

Proposals to Revise Existing Animal Welfare Legislation – A Consultation

A Consultation Document
Issued by the Scottish Executive
Environment and Rural Affairs
Department

March 2004



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Consultation on Animal Welfare Legislation

Introduction

1. The Scottish Executive (SE) issued a consultation paper on 21st March 2003 on proposals to amend the Protection of Animals (Scotland) Act 1912. These proposals were aimed at addressing the specific problem of the lack of statutory powers available to local authorities to remove neglected farm livestock, which are suffering or at risk of suffering, to a place of safety. The responses from a number of organisations to that paper have shown a clear desire for a much wider reform of our existing animal welfare legislation. Ministers now wish to consider expanding the proposed amendment to the Protection of Animals (Scotland) Act 1912 and to introduce wider legislation aimed at consolidating and updating much of the existing animal welfare legislation in Scotland. The purpose of any new legislation will be to prevent cruelty to any animal and to set out the obligations of people to promote the welfare of all animals (including domestic pets) for which they are either permanently or temporarily responsible. This will include owning, managing, or in any way keeping any animal, including buying, selling and transporting.

2. This consultation seeks your views on what should be included in any new Scottish animal welfare legislation. This consultation paper does not deal with the Dangerous Dogs Act 1991, dog fouling, and the Protection of Wild Mammals (Scotland) Act 2002. Any new legislation will specifically exclude the welfare of animals in scientific research, which is a reserved matter and is the responsibility of the Home Office. Comments should be sent to by **2nd July 2004**:

Heather Holmes, Animal Health & Welfare Division,
Scottish Executive Environment and Rural Affairs Department,
Room 350, Pentland House,
47 Robb's Loan,
EDINBURGH
EH14 1TY

The Legislation being Reviewed

3. The general principles of animal welfare legislation are set out in the Protection of Animals Acts. The first Protection of Animals Act in Scotland was passed in 1912. These Acts cover domestic and captive animals and make it an offence to cause any unnecessary suffering to an animal. Although the 1912 Act has been amended over the last 90 years, it remains in many respects legislation designed to deal with the ill-treatment of animals during the 19th Century. This is reflected in the prominence that the Act gives to such things as forbidding the use of dogs for draught purposes on public highways, overloading horse drawn carts, beating and over-riding animals. The provisions relating to transport, fighting and

baiting were restated, and it was made an offence to subject an animal to any operation performed without due care and attention.

4. The Act also dealt with the regulation of knackers' premises, the provision of food and water for impounded animals, restrictions on the sale and use of poisoned grain, the inspection of spring traps for catching hares and rabbits and the power of a constable to order the destruction of an injured animal.

5. The laws protecting domestic, captive or managed animals that we are specifically seeking to consolidate and modernise are the:-

- Protection of Animals (Scotland) Act 1912 and amendments
- Performing Animals (Regulation) Act 1925
- Pet Animals Act 1951
- Cockfighting Act 1952
- Abandonment of Animals Act 1960
- Animal Boarding Establishments Act 1963
- Riding Establishments Acts 1964 and 1970
- Agriculture (Miscellaneous Provisions) Act 1968 – Part 1
- Breeding of Dogs Acts 1973 and 1991
- Dangerous Wild Animals Act 1976
- Animal Health Act 1981
- The Deer (Scotland) Act 1999
- Breeding and Sale of Dogs (Welfare) Act 1999

Why Consolidate and Modernise the Legislation?

6. Since the 1912 Act was implemented there has been increasing public awareness that an animal does not suffer solely as a result of physical abuse caused by deliberate acts or neglect. There is equal concern about the quality of an animal's life and the need for legislation that will provide for animals' physiological and other needs. It is felt, at least by some animal welfare organisations, that mainly due to legislation from the European Union, these needs have to an extent been addressed in the laws now in place for farm livestock, animals in transit, and animals in zoological collections. However, there is some real concern that the legislation for domestic, companion or pet, sport and captive animals is confusing, unwieldy, insufficient and outdated.

7. The Scottish Executive considers that these concerns need to be addressed and that there is considerable scope to modernise, strengthen and improve our current legislation. We wish to consult widely with organisations and individuals about the welfare of all animals kept by people as the first stage in our proposals to consolidate and modernise the legislation in Scotland covering the welfare of domestic, companion or pet, sport and captive animals. This will give us an opportunity to hear what changes consultees would like to see and to bring shortcomings in the existing legislation to our attention.

Issues which can be Raised in the Consultation

8. We wish to see this consultation on the welfare of animals kept by people to be as wide ranging as possible. As stated in paragraph 2, the welfare of animals used in scientific research is a matter reserved to the Westminster Parliament, over which Scottish Ministers have no power and responsibility and is thus outside the scope of this consultation. The welfare of wild animals not in captivity and the legislation on dangerous dogs is not part of this consultation as this is mainly legislation on public safety rather than animal welfare. However, with these few exceptions, no limits have been set to the areas which can be suggested as suitable for inclusion in any forthcoming animal welfare legislation, including the welfare of wild deer in Scotland where they are managed (in control terms).

9. We are keen to hear your ideas and suggestions for ways to improve the existing animal welfare legislation. A list of consultees is appended at Annex B. However, if you think that this paper should be consulted please feel free to distribute this paper more widely. This consultation will give respondents the opportunity to assist us to identify the current shortcomings and to tighten and strengthen the rules and regulations which are there to ensure that animals are not ill-treated, either deliberately or by omission. We are keen to ensure that any new legislation will mean that those responsible for animals are fully aware of these responsibilities and are knowledgeable about how to care for the animals.

10. There are a number of specific issues on which we wish to hear your views, some of which have featured in recent correspondence with the Scottish Executive. The areas which we consider could be included in any future legislation are listed below. This list is by no means exhaustive and the topics have not been placed in any order of priority.

The Definition of “Animal”

11. For the purpose of any animal welfare legislation we are considering defining an animal as “any non-human vertebrate, cephalopod, or crustacean kept by, owned by, managed or dependent on people”. Cephalopods are certain types of marine molluscs, such as octopuses, squids and cuttlefish. Crustaceans include lobsters, crabs, shrimps and prawns. “Managed or dependent” will not include the intermediate feeding of wild animals or the management of river fisheries, but would include fish farming. Do you agree with this definition?

An Obligation to Ensure Good Welfare

12. We believe that anyone responsible for animals should have a duty to secure and promote the welfare of those animals. This should require them to ensure that, in addition to the animals’ physical needs, the physiological and behavioural needs of the animals are met in accordance with good animal management practice and scientific knowledge. Such an obligation goes much further than current legislation and views on whether this is desirable and practical are sought.

Abandonment

13. It is important that proper provision should be made for the welfare of an animal by its owner or keeper and that failure to do so can lead to very serious welfare problems. We are interested in views on whether a specific offence should be created to deal with people who abandon animals or introduce captive animals to the wild without first taking due regard to their welfare.

Animal Fighting

14. It is our intention to prohibit animals being kept or trained for the purpose of fighting or baiting and that no person shall be allowed to promote, organise or attend an organised fight between animals or between man and animals. We do not intend to make this prohibition apply to any animal kept or trained to assist in the hunting of game or of other wild animals. Additionally, no one should be permitted to make a financial gain from organising, participating in or betting on animal fighting or cruelty. Do you agree with this proposal? Are there any other exceptions which you think need to be made?

Animals in Circuses/Performing Animals

15. Currently all performing animal acts should be registered under the Performing Animals (Regulation) Act 1925 but the legislation is regarded as being outdated and of little value as animal welfare legislation. We are interested to hear your views on whether regulations should be extended to require that all performing animal acts be licensed and subject to a regular inspection by a local authority. Additionally we seek your views on whether restrictions should be placed on the species of animals allowed to participate in performing animal acts. If so which animals could be allowed to perform?

Dangerous Wild Animals in Captivity

16. The Dangerous Wild Animals Act 1976 regulates the private keeping of specified animals by means of a licensing regime administered by local authorities. The Act does not prohibit keeping such animals, but the issue of a licence does require that those keeping them have the appropriate skills and facilities to secure public safety and the welfare of the animals. The Act was put in place in response to the growing number of people keeping exotic animals as pets, particularly large cats. Its broad purpose is to protect the public although there are associated animal welfare provisions to ensure that the animals are properly cared for.

17. Growing anecdotal evidence has suggested a high level of non-compliance and a report by the International Zoo Veterinary Group (IZVG) concluded that the Act had been broadly effective as there had been no reported serious injuries to the public. There was, however, compelling circumstantial evidence to support claims of significant non-compliance. They pointed to the view of many keepers that the controls extended to non-dangerous animals, some of which are now farmed, and

widespread disparities in licence and inspection fees set by local authorities. They also identified weaknesses in the enforcement of the Act leading to fears of widespread flouting of its provisions and hearsay evidence that some local authorities were adopting blanket policies to refuse all licence applications.

18. We are considering amending the legislation to update the list of controlled species, to improve enforcement and to issue revised guidance to local authorities. The changes under consideration are:

- Amend the list of species in the Schedule of the Act so as to remove the animals that are unlikely to pose a serious risk to humans (such as some primates like titis; the woolly, broad nosed gentle and grey gentle lemurs; owl and squirrel monkeys), and those covered by other controls (e.g. farmed ostriches and wild boar which are already subject to separate controls applying to domesticated farm stock). We would like to add others – particularly some species of poisonous snakes (the Argentine black-headed snake, the South American green racer, the Peruvian racer, and the Amazon false viper), the Hemiscorpius lepturus scorpion and the dingo. Views are particularly welcome on whether other species should be added or deleted.
- Introduce a requirement for local authorities to have regard to guidance issued by the Scottish Ministers. The absence of up to date guidance on the operation of the Act has been a cause of confusion and inconsistency. We thus propose to issue guidance on the provisions of the Act as amended to which local authorities would be obliged to have regard.
- Increase the validity of licences from one calendar year to 48 consecutive months, so as to ease the bureaucratic burden for both keepers and local authorities.
- Add new mandatory conditions to all licences requiring the keeper to provide evidence annually of valid public liability insurance (such evidence is already required for the present annual licence) and to notify the local authority of any births, deaths, acquisitions, disposals or escapes of kept animals.
- Restrictions on the sale of controlled animals – vendors could be prohibited from selling controlled animals to an unlicensed keeper.
- Require local authorities to issue licences unless there are genuine reasons not to do so, and to specify their reasons where licences are refused.
- Amend the current provisions or introduce guidance on fees to clarify that the fees be set at no more than the level necessary to cover the cost of inspection, administering and enforcing the scheme. At the moment there is evidence of a wide disparity in the fees charged by local authorities.
- The inspections required before granting a licence would no longer have to be undertaken by veterinary surgeons or practitioners, but inspectors would still have to be competent and independent. Zoo keepers and others might fulfil this role. We also propose that the inspections must be undertaken

every two years (instead of annually when the licence is renewed at present), with the option of greater frequency if the local authority has good reason.

- Increase powers of entry to allow local authorities to enter premises where they have good reason to believe animals are being kept without a licence.
- Give keepers a right of appeal against seizure and disposal of their animals. At present local authorities have power to seize and destroy animals kept in contravention of the Act or where licence conditions have not been complied with, with no right of appeal. It would be consistent with natural justice for keepers to be given the right of appeal against such action taken by the authority.
- Clarification or amendment of the “72” hour rule. This rule requires a local authority proposing to attach a condition to the licence permitting animals to be moved to premises outside its boundary for more than 72 hours to consult the local authority in which the other premises are located. The intention was that animals could be moved for veterinary purposes, to film and TV studios and to fairs, but would ensure greater safeguards for periods of longer than 72 hours. This remains a reasonable objective. However, in practice the provisions are open to misunderstanding and could result in animals being kept in unsuitable, unlicensed premises. Views are sought on whether the flexibility necessary for short visits away from licensed premises could be achieved by licence conditions alone, with all premises used to house animals covered by licences, or whether a change in the Act is necessary.
- Recovery of costs arising from escapes – local authorities will be entitled to charge a keeper their reasonable costs incurred in the recovery of an escaped animal.

19. Consultees are invited to comment on these proposals and to offer other ideas or suggestions to improve the scope and enforcement of the Act.

The Sale of Young Companion or Pet Animals

20. The sale of dogs from dog breeding establishments is presently regulated and these establishments are required to be licensed by local authorities. There are no similar provisions relating to the sale of kittens and the trade in young puppies and kittens by dealers who purchase these animals outside the UK for resale in Scotland and elsewhere in the UK is unregulated. We are aware of the potential for serious welfare problems and wish to see an end to any unregulated trade. We wish to ensure that companion animals sold by dealers are covered by the same welfare regulations which apply to puppies sold from licensed dog breeding establishments.

21. Do you agree that any trade in the sale of young companion animals needs to be licensed? If so what conditions should be placed on the granting of a licence? Any views on how to define a “dealer” would be welcomed.

22. The present regulations deal with dog breeding establishments but we are aware that as pedigree cats have increased in popularity and value there are establishments involved in the businesses of breeding kittens for sale. It seems that there is a valid argument to extend the existing legislation regulating the breeding and sale of dogs to include cats.

23. Do you agree? Should it be further extended to include other companion or domestic animals such as birds?

Pet Shops

24. There are concerns that children as young as 12 are legally able to purchase animals from pet shops, possibly on a whim and without parental consent. However, more responsible pet shops already refuse to serve unaccompanied children under the age of 16. To help educate prospective purchasers in the care and welfare needs of animals we are considering introducing a provision which will require the vendors of pet animals to issue information leaflets.

25. The requirements of the Dangerous Wild Animals Act 1976 do not apply to animals for sale or display in pet shops and this has been an area of concern to some organisations. Whilst most pet shops do ensure that any animal which falls within the scope of the Dangerous Wild Animals Act 1976 is properly housed and contained there is no statutory requirement to do so.

26. Do you agree that the minimum age at which people can buy animals or be the legal owner of animals be raised? If so to what age?

Should pet shops be required to issue written information on the care and welfare of all animals they sell?

What changes need to be made to the Pet Animals Act 1951 to ensure that dangerous wild animals on display or for sale in pet shops do not present a danger to the public?

Is there a need for specialists to inspect pet shops where exotic animals are for sale or on display?

What further changes are needed to the Pet Animals Act 1951 and how can the licensing conditions be improved?

Is there a need to introduce a statutory code of practice for pet shops which could include guidance on the competence of staff on animal handling and those offering advice to members of the public?

Pet Fairs

27. Pet shops are already licensed but the current legislation is ambiguous on how it should apply to pet fairs where animals are sold. There are three main types of pet fairs:- birds, fish and reptiles. We believe that local authorities should licence the organisation responsible for organising the event and therefore place these events on a similar legislative footing as pet shops and ensure that similar standards of welfare would apply.

28. Do you agree that there should there be greater regulatory control over public and private pet fairs?

Keeping Exotic or Dangerous Animals as Pets

29. In recent years there has been an increase in the number of exotic or dangerous animals kept as pets, such as reptiles. Sometimes their owners do not understand the appropriate care that these animals need, or that they have the potential to inflict serious injury or cause illness.

30. Should there be greater controls over the buying and selling of exotic or dangerous animals?

If so what animals should be included and what controls should be introduced?

Shoeing of Horses

31. “Couping” is a term used to describe the uneven shoeing of horses designed to cause them to alter their stance. In the Clydesdale horse showing, a stance with hind legs close together is considered desirable and if horses do not have this stance naturally “couping” is sometimes used to “correct” the stance by building up one side of the shoe. In extreme cases only one side of the hoof is shod, but the term can also include fairly minor adjustments to a normal shoe. Uneven shoeing could cause injury to the ligaments, tendons or joints, however, asymmetric shoeing is a recognised and accepted technique for treating conditions of the foot and for correcting conformational defects in other breeds of horses.

32. The Clydesdale Horse Society and the Farriers Registration Council have produced guidelines which limit the amount of “couping” which is considered acceptable when shoeing Clydesdales to give lift to the outside heel. However, this is still a controversial matter and we are interested to hear your views on this issue.

Greyhound Racing

33. Some welfare concerns have been raised regarding a predominantly betting industry led business regulating itself with regard to the welfare of dogs. The National Greyhound Racing Club (NGRC) works to a Code of Practice and regulates one of the greyhound racing tracks in Scotland. The other tracks are independent tracks, unregulated and do not require that veterinary cover is in place at all races.

34. Do you believe that all greyhound racing courses should be licensed in animal welfare terms?

Do you think that a veterinary surgeon needs to be present at all greyhound races and should all dogs be inspected by a vet before and after each race?

Should there be a limit on the frequency that dogs can race?

What responsibility should be placed on the dog owner to ensure that the welfare of the dog is covered when its racing career is over?

The Welfare of Captive Pheasants that are being Bred for Sport Shooting

35. Farmed birds, primarily reared for consumption are subject to the provisions of the Agriculture (Miscellaneous Provisions) Act 1968 and associated welfare codes. However, game birds reared for sport shooting are not subject to the same provisions. There has been some recent concern about the welfare of game birds, it would seem appropriate to make the industry subject to similar provisions as those in the Agriculture (Miscellaneous Provisions) Act 1968. This would give Ministers the power to introduce a statutory code of practice which would remove the apparent anomaly between birds reared for food and those primarily reared for sport shooting.

36. Do you think that this is the most appropriate way forward?

Tail Docking and Mutilations

37. Generally, we believe that animals should not be subjected to any kind of mutilation, except where justified to avoid suffering or to improve welfare. Thus consideration is being given to a proposal to ban or restrict the docking of dogs' tails for prophylactic or preventative purposes. There may be arguments for retaining the practice for those dogs whose tails are particularly prone to injury (e.g. certain working dogs). However, it is considered appropriate to make a provision which would give the Scottish Ministers the power to ban or restrict certain mutilations and, where appropriate, to introduce a code to regulate the competency of non-veterinarians permitted to undertake mutilations (e.g. the removal of dew claws).

38. Do you think that the docking of tails should be banned? Should exceptions be permitted, and if so, in what circumstances?

Markets

39. Under existing regulations there is no requirement to licence places where animals are gathered and sold. Most markets operate to high standards, treat animal welfare as a very serious issue and are regularly visited by local authority animal health officers and inspectors from the Scottish Society for the Prevention of Cruelty to Animals (SSPCA). As indicated in an earlier consultation, issued in February 2003, "Animal Disease Control: Proposals for Legislation in Scotland", we are considering the introduction of a provision which would make animal markets subject to licensing by the Scottish Ministers or local authorities. This would apply both to permanent markets for the sale of farmed livestock and other places where animals (livestock and other animals) are bought and sold on an occasional basis.

40. The Scottish Ministers would be able to make regulations to set out conditions under which animals may be sold. The detailed regulations may vary between species but could include the design, operation, cleanliness and biosecurity of the places of sale and the competence and qualifications of animal handlers.

41. In the earlier consultation there was general agreement of the need to licence markets. Do you agree and what conditions should be met before a licence should be issued?

Animal Sanctuaries

42. Animal sanctuaries are not subject to any regulation and most are run as independent organisations or charities by people who have the welfare interests of the animals as the overall objective. However, there have been cases, despite the best of intentions, where the facilities for the animals have fallen short of acceptable welfare standards. In some cases animals have been found to be suffering from severe neglect. We think that there is considerable support for the licensing of such establishments. Do you agree?

Livery Stables and Yards

43. Riding establishments and animal boarding establishments for cats and dogs are regulated but livery yards for horses are not and we need to consider addressing this apparent anomaly. Do you think that livery yards should be licensed in the same way as other animal boarding establishments?

Tethering of Horses

44. It has been suggested that some horses are tethered in situations which is likely to cause them suffering. We believe that it is appropriate to issue a statutory code of practice which would provide guidance on the tethering of all equines. Would this be sufficient or do you believe that specific regulations are required?

Power to Seize Animals

45. Our previous consultation paper proposed to give statutory powers to local authorities to remove neglected farm livestock, which are suffering or at risk of suffering, to a place of safety. From the comments we received it was clear that many organisations felt that this provision was far too narrow. We now intend to increase the scope of this provision to cover all animals, not just agricultural animals. All the other provisions and safeguards would still apply, including the need to obtain a warrant from a Sheriff. The Sheriff would be required to have regard to protecting the interests of the owner who would have the right of appeal. Views on this significant increase in the scope of this provision are sought.

Human Rights

46. Under Section 31(1) of the Scotland Act 1998, a Minister of the Scottish Executive must, on introducing a Bill in the Scottish Parliament, state that in his/her view the provisions of the Bill would be within the legislative competence of the

Scottish Parliament. To be within legislative competence, a Bill's provisions must, among other things, be compatible with the "convention rights" – those rights drawn from the European Convention on Human Rights (ECHR). In addition, the Presiding Officer of the Parliament must decide whether the provisions would be within the legislative competence and state his view.

47. In the light of responses to this consultation on possible new animal welfare legislation, and before issuing a draft Bill for further consultation, the Minister would consider again the ECHR implications of such proposals and, in doing so, must strike a balance between the rights and obligations of animal keepers and the need to ensure that the welfare of animals is adequately protected.

Sustainable Development

48. Sustainable development is an important element of Executive policy. It is about combining economic progress with social and environmental justice. The key priority areas of resource use, energy and travel were set out in the Executive's statement on sustainable development, "Meeting the Needs.... Priorities, Actions and Targets for Sustainable Development in Scotland" published on 30th April 2002. The proposals on possible animal welfare legislation in this consultation document, or more particularly the way that they are taken forward, needs to combine economic, social and environmental objectives. If there are any such issues to consider, whether direct or indirect, which the possible legislation should address, then we would be pleased to hear of them.

Equal Opportunities

49. When presenting possible new legislation to the Scottish Parliament, the Executive is required to submit a Policy Memorandum that assesses the effect that the enactment of the Bill would have on equal opportunities. The Executive places significant emphasis on its Equality Strategy which includes the following: "Ensuring that all policy, decisions etc. have taken full account of the needs of different equality groups and considered the impact of policies on different groups". The proposals on possible animal welfare legislation in this consultation document do not appear to have any direct impact on equal opportunity issues. However, we would welcome your views on the impact these proposals may have regarding guide or other assistance dogs.

Regulatory Impact Assessment

50. If these changes to legislation are implemented there would be cost implications for those with commercial interests in animals, enforcement agencies, the judicial system, animal sanctuaries and the general public. A draft partial Regulatory Impact Assessment (RIA) has been prepared (Annex A) and a further partial RIA will be prepared prior to commencing a public consultation on a draft Bill later in the year.

Conclusion

51. This Consultation Paper is being sent to animal welfare organisations, representatives of those who use animals for commercial purposes and representatives of local authorities and the police. A list of the organisations being consulted is attached at Annex B. However, we welcome comments from anyone. If there is any organisation not included on this list that you think would like to contribute then please make them aware of this paper which is also available on the Scottish Executive web site.

52. The comments we receive on this consultation will be analysed and assessed. Subsequently Ministers will decide on how to proceed and your comments would help the Scottish Executive prepare any draft Bill which would be issued for a further more detailed consultation.

**ANIMAL HEALTH & WELFARE DIVISION
THE SCOTTISH EXECUTIVE
ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT**

MARCH 2004

1. TITLE OF PROPOSAL

Proposals to Revise Existing Animal Welfare Legislation

2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

Issue: The general principles of animal welfare legislation are set out in the Protection of Animal Acts which make it an offence to cause any unnecessary suffering to an animal. Since the first of these Acts was implemented in Scotland in 1912 (similar legislation in England and Wales dates from 1911), they have been amended on a number of occasions. In many respects the legislation remains designed to deal with the ill-treatment of animals during the 19th century: the 1912 Act was intended to consolidate legislation from that century. Since that Act was implemented there has been increasing awareness that an animal does not suffer solely as a result of physical abuse caused by deliberate acts or neglect and that there is a need to safeguard their physiological and other needs. Some of these needs have, to an extent, been addressed in legislation that has been introduced for farm livestock, animals in transit, and animals in zoological collections. However, there remains concern that the welfare needs of domestic, companion or pet, sport and captive animals are not being adequately provided for. Further, the legislation for these animals does not reflect modern day practices and there are a number of anomalies in the legislation concerning animal boarding and riding establishments. Additionally there is real concern that the legislation for domestic, companion or pet, sport and captive animals is confusing, unwieldy, insufficient and outdated.

Objective: Responses to a consultation to amend the Protection of Animals (Scotland) Act 1912, issued on 21 March 2003, indicated the clear desire for wide reform of existing animal welfare legislation. Scottish Ministers have agreed that wider amendments should be made to the animal welfare legislation when a suitable opportunity arises. A revision of the existing animal welfare legislation would aim to modernise, strengthen and improve the current legislation and to prevent cruelty on any animal and promote the welfare of all animals, including domestic pets for which people are either permanently or temporarily responsible, including owning, managing or in any way keeping any animal, including buying, selling and transporting.

Risk assessment: The revision of the legislation will impact on the number of prosecutions that are brought under the Protection of Animals (Scotland) Act 1912. It will also reduce, in the long term, the number of animals that have to be rescued or picked up and the number of cruelty cases that are investigated.

3. BUSINESS SECTORS AFFECTED

The revision of the welfare legislation will affect businesses that own, manage, or in any way keep an animal, including buying, selling and transporting it. This includes a very wide range of businesses, from farmers to specific types of businesses that own and manage specific types of animals, undertake specific activities with them, or provide specific accommodation for them. The review will also affect a range of businesses that are not affected by the licensing and regulation provisions in the current legislation: cat breeding establishments, importers of cats and dogs from abroad for sale in the UK, livery yards, animal sanctuaries, pet fairs and greyhound race tracks.

4. ISSUES OF EQUITY AND FAIRNESS

Changes to the current legislation will have initial cost implications for those with commercial interests in animals, enforcement agencies, the judicial system, animal welfare organisations and charities and the general public. The review of the guidance will ensure that animal establishments that currently own, manage, or in any way keep an animal, including buying, selling and transported are all covered by legislation to ensure the welfare of animals that they own, manage or in any way keep. It will address anomalies in the current legislation whereby some establishments are licensed and others are not. It will also achieve a better regulation of a number of types of premises where animals are kept (such as circuses whether on the road or in quarters, pet fairs, animal sanctuaries, greyhound-racing tracks), and welfare standards in pheasant rearing and livery yards. A revision to the current legislation will also benefit society in a number of ways by ensuring that a much wider range of animals are better cared for. They would be less likely to stray, create a public nuisance, display aggression and be prone to disease or injury. There would be a variable impact on charities. Changes to the legislation would encourage the better care of animals in the long term and there would be a reduction in the number of animals that were taken into the care of sanctuaries. Charities that are actively engaged in taking action against those who are guilty of cruelty or negligence would likely find – at least in the short term - an increase in the volume of their work.

5. CONSULTATION WITH SMALL BUSINESSES (THE ‘LITMUS TEST’)

We currently do not have enough information on the size of all the businesses that are covered by current animal welfare legislation or those that would now be included by changes to that legislation to carry out a full analysis of the impact on small firms. We expect that the consultation exercise will provide the level of detail required to create a more informed view.

Small business stakeholders are requested to comment on the potential impact on them of the amendments to the current animal welfare legislation proposed in the consultation paper. We shall consider further stakeholder engagement, through meetings with interested stakeholders, including animal welfare organisations,

farmers, animal charities, animals businesses etc., to ensure that we are fully informed of the consequences of any legislative changes.

6. OPTIONS

Option 1: No change to existing legislation.

Option 2: Impose a voluntary code of practice/self-regulation.

Option 3: Revise existing animal welfare legislation and introduce legislation aimed at consolidating and updating much of the animal welfare legislation in Scotland.

7. RISKS, BENEFITS AND COSTS OF THE OPTIONS

Risks and benefits:

Option 1: No benefits.

A number of organisations have already indicated to the Scottish Executive that the Protection of Animals Act 1912 has ceased to meet the needs of modern day society to look after the welfare of a range of animals. The pressure to amend the current legislation, and to consolidate and update it, is bound to increase if the Executive takes no action. The need to modernise our legislation will be intensified in light of developments by the Department for Environment, Food and Rural Affairs (Defra) which intends to publish a draft Animal Welfare Bill for consultation in the first half of this year. This Bill would consolidate and bring-up-to date legislation that would apply in England and Wales. It would be undesirable to have outdated and outmoded legislation in Scotland which fails to meet modern day animal welfare needs and which is unwieldy and difficult to work with when these issues have been addressed in England and Wales.

Option 2: No benefits.

The Protection of Animals (Scotland) Act 1912 deals with those who cause unnecessary suffering through either deliberate cruelty or neglect. This cannot be addressed through self-regulation. There are already some voluntary codes of practice for commercial undertakings such as pet traders and livery yards but no mechanism exists to see that they are properly policed.

Option 3: This option would bring a number of benefits.

The consultation is intended to be as wide ranging as possible. It focuses on a number of specific issues which could be included in future legislation. The benefits that would arise from the revision of the legislation would be dependant on the results of the consultation responses. As outlined in the consultation paper, they could include the following benefits:

- Provide clearer legislation which would make compliance easier for business and government.
- Benefit animals, to prevent cruelty on any animal and promote the welfare of all animals.
- Improve the existing animal welfare legislation by identifying gaps that would modernise specific provisions of animal welfare suited to the 21st century.

More specifically:

- The definition of an 'animal' may enable legislation to be applied to a wider range of animals than at present.
- Provide an obligation to secure and promote the welfare of animals in accordance with good management practice and scientific knowledge.
- Provide for a specific offence for the abandonment of an animal by its owner or keeper.
- Strengthen and extend the current provisions relating to animal fighting.
- Strengthen the current legislation relating to the regulation, licensing and inspection of animals in circuses/performing animals.
- Amend the Dangerous Wild Animals Act 1976 to update the list of controlled species, to improve enforcement and to issue revised guidance to local authorities.
- Extend the current regulations for the licensing of dog breeding establishments to the sale of young companion or pet animals, including the trade in young puppies and kittens imported by dealers for resale in Scotland and elsewhere in the UK.
- Extend the regulations that deal with dog breeding establishments to those that breed cats.
- Strengthen the current legislation relating to pet shops and improve current practice. This may include strengthening licensing conditions, increasing the age at which children can purchase pets, ensuring that dangerous wild animals whether for sale or display do not present a danger to the public, improving the competence of staff on animal handling and educating prospective purchasers in the care and welfare needs of animals.
- Provide greater regulatory control over public and private pet fairs.
- Provide greater controls on the buying and selling of exotic or dangerous animals.
- Regulate the coupling of horses.
- Provide for the licensing of greyhound racing in animal welfare terms and for the conditions of racing dogs during their racing career and after it.
- Strengthen the legislation relating to game birds so that they are brought under similar provisions as those of farmed birds.
- Ban or restrict the docking of dogs' tails for prophylactic or preventative purposes.
- Make regulations that set out conditions under which animals may be sold at permanent markets for the sale of farmed livestock and other places where animals (livestock and other animals) are bought and sold on an occasional basis.
- License animal sanctuaries.

- License animal livery yards in the same way as other animal boarding establishments.
- Introduce a statutory code of practice which would provide guidance on the tethering of all equines.
- Give statutory powers to local authorities to remove neglected animals (not only farm livestock) which are suffering or at risk of suffering, to a place of safety.

Costs to businesses

Option 1: There would be continued high costs to rehome inappropriately sold pets or cure mis-treated animals.

Option 2: As option 1.

Option 3: Some businesses that are not subject to regulation under the current licensing/registering arrangements are to be regulated and they will incur additional costs to meet minimum welfare standards as set in licensing conditions. There will be a licence fee set by the local authority to cover administration, inspection and enforcement costs. However, depending on size of business/activity it is possible that in some cases for existing licensed establishments the cost burden could be reduced as annual inspections may be replaced by less frequent inspections. The additional licensing work will result in a heavier work load for local authorities. There would also – at least initially – be more animal welfare cases being brought before the courts. However, in the long term, there is likely to be significant savings on enforcement and judicial costs as the bill would encourage a more responsible attitude to animal ownership. The putting in place of mechanisms to increase regulation and making the public more aware about the need to be pro-active in good animal care would be key to reducing prosecutions. These would take some time to impact on the level of offences from the time of the passing of new animal welfare legislation.

8. COMPETITION ASSESSMENT

The position will be considered once proposals are clearer.

9. MONITORING AND REVIEW

The Scottish Executive will consider proposals from stakeholders for any changes to the legislation that they consider necessary in the light of their experience, and the effectiveness of the current legislation.

10. CONSULTATION

Stakeholders are invited to comment on the consultation on animal welfare legislation and the Draft Partial Regulatory Impact Assessment and to provide

information on the potential costs and benefits to them (both monetary and non-monetary) of the amendments to current animal welfare legislation.

After the responses to this consultation have been received and collated, they will be summarised, omitting those where confidentiality has been requested, and this summary will be circulated to consultees and be made available on the Scottish Executive website. The responses received will be used to review policy proposals and produce a draft Bill. A further consultation exercise on the draft Bill including a partial RIA is also planned.

LIST OF ORGANISATIONS CONSULTED

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Aberdeenshire Larder
Aberdeenshire Poultry Ltd
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ABP (Perth) Retail
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Allandale Animal Sanctuary
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Association of British Riding Schools
Association for the Preservation of Rural
Scotland
Association for the Study of Reptilia and
Amphibians
Association of Chief Police Officers in
Scotland
Association of Circus Proprietors of
Great Britain
Association of Deer Management
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Association of Parliamentary Group for
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ANNEX B

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Beekeeping Associations throughout
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Belted Galloway Cattle Society
Biggar Abattoir Company
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Birnie Bird Rescue
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Blackface Sheep Breeders Association
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Association
Borders Animal Welfare Association
The Born Free Foundation
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British Association for Shooting &
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British Bavarian Warm Blood Society

British Bloodstock Agency (UK) Ltd
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British Deer Farmers Association
The British Deer Society
British Dog Breeders Council
British Domesticated Ostrich
Association
British Dressage
British Equestrian Federation
British Equestrian Trade Association
British Equine Veterinary Association
British Falconers' Club – Scottish
Branch
British Finfish Farming Association
British Goat Society
British Greyhound Racing Board
British Greyhound Racing Fund
British Hamster Association
British Herpetological Society
British Horse Driving Trials Association
The British Horse Industry
Confederation
British Horse Society – Approved riding
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British Horseracing Board
British House Rabbit Association
British Lipizzaner Horse Society
British Palomino Society
British Percheron Horse Society
British Poultry Council
British Rabbit Producers Association
British Retail Consortium
The British Romagnola Cattle Society
Ltd
British Show Hack, Cob & Riding Horse
Association
British Show Jumping Association
British Skewebald & Piebald Association
British Small Animal Veterinary
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British Society of Animal Production
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**SCOTTISH EXECUTIVE
MARCH 2004**



SCOTTISH EXECUTIVE

Environment and Rural Affairs Department
Agriculture Group

Pentland House
47 Robb's Loan
Edinburgh EH14 1TY

To: Agricultural related organisations, animal welfare organisations, trades and veterinary interests, local authorities

Telephone: 0131-244 6482
Fax: 0131-244 6616
Animal.health@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

Your ref:
Our ref:

March 2004

Dear Sir or Madam

I am writing to invite comments on the enclosed consultation document "Proposals to Revise Existing Animal Welfare Legislation".

Last year, the Scottish Executive issued a consultation paper on proposals to amend the Protection of Animals (Scotland) Act 1912. The responses from a number of organisations have shown a clear desire for a much wider reform of our existing animal welfare legislation. This consultation seeks views on how the existing legislation can be improved to prevent cruelty to any animal and to promote the welfare of all animals, including domestic pets.

Separately last year, the Executive issued a consultation paper "Animal Disease Control: Proposals for Legislation in Scotland". Scottish Ministers are considering the responses to that consultation, and subject to further public consultation may decide to promote combined animal health and welfare legislative changes.

In order to give interested parties sufficient time to consider the consultation on "Proposals to Revise Existing Animal Welfare Legislation", there is a thirteen-week period for responses. If you wish to make comments on the issues covered by the document, please send them to the following address by 2nd July 2004:

Heather Holmes, Animal Health & Welfare Division,
Scottish Executive Environment and Rural Affairs Department,
Room 350, Pentland House,
47 Robb's Loan,
EDINBURGH
EH14 1TY

If you have any queries contact Heather Holmes on 0131 244 6179.

You can, if you prefer, submit your response by e-mail to:- animal.health@scotland.gsi.gov.uk



It is possible to access this consultation online. If you wish to do so, go to <http://www.scotland.gov.uk/view/views.asp> You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

If you would like a copy of this consultation document in an alternative format, such as large print, Braille, audiotape or disc, or in a community language, please get in touch with Heather using the contact details above. We expect that most respondents will find it easier to send in a written response, but if you would find it easier to respond in some other way (such as by telephone, by audiotape or at a meeting) please get in touch with Heather.

A new e-mail alert system for SE consultations (SEconsult) was launched in December 2003. This system will allow stakeholder individuals and organisations to register and receive a weekly e-mail containing details of all new SE consultations (including web links). SEconsult will complement, but in no way replace SE distribution lists, and is designed to allow stakeholders to “keep an eye” on all SE consultation activity and, therefore, be alerted at the earliest opportunity to those of most interest. We encourage you to register as soon as possible.

We will make all responses available to the public in the Scottish Executive Library by 30th July 2004, unless confidentially is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

Yours faithfully

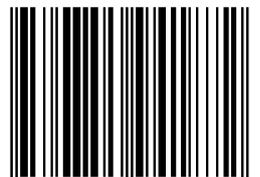
Ian W Strachan
Animal Health and Welfare Division

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