

# Brexit | getting the best deal for animals

A detailed analysis of current legislation, with recommendations for enhancing animal welfare, British industries, and consumer confidence and choice in post-Brexit Britain

JANUARY 2018



This report has been produced by animal protection groups brought together through **Wildlife and Countryside Link** and the **UK Centre for Animal Law (A-Law)**





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**This Government is committed to the very highest standards of animal welfare. As the Prime Minister has set out, we will make the United Kingdom a world leader in the care and protection of animals...this government will continue to promote and enhance animal welfare, both now and after we have left the EU**

**STATED BY MICHAEL GOVE IN NOVEMBER 2017**

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# Contents

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4	SECTION 1 <b>Introduction</b>
8	SECTION 2 <b>EU legislation as part of UK law, before and after Brexit</b>
12	SECTION 3 <b>Wild Animals</b>
22	SECTION 4 <b>Animals in Agriculture</b>
32	SECTION 5 <b>Companion Animals</b>
40	SECTION 6 <b>Animals Used in Research</b>
48	SECTION 7 <b>References</b>

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SECTION 1

# Introduction



As the UK prepares to leave the EU, the welfare of animals is at a critical crossroads and selecting the route ahead will determine the welfare of billions of animals. We have a once in a lifetime opportunity to either define or undermine our country's identity and reputation as a global leader in animal welfare science and standards.

While taking no position on the merits of Britain's departure from the EU, signatories to this manifesto believe that Brexit presents many opportunities to improve the welfare of animals, both in the UK and overseas, in the coming years and decades. We also recognise that Brexit carries risks of dilution and erosion of hard-won animal welfare standards enshrined in EU law.

This manifesto provides a summary of the current EU and international animal protection measures that we believe should be maintained in UK law, as well as the opportunities for the UK to make real improvements for animals, post-Brexit. We have set out our detailed analysis within four chapters: wild animals; animals in agriculture; companion and equine animals; and animals in research. In addition to highlighting the specific EU protections that must be 'banked' and the opportunities to build on those standards, we also identify the infrastructure and resources necessary to ensure continued progress in animal welfare science, independent scrutiny, and enforcement of regulations. All these things are essential if the UK is to maintain and enhance its reputation as a global leader in animal welfare.

We underline the importance of UK law and practice being faithful to the principle, currently provided for in Article 13 of the Treaty on the Functioning of the EU, that "full regard" be paid to the welfare requirements of animals when formulating and implementing policies. We welcome the commitment by the UK Government to legislate for a new duty for UK Ministers to have regard to animals' welfare requirements, and we urge the devolved legislatures in Scotland, Wales and Northern Ireland to follow suit by imposing a similar duty on their Ministers. It is also vital that those new bodies created to develop and enforce environmental and animal welfare standards post-Brexit (when the UK will no longer be

participating in the networks of EU scientific and technical bodies and committees) are established with animal welfare considerations written into their statutory objects. This should be done in such a way that goes beyond merely having "regard" to animals' welfare requirements, instead ensuring that real weight is given to those requirements. Science-based standards should be set so that animals are protected from being caused pain, fear and distress for human economic ends, and that animals are able to engage in natural behaviours consistent with ensuring their health and wellbeing.

We envision a future for UK farming and fishing that thrives on the highest welfare standards, producing safe and healthy products, meeting increasing consumer demand and reinforcing public confidence in the quality of British production. The UK must continue to have access to the full armoury of medicines, by continuing the agreements for the approval of veterinary medicinal products. Furthermore, we strongly believe that it would not be in the UK's economic interest to allow domestic producers to be undercut by foreign imports, produced to lower animal welfare standards, in a race to the bottom.

Our chapters on wildlife, agriculture, use of animals in research, and companion animals all highlight important areas in which the UK needs to ensure current EU welfare standards are maintained or improved. Examples include the testing of chemicals on animals, as presently regulated through REACH; the protection of wildlife and their habitats, and ensuring protection from diseases arising from the movement of cats, dogs and horses.

Post-Brexit, it will remain important that the UK and EU work in partnership with one another to safeguard and advance animal welfare by, for instance, developing and approving alternatives



to the use of animals in safety testing and research; sharing intelligence about the trade in endangered and exotic animals; and funding and sharing research to improve farm animal welfare. The UK and the EU will find they have in common their respective citizens' desire to advance animal welfare; and the UK's power to influence animal welfare standards worldwide will be so much greater if it seeks to do so in partnership, where appropriate, with the world's biggest consumer market.

We call on the Government to commit that the UK will continue to use its membership of international agreements, organisations and treaties, such as the World Organisation for Animal Health, to advocate and resource strategies to improve animal welfare protections. We also highlight the opportunities for the UK to help improve the welfare of many billions of animals around the world, by offering trading partners bilateral assistance to develop and enforce animal health and welfare laws, and by creating trading opportunities for higher welfare products.

Good animal welfare makes good business sense for the UK's future position in global markets. Across the world, including in markets such as in East Asia and South America, increasing numbers of consumers are concerned about animal welfare, demanding higher welfare products in the food they eat, the products they use, and the goods they buy.

And finally, good animal welfare matters at home, to voters. Public concern in the UK for animals is as strong as ever, and what Brexit means for our animal welfare standards will be an issue keenly observed by many millions of people. We welcome DEFRA's recent announcements that CCTV will be made mandatory in slaughterhouses in England, and more humane solutions found to the live export of food animals. These examples show that the Government is alive to the animal welfare challenges and opportunities ahead. All of the signatories to this manifesto look forward to working with politicians of all political colours, and with industry, to make the UK a beacon of high, science-based animal welfare standards.

## THE UK'S POSITIVE IMPACT ON ANIMAL WELFARE BOTH DOMESTICALLY AND GLOBALLY CAN CONTINUE TO BE ACHIEVED BY ENSURING THAT:

- all protection measures currently afforded to animals under EU regulations are transposed into UK law;
- public funds, where used, incentivise and reward best practice in animal welfare in the UK, thus setting the highest standards for our internal markets;
- UK welfare standards are met in trade deals and overseas investment policies, and that where possible trade deals support enforcement of animal protection laws;
- the UK continues to use its membership of international agreements and treaties, such as the World Organisation for Animal Health, to advocate and resource strategies to improve animal welfare protections.

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## RECOMMENDATION TO EXTEND THE DEFINITION OF PROTECTED SPECIES

The definition of “animal” in the UK’s 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 recognition of the growing scientific evidence that they can experience suffering. This would be in line with the approach already taken by countries such as Norway, New Zealand and Switzerland.

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## A NOTE ON DEVOLVED LEGISLATURES

For the sake of brevity, the manifesto uses ‘the UK’ as a shorthand when it discusses all four legislatures’ animal protection laws. Much animal welfare law is, however, currently the responsibility of the devolved legislatures. Specifically, whilst farm animal welfare laws are the responsibility of the devolved institutions, in practice the scope for different parts of the UK to adopt different standards has been relatively small because UK legislation has been required to implement the same substantive requirements set out in EU legislation. In other areas – for example, in relation to companion animals and wild animals – there has been more scope for the devolved legislatures to make different choices from one another. However, UK trade policy post-Brexit is very unlikely to be devolved and therefore the importance of ensuring animals are protected in all areas of trade will remain at a UK level. Whilst we do not take any position on how legislative powers should be distributed within the UK post-Brexit, we note the need for animal welfare to continue to be a focus in all of the UK’s legislatures, not only in Westminster.





SECTION 2

EU legislation as part of UK  
law, before and after Brexit



## 2.1 EU LEGISLATION

This manifesto includes many references to EU legislation of various kinds. It is important to understand the different types of EU legislative instrument that exist, as this is relevant to whether and how such legislation is likely to continue to take effect in UK law after Brexit.

The primary law in the EU legal order is constituted by the treaties, which provide the legal basis for all other EU legislation and actions. The two most important treaties are the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

EU secondary legislation setting generally applicable rules or standards relevant to animal protection comprises two types of instrument: regulations and directives. The key difference between them is that regulations are directly effective as part of the law of all EU States, without a need for national implementing measures, while directives set out the results to be achieved and require EU States to adopt national implementing measures for achieving those results.

Where EU legislation relevant to animal protection is in the form of a regulation, then the UK may not already have made national implementing legislation. In the cases of directives, there is likely to already be UK legislation, but some of that legislation may need to be adapted in the lead-up to “Exit Day” (the day when the UK ceases to be an EU Member State), because the UK will no longer be part of relevant EU bodies or cooperation mechanisms to which that legislation refers.

EU legislation varies in terms of how much latitude Member States retain to set their own, higher, standards. Where EU legislation provides for full harmonisation of standards, the consequence is generally to constrain Member States from setting higher standards, but often the legislation still recognises certain exceptions or derogations on which Member States can rely for setting higher standards. After Brexit, the UK will have greater scope to set different standards – whether higher or lower – than those set by EU legislation, though it is likely that the UK’s movement away from EU standards will be a gradual process.

## 2.2 THE WITHDRAWAL BILL

At the time of producing this manifesto, there is presently before the UK Parliament a Bill – the Withdrawal Bill – providing for the adaptation of UK legislation, so as to ensure that there are no major gaps in UK law after Exit Day.

The intention behind the Withdrawal Bill is to ensure that the substantive requirements provided for in EU legislation – especially EU regulations – are copied across into domestic UK law to ensure a smooth transition on Exit Day. The UK Government’s White Paper, *Legislating for the United Kingdom’s withdrawal from the European Union* (March 2017), stated that there are believed to be around 12,000 EU regulations in force.

Simply copying across all regulations into statutory instruments made by Ministers will not, however, be enough to ensure there are no gaps in UK law on Exit Day. Much existing UK legislation will require adaptation in order to ensure that it will work properly after Brexit. As the White Paper stated, “*Swathes of UK law “will no longer work” on exit, for example because they refer to EU institutions.*” The Withdrawal Bill therefore includes provisions – referred to colloquially as “Henry VIII powers” – enabling Ministers to make statutory instruments which can amend even primary legislation, such as Acts of Parliament. The intention is that these powers will be needed in order to enable Ministers to ensure, within the short time available before Exit Day, that UK law is “Brexit-ready”.

It is anticipated that Ministers will use those powers to make only changes that are necessary to avoid holes in UK law. There will, however, inevitably be choices open to Ministers about how they replace legislative references to EU mechanisms and institutions. We will be watching closely how these powers are used in practice in relation to subject matters affecting animal protection. We attach particular importance to ensuring that the end of the UK’s access to EU bodies and mechanisms does not lead to an erosion of standards, or of the independence and scientific expertise of the bodies responsible for setting those standards.

The Withdrawal Bill is expected also to end the power of the EU Court of Justice in relation to the UK. The UK courts will, however, continue to have regard to judgments of the Court of Justice interpreting EU legislation which has been transposed into, or reflected or replicated in, UK law. As a result, it is likely that the Court of Justice's rulings on the interpretation of EU legislation will remain an important source of law relating to animal protection matters for at least the next decade. As the UK gradually adopts its own rules and standards which are not based on EU legislation, the caselaw of the Court of Justice will become progressively less relevant, but this will take time.

## 2.3 ARTICLE 13 OF THE TFEU

EU law treats animals as 'goods', and farm animals are regarded as a type of agricultural product. The EU rules on free movement of goods therefore apply to farm animals. As a result, the EU Court of Justice has ruled, for example, that Member States cannot prohibit the live export of food animals, and must take proportionate action to ensure that protesters are not allowed to interfere with such exports.

Against this background, during the 1980s and 1990s animal welfare organisations became concerned that there needed to be express recognition by the EU that animals should not be treated as just another form of goods, but should have a special status by virtue of their sentience. In particular, the EU's imperative to remove trade barriers and create a single EU 'internal market' should not be pursued without full regard being paid to the welfare requirements of animals, which should be protected by animal welfare legislation at the EU level.

As a result of a popular campaign in support of these concerns, backed ultimately by the UK Government, EU Member States agreed to adopt a nonbinding declaration which eventually acquired the force of law and is now set out in Article 13 of the TFEU. Article 13 states that:

“ In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

The significance of Article 13 is that it:

- expressly recognises that animals deserve special protection by reason of their sentience; and
- places a legal obligation upon the EU and Member States to pay full regard to animals' welfare requirements when formulating and implementing policy in the areas listed (i.e. agriculture, fisheries, transport, internal market, research and technological development, and space policies).

The TFEU will not be part of UK law post-Brexit. Therefore Article 13 will cease to be part of UK law.



On 12 December 2017, DEFRA published a draft Animal Welfare Bill that would go some way towards replicating Article 13 in UK law. The text of the draft Bill would create a duty for UK Ministers (but not Ministers of the devolved administrations) to “have regard” to the welfare requirements of animals when formulating and implementing policies. This new duty would in some respects be stronger than the duty imposed on Member States by Article 13, since: (a) it would apply in all policy areas, not just the areas listed in Article 13; and (b) it would not be limited by the caveat referring to “*religious rites, cultural traditions and regional heritage*”. It is possible that the legislatures of Scotland, Wales and Northern Ireland will pass legislation placing a similar duty on their Ministers.

We welcome DEFRA’s announcement and are delighted that UK law will include a clear statement of the need for UK Ministers to have regard to animals’ welfare requirements. We note, however, that what will be important in practice is the weight that UK Ministers choose to give to animal welfare when balancing welfare considerations with economic, and other, objectives.







SECTION 3

# Wild Animals



### 3.1 INTRODUCTION

In July 2017, Secretary of State for DEFRA, The Rt Hon Michael Gove MP, stated,

“ I want to see higher standards across the board of animal welfare. We need to take action to tackle the trade in illegal ivory, improve scrutiny of what happens in our abattoirs, move on circus animals and examine the future of live animal exports. Cruelty towards animals driven by man’s worst exploitative instincts needs to be met with the full force of the law<sup>1</sup>.

Such ambition is integral to ensure that once we leave the EU, the UK leads the way on animal welfare for wild animals, by working to improve international standards and adopting and promoting world-leading domestic standards.

It is vital that appropriate, robust mechanisms are established to ensure that the welfare of wild animals is prioritised during policy development and implementation following the UK’s withdrawal from the EU. Additionally, mechanisms should be established to enable Government, businesses and other bodies to be held to account, if the Secretary of State’s stated aim to see higher animal welfare standards across the board is to be realised. An environmental body, as proposed previously by the Secretary of State, could provide a mechanism to hold others to account if its remit were to include the protection of wild animals, and its independence could be secured.

While most EU law relating to wildlife focusses on species conservation rather than animal welfare, aspects of EU regulations and directives significantly influence the welfare and management of wild animals, whether they be free-living or captive, terrestrial or marine, native or exotic. It is therefore essential that these aspects of law are identified and their importance for the welfare of wild animals understood. This will ensure that existing protections for the welfare of wild animals are, as a minimum, maintained in UK legislation, and that the UK pays full regard to the welfare of captive wild animals, and the impacts of human activities

on the welfare of free-living wild animals, following its withdrawal from the EU. The maintenance and implementation of these stringent animal welfare principles is particularly important given the strong and clear public support for enhanced animal protection across the UK.

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### 3.2 HOW EU LAW AFFECTS WILD ANIMALS AT PRESENT

A number of EU laws impact upon the welfare of wild animals, through existing directives or regulations. The principal pieces of EU law that concern or impact wild animal welfare include legislation on habitats (terrestrial and marine), wild birds, invasive species, wildlife trade, zoos, and fisheries bycatch.

UK legislation currently includes provisions stemming from EU directives that help to protect the welfare of wild animals. However, there are aspects of some directives that arguably are not fully incorporated into current UK legislation, such as the Habitats Directive, discussed below. Many wild animal welfare provisions are contained within EU regulations. For example, EU regulations maintain a number of species-specific lists, or annexes, conferring protections for many indigenous and endangered species. Without such lists, the welfare of many wild animals would be at risk through lack of binding protective provisions. Currently, species on these lists are afforded enhanced protection against exploitation, and steps are often taken to promote the creation of safe, suitable habitats. It is therefore important that these regulations are transposed into UK domestic law.

Additionally, the EU Court of Justice (ECJ) is tasked to ensure that member states abide by EU regulations and directives. Post-Brexit, UK judges will not be ‘bound’ by future decisions of the ECJ. This could be detrimental to achieving better animal welfare standards as interpretations by the ECJ are, in some cases, wider than the constructions of UK law. Therefore, post-Brexit, UK domestic law should clearly reflect public principles and concerns on animal welfare.

### 3.3 ENHANCING WILD ANIMAL PROTECTION AFTER BREXIT

The welfare of wild animals is a matter of significant public concern and poor welfare can lead to poor conservation outcomes for threatened species. While animal welfare is generally considered to be a devolved issue by the EU, as outlined above, a number of EU directives and regulations contain provisions that relate to the protection and welfare of wild animals, both on land and at sea. It is imperative that, as a minimum, these provisions are transposed into domestic law following Brexit. In the current situation, the UK has a significant opportunity to enhance wild animal protection, showing global leadership on a matter of substantial public interest.

Whilst the UK as a whole would continue to be a signatory to many international agreements outside of the EU – such as the Bern Convention<sup>2</sup>, Bonn Convention<sup>3</sup>, Convention on Biological Diversity<sup>4</sup>, and CITES<sup>5</sup> – much of the implementing legislation, which underpins vital protections for wildlife, has evolved through collaborative work within the EU. The Government must now ensure that key EU principles and laws are maintained and improved upon after Brexit.

#### 3.3.1 Creating habitats that allow wildlife to thrive

The Habitats Directive<sup>6</sup> lists over 1,000 animal and plant species and 200 habitat types in its annexes, each protected in various ways. While principally focussed on species and habitat conservation, the protection afforded to species within Annex II - through the creation of the Natura 2000 network - aims to meet species' ecological needs. Both terrestrial and marine sites can be designated through the directive, in turn helping to safeguard animals and plants that need these places to survive. Additionally, the species listed in Annex IV and V enjoy protections against exploitation and taking from the wild. These protections clearly benefit the welfare of individual animals, as well as supporting species conservation.

The Habitats Directive is implemented in England and Wales through the Conservation of Habitats and Species Regulations 2010<sup>7</sup>, which details specific protections for certain wild animals from capture, injury or killing, deliberate disturbance or damage to breeding or resting places, and prohibits certain methods of killing. Scottish regulations do not directly mirror those of England and Wales, instead having a number of amendments<sup>8</sup> to the original Conservation (Natural Habitats, &c.) Regulations 1994<sup>9</sup>. These amendments arose to reflect the fact that some of the protected species only occur naturally in Scotland, such as the wildcat, and also as a result of a ruling against the UK<sup>10</sup>, which held that the UK had failed to properly implement the Habitats Directive in a number of material respects.

In its review of wildlife law in England<sup>11</sup>, the Law Commission identified some areas of UK law that do not fully comply with the Habitats Directive. The recommendations in the Law Commission's Review should be re-considered to ensure that this legislation is correctly and fully implemented. In particular, a presumption of protection should be expanded to all wild animal species, and exceptions subjected to a strict system of licensing. Furthermore, the ECJ's expansion of the word "deliberate", as discussed in the Law Commission's review (recommendation 26), should be incorporated into law to ensure all species protected by the Habitats Directive enjoy, as a minimum, the same level of protection post-Brexit.

#### 3.3.2 Protecting wild animals

The Birds Directive<sup>12</sup> confers general protection to naturally occurring wild birds in the EU, their eggs, nests, and habitats. It protects wild birds against deliberate killing or capture, destruction of, or damage to, their eggs or nests, and deliberate disturbance. It also prohibits the trade in and keeping of most wild species in captivity. The Habitats Directive confers similar protection to certain species of other animals, so-called European Protected Species (EPS) such as otters (*Lutra lutra*) and dormice (*Muscardinus avellanarius*). These directives are implemented in England and Wales by the Wildlife and Countryside Act 1981<sup>13</sup>, the Conservation of Habitats and Species Regulations



2010<sup>14</sup>, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007<sup>15</sup>, and a number of other pieces of legislation relating to the use of land and sea. In Scotland, the directive is implemented through the Nature Conservation (Scotland) Act 2004<sup>16</sup> and the Wildlife and Natural Environment (Scotland) Act 2011<sup>17</sup>.

In its review of wildlife law in England, the Law Commission identified some areas of UK law that do not fully comply with these directives. The recommendations of the Law Commission's Review should be re-considered to ensure that the provisions of the Birds Directive are correctly and fully implemented.

As already discussed, existing legislation protects all birds, but for all other animal groups, it is only certain species that are protected. All wild animals should have some basic protection to close loopholes that allow, for example, European hedgehogs (*Erinaceus europaeus*) or red fox (*Vulpes vulpes*) to be taken from the wild and sold as pets. Where it is generally accepted that some wild animals need to be managed, this should be done under licence, with licensing conditions that specify circumstances and methodologies.

Importing certain bird species into the EU is governed through a separate regulation<sup>18</sup>, which sets requirements for the imports of species other than poultry. This regulation prohibits the importation of birds caught in the wild into the EU, as a measure to prevent the spread of avian influenza. For wild birds bred in captivity in third countries, importation is only allowed from 14 authorised establishments across nine countries. Authorised establishments must comply with specific requirements, and imported birds are submitted to a range of tests, as well as quarantine on arrival. Birds imported for conservation programmes, pets accompanying their owners and animals intended for zoos, circuses, amusement parks or experiments, are exempt. Whilst general animal welfare legislation (including the Animal Welfare Act 2006<sup>19</sup> (AWA)) will apply to any birds "under the control of man", equivalent restrictions on importing wild birds should, as a minimum, be maintained following the UK's departure from the EU.

### 3.3.3 Controlling invasive species with care

The EU Invasive Alien Species Regulation<sup>20</sup> entered into force in the UK in January 2015. While principally concerned with protecting the environment against invasive alien species, this regulation requires Member States and any operator involved in the eradication, control or containment of invasive alien species to spare avoidable pain, distress and suffering of animals during the process, taking account of best practice (for example, the Guiding Principles on Animal Welfare, developed by the World Organisation for Animal Health). This regulation also advises that non-lethal methods should be considered and that action taken should have minimal impact on non-target species. Additionally, the regulation requires that the welfare of invasive animals taken from non-commercial owners for the purposes of protecting the environment, be given due regard.

Furthermore, a regulation adopting a list of invasive species of EU Concern came into force in August 2016<sup>21</sup>. It is illegal to trade in species on this list, for any purpose. Therefore, animals such as raccoons and terrapins (*Trachemys scripta*, all sub-species) cannot be traded within the EU after the two-year transition period completes. Those currently owning a species on the list may keep them for the rest of the animal's natural life without requiring a permit, as long as steps are taken to prevent breeding. Sanctuaries are also able to take care of such animals if an owner is no longer able to. Where invasive species interact with infrastructure, some control measures are contained in Part 4 of the Infrastructure Act 2015<sup>22</sup>, which will remain in force following Brexit. However, this Act is less specific regarding animal welfare concerns, as it does not stipulate detailed standards for species control. Subsequently, codes have been produced in England<sup>23</sup> and Wales<sup>24</sup> to guide those who may need to take action against invasive species under the Infrastructure Act 2015. These codes require managers to consider non-lethal control measures, and to comply with the relevant legal requirements such as those set out in the AWA and the Wild Mammals (Protection Act) 1996<sup>25</sup>, although such a consideration does not guarantee high levels of animal welfare.

It is vital that animal welfare concerns are adequately addressed during programmes aimed at controlling or eradicating invasive species. In addition to transposing the EU Invasive Alien Species Regulation into UK legislation, a list (or lists) of priority species of concern should be developed, to better identify those non-native species that might become invasive in the UK, taking account of differing priorities among devolved administrations. The Government should produce detailed guidelines and set strict criteria to protect the welfare of target and non-target animals affected by interventions, focussing on aspects not covered by existing animal welfare legislation. Recognised principles, including the International Consensus Principles for Ethical Wildlife Control<sup>26</sup>, should be considered in the development of criteria.

Additionally, a priority list (or lists), will help to prevent trade in species that are considered both to be a risk to the UK's biodiversity, and are not suitable to be kept as pets. Positive lists for the trade in pets may provide the best solution by permitting trade only in species that are considered not to pose a risk to the UK's biodiversity, whilst also being suitable to be kept as pets. Preventing the trade in invasive pet species will not only improve welfare for those animals traded as pets, but also negate the need for future eradication programmes that might otherwise arise, should non-native animals kept as pets escape, or be released, into the environment.

There is a need to address non-native species co-operatively between devolved nations, whilst recognising that they may not consistently be found across the whole of the UK.

### 3.3.4 Protecting Wild Animals in Trade

The illegal wildlife trade is a significant risk to the conservation and welfare of wildlife both internationally and within the UK, and is often linked with dangerous and organised criminal networks. In its Commitment to Action on Illegal Wildlife Trade published in February 2014<sup>27</sup>, the Government stated:

“ The trade in illegal wildlife products has serious consequences for our environment, threatening the future survival of many species. It is also a serious criminal industry worth billions of pounds every year, driving corruption and insecurity and undermining efforts to cut poverty and develop sustainable economic opportunities.

The UK, in common with all EU Member States and the EU itself, is a Party to the Convention on International Trade in Endangered Species (CITES). Within the EU, the Wildlife Trade Regulations<sup>28</sup> (WTRs) are designed to uniformly implement the provisions of CITES across Member States, given the absence of systematic internal border controls. The associated UK implementing instruments are the Control of Trade in Endangered Species Regulations<sup>29</sup> (COTES), which are in the process of being updated.

Whilst primarily concerned with ensuring that international trade in specimens of wild animals and plants does not threaten their survival, CITES contains a number of provisions that are concerned with the welfare of listed animals in trade. The WTRs go further than CITES in many respects, enhancing the protection afforded to some





vulnerable species in a number of key aspects. There are currently 105 different species of animals listed on WTR Annex A, which under CITES listing criteria are designated as Appendix II species. For these 105 species, the protections afforded by the WTRs are much higher. Furthermore, the WTRs also apply to a number of species that are not listed on the CITES appendices.

The WTRs require Member States to determine that the intended accommodation for a live specimen of an Annex A or B-listed species is adequately equipped to conserve and care for it properly, before import is permitted; CITES only applies this requirement to Appendix I listed species. The WTRs also require higher standards for intra-EU movement of wild animals, and the European Commission has the ability to restrict imports of species that suffer high levels of mortality in trade.

When the UK leaves the EU, it will remain a Party to CITES. However, it is crucial that the WTRs are adopted fully into UK law, to ensure that all additional protections are maintained post-Brexit.

In order not to be left behind in combatting the illegal wildlife trade, the Government should cooperate with the EU to remain a world leader in tackling the illegal wildlife trade, implementing the EU Action Plan Against Wildlife Trafficking<sup>30</sup> and adopting future enhanced measures. The Government should also seek to continue its support for and engagement with the EU-TWIX (Trade in Wildlife Information Exchange) – the centralised EU database containing data on wildlife seizures and offences – in order to assist with investigations.

In October 2018, London will host the fourth in a series of high level Summits on Wildlife Trafficking. The UK's efforts to combat illegal wildlife trade within, and across, its own borders will be under international scrutiny. It is essential that the UK leads by example, such as by introducing a comprehensive ban on domestic trade in, and import/export of, elephant ivory.

The UK, post-Brexit, will be in a position to proactively promote higher levels of protection for threatened species affected by trade, whether or not they are currently listed by CITES or on

the WTRs. The opportunity exists for the UK to provide global leadership on issues concerning the welfare of wild animals threatened by trade. It is not just endangered wild animals whose welfare is threatened by trade. Many other species are also traded and transported live from country to country, often in poor conditions resulting in suffering and many fatalities. One possible measure to mitigate this could be to implement positive or permitted lists of species that can be legally kept and traded as pets and to provide codes of practice covering their husbandry and care, including during transport. Species in which trade is permitted should be restricted to those where sound, impartial evidence exists that their welfare is relatively easy to assure and maintain, and where their keeping does not pose a disproportionate risk to the conservation of species, human and animal health, or the environment.

### 3.3.5 Protecting Animals from the Fur Trade

The UK banned fur farming in 2000<sup>31</sup>. In 2007, the EU banned the sale and import of products containing cat and dog fur<sup>32</sup> (see also chapter five on companion animals), and in 2009, the EU prohibited trade in the products of commercial seal slaughter<sup>33</sup>, which largely came about due to the concerns of citizens, consumers and decision-makers regarding the welfare of seals during commercial hunts. This ground-breaking ban set an important precedent at the World Trade Organisation, which ruled in the *EC-Seal Products* case that the ban was “*necessary to protect public morals*” within the meaning of the General Agreement on Tariffs and Trade 1994.

According to a 2016 YouGov opinion poll<sup>35</sup>, only 8% of British people feel it is acceptable to be able to buy and sell products containing seal fur, and therefore it is imperative that the seal product trade ban is transposed into UK law post-Brexit. However, this same poll revealed that the British public's moral objection to the fur trade extends further than cat, dog and seal fur; only between 8 and 12% of people said that they found it acceptable for fur from foxes (12%), mink (12%), chinchilla (9%), raccoon dogs (8%) and coyotes (8%) to be bought and sold in the UK. Applying the case precedent of public morality to enact trade

restrictions, and noting that the UK has no domestic fur production, we urge the UK Government to maintain the existing fur trade bans for cats, dogs and seals, and to begin the process of extending a fur trade ban to all species.

Furthermore, the EU ban on leg-hold traps, as well as the ban on the import of fur products from countries that permit their use<sup>36</sup>, came about because of concerns around cruelty to, and suffering of, affected animals, and the indiscriminate nature of such traps. Whilst a ban on the use of 'gin traps' was established in England and Wales in 1954<sup>37</sup>, their sale continues to be permitted. In order to reflect overwhelming public opinion and ensure a consistent approach across the EU, a full ban on the use and sale of leg hold traps should be established.

Non-native species that are potentially invasive are often also involved in the fur trade. As discussed above, recent EU regulations around prohibiting the trade in such species could protect them from entering into the fur trade. This includes species such as the raccoon dog, recently added to the EU prohibited trade list, and the American mink, proposed for future inclusion on the list. These species should be added to the Government's own list (or lists) of invasive species for trade prohibitions, in order to avoid the detrimental environmental and animal welfare impacts that could otherwise arise.

### 3.3.6 Safeguarding Animals in Zoos

Across the EU, a zoo licensing and inspection regime is adopted through the Zoos Directive<sup>38</sup>. This directive requires zoos to accommodate animals under conditions which satisfy their specific biological and behavioural requirements, inter alia, by providing species-specific enrichment of enclosures and maintaining a high standard of animal husbandry with a developed programme of preventive and curative veterinary care and nutrition. Within the UK, this directive is implemented through the Zoo Licensing Act 1981<sup>39</sup>.

While the Zoo Licensing Act is considered to satisfy (and in some respects exceed) the requirements

of the Zoos Directive<sup>40</sup>, nevertheless concerns remain about the implementation of the Act in British zoos<sup>41</sup>. A review of the effectiveness of the Act and its monitoring provisions should be undertaken, with a view to ensuring rigorous and effective enforcement.

Whilst the Zoo Licensing Act will continue to be in force following the UK's departure from the EU, the Government should look to improve implementation of this Act to secure the highest possible standards of animal welfare within UK zoos.

Furthermore, outside of the EU, the UK can show leadership on animal welfare by, for example, encouraging an end to the keeping of whales and dolphins in captivity. Whilst the UK currently has no dolphinariums, issues relating to the welfare of captive cetaceans have been brought to public attention in recent years<sup>42</sup>. Evidence provided in a 2014 report has shown that captive cetaceans do not have the freedom to express normal behaviour<sup>43</sup> - a guiding principle for animal welfare. When the UK leaves the EU, the Government could take this opportunity to develop and adopt legislation to ensure the UK maintains a dolphinarium-free status in perpetuity.

### 3.3.7 Enhancing and Protecting Marine Wildlife

The protection of marine animal welfare presents particular challenges: firstly, much of what affects them goes on out of sight, such as entanglement in fishing gear and underwater noise; secondly, monitoring marine wildlife is difficult and typically expensive; and thirdly, activities that may compromise their welfare may be different to those that affect terrestrial animals.

Internationally, the EU and the UK are currently signatories to both the United Nations Convention on the Law of the Sea<sup>44</sup> (UNCLOS) and the United Nations Fish Stocks Agreement<sup>45</sup> (UNFSA), each of which are binding on all signatories. The UK and the EU are also Parties to the Agreement on the Conservation of Small Cetaceans in the Baltic, North East Atlantic, Irish and North Seas<sup>46</sup> (ASCOBANS), and the UK is a Party to the International Whaling Commission<sup>47</sup> (IWC).

Consequently Brexit, in principle, will have no impact upon the UK's obligations under these international treaties, as conservation and management policies will remain in force.

The UK has played a leading role at the IWC in the conception and implementation of the Commission's Animal Welfare Strategy, tackling global issues including entanglement and stranding of cetaceans, and we strongly encourage a continuation of this leadership and resource investment.

Within the EU, the Marine Strategy Framework Directive<sup>48</sup> (MSFD) provides a framework for an ecosystem-based approach to the management of human activities supporting the sustainable use of marine goods and services. The MSFD aims to achieve Good Environmental Status (GES) by 2020 across Europe's marine environment. While the MSFD focuses on conserving the marine environment, it influences the welfare of wildlife, through reducing contaminant levels, marine litter and underwater noise. In the UK, the Government has produced a UK Marine Strategy to achieve GES<sup>49</sup>.

The MSFD will be reviewed by the EU in the coming years. As a current Member State, the UK would be engaged in reassessing the state of our seas, revising targets and indicators for GES, and looking at ways to strengthen and build on existing achievements. Additionally, the UK Government actively engages in the Oslo and Paris Conventions to protect the marine environment in the North-East Atlantic<sup>50</sup> (OSPAR), which supplements the work on the MSFD. The Government should continue to implement the MSFD post-Brexit, incorporating any amendments

beneficial for our marine wildlife that stem from the upcoming EU review.

Large numbers of marine animals are caught as either target species or incidental take (bycatch) in fisheries and an unknown number are harmed by lost or discarded fishing gear (ghost fishing). Bycatch is a significant issue for the welfare of cetaceans and is partly addressed through an EU regulation on the incidental catch of cetaceans in fisheries<sup>52</sup> (the Cetacean Bycatch Regulation). This regulation introduces measures to monitor, reduce and report the incidental catches of whales, dolphins and porpoises by some fishing vessels, as required under Article 12 of the Habitats Directive. Entanglement in nets can cause immense suffering. A new regulation (the Technical Conservation Measures<sup>53</sup>) is currently being proposed, which will either strengthen or weaken existing flawed measures, and this is likely to repeal the existing Cetacean Bycatch Regulation. As a minimum, the Cetacean Bycatch Regulation, or the new Technical Conservation Measures, should protect marine mammals, seabirds and turtles, and should be transposed into domestic law post-Brexit. In addition, improved measures to continually monitor and reduce bycatch should be incorporated into domestic laws. Outside of the EU Common Fisheries Policy<sup>54</sup>, international requirements on incidental catch should be fully embraced and implemented, in order to protect all marine wildlife affected by fishing activities.

Measures to prevent or prohibit deleterious fishing practices can be found within the UN FAO Compliance Agreement<sup>55</sup>, which the EU is a signatory to. Post-Brexit, it is imperative that this Agreement is recognised by the Government,





maintaining internationally agreed minimum standards to protect marine biodiversity.

### 3.3.8 Improving the Welfare of Wild-Caught Fish

There is no EU legislation to protect the welfare of wild fish during capture and processing, despite the requirement of Article 13 of the TFEU, which specifically mentions fisheries policies should pay full regards to animal welfare. Detailed legislation to protect the welfare of farmed fish is also lacking, yet the three general pieces of EU legislation on the farming, transport and slaughter of farm animals all require that fish suffering is avoided. There is a clear opportunity for the UK to take the lead in protecting wild fish welfare at slaughter, by developing suitable legislation.

Currently, considerable suffering is caused to wild-caught fish during capture, landing and subsequent processing. Fish are likely to experience fear, pain and distress as, depending on the fishing method, they are:

- pursued to exhaustion by nets
- crushed under the weight of other fish in trawl nets
- raised from deep water and suffer decompression effects e.g. burst swim bladders
- snared in gill nets
- confined in constricted seine nets
- caught on hooks.

In many types of fishing, the duration of capture can be very long, lasting hours or even days. Fish often die or are fatally injured during this process. Once landed, most fish are either left to asphyxiate, or die during further processing, which may include gutting, filleting and/or freezing while alive and conscious. Some fish may be slaughtered

by “spiking” the brain or by a blow to the head – potentially humane methods of killing fish, but these are the exception rather than the rule.

The number of animals affected is very high. It is estimated that a number in the order of one trillion fish are caught each year globally<sup>56</sup> and around two billion<sup>57</sup> each year by UK fishing fleets. The combination of the severity of suffering, its duration and the huge numbers of animals involved, make commercial fishing a major animal welfare issue that needs to be addressed urgently.

Electrical stunning systems used for farmed fish can and have been adapted for use on fishing boats. These have the potential to provide humane slaughter. Parameters required to “dry” stun fish such as cod, haddock, plaice, turbot and sole have been identified by Dutch researchers: a Dutch supermarket is selling plaice that has been stunned using this technology<sup>56</sup>.

In a separate development, a USA fishing company, Blue North, has designed a 191-foot fishing vessel to humanely harvest cod caught using bottom longlines and electrically stunning in water<sup>59</sup>. A British company is also developing systems for electrically stunning wild fish in water<sup>60</sup>.

As the UK prepares to leave the EU, it is time for the Government to develop a strategy to improve the welfare of wild-caught fish. This includes humane slaughter preceded by measures to reduce stress during capture and handling. A similar strategy is also needed for wild-caught decapod crustaceans and cephalopods.

Furthermore, the prevalence of seal shooting around fish farms is a significant issue for the welfare of wild seals<sup>61</sup>. The Government should develop a strategy to phase out the shooting of seals in the name of aquaculture and fisheries protection.

Post-Brexit, it is imperative that the Government maintains and builds upon internationally agreed standards to protect marine biodiversity.





SECTION 4

# Animals in Agriculture





## 4.1 INTRODUCTION

In Prime Minister's Questions on 8 February 2017, the Rt Hon Theresa May MP said:

“ We should be proud that in the UK we have some of the highest animal welfare standards in the world – indeed, one of the highest scores for animal protection in the world. Leaving the EU will not change that we are committed to maintaining and, where possible, improving standards of welfare in the UK, while ensuring of course that our industry is not put at a competitive disadvantage<sup>62</sup>.

On 19 June 2017, Michael Gove said:

“ We need to maintain, and where possible enhance, environmental and animal welfare standards<sup>63</sup>.

Farm animal welfare has been an important issue for the UK for many years, including before the UK 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<sup>64</sup> led to significant advances in farm animal welfare in the UK, including the Agriculture Act 1967<sup>65</sup>.

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.

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<sup>66</sup>. 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, 52% of respondents across the EU said they would look for an animal welfare label when shopping<sup>67</sup>.

Brexit should not lead to any dilution of current law, rather, we can capitalise on the opportunity Brexit provides to achieve environmental and animal welfare improvements in line with consumer expectations, whilst also positively contributing to the UK economy. Critically, the UK currently pays approximately £3 billion per year in support to farmers<sup>68</sup> and, whilst this funding level is guaranteed until 2022<sup>69</sup>, Brexit provides the opportunity to change the purpose of funding and ensure public money pays for public goods; improving animal welfare should be among the core objectives of post-Brexit farm support.

## 4.2 HOW EU LAW AFFECTS ANIMALS IN AGRICULTURE CURRENTLY

Most UK legislation on the welfare of farm animals is based on EU law. Eighteen of the suite of 44 EU animal welfare laws, by far the largest part of the *acquis* on animal welfare, relate to the welfare of farmed animals.

EU directives lay down minimum standards for the protection of animals bred or kept for farming purposes. Pigs<sup>70</sup>, calves<sup>71</sup>, broiler chickens<sup>72</sup> and laying hens<sup>73</sup> are covered by species-specific directives. For other species such as dairy cows, beef cattle, ducks, turkeys and farmed fish, there are no detailed protections. Only the broad provisions of the EU's General Farm Animals Directive<sup>74</sup> protect these animals. These directives have been implemented into UK law by domestic legislation.

In some instances the UK has implemented higher regulatory standards than the baseline set by the EU. For example, UK law prohibits the use of sow stalls throughout the sow's pregnancy<sup>75</sup>, whereas the EU permits the use of stalls during the first four weeks of pregnancy<sup>76</sup>. UK law also requires all calves to be given bedding, while EU law only requires the provision of bedding<sup>77</sup> for the first two weeks of life<sup>78</sup>. Additionally, slightly higher stocking densities for broilers are permitted by EU law<sup>79</sup> than in most UK law<sup>80</sup>. In some cases there are differences in welfare provisions between the four devolved areas (e.g. Northern Ireland has a maximum permitted broiler stocking density of 42 kg/m<sup>2</sup>, compared to 39 kg/m<sup>2</sup> in the rest of the UK<sup>81</sup>).

The EU regulations on welfare during transport<sup>82</sup> and slaughter<sup>83</sup> form the core of UK law in these areas. The transport regulation must continue to apply after the UK leaves the EU, even though its provisions are overdue for review, especially regarding long distance transport. In the case of slaughter, the UK retained many of its stronger provisions when the EU regulation came into effect. Further, EU regulations lay down rules for the labelling of some foods consisting of or containing products of animal origin<sup>84</sup>. These regulations will need to be transposed into domestic law following Brexit.

## 4.3 ENHANCING PROTECTION FOR ANIMALS IN AGRICULTURE AFTER BREXIT

### 4.3.1 Trade and Farm Support Payments

Two factors will be decisive in determining the post-Brexit level of animal welfare: trade issues and the arrangements for farm support payments that replace the Common Agricultural Policy (CAP).

#### 4.3.1.1 *Trade: ensuring that UK farmers are not undermined by low welfare imports*

UK farmers have for many years argued that, due to EU rules preventing import prohibitions, they are undermined by imports of products produced to lower standards of animal welfare. If, after Brexit, the UK is unable to prevent the import of lower welfare products, UK farmers are likely to oppose any strengthening of domestic farm animal welfare standards.

Accordingly, when negotiating any new trade agreement with the EU, the US or others, it is vital that the Government insists on the inclusion of a clause permitting it to require that imports meet UK animal welfare and health standards. An alternative, though significantly less desirable option, would be for the UK to press for the ability to place differential tariffs on imports. For example, imports that do not

conform to UK welfare standards would be subject to tariffs that are sufficiently high to safeguard UK farmers; imports that meet UK welfare standards would benefit from a low or zero tariff.

The UK will need to be particularly careful when negotiating trade deals with countries that have lower welfare standards than the UK. For example, the US pork industry has 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<sup>85</sup>. Ractopamine is used in 28% of pig meat production in the US; it is a feed additive that causes death, lameness, stiffness, trembling and shortness of breath in farm animals<sup>86</sup>. Concerns have also been expressed that under a UK-US free trade agreement, the UK may have to accept imports of chlorine-washed chicken<sup>87</sup>. Attempts to import such products are contrary to public expectation and will undermine the viability of higher welfare systems in the UK.

Where the UK does not conclude trade agreements (with either the EU or other countries), trade will be governed by the rules of the World Trade Organisation (WTO). There continues to be doubt raised as to whether animal welfare can be used as a rationale to restrict imports from other countries under WTO rules<sup>88</sup>. However, there is in fact legal authority to support the proposition that the UK could require imports of animal-derived food to meet welfare standards equivalent to its own, provided that there is no element of discrimination.

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<sup>89</sup>. One of the exceptions relates to public morals. In the *US-Gambling* case, the WTO dispute panel considered that the term "public morals" denotes standards of right and wrong conduct maintained by or on behalf of a community or nation<sup>90</sup>. In the *EC-Seal Products* case, the Appellate Body ruled that in the EU, animal welfare is an issue of public morality<sup>91</sup>. Earlier in this case the WTO dispute panel considered that the protection of

public moral concerns with regard to animal welfare is an “important value or interest”<sup>92</sup>.

Moreover, WTO case law establishes that a WTO member country is free to choose what level of public morals it wishes to apply in its territory. In the *China-Publications and Audiovisual Products* case, the WTO dispute panel noted “it is up to each Member to determine what level of protection is appropriate in a given situation”, finding that China was entitled to adopt a high level of protection of public morals in its territory<sup>93</sup>.

These cases indicate that countries can require imports to meet welfare standards equivalent to their own, provided there is no element of discrimination that favours domestic producers and no discrimination between different would-be exporting countries – such standards can apply to farm animals.

The significance of these rulings has been recognised by the Rt Hon George Eustice, Minister of State responsible for Agriculture, Fisheries and Food, 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<sup>94</sup>.”

These decisions mean that under WTO rules post-Brexit, the UK will be able to require imports of meat, eggs and dairy products to meet welfare standards equivalent to its own, providing there is no element of discrimination and it is not a disguised restriction on trade.

The UK Government now has the opportunity to take measures to ensure that any imports into the UK (whether from the EU or outside the EU) meet welfare standards equivalent to those set in the UK (or are otherwise subject to a tariff). This will ensure that welfare standards across the UK are protected and improved upon, at no competitive disadvantage to farmers.

In order to underpin efforts to enhance animal welfare, consumers need to be provided with opportunities to make properly informed choices. This can only be given effect if there is appropriate labelling that reflects animal welfare concerns.

The Government should require both domestic and imported products to be labelled as to farming method and method of slaughter. Mandatory labelling on method of production has been in place for cosmetics products tested on animals since 2003<sup>95</sup>, and has not been challenged at the WTO. This could be imposed via new trade agreements. Where new trade agreements are not concluded, labelling requirements would be governed by the WTO rules. WTO case law recognises the legitimacy of labelling schemes, provided that they are non-discriminatory and not a disguised restriction on trade. In the *U.S.-Tuna II (Mexico)* case<sup>96</sup>, the WTO Appellate Body considered the US dolphin-safe labelling provisions. These laid down the conditions under which a product may be labelled as dolphin-safe in the US market. The Appellate Body did not question the legitimacy of such a labelling scheme. Indeed, it found that the U.S. objective of “contributing to the protection of dolphins, by ensuring that the U.S. market is not used to encourage fishing fleets to catch tuna in a manner that adversely affects dolphins”, a legitimate objective for the purposes of Article 2.2 of the WTO Agreement on Technical Barriers to Trade.





We discuss product labelling further in section 4.3.2.8 below.

#### 4.3.1.2 *Designing post-CAP farm support payments*

The UK currently pays approximately £3 billion annually in support to UK farmers. This is guaranteed in its current amount until 2022, although the format and objectives of such payments could change before then.

There are three possibilities post-Brexit:

- 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 current CAP payments are essentially based on the size of the farm, with no real animal welfare conditions attached other than baseline legislation. These payments outweigh the 20% that are given for environmental benefits<sup>97</sup>. In the UK, very little money has been available for animal welfare payments from any of the four devolved authorities. This payment imbalance has generated high land prices and promoted monoculture agriculture, which can have negative impacts on the environment, animal welfare and landscape.

The Government should advocate a major rethink on the purpose of public support for agriculture. The Government should first define what kind of food and farming system the UK wants to achieve, and then establish how public funding can help to move the UK towards that desired system.

Taxpayers' principal role should be to provide funding for public goods that the market cannot currently, or can only partially, deliver, such as high environmental and animal welfare standards. Farmers should be incentivised to move to enhanced welfare and environmental standards by a combination of premium prices from the market, where these are viable, and support from public funding.

We advocate a new system of farm support payments that enables and rewards better animal welfare and environmental standards. The Government may well not wish to create a new set of welfare standards for this purpose. Evidence that a farmer is attaining welfare standards that qualify for funding could be provided by membership of schemes with genuinely higher welfare standards and effective monitoring arrangements, such as *RSPCA Assured*, *Soil Association*, *Pasture-Fed Livestock Association*, *Free Range Dairy Pasture Promise*, or Steps 4 or 5 of the *Global Animal Partnership's* welfare programme. Farmers who are members of such a scheme might qualify for additional support if they achieve specified high welfare standards that go beyond those of the scheme. For example, pig farmers that are able to bring their pigs to slaughter without tail biting or tail docking, could receive additional support.

Payments could contribute to covering additional costs and income foregone, therefore meeting the framework of the WTO Agreement on Agriculture (AoA). Farm support payments could help farmers with a proportion of the capital costs involved and, for a transitional period, could support a proportion of the additional running costs. In addition, payments could include a modest incentive that rewards farmers for their efforts and risk taking in moving to a higher welfare scheme. Any payments should build from a strong baseline of legislative protections.

Payments should be targeted on specified, results-orientated objectives. The objectives of high welfare payment-supported schemes must be clearly articulated and well defined, and measurable milestones and targets must be established to ensure progress is made as planned. The Government should ensure that compliance with higher-welfare schemes is independently audited using spot-checks, with appropriate penalties, such as immediate cessation of payments, for non-compliance. DEFRA and the devolved administrations should be given the responsibility of planning a five-year strategy to promote understanding and uptake of any new system, as well as monitoring and evaluating its impact, including collating publicly accessible annual statistics.

Care must be taken to ensure that payments are compatible with the AoA. Under the AoA, support payments (subsidies) are subject to reduction commitments if they exceed five percent of the total value of a nation's production of a commodity during the relevant year. In practice, most potential payments are likely to be covered by this exemption. Payments are also exempted if they have no, or at most minimal, trade-distorting effects or effects on production and:

- they are for training, extension or advisory services or for marketing and promotion, or
- they are payments under environmental programmes.

If devised with care, support for pasture-based farming and integrated crop-livestock systems could fall within this category.

### 4.3.2 Recommendations for Specific Animal Welfare Reforms

Minister for Agriculture George Eustice has highlighted the Government's manifesto commitment to "*place greater emphasis on animal welfare in the design of agriculture policy*"<sup>98</sup>. In order to remain a world leader in farm animal welfare, the UK will need to go above and beyond the current standards imposed by the EU baseline. In particular, we recommend improvements in the areas set out below. Each of the below reforms would require separate consideration by each devolved administration in the UK, except live exports, which is not a devolved issue.

#### 4.3.2.1 Extending the definition of 'animal' in welfare and slaughter regulations

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 including Norway, New Zealand and Switzerland. A body of scientific evidence strongly points to the conclusion that both cephalopods and decapod crustaceans are capable of experiencing pain and suffering<sup>99</sup>.

#### 4.3.2.2 Ending live exports for slaughter or fattening

The Government's manifesto contains a commitment to look at ways of controlling live exports of animals for fattening or slaughter and the Government is now looking at ways to implement this commitment. Once the UK leaves the EU it will no longer be constrained from banning live exports by EU rules. However, any ban will have to meet WTO rules; a properly designed ban should be able to do this.

The UK should, post-Brexit, ban live exports for slaughter or fattening. Such a ban should exempt breeding animals, provided there is a provision ensuring that they are transported under genuinely high welfare standards. Provisions would also need to be made to ensure that the welfare of animals is not compromised through the use of the Republic of Ireland as a 'back door' route for live exports to the continent. However, genuine trade between Northern Ireland and the Republic of Ireland should be permitted.

Indeed the Government need not wait for Brexit, but should introduce a ban on live exports for slaughter or fattening, within the upcoming Agriculture Bill, to come into force the day after the UK leaves the EU.

#### 4.3.2.3 Focusing on dairy cow welfare

Over the last few years, the trend towards 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 welfare benefits from grazing on pasture. Accordingly, zero-grazed/permanently housed systems, whereby cows are confined indoors for all of the year, should be phased out on animal welfare grounds.

We recognise that there will be instances where some cattle may need to be housed outside of the usual housing period, for special attention to ensure their specific health and welfare needs are met, for example, when they are freshly calved, or for particular health reasons. Additionally, cattle that go outside during the grazing season are also

likely to be housed for a significant portion of the year when they cannot graze. It is important that this winter accommodation is fit for purpose, and does not compromise the cattle's welfare.

A system should be introduced to allow the objective measurement of dairy cow welfare, requiring farmers to report on a number of scientifically valid welfare outcomes including, amongst others, the annual average lameness and mastitis prevalence in the herd, as well as the number of lifetime calvings per cow. Attainment of acceptable levels of these welfare outcomes could then be a criteria for receiving farm payments.

Serious consideration should also be given to incentivising moves towards the use of animals that are able to optimise their welfare from a largely grazed/forage based diet.

Higher dairy cow welfare must become part of the UK's unique selling point post-Brexit. The UK should become a world leader in pasture-based livestock and the skilful management of such systems.

#### **4.3.2.4 Replacing sow farrowing crates with free farrowing systems**

Around 50% of UK sows are placed in farrowing crates a few days before giving birth, remaining there for three to four weeks until piglets are weaned, with the intention of preventing sows crushing their piglets. These crates are so narrow that the sow cannot turn round and the physical and emotional

distress that they cause is well-documented<sup>100</sup>. Farrowing crates should be banned, with a reasonable phase-out period, and replaced by free farrowing systems. British farmers and scientists have played an important part in the development of free farrowing systems<sup>101</sup> and a number of such systems are available, with research showing that piglet mortalities in loose farrowing systems can be as low as, or even lower than, those in crates<sup>102</sup>. Farmers could be encouraged to move to free farrowing systems by farm support payments. These could help farmers with a proportion of the capital costs involved and a proportion of the additional running costs for a transitional period.

#### **4.3.2.5 Providing legislation for species not currently covered by specific welfare legislation**

Currently, legislation does not exist to protect the welfare of a number of farmed animals. Post-Brexit, 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 currently exist with respect to the husbandry, transportation and slaughter of farmed fish. In 2014 the Farm Animal Welfare Committee (FAWC) published Opinions on the 'Welfare of Farmed Fish'<sup>103</sup> and the 'Welfare of Farmed Fish at the Time of Killing'<sup>104</sup>, providing scientific advice to DEFRA about farmed fish welfare on-farm and at the time of slaughter.





The Government should act upon the recommendations of the FAWC, and consider the research from the European Food Safety Authority (EFSA), in relation to the welfare of farmed fish on-farm, during transport, and at slaughter. Brexit provides a convenient opportunity for the Government to make detailed, species-specific regulations to safeguard the welfare of farmed fish and other farmed animals in relation to their husbandry, transportation and slaughter.

#### 4.3.2.6 *Improving the welfare of broiler chickens*

In the UK, most broiler chickens are stocked at 38 kg/m<sup>2</sup>. As chickens in the UK weigh around 2.2 kg at slaughter, this equates to approximately 17 chickens kept per square metre, representing substantial overcrowding<sup>105</sup>. At such high densities, broilers can have high levels of infectious pathogens, leg disorders, foot pad burn and mortality<sup>106</sup>. To protect the welfare of broiler chickens, the maximum permitted broiler stocking density should be reduced to 30 kg/m<sup>2</sup>, the maximum allowed by the *RSPCA Assured* scheme.

Today's chickens have been selected to reach slaughter weight nearly twice as quickly as 40 years ago. Their legs fail to keep pace with the rapidly growing body and often are unable to support it properly. As a result, many chickens suffer from painful leg disorders, with fast growth rates being the main cause of this<sup>107</sup>. Post-Brexit, public payments should encourage a move to higher welfare systems, shifting away from fast growing birds, towards slower growing, more robust breeds.

#### 4.3.2.7 *Ending the use of enriched cages for laying hens*

Barren cages for laying hens have been prohibited across the EU since 2012, but the use of enriched cages is permitted. However, these cages provide only minor welfare improvements compared with the banned barren cage<sup>108</sup>. Germany has banned enriched cages from 2025 (with certain exceptions permitting their use until 2028)<sup>109</sup>. To ensure that the UK does not fall behind other countries, a similar ban should be put in place.

#### 4.3.2.8 *Mandatory labelling of meat and dairy products relating to farming method and slaughter practice*

Governments exhort consumers to play their part in driving welfare improvements, but it is difficult at present for consumers to make informed choices. Evidence has shown the positive effect of labelling on real buying patterns for consumers in the UK in certain areas. For example, EU law has, since 2004, required eggs and egg packs to be labelled as to farming method. This has been an important factor in the market shift away from cage eggs. Since this point, 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<sup>110</sup>.

With meat and milk, however, consumers are largely in the dark. This problem is particularly acute regarding milk. Most milk (other than organic) is pooled together, making it impossible for consumers to distinguish between intensive and pasture-based milk. The Government should work with industry to find ways to separate milk according to intensive/extensive production methods and then require mandatory labelling to afford consumers an informed choice.

After Brexit, labelling should be a clear priority for the UK. All meat, milk and dairy products, and products containing eggs, including those produced overseas, should be labelled as to farming method and method of slaughter, post-Brexit.

#### 4.3.2.9 *Ending the routine preventive use of antibiotics in farming*

The O'Neill Review on Antimicrobial Resistance, commissioned by the UK Government, reports a clear link in the scientific literature between antibiotic use in farm animals and resistance in humans<sup>111</sup>. The main use of antibiotics is routine preventive use in intensive systems, where animals are confined in overcrowded, stressful conditions and are bred for maximum yield. These conditions compromise the animals' health and immune responses, and encourage disease to develop and

spread. Once outside of the EU, the UK should prohibit the routine preventive use of antibiotics, instead employing health-orientated systems for the rearing of animals. In such systems, disease would be prevented by good hygiene, husbandry and housing, not by recourse to regular prophylactic use of antibiotics.

#### 4.3.2.10 Ensuring welfare at slaughter

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

- The use of independently monitored CCTV should be required in all slaughterhouses to reduce the incidence of poor welfare, as revealed by Food Standards Agency data<sup>112</sup>. We were pleased to see the Government's recent proposal to make the use of CCTV mandatory in all slaughterhouses in England. We support this measure to improve animal welfare and recommend careful consideration of the siting of cameras, the length of time for footage to be kept, and how the footage will be monitored and assessed.
- Around 50% of UK pigs are slaughtered with high concentrations of carbon dioxide (CO<sub>2</sub>), despite scientific research showing that CO<sub>2</sub> slaughter of pigs involves a high degree of suffering<sup>113</sup>. In a 2003 report, the FAWC concluded *"the use of high concentrations of CO<sub>2</sub> to stun and kill pigs is not acceptable and we wish to see it phased out in five years"*. This has not been done. The Government should phase out this system as a matter of urgency and replace it with a legal requirement to use more humane methods of stunning and killing.
- The adequate stunning of all birds cannot be achieved with water bath stunning systems, as the electrical currents used are often too low, the frequencies too high and the birds often move, missing the water bath stunner. Further, the process of hanging chickens before stunning causes pain and suffering. While around two thirds of UK chickens are now gas stunned before hanging, this is usually done with CO<sub>2</sub>, which can be at a level known to cause suffering (i.e. above c.30%). The shackling of conscious birds should be prohibited, and research funded to develop

humane alternatives to water bath stunning and to better understand animal suffering with the use of CO<sub>2</sub> gas stunning.

- All animals should be stunned before slaughter. Post-Brexit, the current exemptions to stunning prior to slaughter should be removed from the legislation. Until non-stun slaughter can be phased out, the Government could strengthen the law to provide enhanced safeguards for animals slaughtered without first being stunned. For example, the law should require immediate post-cut stunning and all non-stun slaughter to be carried out in the presence of a veterinary surgeon.

#### 4.3.2.11 Banning the import of foie gras

The significant welfare issues surrounding the production of foie gras are well documented<sup>114</sup>. However, despite the 2007 poll conducted by Ipsos MORI and commissioned by the RSPCA, which showed 63% of the public support a ban on the UK sale of foie gras, 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.

However, 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<sup>115</sup>.

Brexit provides 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.

#### 4.3.3 Research and Enforcement

The EU has a long history of providing scientific information on farm animal welfare to inform legislation through the EFSA and, before the establishment of EFSA, through the Scientific Committee on Animal Health and Welfare and

the Scientific Veterinary Committee. These bodies have produced a number of reports on the welfare of farmed animals, which played crucial roles in influencing legislation, for example the welfare of laying hens and the welfare of veal calves. Aside from the 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 Agency, 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.

#### 4.3.4 Further Opportunities for Improving the Welfare of Animals in Agriculture

Post-Brexit, the UK will resume its seat at the WTO for the first time in 44 years, giving rise to a number of opportunities. Firstly, the UK will be able to negotiate its own free trade agreements (FTAs) and include appropriate animal welfare requirements in them. Secondly, the UK will be able to ensure

that subsidies given to farmers promote higher animal welfare and environmental standards, whilst remaining within the rules of the WTO Agreements (particularly the AoA). 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 (OIE).

Finally, the UK (independent of other EU countries) is one of the largest shareholders in many International Financial Institutions (IFIs), including the World Bank Group. Ensuring that financial investment bodies have strong, well-enforced animal welfare and environmental policies are key to incentivising improvements in agricultural systems globally, and curbing the uptake of low welfare systems. In turn, this will also help to ensure that any improvements in UK animal welfare standards are not undermined by industries overseas, which may operate 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 and environmental policy and enforcement standards higher than those set across the EU.





SECTION 5

# Companion Animals



## 5.1 INTRODUCTION

The issue of companion animals is important – over 12 million people, some 44% of the UK population, own a pet<sup>116</sup>. This creates demand, particularly for young animals such as puppies and kittens. This demand is not being met at present from domestically bred animals, resulting in imported animals which may have been bred in poor conditions contrary to UK legislation, transported long distances and sold to unsuspecting potential owners. This results in disease threats, welfare problems and consumer issues.

EU laws lay down the threshold on issues such as the minimum age of imported dogs and cats, the vaccinations required to negate the disease threat and transportation standards. There are no common EU laws on breeding or sale of companion animals or on cruelty to companion animals, legislation that has existed in the UK for over 180 years. Present EU laws have resulted in increased trade from countries where conditions are poorer and reduced disease mitigation. Leaving the EU presents the UK with an opportunity to increase disease thresholds and prevent illegal trade.

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## 5.2 HOW EU LAW AFFECTS COMPANION ANIMAL WELFARE AT PRESENT

Currently, EU legislation regulates various areas of relevance to the health and welfare in the UK of companion animals, including dogs, cats and equines. This includes travel; commercial pet movements; the welfare of animals during transport; and, the sale and import/export of cat and dog fur.

The EU legislation in these respects is incorporated into UK law by various statutory orders and regulations and whilst this existing legislation goes some way to protecting dog and cat health and welfare, it could go much further.

There is also a new EU Animal Health Law, which is due to introduce additional animal health requirements - including provisions on pet travel - across the EU from 2021.

The decision for the UK to exit the EU provides the UK Government with the opportunity to review and amend the legislation governing pet travel, trade and disease control.

The existing EU legislation that applies to dogs and cats is outlined below, with recommendations for improvements to each that could be adopted within the UK Government's legislation.

Specific comments are also made related to legislative provisions for equidae (horses, ponies, donkeys and mules) in the UK.

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## 5.3 ENHANCING COMPANION ANIMAL PROTECTION AFTER BREXIT

### 5.3.1 The Pet Travel Scheme (non-commercial movement of pets)

Regulation No 576/2013 sets out the requirements for dogs, cats and ferrets which are moved for non-commercial purposes between EU Member States or into the EU<sup>117</sup>. This is otherwise known as the Pet Travel Scheme (PETS) and requires all three species to be microchipped, vaccinated against rabies and to have a valid pet passport when moved between or into Member States.

Implementing Regulation No 577/2013 sets out the model identification documents for pet movement<sup>118</sup>. Delegated Regulation No 1152/2011 also requires dogs being moved into four Member States, including the UK, to be treated against the tapeworm *Echinococcus multilocularis* from 24 to 120 hours before travel<sup>119</sup>.

It is important to note that the movement of animals for change of ownership, even if it is a charitable activity, does not fall under PETS: it is considered a commercial activity.

The PETS rules were changed in 2012 to harmonise travel across Europe. This resulted in a relaxation of the UK's quarantine and animal health controls. Figures from DEFRA show that the number of non-British registered dogs entering Great Britain via PETS increased by 82% in the first year of the controls being relaxed<sup>120</sup>.

**Table 1: Numbers of dogs imported to the UK under British microchip and non-UK registered<sup>121</sup>**

2011	85,299 of which 30,833 were non UK registered
2012	138,968 of which 56,147 were non UK registered
2013	152,075 of which 58,869 were non UK registered
2014	155,444 of which 63,466 were non UK registered
2015	164,836 of which 65,080 were non UK registered
2016	275,876 of which 62,045 were non UK registered

Furthermore, DEFRA figures also show that the number of non-British registered dogs entering Great Britain under PETS has continued to rise year-on-year since these changes, with a noticeable increase in imports of puppies and dogs from certain central and eastern European countries such as Hungary, Lithuania, Romania and Poland. For example, the number of Lithuanian dogs travelling into Great Britain under PETS increased by a shocking 780% between 2011 and 2013. The number of Hungarian dogs travelling into Great Britain under PETS increased by 663% in the same period<sup>122</sup>.

Investigations have provided evidence of PETS being regularly used as a cover to import puppies into Great Britain for commercial purposes. In 2014, an undercover investigation<sup>123</sup> found evidence of puppies being brought into the UK for sale via PETS from both Lithuania and Hungary. Despite changes to the scheme in December 2014, including the requirement for Member States to carry out non-discriminatory checks, the problem continues. A second investigation in 2015<sup>124</sup> highlighted that the changes were not the deterrent they were intended to be, with the trade continuing from Lithuania and Romania. A third investigation in 2017<sup>125</sup>, which focused on Lithuania and Poland, again showed

that illegal puppy importations are as rife as ever. All investigations revealed the fraudulent issuing of pet passports with falsified data, the importation of underage puppies and issues with controls at the UK border. A number of recent prosecutions shows that the problem of illegally importing puppies from Central and Eastern Europe continues<sup>126</sup>.

**Table 2: The number of cats entering Great Britain under PETS has also increased year on year<sup>127</sup>.**

2011	8,220
2013	14,147
2015	21,404

There is concern that the increased number of animals coming into the UK, together with concerns about the effectiveness and enforcement of the legislation, present a disease risk. Currently, only dogs are required to be treated against the tapeworm *Echinococcus multilocularis* before entering the UK, from 24 to 120 hours before entry. Without treating both dogs and cats appropriately, this parasite could enter the UK, where it is also a risk to humans<sup>128</sup>. There are also other diseases which are not currently, and we recommend should be, covered in the current legislation, which pose a huge risk to animal, and in some cases to human, health. These include *Leishmaniosis*, *Ehrlichiosis* and *Babesiosis*.

Our key recommendations for non-commercial pet travel are:

- Rabies blood (titre) test: it is known that a small but significant number of animals do not mount an adequate immune response following vaccination against rabies. A study<sup>129</sup> has found that 4.12% of dogs and 2.85% of cats, which had been vaccinated and later blood tested, failed to demonstrate sufficient antibodies against the rabies virus. This study also found that dogs less than six months old had a significantly higher chance of failing a blood test. Prior to the changes to the Pet Travel Scheme in 2012, it was advised that young naïve dogs should receive two doses of rabies vaccination for this reason.



Research<sup>130</sup> has also shown that over half (53%) of imported rescue dogs from Eastern Europe failed to demonstrate a sufficient antibody level and 41% of the dogs had inadequate antibody levels. We therefore recommend the reintroduction of rabies blood (titre) testing before entry into the UK. This would help protect the UK from the risk of rabies.

- **Post rabies blood (titre) test wait period:** although there is currently no requirement for dogs, cats and ferrets to have a rabies blood test before being moved between Member States, these species do need to undergo a blood test before entering a Member State from a third country or territory. The validity requirements are for the test to be carried out at least 30 days after the date of vaccination and for there to be a three-month wait period from the date of the successful blood test before the animal is moved between countries. The average incubation period for naturally occurring rabies in dogs, cats and ferrets varies from 3-12 weeks depending on the reference, so three months is a proportionate wait period. To minimise the risk of rabies we recommend that, in addition to a requirement for a rabies blood test, a similar post blood test wait period should be introduced for all dogs and cats before entry into the UK from other countries, including EU Member States. Such a wait period would also make it easier for border enforcement staff to differentiate between adult dogs and those that are too young to legally enter the country.
- **Tick treatment:** a requirement should be reintroduced for both dogs and cats to be treated against ticks before entering the UK, to prevent parasites such as *Babesia canis* and *Ehrlichia canis* from being introduced into the UK. This could be based on the previous requirement for tick treatment prior to 2012, where pets had to be treated for ticks 24-48 hours before travel.
- **Tapeworm treatment:** the treatment window for tapeworm before entry into the UK should be shortened from 24-120 hours to 24-48 hours, as previously required. This timescale should be reduced because the larger the treatment window, the greater the chance of

re-infection. Tapeworm treatment should also be reintroduced for cats.

- **Reduce the number of dogs allowed as a non-commercial movement:** the current PETS rules allow up to five pet animals to be moved by one owner or authorised person under the scheme. However, investigations have found commercial pet dealers are illegally using the PETS scheme as a way of side-stepping the additional requirements of the commercial movement legislation. We recommend reducing the number of animals that can be moved by one person under PETS. For puppies, a maximum of two dogs under six months should be permitted to be moved at a time; whilst families may wish to travel with a puppy it would be rare for them to do so with more than two puppies. For all dogs, including adult dogs, there should be an overall limit of three dogs to be moved at one time. Studies<sup>131</sup> have estimated that the majority of UK households with dogs had only one dog (73.3%), 18.9% owned two dogs and 4% owned three dogs. Therefore, by setting the limit at three dogs, the majority of dog owners (97.4%) would be able to travel with their pet dogs. For families wanting to travel with four or five dogs, we recommend that a very tightly regulated process could be introduced, which would require an exemption certificate to be issued by the competent authority, justifying why four or five dogs are to be transported.
- **Microchip requirements:** currently, pets are required to be microchipped before entering the UK, but there is no requirement for them to be registered on a database. We recommend the introduction of a requirement for microchip and other relevant details to be registered on a database linked to an EU database. This is important to provide traceability, particularly given the increased level of travel.

We are also concerned that whilst microchips are scanned at the border before pets can enter the UK, a record is not kept of microchip numbers. This means that when welfare organisations take in dogs and cats with a microchip from another country, it is not possible to tell if and when the animal came into the country legally. We therefore recommend the development of a

simple database logging pets' microchip numbers and the date of entry into the UK. This would not only help welfare organisations to undertake a risk assessment for such animals (by comparing time of entry with the incubation period of disease), but in the event of a disease outbreak it would also enable control measures to be most effective.

- Carriers: the enforcement of the legislation on pet movement should be shifted to government agencies rather than the carriers. Currently, various challenges are placed on the carriers to undertake checks on pets that are travelling, such as identifying whether pet passports are fraudulent and whether puppies are over 15 weeks of age. We recommend that it would be appropriate for checks to instead be undertaken by a qualified animal professional from a Government agency.

### 5.3.2 Commercial Movement of Animals

Directive 92/65/EEC<sup>132</sup> (the Balai Directive) sets out the animal health requirements for dogs, cats and ferrets being moved between or into Member States for commercial purposes.

When more than five dogs, cats and ferrets are moved, the Balai Directive also applies regardless of whether the movement is for a commercial purpose (unless the animals are being moved for the purpose of participating in competitions, exhibitions or sporting events, for which proof of the event is required).

The Balai Directive also applies to the movement of animals for re-homing purposes. Any animal that is moved for the sole purpose of change of ownership is considered to be a commercial activity, irrespective of any financial gain, and must therefore comply with this directive. This includes charitable activities.

Directive 2013/31/EU<sup>133</sup> amends the Balai Directive to bring it in line with the requirements for dogs, cats and ferrets under Regulation No 576/2013 (PETS - see above).

In addition to the requirements set out in Regulation 576/2013 on non-commercial pet movements, these directives require that animals must come from a holding or business registered in the EU country of origin. Importers must obtain a health certificate (issued from the European Commission's Trade Control and Export System (TRACES) website) for each movement of animals. An authorised vet must carry out a clinical examination of each animal ensuring they are fit to travel within 48 hours before travel.

These recommendations should also be implemented for commercial movements of dogs, cats and ferrets.

We would also like to see improved intelligence-led checks both at the point of destination and at the point of departure in the UK. There are serious concerns that checks at ports for compliance with the Balai Directive are insufficient in number and quality, as they take place at the arrival destination. Furthermore, currently only up to 10% of consignments are checked at the destination. This is extremely concerning as there is clear potential for cases of illegal importations to be missed and so this should be addressed in future legislation. It is important that improvements to the non-commercial pet movement legislation be coupled with more stringent enforcement of the commercial legislation, to ensure that a decrease in illegal activity through one route does not result in an increase in the other.

It would also be desirable for the UK to retain access to TRACES - an effective online system that enables Member States, including the UK, to follow all the movements of animals into and out of the UK. This permits animals to be traced so that post import checks can be carried out and is invaluable when animals have to be traced as a result of a disease outbreak. However, the European Commission have made clear that access to TRACES is only permissible if a country is a member of the single market, as TRACES is linked to Regulation 882/2004<sup>134</sup>, so access will depend on whether or not the UK remains within the single market, or if any special access provision is made for the UK if it leaves the single market.

It would also be highly desirable to continue the arrangements in Council Directive 82/894/EEC<sup>135</sup> (on the notification of animal diseases within the community) that will enable relevant data and information to be shared between the UK and the EU and its Member States in the event of a disease outbreak or suspicion of an outbreak through the Animal Disease Notification (ADNS) system.

### 5.3.3 Animals During Transport

The transport of dogs and cats in the EU in connection with an economic activity is governed by Regulation No 1/2005<sup>136</sup> on the protection of animals during transport. The rules require that the animals are fit to travel - cats and dogs of less than eight weeks cannot be transported unless they are accompanied by their mother - and must not be transported in a way likely to cause them injury or undue suffering. Cats and dogs transported less than 50 km are not covered by these rules.

The rules are however general in nature and the European Commission has committed to adopting detailed rules for the transport of dogs and cats after the adoption of an opinion on this topic by the European Food Safety Authority<sup>137</sup>. Despite this opinion being published in 2004, there are still only a few rules specific to dogs and cats. We recommend that the UK introduce specific requirements to ensure the welfare of dogs and cats during transport in future legislation, which should include issues such as clear guidance on cage sizes and frequency of travel breaks.

### 5.3.4 Trade in Cat and Dog Fur

In 2007, the EU banned the sale and import of products containing cat and dog fur<sup>138</sup>. Regulation No 1523/2007<sup>139</sup> places a ban on the sale of dog and cat fur within the EU, as well as its import or export.

The ban on cat and dog fur must be retained due to the inherent cruelty in this trade, as there could be incentives for the trade to re-start into the UK should the ban be rescinded. This would be unacceptable to the British public and must be prevented.

The fur trade is also discussed in section 3.3.5.

### 5.3.5 Transmissible Animal Diseases

Regulation 2016/429<sup>140</sup> was adopted in March 2016. It streamlines almost 40 EU legal acts related to animal health into a single law. Intended as a framework law, the regulation itself only lays down general principles and basic rules on animal diseases. This is an important new regulation as it will repeal both Regulation 576/2013 (PETS) and the Balai Directive (outlined above).

Although the Animal Health Law will apply from 2021, Regulation 576/2013 (PETS) will continue to apply until 21 April 2026. Detailed provisions under the Animal Health Law are still to be established by delegated or implementing acts.





The Animal Health Law will require that all breeder and seller establishments in the EU will have to be registered. This should help to make breeders and sellers more transparent and accountable. It should also give transparency in terms of how many (and types) of animals are being bred and sold within the UK and across Europe.

Although the UK has committed to exiting the EU, ensuring that the Animal Health Law is as robust as possible is still in the UK's interest. Dogs and cats travelling to the EU from the UK will still have to comply with this regulation.

We recommend that the UK Government continues to input into EU negotiations on the relevant implementing and delegated acts under the Animal Health Law.

### 5.3.6 Specific Recommendations Applying to Equidae in the UK

The UK has one of the highest quality equine industries in the world, and is internationally recognised as the leading source of equine expertise. As set out in the Equine Sector Council's Manifesto, the equine industry in the UK contributes £8 billion a year to the economy and is the second largest rural employer after agriculture. Horse riding engages a higher proportion of women, people with disabilities and those over the age of 45 than other sports.

In addition to EU legislation referred to above, we recommend that the UK Government:

- Introduces domestic legislation to enforce Commission Implementing Regulation 2015/262<sup>141</sup> on Equine Identification without delay. We are encouraged by the consultations that have been published in England and Scotland and urge DEFRA and the devolved administrations to include retrospective microchipping of all horses, Local Authority-issued Fixed Penalty and Improvement Notices; the ability for veterinary practitioners to access the database; and to build in a means for the owner to enter data online to notify PIOs of necessary changes to their records.
- In the long-term, ensures that stakeholders, including government, sporting associations, breeders, NGOs, the World Organisation for Animal Health and the veterinary community continue to work together to maintain and build on the UK's role as a leader in equine health and welfare by:
  - ensuring that any approach taken on equine identification by the UK Government and the devolved administrations is recognised by, and seamlessly workable in, the EU to ensure ease of trade and competition in equestrian sport and racing
  - preventing the non-compliant export of equines by strengthening its portal controls and making the package of legislation that prohibits the export of some horses for slaughter more robust, enforceable and enforced. This will also improve biosecurity and enhance traceability and should also be supported by:
    - *providing adequate personnel and financial resources in DEFRA, the Animal and Plant Health Agency (APHA) and at our borders to implement policies, enforce legislation to improve equine health and welfare and ensure any border checks do not lead to long queues at ports; and*
    - *undertaking more rigorous, intelligence-led checks of equine imports and exports both at our ports at destination and elsewhere. However, this should be in addition to, not instead of, routine surveillance of farms and other equine premises.*
- Continues the Tripartite Agreement with France and Republic of Ireland which enables high health/high performance registered equines from Ireland and the UK to move to and from France without animal health certification, subject to detailed electronic prior notification arrangements and gives free movement of all horses, ponies, donkeys and mules, except animals destined for slaughter, between the UK and the Republic of Ireland.



The decision for the UK to exit the EU provides the UK Government with the opportunity to review and amend the legislation governing pet travel, trade and disease control.

SECTION 6

# Animals Used in Research





## 6.1 INTRODUCTION

Approximately four million experiments on animals take place in the UK every year, all by statutory definition with the potential to cause pain, suffering, distress or lasting harm. In the EU as a whole, the figure is over 11 million. The UK is one of the biggest users of research animals in the EU<sup>142</sup>.

Many people are deeply concerned about the use of animals in experiments, with 74% of the public agreeing that more needs to be done to find alternatives<sup>143</sup>. There are increasing scientific concerns about the translatability of animal models and more scientists are turning towards the use of non-animal replacements.

The regulation of animal research and testing is therefore a significant issue for the UK and one which represents both a major challenge and concern as the UK leaves the EU.

The UK should ensure that the public can have confidence that legislation governing the use of animals in science is applied rigorously. This requires both increased transparency about how animals are used in research, and *demonstrable* efforts to replace, reduce and refine animal use in research and testing.

The UK has an outstanding international reputation in scientific endeavour and there is an opportunity for the UK to lead the world in the development of non-animal techniques and technologies to replace animal use.

The Government has considerable discretion about which experiments on animals it allows and, in particular, for what purposes, on which species, and with how much pain and distress. Post-Brexit, the Government's latitude will be even greater as it will not be bound by Article 2 of the key EU directive in this area which restricts 'stricter national measures' (explained further below), and it is very important that, aided by greater transparency, what is and is not permitted reflects evolving public opinion.

Leaving the EU represents an opportunity for the Government to bring experiments on animals more in line with public opinion and to un-tap the vast

potential of non-animal approaches, for the benefit of the nation's health and scientific excellence.

The UK should use Brexit as a springboard for leading the world in humane, cutting-edge science.

It should be noted that animal research is currently a reserved matter: the Scottish Parliament and Welsh and Northern Irish assemblies have no legislative competence. The Home Office is the sole regulator in England, Scotland and Wales and the Department of Health, Social Security and Public Safety is the regulator in Northern Ireland.

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## 6.2 HOW EU LAW AFFECTS THE USE OF ANIMALS IN RESEARCH AT PRESENT

EU Directive 2010/63/EU on the protection of animals used for scientific purposes<sup>144</sup> ('the directive') regulates experiments on live vertebrate animals (and cephalopods, including octopus, cuttlefish and squid), including the conditions in which they can be bred, supplied and housed. The directive is in part based on a convention agreed by the 47-country Council of Europe, for example with regard to minimum housing standards<sup>145</sup>.

The directive is also based, in part, upon principles derived from UK law, enshrined in the Animals (Scientific Procedures) Act 1986<sup>146</sup> (ASPA) in its original form; and implementation of the directive has taken place at a domestic level by amendments to ASPA.

The directive is a harmonising measure, designed to 'level the playing field' between Member States. Its legal focus is therefore the internal market and intra-EU trade, though it contains many animal welfare measures.

The directive explicitly requires two levels of authorisation: one for the breeder, supplier or user (establishment); and one for each project. It also requires Member States to ensure, by authorisation or "other means", that staff carrying out procedures, caring for animals, or killing animals, are adequately educated and trained.

In the UK, a project licence permits what would otherwise be a criminal offence, as licence holders who lawfully use animals under ASPA are exempted from the provisions of the Animal Welfare Act 2006<sup>147</sup> (which creates an offence of causing “unnecessary suffering” to an animal).

Two key legal tests must be met before a UK project licence may be granted:

- The project must undergo a **harm:benefit** analysis: the potential benefits for humankind, the environment or other animals must be considered against the pain, suffering, distress or lasting harm which the experimental animals are likely to experience. This takes ethical considerations into account, and the quality of the proposed science is also fundamental, due to the direct effect this will have on benefit; and
- The Secretary of State must be satisfied that the scientific objective could not be achieved without using animals, by using fewer animals, or by causing less suffering (including both pain and distress). This is the **Three Rs** principle (Replacement, Reduction and Refinement). Member States are supposed to encourage the development of alternatives, though implementation is inconsistent.

The severity of each regulated procedure is prospectively classified as ‘non-recovery’ (conducted under general anaesthesia throughout), ‘mild’, ‘moderate’ or ‘severe’, and relevant severity limits (denoted by defined ‘humane endpoints’) at which any given procedure must be terminated, must be defined. Procedures with the potential to cause severe pain, suffering or distress that is likely to be long-lasting and cannot be ameliorated, are not permitted, although a ‘safeguard clause’ allows Member States to apply for an exemption to this in exceptional circumstances (this has never happened at the time of writing). There are also limits on the re-use of animals in separate experiments and limited restrictions on the breeding and use of non-human primates.

Unlike many other pieces of EU animal welfare legislation, Article 2 of the directive prohibits Member States from introducing greater protection for animals than the directive requires, though they are able to retain enhanced measures that were already in force at November 2010. The UK’s freedom of manoeuvre therefore currently has some limits.

However, Member States can use the harm:benefit analysis to introduce policy bans (e.g. taking a policy decision not to grant licences for particular types of experiments, or using particular species). For example, in the 1990s the UK took such decisions in relation to the use of animals for cosmetics, alcohol and tobacco product development, offensive weapon development and on the use of great apes and wild-caught monkeys. It recently introduced a policy ban, albeit in a limited way, on household products testing. Further, national policies and guidance can implement more refined or stringent measures in the context of implementing the Three Rs (as set out in Article 4 of the directive).

In many cases, Member States can also unilaterally improve housing and care standards through licence conditions. They can also increase the transparency of experiments and insist on mandatory animal welfare representation on institutional ethics committees.

There is also a myriad of other EU legislation on product safety, efficacy, hazard classification and labelling of substances such as medicines, veterinary products and medical devices. For example, the EU regulation known as REACH<sup>148</sup> leads in practice to animal testing of chemicals such as pesticides and industrial chemicals. In addition, there are prescribed methods of testing (animal and non-animal) in the European Pharmacopeia for products used in human medicines.

## 6.3 ENHANCING PROTECTION FOR ANIMALS USED IN RESEARCH AFTER BREXIT

### 6.3.1 No Standards Lower than those Already Enshrined in the UK

The British public will want to be assured that leaving the EU will not result in any diminution in the regulation of animal use in research and that the regulatory conditions of ASPA (which are already the subject of criticism by some as being inadequate) will not be diluted. This is essential, not only because many people are rightly concerned about animal welfare, but also because causing avoidable suffering to animals used in experiments has negative effects on the quality of the science. Both of these considerations are recognised by the regulator.

Ben Wallace MP, Secretary of State in the 2015 Animals in Science Regulation Unit (ASRU) Annual Report<sup>149</sup> stated:

“ The UK continues to maintain a leading position in science and innovation alongside support for good animal welfare. The two are mutually dependent – good science can only be achieved where there is good animal welfare. Through a strong regulatory framework, underpinned by these commitments to strong science and welfare, we will continue to provide assurances to the public.

### 6.3.2 Improved Standards

The UK currently plays an active part in the EU's processes for shaping, and overseeing the implementation of, EU regulatory requirements relating to animals used in experiments. After Brexit, the UK's influence within these processes (which helps to improve animal welfare standards across the whole EU) is likely to be diminished. It is important that the UK maintains standards that at least keep pace with the EU's efforts to replace, reduce and refine the use of animals. The UK should

seek to ensure that its standards are the best in the world, whilst seeking to influence the EU and other trading partners to raise animal welfare standards. The UK should also consider how to mirror the EU regulatory oversight that currently operates to scrutinise, and ensure the UK's compliance with, the legally applicable standards.

Leaving the EU should be seen as an opportunity to improve standards and invest in research that is both more humane and scientifically valid, by phasing out the use of harmful experiments on animals.

As shown by the European Union Citizens' Initiative, 3 March 2015, there is significant public concern about the well-being of animals used in experiments<sup>150</sup> and there is particular concern around the use of dogs, cats, equines and primates. These developments of opinion are particularly pertinent, as the public funds experiments on animals either through tax or consumption.

As a minimum, the Government should:

- make a public commitment to ending, within a challenging yet achievable time frame, the permitting of 'severe' suffering, as defined in UK legislation. This should include a realistic assessment of how much an animal is likely to suffer from birth (or hatch) to death, including cumulatively from multiple procedures, husbandry techniques and restrictive housing. It should also include reviewing the re-use of animals who have undergone procedures classified as 'moderate' or 'severe', to ensure that there is a strict limit to severity depending on the animals' life experiences. This would not require a change in the law, but could be achieved by implementing policy rather than changing legislation;
- commit to a stringent review of defined areas in regulatory testing, including the use of a second species and multiple routes of administering substances, with the aim of identifying and eliminating avoidable tests;
- retain, or commit to, effective legislative or policy bans on the licensing of procedures that would (if the UK were still part of the



EU) have involved the UK invoking one of the so-called 'safeguard clauses' in Article 55 of the directive, which derogates from animal welfare requirements by allowing Member States to adopt provisional measures permitting certain procedures that would otherwise not be authorised under the directive;

- commit to a ban on the export of animals for use in research, save with Home Office consent to be granted where there would otherwise be a greater welfare detriment. This reflects the transport stress that animals endure, as well as the lack of control of standards with respect to housing, husbandry and procedures in third countries. Again, this could be achieved by an establishment licence condition and would be WTO compliant;
- have much greater transparency in relation to animal use, for example by making project licence applications and retrospective reviews publicly available (which can be done without identifying the establishments or the individual researchers and also without revealing information that is genuinely commercially confidential); and
- contribute to the development and validation of non-animal research methods and technologies and encourage research in this field.

### 6.3.3 Research Technologies

Article 47 of the directive mandates that Member States contribute to the development and validation of non-animal approaches (and methods which use fewer animals or entail less suffering), which could provide the same or higher levels of information as those obtained in procedures using animals, and that Member States should encourage research in this field. Although the Government contributes to the development, validation and implementation of non-animal research approaches, a clear legislative or government-led policy in this area is lacking.

Brexit is an opportunity for the Government to support and encourage the scientific community to advance valid, non-animal research technologies that, in the case of applied medical research, are more applicable to humans. Such technologies are increasingly seen by the scientific community as important tools to improve the quality of scientific research. These methods also tend to be faster, cheaper and more reliable than *in vivo* procedures.

There is significant funding from the EU for scientific research, including life science research that involves experiments on animals. British scientists, understandably, want access to at least the same level of funding post-Brexit as they had before, along with the opportunity of collaborating



with the best scientists from the EU and elsewhere. As the source and nature of funding changes, there is an opportunity to change the focus to non-animal approaches.

Non-animal technologies have been identified by Innovate UK as “one of a series of technologies with the potential to drive future UK economic growth”<sup>151</sup> with a huge market potential. That opportunity should be grasped.

### 6.3.4 Thematic Reviews

An ongoing ethical and scientific thematic review to ensure targeted replacement of animal use with human biology-based approaches in relevant fields could potentially achieve enormous welfare and health benefits for the UK, going hand in hand with a rigorous approach to the Three Rs principle, which may further encourage the use of non-animal technologies. As recognised in the 2015 ASRU Annual Report<sup>152</sup>:

*“The UK scientific community is a global leader in promoting and implementing the 3Rs. ASRU is committed to using this expertise to influence the uptake and adoption of 3Rs approaches globally through international engagement. Its work focuses on realising benefits for the UK in three areas:*

- *the **ethical** benefits of promoting the 3Rs to reduce animal testing globally and raise global welfare standards;*
- *the **scientific** benefits of enhanced opportunities for international collaboration (for example, through compatibility of welfare standards and ethical decision making); and*
- *the **economic** benefits that come from removing barriers to trade and enabling more streamlined studies (for example, accelerated drug approvals and opening markets for cosmetics).”*

It is important that the Government implement a structured programme of thematic review with timetables for reporting and action to be taken. Full replacement of procedures involving animals should be at the heart of the review process and within that context the reviews should have two

primary purposes: to inform the work of the regulatory authorities in identifying opportunities to support or introduce non-animal methods into relevant legislation and the work of UK bodies; and to identify opportunities to amend legislation or UK policy or to produce guidance for relevant competent authorities, that will lead to enduring reductions in the use of animals.

Thematic reviews should also consider the ethics of using animals in research in the context of evolving public opinion.

### 6.3.5 Trade and International Partnerships

There could be a risk that, as the UK enters into bilateral trade negotiations with the EU and countries outside the EU, it may abandon provisions that seek to ensure that higher welfare standards apply to the use of animals in experiments within the UK.

Scientific partnerships with researchers outside the EU should be subject to the equivalent standards to those which apply under UK law, especially where the research project is funded partly by UK State funds. Government-funded research councils should insist that all research in third countries is conducted at least according to UK standards (and reviewed by the home institution’s Animal Welfare and Ethical Review Body (AWERB) wherever applicable), as a condition of receiving funding.

It is important to support the scientific community in the UK, which is adopting alternatives to using research animals, by banning the importation of products developed using animals in ways which would not be permitted in the UK.

An example is monoclonal antibodies (MAbs): production using animals is prohibited in the EU in most cases because there are non-animal alternatives, but it is still possible to import the same MAbs which have been produced using animals, from outside the EU. Such import bans could be consistent with WTO rules because they would reflect the prevailing morality of UK citizens. At the same time, every effort should be made to agree standards through the relevant and appropriate global standard setting body

e.g. Codex Alimentarius, European Food Safety Authority and the Organisation for Economic Co-operation and Development (OECD).

As mentioned above, there is extensive EU legislation, such as REACH, which has an impact on animals used in experiments. Much of the legislation not only regulates activity within the EU but also requires the same standards for products imported into the EU. Therefore, once outside the EU, UK companies will have to meet those standards to export their products to the EU.

The sensible course would be for the UK to maintain those standards (as a minimum) in its own law and, in the case of REACH, negotiate continued access to the EU dispute resolution mechanism.

International standards more generally could be agreed through global bodies, such as Codex, EFSA and the OECD. Import bans should also be negotiated through relevant trade agreements and should properly reflect animal welfare concerns, including the use of non-animal methods where they are available.

Since March 2009 the EU has banned the testing of cosmetic products on animals within the EU (a 'testing ban'), and from 11 March 2013 the EU also banned the sale of cosmetic products and ingredients that were animal tested after that date anywhere in the world (the 'marketing ban'). Whilst cosmetics companies can still test their products or ingredients on animals outside the EU, they must not rely on the results of these tests in order to sell these products in the EU. These bans have been recognised as a hugely important step towards achieving a global ban on cosmetics testing on animals.

The EU cosmetics testing and marketing bans must be maintained (with loopholes closed) in any trade agreements the UK negotiates.

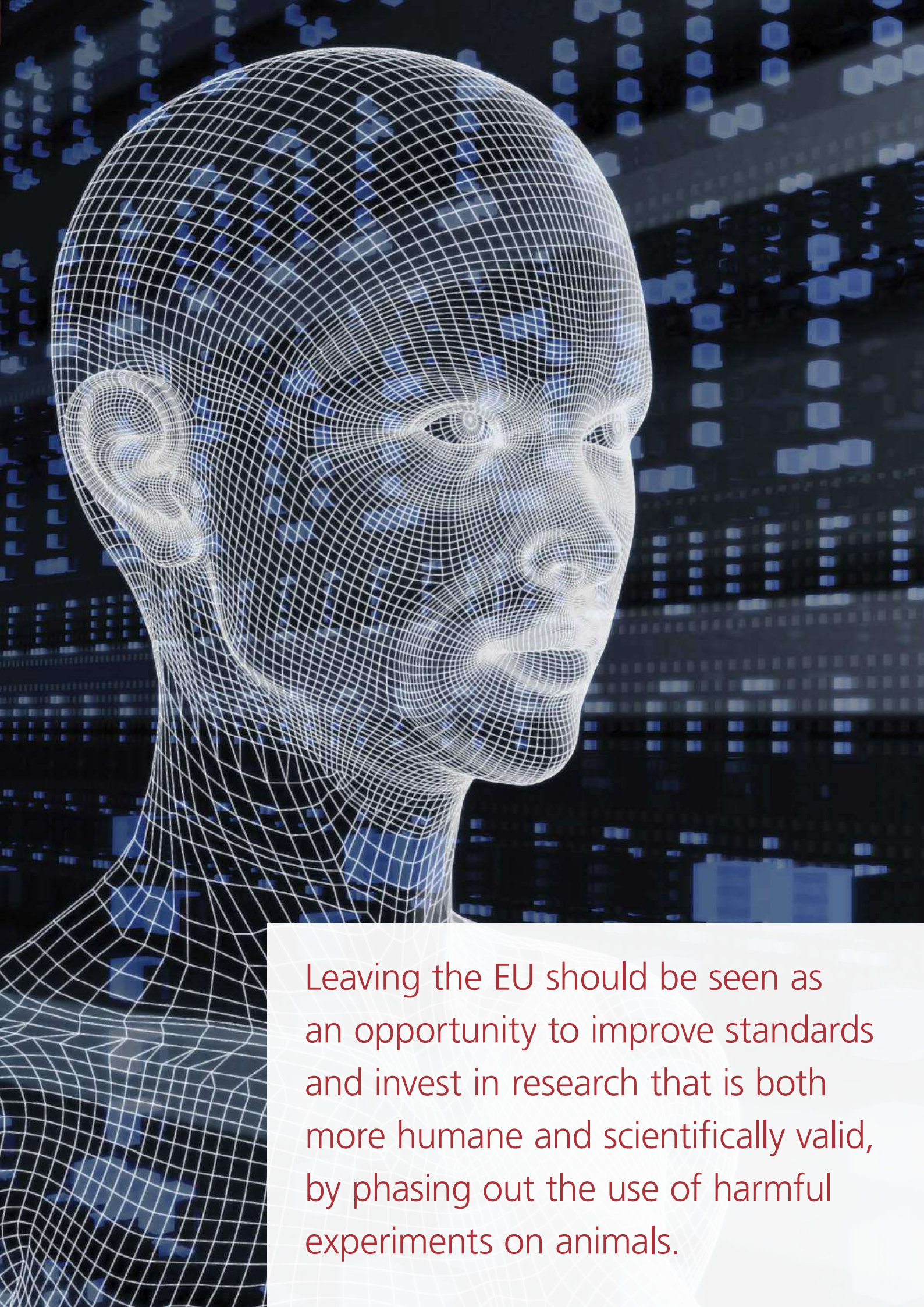
### 6.3.6 Accountability and Scrutiny

After the UK leaves the EU, it will be important that domestic accountability is strengthened. There should also be greater public awareness-raising and transparency with respect to the remit, membership and activities of the Animals in Science Committee (ASC), and its level of independence from the Home Office ASRU, which implements the ASPA. This would help to reassure the public that the statutory independent advisory body will be adequately robust, representative and free to set its own agenda post-Brexit. The ASC should also receive increased funding and continue to liaise with other national committees in order to enable it to effectively fulfil its remit and provide greater challenge to the *status quo* regarding replacement, reduction, refinement and ethical scrutiny of animal use.

Transparency will remain of central importance post-Brexit. Application of the harm:benefit analysis should reflect societal concerns, and society (in the form of the public) has an obvious stake in the efficacy, or otherwise, of experiments on animals.

In the meantime, the House of Commons Science and Technology Committee could have a crucial role to play in ensuring that the "protection" of animals used in experiments remains a priority as the UK prepares to leave the EU.





Leaving the EU should be seen as an opportunity to improve standards and invest in research that is both more humane and scientifically valid, by phasing out the use of harmful experiments on animals.





SECTION 7

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## Wild Animals

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