



**Written evidence from Association of Lawyers for Animal Welfare
and Wildlife and Countryside Link**

Introduction and background

The purpose of this document is to provide written evidence to the House of Lords EU Energy and Environment Sub-Committee inquiry “Brexit: farm animal welfare” launched on 17 March 2017. This paper will focus primarily on the questions raised by that inquiry.

This submission has been co-ordinated by the Association of Lawyers for Animal Welfare (ALAW) and Wildlife and Countryside Link on the basis of input from the following organisations:

- Compassion in World Farming
- Four Paws UK
- Friends of the Earth England
- Humane Society International – UK
- RSPCA
- Woodland Trust
- World Animal Protection
- Crustacean Compassion

What impact will Brexit have on assurance and standards in relation to farm animal welfare?

Most UK legislation on the welfare of farm animals is based on European Union law.

EU directives lay down minimum standards for the protection of animals bred or kept for farming purposes. These consist of species specific Directives (in relation to pigs, calves, broiler chickens and laying hens) and a general Directive dealing with other animals not otherwise covered by the species specific Directives.

These Directives have been implemented into UK law by domestic legislation (as Directives they do not have direct effect and therefore required domestic implementing legislation).

When the UK leaves the EU this implementing legislation will not be automatically repealed so the current standards contained within this domestic legislation will remain.

It should be noted that in some instances the UK has implemented (via domestic legislation) higher standards than the baseline set by the EU, and these higher standards will, of course, remain too.

EU Regulations exist that set baseline standards for the EU for the transport of live animals and protection at the point of slaughter. Further, EU Regulations lay down rules for the labelling of some foods consisting of or containing products of animal origin.

As EU Regulations, these laws have direct effect in Member States and did not require domestic implementing legislation. The Great Repeal Bill will incorporate these EU Regulations into UK law but allows the Government (via Henry VIII clauses) to amend them. From a legal perspective, this means that Brexit will not immediately affect the current farm animal welfare standards in place in the UK but the standards could be weakened post May 2019 by secondary legislation.



Is a decline in farm animal welfare standards post-Brexit inevitable?

The UK was a world leader in farm animal welfare long before it joined the EU. For example, in 1965, the UK government commissioned an investigation, led by Professor Roger Brambell, into the welfare of intensively farmed animals. The Brambell report led to significant advances in farm animal welfare in the UK including the Agriculture Act 1967.

Once within the EU, the UK continued to be a leader in farm animal welfare by, for example, banning sow stalls 14 years before the EU.

There are both political and business cases for improving animal welfare in UK farming. Secretary of State Andrea Leadsom has said that the UK's Unique Selling Point, both at home and abroad, should include the highest standards of animal welfare.¹² In giving evidence to the Commons Environment Food and Rural Affairs Committee she said: "I will be promoting ever higher animal welfare standards as part of our selling pitch to the rest of the world to buy more UK-produced food".³

Therefore, a decline in farm animal welfare standards post-Brexit is far from inevitable. On the contrary, our view is that Brexit can be seen as an opportunity to retain and improve upon farm animal welfare standards in the UK in line with consumer expectations whilst also positively contributing to the UK economy. We explain this further in the section below.

Which monitoring bodies will need to be replaced or strengthened?

The EU has a long history of providing scientific information on farm animal welfare to inform legislation through European Food Safety Authority (EFSA), the Scientific Committee on Animal Health and Welfare (SCAHAW) and the Scientific Veterinary Committee (SVC). It has produced a number of reports on the welfare of farmed animals, which played crucial roles in influencing legislation, for example the welfare of laying hens⁴ and the welfare of the veal calf⁵. Aside from the Farm Animal Welfare Council (FAWC), no similar independent body exists in the UK and we strongly urge the Government to ring fence funding in order to establish expert groups that can provide scientific scrutiny and advice on animal welfare issues.

Additionally, the Animal and Plant Health Association (APHA), which facilitates animal imports and exports, as well as identifying and controlling disease, should be properly resourced to protect animal welfare and health, and improve biosecurity.

¹ Andrea Leadsom speaking to NFU meeting at Conservative Party Conference 2016. Available at: http://www.npa-uk.org.uk/Post-Brexit_UK_to_be_an_exemplar_for_animal_health_and_welfare_standards-Leadsom.html (Accessed 8 April 2017).

² Andrea Leadsom's oral evidence to House of Commons Environment, Food and Rural Affairs Committee, 19 October 2016. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/the-work-of-the-department-for-environment-food-and-rural-affairs/oral/41680.html> (Accessed 8 April 2017)

³ Ibid.

⁴ Directive 1999/74

⁵ Directive 97/2



What will the Government need to do to ensure continued protection for farm animals across the UK?

Any future agreement with the EU must involve discussion and agreements between all devolved nations within the UK, to ensure that respective issues are understood and benefits recognised to enhance animal welfare.

UK farmers have for many years stressed that, due to EU free movement of goods principles preventing prohibitions or tariffs on imports of goods into the UK, investment in and production from higher welfare systems could be undermined by imports of products coming from countries with lower standards of animal welfare.

A significant redesign of the current CAP system of payments can and should support UK farmers operating at higher levels of animal welfare, and incentivise shifts to higher welfare systems (see question six, below, for a detailed response on this). However, if, after Brexit, the UK is unable to prevent the import of lower welfare products, UK farmers are likely to oppose any strengthening of welfare standards because to do so would continue to put them at a competitive disadvantage and could potentially worsen their situation.

Accordingly, when negotiating new trade agreements – with the EU or others – it is vital that the UK insists on the inclusion of provisions permitting it to require animal product imports to meet UK animal welfare and health standards.

An alternative would be for the UK to impose appropriate measures such as Tariff-Rate Quotas, which would indirectly have the advantage of encouraging exporting countries to meet UK welfare standards.

There have already been declarations of intent to erode welfare standards post Brexit, and the UK Government needs to stand very firmly against this. For example, the US pork industry has already expressed its desire to reduce trade barriers, such as the EU ban on use of Ractopamine, to increase US pork exports to the UK in a post-Brexit UK-US free trade agreement.⁶ Ractopamine is used in 28% of pig meat production in the US; it is a feed additive which causes death, lameness, stiffness, trembling and shortness of breath in farm animals⁷.

Where the UK does not conclude a trade agreement, trade will be governed by the rules of the World Trade Organisation (WTO). WTO case law indicates that countries can require imports to meet welfare standards equivalent to their own provided that there is no element of discrimination that favours domestic producers and no discrimination between different would-be exporting countries, and such standards can apply to farm animals⁸. In the *US-Shrimp* case, the WTO Appellate Body concluded that conditioning market access on the adoption of a programme comparable in effectiveness to that of the importing country is permissible under WTO Article XX, which sets out exceptions to the WTO's prohibition on trade restrictions.⁹ One of those exceptions relates to public morality and in the *EC-Seal Products* case, the Appellate Body ruled that in the EU animal welfare *is* an issue of public morality.¹⁰

⁶ <http://www.politico.com/tipsheets/morning-trade/2017/01/on-the-hunt-for-bilaterals-218492>

⁷ http://www.humanesociety.org/news/press_releases/2014/11/ractopamine-drug-challenged-110514.html
(Accessed 18 March 2017)

⁸ WTO. 2012. DS381/AB/R; WTO 2014; DS 400/AB/R

⁹ Appellate Body Report in *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS 58/AB/RW. 22 October 2001, paragraph 144.

¹⁰ Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R and WT/DS401/AB/R, adopted 22 May 2014, paragraphs 5.167 & 5.201



The significance of these rulings has been recognised by Minister of State George Eustice, who has said: “there are legal precedents and case law to support the use of ethical bans on certain practices and the reflection of animal welfare in trade agreements. I do not believe that anything along the lines that we would propose will cause any difficulty whatever with WTO rules”.¹¹

Therefore, the UK Government needs to take measures to ensure that any imports into the UK meet the same welfare standards set in the UK (or are otherwise subject to a tariff), so that welfare standards in the UK can be protected at no competitive disadvantage to UK farmers. This can be achieved through both trade agreements and WTO rules. This will ensure that UK farm animal welfare standards can be maintained and further improved.

How can the UK remain a world leader in farm animal welfare?

Minister of State George Eustice has highlighted the Government’s manifesto commitment to “place greater emphasis on animal welfare in the design of agriculture policy”.¹² In order to remain a world leader in farm animal welfare, the UK needs to go above and beyond the current standards imposed by the EU baseline. In particular, we would recommend improvements in the following areas:

Recognition of animals as sentient beings in UK law

Article 13 of the Treaty on the Functioning of the EU recognises animals as ‘sentient beings’ and requires the Member States, when formulating and implementing EU policy on *inter alia* agriculture and transport, to “pay full regard to the welfare requirements of animals”. Post Brexit, similar provisions must be incorporated into UK law, for example through amendment to the Animal Welfare Acts of the various parts of the UK.

Further, the definition of “animal” in the Animal Welfare Acts and in the EU derived regulations on Welfare at the Time of Killing should be extended to include decapod crustaceans and cephalopods, in line with the approach taken by other countries, for example Norway, New Zealand and Switzerland. A body of scientific evidence strongly points to the conclusion that both cephalopods and decapods are capable of experiencing pain and suffering¹³.

Ending live exports for slaughter or fattening

Once the UK is no longer constrained by EU rules, it could ban live exports for slaughter or fattening. Preparations can be made now for this ban to come into force the day after the UK leaves the EU. This ban would not apply to breeding animals provided there is provision ensuring that they are transported under genuinely high welfare standards. Provision would also need to be made to ensure that the

¹¹ George Eustice speaking in Westminster Hall debate on 24 January 2017. Available at: <https://hansard.parliament.uk/Commons/2017-01-24/debates/7E2FCDD9-C80D-4488-92C5-1783E703AC45/LeavingTheEUAnimalWelfareStandardsInFarming> (Accessed: 8 April 2017)

¹² Ibid

¹³ Tonkins, B., (2016) “Why are Cephalopods Protected in Scientific Research in Europe?” Working Paper <https://goo.gl/eVHVfy>; European Food Safety Authority (2005) "Opinion on the “Aspects of the biology and welfare of animals used for experimental and other scientific purposes”, The EFSA Journal, 292, 1-46; Appel, M & Elwood, R (2009), 'Motivational trade-offs and potential pain experience in hermit crabs' Applied Animal Behaviour Science, vol 119, no. 1-2, pp. 120-124; Magee, B., and Elwood, R., (2013) "Shock avoidance by discrimination learning in the shore crab (*Carcinus maenas*) is consistent with a key criterion for pain", Journal of Experimental Biology, vol 216: 353-358



Republic of Ireland is not used as a ‘back door’ route for live exports to the continent, whilst protecting genuine trade between Northern Ireland and the Republic of Ireland.

Focusing on dairy cow welfare

Over the last few years, the trend for housing dairy cows all year round has increased, which is in contrast to the traditional system of turning cattle out to graze during the pasture-growing season. However, cows derive a welfare benefit from being turned out to pasture. Accordingly, zero-grazing, whereby cows are confined indoors for all or nearly all of the year, should be phased out.

We recognise there will be instances where some cattle may need to be housed because they require special attention to ensure that their specific health and welfare needs are met, for example post lactation or for other health reasons. The welfare of the dairy cow must be objectively measured, so that the welfare status of cattle can be properly assessed in any system. Cattle who go outside to graze are also likely to be housed for a significant portion of the year, and it is important that this winter accommodation is fit for purpose, and does not compromise their welfare. Consideration should be given to breeding dairy cows in the future who are better able to survive on a largely grazed diet.

Replacing sow farrowing crates with free farrowing systems

Around 50% of UK sows are placed in farrowing crates a few days before giving birth and remain there until the piglets are weaned at three to four weeks of age with the intention of preventing the sows from crushing their piglets. The crates are so narrow that the sow cannot turn round and the physical and emotional distress that they cause is well-documented.¹⁴¹⁵

Farrowing crates should be banned and replacements such as free farrowing systems explored.

Providing detailed legislation for those species not currently covered by specific welfare legislation

Detailed Regulations should be made to safeguard the welfare of dairy cows, beef cattle, sheep, ducks, turkeys, farmed fish, decapod crustaceans and cephalopods.

For example, detailed provisions do not exist with respect to the husbandry, transportation and slaughter of farmed fish. The FAWC published Opinions on the ‘Welfare of Farmed Fish’ and the ‘Welfare of Farmed Fish at the Time of Killing’ (February and May 2014 respectively), providing scientific advice to DEFRA about the welfare of farmed fish on-farm and at the time of slaughter.

There should be a commitment from the Government to act upon the recommendations of the FAWC, and to consider the research from the EFSA, in relation to the welfare of farmed fish on-farm and during transport and slaughter. Brexit provides a convenient opportunity for the Government to enshrine in legislation detailed provisions for the welfare of farmed fish in relation to their husbandry, transportation and slaughter.

Improving the welfare of broiler chickens

Many chickens bred for meat in the UK are stocked at 38 kg/m². As chickens in the UK weigh around 2.2 kg at slaughter, this equates to around 17 chickens being kept per square metre, representing

¹⁴ Baxter, E.M., Lawrence, A.B. & Edwards, S.A. (2012) Alternative farrowing accommodation: welfare and economic aspects of existing farrowing and lactation systems for pigs. *Animal*, 6:1, pp.96-117

¹⁵ Weber, R., N. Keli, M. Fehr, and R. Horat. 2007. “Piglet Mortality on Farms Using Farrowing Systems with or without Crates.” *Animal Welfare* 16: 277–79



substantial overcrowding and causing poor welfare.¹⁶¹⁷ The maximum permitted broiler stocking density should be reduced to 30 kg/m², the maximum allowed by the *RSPCA Assured* scheme.

Today's chickens have been selected to reach slaughter weight about twice as quickly as 40 years ago. A body of evidence indicates that more than twenty five per cent of broilers suffer from leg disorders that are likely to be painful and that fast growth rates are the main cause of this.¹⁸¹⁹ Fast growing birds must be replaced by slower growing, more robust, breeds.

Mandatory labelling of meat and dairy products as to farming method

Government exhorts consumers to play their part in driving welfare improvements, but it is difficult at present for consumers to make informed choices. EU law has, since 2004, required eggs and egg packs to be labelled to the farming method in which they were produced. This has been an important factor in the market shift away from eggs from caged hens. With meat and milk, however, consumers remain in the dark, particular as nearly all milk (other than organic) is pooled together.

After Brexit, the UK should require meat, milk and dairy products, and products containing eggs, including those that have been produced overseas, to be labelled as to farming method, method of slaughter and country of origin.

Ending the routine preventive use of antibiotics in farming

Antibiotic are routinely used for preventative purposes in intensive farming systems because (in order to produce maximum yield) animals are confined in overcrowded, stressful conditions that compromise their health and immune systems, encouraging disease to develop and spread. Once the UK leaves the EU it should prohibit the routine preventative use of antibiotics and instead employ health-orientated systems for the rearing of animals. In such systems, disease would be prevented by good hygiene, husbandry and housing.

Ensuring welfare at slaughter

Steps should be taken to ensure welfare of farm animals at slaughter. These should include:

- the mandatory use of independently monitored CCTV in all slaughterhouses. Careful consideration should be given to siting of cameras, how long footage should be kept for and how the footage will be independently monitored and assessed;
- phasing out the use of high levels of CO₂ to stun and slaughter pigs, replacing it with the use of argon or another inert gas;
- requiring the stunning of chickens with argon or another inert gas prior to hanging and slaughter; and
- requiring all animals to be stunned before slaughter, and in the interim introducing enhanced safeguards such as immediate post-cut stunning and requiring the presence of a veterinary surgeon.

¹⁶ Agra CEAS Consulting, 2006. Broiler analysis (Report for RSPCA)

¹⁷ Hall A., 2001. The effect of stocking density on the welfare and behaviour of broiler chickens reared commercially. *Animal Welfare* 10, 23-40

¹⁸ Knowles, T. G., Kestin, S. C., Haslam, S. M., Brown, S. N., Green, L. E., Butterworth, A., Pope, S. J., Pfeiffer, D. and Nicol, C. J., 2008. Leg disorders in broiler chickens: prevalence, risk factors and prevention. *Plos one* 3 (2): e1545. doi: 10.1371/journal.pone.0001545.

¹⁹ European Commission, 2016. Report on the impact of genetic selection on the welfare of chickens kept for meat production. COM(2016) 182 final



Banning the import of foie gras

The significant welfare issues surrounding the production of foie gras are well documented.²⁰

However, despite the fact that a 2007 poll conducted by Ipsos MORI and commissioned by the RSPCA showed that 63% of the public support a ban on the sale of foie gras in the UK, the UK has not been able to impose a ban on imports from EU countries such as France, Belgium, Hungary and Spain, because of the free movement of goods principle.

On the other hand, a ban on imports from outside the EU would be permitted under WTO rules on the grounds of public morality following the *EC-Seal Products* case (see above), provided that the import ban was accompanied by an express ban on production in the UK. The UK Government has already suggested that production in the UK could be in breach of UK animal welfare laws.²¹

Brexit will provide an opportunity to impose a ban on all imports of foie gras into the UK, regardless of the country of production, in line with the public's expectations.

What are the post-Brexit opportunities in relation to farm animal welfare?

There are a number of post-Brexit opportunities available in relation to farm animal welfare including the opportunity to make improvements as set out above, and the ability to influence welfare standards in other countries as set out below.

Further key opportunities arise in relation to the Common Agricultural Policy (CAP). The UK currently pays €2.8 billion annually in support to farmers. This is guaranteed in its current format and amount until 2020.

There are three possibilities post 2020:

- CAP is retained in its current form
- Public funding for farmers is phased out/stopped
- Public funding for farmers is retained but the system fundamentally reformed

The current system in its current form should not be retained. 80% of the current CAP payments are essentially based on the size of the farm and have no real welfare conditions attached other than baseline legislation. These payments outweigh the 20% that are given for environmental benefits.

The Government should retain a system of farm payment but only if there is a major rethink on the purpose of public support for agriculture. The Government should first define what kind of food and farming system we want – what we want it to achieve – and then establish how public funding can help to move the UK towards that desired system.

Public money for farming should be there to deliver public goods that the market cannot, or can only partially, deliver such as high environmental and animal welfare standards. Farmers should be incentivised and rewarded for better environmental standards and animal welfare, through a combination of premium prices from the market, where these are viable, and support from public funding.

²⁰ Take for example Report of the Scientific Committee on Animal Health and Animal Welfare entitled “Welfare Aspects of the Production of Foie Gras in Ducks and Geese”, adopted 16 December 1998

²¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-10-07/47247/>



If the new system includes funding for higher animal welfare standards, funding could be granted for membership of schemes with genuinely high welfare standards such as *RSPCA Assured*, *Soil Association*, *Pasture-Fed Livestock Association* or Steps four or five of the *Global Animal Partnership's* welfare programme.

In any new/revised scheme, payments should be targeted on specified, results-orientated objectives. Objectives should be clearly articulated, and well-defined and measurable milestones and targets must be established to ensure progress is made as planned. Government should ensure that compliance is independently audited using spot-checks, with appropriate penalties such as immediate cessation of payments for non-compliance. DEFRA should be tasked with responsibility to plan a five-year strategy to promote understanding and uptake of the new subsidy system, as well as to monitor and evaluate its impact, including collating publicly-accessible annual statistics.

What is the role of consumer demand and consumer awareness in high farm animal welfare standards?

The European Commission has undertaken three Eurobarometers in the past 12 years, which have shown the importance of animal welfare to the consumer in the UK and other EU countries. In 2005, 62% of the British public felt that animal welfare did not receive enough importance in the country's food policy, and in 2016, 55% of respondents across the EU said they would look for an animal welfare label when shopping.

These numbers have already translated into real buying patterns for consumers in the UK in certain areas. The number of laying hens under the RSPCA Assured scheme has risen from 24% of the UK flock in 2004 to over 51% in 2016 (constituting the vast majority of non-caged egg production), as sales of free range eggs increased. In the same time period, numbers of pigs under the scheme has risen from 17% to 28% of the UK herd, and the majority of Scottish farmed Atlantic salmon sold in the UK will have been produced to RSPCA welfare standards.

It is vital that consumers are provided with opportunities to make properly informed choices and this can only be given effect if there is appropriate labelling that reflects animal welfare concerns.

Consumer preference can also have some impact on the interpretation of agricultural rules under WTO rules. WTO panels have said that measures highlighting how a product is produced may be allowed under the Technical Barriers to Trade Agreement (TBT) based on consumer preference.

What effect, if any, will the withdrawal from the EU have on the UK's ability to promote farm animal welfare?

As the UK resumes their seat at the WTO for the first time in 44 years, this will give rise to a number of opportunities. Firstly, the UK can negotiate its own free trade agreements (FTAs) and include animal welfare requirements in them. Secondly, the UK will be able to ensure that subsidies to farmers promote higher animal standards whilst remaining within the rules of the WTO Agreements (particularly the Agreement on Agriculture). The UK will continue to be at liberty to proactively lead and promote development and agreement of the highest possible animal welfare standards in relevant global bodies, such as the World Organisation for Animal Health.



Wildlife and
Countryside



Finally, the UK alone (independent of other EU countries) is one of the largest shareholders in many International Financial Institutions, including the World Bank Group. Ensuring that financial investment bodies have strong, well-enforced animal welfare policies is key to incentivising improvements in animal agriculture systems globally, and curbing the uptake of low welfare systems. This in turn will also help to ensure that improvements in UK animal welfare standards are not undermined by industries overseas, operating at lower standards and costs. As a major shareholder, the UK will continue to hold an important influencing role in IFIs, and could enjoy greater freedom to advocate animal welfare policy and enforcement standards higher than those set across the EU.

ALAW and Wildlife and Countryside Link, 8 April 2017