

DÁIL ÉIREANN

AN ROGHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

SELECT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

Dé Máirt, 27 Samhain 2012

Tuesday, 27 November 2012

The Select Committee met at 3 p.m.

MEMBERS PRESENT:

Deputy Tom Barry,	Deputy Martin Heydon,
Deputy Simon Coveney (Minister for Agriculture, Food and the Marine),	Deputy Michael McNamara,
Deputy Pat Deering,	Deputy Éamon Ó Cuív,
Deputy Martin Ferris,	Deputy Maureen O'Sullivan.*

* In the absence of Deputy Thomas Pringle.

DEPUTY ANDREW DOYLE IN THE CHAIR.

Animal Health and Welfare Bill 2012: Committee Stage (Resumed)

SECTION 2

Chairman: I received an apology from Deputy Pringle and Deputy Maureen O’Sullivan has been nominated as his substitute.

We are convened today to resume consideration of the Animal Health and Welfare Bill 2012. I welcome the Minister. We will have approximately an hour and ten minutes here.

Before we resume, I bring to members’ attention that there are three additional lists of amendments and a second and third list of amendments. The second and third list of amendments contains some substitute amendments.

Amendment No. 4, in the names of Deputies Pringle and Ó Cuív, was already discussed with amendment No. 1.

Deputy Maureen O’Sullivan: I move amendment No. 4:

In page 9, subsection (1), between lines 8 and 9, to insert the following:

““inspector” means a person being a veterinary practitioner appointed by the Minister or a local authority to be an inspector for the purposes of this Act;”.

Deputy Éamon Ó Cuív: My party will not press the amendment. We reserve the right to table it again on Report Stage.

Chairman: I presume Deputy Maureen O’Sullivan is happy with that.

Deputy Maureen O’Sullivan: Yes.

Amendment, by leave, withdrawn.

Chairman: Amendment No. 5 is in the name of the Minister. Amendments Nos. 5, 35a, 36 and 37 are related and they will be discussed together.

Minister for Agriculture, Food and the Marine (Deputy Simon Coveney): I move amendment No. 5:

In page 9, subsection (1), to delete lines 9 to 14.

These all are in my name. I do not anticipate this will be a contentious issue. During an earlier debate it became apparent that placing the definition of “intensive unit” so far from the two sections to which it applies made the text less user friendly. It is best to move the definition of “intensive unit” from the general definitions section to sections 19 and 20 as it is used only in these two sections and to make a few technical adjustments to ensure comparability between the two sections.

This is purely a technical adjustment and there is no change to the substance of the definition. As there was confusion about the definition of “intensive unit”, we included the definition in the sections dealing with issues such as poultry units.

Amendment agreed to.

Chairman: Amendment No. 6 was grouped with amendment No. 2. However, as amendment No. 2 was not moved, discussion will be allowed on amendment No. 6.

Deputy Simon Coveney: I move amendment No. 6:

In page 9, line 22, to delete “of a kind commonly”.

This is a proposal to remove the words “of a kind commonly” before the phrase “kept for farming recreation, domestic or sporting purposes on the island of Ireland”. Concerns were expressed that the phrase “a kind commonly kept for farming” would exclude unusual or exotic species such a snake kept as a pet in a display cabinet. We do not want the provision to be used as an excuse not to look after an animal that is uncommonly kept. The original wording creates unnecessary ambiguity.

Amendment agreed to.

Section 2, as amended, agreed to.

Sections 3 to 7, inclusive, agreed to.

SECTION 8

Chairman: Amendments Nos. 7 to 10, inclusive, are related and may be discussed together.

Deputy Simon Coveney: I move amendment No. 7:

In page 11, subsection (1), lines 10 and 11, to delete “necessary” and substitute “reasonable”.

Deputy Éamon Ó Cuív: I have tabled a similar amendment to amendment No. 7 in order to substitute the word “reasonable” for “necessary”. In amendment No. 8 we are dealing with the issue of commonage. I bow to the much greater ability of the Parliamentary Counsel to draft legislation.

Chairman: Amendment No. 9 is an alternative to amendment No. 8.

Deputy Éamon Ó Cuív: I have no doubt that the Parliamentary Counsel can give a good explanation as to why amendment No. 8 is superior to amendment No. 9.

Deputy Simon Coveney: I am happy to accommodate the replacing of the word “necessary” with “reasonable” in this section, but I am not prepared to do the same in the general animal welfare section because that would undermine the Bill’s new approach towards animal welfare. Section 8 deals with the prohibition on farm animals from straying. I accept that some flexibility is needed in this regard. That is why the wording “take all necessary measures to ensure that” is being changed to “take all reasonable measures to ensure that” animals do not stray. I agree with the Deputy on the matter. After a lengthy discussion in the Seanad, we agreed to prepare an amendment at a later stage.

In respect of amendment No. 8, we did not deal with the commonage issues. The general thrust of section 8 is to require that a fence, structure or building be erected to ensure animals do not stray. There is, of course, an exception to this rule where a boundary is shared in a commonage area. We need to accommodate this in the legislation, which is why amendments Nos.

8 and 9 do the same thing. The legal advice we have received leads us to think our wording is slightly better, but essentially the amendments share the same motive.

We have tried to understand the reasoning behind amendment No. 10. I suspect it deals with mink farming in County Donegal, in particular, because that happens to be where most such farms are located. I am not opposed to the amendment. It adds a new subparagraph (iii) to subsection (1)(b) with the following effect:

all buildings, gates, fences, hedges, boundary walls and other structures used to contain the animal are constructed and maintained in a manner that minimises -

(i) the risk that the animal will stray,

(ii) the risk, or spread, of disease onto or from the land or premises on which the animal is kept,

(iii) the risk that the animal will damage the surrounding population of indigenous wild animals or the natural flora and fauna of the surrounding environment.

Most of us who know about farming realise that mink can do extensive damage to wild-life if they are released into the wild. We are happy, therefore, to accept the amendment.

Deputy Maureen O’Sullivan: The amendment was tabled for the reasons the Minister outlined. I know about the damage that feral mink have done to bird life and fauna.

Deputy Simon Coveney: Given the conversation on fur farming we had last week, it is no harm to spell out in law the onus on farmers to ensure their mink do not escape.

Deputy Éamon Ó Cuív: I do not want to prolong the debate unnecessarily, but there are many unfenced commonages. I understand farmers are liable if their cattle stray onto a road, but if sheep do likewise, the driver is liable for any damage done, which is the way it should be. It is not possible to fence many commonages and one would not receive planning permission to do so. I am delighted, therefore, that the Minister accepts my amendment. I am also pleased that he is accepting the term “reasonable”. The best farmer in the world cannot always prevent animals from escaping. The word “necessary” implies that one can always guarantee animals will not stray. I refer, in particular, to the mountain sheep in the part of the world in which I live. Many lowland farmers have found that they will get through places that they never dreamed any sheep could get through. I support Deputy Thomas Pringle’s amendment. Last weekend I spoke to a sheep farmer about the relative risks to young lambs. He said mink posed the greatest risk in our area when they escaped, while grey crows and the fox were others. However, he was more philosophical about the fox because he reckoned that to exist it had to eat sheep and the odd sheep missing was the price to be paid for balance in nature. It is not that they would not try to keep the number of foxes down within reason, but farmers accept that they will lose lambs to foxes. It is good that the onus will be on mink farmers to keep them out of harm’s way.

Amendment agreed to.

Deputy Simon Coveney: I move amendment No. 8:

In page 11, subsection (1)(b)(ii), line 19, to delete “is kept.” and substitute the following:

“is kept, having regard to shared boundaries and commonage.”.

Amendment agreed to.

Amendment No. 9 not moved.

Deputy Maureen O’Sullivan: I move amendment No. 10:

In page 11, subsection (1)(b), between lines 19 and 20, to insert the following:

“(iii) the risk that the animal will damage the surrounding population of indigenous wild animals or the natural flora and fauna of the surrounding environment.”.

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9

Deputy Maureen O’Sullivan: I move amendment No. 11:

In page 11, lines 35 and 36, to delete paragraph (a) and substitute the following:

“(a) there is a risk or a suspicion that disease is present, or”.

Deputy Éamon Ó Cuív: Section 9(a) refers to an area “at risk of, or suspected of, being affected with disease”. The amendment refers to “a risk or a suspicion that disease is present”. As drafted, there does not need to be a suspicion that disease is present. I am interested in the Minister’s explanation for the use of this wording because it allows a wide margin in declaring a disease eradication area. The purpose of the amendment is to limit this.

Deputy Simon Coveney: The amendment would make no material change to the meaning; rather, it would merely change the tense of the verbs and, therefore, would not improve the Bill which has been drafted effectively by members of staff in the Office of the Parliamentary Counsel. The amendment would not improve on the work they have done. The claim my team is making is that there is no material difference between what Deputy Ó Cuív is proposing and what we have included in the Bill. If that is not the case, we need to discuss the matter and decide which is the better version. We are trying to ensure the Minister can, by order, declare the State or part of it to be a disease eradication area for the purposes of containing a disease. The amendment would provide that he or she could only do this where there was a risk or a suspicion that disease was present, whereas the section states “at risk of or suspected of being affected with disease in the area”. I am not sure what is the difference between them. I am saying the same thing in that the area has to be at risk of, or suspected of, being affected with disease. “Being affected with” is the same as “a disease being present”. That is our definition. If that is not the case, I am happy to examine the matter.

Deputy Éamon Ó Cuív: Unless there is an obtuse reason for it, the wording is stilted and convoluted, while that proposed by Deputy Thomas Pringle and me is more straightforward and to the point. There must be a difference. If the Minister is willing to consult the Parliamentary Counsel before Report Stage, we can resubmit the amendment and he might be able to explain why the paragraph was not drafted in the way we have proposed. We use straightforward English.

Deputy Simon Coveney: Section 9(b) states, “disease is present there”. If we say “disease has to be present”, the Minister has to find an instance of the disease in the area. If he or she

knows it is likely to have spread into the area, he or she will want to close it down. That is the flexibility a Minister should want. If, for example, there is an outbreak of disease in west Cork and I know it is likely to spread into County Kerry, I will want to close off an area along the county border to prevent the disease from spreading. However, while I cannot prove the disease has broken out in the area, it makes sense to close it off to prevent the disease from spreading to contiguous herds and so on. I suspect we are looking for that flexibility, but I accept the speaking note does not state this.

Deputy Éamon Ó Cuív: If that was the case, the disease eradication area could be known not to have the disease present but to be at risk of it. Is that correct?

Deputy Simon Coveney: Exactly, it would be “at risk of, or suspected of being affected with disease”.

Deputy Éamon Ó Cuív: In the future.

Deputy Simon Coveney: No. If someone has reason to believe a neighbouring farm is likely to be infected, it makes sense to put a ring around it. For example, a disease may be dormant for a period. We are trying to cover areas in which disease is present, but the Minister should also have the flexibility to create a disease eradication area where he or she considers it is at risk, or suspected of being affected with the disease. This precautionary principle should be factored in.

Deputy Éamon Ó Cuív: In ordinary English, it would state, “...at risk of, or suspected of, being affected by disease”.

Deputy Simon Coveney: It is the same thing. If the Deputy wants to table an amendment with that wording on Report Stage, I will accept it as he is only substituting the word “by” for “with”.

Deputy Éamon Ó Cuív: It is a little complicated, but a neighbouring area can be affected by the disease. Is that meant to be covered?

Deputy Simon Coveney: I think so. That is my reading of it.

Deputy Éamon Ó Cuív: Will the Minister clarify the matter?

Deputy Simon Coveney: Yes.

Deputy Éamon Ó Cuív: We will table the amendment again on Report Stage.

Amendment, by leave, withdrawn.

Section 9 agreed to.

Section 10 agreed to.

SECTION 11

Chairman: Amendments Nos. 12, 14, 15, 25a, 25b, 49a and 50 are related and will be discussed together.

Deputy Éamon Ó Cuív: I move amendment No. 12:

In page 13, subsection (1), line 5, to delete “necessary” and substitute “reasonable”.

These amendments seek to change “necessary” to “reasonable”. I would be interested to know whether the Minister opposes each of these changes and the reasons in each case. Section 11(1) states:

A person who has in his or her possession or under his or her control a protected animal shall take all necessary steps to—

(a) ensure that the animal is—

(i) treated in a manner that—

(I) safeguards the health and welfare of the animal,

and

(II) does not threaten the health or welfare of the animal or another animal,

Why does the Minister believe it should be “necessary” and not “reasonable”?

Deputy Simon Coveney: Does the Deputy want me to respond to this amendment first?

Deputy Éamon Ó Cuív: The logic is that things could happen despite what the person might do. For example, cats and dogs get run over by cars. Many people have domestic cats. If someone allows his or her cat run about the back yard and it can get over the back wall and out onto the road, as most people do, has that person taken all necessary steps to ensure he or she has safeguarded the health and welfare of the animal? If the cat gets killed, the question is whether the person took all necessary steps or all reasonable steps. I believe it is reasonable to let a cat out, but if a person must ensure he or she has taken all necessary steps to look after the health and welfare of the animal, he or she would never let the cat out. I rest my case.

Deputy Simon Coveney: The Deputy may have let the cat out of the bag. I feel strongly about this and we had a long debate on this issue in the Seanad. This and the valuation of animals, which we will deal with later, were the two areas on which we had the longest discussions. If we were to introduce “reasonable” in Part 3, which is the most important part of the legislation in dealing with animal welfare and the legal responsibility of people who own or look after animals to actually look after their welfare, any time anyone was taken to court they would claim they did everything that was reasonable and refer to an excuse, such as being away for the weekend or not feeling well that day. We do not have that approach to other legislation when it comes to responsibilities whereby people might be required to do everything reasonable to abide by the speed limit - one does everything necessary to abide by the speed limit by not going over the speed limit.

In dealing with farm animals straying there is a need for flexibility for the reasons the Deputy gave earlier of animals straying, somebody knocking down a fence or whatever. On the fundamentals of animal welfare and the principles relating to the prohibition of animal cruelty in the legislation and the responsibility on a person to safeguard the health and welfare of an animal in his or her ownership, we need to have legal clarity rather than deliberately factoring in ambiguity or flexibility. The term “necessary” sends out a strong signal that a person is required to abide by the law in terms of animal welfare as opposed to being encouraged to do everything reasonable.

The Bill specifies that a person should have regard to the animal’s nature, type, species, breed, development and environment, and ensure that all buildings, gates, fences, hedges, boundary walls and other structures used to contain the animal are constructed and maintained

in a manner that the animal is not caused injury or unnecessary suffering and so on. Introducing the term “reasonable steps” to that type of requirement would make it almost impossible to secure a conviction for somebody who was cruel either intentionally or unintentionally. It would dramatically undermine the purpose of the legislation which is to put a very clear line in the sand legally such that an animal owner has a responsibility and is required to look after its welfare. That is why a person is required to take all necessary steps to do that. Arguments will be made in a courtroom as to whether necessary steps were taken but there were other factors that meant that even though the person took those necessary steps there was still an animal welfare issue that was outside his or her control. That is the normal legal wrangling that will take place. Stating in the legislation “a person who has in his or her possession or under his or her control a protected animal shall take all reasonable steps” is too weak. It does not send the kind of signal or gives the legal certainty we require. Anybody with a decent barrister would ensure there would never be a conviction.

I understand the Deputy’s reasoning in the amendment and many people have made this point. Even when we had this discussion in the Seanad, people accepted that for the previous section we replaced “necessary” with “reasonable”, but that in the general animal welfare section, which is really the heart of the Bill, we need to keep the word “necessary” to keep legal certainty.

Deputy Éamon Ó Cuív: I would not object to the word “necessary” if the section stated that a person who has in his or her possession or under his or her control a protected animal should take all necessary steps having regard to the animal’s nature, type, species, breed to ensure that the animal is treated correctly. Domestic animals, particularly cats, are allowed to roam. Dogs are different and may be kept on a lead. While allowing a cat to roam may threaten the health and welfare of the animal, it might equally be threatened by being kept in. If what is specified in section 11(1)(b) is moved up to the top such that it applies to section 11(1)(a) and section 11(1)(b) then we are out the gate - the cat is over the wall.

Deputy Simon Coveney: We may be covered because the end of section 11(1)(a) states “in accordance with established experience and scientific knowledge”. I believe that line covers the cat running out of the window and getting run down by a car, which is established experience, I would say.

Deputy Éamon Ó Cuív: Why is the phrase “having regard to the animal’s nature, type, species, breed” etc. not placed at the start of the section?

Deputy Simon Coveney: It is a separate subheading. The first subheading specifies:

ensure that the animal is—

(i) treated in a manner that—

(I) safeguards the health and welfare of the animal,

and

(II) does not threaten the health or welfare of the animal or another animal,

and

(ii) bred or kept, having regard to the species and the degree of development, adaptation and domestication of the animal and to its physiological and behavioural needs,

The second subheading mentions: “having regard to the animal’s nature, type, species, breed” etc. A person must have regard to that anyhow. I would be surprised if section 11(1)(b) did not also cover a cat running out, having regard to the animal’s nature. The nature of cats is that with some exceptions, they are semi-wild anyway. My fear is that we would make nonsense of the Bill if we weaken the terminology. If the Deputy wants to propose something else on Report Stage, I will consider it.

Deputy Éamon Ó Cuív: We can come back to it on Report Stage.

Deputy Michael McNamara: The Minister mentioned good or decent barristers and I would not claim to be either, but I was called to the Bar. “Reasonable” has a very different meaning to that which the Minister has ascribed to the word. “Reasonable” does not mean what one thought was reasonable. A “reasonable man” test is fairly common in law and means what an ordinary person would believe to be reasonable. This issue concerns cats but is largely about straying animals as well. If we know cats are prone to wander and one must take all necessary steps to keep the cat safe, one cannot let the cat out. Neither I nor Deputy Ó Cuív is a scientist, although he might surprise me by claiming to be one, but both of us and the Minister know that cats are inclined to wander. I accept that the matter concerns farm animals.

Deputy Simon Coveney: On the issue of straying animals, we have accepted the word “reasonable”. That related to the previous two sections. This relates to the general animal welfare issue.

Deputy Michael McNamara: I stand corrected and thank the Minister.

Deputy Éamon Ó Cuív: Does it cover domestic animals?

Deputy Simon Coveney: Yes. It covers all animals. According to the legal opinion I have on this amendment, this proposal was discussed in the Seanad and, unlike the similar wording in section 8, it was agreed not to amend the wording from “necessary” to “reasonable”. This section is fundamental to the Bill. Furthermore, while it is relatively clear-cut with regard to the buildings or fences and the requirement to stop animals straying, the scope for unscrupulous individuals to interpret “reasonable” to the detriment of animals in this section is too major to ignore. We did make the change in respect of straying animals because animals stray and get knocked down as a result. The heart of this section concerns the onus on the owner or the person looking after animals to look after their welfare. People should have to do everything necessary to do that.

Deputy Éamon Ó Cuív: The point is that the most common domestic animal is the cat. As they say, one never owns a cat; the cat owns one.

Deputy Simon Coveney: Do they?

Deputy Éamon Ó Cuív: In respect of section 11(1) and (2), which involve having regard to the animal’s nature, it is not possible to take all necessary steps to safeguard the health and welfare of the animal and to ensure it does not threaten the health and welfare of another animal without effectively locking it up. It relates to the nature of the beast. I reckon that one must either insert “reasonable” or “having regard to the animal’s nature” to be absolutely clear.

Deputy Simon Coveney: We had that.

Deputy Éamon Ó Cuív: It has been included in section 11(1)(b) but not in section 11(1)

(a).

Deputy Simon Coveney: Section 11(1)(a) refers to the animal's nature, type, species, breed and development.

Deputy Éamon Ó Cuív: I am referring to section 11(1)(a). That reference to having regard to the animal's nature, type, species, breed, development and environment does not qualify the requirement to safeguard the health and welfare of the animal. Cats are being killed all the time and most cats are killed out of doors. It is a fact. It is covered here. This is the law. The law is what it means. Most cats are killed out of doors while foraging around on their own, getting into trouble and fighting with other animals. We will reflect on it and will not push the amendment today but will table it on Report Stage because it is a very reasonable point.

Deputy Simon Coveney: If the Deputy looks at section 11(1)(a), he can see that the word "and" and not the word "or" is between subsection (1)(a)(i) and subsection (1)(a)(ii). The subsection states:

A person who has in his or her possession or under his or her control a protected animal shall take all necessary steps to—

(a) ensure that the animal is—

(i) treated in a manner that—

(I) safeguards the health and welfare of the animal, and

(II) does not threaten the health or welfare of the animal or another animal,

and

(ii) bred or kept, having regard to the species and the degree of development, adaptation and domestication of the animal and to its physiological and behavioural needs.

That is a fairly strong safeguard for a cat in terms of its adaptation and domestication, but I will look at it again and we can have a brief discussion on Report Stage. I will improve the note. This is not a difficult thing for us to redraft if it improves it so we will have a look at it.

Chairman: Does the Minister wish to speak to amendments Nos. 14, 15, 25a, 25b, 49a and 50?

Deputy Simon Coveney: I do, particularly in respect of amendment No. 15 because what is being proposed here is good but it does not make legal sense to do it. I will explain why this is the case. What Deputies Ó Cuív and Pringle are proposing in amendment No. 15 is essentially to put the five freedoms into this legislation because for most people, they are the accepted measurement of whether one is looking after an animal properly. These conditions include whether animals are in a suitable environment, have an appropriate diet, are allowed to exhibit normal behavioural patterns, are housed in a way that is appropriate and are protected from unnecessary pain, suffering, injury and disease.

We are dealing with the five freedoms in far more detail in different parts of this legislation. I can tell members the areas in which we are doing this. The environment element is dealt with in section 11(1)(b). Diet is dealt with in section 13 and behaviour is dealt with in section 11(1)

(a)(ii). Housing and safety from other animals is being dealt with in section 11(1)(b) 11(1)(a) (i)(II). Being free from pain and disease is being dealt with in section 11 1(a)(i) and section 12. It is not that we are not committed to the five freedoms and we need to be careful that we are not too glib about that because in a year's time, it might be a case of the six fundamentals. At the moment, the five freedoms is the benchmark set in respect of animal welfare and I agree with that as it is a good thing. However, amendment No. 15 does not change anything in the legislation but becomes repetitive and looks as if we are dealing with some of these issues in a way that is not as substantive as the way we are actually dealing with them.

If one looks at amendments Nos. 25a and 49a, both of which are mine, one will see that we are trying to deal in a more substantial way with some of the issues in those five freedoms. I am quoting all sorts of sections and it is very hard to follow if one does not have them in front of one. For example, amendment No. 25a proposes to insert shelter and warmth, adequate light and ventilation and adequate exercise into section 14(3)(c) to deal with Deputy Ferris's wish to see light and ventilation included in the responsibility for housing an animal. That is a good example of how we are dealing with the fourth freedom of housing, but doing so in a much more comprehensive way than just listing the five freedoms. I can give members a detailed note before Report Stage, if they wish, to show in a very clear way how we are dealing with each of the five freedoms. It is more comprehensive than simply listing them and then pretending that the job is done. Within the different sections that apply, be they the cruelty, housing or code of conduct sections, we are dealing with all five items but dealing with them in the appropriate section rather than just naming them one after the other on page 13, which is what is being proposed.

What I am proposing in amendment No. 25a is very similar to what Deputy Ferris is proposing in amendment No. 25b, and what I am proposing in amendment No. 49a is very similar to what Deputies Pringle and Ó Cuív are proposing in amendment No. 50. I agree with the principles and sentiment behind what the Deputies are proposing but we are doing it in a comprehensive way.

Deputy Éamon Ó Cuív: I will not press the amendment but will table it on Report Stage.

Amendment, by leave, withdrawn.

Deputy Maureen O'Sullivan: I move amendment No. 13:

In page 13, subsection (1)(a)(i)(II), line 11, after "animal" to insert the following:

"including animals prior, during and after an entertainment or sporting event,".

We are seeking extra protection on health and welfare to include animals used in-----

Chairman: Amendment No. 13 was discussed with amendment No. 3 so no discussion can be allowed. I will allow a point of clarification.

Deputy Maureen O'Sullivan: I would like the Bill to be a bit more specific and include entertainment and sporting events.

Chairman: Is the Deputy pressing the amendment?

Deputy Maureen O'Sullivan: I would like to hear what the Minister has to say.

Chairman: It has already been discussed. Does the Minister wish to clarify this point?

Deputy Simon Coveney: All of the provisions of the Bill will be required at all times and not only at sporting events. The amendment seeks to include animals prior to, during and after entertainment or sporting events, and the case I would make is that the provisions should apply at all times, whether training or at an event, and whether events are sporting or not. Later we will deal with a section on the concept of animals in a performance and we will go through issues such as dogfighting, cockfighting and animal baiting. I am not sure what else I can say. I do not think the amendment is necessary because it is already covered.

Amendment, by leave, withdrawn.

Deputy Maureen O’Sullivan: I move amendment No. 14:

In page 13, subsection (1)(a), between lines 16 and 17, to insert the following:

“(iii) treated in a manner that they are not kept in close quarters preventing them from experiencing their natural animal behaviour including the freedom to roam pasture land,”.

We want to ensure food production mechanisms take into account the quality of life of the animal used.

Chairman: This was discussed with amendment No. 12.

Deputy Simon Coveney: I did not refer to the amendment specifically. My view is that it is covered under the five freedoms listed in amendment No. 15 which I believe are already catered for in various sections of the Bill. I can send the Deputy a note on the five freedoms. I believe it is unnecessary to introduce the proposed subsection.

Amendment, by leave, withdrawn.

Deputy Maureen O’Sullivan: I move amendment No. 15:

In page 13, subsection (1), between lines 18 and 19, to insert the following:

“(b) the animal’s physiological and behavioural needs shall be taken to include

—

- (i) its need for a suitable environment,
- (ii) its need for a suitable diet,
- (iii) its need to be able to exhibit normal behaviour patterns,
- (iv) any need it has to be housed with, or apart from, other animals, and
- (v) its need to be protected from pain, suffering, injury and disease,”.

Amendment, by leave, withdrawn.

Section 11 agreed to.

SECTION 12

Chairman: Amendments Nos. 16 to 23, inclusive, are related and will be discussed together. Amendment No. 23 is an alternative to amendment No. 22.

Deputy Éamon Ó Cuív: I move amendment No. 16:

In page 13, subsection (1)(a), line 35, before “do,” where it firstly occurs to insert “intentionally”.

Amendments Nos. 22 and 23 are alternatives and look very similar to me, so we will go with the Minister’s better wording. I appreciate the Minister has taken it on board. In amendment No. 16 we suggest the word “intentionally” be included. Acceptance of amendments Nos. 16 and 17 would mean section 12(1)(a) would read “do, or fail to do intentionally, anything or cause or permit anything to be done to an animal that causes unnecessary suffering to, or endanger the health or welfare of, an animal, or”.

With regard to amendment No. 17, there could be an argument about what injury and disfigurement mean. Is dehorning disfigurement? Tá adharca fada ar na buaibh thar lear. However, there are no adharca ar na buaibh any more. Presumably injury or disfigurement would cause unnecessary suffering, so it seems to be an over-elaboration and might lead to an unnecessary debate. Surely the entire section deals with unnecessary suffering. Somebody could argue it is disfigurement to cut the hair of a poodle rather than leaving it in its natural state. The issue is whether it causes unnecessary suffering to the animal.

With regard to section 12(2), I thought the transport of animals was covered elsewhere in the Bill so why is it included as a separate section? Surely it is included in the wording of section 12(1)(a) as something one does. With regard to section 12(5)(b), will the Minister outline the exact legal standing of the codes of practice he proposes? In section 12(6), the Minister is in favour of reasonable grounds instead of being against them. Amendment No. 20 proposes to delete the reference to reasonable grounds and replace it with “evidence”. The argument is that “reasonable grounds” give huge powers to an authorised officer and may be open to abuse. I appreciate the Minister has dealt with dependent offspring in amendment No. 22 and I will agree to this amendment. In amendment No. 21 we propose to include the phrase “or will be” in section 12(8).

Deputy Simon Coveney: I will accept amendment No. 21 as I agree it will improve the situation because it will allow action to be taken on what might happen rather than what is happening at present or what has happened. To shorten the list, we agree on amendments Nos. 22 and 23 because we are seeking the same end and I believe our wording is a little better. I thank Deputy Ó Cuív for accepting it.

Section 12 deals with the prohibition of animal cruelty so it and the previous section we dealt with on animal welfare are the key sections of the Bill. With regard to amendment No. 16, we are trying to bring as much legal certainty as we can and we do not want excuses to be given such as that a person did not mean to do something. Very few people are intentionally cruel to an animal and if they are it is an open and shut case. Proving someone is intentionally cruel is very difficult in a court of law. A person who owns a dog and comes home drunk at night and kicks it around the garden or does not feed it could make the case that he or she was not being cruel because he or she did not do so intentionally but because he or she was drunk. This type of excuse has been used in cases of domestic violence. I do not want an easy out for people who are responsible for cruelty to animals.

Provision is made in a later section for a person with a mental illness accused of cruelty to an animal. We do not want to be pursuing a person who for reasons of mental illness is not capable of looking after animals but is accused of neglect or cruelty. This type of person needs help rather than the imposition of a fine or imprisonment. With that exception, we do not want

to create unnecessary ambiguity through the provision of a legal mechanism which enables people get out of cruelty cases. From that point of view, I do not agree with Deputy Ó Cuív. I do, however, agree with him on amendment No. 17, which might surprise some people. This section provides that a person shall not do, or fail to do, anything or cause to permit anything to be done to an animal that causes injury, (including disfigurement) or unnecessary suffering to, or endanger the health or welfare of, an animal. There is no need for the inclusion in this section of the words “injury (including disfigurement, or”. This is dealt with in another section and will be further dealt with by way of regulation or codes of conduct.

This section deals with cruelty. As such, it is perfectly acceptable that it would simply provide that a person shall not do, or fail to do, anything or cause to permit anything to be done, to an animal that causes unnecessary suffering to, or endangers the health or welfare of, an animal. I see no reason for the inclusion of the words “including disfigurement” at this point because of dehorning or putting a ring on a lamb’s tail and so on.

Deputy Éamon Ó Cuív: It does not go on the tail.

Deputy Simon Coveney: We need to deal with this type of practice through codes of conduct or regulation. Section 16 of the Bill allows us to do so comprehensively. I do not propose to accept amendment No. 16 because I believe it weakens the law. I will accept amendment No. 17 because the issue of disfigurement is dealt with in a later section.

Amendment No. 18 proposes the deletion of subsection 2(a) and (b). This section states: “...without prejudice to subsection (1) a person shall not...”. We have retained the wording, which has been in place in animal cruelty legislation since 1911, namely, “(a) convey or carry, or permit to be conveyed or carried, an animal in such manner or position as to cause that animal any unnecessary suffering, or (b) cruelly treat or beat, kick, ill-treat, over-work, over-drive, over-load, over-burden, torture, mutilate, infuriate or terrify an animal...”. I accept that this is slightly outdated wording. However, it is wording that remains relevant. This section sets out the standards required in the transportation of animals, which is covered by legislation at European level, which applies in Ireland. It is important the law is clear in regard to beating, kicking and over-working etc. of an animal, which is already provided for in legislation. If someone can come up with better wording for this section, I will take a look at it. I believe it is necessary to outline what is meant by animal cruelty. This is what the Bill attempts to do.

Deputy Éamon Ó Cuív: The Bill provides that a person shall not do anything that causes unnecessary suffering. All of the actions listed would cause unnecessary suffering.

Deputy Simon Coveney: If it is necessary for a person to transport animals then he or she must do so under the accepted regulations.

Deputy Éamon Ó Cuív: They cannot be transported in a manner which causes unnecessary suffering.

Deputy Simon Coveney: Correct.

Deputy Éamon Ó Cuív: That is provided for in subsection 1. A person cannot cruelly treat or beat or kick etc. because to do so would cause unnecessary suffering. I am saying that subsection 1 deals with this in an omnibus way, in that it provides that anything that causes unnecessary suffering is not permitted. This applies not only in respect of any of the actions listed but in respect of carriage or any other action not listed. That is my argument.

Deputy Simon Coveney: That is not an unfair point. The issue is whether we need to spell it out further. I am prepared to accept amendment No. 17 regarding the deletion of the words “injury (including disfigurement), or” because this matter is dealt with in some detail in another section. There is a need to spell out in pretty blunt language exactly what is meant by cruelty.

Deputy Éamon Ó Cuív: In spelling out certain cruelties, provision is made for two levels of cruelty, namely, any type of cruelty, including of a type not listed, and limited cruelty in the context of what is listed in subsection 2(b). In my view the word “anything” is undermined by the listing of specific actions, which would suggest that other types of cruelty not listed are not the same as those listed. This in my view is overkill and undermines the word “anything”. Perhaps the Minister would reflect on the matter.

Deputy Simon Coveney: I will reflect on the matter. I accept the Deputy’s point in regard to listing specific actions, which creates categories in terms of actions listed and not listed. We have rejected people’s attempts to list animals in the middle of a performance or sport because this is already dealt with in the general wording of the Bill. I will reflect on the matter rather than accept the amendment now. I want to ensure nothing legal is being missed. I will look at it for Report Stage.

I was asked by the Deputy to explain legally what we are doing in the context of the codes of practice. My understanding is that the legal position of codes of practice is that one cannot create an offence by a code. To create a new offence one must do so by way of regulation or law. We have many successful codes, including with farming organisations around farming and so on. We have also introduced a new code of conduct in relation to animal welfare organisations, including dog pounds and rescue centres. What we are proposing to do in a number of areas covered by this legislation is to work with the relevant representative bodies to work out acceptable codes and standards on how certain procedures take place, be it dehorning, disbudding and so on. Likewise, if we want to do this in the blood sports area, we will put in place a code of conduct. The value and strength of codes of conduct legally is that they can be taken into account in a court of law where a judge is making a judgment for or against whether a person or group of people are treating an animal cruelly. However, they are not the determinant of the law. That is my understanding of it. Codes of conduct should not, for example, be seen by farmers as a threat. It would be quite the opposite. Essentially, these are guidelines for acceptable behaviour, and if somebody taken to court can show that he or she was abiding by the code of conduct, it would strengthen the defence. If the prosecution claims the person ignored the codes of conduct, it would weaken the defence’s case. The code of conduct does not create a new law or offence but is rather a set of rules that should be abided by. The primary legislation is required to back that up.

Deputy Éamon Ó Cuív: There is a fear that such codes of practice might be very detailed law by the back door. If I understand correctly, a person can only be prosecuted under a regulation made under the law or a provision in the law without a regulation.

Deputy Simon Coveney: Yes.

Deputy Éamon Ó Cuív: When the judge considers an issue, if it is an area where there are codes of practice, the judge would have to hand down a conviction under a particular statutory instrument or law.

Deputy Simon Coveney: Correct.

Deputy Éamon Ó Cuív: In trying to measure whether the statutory instrument or law has been broken, the code of practice could be considered. A code of practice is subservient in every way to the fact there must be proof that a person is guilty under a statutory instrument or law.

Deputy Simon Coveney: That is my understanding unless we say in the legislation that somebody is required to abide by a code of practice, or we introduce a regulation to that effect.

Deputy Éamon Ó Cuív: Is that what is now being said in the legislation?

Deputy Simon Coveney: No, we are saying that the considerations to which regard may be had when determining, for the purposes of this section, whether suffering is unnecessary, may, among any other considerations, include issues such as whether the suffering could reasonably have been avoided, terminated or reduced and whether the conduct which caused the suffering was in compliance with this Act, another enactment, animal health and welfare regulation or a code of practice. That sums up what the Deputy stated, which is that this factor can and will be considered, among other considerations, when there is a determination as to whether unnecessary suffering has taken place.

Deputy Éamon Ó Cuív: It must be proven under the law.

Deputy Simon Coveney: Yes. There is reference to regulations, the Act, another enactment or code of conduct.

Deputy Éamon Ó Cuív: If we are to go the route of a code of practice, it must be simple and practical. It should be a layman's law and understandable to people. It should be widely disseminated as nobody wants to be caught out because they do not know about something. The idea of a code of practice is that it should be generally known and agreed by the sector involved. There should be a layman's understanding of good practice rather than something written in legalese, which can be fairly impenetrable.

Deputy Simon Coveney: Under Part 4, it is clear that before establishing or adopting a code of practice the Minister shall publish the code on the website of his or her Department. The legislation also indicates that a Minister may, having considered any representations received, establish or adopt a draft code with or without modification. The experience of codes of practice in this country has been somewhat limited but with the codes that have been introduced, the experience has been quite positive. The Farm Animal Welfare Advisory Council introduced animal welfare guidelines for beef farmers and a code of conduct was introduced as part of that process which is also a set of guidelines. One can be more prescriptive in making codes of conduct mandatory or voluntary but we have options under the code of practice section that we can go through when we deal with that section.

Deputy Éamon Ó Cuív: One of the problems nowadays is that we start simply, but the process can eventually get very complicated. Most people have insurance policies with plenty of small print that nobody ever reads. My understanding of a code of practice is that it would not work unless it can be very simple, written in layman's language and is not too long. It should cut to the chase. Otherwise, people will be getting into something of which they are not aware. There is a proviso that it is the intention of the Department to have an accessible document, written in ordinary and understandable English, which can be widely disseminated. People must be aware of this basic stuff.

The computer is a fantastic invention in some ways but one of the problems it has created

is making everything too wordy. Nobody reads half of the words because there are so many of them. I will not be pressing the amendment.

Deputy Simon Coveney: Amendment No. 20 relates to an authorised officer who has reasonable grounds for believing a person is offending against the section with regard to an animal. The authorised officer may require the person to immediately desist from so offending. The Deputy is asking me to remove “reasonable grounds” and provide for an authorised officer “who has evidence” for believing that a person is offending against the section.

In this legislation we are trying to ensure that authorised officers can intervene before events happen, if possible. One of the weaknesses of existing legislation in this area is that there must be evidence before action can be taken. That means cruelty would have already occurred. One of the fundamental changes this legislation is bringing into law is allowing us to take action early and issue a welfare notice, for example, which is a new mechanism. Some people may see it as an on-the-spot fine but the idea is to try to keep people out of court unless they must be brought there.

An authorised officer who has reasonable grounds for believing there is a problem should be able to take action on the back of it. It is up to the authorised officer to subsequently show that there were reasonable grounds for this. In other words, an authorised officer may get a call from a person whose neighbour is beating an animal at night, as can be heard from yelps and howls from the garden. The officer could take action on the back of that if there are reasonable grounds to act, with a likelihood of cruelty occurring. In a farming case, there may be a report that a neighbour mistreats animals or injects them with something that should not be used. An officer would be able to take action on the back of that if there are reasonable grounds to suspect that something that should not have happened has occurred.

If there must be evidence before such action, an officer would have to procure a warrant and put a case together. That may be difficult without taking the action we are looking to provide for. Later we will discuss how an authorised officer, under certain conditions, may enter a residential premises if there is reason to believe that evidence will be destroyed if immediate action is not taken. I am sure we will have a discussion about the circumstances - which would be very restrictive - as to when that may be allowed. This is all about trying to ensure that authorised officers can take action on the basis of reasonable grounds, as opposed to having the full onus of collecting and producing evidence before anything is done.

This is about prevention as well as responding to acts of cruelty. It is also about prevention of intentional spreading of disease rather than dealing with consequences afterwards.

If we include evidence, it will make it much more difficult for an authorised officer to take action, even if he or she has a strong reason to believe something is happening which must be prevented. I understand the Deputy’s motivation, but I do not agree with the amendment.

Deputy Éamon Ó Cuív: The wording is that an authorised officer who has reasonable grounds for believing a person is offending against this section in relation to an animal may require that person to immediately desist from so offending. That is if the person is offending.

Deputy Simon Coveney: Yes.

Deputy Éamon Ó Cuív: How can the person desist if he or she is not offending? The wording appears to have an implication that he or she is doing something, but the Minister is saying there are only reasonable grounds and no evidence for believing he or she is doing it.

He is also talking about getting there before a person offends, but the wording appears to imply that he or she must be offending-----

Deputy Simon Coveney: One is taking action to stop the person offending.

Deputy Éamon Ó Cuív: Not before he or she starts to do so.

Deputy Simon Coveney: One can only act when one gets to that point. If one receives a telephone call from a credible person to say somebody is injecting something into an animal which he or she should not be doing, one can act on this information. One can ask that person to desist or stop doing what he or she is doing because one has reason to believe he or she is causing an offence. That is the type of circumstance envisaged. There are many others also, but that is the one that springs to mind. We want authorised officers to be able to act quickly, rather than having to gather evidence before they can require somebody to stop doing something. There might be a better example.

Deputy Éamon Ó Cuív: There is another side to this. How can one stop so-called credible persons making all sorts of complaints because of animosity between two neighbours? The authorised officer claims it is reasonable because Mr. and Mrs. Murphy said it was happening, but it was not happening. In defence of having told somebody to desist with no real evidence, the authorised officer will say there were reasonable grounds to believe it was happening because he or she was told it was happening and the witness was credible. Such things happen all the time. The things that happen between neighbours in this country are unbelievable.

Deputy Simon Coveney: We have set up an animal welfare hotline for those who wish to report cruelty or have a concern that there might be cruelty. It is up to authorised officers to make a judgment as to whether there are reasonable grounds to take action. Obviously, we must ensure authorised officers are properly trained to make an intelligent judgment. If we were to decide not to include this provision because a neighbour might wish to cause a problem for another neighbour by falsely reporting something, we would simply have to allow cruelty to occur and gather evidence as we must do before taking action. That should not be the position. There might be exceptional cases where the complaints are groundless, but if that is the case, we should look at whether the person who reported it broke the law. If an authorised officer has reasonable grounds to believe somebody is offending under the legislation, we wish to give him or her the power to intervene. It is that simple.

Deputy Éamon Ó Cuív: Is there evidence that the law is failing to prevent cruelty? If it is, that would be interesting and it would swing me towards the Minister's opinion.

Deputy Simon Coveney: I do not have anecdotal evidence, but I am sure we can provide the Deputy with some examples. If one looks at best practice in animal welfare legislation - for example, what has been done in the United Kingdom - we are trying to move from requiring proof from the investigating body before it can do anything to trying to intervene early to prevent cruelty and the spread of disease. It means taking action before things get serious or a minor welfare problem turns into a significant one. There have been a number of cases not only of domestic cruelty but also on farms where animals were totally neglected for whatever reason and in some cases died. There was a case in north Cork where a large number of pigs died of starvation. I want to ensure we have the law on our side in terms of authorised officers intervening early in such cases, as opposed to taking a prosecution in an awful cruelty case after it has happened. This legislation is about early intervention. It is about authorised officers taking a minor action such as issuing a welfare notice. It means saying to somebody: "What you are

doing is not acceptable, but if you do X, Y or Z over the next three weeks, that will be the end of it.” That is the type of intervention we want, whereby authorised officers work with people to ensure animal welfare is improved as opposed to being obliged to wait for unfortunate and, in some cases, nasty incidents to happen and then having to mop up the mess and take a court case with the evidence available. That is the way the law is structured and it is weak. I do not wish to exaggerate this point, although I probably am, but it is important that authorised officers can get on with their job if they have reasonable grounds for believing something is wrong, as opposed to having to wait until they can gather evidence.

Chairman: As we will have to vacate the room in a few minutes, I will move through the amendments if everybody agrees.

Deputy Tom Barry: I can see where both parties are coming from on this issue. It comes down to ensuring the authorised officer receives the correct training and has the necessary experience. We must be fair to the three parties involved - the complainant, the person who is the subject of the complaint and the Department. Perhaps some guidelines should be attached to this in order that everybody will be clear. I understand the Minister’s point. There were instances where one could see a major welfare incident was about to happen. In one case it was due to financial circumstances. Everybody knew it was going to happen and there was no point in leaving the animals to die and dealing with the issue afterwards. However, we must protect people from spurious or vexatious complaints or an inspector who might have a God complex and decides he or she knows better than everybody else. For everybody’s benefit, perhaps there should be guidelines and protocols for engagement in this matter.

Deputy Simon Coveney: There are protocols for how authorised officers behave in recording evidence, having to provide written descriptions of what they have seen and so forth. The Deputy is right. As we are giving a great deal of power to authorised officers under this legislation, they must be the right people who are properly trained and they must abide by an appropriate protocol and code of conduct. It is my job to ensure that happens.

Amendment, by leave, withdrawn.

Deputy Éamon Ó Cuív: I move amendment No. 17:

In page 13, subsection (1)(a), lines 36 and 37, to delete “injury (including disfigurement) or”.

Amendment agreed to.

Deputy Maureen O’Sullivan: I move amendment No. 18:

In page 13, line 41 and in page 14, lines 1 to 7, to delete subsection (2).

The Minister said he would consider this amendment.

Deputy Simon Coveney: I will examine it to see if it is necessary.

Amendment, by leave, withdrawn.

Deputy Éamon Ó Cuív: I move amendment No. 19:

In page 14, subsection (5)(b), line 21, to delete “or a code of practice”.

I am not pressing the amendment.

Amendment, by leave, withdrawn.

Deputy Éamon Ó Cuív: I move amendment No. 20:

In page 14, subsection (6), line 30, to delete “reasonable grounds” and substitute “evidence”.

I will not press the amendment.

Amendment, by leave, withdrawn.

Deputy Maureen O’Sullivan: I move amendment No. 21:

In page 14, subsection (8), line 38, after “been” to insert “or will be”.

Amendment agreed to.

Deputy Simon Coveney: I move amendment No. 22:

In page 14, subsection (8), line 39, after “concerned” to insert “(and any dependant offspring of the animal)”.

Amendment agreed to.

Amendment No. 23 not moved.

Chairman: Amendment No. 24 has been ruled out of order.

Deputy Éamon Ó Cuív: Amendment No. 24 reads: “In page 14, subsection (9), line 44, after “or” where it secondly occurs to insert “by order of the court.”

It seeks to clarify whether we are saying the Minister can deduct the money without an order of the court.

Chairman: The amendment has been ruled out of order.

Amendment No. 24 not moved.

Deputy Maureen O’Sullivan: I move amendment No. 25:

In page 15, subsection (12), lines 10 to 12, to delete paragraph (c).

Chairman: The amendment has already been discussed.

Deputy Maureen O’Sullivan: We are going to call a vote on it.

Chairman: We will not do it today. I thank the Minister, his officials and the members for sticking with this.

Progress reported; Committee to sit again.

The select committee adjourned at 4.35 p.m. until 10 a.m. on Wednesday, 5 December 2012.