We welcome the Government’s undertaking that it will seek to simplify the drafting of clause 1(1). (Paragraph 70)
15. We are extremely concerned that the Government apparently intends that the clause 1(1) cruelty offence should apply only to deliberate infliction of unnecessary suffering and that it should not extend to unnecessary suffering which arises as a result of negligence or neglect. As currently drafted, unnecessary suffering which arises as a result of negligence or neglect would appear to engage the cruelty offence only where the suffering is caused by another person who is not the keeper, as a result of the keeper’s negligence or neglect. The Government’s apparent position would represent a backward step in terms of animal protection: it would lessen the current protections in existing animal welfare law and would significantly restrict the scope of the cruelty offence. (Paragraph 80)
16. We assume it is the Government’s intention that unnecessary suffering which arises as a result of negligence or neglect should be dealt with under the clause 3 welfare offence. We consider such an approach is inappropriate for two reasons. First, the penalties available under the welfare offence are less serious than those available under the clause 1(1) cruelty offence. Second, and more importantly, we

understand the purpose of the welfare offence to be to deal with those cases where the standard of care given to an animal is clearly inadequate, but where it is not possible to demonstrate that the animal has suffered unnecessarily. The distinction between the cruelty offence and the welfare offence should be whether the animal has suffered unnecessarily, not the mental state of the person who caused that suffering. The extent of an offender's mental culpability can best be reflected at the sentencing stage, where we would expect those whose negligence or neglect has caused unnecessary suffering generally to receive a lesser sentence than those who intentionally or recklessly caused such suffering. (Paragraph 81)

17. We therefore recommend that the Government amend the draft Bill to make it clear that the mens rea element of the clause 1(1) cruelty offence should be assessed by means of an objective test, so that the defendant's conduct will be assessed on the basis of what a reasonable person in the position of the defendant would have known about the consequences of his or her conduct. (Paragraph 82)
18. We recommend that the Government amend clause 1 so as to make clear that it is an offence to cause unnecessary mental suffering to an animal, whether or not that mental suffering is accompanied by physical suffering. (Paragraph 84)
19. We consider that clause 1(3) is unclear in its intent and application. We are concerned that, as presently drafted, the complexity of clause 1(3) will create uncertainty for prosecutors and the courts, which could make it difficult for a prosecutor to secure a conviction under clause 1(1) or (2). We recommend that the Government consider how clause 1(3) can best be clarified. (Paragraphs 88 and 89)
20. In order to make the scope of the proposed mutilation offence clear, we consider that it is crucial that a definition of "mutilation" is included on the face of the legislation. Without such a definition, what constitutes "mutilation" would effectively be defined by the appropriate national authority, on the basis of what mutilations the authority chose *not* to exempt from clause 1(4) by means of clause 1(5). The definition should also assist in rendering "mutilation" a less emotive word in the context of animal welfare legislation, because it will have a clear meaning in both a legal and a veterinary context. (Paragraph 96)
21. On the basis of the evidence we have received, it is evident that the list of exemptions to the clause 1(4) mutilation offence is likely to be lengthy. We have therefore considered whether it is in fact appropriate or meaningful to have an absolute ban on mutilation on the face of the legislation, given that the ban is likely to be considerably less than 'absolute' in practice. This is particularly true given that farmed and companion animals can have quite distinct welfare needs and practices in this respect, and any exemptions made under clause 1(5) will need to distinguish between these. (Paragraph 101)
22. On balance, we support the inclusion of clause 1(4) on the face of the Bill because it will send a strong message about animal welfare to the courts and the public. The inclusion of mutilation as a separate class of welfare offence is also important for evidential reasons: if acts of mutilation were left to be dealt with by clause 1(1) and (2), evidence of suffering as a consequence of the mutilation would be required. (Paragraph 102)

23. We consider that each of the acts specified in clauses 2(1)(a) to (e) of the fighting offence should be deemed to be offences at the time at which each act takes place. Provided that sufficient evidence exists in the absence of the fight, prosecutions should be able to be pursued in respect of such acts without the need for the animal fight to take place. The enforcing authorities should not have to wait for a fight to take place before being able to take enforcement action. We recommend that the Government amend clauses 2(1)(a) to (e) accordingly. (Paragraph 106)
24. We commend the Government for the introduction of the welfare offence under clause 3. This clause will allow preventive action to be taken at a point at which harm has yet to occur to the animal in question, something which is not possible under current animal welfare law. It should make a significant and important contribution towards enhancing animal welfare. (Paragraph 111)
25. However, we consider that the Government is being disingenuous in presenting the proposed clause 3 welfare offence as a simple extension, from farmed animals to all kept and companion animals, of an existing duty to ensure welfare. The existing offence on which the Government relies, section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1968, is not analogous to the proposed welfare offence. We consider that clause 3 would in fact extend the protection currently offered by section 1(1) of the 1968 Act. We entirely support this extension, but we consider it is important that the Government should accurately represent to Parliament the nature of the proposals to which it is seeking Parliament's agreement. (Paragraph 112)
26. We recommend that the Government re-consider the wording of the clause 3(1) offence, in order to clarify the nature of the offence. In particular:
- A keeper should be required to ensure an animal's *good* or *beneficial* welfare. As currently drafted, an offence would be committed if a keeper fails to take reasonable steps "to ensure the animal's welfare". "Welfare" in itself is a neutral term; clarification of what kind of welfare a keeper needs to ensure is required.
  - The Government should consider whether clause 3(1) would not be better and more helpfully expressed as a positive duty of care, rather than as an offence of omission. (Paragraph 116)
27. We consider it is appropriate that the welfare offence should have only an *actus reus* (or action) element and no *mens rea* (or mental) element. This would mean that a keeper who unknowingly or negligently failed to take reasonable steps to ensure an animal's welfare would be as culpable as a keeper who intentionally or recklessly failed to take such reasonable steps. However, our endorsement of the elements of the clause 3 welfare offence should be read in the context of our comments on the *mens rea* element of the clause 1 cruelty offence. (Paragraph 117)

28. We support the Government's approach of setting out a modified version of the five freedoms on the face of the draft Bill. The five needs in clause 3(4) provide a strong statement of the ideal animal welfare circumstances towards which those responsible for animals should be working. We consider it imperative, however, that the five needs should continue to be framed as aspirational, and therefore not achievable in all circumstances. (Paragraph 128)
29. In respect of clause 3(5), we support the RSPCA's suggestion of amending the existing clause 3(5) so that it mirrors the factors set out in regulation 3(3) of the Welfare of Farmed Animals (England) Regulations 2000. The factors listed in regulation 3(3) should be more helpful to the courts in distinguishing the circumstances in which the clause 3(4) needs are not attainable. It also seems sensible to us to aim, wherever possible, for consistency in definitions in animal welfare legislation. (Paragraph 129)
30. We do not object to the removal of clause 3(3) provided that the Government is certain that abandonment of an animal would not serve to divest a person of legal ownership or the responsibilities that follow on from it, and that a charge could therefore be laid and successfully prosecuted under clause 3(1). (Paragraph 136)
31. However, we are concerned that the draft Bill would represent a significant weakening of the current law on the abandonment of animals. Under the Abandonment of Animals Act 1960, an offence is committed at the time at which abandonment occurs; no evidence of the animal having suffered is required, and a person who is found guilty of abandonment is deemed to be guilty of a cruelty offence within the meaning of the Protection of Animals Act 1911. Under the draft Bill, although an act of abandonment could form the basis of a charge laid under the main cruelty offence, clause 1(1), evidence of the animal having suffered would be required. Evidence of abandonment *without* evidence of the animal having suffered could form the basis only of a charge laid under the welfare offence, clause 3(1), which carries lesser penalties than the clause 1 cruelty offences. (Paragraph 137)
32. We recommend that the Government amend the draft Bill so that the act of abandoning an animal continues to be treated as a cruelty offence without the need for evidence of the animal having suffered as a consequence of the abandonment. The present law presumably does not require such evidence for the very good reason that an abandoned animal may not be able to be traced, in order for its suffering to be able to be demonstrated. No doubt the 1960 Act was enacted in the first place to deal with the requirement in the 1911 Act that unnecessary suffering be demonstrated. The fact that the act of abandonment, in and of itself, constitutes an offence is a key animal welfare protection in current law and it is crucial that it be maintained. (Paragraph 138)

### Delegated powers

33. The power that would be delegated under clause 6 is very broad. We are unconvinced by the Minister's justification for the breadth of the clause 6(1) delegated power. (Paragraphs 146 and 151)

34. The suggestion that the mechanism of judicial review would provide a sufficient limitation on the exercise of the clause 6(1) power is unacceptable. (Paragraph 152)
35. We are disappointed by the Minister's reluctance to consider redrafting the clause 6(1) power in order to limit its breadth. We recommend that the Government amend clause 6 so that:
- a more precise word than "promote" is used: "ensure" seems sensible, provided that it continues to be used in clause 3
  - the appropriate national authority must certify that any draft regulation proposed to be made under clause 6(1) is justified either on the basis of scientific evidence or because it meets a genuine welfare need evidenced by the consultation process on the proposed draft regulations. (Paragraph 155)
36. We recommend that clearer requirements about the way in which licensing powers are to be exercised should be included on the face of the legislation, rather than being left for the appropriate national authority to specify under delegated legislation. It should be clearly stated that the licensing authority has the power to attach welfare conditions to a licence and to revoke a licence. The legislation should also require the licensing authority to have regard, in issuing a licence, to relevant guidance laid down in the form of codes of practice issued by the appropriate national authority under clause 7. (Paragraph 161)
37. We recommend that the Government re-examine the issue of whether the degree of detail in clause 6(2) could potentially circumscribe the generality of the clause 6(1) delegated power in ways which the Government does not intend. (Paragraph 163)
38. We recommend that the Government amend clause 1 so as to require the appropriate national authority to certify that any draft order proposed to be made under clause 1(5) is justified either on the basis of scientific evidence or because it meets a genuine welfare need evidenced by the consultation process on the proposed draft regulations. (Paragraph 166)
39. We endorse the inclusion of a duty for the appropriate national authority to consult on any draft code of practice which the authority proposes to make under clause 7, as set out in clauses 8(1)(b) and 9(1)(b). We believe that an obligation to consult on draft codes of practice should improve the quality and relevance of the final codes. (Paragraph 175)
40. Given the Government's readiness to include a duty to consult on draft codes of practice, we are extremely disappointed by the Minister's refusal to include a parallel duty to consult on draft regulations. Regulations made under clause 6(1), and orders made under clause 1(5), will form part of the law of the land—regulations made under clause 6(1) may create criminal offences and repeal primary legislation, amongst other things—whereas codes of practice will exist primarily for the purpose of guidance. We do not accept the Minister's argument that, as Defra intends to consult on draft regulations anyway, there is nothing to be gained by including a requirement to consult on the face of the Bill. The Cabinet Office code of practice has no legal force and cannot require government

departments to consult; nor is there any obligation for the National Assembly for Wales—an appropriate national authority under clause 6(1) and clause 1(5)—to adopt the code of practice. If the Minister intends to consult appropriately on all draft regulations anyway, he can have no objection to a requirement to consult being included on the face of the draft Bill. (Paragraph 176)

41. We recommend that clause 6 should be amended to place a duty on the appropriate national authority to consult on any draft regulation which the authority proposes to make under clause 6(1). This duty should be in equivalent terms to the duty for the appropriate national authority to consult on any draft code of practice which the authority proposes to make under clause 7, as set out in clauses 8(1)(b) and 9(1)(b). (Paragraph 177)
42. Likewise, we recommend that clause 1 should be amended to place a duty on the appropriate national authority to consult on any draft order which the authority proposes to make under clause 1(5). This duty should be in equivalent terms to the duty for the appropriate national authority to consult on any draft code of practice which the authority proposes to make under clause 7, as set out in clauses 8(1)(b) and 9(1)(b). (Paragraph 178)
43. We suggest to Defra that, if it intends to continue to use working groups to formulate animal welfare policy, then it would be well-advised to formalise the process by which the groups' membership and programme of work is decided, in order to ensure transparency and build confidence in the quality of those undertaking this work. (Paragraph 179)
44. We recommend that the Secretary of State agree to enter into a 'memorandum of understanding' with this Committee, undertaking to:
  - publish in draft form any regulation proposed to be made under clause 6(1) or order proposed to be made under clause 1(5)
  - inform the Committee of such publication
  - allow the Committee a period of 30 sitting days in which to report to the House on the draft instrument
  - agree that no motion to approve may be made until either the period of 30 sitting days has elapsed or the Committee reported to the House on the draft instrument, whichever occurs first.

The memorandum of understanding should make it clear for what period of time such an arrangement should apply. It should also provide for the possibility that an exception could be made to this arrangement in circumstances of genuine emergency. (Paragraph 184)

45. If such a process were adopted, the Committee would have flexibility to decide either to call for evidence on the draft regulation or order and to examine it thoroughly, or to decide at an early stage that the draft regulation or order did not warrant a thorough examination and to report to the House that it had no matters to raise. (Paragraph 185)

## Enforcement, prosecution and penalties

46. We recommend that the clauses on enforcement should be set out in the draft Bill as they would occur chronologically. The current arrangement of the enforcement provisions in the draft Bill does not follow a logical sequence, is unduly complicated and is difficult to follow. (Paragraph 190)
47. Defra has acknowledged that the period for which an animal taken into possession can be retained needs to be reviewed. We recommend the retention of the existing legal position, whereby there would not be a time limit on the retention of an animal in distress but its owner would have the immediate right to apply to court for its return. (Paragraph 195)
48. We recommend that the current provisions on reimbursement of *reasonable* costs in the Protection of Animals (Amendment) Act 2000 should be reflected throughout the draft Bill, so that inspectors and prosecutors are able to be reimbursed only for reasonable costs incurred by them in the performance of their functions under the Bill. (Paragraph 199)
49. We are satisfied it is appropriate that constables and inspectors should be empowered to authorise the killing of a protected animal where there is no reasonable alternative. However, we consider that constables and inspectors would be greatly assisted in their functions if the term “reasonable alternative” was defined in the Bill. Furthermore, we seek assurances from the Government that those persons tasked with animal inspection work will be properly trained in animal behaviour so as to recognise when it will be necessary to kill an animal; constables and inspectors should also be trained to kill an animal in as humane a way as possible. (Paragraph 203)
50. We consider that the powers contained in clauses 39 and 40 are appropriate. We believe that the serious nature of offences against animals justifies empowering constables and inspectors to enter premises, other than premises used solely as private dwellings, without a warrant on the basis of reasonable suspicion or belief that an offence is being or has been committed or that evidence of a relevant offence is on the premises. (Paragraph 206)
51. To avoid confusion, we recommend that the Government amend the Bill to clarify what is meant by “any part of premises which is used as a private dwelling.” (Paragraph 208)
52. We endorse the underlying intention of the powers of entry in the draft Bill, namely that inspectors and constables should not be permitted to enter a private dwelling unless they have first obtained a warrant. We recommend that the Bill should provide greater powers of entry so that entry would not be permitted, without a warrant, to premises used *only* as a private dwelling. This would allow inspectors to enter premises used as both business premises and private dwellings, such as farm premises, without a warrant. (Paragraph 214)
53. We recommend that the Government give consideration to implementing the suggestion made by the Association of Chief Police Officers that one set of

justifications should be adopted, instead of different powers in different statutes, setting out the circumstances in which a private dwelling may be entered without a warrant. (Paragraph 215)

54. Given that both inspectors and constables will be exercising the powers of entry and search under the draft Bill, we recommend that the draft Bill should be amended to include a requirement that the codes of practice issued under the Police and Criminal Evidence Act 1984 in connection with the exercise of those powers should be complied with when exercising search and entry powers under the Bill. (Paragraph 218)
55. As currently drafted, there is nothing in the draft Bill to prevent an RSPCA inspector, or an employee of any other charitable organisation, from being appointed as an inspector under the legislation, because the Secretary of State is not prevented from including them on a list of suitable persons. We have only Defra's stated intention that the list will extend to only the State Veterinary Service and local authorities. If this is indeed Defra's intention, then we recommend that it should be specified on the face of the Bill. Currently, the draft Bill effectively delegates an unlimited power to the Secretary of State to decide who may act as an inspector. At the very least, the Bill should specify the appropriate categories of person or 'characteristics' of persons who may be appointed to the role. We further recommend that the draft Bill be amended to specify how inspectors will be appointed in Wales: currently, clause 44 makes reference only to the Secretary of State; no mention is made of the National Assembly for Wales. (Paragraph 224)
56. We believe that the RSPCA has performed a valuable role in ensuring animal welfare, and that it should be encouraged to continue to do so. Nevertheless, it is ultimately a charitable body and therefore should have a separate and distinct role from "inspectors" appointed to enforce the draft Bill. To avoid confusion with the RSPCA's own inspectors, we recommend that the Government consider changing the term "inspector" in the draft Bill to "approved person", "approved officer", or some other term that sits appropriately with relevant legislation. (Paragraph 226)
57. We recommend that the draft Bill should be amended to ensure that the standard with which an inspector must comply in order not to be held criminally or civilly liable is the same as the standard applied to constables exercising equivalent powers. (Paragraph 228)
58. We consider that it is imperative that there is consistency in animal welfare enforcement between local authorities. It is most unsatisfactory and inequitable to have different standards of enforcement in different regions. We therefore recommend that the Government should adopt a system, such as a database, to ensure that enforcement across licensing departments in England and Wales is consistent. The information should be entered and held by local authorities. Although the RSPCA should be permitted to have access to the information, we consider it wholly inappropriate that the RSPCA should be given responsibility for compiling and maintaining the database. Defra should use its own resources to audit the consistency of enforcement between local authorities. (Paragraph 233)

59. We recommend that provision should be made to provide that compensation may be made available to persons whose animals have been dealt with under clauses 16 or 17 but who have subsequently been acquitted of any animal welfare charges. The draft Bill should be amended to specify and limit the circumstances in which a court can order the slaughter of an animal. It should specify that the court can make such an order only where no reasonable or humane alternative exists. (Paragraph 236)
60. We consider that improvement notices would assist in ensuring that proceedings are commenced only in appropriate cases. They would not only save court time but could also encourage owners to improve standards of animal welfare. We recommend that, although enforcement agencies should have a discretion to issue improvement notices for protected animals, that discretion and the relevant procedural requirements should be specified on the face of the Bill. This should include a right of appeal on the part of the person to whom an improvement notice is issued. (Paragraph 242)
61. We recommend that clause 15(2)(c) be deleted from the Bill if the Government is unable to demonstrate a convincing reason for its inclusion. The Government should explain to whom it intends the powers of a prosecutor would be delegated under clause 15(2)(c) if it is not to the RSPCA. We consider it wholly inappropriate that prosecution powers under the draft Bill should be able to be exercised by any organisation other than the Police, the State Veterinary Service and local authorities. (Paragraph 250)
62. We consider that the RSPCA should be able to continue to institute private prosecutions on its own behalf. (Paragraph 258)
63. We consider that the gravity of the offences under the draft Bill should be reflected in increased sentencing powers. We recommend that certain offences should be triable ‘either way’—that is, either summary or indictable—in order to give the courts the ability to impose longer sentences in appropriate cases, and we urge Defra to take this matter up with the Home Office. The offences which should be triable ‘either way’ should be the clause 2 fighting offence and the most serious cruelty offences under clause 1. We note that such offences would necessarily involve premeditation, whereas a welfare offence might not necessarily be intentional. (Paragraph 264)
64. We welcome the Government’s intention to close the loophole in the current provisions on disqualification by ensuring that an offender cannot circumvent disqualification by transferring ownership and, therefore, custody of an animal. However, we consider that clause 26 does not achieve this intention and we therefore recommend that the activities prohibited by clause 26 of the draft Bill should be extended to include “having custody, control or the power to control animals”. (Paragraph 267)
65. We recommend that fighting should automatically attract a disqualification order. We further recommend that certain animal cruelty offences carried out for a profit, such as making ‘snuff’ videos, should also attract automatic disqualification to reflect the seriousness of the offence. (Paragraph 269)

## Defra's Regulatory Impact Assessment

66. Given that Defra has had well over two years since its initial consultation on the draft Bill in January 2002, we are both surprised and concerned that the appraisal of alternatives to regulation in the Regulatory Impact Assessment accompanying the draft Bill is not better developed. Defra's excessively simplistic assessment of options fails to quantify the benefits of the legislation or its alternatives, which limits Defra's ability to demonstrate that the benefits of the proposed legislation would exceed the costs. (Paragraph 274)
67. Defra's assessment of the probable enforcement costs arising from the implementation of the legislation as "negligible" appears to us to be simplistic in the extreme, for the following reasons:
- Defra appears to have ignored the probable increase—at least initially—in prosecution and conviction numbers from the new offences which the draft Bill would create.
  - Defra does not appear to have accounted for the fact that proposals in secondary legislation will require appropriately skilled personnel to provide enforcement and inspection services and veterinary expertise in newly regulated areas such as animal sanctuaries, livery yards and greyhound tracks. We received evidence suggesting that there is a significant skills shortage in these areas and we are therefore concerned that the Regulatory Impact Assessment does not quantify what extra resources will be required nor how they will be provided. The Regulatory Impact Assessment states that "each piece of secondary legislation will be subject to a separate RIA and consultation once it is decided to take forward work on that particular regulation/order", which suggests to us that Defra has given no detailed consideration to the likely resource implications of its proposed secondary legislation.
  - Defra has proposed that local authorities should operate their licensing services on the basis of full cost recovery, yet the practicalities of this proposal are nowhere discussed in the Regulatory Impact Assessment. (Paragraph 282)
68. We consider that the Regulatory Impact Assessment accompanying the draft Bill fails to demonstrate that the benefits of the proposed legislation would exceed the costs, as is required by Cabinet Office and National Audit Office guidance. The Regulatory Impact Assessment shows evidence of a lack of thorough consideration, on the part of Defra, about the likely consequences of enacting the draft Bill. It fails to demonstrate what measurable benefits would arise from enactment and provides only weakly evidenced and limited cost information. We are concerned that Defra's poor assessment of the likely long-term implications of the draft Bill, together with the extent to which Defra proposes to defer policy decisions to secondary legislation, indicates that Defra is not yet properly prepared to legislate in this area. We therefore consider that the Regulatory Impact Assessment lacks credibility and provides an inadequate basis for pre-legislative scrutiny. (Paragraph 283)

69. Consequently, we recommend that, before a final Bill is introduced to Parliament, Defra produces a new Regulatory Impact Assessment which better meets the requirements of Cabinet Office and National Audit Office guidance. The revised Regulatory Impact Assessment should include:
- a more thorough options appraisal
  - a quantification of benefits
  - a more comprehensive consideration of costs, including the costs of secondary legislation
  - evidence to demonstrate that full cost recovery by local authorities is a realistic operational objective, and
  - evidence to demonstrate that sufficient appropriately skilled personnel exist to provide enforcement and inspection services and veterinary expertise in newly regulated areas such as animal sanctuaries, livery yards and greyhound tracks. If such evidence is not available, Defra should explain how it proposes to address this shortage. (Paragraph 284)
70. We also recommend that, in order to gauge whether costs are accurately reflected in its Regulatory Impact Assessment, Defra consults with the appropriate authorities about the likely costs of enforcement, licensing and inspection. (Paragraph 285)

### **Proposed and possible secondary legislation and codes of practice**

71. We recommend that, at such time as the Bill may be introduced to Parliament, the Government clarify its reference in annex L to the Regulatory Impact Assessment to regulations it intends to make within a year of the Bill's enactment that would effectively "define" the clause 3 welfare offence. Such regulations would appear to be in addition to the proposed regulations about which the Government has provided details in the annexes to the RIA. (Paragraph 291)
72. We recommend that, at the same time, the Government also clarify its reference in annex L to regulations it intends to make within a year of the Bill's enactment in order to regulate means of selling animals, other than pet shops and pet fairs. (Paragraph 292)

### **Proposed first tranche of secondary legislation and codes of practice**

73. We are concerned that Defra has not set out in the draft Bill document any detail on its proposals to license riding schools, dog and cat boarding establishments and pet shops, given that it intends to implement these proposals within a year of the Bill being enacted. A clear indication of the policy which Defra intends to implement in respect of these businesses should be made available if and when the final Bill is introduced to Parliament. (Paragraph 299)
74. At this stage, we support Defra's proposal to introduce mandatory licensing and inspection for all livery yards in England. (Paragraph 301)

75. We consider it vital that the legal status of pet fairs be clarified. Obviously, the confusion caused by the wording of the Pet Animals Act 1951 is most unsatisfactory. Given the current situation is so murky, and that the ethics of pet fairs are so hotly contested, we are extremely concerned that Defra appears to have assumed that it should legislate so that pet fairs are clearly legal, without first consulting widely on this issue. Defra appears to have proceeded straight to the question of asking *how* pet fairs should be regulated, without first asking whether they *should* be clearly legalised. This is a significant deficiency in the approach adopted by Defra in updating animal welfare legislation. We recommend that, before Defra proceeds to draft regulations which would repeal the 1951 Act and introduce, in its place, a licensing regime on pet fairs, it first consult on whether pet fairs should be made unequivocally legal. (Paragraph 316)
76. We recommend that Defra reappraise the basis on which its proposed regime for licensing pet fairs is predicated. (Paragraph 317)
77. We do not support Defra's proposal to introduce 18-month licences, rather than annual licences, in respect of licensing of circuses, pet fairs, livery yards or animal sanctuaries, or in respect of any other business currently licensed under animal welfare legislation. The proposal would reduce the frequency with which businesses or premises would be inspected, and would therefore not promote the highest standards of animal welfare because it would increase the period of time during which breaches of legislation could go undetected. We consider that any possible benefits to business offered by a shift to 18-month licences are outweighed by animal welfare considerations. In particular, we consider 18-month licences would be entirely inappropriate for itinerant, annual, often one-off events, such as pet fairs. We therefore recommend that Defra does not pursue its proposal to replace annual licences with 18-month licences. In respect of pet fairs and similar events, we recommend that a licence for a pet fair should apply to a single event only, and that each separate event should require a separate licence. (Paragraph 320)
78. We recommend that vet-accompanied inspections of livery yards, animal sanctuaries and dog and cat boarding establishments should be required at least every two years, rather than Defra's proposed requirement of only once every five years. If Defra accepts our recommendation to provide for annual licences, rather than the proposed 18-month licences, then a vet-accompanied inspection should be required every two years—at the time of application and at every second licence renewal thereafter. If Defra proceeds with its proposal to introduce 18-month licences, then a vet-accompanied inspection should be required every 18 months—at the time of application and at every licence renewal thereafter. (Paragraph 323)
79. We commend Defra on its proposed scheme to require pet vendors to issue appropriate information about animal husbandry and care at the point of sale. However, we are concerned that Defra has apparently failed to consider extending this requirement beyond pet shops and dog breeding establishments to other vendors of pet animals, such as vendors at pet fairs and at other types of breeding establishments. We therefore recommend that the proposed scheme be extended to other vendors of pet animals. We recommend that the information which vendors are required to provide to prospective and actual purchasers should be able to be

provided by the Pet Care Trust only if Defra first institutes a system whereby the information is checked by an independent, expert source prior to being published. (Paragraph 327)

- 80.** If electronic shock collars and perimeter fence devices have indeed been in use in the UK for 13 years now, as one submitter claimed, then we are surprised that Defra has not yet undertaken sufficient research into these devices in order to have formed an opinion of them, particularly given the controversy surrounding their use. We urge Defra to undertake a process of consultation and research about the possible regulation of these devices as soon as possible. (Paragraph 333)
- 81.** At this stage, it seems to us that an appropriate approach to electronic shock collars and perimeter fence devices would be to outlaw their use for purposes of training except, perhaps, with the exception of suitably licensed veterinarians. On the basis of the evidence we have received, we do not oppose the use of these devices to contain dogs within a particular area without the need for fences. (Paragraph 334)
- 82.** We consider that tail docking in dogs should be banned for cosmetic reasons. Tail docking should continue to be permitted for therapeutic reasons, where it is in an animal's best welfare interests. The question of allowing an exemption for prophylactic docking for certain breeds or types of working dogs is more difficult. For example, there is a risk that a whole litter of puppies which might one day be used as working dogs could be docked as a precautionary measure. Unless there is a system to guarantee that a docked puppy will be used as a working dog, an exemption for prophylactic docking risks being abused. (Paragraph 340)
- 83.** We therefore support Defra's proposed position on this issue. To prevent an abuse of any exemption for prophylactic docking, we recommend that a puppy's tail should be permitted to be docked for prophylactic reasons only where the following conditions are met:
- as is currently required by law, tail docking should be carried out only by a veterinarian
  - the veterinarian should take all reasonable steps to satisfy him or herself that the puppy is of a specified breed of dog, generally used as a working dog, or that the puppy is likely to be used as a specified type of working dog
  - the veterinarian should be required to maintain records demonstrating why he or she was satisfied that these conditions were met—for example, a gun licence
  - the veterinarian should be required to microchip any puppy which he or she docks; the microchip should contain the details of the veterinarian who docked the puppy, and
  - the veterinarian should provide the owner with a certificate endorsing the tail docking; the certificate should include the details of the veterinarian who carried out the procedure. (Paragraph 341)

84. We recommend that, prior to drawing up a draft code of practice on the rearing of game birds for sport shooting purposes, Defra should ensure that it has consulted with a broad range of groups and individuals with an interest in this area, including those groups which are critical of current game bird rearing practices. The Government should ensure that it has solid data on the numbers of game farms in England and Wales and the scale of these farms. (Paragraph 352)
85. On the basis of the evidence we have received, we do not support the existing Game Farmers' Association code of practice being adopted as a statutory code of practice under clause 7 without further consideration first being given to the appropriateness of certain rearing practices, including beak trimming and burning and the fitting of bits, masks and spectacles. We consider that gamekeepers should be required to try other methods first before resorting to these practices, as currently appears to be the requirement in relation to tail docking in piglets. (Paragraph 353)
86. We are also concerned that, of the game birds being reared, only 40% end up being shot. However, we have heard insufficient evidence to draw any firm conclusion on this issue. (Paragraph 354)
87. We do not consider that gamekeepers should continue to be responsible for taking reasonable steps to ensure the welfare of game birds once they have been released into the wild, in terms of the clause 3 welfare offence. However, as the draft Bill stands, we consider there is scope for prosecutions to be brought in this respect. We recommend that the Government ensure that the protection provided by the draft Bill does not extend to game birds once they have been released into the wild. (Paragraph 355)
88. We support Defra's suggestion that vendors who sell pet animals over the internet in England should be subject to a code of practice, issued under clause 7, which would set out minimum welfare standards. However, given that Defra describes its policy in this area as "to be agreed", we doubt whether Defra will be in a position to issue such a code of practice within a year of any Bill being enacted, as is its stated intention. We recommend that the Government assess whether it is really in a position to issue a code of practice on internet trading within its intended timescale. (Paragraph 358)
89. Given the importance of any secondary legislation made under a future Act for the practical operation of the Act, we consider it is important that Parliament should have some indication of what policies the Government is proposing to implement under the delegated powers in the Act. This is particularly crucial given the wide-ranging concerns that have been raised in evidence about many aspects of the policies proposed for implementation in the first tranche of secondary legislation and codes of practice. We therefore recommend that the Government publish revised details of its proposed policies for implementation in the first tranche at such time as it may introduce a final Bill to Parliament. (Paragraph 359)

## Proposed second tranche of secondary legislation and codes of practice

90. We recommend that, prior to publishing any draft regulations providing for the licensing and registration of animal sanctuaries, Defra consult widely in order to produce a practical definition of what types of establishment constitute an “animal sanctuary”. As part of this exercise, Defra will need to establish with greater certainty how many animal sanctuaries there are in England. (Paragraph 367)
91. We recommend that a licensing scheme should be extended to all animal sanctuaries, regardless of their size. We acknowledge that the imposition of the compliance costs associated with such a requirement may cause some smaller sanctuaries to close down. On balance, however, we consider it is more important that minimum animal welfare standards be ensured across all sanctuaries. (Paragraph 369)
92. We recommend that Defra amends its proposals to license the use of performing animals in circuses by distinguishing between the use of wild animals and domesticated animals in circuses, with a view to prohibiting the use of the former. Circuses should not be permitted either to bring in new wild animals or to breed from their existing wild animals. (Paragraph 381)
93. With this qualification, we support Defra’s proposals to license the use of performing animals in circuses, television, films, theatre and promotional work. However, we recommend that Defra clarify whether it proposes to license the circus/organisation, the trainer or the animal. We also recommend that Defra clarify what use it envisages being made of registration requirements in these circumstances. (Paragraph 382)
94. We recommend that any draft regulations proposing to implement a licensing regime for the use of performing animals should specify that all personnel who train, work with, supply or are responsible for supplying animals must be licensed. Such personnel should be required to attain a formal animal training qualification before they can be licensed. (Paragraph 383)
95. We recommend that Defra explain whether it intends to regulate international circuses visiting England and, if so, how. (Paragraph 384)
96. We recommend that Defra re-examine its rationale for exempting “amateur theatrical productions” from any licensing or registration scheme. The proposed exemption appears to be contrary to the draft Bill’s ultimate objective of improving animal welfare. (Paragraph 385)
97. We are unconvinced by the argument that the greyhound racing industry should be allowed until 2010 to regulate itself and improve its own welfare standards. We accept that the British Greyhound Racing Board and the National Greyhound Racing Club are making significant efforts to improve welfare standards at NGRC-registered tracks, but their best efforts cannot alter the fact that about 40% of greyhound racing tracks are run independently of the NGRC, and therefore apparently operate free from external, independent scrutiny. If these tracks do not

wish to register with the NGRC, they cannot be compelled to do so. We therefore consider external, independent regulation of these tracks is essential, and we do not consider that it would be fair to exclude NGRC-registered tracks from such regulation. (Paragraph 392)

- 98.** We consider that greyhound racing tracks should be subject to a licensing regime, not a code of practice, and we therefore recommend that Defra should publish draft regulations to address this issue as soon as possible. We do not accept that regulation in this area should wait until 2010, or five years after any future Bill is enacted. (Paragraph 393)

### Comments on the pre-legislative scrutiny process

- 99.** We welcome the extent to which Defra has chosen to involve itself in our pre-legislative scrutiny process, and the helpful and open-minded attitude adopted by the Minister and his officials in the course of our oral evidence sessions with them. (Paragraph 395)
- 100.** However, we consider that this draft Bill was not an appropriate candidate for pre-legislative scrutiny by Parliament in the absence of the Government having first conducted its own consultation process. Defra last consulted on this policy proposal two and a half years before the publication of the draft Bill. Given the complexity of the proposal and the widespread public interest in it, we consider that it should have been subject to further consultation prior to being published for the purposes of pre-legislative scrutiny. (Paragraph 396)
- 101.** While it is not always inappropriate for government departments to choose to rely on Parliament's pre-legislative scrutiny process, rather than conducting a separate consultation process in accordance with Cabinet Office guidelines, we consider the Government should adopt such an approach only where the policy behind a draft Bill has recently been consulted on, or where the draft Bill is minor or uncontroversial. Neither of these conditions were met in the case of the draft Animal Welfare Bill. (Paragraph 398)

# Formal minutes

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**Wednesday 1 December 2004**

Members present:

Mr Michael Jack, in the Chair

Mr David Drew	Joan Ruddock
Patrick Hall	Alan Simpson
Mr Mark Lazarowicz	Paddy Tipping
Mr David Lepper	Mr Bill Wiggin
Mr Austin Mitchell	

The Committee deliberated.

Draft Report [*The Draft Animal Welfare Bill*], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 398 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Minutes of Evidence.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman*).

Several memoranda were ordered to be reported to the House.

[Adjourned till Wednesday 8 December at half past Two o'clock.]

## Witnesses

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### Tuesday 7 September 2004: am

Ben Bradshaw MP, John Bourne, Graham Thurlow and Caroline Connell,  
**Department for Environment, Food and Rural Affairs** Ev 1

Jackie Ballard, Michael Flower and Dr Arthur Lindley, **Royal Society for  
the Prevention of Cruelty to Animals** Ev 24

Lord Soulsby of Swaffham Prior and Mike Radford, **Companion Animal  
Welfare Council**, Caroline Kisko and Phil Buckley, **The Kennel Club** and  
Lou Leather and Chris Laurence, **Pet Advisory Committee** Ev 45

### Tuesday 7 September 2004: pm

Janet Nunn, Meriel France and Steve Zlotowitz, **Pet Care Trust** and Steve  
Fairburn, **Pets at Home** Ev 55

Dr Mike Allen and Chris Newman, **Federation of British Herpetologists**  
and Ian Robinson and Corinne Evans, **International Fund for Animal  
Welfare** Ev 71

Clifford Warwick and Dr Roger Mugford **BioVeterinary Group**; Elaine  
Toland, **Animal Protection Agency** and Greg Glendell, **BirdsFirst** Ev 90

### Wednesday 8 September

Duncan Davidson, **Mitcham Veterinary Clinic** and Andrew Constant,  
**Animals in Mind** Ev 105

Ginette Elliott, and Lynne Smith, **Council of Docked Breeds**, and  
Professor David B Morton, Clare O'Dempsey and Pauline Baines, **Anti-  
Docking Alliance** Ev 116

### Thursday 9 September 2004

Dr Judy MacArthur Clark and Graham Godbold, **Farm Animal Welfare Council** and Mike Attenborough and Derek Armstrong, **Meat and Livestock Commission** Ev 124

Tim Bennett, Barney Holbeche and Annette Jacobs, **National Farmers' Union** Ev 135

Nick Somerfield, **Farmers' Union of Wales** Ev 143

John Thorley, **National Sheep Association** and Lawrence Alderson, **Rare Breeds Survival Trust** Ev 151

### Monday 13 September 2004

John Best, **British Wildlife Rehabilitation Council** Ev 156

Wesley Denton, **Sea Fish Industry Authority**; David Bird and Dr Bruno Broughton, **National Angling Alliance** and Julie Roxburgh and Simon Buckhaven, **The Shellfish Network** Ev 164

### Wednesday 15 September 2004

Charles Nodder, **National Gamekeepers' Organisation** and Andrew Tyler, **Animal Aid** Ev 179

Dr Miranda Stevenson, **Federation of Zoological Gardens**, Daniel Turner, **Born Free Foundation** and Martin Spray, **Wildfowl and Wetlands Trust** Ev 195

David McDowell, **National Equine Welfare Council**; John Smales and Keith Meldrum, **International League for the Protection of Horses** and Nicolas de Brauwere, **Redwings Horse Sanctuary** Ev 208

### Thursday 16 September 2004

Malcolm Clay, James Clubb and Martin Burton, **Association of Circus Proprietors of Great Britain** and Rona Brown and Peter Scott, **Performing Animals Welfare Standards International** Ev 217

Lord David Lipsey and John Haynes, **British Greyhound Racing Board** and Maureen Purvis and Dr Annette Crosbie, **Greyhounds UK** Ev 232

James Pavey and Simon Murray, **Society of Conservative Lawyers** Ev 247

### Tuesday 12 October 2004: am

Richard Brunstrom, **Association of Chief Police Officers**; Andrew Griffiths and Peter Smith, **Chartered Institute of Environmental Health**; Graham Capper and Abigail Mahony, **Local Government Association** and Paula Williamson, **Worcestershire County Council** Ev 261

### Tuesday 12 October 2004: pm

John Parker, Lynne Hill and Jill Nute, **Royal College of Veterinary Surgeons** and Dr Bob McCracken and Chris Laurence, **British Veterinary Association** Ev 277

Mike Radford, **Reader of Law, University of Aberdeen** Ev 290

### Wednesday 13 October 2004

David Fursdon and Christopher Price, **Country Land and Business Association** and John Jackson and Graham Downing, **Countryside Alliance** Ev 325

Peter Stevenson, **Advocates for Animals** and Douglas Batcher, Mike Hobday and Rebecca Seden, **League Against Cruel Sports** Ev 340

Anne Kasica, Ernest Vine, David Arthur, Christopher Day, Jonathan Cairns and Joan Jackson, **Self-help group for farmers, pet owners and others experiencing difficulties with the RSPCA** Ev 348

**Thursday 14 October 2004**

Tony Suckling, Michael Flower and David Bowles, **Royal Society for the Prevention of Cruelty to Animals** Ev 360

**Wednesday 27 October 2004**

Ben Bradshaw MP, John Bourne, Caroline Connell and Henry Hoppe, **Department for Environment, Food and Rural Affairs** Ev 370

## List of written evidence

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Royal Society for the Prevention of Cruelty to Animals	Ev 9, 32, 33, 367, 368, 369
Companion Animal Welfare Council	Ev 34
Kennel Club	Ev 38, 50
Pet Advisory Committee	Ev 42, 49
Pet Care Trust	Ev 51, 61
Pets at Home	Ev 53
Federation of British Herpetologists	Ev 62, 77, 79
International Fund for Animal Welfare	Ev 66, 76
BioVeterinary Group	Ev 80, 95
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## List of unprinted written evidence

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Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1. (Tel 020 7219 3074) hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

DR Wise (attachments)

British Equine Veterinary Association (attachment)

United Kingdom Horse Shoers Union (attachment)

The Born Free Foundation (attachment)

The Natural Horse Group (appendix)

The Pet Care Trust (appendix)

Pets at Home (attachment)

BioVeterinary Group (appendix and supplementary memorandum)

The Society of Conservative Lawyers (full memorandum)

Dr Peter Shaw (memorandum)

Ron Henny (supplementary memorandum)

Animal Defenders International and the National Anti-Vivisection Society (full memorandum)

British Association for Shooting and Conservation (supplementary memorandum)

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Seventeenth Report	Biofuels ( <i>Reply, HC 88 Session 2003-04</i> )	
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Fourteenth Report	Gangmasters ( <i>Reply, HC 122 Session 2003-04</i> )	HC 691
Thirteenth Report	Poultry Farming in the United Kingdom ( <i>Reply, HC 1219</i> )	HC 79-I
Twelfth Report	The Departmental Annual Report 2003 ( <i>Reply, HC 1175</i> )	HC 832
Eleventh Report	Rural Broadband ( <i>Reply, HC 1174</i> )	HC 587
Tenth Report	Horticulture Research International ( <i>Reply, HC 1086</i> )	HC 873
Ninth Report	The Delivery of Education in Rural Areas ( <i>Reply, HC 1085</i> )	HC 467
Eighth Report	The Future of Waste Management ( <i>Reply, HC 1084</i> )	HC 385
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Sixth Report	Rural Payments Agency ( <i>Reply, HC 830</i> )	HC 382
Fifth Report	The Countryside and Rights of Way Act 2000 ( <i>Reply, HC 748</i> )	HC 394
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Third Report	The Mid-term Review of the Common Agricultural Policy ( <i>Reply, HC 615</i> )	HC 151
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Ninth Report	The Future of UK Agriculture in a Changing World ( <i>Reply, HC 384, Session 2002-03</i> )	HC 550
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