



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 13 June 2017

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
18th Meeting 2017, Session 5

CONVENER

*Graeme Dey (Angus South) (SNP)

DEPUTY CONVENER

Maurice Golden (West Scotland) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Alexander Burnett (Aberdeenshire West) (Con)
*Finlay Carson (Galloway and West Dumfries) (Con)
*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)
*Emma Harper (South Scotland) (SNP)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Angus MacDonald (Falkirk East) (SNP)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*David Stewart (Highlands and Islands) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Judith Brown (Scottish Government)
Roseanna Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform)
Melissa Donald (British Veterinary Association)
Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)
Nicola O'Brien (Captive Animals Protection Society)
Liz Tyson (Born Free Foundation)
Andrew Voas (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament
Environment, Climate Change
and Land Reform Committee

Tuesday 13 June 2017

[The Convener opened the meeting at 09:45]

Decision on Taking Business in
Private

The Convener (Graeme Dey): Good morning and welcome to the 18th meeting in 2017 of the Environment, Climate Change and Land Reform Committee. The committee has received apologies from our colleague Maurice Golden. Before we move to the first item on the agenda, I remind everyone to switch off mobile phones and other electronic devices, because they might affect the broadcasting system.

Agenda item 1 is a decision on whether to take item 5 in private. Are we all agreed?

Members *indicated agreement.*

Wild Animals in Travelling
Circuses (Scotland) Bill: Stage 1

09:45

The Convener: Agenda item 2 is an evidence session on the Wild Animals in Travelling Circuses (Scotland) Bill with a panel of stakeholders. I welcome Melissa Donald, the Scottish branch president of the British Veterinary Association; Mike Flynn, the chief superintendent of the Scottish Society for the Prevention of Cruelty to Animals; Nicola O'Brien, the campaigns director for the Captive Animals Protection Society; and Liz Tyson, a consultant with the Born Free Foundation.

Members have a series of questions to put to the panel. Please bear it in mind that matters may arise from the evidence that may require witnesses to get back to us in writing. I thank you for your co-operation and ask Emma Harper to kick things off.

Emma Harper (South Scotland) (SNP): Good morning, panel. There has been a lot of discussion of the issue of welfare versus ethics as we propose this ban on wild animals in circuses. What are the witnesses' thoughts on the advantages and disadvantages of pursuing a ban on ethical rather than welfare grounds, and what are your views on the three criteria that are used to propose the ban: the impact on respect for animals, the impact of the travelling environment on an animal's nature and the ethical costs versus benefits? Also, how clear is the purpose and policy objective of the bill?

Liz Tyson (Born Free Foundation): The view of the Born Free Foundation is that a ban could have been introduced on welfare grounds. That is equally true for the policy process in England. That said, we do not believe that the two concepts are mutually exclusive; we think that ethics and welfare are inextricably linked. Our concern for welfare is inevitably going to be either based on or informed by ethical decisions.

I saw that one of the questions raised in a previous evidence session was about how the issue of transport fits into the ethical bracket, because that is surely more focused on welfare than on ethics. However, when we talk about respect for wild animals from an ethical perspective and about respecting their natural needs and behaviours, it fits perfectly to say that it would not be ethical to transport lions, tigers or elephants in the backs of lorries, as that frustrates their ability to show their natural behaviours.

We would have liked the ban to be brought in on welfare grounds, partly to see that aspect of the

Animal Health and Welfare (Scotland) Act 2006 tested in fulfilling that, but we are happy with the proposal to introduce a ban in the most expedient way possible. If that is via ethical grounds, we agree that the criteria of respect for animals and so on are all really important.

Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals): We first got involved in the issue in 2007, when a Westminster committee was set up but refused to take anecdotal evidence on the welfare aspect. That is why the ethical aspect came into consideration. I have always thought that wild animals should be banned from travelling circuses. I am happy to say that that should be on welfare grounds, and it is a bit of a no-brainer from the ethical point of view. There is no real benefit in having certain species in circuses other than entertainment.

The Convener: Does it matter what the grounds are for the ban? Is it just that we need a ban?

Nicola O'Brien (Captive Animals Protection Society): I think so. CAPS has worked on the issue for 60 years, and our interactions with the public show that there is a mixture of reasons for concern. People think that the inherent nature of the travelling and of training and making those animals perform is a welfare concern. Nevertheless, I agree with Liz Tyson that it is also linked to ethics because people feel that it is wrong to do that to animals.

That may stem from the fact that they think that it compromises the welfare of the individual animals but, as the Government itself has pointed out in its policy documents, there is a growing public opinion about how we see animals, and people just do not feel that it is right for us to use animals in that way. However the policy is delivered, it is meeting the need to respond to those viewpoints from the public. That is the priority, and it is also for the good of the animals themselves.

Emma Harper: The last time that we took evidence, the witnesses talked about the five freedoms for animals—the freedom from hunger and thirst, the freedom from pain and discomfort, the freedom from injury, the freedom from fear and distress and the freedom to express normal behaviour. Can animals that are in a circus environment experience the freedom to express normal behaviours?

Liz Tyson: I would say categorically no. They might have freedom from injury and disease, because there is the potential for veterinary care, but in terms of their natural behaviours, natural environment and social groupings and the ability to make choices about their day-to-day life, I would say that they are severely frustrated. In

some circumstances, it will be impossible for their needs to be met.

Nicola O'Brien: I agree. We see some stereotypical behaviours in animals in circuses and other facilities. Those are behaviours that animals perform that are unusual, that serve no function and that we would not normally see in animals in the wild, such as a tiger pacing up and down in a small area or shaking its head from side to side. Such behaviours are recognised as an indicator of the impact of captivity on animals, and they are seen in wild animals in circuses, which can show that they are being deprived of the ability to perform the behaviours that they would perform naturally.

Of course, if we compare the environment of a circus and long hours of confinement to what the animals would naturally experience in the wild, we can see why the circus environment may not meet those animals' needs.

Finlay Carson (Galloway and West Dumfries) (Con): Given what you have just said, what are your thoughts on the penguin parade at Edinburgh zoo or displays of wild birds of prey at agricultural shows?

Nicola O'Brien: Our organisation is also opposed to the use of animals in those ways, because we think that it does not respect the three reasons that were set out for the bill. We do not think that it fulfils the objective of respect for animals. Parading or displaying animals as a form of entertainment is inappropriate.

Our organisation opposes the use of animals in falconry, as there are similar ethical and welfare concerns about animals being used in that way. However, we are aware that we are here to talk about circuses in particular, and that is the issue on which the public has responded through the consultation.

Melissa Donald (British Veterinary Association): We fully support the bill as it is drafted. We should note that the penguins at Edinburgh zoo have a permanent enclosure, and for the bulk of their time they are able to exhibit more natural behaviours. Also, falcons and similar birds need to be exercised by flying and, in a sense, the display is a way of exercising them and teaching them to grab food. That is a different matter from the transportation of animals, which is the issue that the bill deals with. Emma Harper referred to the use of the phrase "travelling circuses". The whole point is that the animals are travelling and space is limited, so species might be kept next to one another inappropriately, which would induce fear.

The Convener: Let us explore that at this point. Your submission talks about the impact of group

housing on aggression and normal behaviour. Can you expand on that?

Melissa Donald: When there is only a certain amount of room to transport animals, fear is induced in them, and the first thing that a lot of species do when they are scared is fight or try to appear bigger than they are. They want to dominate the situation in order to tell the other guy, "Hey, don't mess with me," even though they feel scared inside.

The Convener: In bullet point 7 on page 6 of your submission, you say:

"We believe that this ban should cover all wild animal species without exception."

How does that differ from what is proposed?

Melissa Donald: It would ensure that there were no loopholes and that people could not argue that a particular animal is not a wild animal. It would make the ban really clear.

The Convener: How do you propose that that should be done?

Melissa Donald: It would be done through the definitions that are already in the bill.

The Convener: Are there any possible loopholes in the bill as it is drafted?

Melissa Donald: No, not as it is drafted at this point.

Mark Ruskell (Mid Scotland and Fife) (Green): What are the panel's views on the general scope of the bill? It does not include static circuses or transportation and keeping of animals that are part of a travelling circus. It also does not cover other forms of animal performance, which have been touched on already.

Mike Flynn: As I said earlier, the reason why the bill has come about is historical. When it was first mooted a decade and a half ago, England and Wales were talking about a total ban on circuses. At that point, one of the most famous circuses, which was based at its winter quarters in Blackpool, tried to buy a site in Kilmarnock to which to relocate.

There is a parallel between the bill and the mink bill that became the Fur Farming (Prohibition) Act 2000. We did not have any mink farms in Scotland, but because it was being proposed that they would be banned down south, we implemented a ban up here so that fur farms could not relocate. The context of the bill has not really changed in 15 years. I see it as a preventative measure.

I hope that the committee understands how circuses have changed over the years. I have been in my job for 30 years and was, for 7 years before that, a keeper at Edinburgh zoo. To return

to Finlay Carson's question, the penguins there are free to come and go on the parade; they are not forced to go out. Thirty years ago, about six travelling circuses used to come to Scotland with elephants, tigers and lions—the Il Florilegio circus even had giraffes, hippos and so on—but that has diminished over the years; I believe that there are now no circuses based in Britain that have any large cats—the last of them went a couple of years ago. You will know the story of Anne the elephant, who was the last elephant to be used in captivity. People are not clamouring to see such performances now, so circuses do not add animals to their collections in order to get people in. Perception of that has changed in the past 15 to 20 years.

Mark Ruskell: If it is a preventative measure, why not add static circuses as well, so that animals will not appear in them?

Mike Flynn: Pass. I do not know. However, there is a better chance of ensuring better conditions for animals in some static circuses, because the bill takes out the travelling aspect. We have visited every circus that has come here in the past 30 years and some of the animal accommodation has been what we class as being suitable for housing and for sleeping, but there is no way that an animal could exhibit any natural behaviour in such situations.

Nicola O'Brien: We have outlined that static circuses could be included in the bill. We interact with the public on that issue all the time; a huge part of our work is to engage with the public, to get people's opinions and, we hope, to raise awareness. People are concerned that animals are being used to perform in the circus environment, but the travel aspect is also a large part of their concern and it is one of the main arguments that we use for why circuses with animals should be banned.

With regard to the ethical basis for the bill, the issues include the impact on respect for animals and the ethical cost versus benefits. If we are talking about static circuses in the same way as travelling circuses, what people are fundamentally concerned about is using animals by putting them on display and making them perform certain behaviours. I am aware that there are currently no static circuses in Scotland; also, few or none travel to Scotland at present. Therefore, perhaps including static circuses is an option.

10:00

Mark Ruskell: Do you have evidence of wider public concern about animal performances beyond travelling circuses? The consultation was very much about travelling circuses, and I am struggling to know what public opinion is.

Nicola O'Brien: To my knowledge, no other consultations or polls have asked specifically about that. I am going by our and other organisations' history, as well as our work with local people. As you are aware, there are council bans on the use of animals in circuses in Scotland and elsewhere in the country. We have engaged a lot with the public, who have supported and rallied for a ban. The conversations that we have are not about one type of circus over another; use of animals in circuses is the concern.

Liz Tyson: Having been part of the advocacy and campaigning in Scotland, England and, to a lesser extent, Ireland over the past seven or eight years, I wonder whether the reason why static circuses are not included in the bill is that everything started on the basis of considering a ban on welfare grounds. England then rejected the idea of a ban based on welfare grounds and invited Scotland to join in proposed legislation on the basis of ethics. When a ban was being considered purely on welfare grounds, travelling was a huge part of the issue. The fact that travelling is still an issue is really a hangover from that, but I agree with Nicola O'Brien that, if we say that it is unethical to use wild animals in circuses, although travelling may impact that, the wider issue is that they should not be used.

That said, to return to what we said before, we are really grateful that Scotland is introducing a ban. We understand that the consultation has been carried out with travelling in mind. That perhaps explains why static circuses have been left out of the bill.

Melissa Donald: The housing environment in static circuses is more permanent and can be better adapted to cater to animals' welfare needs. As the other witnesses have said, the consultation highlighted that travelling is the main issue.

Mark Ruskell: The Cabinet Secretary for the Environment, Climate Change and Land Reform has put it to us that the Government intends to legislate on other areas of animal performances. However, that is not included in the bill. One of the local authority witnesses last week said that it might be better to have a catch-all approach rather than a piecemeal approach. What is your view on that?

Liz Tyson: In what sense do you mean "a catch-all approach"?

Mark Ruskell: It was put to the committee that the bill could include all the other areas of animal performance. I am interested in your views on targeting circuses specifically, rather than taking a wider approach.

Liz Tyson: That is a difficult one. The Born Free Foundation campaigns for wild animals, works to protect them and opposes their use in captivity. In

an ideal world, we would love all those things to be dealt with equally. However, we are aware of the practicalities of the matter.

We were heartened to be told in a meeting with civil servants, which we attended along with a number of the other witnesses who are present, that mobile zoos and reindeer displays, for example, may be looked into soon. We certainly welcome that. I would be reluctant to say that they should be considered now, because I imagine that it would be a huge amount of work and would cause a huge delay, so we could miss the opportunity to introduce the ban, which is incredibly important.

In an ideal world, we would not take a piecemeal approach, but in the practical world, we would rather see the bill being passed and then continue to work with the Government to proceed on other issues.

Nicola O'Brien: In our submission, we have included comments about mobile zoos and similar uses of animals. I will go back to ethics, which is what we are talking about today. Animals in mobile zoos have similar, if not the same, welfare considerations as those in circuses. The report that was commissioned last year by the Welsh Government from Dorning et al has been mentioned. Its remit was expanded from animals in travelling circuses to other forms of travelling entertainment with animals, which included mobile zoos. It came to the same conclusion—that there are grounds for a ban based on animal welfare, which we support.

Our organisation shares Liz Tyson's view; we are torn. We campaign for a complete end to the use of animals in such ways, but we want the bill to move swiftly so that we can get its measures in place. A bill of this nature is grossly overdue in the United Kingdom; Scotland leading on this would be a fantastic and significant start.

The Convener: Are there any other views on that?

Mike Flynn: It may be down to public perception; the vast majority of the surveys that I have seen are against the use of wild animals in travelling circuses. There is a growth in bird of prey demonstrations and what are classed as mobile zoos. I would call them mobile exhibitions because they are not zoos as such—they are not taking tigers and lions about. Anyone here could hire one for a children's party or school for £80 or £100; you pick the species that you want—mainly from snakes, small mammals and spiders—and they are all travelled. We have concerns that snakes are being travelled alongside ferrets and other things, which is going down the line towards circus activity.

Nicola O'Brien: Circuses are the priority, given the history, public opinion and the work that has already been done. We included mobile zoos because we want to point out strongly that they need in due course to be taken just as seriously, after the passing of the bill. We have heard a few highlights from the catalogue of issues: the travelling aspects, with many animals in small crates or boxes; social animals being kept singly; animals being on the road for many hours and at events for many more hours; and the handling, that may go beyond circuses, with many animals being passed around by children and adults. Mobile zoos are a relatively new industry, which is only just coming to the attention of authorities such as local authorities, the Government and even non-governmental organisations and animal welfare groups. We wanted to include them, because they are worth the same consideration as circuses, in the future.

The Convener: Is there a counterargument that properly run displays of that type encourage respect for animals and greater understanding? Is there a balance to be struck?

Nicola O'Brien: That argument has been used about circuses in the past. Our organisation has worked on the issue for 60 years—although not me personally. Having read about the campaign, I know that the arguments for circuses in the past were similar—that they were a way for people to view and get close to wild animals, and potentially to learn about them, that they did not have before. As we have pointed out, our attitudes to animals as a nation have changed and there are now ways to achieve knowledge and respect for animals without having them in front of us to handle and to take photos with them.

Richard Lyle (Uddingston and Bellshill) (SNP): I remind members that I am the convener of the cross-party group for the Showmen's Guild and an honorary member of the Showmen's Guild Scottish section. I support the principles of the bill, but I have concerns.

At last week's committee meeting, Martin Burton, representing the Association of Circus Proprietors of Great Britain, stated his concerns about a lack of clarity regarding definitions in the bill:

"Clearly, the economic impact on circuses with wild animals that already do not come to Scotland will be zero. However, the economic impact on animal displays in shopping centres ... hawk and wild bird displays at outdoor shows ... Santa displays ... reindeer ... and, eventually, on zoos will be massive. That is the direction that the legislation is going in—it will eventually close your zoos."—*[Official Report, Environment, Climate Change and Land Reform Committee, 6 June 2017; c 41.]*

Nicola O'Brien alluded to that issue a few minutes ago and Finlay Carson mentioned penguins.

Does the panel agree that the bill relates to travelling circuses and therefore does not cover static circuses and zoos? Do you believe that it covers other animal shows, wild west shows or any show with a different theme, or does it need to be tightened, as per the cabinet secretary's recent letter?

Liz Tyson: With regard to the definitions, we had a concern about the definition of domesticated animals, but not about the definition of circus.

When legislation of this sort has been introduced in other countries, the idea is often thrown up that it is the thin end of the wedge—that once it is passed, the floodgates will open and suddenly people will not be allowed to have a pet dog or cat.

If we could impact on animal welfare in zoos and in other situations, we would be very happy, but we are also aware that legislation is tightly and narrowly focused—I think that this bill is.

Since 1981, circuses have been excluded from zoo licensing, and that has worked perfectly; the licensing regime in the UK is specifically for circuses. We have not had falconry shows being accidentally captured by that legislation, and it uses exactly the same definition. A travelling circus is a circus that travels. People know what a circus is; they do not confuse a falconry show in a shopping centre or a mobile zoo with a circus—the precedent of the UK legislation already shows that that does not happen. It is not what anybody who is involved in advocacy and lobbying to introduce animal welfare legislation wants. Introducing one piece of legislation certainly does not open the floodgates to suddenly fixing everything else.

The Convener: CAPS has expressed concerns about the definition of a circus, has it not?

Nicola O'Brien: We have. We understand that there is no need to specifically outline what the word "circus" means, given that there is a general understanding of it. We welcome that approach—we are not saying that "circus" definitely needs to be defined—but with caution, given that we do not want some businesses that we think should be classed as circuses to be excluded.

The decision on the definition needs to come from the Government, on the basis of what it wants to ban. We, and probably the other NGOs that are on the panel, would be happy to help with the definition if that was deemed necessary.

The Convener: Will you give an example of the type of business that could get through a loophole?

Nicola O'Brien: There were comments in previous evidence sessions that, for example, an act that travels with big cats might say that it does not subscribe to being classed as a circus

because it does not have some of the more traditional aspects of a circus or the image that the word “circus” conjures in the public’s mind. That is our concern, although whether that means that it would be agreed that such an act was not covered by the bill is an open question. We also do not want to narrow the focus too much, in case we end up with the same issue.

Richard Lyle: Anthony Beckwith, who represented An Evening with Lions and Tigers, said that his act was outwith the scope of the bill.

To go back to councils, we have 32 councils in Scotland that all work to the Civic Government (Scotland) Act 1982 but interpret it differently. Andrew Mitchell of the City of Edinburgh Council suggested that, if we want to improve how we deal with performing animals, we had better do it

“in one piece of legislation”

and that

“a piecemeal approach ... is not helpful”.—[*Official Report, Environment, Climate Change and Land Reform Committee*, 6 June 2017; c 21.]

The person from Argyll and Bute Council agreed with him. What is your view on the councils’ interpretation of the legislation?

Liz Tyson: I am not sure that I understand. Is the person from the City of Edinburgh Council asking for other types of animal use to be brought under the bill?

Richard Lyle: They are looking for clarification. I mentioned Anthony Beckwith. When he sought clarification from someone in the Scottish Government, they said, “I don’t know.”

10:15

Liz Tyson: Since the introduction of the Zoo Licensing Act 1981, any travelling circus has known that it is not a zoo. Circuses have known that well enough to define themselves as circuses so that they do not fall under the licensing regimes for zoos. “An Evening with Lions and Tigers” certainly defined itself as a circus when it was in England, because it applied for a licence, which was refused.

Local authorities might say, “We don’t know exactly how to define this,” but that wriggle room is given in a lot of legislation. It means that we do not end up with absurd situations where, for example, something that is clearly not a circus is defined as one. As Nicola O’Brien said, we want to make sure that all circuses are captured, and common sense would say that an act that performed in a big top with a group of lions and tigers would be defined as a travelling circus. That is certainly how “An Evening with Lions and Tigers” defined itself in England.

Richard Lyle: A travelling circus is something with clowns and acrobats, if we are considering the definition. That is the grey area that I am concerned about.

I support the bill, but it has been pointed out that there has not been a wild animal travelling in a circus in Scotland for a number of years—I think that Mike Flynn said that. We heard last week that a circus in England hops short distances of up to 27 miles but that travelling more than that would affect the animals. Basically, I think that Melissa Donald agrees with me. I know that the Government wants to stop the use of wild animals in travelling circuses. I am getting research done, but I know that most of the 32 councils have already banned circuses with wild animals from council land.

I will ask my final question. To what extent could the bill’s definition of “wild animal” pose an interpretational challenge?

Liz Tyson: The problem is less the definition of “wild animal” and more the inclusion of the term “domesticated”. The two are mutually exclusive, but the term “domesticated” has been defined in a confusing way, as it could suggest that domestication simply involves breeding animals in a captive environment for a few generations and taming them. That is very different from the process of domestication, which takes place over millennia and changes animals genetically, physically and physiologically. The definition in the bill could lend itself to people making arguments, which I have heard before, that I certainly do not subscribe to. It would be interesting to hear vets’ opinions on the idea that tigers that have been bred for five generations in a circus are now domesticated, which goes against any scientific information that we have.

The definition in the Zoo Licensing Act 1981 of wild animals as

“animals not normally domesticated in Great Britain”

has been used successfully since the early 1980s. That act does not contain a definition of domesticated animals, but the definition of wild animals has served us perfectly well. We therefore suggest removing the reference to domesticated animals from the bill, because it may become confusing.

The Convener: I will bring in Mike Flynn. Given your background in enforcement and investigation, how do you view the definitions in the bill? Are you comfortable with them?

Mike Flynn: Yes. Defining a wild animal as

“an animal other than one of a kind that is commonly domesticated in the British Islands”

means that animals such as camels, which some people would argue have been domesticated in other countries in the world, are seen as wild animals.

The term “circus” is widely known. I do not agree that a circus has to include every aspect that we might think of. The Chinese and Russian state circuses that come here have no animals and have never had animals, but they are still classed as circuses.

I do not have a problem with the definitions. Ultimately, it is the court that decides on this kind of thing. Lots of things that we deal with do not have clear definitions—for example, there is no clear definition of puppy farms in the eyes of the law, but we can still deal with them.

I do not see that that is a problem, but there is a problem with the 32 local authorities having 32 different opinions. That comes across to everyone who is involved in the licensing sector. If someone wants a dangerous wild animal licence in Glasgow, it will cost them £50. In Edinburgh, they will be priced out of the market, so they will be unable to get one. There is no common ground there.

It is great that local authorities have banned such circuses from appearing on their land, but when that rule first applied in Edinburgh, the circuses went to Murrayfield ice rink car park or the Royal Highland showground. If there is a loophole, people will find it. I do not have a problem with the definitions.

The Convener: Does anyone else want to respond to Mr Lyle’s questions? If not, is Mr Lyle content?

Richard Lyle: I have a quick wee question. Are llamas, camels and reindeer domesticated animals?

Liz Tyson: In this country, a llama is classed as domesticated. There has been clear guidance off the back of the 1981 act for some time—there has had to be—and there is a schedule that helps local authorities to understand what is or is not a domesticated animal. Some species of reindeer are considered to be domesticated in some places but not others—I cannot give you the names of the species and subspecies, but they are in the schedule. In the British isles, a camel is never a domesticated animal. There is precedent in the UK statute book on that.

David Stewart (Highlands and Islands) (Lab): How effective is the UK Government’s licensing system at safeguarding the welfare of wild animals in travelling circuses?

Mike Flynn: I do not think that it has had a material effect; things have not changed over the years, so I have no comment to make on that.

The travelling aspect has always been our biggest concern. I agree with Mr Lyle that, these days, circuses normally go 15 or 20 miles, or whatever. However, it is commonly known in the livestock industry that the biggest problem with transporting animals is loading and unloading them. There is an element of stress, even if the animals are travelling a short distance. It can be easy to physically handle livestock but not tigers and lions.

Liz Tyson: Peter Jolly’s circus, which is one of the two that currently have wild animals, performed for a number of years with the act that is now “An Evening with Lions and Tigers”. That act was licensed as part of Jolly’s circus for, I think, two years, and then broke off, came up to Scotland and was in Fraserburgh over the winter. The weakness that that shows is that the proprietor was able to take his animals out of the licensing regime and move them across the border, so that suddenly his act was subject to no meaningful regulations beyond general animal welfare regulations.

It is very telling that, after that, when Mr Chipperfield and Mr Beckwith applied for a circus licence—I understand that they were using the same lorries and accommodation as they had previously used—they were refused, because they did not meet the required standards. It appears that the standard of accommodation had been licensed for two years and then suddenly the same standard of accommodation could not be licensed. There are discrepancies in how facilities are inspected.

Circus Mondao had its licence suspended after numerous warnings from the Department for Environment, Food and Rural Affairs, which are documented. As I understand it, there had been repeated warnings about, for example, members of the public being allowed to have contact with the reindeer when they were in winter quarters and issues to do with the welfare of one of the camels, and eventually the circus licence was suspended. There were all sorts of issues with getting the paperwork together and so on.

It does not look to us, from the outside, as if the system has done anything substantial to improve animal welfare. To be honest, that does not really surprise us. I think that all the organisations that were consulted—or involved, rather, because we refused to participate in the consultation on the measure—said from the outset, “This isn’t going to work”.

David Stewart: As you know, the Scottish Government rejected the regulatory approach, and one of the arguments for doing that was that there is a lack of scientific data on animal welfare. Do you agree with that assessment?

Liz Tyson: When the Westminster Government introduced the licensing regime, it claimed that the regime would guarantee that high standards of welfare were met—I think that that is what was said, almost word for word. When we asked the Westminster Government what analysis and research it had done to explore how to meet the welfare needs of wild animals in circuses, it responded that it had not done any. Our view is that the approach appeared to be one of setting the benchmark at the best circus standards that can be achieved, but whether those standards ever met animal welfare needs was never confirmed, and we argue very strongly that they cannot do so.

David Stewart: So there is a real issue with the data and enforcement.

Liz Tyson: Yes.

David Stewart: That is very helpful. Do other members of the panel have any observations on that?

Nicola O'Brien: Liz Tyson has covered the examples that I had with regard to Circus Mondao. Our only general comment is that licensing and continuing to allow wild animals in travelling circuses does not address the ethical concerns, which are what the bill is based on.

David Stewart: In earlier answers to my colleagues, you touched on what might be your ideal bill, but if you were to start from scratch to protect wild animals in travelling circuses, would you add aspects that do not appear in the bill or would you basically endorse the bill? Is there anything that you would take away or add?

Liz Tyson: The only substantive thing is that we would remove the domestication definition, for the reasons that we have outlined. We understand that the issue is display, performance and exhibition; banning ownership goes into completely different territory, which could arguably be discriminatory. We support the bill's aim to ban wild animals in travelling circuses, which we have all worked towards for a long time.

Nicola O'Brien: I agree—we are happy with the bill's focus on wild animals in travelling circuses. We, too, highlight our concern that the domestication definition could be open to challenge.

Mike Flynn: As I said in our submission, I see the bill as a preventative measure—the intention is to stop the issue before it starts. I have known every circus that has come to Scotland in the past 30 years and the circus community is very law abiding. No one is going to break the law once they know that there is something that they are not supposed to do here. Given that, as Martin Burton said last week, the ban will have no financial

impact on the industry, I do not have a problem with it.

Melissa Donald: The BVA supports the bill as it stands—we would not add anything to it.

David Stewart: Thank you. That is very straightforward.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I have some questions about the enforceability of the legislation. David Kerr of Argyll and Bute Council told us:

“Moving things to an ethical basis could be very profitable for defence teams, because what we need when we enforce legislation is a clear definition.”—[*Official Report, Environment, Climate Change and Land Reform Committee*, 6 June 2017; c 17.]

Are there implications for the enforceability of the bill given that it has an ethical rather than a welfare basis?

Liz Tyson: Mike Flynn is probably better placed to answer that, but I have a small point. As there is strict liability, if someone operates such a circus, they will have breached the regulations—full stop. I do not consider that the background to the bill—whether or not it is on welfare grounds—will have an impact when it comes to enforcing the law. It seems clear to me that if you are operating a circus with wild animals you are in breach of the legislation. I would not necessarily see the basis as an issue.

Mike Flynn: I agree. Although the bill is based on ethical principles, because previous committees said that there was not sufficient evidence to base it on welfare, the offence is black and white—if you operate a travelling circus, you are committing an offence, regardless of whether the bill is ethical or welfare based.

Melissa Donald: I agree.

Kate Forbes: Do you have any thoughts on the proposed enforcement approach and provisions, particularly the discretionary nature of the obligation on local authorities to enforce the bill?

Mike Flynn: That crops up in lots of legislation, such as the Animal Health and Welfare (Scotland) Act 2006, which says that local authorities may enforce the act, not that they shall enforce it. That is common in many aspects of licensing and will not make any difference here.

I am not sitting here banging the Convention of Scottish Local Authorities drum, but one of the problems is that local authorities are vastly underfunded and licensing provisions cost money. I am a big supporter of the idea that any licensing should be self-funding, because local authorities are not going to take money from essential services to provide something that—no disrespect to local authorities—many of them are not trained

to do. The inspectors do not know half the species that they are dealing with.

10:30

Kate Forbes: I am thinking of the powers in the bill. I accept the point about the need for resourcing, but do you have any thoughts about the lack of any provision that would enable local authorities to prevent a circus from operating while they investigate and report the matter to the procurator fiscal or obtain records from the operator?

Mike Flynn: This is in the bill. The local authority has the right, with a warrant, to enter a premises and gain information to send to the procurator fiscal to establish whether an offence has been committed. Other legislation extends to seizing the animal involved, but no one is going to need to seize an exotic animal from a circus, given that we are talking about a law-abiding community. That is why I have said that I do not see that happening.

Kate Forbes: I suppose that the issue is local authorities being able to serve a notice to prevent the activity from going ahead while the investigation is on-going.

Mike Flynn: Technically, if, as soon as the local authority took action and decided to report the issue to the procurator fiscal, the show moved 5 miles down the road and started again, it would be a subsequent offence and so on. I just do not see circus people doing that.

Claudia Beamish (South Scotland) (Lab): I want to continue the line of questioning in relation to enforcement. Does any member of the panel have views on the proposed maximum fine level, which is level 5? Are you confident that that level of fine will act as an appropriate deterrent to the use of wild animals in travelling circuses in Scotland?

Mike Flynn: I am. In his evidence last week, Martin Burton said that if you fined him £5,000 you would put him out of business. When I was a child it was hard to get into the circus—they were mobbed. These days some of them have very poor attendance and very high overheads. I think that £5,000 is proportionate.

Liz Tyson: It is worth adding that, as Mike Flynn said, once the ban is in place, people are generally likely to abide by it. I do not think that the circus community and circuses with wild animals will try to get round it. They will not be happy about it, but that will be it. We do not have to worry about them trying to breach the ban or get round it in some way.

Claudia Beamish: Thank you.

The Convener: That concludes the evidence from the panel. I thank the witnesses for their useful contribution.

The committee is slightly ahead of schedule, so I suggest that we move into private to take item 5 and resume in public at 11 o'clock, when we will be joined by the cabinet secretary for the next part of the meeting. Do members agree?

Members *indicated agreement.*

10:33

Meeting continued in private.

11:02

Meeting continued in public.

Subordinate Legislation

Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2017 [Draft]

The Convener: Welcome back to the public part of the meeting. The committee will now take evidence on a draft Scottish statutory instrument. We are joined by Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform; Andrew Voas, veterinary adviser; and Judith Brown, solicitor.

The cabinet secretary will make a short opening statement on the draft regulations.

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): Thank you, convener, and good morning, everybody. The draft regulations before you would amend the 2010 regulations to include an exemption to permit tail shortening in some limited circumstances.

You have heard that research commissioned from the University of Glasgow recorded that about one seventh of working dogs surveyed in the 2010-11 shooting season sustained at least one tail injury in that year, with a higher incidence for certain breeds. The Scottish Government considers that the research provides sufficient evidence that shortening the tails of puppies at risk of tail injury while they are engaged in lawful shooting activities in later life will improve the welfare of those dogs. However, in line with the research findings, we do not intend for that to apply to all types of working dogs, and we require conditions to be met that aim to ensure that only those dogs at most risk are affected by the regulations.

The proposed exemption therefore applies to the only two types of working dog, spaniels and hunt point retrieve breeds, that are commonly used in those lawful activities. The evidence showed them to be at significantly higher risk of tail injury than other types of dog. The evidence also showed that there was no benefit in trying to reduce injury by removing more than the end third of the tail. For that reason, the draft regulations limit the extent by which a tail may be shortened to no more than the end third.

The draft regulations ensure that, as far as is reasonably possible, only those dogs that are likely to be used for lawful shooting purposes can have their tails shortened, and that veterinarians are the only persons who may carry out the procedure. The operating vet must therefore be

satisfied that evidence has been produced to him or her showing that the dog is likely to be used for working in later life. The regulations also provide that the procedure may only be carried out for the purpose of dog welfare.

As required under the provisions in the Animal Health and Welfare (Scotland) Act 2006, we consulted those considered to have an interest in tail shortening. A full public consultation on a tightly defined exemption took place between 10 February and 3 May 2016. Of the total number of responses, 92 per cent favoured permitting shortening, and 52 per cent considered that shortening should be restricted to the end third of the tail.

We are of course aware that the question whether or not to introduce such an exemption remains a highly emotive issue. Ultimately, the proposed amendment to the previous provisions will place responsibility for making the decision in the hands of those who are best placed, in my view, to make an informed professional judgment. Those are the practising veterinary surgeons, mostly in rural Scotland, who know the clients who are working dog breeders, who understand the risks of injury associated with normal shooting activities and who, most importantly, have a professional duty to ensure the welfare of all animals in their care.

I am happy to answer any questions.

The Convener: Thank you. The consultation document stated:

“This consultation concerns the case that has been made to us for the introduction of a tightly defined exemption regime”.

Could you outline for us who made the case that the law should change and that docking should be allowed in certain limited circumstances? What made that case persuasive?

Roseanna Cunningham: Much of the work took place before I was in post. I will ask the chief veterinary adviser to give you some of the background to what led up to the present situation.

Andrew Voas (Scottish Government): When all tail docking was banned in Scotland back in 2007, a lot of concern was raised by people who were interested in shooting—gamekeepers and members of the British Association for Shooting and Conservation, or BASC—that it would leave dogs involved in shooting at risk of injury. A commitment was given at the time that, if new evidence came to light about the risk of injury to dogs involved in shooting, we would review the evidence in Scotland.

After 2007, the Diesel study was carried out, as has been mentioned previously, and the report was published in 2010. It considered all types of

dogs, so it was not focused on working breeds or on working dogs in Scotland. If I remember rightly, only 24 dogs involved in shooting activities were identified in that study. A lot of dogs were traditionally docked at that time, so the population of dogs studied by Diesel would have included quite a high proportion of dogs that had already been docked.

For those various reasons, that study did not give us the evidence that we needed and that specifically applied to dogs from working breeds actually working in Scotland. For that reason, we were asked by the then Cabinet Secretary for Rural Affairs and the Environment, Mr Lochhead, to commission some research. The research that we commissioned is the research that you have just heard about, by Glasgow university.

We are now in a position to consider the results of that research and the arguments that have been made around what it shows. The pressure has come from people who have been closely involved with working dogs in Scotland, who believe that there is significant concern about injuries to the tails of undocked working dogs that are currently working in Scotland.

The Convener: Let us discuss that research further.

Mark Ruskell: We have heard quite a lot of evidence about the limitations of the research, so I would like to run through some aspects of those limitations. The Diesel study to which you referred found out that a significant aspect of tail injury related to kennelling arrangements. Did either of the studies consider kennelling?

Andrew Voas: The Diesel study considered all types of dogs, both working breeds and non-working breeds. There were only a small number of what we would commonly understand to be working dogs involved in shooting.

As you have heard, two main studies came out of the Glasgow research, and two main papers. One of those was looking at owner-reported injuries and it was intentionally targeted at the community most likely to experience those injuries—the owners of working dogs in Scotland. As a result, respondents were recruited from Scottish gamekeepers and BASC and other groups that were involved in shooting.

Mark Ruskell: Did any of those studies look at kennelling?

Andrew Voas: As you said, the Diesel study looked at kennelling.

Mark Ruskell: Sorry—I meant the two studies that were commissioned by the Scottish Government.

Andrew Voas: Those two studies did not specifically look at kennelling. The second study looked at veterinary practice information on whether animals had recorded tail injuries; it did not look at the cause of those injuries.

Mark Ruskell: Thanks for that. I will move on to the impact of tail docking on behaviour and communication in dogs. Did either of the two studies that were commissioned by the Scottish Government look at the potential impact on those dogs of tail shortening and its impact on behaviour and communication?

Andrew Voas: No, that was not a specification.

Mark Ruskell: Why was that the case?

Andrew Voas: Well—

Roseanna Cunningham: The intention was simply to get statistical information about the extent of tail injury. The impact of tail shortening, which the committee had an interesting debate on, was not the primary focus of that research. The research was an attempt to establish better information about what was being claimed about tail injuries and their extent and whether those claims were borne out by the facts.

Andrew Voas: The proposition that was put to us was that working dogs were experiencing more tail injuries because they were predominantly undocked. The purpose was to investigate that specific point.

Mark Ruskell: Looking at this from an animal welfare point of view, a lot of research has been submitted to the committee that strongly implies that there could be an impact in terms of communication and behavioural difficulties in dogs with docked tails. Why was that impact not considered? Clearly there could be a cost and a benefit to the proposed exemption.

Roseanna Cunningham: I did not instruct the research in the first place and I cannot answer for the people who did. The purpose of the research was just to establish the extent of tail injuries and to operate on that basis. I read with interest the committee's discussions on behaviour, although it appeared to me that there was no conclusive evidence either way. I accept that there is an interesting discussion to be had around that, but my view is that that discussion needs to be taken forward by veterinarians. They need to look at how they would, in certain cases, manage pain if it was felt that pain had to be managed. I do not, at this stage, get a sense that the veterinary profession is at the point of having that kind of discussion on a UK-wide basis.

Mark Ruskell: So kennelling and behaviour have not been considered. Can I ask about the Lederer study? It was a self-selecting study that

was advertised in country sports magazines. Do you see any inherent biases in that study?

Roseanna Cunningham: My first reaction is that that study was attempting to get information about working dogs. Previous studies have looked at all dogs or at working breeds—but of course not all dogs from working breeds will be working. The Lederer study was an attempt to get to those people whose dogs were actually working. I am not a statistician, but I am not sure how else the researchers could easily have reached out specifically to owners of animals that were actually working.

Mark Ruskell: Why the emphasis on a self-selecting group that clearly has an interest in preserving the tradition? Why is this not being led by veterinarians looking at their case work with working dogs and assessing what the impacts could be?

11:15

Andrew Voas: That was the purpose of the second study. There was an initial survey of the owners and users of working dogs. The second study, published in 2014, was the survey of veterinary practice data, which is known as the Cameron report. It teased out from veterinary practice data, as far as we could gather, the information about injuries to dogs of working breeds. The third study, which did not go ahead in the end, was designed to give the best quality evidence. It would have been a prospective cohort study in which we would have identified a group of dogs that were going to be used for working over the next shooting season and monitored what happened to those dogs as the season progressed. The research was originally set up with those three parts. Unfortunately, the third part was not achievable for various reasons, so we have to interpret the first two parts of the study as best we can.

Mark Ruskell: At a previous committee meeting we heard evidence from a vet who docks tails, or would like to dock tails. He had seen only six tail injuries in the past year. Does that not conflict with the figures that are coming out of the Lederer study, which assumes that all dogs at some point in their lives will have a tail injury that will need to be presented to a vet?

Roseanna Cunningham: In reality we should run a study over a 10-year period because a working dog has a working life of more than one year. We may see a small number of dogs with a tail injury in one year, but over a period of time that number is likely to be a lot higher. That might have been an interesting thing to study, but it would take a very long time. We would need to track a cohort of dogs over their entire working lives,

which none of those pieces of research has done. In those circumstances the incidence of injury would be likely to be considerably higher than the data shows at the moment.

I specifically asked a question, and we have some evidence, on what percentage of dogs are now being imported from south of the border so that they are already docked—and that will be fully docked—as compared with the dogs that are being worked with undocked tails. There are many issues with that and I know from the response that I have had that those numbers are a bit of a guesstimate at the moment but they are fairly significant. That will also be having an impact on the numbers of injuries, because we are not looking at those numbers in the context only of working dogs that are undocked, if you see what I mean.

The Convener: Can I come in on that point? The other great unknown is the number of injuries that are sustained that are not presented to veterinary surgeons. Is there any feel for the scale of that? The owners are perhaps dealing with the injuries without ever presenting at a vet because the injuries are relatively minor.

Roseanna Cunningham: I remind people that dogs have a longish working life and that superficial or minor injuries in one year might become a more serious problem in subsequent years. The studies are in effect a one-year spot-check look and dogs that have minor injuries in one year may go on to have more serious injuries later.

Andrew Voas: I can give you some figures. At the previous meeting the committee was seeking some firmer estimates of the number of working dogs in Scotland and how many might be brought in. We have had the BASC submission, which estimates that there are currently perhaps 50,000 working dogs in Scotland. I have been having a look at some of the figures and trying to relate them to the information that we have from the research. We can assume from the BASC estimate of 50,000 working dogs that perhaps 38,000 of those are spaniels. The Lederer study reported that a third to a half of working spaniels are currently being imported from England, and most of those will be either partially or fully docked, as we have heard.

If we assume that spaniels will live for 10 years, on average, 3,800 puppies will need to be supplied every year in order to maintain that population of 38,000 spaniels. Approximately half of those might be imported from England, so we are left with perhaps 2,000 puppies per year having to be bred in Scotland to keep constant the population of spaniels in work.

If we look at statistics from the different studies, and take those 2,000 puppies per year, we can see that, according to the Lederer study, we might have 1,000 owner-reported injuries that will range from fairly minor nicks—which can cause blood to be spread everywhere and can look very unpleasant, but will be relatively minor injuries—to more serious tail injuries. Of those 1,000 injuries, there might be 333 that need veterinary treatment; again, that figure comes from information gathered in the Lederer report. Of those 333 injuries, there might be 66 amputations. That figure is based on the ratio of tail injuries to amputations, which is approximately 5:1 according to the Cameron study. It is also consistent with the Diesel study, although the ratio in that study was more like 3:1.

In order to provide those 2,000 working spaniels, we might have to breed 2,000 spaniels if every puppy from every litter went on to be a working dog. If, say, only one in six puppies from a litter went on to be a working dog, we would have to breed 12,000 spaniels. If we assume that there is a stable population of 10,000 Scottish-bred dogs, with an intake of 2,000 puppies per year, and let us say that they work for five years, on average, before retiring, we could then multiply the figures that I have mentioned by five, to give an approximate total incidence in Scotland. That would give perhaps 1,500 injuries that need veterinary treatment, which might give 300 amputations in working spaniels.

I return to the number of puppies bred. If we assume that perhaps 50 per cent of puppies go on to be working dogs, and we have to dock the tails of the entire litter to protect that 50 per cent, we might have to dock 4,000 puppies to save 66 amputations, which is a ratio of 80 puppies to save one amputation. We must remember that those figures are in one year, whereas the puppies are exposed for their working lives, so they might be exposed, year after year, for five years.

I have given some approximate figures that might help members. I am not saying that they are absolute, but they will give general guidance on the overall numbers that we are talking about.

Mark Ruskell: I still get the sense that that is finger-in-the-air stuff. Clearly, when the ban was brought in, there was an opportunity to do a 10-year cohort study that would have looked not at general dog populations but specifically at working dogs, compared the situation in England, and come up with robust data. Instead, we have a survey that is publicised in country sports magazines. We do not have such an attitude to doing surveys on wildlife crime or fox hunting.

I am concerned about inherent biases and about the lack of empirical data that is veterinary led. I am curious as to why that third study was not completed, because I think that it would have

given us the information that we need in order to judge whether, in animal welfare terms, the exemption is a sensible one.

Roseanna Cunningham: I am afraid that I do not recall the work that was done in leading up to the legislation and the regulations in the first place. I think that Ross Finnie was the minister at the time. I cannot go back and work out what was done in those circumstances. It was Ross Finnie who gave the assurance that the position would be reviewed if veterinary evidence became available. After that, there was a debate, which I suppose was *ex post facto* as far as the legislation was concerned, that led to the subsequent instruction of the research that we are discussing.

In order to have done a 10-year study, Ross Finnie would have had to instruct the study almost immediately the legislation was passed, and that was not in people's minds at the time of the debate. I pluck 10 years out of the air, but I am not 100 per cent confident about the working life of one of those dogs, as opposed to when they get retired. I am assuming that it is somewhere between five and 10 years and I think that that is probably right, although there are people in this room who may have a slightly better sense than I have of the life of a working dog.

The issue has not gone away. The extent to which puppies are now imported from south of the border, because there is a different regime there, is significant. The regime south of the border is less tightly controlled than what we are proposing, because it permits full docking, which we are not permitting, and we think that what we are presenting is a proportionate move that is fairly tightly controlled and does not preclude the possibility of further future research if people feel that that is required. Nevertheless, we think that it is an appropriate response to the concerns of those people who are actually breeding, raising and working these dogs.

Finlay Carson: I agree with much of what Mr Ruskell said about the finger-in-the-air approach taken to some of the research that we have seen. At the risk of being totally bamboozled by statistics again, I will ask a question that I hope you will be able to answer. What information do you have on the level of damage to working dogs' tails in the parts of the UK where there is already an exemption? Has work been done that will allow us to compare what has been happening in Scotland with the regimes in England, Wales and Northern Ireland, where exemptions exist?

Roseanna Cunningham: Off the top of my head, I am not aware of a piece of comparative work. I know that the regime south of the border has a wider exemption than we would allow and that the controls are a bit less tight, so I am not sure how useful such a comparison would be,

because we would not be comparing like with like. I am conscious that what we are proposing is quite narrow, and we would need to see how it worked out. The range of breeds that are covered south of the border is wider. It includes terriers, which we have excluded, so a comparison would not be easy to do.

Finlay Carson: It would have given us a ball park. As has been mentioned, we have had time since the ban was brought in and we are now looking at exemptions, but there appears to be very little information. There are exemptions south of the border and we know what breeds we are talking about here, so even a rough idea would have been helpful to our considerations, but that sort of information does not appear to be available at all.

Andrew Voas: The information not been collected in England. The closest is the Diesel study, which gave an instance of 0.03 per cent in docked dogs and 0.023 per cent in undocked dogs—that is the best evidence that docking has a protective effect against injuries. Some might say that it is self-evident that, if an animal has had its tail removed, it is less likely to have its tail injured.

Roseanna Cunningham: That covered all dogs.

Andrew Voas: Yes, that covered all dogs, so one would expect the effect in relation to working dogs to be even greater.

Claudia Beamish: What assessment has been carried out of alternatives to tail docking to reduce tail injuries later in life? The committee has heard some evidence prior to today about the use of tail protectors, and a small amount of evidence about breeding for tail carriage, although I appreciate that that would take longer. Points about the possibilities of appropriate kennelling have already been highlighted by my colleague Mark Ruskell, but I would like to hear the cabinet secretary's comments on alternatives to docking.

11:30

Roseanna Cunningham: As far as I am aware, none of the studies has looked at alternatives in detail. I read with interest the exchanges about the various methods by which tail injury could be—probably not wholly, but at least partially—prevented. Professionally, I am not in a position to assess whether they are practical in the context of working dogs. I can see that they might be useful with a domestic animal that might run out into wilder ground from time to time, but the difficulty with working dogs is that they are in that terrain all the time, often in very wet weather. I imagine that that creates significant difficulties with some of the proposed methods that have been discussed.

I have not seen any conclusive findings emerge from the committee's evidence to indicate that such methods would necessarily be effective; I think that they have been presented as possibilities rather than anything else. None of the research studies has been designed to look at that. I am not sure where such other practices are in place, and I do not know how a study could be designed that would manage that.

Andrew Voas: We have considered evidence on things such as the tail protectors that are available and which are used in the United States. They seem to be marketed as protective tail tips for pointer dogs in particular. The device is similar to a 50mm syringe case—it is basically a plastic covering that is taped on to the end of the dog's tail. If you look online, you will see that they seem to have fairly mixed reviews. Some people say that they work, while others say that they fall off very easily. I think that, in the States, they will be used mainly for pointers rather than for spaniels, which are the predominant concern in Scotland. I could well imagine that a full-tail spaniel with a fairly heavy protector on the end of its tail would be at risk of injuring itself, or that the protector could get damaged in the undergrowth and fall off or pull the tail. I could well believe that tail protectors are not really a practical solution in the Scottish situation for working spaniels with full tails.

Claudia Beamish: Is it the case that what you are saying is speculative?

Andrew Voas: Yes. Nobody has done any detailed research on the effectiveness of such devices.

Claudia Beamish: We heard from Jim Dukes that he was not confident that, in a wet country such as Scotland, wrapping a bandage round the tail of a dog or using Vaseline—I am not disparaging such practice—would work. However, if there are possible alternatives, it would be useful to have a bit more detail on them. I am talking about kennelling, protectors and hair trimming.

Andrew Voas: I support Jim Dukes's comments about bandaging, because dogs' tails are notoriously difficult to bandage. I have had experience of trying to get a bandage to stay on a dog whose tail is wagging vigorously. The dog might constantly try to chew the bandage off, and there is a risk of the bandage getting caught in things or getting wet and muddy. I support Jim Dukes's view that such solutions are not practical in Scottish situations.

Claudia Beamish: That is the case with bandages, at least.

Andrew Voas: Yes—it is particularly the case with bandages.

The Convener: Mark Ruskell will continue with the theme of possible alternatives to what is proposed.

Mark Ruskell: Cabinet secretary, I think that you said in your opening remarks that it was your intention that as few dogs as reasonably possible that do not go on to work would have their tails docked. Do you agree with the evidence of witnesses such as Tim Parkin, who told the committee that, as a result of the regulations, the tails of full litters of puppies of the relevant breeds will be docked, regardless of whether they end up being working dogs? If it is the intention of the regulations that as few dogs as reasonably possible will have their tails docked, how will you ensure that the docking of the tails of full litters of puppies, regardless of whether they go on to be working dogs, can be prevented?

Roseanna Cunningham: We confine it to the breeds in question in the first place. I fully accept that not every single puppy in every single litter will go on to become a working dog. I am not an expert and I do not know how dogs are identified as likely to be good working dogs, but I expect that, at the age of between three and five days, the assessment would be difficult. I do not suppose that even the best breeder can look at a three-day-old puppy and think, "That's the one that is going to be the champion working dog; the others will go to be pets." I expect that there will be a degree of tail shortening of dogs that might subsequently become pets. That is one of the reasons why we want to confine the practice to as few breeds as possible—to breeds from which the majority of working dogs in Scotland are chosen, and to dogs from areas where the vets know the breeders and the demands of the economic activity that we are discussing. Vets will be able to make the best assessment that they can, but we are leaving it up to their professional judgment.

Mark Ruskell: Would that then further skew the findings of the Lederer study, which focused entirely on working dogs? There is a wider population of non-working dogs out there that have their tails docked.

Roseanna Cunningham: A study of working dogs would study adult dogs that are actually working. If we accept that not every single puppy from every single working breed litter goes on to become a working dog, we accept that the ones that are not working dogs would not be included in such a study. The Lederer study looked at working dogs as opposed to working breeds. The two things are not the same, and we accept that. You cannot know that a dog is going to be a working dog until it is an adult. However, if you leave the procedure until the dog is an adult, the issues that people are concerned about become even more critical and probably more difficult to manage.

Again, I am not an expert and I do not know at what age a dog can be identified as likely to be a good working dog, but it is probably when they are more than six months old. Shortening the dog's tail at that age will clearly be a bigger issue for it than if that happened when it was between three and five days old.

Mark Ruskell: Is there not a significant loophole here? I will give you an example. A couple of weeks ago, somebody got in touch with me via social media to tell me that they had gone to England to buy a puppy with a docked tail that had come from a litter of working dogs. It was being brought to Scotland not to be worked but to be kept as a pet. Is there not a significant loophole in the English legislation that could be replicated here, whereby such dogs could be sold and moved on, yet they do not become working dogs?

Roseanna Cunningham: The loophole exists. If the situation in England that we are describing continues, we are not opening up a loophole.

Mark Ruskell: We are just replicating it.

Roseanna Cunningham: The fact is that people are already going south of the border to get dogs with docked tails, so we are not creating a loophole. We are already experiencing the consequences of the difference between the systems north and south of the border. Will some puppies with shortened tails end up as pets? Clearly, that will happen.

We will focus on the specific breeds that we are talking about. I remind you that those do not include terriers. Terriers are a huge breed south of the border and their tails can be docked. We are not including terriers. We are focusing on as narrow a population as we think is reasonable to focus on. It is difficult to see how we could focus any more narrowly, short of waiting until individual dogs are identified as dogs that are going to be working dogs, by which time the animal welfare issues become even more difficult to manage.

The Convener: I would just like to explore the practicalities, if I may. If, in the event that the regulations were to proceed, some veterinary surgeons opted out of undertaking the procedure, would an issue arise with regard to meeting the requirement that judgments be exercised by vets with knowledge of those presenting dogs for the procedure and therefore knowledge of the likely use to which those dogs would be put? Would the process be undermined, or is it the Government's view that the vets who will be asked to carry out the procedure will be largely those who have seen the harm that has been done to working dogs simply because those are the dogs that they see?

I might not have explained that clearly enough, but I think that you get the thrust of it.

Roseanna Cunningham: I suspect that most vets who practise in rural Scotland and whose practices cover such dogs, because they are required in the local area, will be the ones most likely to accept the need for the measure, because they are the ones who are most likely to see the consequences of the procedure not being done. I do not think that there are so many breeders in Scotland that there will be some who are not well known; the breeders of these breeds are probably pretty well known across the board as things stand. It is not as if every vet practice will have its own particular breeder who is very specific to it. There will be breeders who cover broader areas.

Might some vet practices choose not to do the procedure? That clearly might be the case. Might individual vets in vet practices choose not to? That might be the case, too, and I do not know how the practice management will handle that. However, I imagine that the most likely outcome will be that vets who are already well acquainted with and understand the issues will be those who will carry out the procedure and those who are most likely to know which puppies in a litter are likely to go on to become working dogs.

The Convener: In the past few days, we have received written evidence from veterinary practices and vets in rural settings in support of the exemption.

I want to touch on another aspect. Could the resistance to the measure that we have heard is out there among some vets, particularly younger ones, be down to their concern that they do not possess the skill set to carry out the procedure? No vets under the age of 29 or 30 in Scotland have had experience of doing the procedure. If that is the reason for the resistance that we are told exists, what steps might the Government take to ensure that vets are equipped with the required skill set and therefore have the confidence to carry out the procedure?

Roseanna Cunningham: I certainly understand that someone who has become a vet in the past 10 years will have no experience of this form of tail shortening. Of course, they might have experience of dealing with tail injuries or of shortening or amputating an adult dog's tail—those are procedures that they might have come across. However, I would have thought that ensuring that vets had such skills would be a matter for the veterinary bodies in the first instance. As for whether there might be a role for the Government to step into, I would not like to commit myself to that at this point, because we would need to talk to the British Veterinary Association about what it thought might be necessary. It is probably most likely to be young vets who want to work in rural practices who we will need to ensure have the necessary skills.

The Convener: Do you commit to having that conversation with the veterinary bodies?

Roseanna Cunningham: I think so. I want to refer to the Royal College of Veterinary Surgeons here, but I do not suppose that that is what I mean—

Andrew Voas: It probably is what you mean, cabinet secretary.

As a vet, I docked puppies back in the late 1980s when lay people were allowed to do it, and I have also dealt with chronic tail injuries. The actual operation to dock a puppy's tail is very straightforward. I think that the point that has been highlighted is probably being overplayed; as has been explained, the operation is very simple, and if a young vet is talked through it by someone with previous experience, they will have no difficulty with the practicalities of what is very straightforward surgery.

11:45

From talking to the Royal College of Veterinary Surgeons, we think that it would be useful if the Government gave guidance to veterinary surgeons to explain—if the regulations are approved—that we are not necessarily advocating tail docking for all dogs or making it compulsory. We are simply giving the vets who see the value of docking the opportunity to exercise their professional judgment on which puppies are most at risk of injury later in life, based on their knowledge of the breeder and where the breeder's puppies have gone previously, and based on their experience of seeing tail injuries in practice. Those vets are best placed to decide whether docking is justified for a particular litter of puppies.

Vets have a professional obligation to endeavour to protect the welfare of animals in their care—when we qualify, we take an oath to do so. That obligation should override all other considerations when a vet has to make the decision. If the vet genuinely believes that tail docking is in the animal's best interests, they will be acting in accordance with the oath that they have taken. If they do not believe that, to carry out docking would be to fail in their duty. People take that seriously. I understand that there is an ethical dilemma, but the profession is in a unique position to make the decision and should be expected and trusted to do so.

Emma Harper: I am interested in the pain management aspect of shortening a puppy's tail compared with amputation in an adult dog, which could be more invasive, especially if the dog has had multiple engagements with a vet because of repeated injuries. How do you interpret the research on the pain and distress that are associated with docking a puppy, compared with

the pain and distress that an adult animal might suffer? In our paper, it says “docking”, but I am sure that shortening is a bit less invasive than docking the whole tail.

Roseanna Cunningham: I have looked at the evidence on that; although I do not have medical knowledge, I thought that an interesting point was made about there being an issue to do with pain management early in a puppy’s life, because the animal’s body is not properly developed and cannot absorb all the pain relief that might be given. An adult dog can get really good pain relief, but a tiny puppy cannot, because its organs are not able to absorb the drugs. I am looking at Andrew Voas; he is the one with that knowledge.

Andrew Voas: I think that Tim Parkin mentioned that. We have local anaesthetics that might be used on very young puppies, but many vets say that the pain that is associated with giving the anaesthetic is as bad as, or worse than, the brief pain that is associated with the tail shortening procedure.

There is an analgesic drug that is commonly used in veterinary practice that gives longer-term pain relief, but it is contraindicated for animals under six weeks old, which Tim Parkin said is because the liver is not sufficiently developed to cope with it.

Pain in puppies is an interesting area. It is difficult to assess pain in neonates such as puppies, because of their lack of behavioural responses to pain. I think that all vets accept that docking or tail shortening are painful procedures. Puppies certainly yelp or vocalise briefly when the tail shortening is done. Typically, they are then put back with the mother, and they start suckling and become calm. Some people have suggested that suckling releases endogenous opioids or endogenous pain killers and is a form of comfort and pain relief for the puppy. That is the acute pain issue. Docking or tail shortening is certainly painful for the puppy at the time, and the acute pain will pass.

There is wider concern in a couple of areas. One is that an experience of acute pain as a young animal can sensitise animals to painful or stressful experiences later in life. We do not have any good evidence for that in dogs and we have to say that, based on the anecdotal evidence or the accumulated mass of experience, it is not commonly recognised that puppies that have had their tails shortened go on to be chronically nervous or chronically stressed individuals. Many people have seen working spaniels that have had their tails docked go on to be apparently happy active dogs. We have to bear that in mind.

The other main issue is nerve regeneration, or neuromas. It is well recognised in human medicine

that when we amputate a digit or a limb, the severed nerve tries to regrow. That often forms what is called a neuroma, which is a disorganised mass of nerve tissue that is trying to heal, and granulation tissue. In human patients, that can result in abnormal sensation, particularly if the wound is infected or damaged, so that it subsequently contracts. There can be paraesthesia—pins and needles—there can be a sensation called allodynia, in which previously normal touch sensations are perceived as painful, and there can be heightened sensitivity to pain. Those conditions are seen in perhaps less than 10 per cent of human patients who have a limb or digit amputation.

There is concern that severing a nerve can result in neuroma. Neuroma is a normal response to a nerve being severed; it is not surprising that we find them. They have been found in dogs; there is a paper from 1990 that describes six dogs that had neuromas following tail docking. Those cases were investigated because the dogs showed signs of being in chronic pain—biting their tails or their tails being sensitive when handled. We do not know whether the neuromas in those cases were just incidental findings, but the point is that they caused obvious signs in those animals. However, on the wider scale, the syndrome of a tail shortening operation causing chronic pain to a dog later in life is unusual; those are highly unusual cases and it is not generally recognised that spaniels that have had their tails shortened by a third will go on to have painful tails, constantly bite at their tails or show signs of pain that would require a further operation.

There is some interesting work on neuromas in pigs. I am sorry to go on, but—

Roseanna Cunningham: I think that you might be giving the committee more information than is absolutely necessary.

The Convener: We have got the gist.

Emma Harper: What is the proportionality of shortening a puppy’s tail versus the pain or animal welfare issues that are involved in the injury of an adult dog’s tail? Would the adult injury outweigh the shortening of the puppy’s tail at five days old?

Andrew Voas: I have done both procedures. Shortening a puppy’s tail seems to cause brief pain. The puppy then suckles and gets comfort from the mother and it seems that there is no obvious long-term effect, although we have to bear in mind the probably valid concern about potential chronic pain later in life.

However, the tail amputation of an adult dog is a serious operation. It is relatively straightforward surgery, but the problems are usually in the healing process. Often, the tail tip swells up, stitches can come out and there may well be

infection. Therefore, it is a much more serious and potentially painful operation for an adult dog than a tail shortening procedure is for a newborn puppy.

Claudia Beamish: Is there evidence on the proportion of dogs that develop infections after the docking procedure?

Andrew Voas: I do not think that anyone has done studies on that. We have heard anecdotally about it. I think that we heard from one previous witness that she had seen litters that had died from blood loss or infection, but that is incredibly unusual.

Claudia Beamish: I apologise for not asking the right question and for not being clear. I meant to ask about adult dogs that have not had their tails docked as puppies. What proportion of adult dogs have had infections because of having their tails docked?

Andrew Voas: I do not think that anyone has gathered such statistics systematically. The likelihood of infection getting into the wound and becoming established would depend on the sort of injury, what caused it and how long it was left before it was seen by a vet. Giving of antibiotics would be routine when carrying out an amputation, but infection might have been established before the operation took place.

Alexander Burnett (Aberdeenshire West) (Con): I was going to ask whether you have a feel for the number of dogs potentially affected, how many spaniel and hunt point retrieve dogs are born in Scotland, and how many go on to be working gun dogs, but I think that Andrew Voas has given a fairly comprehensive extrapolation of the available data. Is there anything that the cabinet secretary would like to add to that?

Roseanna Cunningham: There is not, really. As we are all aware, there are in Scotland a lot of working dogs in legitimate areas of activity. However, not all the puppies in the litters that they come from go on to become working dogs. We could try to specify further how many dogs would be affected, but at the moment the numbers can only be broad. That is partly because—as we are constantly aware—many dogs are brought in from south of the border, which changes the numbers: our estimate of the number of such working dogs must always take into account that about a third are not bred in Scotland, but have been brought in from elsewhere.

Alexander Burnett: My supplementary question is about data collection. As has been said repeatedly, there are a lot of limitations in the data. We have microchipping, there are issues around breeding licenses, and there will be on-going monitoring of the regulations, should they be passed. What are your views on future recording of statistics on dogs?

Roseanna Cunningham: I hope that we will take things forward across a broad range of animal welfare issues. I am not quite sure how we would construct a set of statistics on dogs that would give us the very specific information that we are looking at in relation to the regulations. We will go away and have a think about that and consider whether there is a better way to count dogs' heads—or tails—to establish a more accurate picture. We will never have an entirely accurate picture. We know that dogs are imported from all over the place, and not just from south of the border. We will consider whether we can refine the information that we have on numbers. I will let the committee know either way whether there is a way to do that.

The Convener: Before I bring David Stewart back in, the reference to microchipping brought something to my mind. We heard the assertion that the pain that is felt by a puppy in docking might be equated to that involved in microchipping. It was also suggested that a microchip being inserted close to a nerve would be quite a bit more painful. Can Andrew Voas comment on that evidence?

Andrew Voas: My experience in practice predates common microchipping, so I cannot comment on that first hand. It is unlikely that microchipping in general causes significant pain. My opinion is that shortening the tail of a puppy would be more painful than putting in a needle to inject a microchip. There may well be exceptions, as we have heard.

12:00

David Stewart: Cabinet secretary, I want to return to the type of evidence that you will ask vets to seek in deciding whether a dog is likely to become a working dog. However, before you answer that, let me talk about an email that I received this morning—by happy coincidence—from a working vet in my patch, the Highlands and Islands. The vet said:

“For practising vets, there are also concerns as to how any amendment to legislation could be enforced; evidence suggests that it is impossible to assess the suitability of a dog for a working role at 5 days old or less (Alder, 2007) and colleagues across the border have raised concerns as to how current exemption regulation in England leaves room for abuse in terms of proving in concrete terms the ‘working’ function of the puppy. This could result in many dogs unnecessarily undergoing this painful procedure despite the fact that they will not go on to fulfil a working function in later life.”

How do you respond to that working vet's assessment of the proposed legislation?

Roseanna Cunningham: I have conceded that at three to five days old it is probably impossible to identify which puppy or puppies in a litter will be

working dogs in their adult lives. I also indicated that we cannot wait until they are mature. Tail shortening could be done when they are a lot older, but I presume that shortening is a much more traumatic experience for a puppy that is six to nine months old than it is for a puppy that is three to five days old.

What we are proposing does not mean that only puppies that go on to be working dogs will have their tails shortened. That is why we have talked about breeds rather than working dogs per se. It is also why we want to leave the decision to vets' judgment. I cannot speak about the vet who wrote to you; he or she might make the decision that they will not carry out tail shortening, which is a decision that they are perfectly entitled to make.

We have said that vets will look at the history of the breeder with whom they are dealing or the person who brings the dog to them—the gamekeepers and people with shooting licences, who are active in hunting. If someone rocks up from a suburb of Aberdeen wanting their dog's tail shortened, I can imagine that a vet might be somewhat sceptical as to whether that dog will go on to be a working dog. However, dogs that are brought in by recognised breeders or by people who take part in activities that involve working dogs will be viewed differently by vets. It will be for vets to make decisions in individual circumstances.

David Stewart: I will send the email on to you. I welcome your comments and appreciate that you cannot necessarily respond to it cold.

I have a few final questions on enforcement. You gave that example about Aberdeen. Let us imagine a hypothetical situation in which you get evidence that vets are not checking whether dogs are likely to be used for working and the lawful shooting of animals. Who will be the inspector? Will it be the vets' professional association? Will it be some new organisation that you will set up? The old story, for any legislation, is that we need to ask who guards the guards. What inspection regime will there be?

Roseanna Cunningham: I do not anticipate setting up a specific body of inspectors to deal with the issue. We do not take that approach with general practitioners and other clinical practitioners, and I do not suppose that we will do so with vets in respect of tail shortening. We will rely on veterinary surgeons having a proper professional attitude towards the practice. Repeated reports of rogue practice or a rogue vet would be for the professional body, not the Government, to deal with.

David Stewart: For the record, I agree with the cabinet secretary that we have a very professional group of vets in Scotland, and I do not expect

there to be an issue. However, any legislation requires teeth. There will be no new body, and you will require the vets' professional association to take enforcement action if a vet breaches the legislation.

Roseanna Cunningham: I expect that that would be a matter for the professional association, if it thought that vets were doing unnecessary tail shortening. Let us be honest, it would have to be on breeds that were not working breeds.

Andrew Voas: It would also be a technical offence under the Animal Health and Welfare (Scotland) Act 2006, which can be enforced by SSPCA inspectors or local authorities. As we have heard, the Royal College of Veterinary Surgeons would almost certainly want to take action if it were to receive reports about vets doing such docking, although it was otherwise in accordance with the legislation.

David Stewart: Could you remind the committee what the sanctions would be for a breach under the 2006 act?

Andrew Voas: I would refer that to a lawyer.

David Stewart: I am sorry: I am just making sure that Judith Brown has a chance to comment today, since she has been sitting so quietly.

Judith Brown (Scottish Government): If the procedure does not accord with the terms of the proposed exemption, it would amount to the offence of mutilation under section 20 of the 2006 act. That would be a criminal offence. I will check right now exactly what the level of penalty would be.

David Stewart: While you are looking it up, after my unfair comment, I say that I take it that the SSPCA would still have a role in general in animal welfare under the legislation. For example, if an irate constituent in the Highlands and Islands knew of a vet who was not looking into whether an animal was likely to be used for work in connection with the lawful shooting of animals, they could refer that case to the SSPCA, which could look at whether there had been a breach of the 2006 legislation. Am I correct in that understanding of the law?

Andrew Voas: Yes, that is correct.

Judith Brown: Yes. A person who commits an offence under section 20

"is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 or both."

David Stewart: So, in such a case, the vet could be liable for professional misconduct under the British Veterinary Association and criminal action under the 2006 legislation?

Judith Brown: Yes, that is correct.

David Stewart: Thank you.

Richard Lyle: While Judith Brown is looking up section 20, can she confirm that, under the 2006 act, it is also an offence to take a protected animal from Scotland to a different regulatory regime for the purpose of having its tail docked in another country? We have had a discussion about the fact that people in Scotland are taking puppies down to—

Roseanna Cunningham: No—that is not what I said. I talked about people going south to buy animals to bring them in.

Richard Lyle: I did not say that you said it. It has been discussed previously that people take their animals to England to get their tails docked. If they do, are they breaking the law?

Roseanna Cunningham: If that is the context, it sounds very much like it.

Judith Brown: Yes. I think that that is prohibited.

Richard Lyle: Okay. I apologise to the cabinet secretary if she thought that I was referring to her—I was not.

Roseanna Cunningham: We have been talking about people going south to buy dogs and bring them back as opposed to taking their own dogs south.

Richard Lyle: We talked previously about people having physically taken their dogs from Scotland to England to get their tails docked.

Andrew Voas: People are also taking their pregnant bitches to England to give birth, as they can then legally have the puppies' tails docked in England. We have heard about that practice anecdotally.

Richard Lyle: Okay. I just wanted clarification, not to make a big issue of it.

The cabinet secretary might have covered my next question in her opening statement. Two weeks ago, the committee was told:

"The 'combination of breeds' element in that regulation could provide a huge loophole."—[*Official Report, Environment, Climate Change and Land Reform Committee*, 30 May 2017; c 40.]

What is your response to that?

Roseanna Cunningham: We have narrowed the exemption down as far as we think is reasonably practicable. I am not sure what loophole is being discussed.

As I said, terriers are included in the exemption south of the border but we have deliberately excluded terriers from exemption in Scotland.

I think that there was some conversation about mixed breeds, but they would fall within the hunt point retrieve and spaniel general breeds rather than be bred outside those two breeds. We think that we have narrowed the exemption down as far as we can in terms of actual breeds. Other than the loophole that there might be in the fact that some dogs that end up as pets might have their tails shortened, I am not sure what the loophole would be.

Richard Lyle: How could vets be certain that the breed that they were presented with for docking was covered by the regulation?

Roseanna Cunningham: I genuinely hope that a vet could tell the difference. Even I can tell when a spaniel is in front of me. I am not quite so confident about hunt point retrieve breeds, but I would definitely know a spaniel when I saw it, and I hope that a vet would.

Richard Lyle: I am sure that they would.

Roseanna Cunningham: I defer to my veterinary colleague.

Andrew Voas: That would be a matter of professionalism. If a vet was presented with some weird cross and they were not sure whether it was a pointer, they would not dock its tail. That would be their professional duty.

Roseanna Cunningham: They would look at the dog's history.

Richard Lyle: I used to have a Yorkshire terrier, but there are different breeds, and breeders are cross-breeding. Is there scope for any dubiety? I know what a spaniel is, but—

Roseanna Cunningham: I think that, if there was scope for any dubiety, a professional vet would ask questions about the dog's ancestry and, if they did not get reasonable answers, they would have to say no. I accept that lots of cross-breeds are appearing, but vets are becoming familiar with the more popular cross-breeds.

The Convener: Given the penalties that we identified a few moments ago, I presume that you are confident that vets would take every care in the matter.

As members have no more questions, we move to agenda item 4, which is consideration of motion S5M-05754. I invite the cabinet secretary to speak to and move the motion. Procedurally, this part of the meeting can last up to 90 minutes and Government officials cannot take part in the discussion.

Roseanna Cunningham: I refer members to the comments that I have already made.

I move,

That the Environment, Climate Change and Land Reform Committee recommends that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2017 [draft] be approved.

Mark Ruskell: Cabinet secretary, I dealt with the Animal Health and Welfare (Scotland) Act 2006 in the second session of the Scottish Parliament. The issue of tail docking and potential exemptions for working dogs was given thorough scrutiny at that point, and the Parliament disagreed to having an exemption on the basis of the veterinary evidence that was presented to us. I do not feel that anything has changed.

I am not being presented with a robust, scientific case for introducing the exemption at this point. I believe that the evidence in front of us is deeply unscientific—it consists of one study that was self-selecting through the pages of country sports magazines and another study that was based on a wider population of dogs but that does not distinguish between working and non-working dogs. A third study was not even commissioned and did not take place. This is happening 10 years after tail docking was banned in Scotland, and we just do not have the scientific evidence from an animal welfare point of view to allow the exemption to be approved.

None of the studies has looked at the wider causes of tail injuries or at kennelling and none of the studies has looked at the wider potential behavioural impacts of removing puppies' tails, so we have no way of comparing the costs and benefits. In addition, not a single veterinary body in this country is backing the exemption. We have to ask why that is.

In England, exemptions were brought in but they are full of loopholes. In essence, the Scottish Government wants to mirror that situation here—it wants to weaken the progressive legislation that we passed in session 2 to match the unworkable exemptions that exist in England and Wales.

I do not think that the evidence stacks up, and I do not think that the guesstimates that we have heard today of the number of puppies' tails that would have to be docked when they were under five days old to prevent a tail amputation in a working dog, stack up. It was mentioned that 80 puppies' tails would have to be docked to save one amputation in an adult dog. I do not believe that the pain and injury that would be inflicted on a puppy at that age would be 80 times less than the pain and injury that caused amputation in an adult dog.

For all those reasons, I cannot see a robust scientific way to back the proposed subordinate legislation and I will certainly vote against it.

12:15

Claudia Beamish: I, too, will vote against the regulations. The research that needed to be done over a 10-year period has not been done. Some parts of the regulations are not clear and are too speculative for me to be able to support them. There has been no research into kennelling and no scientific research into the alternatives to docking, although we have heard from Andrew Voas on some aspects of that today.

Andrew Voas's evidence also had some "maybes" in it in relation to the number of spaniels, and there were extrapolations from one study to another study, which made the evidence unclear and uncertain.

I have concerns about the impact of docking on behaviour and communication. As we know—at least, I do—a dog's tail tells us a lot, yet no research has been done on that. I do not know how such research could be done. The difficulty in assessing pain in puppies also raises a big question mark.

I am not convinced by the evidence on animal welfare that has been given to the committee. I am also not convinced that tail docking is a proportionate response or that enough research has been done. As the regulations stand today, I will vote against them.

Emma Harper: In addition to receiving the written and oral evidence that has been given to the committee, I have looked into the matter and have spoken directly to vets. As someone who has participated in the amputation of limbs in humans, I think that allowing the docking of puppies' tails is a proportionate way to avoid future injury. It would be appropriate to allow vets in rural practices, who know the breeders and the people involved in working dog businesses, to determine what is appropriate.

I had an additional concern about hunt point retrieve breeds, because they are quite big, but, as I found out when we took evidence, HPRs are not just hunters, pointers or retrievers but are becoming more mixed in their skills. That makes it more appropriate to include the hunt point retrieve breeds. However, it would be inappropriate to dock the tail of a pointer, because the carriage of the tail of such a breed is horizontal and would not go into the undergrowth.

I would be supportive of allowing professional vets help to support the regulations.

Finlay Carson: I am somewhat disappointed with the lack of joined-up evidence that the

committee has received, given the time that has been available to gather information and the fact that there is already an exemption in England, Wales and Northern Ireland. However, on balance, given that tail shortening prevents the extreme pain that—as is widely accepted—tail damage in later life can cause, I will support the Government's motion.

Kate Forbes: I, too, start from the position that we have a problem with pain in adult working dogs. Tail damage happens; the question is, what do we do about it? I share Mark Ruskell's disappointment with the evidence on both sides. In the past 10 years, there have been opportunities for both sides to make a case, and I was disappointed when, two weeks ago, we asked those who are against tail docking for alternative solutions in the light of the fact that there is damage in adult working dogs but those solutions do not exist.

From an animal welfare point of view, it comes down to pain in a puppy versus pain in an adult dog. Given that tail shortening already happens to an extent in England, loopholes are currently being used. It would be far better to have a more proportionate response that targets a more limited population in Scotland.

Although evidence on the issue is critical, having spoken at length to people in my constituency, I recognise that there is a problem in adult working dogs and that we do not currently have a solution for the pain that they experience.

Angus MacDonald (Falkirk East) (SNP): One salient point in the submission from the Scottish Gamekeepers Association is that, if tail shortening is to go ahead,

"these animals would be up to 20 times less likely to suffer prolonged injury in later life",

as we have heard on numerous occasions. Another salient point is:

"The Lederer study tells us that over 1 in 2 Spaniels and over 1 in 3 HPRs with full length tails sustained one or more injuries in ONE SEASON."

I believe that the Government has made the case, and I will support the legislation.

The Convener: I see the legislation as a preventative move that is aimed at avoiding significant painful experiences for dogs in later life. It is targeted at those dogs that are at risk.

I understand the concerns of some animal welfare organisations and of some colleagues, but those concerns ignore the clear harm that is being done to working dogs. Are we saying that we know that there is an issue, but so be it?

Like Kate Forbes, I admit that the evidence that the committee heard the other week from both

sides of the argument was not persuasive in either direction. However, the subsequent written submission from the Scottish Gamekeepers Association, which was backed by a sizeable number and variety of knowledgeable rural vets, has convinced me. Nonetheless, I feel that—as we touched on earlier—if the regulations are approved, there is a need for work to be done to ensure that vets have a clear understanding of the exemption, that they are competent and that they possess the skill set that is required to carry out the practice. I, too, will support the legislation.

As no other member wishes to contribute, I invite the cabinet secretary to wind up.

Roseanna Cunningham: I do not want to add anything to what has been said. I simply remind everybody that we have deliberately used the language of tail shortening because the legislation is not a return to tail docking even in the very limited circumstances for which we propose the exemption. Removal of one third of the tail still leaves an expressive tail.

Much as I understand the emotional response, I believe that some of the concerns are just that: emotional. There is a problem with dogs that are used for particular work—a relatively small population in comparison with the total number of dogs in Scotland—and they need better protection than they currently get.

The Convener: The question is, that motion S5M-05754, in the name of Roseanna Cunningham, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burnett, Alexander (Aberdeenshire West) (Con)
Carson, Finlay (Galloway and West Dumfries) (Con)
Dey, Graeme (Angus South) (SNP)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Harper, Emma (South Scotland) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Angus (Falkirk East) (SNP)

Against

Beamish, Claudia (South Scotland) (Lab)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, David (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 7, Against 3, Abstentions 0.

Motion agreed to,

That the Environment, Climate Change and Land Reform Committee recommends that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2017 [draft] be approved.

The Convener: The committee's report will confirm the outcome of the debate. Are members content to delegate to the convener the task of signing off the report?

Members *indicated agreement.*

The Convener: I thank the cabinet secretary and her officials for their time.

At our next meeting, on 20 June, the committee will hold an evidence session with stakeholders to explore waste generation and disposal in Scotland. We will also consider the Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/168).

Meeting closed at 12:24.

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