

### ANIMAL LAW

Is now the time for a global approach to animal law and how could this be achieved?

### UPDATES

Analysis of the latest cases and materials, including the law behind the petitions

### TRADE

What is the future for UK trade and farming in light of FTAs, Brexit and the Agriculture Act 2020?

### DOG MEAT

Hannah Brown gives her perspective on the legal issues around dog meat consumption



## CONTENTS

Time for Global Animal Welfare by Sabine Brels & Antoine F Goetschel	1
Cases, Updates & Materials:	
Wild Justice case updates by Carol Day, Tom Short, Tessa Gregory & Rhiannon Adams	7
Bureau rejects Scottish Wildcat Haven Bern Convention Complaint by Sophie Mills	10
The Law behind some of the Current Animal-Related Parliamentary Petitions by Randi Milgram & Michelle Strauss	12
Launch of a new Parliamentary Group formed to promote human-relevant science and the use of non-animal alternative methods in research by Nadine Lees	17
Italy State Council suspends controversial experimentation on macaques by Blanche Koenig	18
Welsh Government to introduce Lucy's Law by Geraint Manley	19
Free Trade Agreements, a new Farm Support System and Brexit: Which Direction does UK Farming go now? by David Bowles	20
A Perspective on Dog Meat by Hannah Brown	29

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## EDITOR'S NOTE

Who would have thought we'd have a year like 2020?

Despite everything, however, work has been ongoing to improve the lives of animals; little by little we make a difference.

In this edition, we bring you a roundup of cases, legislation, policy proposals and initiatives, keeping our readers updated about the latest in animal protection law. As usual, the journal also features articles analysing topical or important issues about issues facing the animal protection community. In this edition, David Bowles (RSPCA) grapples with recent developments around agricultural regulation and trade, Antoine Goetschel and Sabine Brels (Global Animal Law) discuss the globalisation of animal protection law and Hannah Brown gives a personal perspective on legal and ethical issues around dog meat consumption.

A-Law wishes all its members and allies a Happy Christmas and New Year.

Yours for the animals,

Jill Williams  
Editor

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# Time for Global Animal Welfare

Sabine Brels and Antoine F. Goetschel

## Abstract

Animal welfare is a global matter. As such, it calls for global measures. In order to provide comprehensive and sufficient answers in international law, the time has come to consider animal welfare on a global scale. There have been various proposals for international declarations on animal protection. Nonetheless no comprehensive protection of nonhuman animals exists in international law to date. In order to fill this gap, a global protection of animals is necessary. Why and how should that happen? This article will examine those questions and provide concrete suggestions, such as the formation of a United Nations (UN) specific institution and the adoption of a UN specific convention for globally protecting animals.

## Introduction

Animal welfare is a global concern knocking at the UN's door.

As an example, the UN Report on 'Harmony with Nature', 2020 recognizes that:

'Animals are sentient beings, not mere property, and must be afforded respect and legal recognition. Such recognition is growing around the world'<sup>1</sup>.

Until now, there has been a lack of measures to address this issue comprehensively. Previous proposals and actions to improve animal welfare worldwide are not sufficient to improve the lives of all animals who are still suffering every day. To fill this gap and better protect animals everywhere in the world, a global approach is indispensable<sup>2</sup>. As a result, the concern for animal protection must be considered universally, comprehensively, and holistically. All countries, all animal species, and all questions con-

cerning animals should be considered<sup>3</sup>.

In a broad sense, the protection of animals means that, in addition to the conservation of wildlife, the care and welfare of animals against unnecessary suffering should be protected through the law. All non-human animals are to be considered as animals. A global and multidisciplinary approach takes into account not only animal protection law, but also all aspects of the sciences that concern animals, such as veterinary medicine, ethology, biology, and animal ethics. All categories of animals, that humans are interacting with as companions, using for sports, breeding in farms, testing in laboratories, or hunting in the wild, are all sentient, emotional, and intelligent creatures. Therefore, all should be encouraged to respect them. To date, animal welfare laws has been existing in around two-thirds of the national states and at the European levels. International standards have also been adopted by the World Organization for Animal Health (OIE). The next step would be to raise animal protection at the global level in the frame of the UN<sup>4</sup>.

## I. Arguments for global animal welfare

Global protection of animals has been missing largely in international law to date. Moreover, animal welfare is still absent from the UN agenda. In addition to the needs of humans and their interests to live in a healthy environment for current and future generations, the concern for animal suffering, beyond species extinction, is also important from an ethical and humane view-point.

Since animal suffering continues to spread all over the world and does not stop at borders, a universal system to alleviate is necessary. Considerable damage and avoidable suffering is inflicted on farm animals worldwide in connection with the production of food and animal products. According to forecasts,

<sup>1</sup> §42 of the UN Report on 'Harmony with Nature', 28th July 2020, online at : <https://undocs.org/en/A/75/266>.

<sup>2</sup> Cf. Sabine Brels, "A Global Approach to Animal Protection", *Journal of International Wildlife Law and Policy*, Vol. 20, 105-123, 2017.

<sup>3</sup> Sabine Brels, "Globally Protecting Animals at the UN: Why and how", *The UN Observer*, 2019, 193-225.

<sup>4</sup> See the complete Animal Welfare Legislation Database on the GAL website at : [www.globalanimallaw.org](http://www.globalanimallaw.org).



global meat production will double by 2050.<sup>5</sup> The danger of increasing species extinction has led the international community to develop more selective conservation instruments. In particular, animal experiments are increasing worldwide. The regulatory frameworks of nations and continents for the protection of laboratory animals vary considerably, thus encouraging the shift from animal experimentation to countries with a lower level of protection. However, there is still neither an institution nor an intergovernmental regulatory framework that is dedicated to the protection of animals in a holistic and global manner. Indeed, the focus of international and UN instruments is more on species conservation than on the well-being of the individuals. Moreover, animal welfare is not directly covered by the 17 Sustainable Development Goals (SDGs). Therefore, a proposal has been made to create a new SDG 18 on animal protection. This innovation must be considered by the UN<sup>6</sup>.

While there is a need to ensure further protections of animal welfare at an international level, some conventions do exist currently on the subject of wildlife

protection. The main instruments are: the International Convention for the Regulation of Whaling (ICRW)<sup>7</sup>, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>8</sup>, the Convention on the Conservation of Migratory Species (CMS)<sup>9</sup>, and the Convention on Biological Diversity (CBD)<sup>10</sup>. The ICRW states that the conservation of whale stocks and protection from excessive hunting was the initial focus in 1946. Afterwards, some states avoided complying with the moratorium on whaling introduced in 1982. In addition, Japan invoked an exception allowing whaling for scientific purposes. Based on a ruling by the International Court of Justice in 2014, whaling in the Antarctic Ocean camouflaged in this way is no longer permitted<sup>11</sup>, which has prompted Japan to withdraw from the agreement<sup>12</sup>

5 Meat & Meat Products, FAO at : [www.fao.org/ag/againfo/themes/en/meat/home.html](http://www.fao.org/ag/againfo/themes/en/meat/home.html) (last update 15.03.19).

6 Ingrid J. Visseren-Hamakers, The 18th Sustainable Development Goal, Earth System Governance, 2020.

7 International Convention for the Regulation of Whaling, Washington, 2 December 1946 (ICRW).

8 Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 3 March 1973 (CITES).

9 Convention on the Conservation of Migratory Species of Wild Animals (CMS), Bonn, 23 June 1979.

10 Convention on Biological Diversity (CBD), Rio, 5 June 1992.

11 International Court of Justice (ICJ), Antarctic whaling (Australia vs. Japan: New Zealand intervenes), 31 March 2014.

12 'The end of the hide-and-seek game', Guest contri-

recently. In addition, CITES and CMS show that the scope of regulation is limited to certain species, as the conservation of endangered animals must be ensured. Again, the focus is on species conservation rather than the protection of individual animal welfare.

As reflected in an increasing number of countries legislation, the protection of individual animals and their welfare appears to be increasingly important. Inter-governmental organizations such as the World Organization for Animal Health (OIE) or the World Trade Organization (WTO) have also mentioned that animal welfare is important. The OIE was initially focused on the control of zoonoses and has developed into an organization dedicated to animal health and animal welfare since the beginning of the 21st century. Although several animal welfare regulations have been established to alleviate animal suffering during transport, within certain farming practices, and at the point of killing the animal, the regulations do not take a holistic perspective. The WTO first attributed an important value to animal welfare in the Seal case in 2013<sup>13</sup>.

In view of the comprehensive perspective that is being sought, the existing intentions and regulations have not appeared yet to be sufficient to achieve a holistic and global breakthrough for animal welfare and animal health through current international legislation. The importance of improving the law cannot be understated: it is the key to ensuring enforcement of animal welfare measures worldwide.

Discussions in animal protection law often focus on ethics, which – in contrast to the law – is not enforceable. Especially in animal protection, where the interests of animal users are mostly global and prepotent, binding law must be created. Ethical principles, such as those provided for in the Earth Charter Initiative<sup>14</sup>, are therefore to be welcomed, but they are not enforceable. With such declarations, it is problematic that animal protection cannot be ensured by law.

## II. Pathways towards global animal welfare

In order to give global emphasis to animal protection, an umbrella instrument in international law is necessary. As we could emphasize, the existing international regulations focus on the conservation of endangered species, but not on the welfare protection of individual animals. In the course of time, in-

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bution by Valentin Schatz, 2.01.2019, Legal Tribune Online at <https://www.lto.de/recht/hintergruende/h/japan-austritt-wal-fangkonvention-voelkerrecht-moratorium-politik/>.

13 WTO, European Communities - Measures banning the import and marketing of seal products, Panel Reports, WT/DS400/R-WT/DS401/R, 25 November 2013.

14 Earth Charter Initiative of 2000, Principle 1: All beings are interdependent, and each life form has its own needs.

struments have been proposed, such as a Universal Declaration of Animal Rights (UDAR)<sup>15</sup> but this has only been presented at UNESCO in 1978 and has not been adopted by the UN. Ten years later, the World Charter for Nature was adopted by the UN in 1982 with references to animal protection<sup>16</sup>. A few years after, Professor David Favre proposed an international convention on animal protection in 1988, but sadly, this initiative did not receive sufficient support from governments<sup>17</sup>.

The Universal Declaration on Animal Welfare (UDAW) should be seen in a broader context, from which a first draft text was prepared in 2000 and later proposed for adoption by the UN General Assembly<sup>18</sup>. The basic principle is that animals are sentient beings and their welfare must be respected. Care must be taken for their physical and mental well-being. This approach was constituted as a non-binding declaration of principles and thus qualified as soft law. Such an approach is fundamentally suitable to initiate a further development of international law. It will assist in generating increased attention for animal protection, which is elementary to demonstrate its importance. Despite the efforts made, it should be pointed out that it has no legally binding character. In the future, the focus should be on a binding and comprehensive convention that aims to improve not only animal protection but also animal health globally.

Institutionally, various organizations can be identified that pay attention to animal protection – at least at first glance. In addition to important UN institutions, such as the FAO and the World Health Organization (WHO), it would be possible to extend the mandate of the United Nations Environment Program (UNEP) to focus more on animal welfare and protection in the future. In principle, a deeper integration of animal welfare into sustainable development would be appropriate, for example, through a resolution proposed by the influential UN Economic and Social Council (ECOSOC). Such a resolution might bring animal protection into the UN agenda, as a privileged way to gain greater acceptance and consideration for animal welfare issues.

In addition, the establishment of a new UN institution for animal protection should be considered. The complexity and urgency of global animal welfare justifies the establishment of an agency or program by the UN. This institution could, in analogy to UNEP, be

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15 Universal Declaration of Animal Rights (UDAR), Paris, 1978.

16 World Charter for Nature, 28 October 1982.

17 International Convention for the Protection of Animals, 4 April 1988; David Favre, 'Movement toward an international convention for the protection of animals', in: D.E. Blackman et al. (ed.), *Animal welfare and the law*, 1989.

18 Proposal for a Universal Declaration on Animal Welfare (UDAW).

called the United Nations Animal Protection Program (UNAPP). This would make it possible to ensure both the protection of biodiversity and animal welfare. Should the implementation of an authority appear to be too extensive, an alternative would be to extend UNEP through a corresponding department. Nonetheless, priority should be given to a separate UN institution, which can also be the secretariat in charge of a UN convention on animal health and protection. An important innovation would be the integration of animal health as an important part of animal welfare, which is in line with the One Health/One Welfare approach, including humans, environment, and the animals alike.

It is questionable whether other institutions outside the UN are suitable to close the gap in global animal welfare law. A broader scope of tasks for the OIE would be conceivable, including in the area of animal welfare. This approach would be appropriate as the OIE is considered the leading organization for animal welfare. However, from a legal viewpoint, its animal welfare standards are minimal recommendations with non-legally binding value, knowing that many aspects of animal suffering have not been taken under consideration so far<sup>19</sup>. Therefore, if not evolving into a broader and stronger legal mandate, the UN appears to be the appropriate institution in view of the desirable global and legally binding approach for animal protection. Furthermore, multilateral conventions are undoubtedly the most important source in international law nowadays and it is therefore suitable for providing an adequate framework.

The common ground for this global agreement can be found at various levels of legislation. At the national level, many laws to protect animal welfare and against cruelty already exist<sup>20</sup>. At the regional level, the European instruments of the Council of Europe and the European Union are particularly relevant<sup>21</sup>. In addition, at the international level, international instruments do not take a holistic approach and are not sufficient to globally protect animals<sup>22</sup>. A common legal basis covering all areas relating to animals treatment is therefore essential. A universal convention has to be considered, as it is binding for the member states and requires implementation in national legislation. In contrast, declarations are more symbolic. This instrument should also take into account the emergency to better protect animals globally, as well as every individual's health, welfare, and environment.

<sup>19</sup> OIE Standards on Animal Welfare.

<sup>20</sup> For the national level see [www.globalanimallaw.org/database/national/index.html](http://www.globalanimallaw.org/database/national/index.html).

<sup>21</sup> For the European level see [www.globalanimallaw.org/database/europe.html](http://www.globalanimallaw.org/database/europe.html).

<sup>22</sup> For the international level see [www.globalanimallaw.org/database/international.html](http://www.globalanimallaw.org/database/international.html).

### III. A framework convention (UNCAHP) as a priority

In order to fill the gap of global animal protection, a framework convention is needed. Indeed, as an emerging concern on the international scene, global animal protection requires a framework convention to set the stage and frame for the basis of the main measures to be implemented in theory and practice.

This instrument is currently proposed through the United Nations Convention on Animal Health and Protection (UNCAHP), aiming to provide a global protection to all animals worldwide. This initiative is proposed by the Global Animal Law (GAL) organization, resulting from the expertise and participation of prominent international animal lawyers all over the world.

In this convention, all relevant aspects of animal (ab) uses are regulated. As a starting point, animals are universally recognized as sentient beings, whose fundamental interests matter. Therefore, both wild and domestic animals are concerned<sup>23</sup>.

The UNCAHP is clearly written and aims to be a practical instrument divided in four parts: Preamble, Objective, Principles and Implementation.

The UNCAHP proposal presents several advantages that are rather unique in such an initiative.

. As a *global instrument*, it is:

- *Universal*: It concerns all countries members of the UN<sup>24</sup>;

- *All-encompassing*: It concerns all categories of animals (as companion, farm, lab, sports and wild animals);

- *Holistic*: It includes animal protection in the global picture of environmental and human protection through the One Health/One Welfare approach.

. As a *framework-convention*, it is:

- *Legally-binding* to member states: Contrarily to declarations of principles.

- *Consensual*: It contains internationally agreed principles, for instance, in the frame of the OIE (such as the five freedoms and 3Rs<sup>25</sup>) and general principles

<sup>23</sup> See the general definition of 'animals' as non-human animal beings in the UN Convention on Animal Health and Protection (UNCAHP), 1st Draft of the Global Animal Law GAL Association, 23 August 2018 (online at [www.globalanimallaw.org](http://www.globalanimallaw.org) and [www.uncahp.org](http://www.uncahp.org)).

<sup>24</sup> The UN is the universal organization gathering all sovereign states together (to date the UN has 193 member States). See online: <https://www.un.org/en/member-states/>.

<sup>25</sup> UNCAHP 1st Draft Art. 2.

of animal law (non-cruelty and good-treatment<sup>26</sup>) that can be formally adapted to all countries as they reflect the common-ground of animal welfare law<sup>27</sup>.

- *Evolutive*: It contains far-reaching principles, which are adapted to long-term goals, such as the protection of animals' fundamental interests<sup>28</sup> and the research of alternatives to animal products and exploitation<sup>29</sup>.

In its preamble, animal welfare is presented as a complex issue. The primary objective can be defined as the welfare and protection of animal health. The concept of animals is broadly defined in that all 'non-human animals' should be covered. In addition to the responsibility, care and support of animals, there must be guaranteed freedoms. These are freedom from fear and distress, freedom from heat stress or physical discomfort, freedom to express normal patterns of behavior, freedom from pain, injury and disease and freedom from hunger, thirst and malnutrition. Scientific research must also apply the 3R and ensure that the number of animals used in experiments is reduced (*Reduce*), that experimental methods are refined (*Refine*) and that animal replacement is sought through alternative non-animal techniques (*Replace*). Respect for the intrinsic value of animals, their care and protection and animal dignity, are key principles.

Appropriate measures must be taken to prevent avoidable harm to animals and to refrain from all forms of cruelty. As sentient beings, animals must be treated well and have an interest worth protecting in not being killed unnecessarily or restricted in their freedom of movement and natural behavior. For the enforcement of animal protection law around the world, it is important that animals are given the opportunity to be represented in court and thus have a legal voice in the proceedings. Transparency in the enforcement of animal protection must also be increased. This will ensure that enforcement of law can be compared between states, resulting in creased protection levels. Furthermore, the outsourcing of animal suffering to other states with a lower level of protection must be stopped (for instance, in the fields of animal slaughter or experiments).

The implementation of such a convention requires that the contracting states develop or adapt existing strategies, plans and programs for animal health and protection in accordance with their national requirements. Fruitful cooperation between the states

should be sought directly, or through their specialized agencies, such as veterinary offices. A secretariat has to be set up as the competent body to perform administrative and organizational tasks. In addition, it has to ensure and support the best enforcement possible in all member states.

It should be provided that the member states create meaningful incentive systems for the effective enforcement of protective measures, which are economically and socially meaningful. In addition, the public must be informed in about the importance of animal protection and animal health.

It is now clear that overexploitation of both wild and farmed animals increases the occurrence of zoonoses, that being animal diseases that can be transmitted to humans, with sometimes severe consequences as can be seen from the recent Covid-19 pandemic. If we do not change anything, the situation will not improve. On the contrary, if we continue at this pace, the risk of new deadly pandemics will not diminish.

Today, the OIE alerts us to the fact that 75% of emerging infectious diseases are of animal origin<sup>30</sup>. It is now commonly accepted that in order to face a global problem, we need a global solution. In order to help create a better world for present and future generations, a world where humans and animals can live together in harmony in a healthy environment, we need to go to the governments to convince them to adopt this convention and make animal protection and global health a new 'UNiversal' mission.

The interdependence between living beings cannot be ignored anymore. Therefore, the 'One Health/One Welfare' approach embodied by UNCAHP should be endorsed on a global scale.

## Conclusion

In the 21st century, ensuring animal health and protection should become a common objective of all states. Indeed, a growing part of the world population knows that animal suffering matters. In addition to the legal decrees at national, regional and international level, there is an increasing number of court decisions that give animal protection a growing importance. It can be assumed that the necessary progress in the complex area of animal welfare law can be achieved through a legally binding instrument of international law. UNCAHP should be adopted and implemented. In contrast to ethics, law is enforceable and that is the decisive key to enforce animal welfare with a cool head and warm heart. A binding instrument would lead to animal justice, in

26 UNCAHP 1st Draft Art. 4.

27 Sabine Brels, *Animal Welfare Law in the World: Evoution and Globalization*, Harmattan, 2017 (in french). Astract in GJAL, n°1/2016, at. 36-37, online at : <https://ojs.abo.fi/index.php/gjal/article/view/1463/1758>.

28 UNCAHP 1st Draft Art. 5.

29 UNCAHP 1st Draft Art. 6.

30 OIE, *Biological Threat Reduction Strategy* : [https://www.oie.int/fileadmin/Home/eng/Our\\_scientific\\_expertise/docs/pdf/StrategyBiothreat2015-FINAL.pdf](https://www.oie.int/fileadmin/Home/eng/Our_scientific_expertise/docs/pdf/StrategyBiothreat2015-FINAL.pdf)

recognition that animals are individuals and sentient beings. Global animal welfare can only be improved and purposefully promoted through the involvement of all parties. In this sense, it is necessary to work towards ensuring that all circles recognize the present context and work together to find adequate solutions.

According to the first article of its Charter, the UN is mandated to maintain peace in the world. It appears to be the appropriate institution for maintaining peace between all kind of living beings. A contribution to global animal protection would result in a more peaceful life for all individuals on earth, which is in line with the purpose of the UN. Nonetheless, the strong connections existing between all living beings must be acknowledged in order to better protect human beings, the environment and our animal fellows alike.

### **About the Authors**

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Find out more on the GAL website: [www.globalanimallaw.org](http://www.globalanimallaw.org) and UNCAHP website: [www.uncahp.org](http://www.uncahp.org).



# Cases, Updates & Materials

Leigh Day is currently instructed by Wild Justice on three issues – two are the subject of ongoing proceedings and one case has recently settled

## Gamebirds

In early 2020, Wild Justice issued proceedings against the Secretary of State at Defra for failing to assess the impact of some 60 million Pheasants and Red-Legged Partridges on European Protected Sites (EPS) in England.

Under Article 6(3) of the Habitats Directive, Member States are required to have put in place measures to ensure that the adverse impact of plans and programmes not directly concerned with the management of Special Areas for Conservation (SAC) under the Habitats Directive and Special Protection Areas (SPA) under the Wild Birds Directive are assessed. No such measures are in place to evaluate the likely significant effect of the annual introduction of these gamebirds on Natura 2000 sites.

The case was due to be heard in the Planning Court before Mr Justice Holgate on 3<sup>rd</sup> and 4<sup>th</sup> November but, a few days beforehand, Defra undertook to urgently bring in the following measures by Statutory Instrument to protect European wildlife sites from continuing damage:

1. Adding the Pheasant and Red-legged Partridge to Schedule 9 of the Wildlife and Countryside Act 1981, which contains species which cause ecological, environmental or socio-economic harm. This means that those species can only be released under licence and to do otherwise would be a criminal offence.

2. Bringing in a general licence which will permit releases of the two gamebird species away from protected wildlife sites but not on them or near them (within 500m is proposed, subject to consultation) unless a number of licence conditions are met. For example, there will be limits to the numbers of birds that can be released under the general licence.

3. Monitoring by Natural England of a large number of sites to ascertain the extent of damage caused by non-native gamebirds.

The decision to establish a licensing regime for the annual introduction of gamebirds is a major breakthrough in regulating the impacts of huge numbers of non-native birds on our most valuable wildlife sites. Wild Justice will be examining the detail of the proposed scheme very carefully to ensure that it fulfils the Secretary of State's obligations under the EU Habitats Directive.

Welsh Ministers have subsequently confirmed they intend to consult on adding pheasants and red-legged partridges to Schedule 9 of the Wildlife and Countryside Act 1981 and Natural Resources Wales (NRW) also intends to consult on the appropriate conditions for the general and specific licences that arise from that addition. However, the aim is that there will be an appropriate process in place for releases of pheasants and red-legged partridges in Wales in the 2022 season, taking into account elections to the Senedd are taking place on 6<sup>th</sup> May 2021.

## General Licences

Leigh Day has also been assisting Wild Justice in their ongoing challenges to England and Wales' stance on licencing the killing of wild birds. Licences issued by Defra in England (until last year by Natural England, NE) and by Natural Resources Wales (NRW) provide a derogation from the Wild Birds Directive permitting what would otherwise be prohibited unlawful killing. In addition to specific licences issued to individuals after scrutiny of why the applicant believes le-



that action is justified, both Defra and NRW also issue so-called 'general licences' which can be relied on by anyone to kill specified lists of wild birds provided they believe they are killing for purposes such as conservation and health and safety.

Wild Justice launched proceedings against NE in 2019 based on a fundamental flaw in their general licences; namely, that, contrary to the requirements of the Wildlife & Countryside Act 1981, Natural England had not considered any other alternatives to lethal action by general licences, let alone satisfied itself that such alternatives would not work, before granting the licences. The practical result of that failure by NE was to permit the casual killing of thousands of birds across the UK, despite the likely availability of non-lethal alternatives in many cases.

In pre-action correspondence, NE repeatedly refused to acknowledge shortfalls in the law, leaving Wild Justice with no option but to issue proceedings. NE then finally conceded the claim and the case went on to be one of the

biggest wildlife and conservation stories of the year, in part, perhaps, due to NE's hasty revocation of the 2019 general licences and the subsequent granting of new general licences without detailed consultation. It was in the wake of NE's action that the Secretary of State for Food and Rural Affairs rescinded NE's delegated powers to issue the general licences and brought that function back in to Defra.

Wild Justice is currently pursuing proceedings in Wales, arguing that NRW's licences are also irredeemably flawed because, among other things, contrary to the explicit requirements of the WCA 1981, they fail to set out the circumstances in which the general licences can be relied on to carry out lethal control to achieve their respective purposes. For example, in the case of the general licence allowing the lethal control of certain species of bird to conserve populations of other wild birds, the licence fails to: (i) specify the species being protected by culling Carrion Crows (it lists 143 species instead – some of which do not occur in Wales and others, nesting in burrows or in large colonies, would nev-

er be predated by Carrion Crows); (ii) limit the geographical areas where the licence should be used (for example to those parts of Wales where these vulnerable species actually nest); and (iii) identify the time of year when the licence can be used. As such, it fails to describe the circumstances of legitimate use at all. This is a fundamental flaw, permitting (as it does) the killing of a Carrion Crow, or 100 Carrion Crows, in the centre of Cardiff even where the species that killing purports to protect (such as Grey Partridge, Curlew, and Lapwing) are not at any risk from Carrion Crows in central Cardiff.

The NRW case will be heard remotely on 18 December 2020. Meanwhile, Defra has recently published new draft general licences following a review. These are due to come into force on 1 January 2020, but may be affected by the NRW proceedings. Wild Justice is also examining these licences.

## Badgers

Culling Badgers as a measure to curb the spread of Bovine TB started in Gloucester and Somerset in 2013. It now extends to 54 areas in England and it is thought that some 64,000 Badgers will be shot in the 2020 cull. This year, for the first time, it has been expanded into areas ("Edge Areas") in which the vaccination of badgers is being piloted, with decimating effect on schemes that are intended to provide a long-term solution to the control of bTB.

Natural England published 10 licences for supplementary Badger control on 15 May 2020. Further licences followed in September 2020. Condition 21 of the Licences states that all reasonable steps must be taken to ensure that Badgers shot under the licence are dispatched "swiftly and humanely".

Wild Justice believes that in order to work out whether steps being taken are reasonable, NE must have some idea what is meant by "swiftly and humanely" – but it would appear to have no basis for measuring it. In July 2020, Wild Justice applied for a Judicial Review (JR) of NE's failure to clarify how it sets a benchmark for humaneness, arguing that a lack of clarity means that an unacceptably high proportion of Badgers are left to an inhumane death.

NE is being asked to explain what measure for humaneness it is using after it chose not to apply the approach to humaneness agreed in 2014 by the Independent Expert Panel (IEP) established by Defra to report on pilot culls in Somerset and Gloucestershire. The Panel considered that for the controlled shooting of Badgers in the field, the percentage of animals surviving for more than five minutes after being shot, and the percentage being wounded but not retrieved (the "non-retrieval rate"), should not together exceed five per cent. i.e. at least 95 per cent of Badgers that are shot at should die within five minutes.

The Government accepted that steps should be taken to improve shooting accuracy in its response to the IEP report but, despite efforts to improve the overall quality of marksmanship, Natural England's annual reports demonstrate that the non-retrieval rate alone has consistently remained above 10 per cent since 2014, i.e. double the level recommended by the IEP.

In August 2020, the Honourable Mr Justice Johnson refused permission for JR on the papers and in October 2020, Mrs Justice Farbey refused permission following an oral hearing in the High Court. Wild Justice has recently lodged an appeal in the hope that the Court of Appeal will consider it arguable that NE is acting unlawfully because it has imposed a condition that is entirely vague and unenforceable and provides none of the necessary certainties to ensure that reasonable steps are being taken to ensure the culling of Badgers is humane. The Court of Appeal's decision is awaited.

Wild Justice is represented in these cases by Carol Day, Tom Short, Tessa Gregory and Rhiannon Adams of Leigh Day and David Wolfe QC and Anita Davies of Matrix Chambers.

*Carol Day, Tom Short, Tessa Gregory & Rhiannon Adams of Leigh Day*

# Bureau rejects Scottish Wildcat Haven Bern Convention Complaint

The Scottish wildcat (*Felis silvestris*) is one of the few native predators left in Scotland. With only 35 recorded in northern Scotland in recent years, they are at risk of genetic extinction. Three main factors have contributed to this: (1) hunting for sport; (2) loss and fragmentation of their habitat; and (3) hybridisation and associated disease.

In 1988, the Scottish wildcat gained legal protection, making it illegal to deliberately or recklessly capture, kill or injure a wildcat and damage or destroy breeding sites or resting places of a wildcat. It is against this background that recent steps taken by Wildcat Haven CIC are considered.

## Bern Convention Complaint

It has been suggested that the population of Scottish wildcats is no longer viable with the numbers so low and breeding in captivity is the only viable option. Wildcat Haven disagree and have instead established a campaign to protect and conserve the remaining wildcat population in their current habitat. They instead would complete a comprehensive national survey to identify wildcat presence, followed by strict protections to prevent logging and disturbance, and allied to an intensive neutering programme for hybrid and feral cats in the area.

Wildcat Haven have stated that 13 of the remaining 35 wildcats live in Clashindarroch Forest. This however, is a commercial woodland, and the forest is subject to logging operations. National Geographic reported that 90 hectares of timber – 1.3% of the forest – is cut annually. Forestry and Land Scotland's new land management plan for Clashindarroch proposes felling 5.2% of the trees over the next five years, and thinning across 29% of the forest area.<sup>1</sup>

<sup>1</sup> <https://www.nationalgeographic.co.uk/animals/2020/09/amidst-hybridisation-and-habitat-disruption-the-highland-tiger-is-cling->

As a result of the continued commercial operations at Clashindarroch Forest and the failure to make any specific protections for the wildcats, Wildcat Haven submitted a [complaint](#) (dated 9 April 2020) under the Bern Convention against the Scottish Government.

The Bern Convention is a binding international legal instrument in the field of nature conservation, covering the natural heritage in Europe. The [Convention](#) aims “to ensure conservation of wild flora and fauna species and their habitats [and gives] special attention to endangered and vulnerable species...” [Appendix II](#) of this Convention specifically mentions the protection of *Felis silvestris*.

Wildcat Haven's complaint comprised the following alleged failures of the Scottish Government:

1. Failing to complete a comprehensive national survey which adequately assessed the remaining population size and distribution of the species and failing to produce a cohesive national action plan to protect the remaining populations in the wild;
2. Failing to apply and uphold environmental laws designed to protect this strictly protected species from disturbance; specifically, as a result of commercial logging ongoing at the Clashindarroch forest and;
3. Failure to enforce and uphold the Convention in respect of a planned windfarm development by Vattenfall Wind Power Limited which would disturb the wildcat's resting place.

## Scottish Government Response

In the Scottish Government's [response](#) (dated 31 July 2020) to Wildcat Haven's complaint, all alleged failures were rebutted on the basis that “whilst recommendations can be helpful tools, which the UK values and implements where it is appropriate to do so, none of these recommendations are legally binding on Parties to the Convention”. Further, several key areas of the complaint strayed beyond the UK's obligations

[ing-on-by-a?fbclid=IwAR02H86R2mzYOWdi1wbb5TFTGReh1Y-H8DSPx54MKeXchsIjAP5RBF-wxJM](https://www.scottish.gov.uk/information-and-consultation/consultations/consultation-on-wildcat-haven-complaint-response)

under the Convention: e.g. non-compliance with obligations under EU law which is not within the remit of the complaints process under the Convention.

The Scottish Government response recognised that wildcats are one of Scotland's most endangered animals and their conservation and protection is of the "highest priority". To this end, a Scottish Wildcat Conservation Action Plan (SWCAP) was produced in 2013. A SWCAP Steering Group, representing a range of organisations, specialisms and interests, was established to take this work forward and implemented the multi-partner Scottish Wildcat Action (SWA) project (which ran from 2015-2020). The SWA concluded that there is not currently not a viable wildcat population in Scotland – the number of cats is too small, hybridisation too far advanced and the population too fragmented. The IUNC SSC Cat Specialist Group (CSG) has also been instructed by the Scottish Government to carry out an independent review of SWA's work and other wildcat conservation activities in Scotland.

The independent review from the CSG, along with the conclusions of the SWA, informed the design of a new EU LIFE-funded project, 'Saving Wildcats'. This work runs from 2019-2025 and involves (1) the further development of the conservation breeding programme in collaboration with breeders across the rest of the UK and Europe, (2) the construction of purpose-built breeding facilities at the Royal Zoological Society of Scotland's (RZSS) Highland Wildlife Park, liaison with other European specialists who will be providing animals for the project and (3) the production of a new, updated wildcat action plan.

## Bern Convention Decision

Wildcat Haven's complaint was considered at the meeting of the Bureau of the Standing Committee of the Bern Convention on 15 – 16 September 2020. In their brief [decision](#) (at page 20), the Bureau stated that a breach of the Convention had not occurred and the complaint was dismissed. Their expert analysis reached the conclusion that the species could no longer be conserved in the wild. The actions of the Scot-

tish government to repopulate the wildcats in captivity and reintroduce in the wild appeared to be the only realistic solution .

The Bureau supported the government's strategy, but urged the authorities to cooperate together with Wildcat Haven and the IUCN SSC Cat Specialist Group in order to share expertise and elaborate joint action plans.

## Continuing to Challenge the Scottish Government

Wildcat Haven consider the government to be in breach of their duty under the Nature Conservation (Scotland) Act 2004 by refusing to designate Clashindoroch Forest as a protected site. Living Law has [written](#) to Scottish Natural Heritage calling for the land to be turned into a site of special scientific interest (SSSI) to help protect the vulnerable wildcats. The Scottish Government response is due by 12 October 2020.

*Sophie Mills, A-law Scottish Steering Committee*



## The Law behind some of the Current Animal-Related Parliamentary Petitions

Many proposals for new animal-related legislation abound, including some that address long-held complaints about the current system, and some that address legal loopholes in existing laws. We have summarised a few notable petitions that we are keen to see progress.

### Jasmine's Law

On October 14, MP Andrew Rosindell MP introduced the Dogs and Domestic Animals (Accommodation and Protection) Bill, a Ten-Minute Rule Bill that proposes to ban blanket 'no pet' policies in rental agreements. In the competitive UK housing market, default 'no pets' policies are common. This bill seeks to switch the default position to one which permits families to access rental accommodation with their pets unless there is reasonable cause to disallow a

pet according to individual circumstances.<sup>2</sup>

Jasmine's Law is named after a Weimaraner dog whose family started the campaign. Jasmine's loved ones experienced the hardships that blanket clauses on pets can cause when a family member was precluded from caring for her upon moving into rental accommodation with such a ban. The relative was not permitted to have Jasmine in the accommodation for even a short time.

The bill follows the observation by Housing Secretary Robert Jenrick MP in January that it should be easier for well-behaved pets to legally stay in rental housing; Rosindell's bill is the first official action to follow from this statement.

The bill does contain safeguards for landlords, requiring that tenants should demonstrate that they are responsible owners through actions such as: providing veterinary confirmation of vaccinations; having the animal spayed/neu-

<sup>2</sup> <https://www.rosindell.com/campaigns/pet-every-home>

tered; and demonstrating that the animal responds to some basic training commands (for dogs). Provided this evidence of responsible ownership is satisfied, the default in rental housing would no longer be to disallow pets. Instead, there would be an assumption that owners may keep their pets, provided that the accommodation is suitable for the species concerned.

France, Germany, Belgium, and Switzerland have already outlawed blanket restrictions on pets in the rental sector.

In November, we invited Sarah Dixon (The FOAL Group) and Dr. Liz Ormerod (Society for Companion Animal Studies) to talk about, respectively, the campaign and research into the human-animal bond that underlies much of the work in this area. Dr. Ormerod has worked tirelessly over many years to persuade local authorities to move away from 'no pet' clauses in rental agreements and has also worked with the rental sector to educate landlords about the impact blanket application of such policies can have in individual circumstances and, in particular, the impact upon vulnerable groups relying upon their pet for companionship and support, sometimes over a period of many years.

The tragic death of John Chadwick<sup>3</sup> exemplifies just this and also highlights another issue: the consequence of such policies upon people reliant upon social housing, who face being deemed intentionally homeless if they decline an offer of accommodation on the grounds that it would mean separating from their companion animal. John was in a vulnerable category when he lost his home after a private landlord wanted to sell the property. He was separated from his pets after being placed in temporary accommodation by the local authority, and he faced permanent separation from them when an offer of permanent housing with a 'no-pet' clause attached meant that he would be permanently separated from his companion animals. Sadly, he died by suicide 10 days after being separated from his beloved pets on what was also the anniversary of his mother's death.

Dr Debbie Rook (Northumbria University) highlights the impact upon the elderly population

<sup>3</sup> <http://www.scas.org.uk/give-up-your-pets-or-your-home-in-loving-memory-of-john-chadwick/>

in her article 'For the Love of Darcie'<sup>4</sup> which describes the plight of a man who decided to give up his place at a residential care home and move into private rental accommodation, rather than face separation from the dog with whom he had shared his life.

## Pet Theft Reform

A further two e-petitions, each attracting over 100,000 signatures, were debated in Westminster Hall on 19 October 2020, both concerning pet theft, but putting forward differing proposals for how the Government might address the rising incidence of dog thefts.

The first petition, 'Pet Theft Reform: Amend animal welfare law to make pet theft a specific offence' (244530) calls for pet theft to be classified as a specific offence and treated differently from theft of inanimate objects. The second petition 'Make pet theft crime a specific offence with custodial sentences' (300071) also calls for the re-classification of pet theft and for sentencing guidelines to be revised.

Under current law, pets who are stolen are treated as property under the Theft Act and treated in the same manner as inanimate property. Sentencing guidelines reflect the monetary value of the stolen property; as most pets have a monetary value under £500, sentencing for such theft usually falls into a lower tier.

The second petition proposes a revision to sentencing guidelines with pet theft becoming a category 2 offence, with a starting point of two years custody.<sup>5</sup> Both petitions call for the sentencing guidelines to reflect the emotional impact and trauma caused by the offence, rather than the monetary value of the animal.

The public response to the e-petitions suggests strong public opinion on this issue; in 2018 as well, a petition calling for re-classification of pet theft to a specific crime also received over 100,000 signatures. A Private Members Bill was put forward but failed to complete its passage

<sup>4</sup> For the Love of Darcie: Recognising the Human-Companion Animal Relationship in Housing Law and Policy [https://link.springer.com/article/10.1007/s10991-018-9209-y?wt\\_mc=Internal.Event.1.SEM.ArticleAuthorOnlineFirst](https://link.springer.com/article/10.1007/s10991-018-9209-y?wt_mc=Internal.Event.1.SEM.ArticleAuthorOnlineFirst)

<sup>5</sup> <https://petition.parliament.uk/petitions/300071>

through Parliament.

Tom Hunt MP opened the debate in Westminster Hall on 19 October. In relation to law reform options, he said: "I think in this case that it would probably be better to try to get the sentencing guidelines changed than to try to get a new specific pet theft law introduced – it is more likely to achieve what we are looking for."

It is reported that the government is 'keen to act' on the matter<sup>6</sup> and so we may well see further action on this in the near future.

With pet theft on the rise, such reform could help to successfully deter criminal acts of the sort. During this past year of lockdown, while purchasing and adoption of pets has increased, so too has pet theft seen a dramatic rise, with record highs.

These petitions for law reform also raise an important point of principle. Should the classification of animals as property be changed to reflect their sentience? There are many who believe that the property classification of animals, while useful to preserve ownership rights, should reflect that animals fall into a special category of property. David Favre adopts the term 'living property' and argues for reform, reflecting the special position of animals. This would arguably be another step towards recognising that the property status of animals needs to be qualified in some instances to reflect the sentient nature of the property in consideration.

## Breed Specific Legislation

Opposition to the UK's outdated breed specific legislation is a perennial issue. A petition to replace breed specific provisions in the Dangerous Dogs Act with a new statutory framework attracted 118,639 signatures when it closed in September 2020.<sup>7</sup>

The petition proposes law reform that focuses on behaviour, not breed, and at the owner's ability and/or efforts to control their dog rather than the dog's physical features.

The Government's response to the petition was

6 <https://www.bbc.co.uk/news/uk-england-54605544>

7 <https://petition.parliament.uk/petitions/300561>

as follows:

'The Government considers that prohibition on the four types of fighting dog under Dangerous Dogs Act 1991 should remain in place. This is supported by police who are responsible for enforcing the Act.'

Campaigners argue that breed specific legislation has failed to achieve what Parliament intended to achieve: protecting the public. As many other jurisdictions have realised, focusing on specific breeds or types of dogs fails to tackle the causes of dog aggression and focuses on dog breed, rather than behaviour and owner responsibility. It is also argued that such legislation stigmatises those breeds and creates a public perception of dangerousness that is not borne out by scientific research.

The dangerous dogs legislation already confers extensive power upon the courts to deal with dogs that exhibit 'dangerous' behaviour and it is questionable whether it is necessary to include additional powers in respect of those dogs subject to breed specific provisions, so called 'banned breeds'.

A-law submitted written evidence<sup>8</sup> to the Environment, Food and Rural Affairs Committee<sup>9</sup>, for its inquiry into this issue in 2018. We have identified a number of problematic issues with the Dangerous Dogs Act, including the breed specific provisions. As we highlight in our submissions, the breed specific provisions can be unfair and harsh in their application to dogs of a gentle disposition and good temperament, who may nevertheless be subject to euthanasia on the basis of their breed. We have called for the Law Commission to review this area of law with a view to making recommendations for legislative reform to Parliament.

In November 2018, DEFRA commissioned research in collaboration with Middlesex University to assess the effectiveness of dog control measures, identify and examine factors implicated in dog bite injuries, and to consider mea-

8 <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Environment,%20Food%20and%20Rural%20Affairs/Dangerous%20Dogs%20Breed%20Specific%20Legislation/written/84509.html>

9 <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/1040/104002.htm>



asures for promoting responsible dog ownership. It is unlikely that there will be further progress on this issue through Parliament until this study has been properly evaluated and DEFRA has considered measures taken in other jurisdictions to see what lessons can be learnt.

## Restricting Puppy Imports

A recent petition seeking to restrict the exploitative import of young puppies for sale in the UK has obtained more than 127,000 signatures.<sup>10</sup> In the aftermath of Lucy's Law, which is an amendment to the licensing regulations to prohibit the sale of puppies from third parties, focus has now turned to the importation of young puppies from abroad.

Our legal volunteers have been among the great lawyers who have supported Marc Abraham ('Marc The Vet') with his campaign to close loopholes in the law which enable disreputable breeders to supply high quantities of puppies bred in low welfare conditions, often with unaddressed health problems. The campaign provided input into the recent EFRA inquiry that took place in November and their written evidence to the inquiry recommends that:

'The simplest and most pragmatic solution identified is to raise the minimum import age of puppies intended for resale, to at least six months, which importantly facilitates the preferable increased wait time post rabies vaccination(s) and essential serology/blood tests; encouraging increased levels of rabies protection by exceeding the maximum incubation period for rabies infection (supported by BVA, Dogs Trust, and others); with most cases of Rabies presenting 3-8/12 weeks post-infection.'

The impetus for this petition was the death of a young puppy just six days after being imported from Russia by a UK-based agent. While the celebrity nature of this situation attracted public attention<sup>11</sup>, this is far from an isolated incident.

Although puppies may not be lawfully transported into the UK until they are 15 weeks old (to account for vaccination needs), many young-

<sup>10</sup> <https://petition.parliament.uk/petitions/326261>

<sup>11</sup> <https://www.mirror.co.uk/3am/celebrity-news/brits-risk-catching-fatal-diseases-23056294>

er puppies are indeed imported, as it is difficult to accurately determine age in puppies this young. There are also concerns that the current age restrictions do not reflect the robustness of dogs for travel and the need to allow time for blood tests to confirm that transferable diseases are not present, including the rabies infection.

In response to awareness raising around this issue, the Environment, Food and Rural Affairs (EFRA) Committee held a special one-off session<sup>12</sup> and there is hope that the minimum age for the commercial import of puppies for re-sale will be raised in the next six months.

We support these law reform efforts to close routes to market for unscrupulous dog breeders who sell dogs bred in low welfare conditions to unsuspecting members of the public. Not only is this bad for the puppies and consumers, but it also potentially undermines public confidence in reputable breeders. We hope, however, to see an exception for puppies from rescue organisations whose purpose is charitable and non-commercial.

## Microchip scanning

An increasing number of high-profile petitions seek to require veterinary practices to check microchips in particular situations. Microchipping regulations have been in force in the UK for some time now,<sup>13</sup> requiring dogs more than 8 weeks of age to be chipped. Equines are required to be chipped in England<sup>14</sup>. However, there is no requirement for cats to be microchipped, although in 2019 the Government committed to review this position and put out a call for evidence. Public feedback is due on this issue soon.

There have been two Parliamentary petitions addressing separate, but related issues around compulsory scanning of microchips by vets.

The Tuks law petition seeks to create legislation

<sup>12</sup> The inquiry can be viewed here on Parliament TV - <https://parliamentlive.tv/Event/Index/d8a331de-9242-4e64-b1e2-07b792766073>

<sup>13</sup> The Dogs (Amendment) Act (Northern Ireland) 2011; The Microchipping of Dogs (England) Regulations 2015; The Microchipping of Dogs (Scotland) Regulations 2016; The Microchipping of Dogs (Wales) regulations 2015

<sup>14</sup> Equine Identification (England) Regulations 2018

that will require veterinarians to scan a microchip before euthanising a healthy or treatable animal. This scan would check (a) that the person presenting the animal is registered on the microchip; and (b) whether there are any dual registration details, such as an animal rescue or owner, who could be contacted.

Tuks Law was launched in the name of a rescue dog called Tuk who was brought to the UK from Romania and rehomed as a puppy. Tuk was later sold online, and when he was just 16 months old, he was taken to a vet and euthanised. Were it law to scan microchips, Tuk's death may have been prevented, as the microchip would have shown both that the person asking for Tuk to be euthanised was not his registered keeper, and that there was dual registration with a rescue who would have taken Tuk into their care.

Tuks Law is particularly relevant where animals are rehomed by rescues, as the rehoming contract typically states that in the event an owner is unable to care for an animal, it must be returned to the rescue, who will then find alternative care. Such contracts may avoid needless euthanasia of healthy or treatable animals. The petition is also relevant for situations where an animal may have strayed, and the owners are searching for that animal.

Listening to campaigners, the Government has accepted the need to make it a statutory requirement for vets to check the microchip of dogs prior to euthanasia. It is anticipated that this legislative change will be introduced in an Animal Welfare Bill which will be announced in the Queens Speech in 2021.

The campaign for Tuks Law has highlighted some of the practical difficulties posed by the present microchipping regulations which do not require a centralised database; consequently, there are now 14 approved microchip databases in the UK.<sup>15</sup>

It remains to be seen whether legislative proposals will reflect the calls for Fern's Law, a requirement for vets to scan pets for microchips when an animal is registered for treatment. Whilst some practices do routinely check a microchip when a dog is first registered with

their clinic, vets are under no legal obligation to check a microchip of any pet that they treat. This proposed legislation aims to help owners whose dogs have been stolen, increasing the odds that they will be reunited.

Fern's Law developed from the story of a dog named Fern, who was stolen from her home in 2013. It wasn't until 6 years later that Fern was reunited with her family, after a vet checked her chip when she was brought in as a stray.

The petition to introduce Ferns Law garnered over 112,000 signatures and is due to be debated in parliament.<sup>16</sup> The government responded in April 2020 to advise that it would consider the proposal put forward in this petition as part of its wider review of the microchipping regulations in England.

If any members wished to assist us with our work on above issues, please contact the chairs of the Companion Animal Special Interest Group: Randi Milgram ([blogeditor@alaw.org.uk](mailto:blogeditor@alaw.org.uk)) and Michelle Strauss ([michellekstrauss@gmail.com](mailto:michellekstrauss@gmail.com)). We would be particularly grateful to hear from practitioners with experience in Data Protection.

*Randi Milgram & Michelle Strauss, Co-chairs of A-law's Companion Animal Special Interest Group*

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15 <https://www.gov.uk/get-your-dog-microchipped>

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16 <https://petition.parliament.uk/petitions/300010>

# Launch of a new Parliamentary Group formed to promote human-relevant science and the use of non-animal alternative methods in research

A new All-Party Parliamentary Group has been formed and launched in the UK, to promote human-relevant science. It held its first Annual General Meeting on 6th October 2020 to outline its priorities and looking forward, it aims to accelerate the uptake and development of animal free research and the use of human-relevant science.

The Parliamentary Group will bring together Lords, MP's and Peers of all parties, the human-relevant life science sector, third sector groups, scientists and stakeholders, to discuss and promote human-relevant science. The alliance between these different groups allows for coordination of ideas, progress and work, towards the promotion, implementation and adoption of human-relevant approaches in the UK, enabling the possibility of positive change for the future of animal use in research.

The Human Relevant Science Parliamentary Group is assisted by the Alliance for Human Relevant Science, which successfully collaborates like-minded companies, organisations and individuals, to express how significant advances in science and technology can result in new research methods based on human biology. The Alliance for Human Relevant Science calls for a fresh approach to drug discovery and aims to support science for better human health, save human and animal lives through improving safety and efficacy testing of medicines and chemicals, and to save money through more relevant research.

So what is the idea of human-relevant research? Human-relevant research promotes human-focused methods in research and in contrast, draws upon the issues with animal use in research. Animal use in research is an arguably an outdated method, of which is costly, time consuming and often displays limited relevance

to humans. Many breakthroughs in research are lost in translation from pre-clinical animal models, to humans. Drugs seemingly promising in animal studies, go on to fail in approximately 90% of human trials, despite the UK being a leader in scientific research.

The human focus of The Alliance for Human Relevant Science and the All-Party Parliamentary Group for Human Relevant Science, bridge this translational gap in scientific research, with human-relevant technologies (also known as new approach methodologies). Such new approach methodologies can transform the understanding of human disease and biology. They have the ability to pave the way for more human-relevant science, as well as producing quicker, more effective science, without the need to use animals. As these new approach human-relevant methodologies do not involve the use of animals, the unreliability of animal methods are avoided.

The group therefore appears to be a positive step in the right direction for animal welfare, due to influencing the move away from animal methods in research, through the promotion of innovative human-focused methods. The Alliance voices that such human-focused and innovative new methods, with sufficient investment, could also revitalise transitional research, save money and increase wealth and profitability, alongside improving public health.

In line with these ideas, the Parliamentary Group will discuss themes of strategic funding to incentivise the development of human-relevant methods and technologies. The group will also drive towards including human-relevant methods into regulatory guidelines on medicines development. Ultimately, this group presents a great opportunity to change mindsets and is a great platform to address, amplify and advance current animal use concerns in the UK, whilst promoting new approach methodologies.

The group has been formed and launched at a good time to promote the success of using human-focused methods in research, rather than animal methods, especially when considering the urgency for a COVID-19 vaccine and the present failure of animal methods to quickly reach that goal.

Brexit also brings the potential for major changes in UK research and thus it provides the ability to use innovative methods such as human-focused ones, to replace poorly performing animal tests. It is hopeful that these factors will further aid the group's success in bringing about positive change in UK science and research.

Overall, the new Parliamentary Group on Human Relevant Science should hopefully encourage good debate and will align the voice of various individuals and organisations. It is never simple to make change but nonetheless, this group is a step in the right direction. The group provides a great opportunity to drive positive progress towards the use of alternatives to animals in research, alongside the prospect of new, improved and possibly safer medicines as a result. It could advance science and produce better long-term outcomes for medicine, human health and animals, which can be praised by both members of the science and animal welfare communities.

*Nadine Lees, LJMU Student & Researcher for A-law's Animal Research Special Interest Group*

## Italy State Council suspends controversial experimentation on macaques

The Italian State Council (Italian Supreme Court for administrative law) has ordered a second suspension of experimentation on six macaque monkeys, planned as part of the so-called European "Light-Up" project led by the Universities of Studies of Turin and Parma.

The primate experiments (intended to develop treatments for human patients with vision loss due to brain damage) involves making lesions in the macaques' brains' visual cortex to generate blindness, and the electrical signals around the lesion studied. The macaques would subsequently be euthanised. (*Anatomical-physiological mechanisms underlying the recovery of visual awareness in the monkey with cortical blindness*" issued by the Ministry of Health, no. 803/2018-PR on 15.10.2018).

The experiments were initially approved by the ethics committees of the European Research Council, the University of Parma and the Ministry of Health. In January 2020, the State Council overturned a decree by the Regional Court of Lazio and ordered a suspension of the experiments at the University of Studies of Turin, following representations by Lega Anti Vivisezione ("LAV"). However in May 2020, the Lazio Regional Court determined that the experiments could resume.

In the latest suspension, following further representations by LAV, the State Council overturned the May ruling, and ordered that a "careful and analytical" scientific study of the animal research must now be carried out by neutral third party scientists to determine whether it should continue. The analysis must take account of four key aspects: (1) replacement (if the anticipated results are achievable only through experimentation on live, non-human primates); (2) reduction (i.e. whether it is necessary to carry out the experiments on all six macaques); (3) if the principle of replacement is respected in relation to the scientific originality of the expected results, and the transmissibility of the results to human beings, taking account of the current state of scientific research; and (4) if the scientific findings of these opinions considered all three elements set out in Legislative Decree no. 26 of 2014 (implementing directive 2010/63/EU), which lay down as conditions for the otherwise-prohibited testing of non-human live primates. The next hearing on the merits is scheduled for January 28<sup>th</sup>, 2021.

[https://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=cds&nrg=202007021&nomeFile=202005914\\_15.html&subDir=Provvedimenti](https://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=cds&nrg=202007021&nomeFile=202005914_15.html&subDir=Provvedimenti)

LAV noted that the ruling may result in the universities losing part of the (two million Euro) European Union funding already received for the experiments. An online [petition](#) opposing the experiments, organised by LAV, has now received more than 440,000 signatures.

*Blanche Koenig, Co-Chair of A-law's Animal Research Special Interest Group*

## Welsh Government to introduce Lucy's Law

The Welsh Government have made the announcement that they will be bringing in Lucy's Law to ban the third-party sale of puppies. In the next few months, sales on third party puppy and kitten will be made illegal in Wales.

Current Welsh Government regulations mean a local authority licence is only needed by those breeding three litters or more per year. This has led to the highly criticised puppy farms and calls for changes to bring an end to them.

Criticism and a BBC Wales investigation led to a consultation, which ran between June and August, and found: "The commercial third party sales of puppies and kittens may be associated with poorer welfare conditions for the animals compared with direct purchase from the breeder."

"For example, the introduction to several new and unfamiliar environments, and the increased likelihood of multiple journeys for such puppies and kittens have the potential to contribute to an increased risk of disease, and lack of socialisation and habituation."

This consultation pushed the Welsh Government to bring Lucy's Law into force. The ban on commercial third-party sales has been confirmed as being introduced by the end of this Senedd (in May 2021).

Wales is not the first to introduce Lucy's Law, with it coming into force in England from the 6<sup>th</sup> April 2020, with a ban also set to come into force in Scotland.

*Geraint Manley, Solicitor*

# Free Trade Agreements, a new Farm Support System and Brexit: Which Direction does UK Farming go now?

David Bowles, Head of Public Affairs at RSPCA

## Abstract

In November 2020 the UK adopted its first Agriculture Act since 1947 which sets out the vision for English and British agriculture now the UK is no longer a Member State of the EU. On 1 January the UK will regain its independent seat at the World Trade Organisation outside the EU and is currently negotiating seven free trade agreements. This brings a number of opportunities for British farming such as improving the rules governing the transport of live animals. It also brings many threats such as how the UK will defend its higher farm animal welfare standards or its animal health standards, two of which have already been ruled by the WTO as being non compliant.

All farm animal health and welfare legislation is devolved and so the responsibility of the devolved administrations and Parliaments. But it is the UK that is the member of the World Trade Organisation which polices the rules on imports, exports and subsidies of farm products; it is the UK that has to report on how the UK has complied with those rules. It is also the UK that negotiates free trade agreements with other countries, the majority of whom have farm standards that are lower than in the UK. Those British standards will be vulnerable to cheaper imports produced to lower standards that are illegal in the UK. This paper will explore the opportunities and threats to Britain's farm standards and examine where the power really lies in determining the direction of those standards as the UK leaves the European Union.

## Introduction

In November 2020 the UK Parliament agreed its

first Agriculture Act<sup>1</sup> since 1947 and from 1 January 2021 Great Britain's three devolved countries - England, Wales and Scotland - will be in charge of farm policies and farm subsidies outside of the EU's Common Agricultural Policy for the first time since 1973<sup>2</sup>. Northern Ireland, as a Member of the EU's Single Market and Customs Union under the European Union (Withdrawal Agreement) Act 2020<sup>3</sup> will continue to follow the EU's farm legislation but be able to set its own farm subsidy programme. On the same date the UK will resume its membership of the World Trade Organisation (WTO) as a non EU Member State, free to set its own trade policies. These two once in a generation changes are large enough on their own to set new strategies and laws on these areas but the UK's trade policy and its farm policy are inextricably linked, interdependent and conflicted. Decision making on these two areas is also interlinked and conflicted. One, trade policy, is a reserved power and so decided at a central Government level. Farm support policy has been a devolved power since 1999, confirmed in the Agriculture Act 2020. Policy on individual farm issues such as farming standards or consumer information is also devolved but needs to be juxtaposed with ensuring the free movement of food and farm products across the UK Single Market which is a reserved power. The future direction of British farming is dependent not just on the inter-

1 <https://www.legislation.gov.uk/ukpga/2020/21/contents/enacted>

2 Farm animal and health laws are devolved to England, Scotland and Wales; although the four devolved Governments have set their own farm subsidy programmes since 1999, these have been constrained by EU common rules on how much could be spent on animal welfare and environment programmes and how much on the Basic Payment Scheme

3 <https://services.parliament.uk/Bills/2019-21/europeanunionwithdrawalagreement.html>



action between trade policy and farm policy but also the interplay between devolved and central governments.

The UK Government has a clear manifesto commitment not to undermine its high animal welfare standards in trade agreements<sup>4</sup>. It has made clear its intentions to improve its animal welfare standards as set out in the Prime Ministers first speech<sup>5</sup>. It also has laid out its intentions to play a full role as a free trade nation once it regains its seat at the WTO independent of the EU<sup>6</sup>. The interplay of these two seemingly conflicting goals and the tussle between central and devolved governments to control the farm welfare agenda will determine how the UK's farm animal welfare policy will develop in the future. Will the UK decide to go to a free trade liberalisation

policy with the resultant impacts cheaper products produced at lower standards will have on its own farm standards? Or will it decide to pursue an agenda of increasing farm animal welfare standards and selling these products and this philosophy on a world stage? Tensions within Government between the Trade and Agriculture Ministries<sup>7</sup> and between the devolved and central Government<sup>8</sup> already show the fault lines in trying to answer this question.

This paper will assess the powers of the Agriculture Act, the retained specific farm animal welfare laws and the UK's trade policy to gain an insight into which road the UK will take on farm policy and assess the options it has under trade rules to support that position.

### **Agriculture Act 2020 - separating out the England and UK pieces**

4 <https://www.conservatives.com/our-plan> accessed 29.11.20

5 <https://www.gov.uk/government/speeches/boris-johnsons-first-speech-as-prime-minister-24-july-2019>

6 <https://www.gov.uk/government/speeches/chatham-house-speech-liz-truss-sets-out-vision-for-values-driven-free-trade>

7 <https://www.ft.com/content/a1bb84cf-be5d-486c-841f-fc6d84aa22b8> accessed 20.11.20

8 <https://www.heraldsotland.com/news/18774695-reckless---snp-attack-uk-race-bottom-food-standards/> accessed 20.11.20

The Agriculture Act<sup>1</sup> covers 52 Articles, 7 Schedules and perhaps more importantly gives 29 different powers to authorities to set out new delegated legislation in areas which range from the power to the devolved governments to set their own farm support systems to the power to change fertiliser standards. It took nearly three years to agree from the first consultation in February 2018 on the principles behind the legislation<sup>9</sup> to the final Royal Assent in November 2020. Agreement on the Act spanned two Governments, two Prime Ministers and three Defra Secretaries of State, and was determined to a certain extent by the lack of progress on agreeing how the UK was leaving the EU.

It generated some of the largest responses seen on a piece of any legislation let alone one on agriculture. Over 43,000 responses were submitted to the initial consultation in 2018<sup>10</sup> and a petition containing over one million signatures to protect British food standards was submitted to Defra as the Bill reached its finale in 2020<sup>11</sup>. Aside from being the first Agriculture Act in over 70 years, part of this public concern can be gauged from the importance the issue of animal welfare and agriculture had played in the Referendum debate during 2016 when there were promises that the UK would be able to manage its own legislative portfolio for the first time and ban totemic issues such as live exports of farm animals<sup>12</sup>.

The Agriculture Act 2020 fulfills two roles. It sets out a new framework to pay farmers subsidies once we have left the EU, to replace the outmoded Common Agricultural Policy<sup>13</sup>. Each of the four devolved Governments will have the right to set their own agricultural policy. Secondly the Agriculture Act sets out this policy in detail for England. By determining all subsidies

(£2.45 billion annually until 2024<sup>14</sup>) shall be given for ten public good activities, including that to promote animal welfare<sup>15</sup>, it is clear that the English farm support system will be very different to anything that has gone before. The new payments regime will start in England in 2021 to come fully in effect by 2027<sup>16</sup>. The increase in payments for public goods will coincide with a decrease in the Basic Payments System (BPS) which will be around half of present levels by 2024<sup>17</sup>. The Governments in Wales<sup>18</sup>, Northern Ireland<sup>19</sup> and Scotland<sup>20</sup> are expected to set out their policies in Agriculture Acts in 2021 but are expected to adopt different policies in regards to the balance between BPS and public goods payments<sup>21</sup>. All have announced legislation<sup>22</sup> to ensure there is a degree of continuity of the existing payments for 2021 whilst the new systems are agreed.

Clearly this is a huge opportunity for animal welfare to divert farm payments away from BPS towards promoting animal welfare schemes. In the 47 years that the UK implemented the Common Agricultural Policy, only one country, Scotland, has adopted any programme to specifically promote animal welfare and this only ran from 2007 to 2013<sup>23</sup>. Whilst this was a successful programme<sup>24</sup>, the funds allocated to it could not compete compared to the annual spend of

9 <https://www.gov.uk/government/consultations/the-future-for-food-farming-and-the-environment>

10 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/741461/future-farming-consult-sum-resp.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741461/future-farming-consult-sum-resp.pdf) accessed 29.11.20

11 <https://www.nfuonline.com/news/latest-news/nfu-food-standards-petition-hits-one-million-signatures/> accessed 20.1.20

12 <https://www.telegraph.co.uk/news/2016/08/29/brexit-is-chance-to-halt-shameful-live-animal-exports-say-protectors/> accessed 20.11.20

13 [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en) accessed 29.11.20

14 <https://www.gov.uk/government/speeches/spending-review-2020-speech> accessed 25.11.20

15 Article 1(1) Agriculture Act 2020

16 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/939602/agricultural-transition-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939602/agricultural-transition-plan.pdf) accessed 30.11.20

17 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/939925/agricultural-transition-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939925/agricultural-transition-plan.pdf) accessed 30.11.20

18 <https://business.senedd.wales/documents/s105187/Letter%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20to%20the%20Chair%20of%20the%20Legislation%20.pdf>

19 <https://www.northernireland.gov.uk/node/47952>

20 <https://www.gov.scot/news/farming-and-food-production/>

21 <https://gov.wales/sites/default/files/consultations/2019-07/brexit-consultation-document.pdf> accessed 30.11.20

22 Eg <https://www.legislation.gov.uk/asp/2020/17/contents/enacted>

23 <https://www2.gov.scot/Topics/farmingrural/SRDP/PMC/PMCPapers/PMC20083> accessed 30.11.20

24 RSPCA.2007.Targeted help: improving farm animal welfare in Scotland under the Rural Development Programmes.



around £2.6 billion in farm support payments that the UK gave farmers based on the size of their farm under the BPS<sup>25</sup>. The England programme alone will allocate around half the £2.4 billion in payments to environment and animal welfare schemes by 2024, more in a year than has occurred in the past 47 years. Farmers have questioned what this massive change in direction will mean for their business<sup>26</sup>.

The Agriculture Act sets out the powers for the devolved Governments of Wales and Northern Ireland to set their own farm support policies<sup>27</sup> and specifically sets out the English support framework<sup>28</sup>. But it also gives power to the UK Government to ensure that any payments are in line with the UK's WTO obligations<sup>29</sup>.

How are these seemingly competing powers going to operate? The snappily titled World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020<sup>30</sup>, laid as a Statutory Instrument in November 2020 in the Houses of Parliament gives some clues. Although the system allows for coordination and communication between the four parts of the UK, ultimately it is the Defra Secretary of State who decides if a farm payment is compliant with our trade obligations or should be changed. Now we should examine the potential of the specific laws on farm animal welfare to change farm policy.

### EU legislation - what have we inherited?

The UK has nationalised all 18 of the EU's farm animal welfare acquis which includes four specific standards on the keeping of animals on farm, three specific bans on usage of growth promoters on animal health grounds and legislation on the transport and slaughter of farm animals. All of the farm animal welfare laws are devolved and have been agreed by the relevant

country's legislatures. The animal health laws are also ostensibly devolved and are under the jurisdiction of the three devolved Governments and their food standards agencies rather than central Government<sup>31</sup>.

However, it is not that simple as the impact of devolved legislation could have consequences on the other Governments. For instance England has the power to stop live animal exports in its legislation but this would have a big impact on the exports of Scottish calves or Welsh sheep - and subsequently the economic value of these sectors - as these exit from English ports. The UK also has the power in Free Trade Agreements to permit importation of substances prohibited in other jurisdictions such as hormone beef or chlorine washed chicken. As these products are free to circulate in the British market once imported, these render the country prohibitions in Scotland or Wales effectively redundant.

There are opportunities to shape future farm animal law. The UK Government has said it will improve its farm animal welfare legislation once it has finished the transition period and left the EU. For instance the UK Government has announced a consultation on stopping live exports and improving transport rules within England<sup>32</sup>. In addition the three devolved Governments could start to pass species specific legislation in areas that the EU has yet to agree such as beef and dairy cattle, sheep, turkeys or salmon. But all these laws have to meet the framework of the WTO's trade regime, so establishing what the WTO rules are and what they mean is crucial for future farm improvements.

### World Trade Organisation rules - what is possible and impossible

Agriculture has always been a difficult sector for the multilateral trading system which has treated agriculture differently from its inception in 1947. Although the General Agreement on Tariffs and Trade (GATT '47)<sup>33</sup> did not exclude agriculture, it did allow import restrictions where

25 [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/basic-payment\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/basic-payment_en) accessed 29.11.20

26 <https://www.fwi.co.uk/business/payments-schemes/bps/defra-unveils-roadmap-to-elm-scheme> accessed 30.11.20

27 Article 47 Agriculture Act 2020

28 Article 1(3) Agriculture Act 2020

29 Article 43 Agriculture Act 2020

30 <https://www.legislation.gov.uk/ukdsi/2020/9780348214987>

31 Northern Ireland will continue, as part of the EU's Single Market to follow the EU's rules on animal health

32 <https://consult.defra.gov.uk/animal-health-and-welfare/live-exports-and-improving-welfare-in-transport/> accessed 4/12/20

33 General Agreement on Tariffs and Trade 1947. [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)

there were food surpluses or national schemes in place to regulate the marketing of products. The reform of the global agricultural trading system was only really initiated under the Uruguay Round negotiations in 1994 which set up the Agreement on Agriculture<sup>34</sup>. This agreed three methods to establish a fair and market oriented system for farm products, namely, to increase market access, reduce tariffs on imported products and reduce support for farming systems that have minimal or no trade distorting effects on production. Since 1994 there have been 109 disputes looked at by the WTO's Dispute Settlement Body (DSB) involving agricultural and food products<sup>35</sup> of which 84 have been taken under the Agreement on Agriculture<sup>36</sup>. This has given a broad framework to establish what is and is not possible under trade rules.

Trade in food and farm products must, like trade in any product, adhere to the relevant Agreements under the WTO, which for agriculture are the GATT '47<sup>1</sup>, the Sanitary and PhytoSanitary Agreement (SPS)<sup>37</sup>, the Technical Barriers to Trade Agreement (TBT)<sup>38</sup> and the Agreement on Agriculture (AoA)<sup>29</sup>. Disputes on trade measures tend to cite more than one Agreement and previous disputes have looked at the most relevant Agreement first to assess the measures. The nexus of Agreements to each other differs: if a measure is found to be non compliant to the SPS it is assumed to be non compliant to the GATT but this does not necessarily hold for the TBT and GATT. We will now examine measures that are possible under each Agreement.

Firstly animal health measures. The SPS allows a country to set its own level of protection on animal health provided that any measures are necessary, are not a disguised trade restriction or applied in an unjustifiably discriminatory manner. Trade bans are not permissible if the country has not undertaken a risk assessment of

the measures<sup>39</sup>, has introduced measures contrary to international regulations<sup>40</sup> and uses the precautionary principle if there is no scientific evidence to back it up<sup>41</sup>. Risk assessments need to be regularly updated<sup>42</sup>. Countries can adopt higher standards than the OIE global standards but need to show why this has been adopted in their risk assessment<sup>37</sup>. The SPS has not dealt with an agricultural animal welfare dispute as there are no international agricultural welfare standards<sup>43</sup> but has ruled on a number of agricultural animal health disputes, such as on beef hormones, where it found against the EU's ban as it was not based on a risk assessment or scientific information<sup>44</sup>. This dispute was only resolved after 20 years by the EU offering, and the USA accepting, increased import quotas for non hormone beef<sup>45</sup>. The UK, when it becomes a member of the WTO outside the EU on 1 January 2021, will not have the safeguard of this negotiated agreement and it is likely that the USA will reopen this issue knowing that the WTO DSB has already ruled it as illegal under trade rules. Another outstanding dispute concerns the EU ban on imported US chicken washed in agents such as chlorine. Again this is not based on a scientific risk assessment and the UK may also find this difficult to defend should a country such as the USA ask the DSB to rule on it.

The TBT covers labelling issues. There have been 56 disputes under the TBT, 19 concerning farm animals though only one, the EU seals ban, involved an animal welfare issue<sup>46</sup>. The panel disputes have confirmed that measures cannot be taken that are "more trade-restrictive than

34 Agreement on agriculture. 1994 [https://www.wto.org/english/docs\\_e/legal\\_e/14-ag\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm)

35 [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_subjects\\_index\\_e.htm?id=G15](https://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm?id=G15) accessed 29/11/20

36 [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm?id=A1](https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A1) accessed 29/11/20

37 Agreement on the Application of Sanitary and PhytoSanitary Measures. 1994 [https://www.wto.org/english/docs\\_e/legal\\_e/15sps\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm)

38 Agreement on Technical Barriers to Trade. 1994 [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

39 WT/DS291/R 2. 1998. EU Approval and marketing of Biotech products

40 WT/DS47/AB/R 2014 Russian Federation - Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union

41 WT/DS26/AB/R 1998 EU Measures affecting meat and meat products (hormones)

42 WT/DS447/R 2015 USA-Argentina Import of animals, Meat and other animal products from Argentina

43 The OIE farm standards which cover 14 areas are not linked to the SPS Agreement unlike the OIE disease and animal health standards

44 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds26\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm) accessed 29.11.20

45 <https://www.consilium.europa.eu/en/press/press-releases/2019/07/15/imports-of-hormone-free-beef-eu-us-agreement-confirmed/#>

46 [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm?id=A22](https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A22) accessed 29.11.20

necessary to fulfil a legitimate objective<sup>47</sup> and a risk assessment has to be done based on “available scientific and technical information”<sup>48</sup>. But recent panels have allowed measures to protect the life or health of any animal, including farmed ones<sup>49</sup> and permitted labelling or marketing terms different from internationally agreed standards<sup>50</sup>, as long as they are not a disguised trade restriction<sup>42</sup>. The US country of origin labelling on beef was found not compliant as it disadvantaged imported beef against US beef<sup>51</sup>. However the US's tuna dolphin labelling scheme was ruled as compliant with TBT rules as it introduced a calibrated method of assessing the risk of product which was determined not to constitute arbitrary or unjustifiable discrimination to other products<sup>52</sup>. So measures are allowed to protect human health<sup>53</sup>, give consumers information<sup>54</sup>, including on how a product is produced based on consumer preference<sup>47</sup>, but regulations must be even handed and cannot be an arbitrary or unjustified discrimination between countries where the same provisions prevail and cannot be a disguised restriction on trade<sup>55</sup>. The crucial issue concerning if labelling is permitted to show the difference to consumers in how an agricultural product is produced, based on a “like” product such as eggs, is unclear as panels have yet to rule specifically if the method of production in a product is permitted under TBT rules<sup>56</sup>.

There have been 493 disputes heard under the

47 DS/384/AB/R 2012 USA Cool Certain Country of Origin Labelling Requirements

48 WT/DS381/AB/R 2012. United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

49 WT/DS381/RW 2015 United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

50 WT/DS231/AB/R 2002. EU Trade description of sardines

51 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds384\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm) accessed 29.11.20

52 [https://www.wto.org/english/tratop\\_e/dispu\\_e/381abr2\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/381abr2_e.pdf) accessed 29.11.20

53 WT/DS135/R 2000. EU Measures Affecting Asbestos and Asbestos-Containing Products

54 DS/384/AB/R 2012 USA Cool Certain Country of Origin Labelling Requirements

55 DS406/AB/R 2012. US Clove cigarettes.

56 WT/DS401/AB/R. 2014. EU Measures prohibiting the importation and marketing of seal products

GATT since 1994<sup>57</sup> and over 350 rulings which have given a framework on the compatibility of trade bans under the regime. We know that trade bans are allowed for animal welfare including to protect a country's morals<sup>58</sup> determined by how long the country have held that position<sup>59</sup>, that trade bans are allowed to ensure that animals are not killed inhumanely<sup>60</sup> and can apply extra jurisdictionally<sup>61</sup>. Trade bans could be allowed based on how a product is produced provided there is a calibrated risk based approach to determine the impact of how the product is produced<sup>62</sup>. Consumer preferences can be included in this test<sup>63</sup>. However a country may not be able to introduce a trade restrictive measure if it gives an unfair trade advantage to its own products or allows a different method of production in its own territory to the imported product<sup>58, 64</sup>. The EU successfully retained its seal products ban after the WTO challenge from Canada and Norway on the grounds that this was an important moral issue for the EU<sup>65</sup>. The EU showed this not through opinion polls, but by demonstrating the legislation and public concern on the issue was long standing. The WTO also agreed that as this was a moral issue the EU could ban a product from another country, even if they have different moral values. However it did not rule on if it could ban a product based on how it was produced.

Finally the Agreement on Agriculture (AoA), sets out the framework for how farm subsidy payments must operate and encourages less

57 [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm) accessed 29.11.20

58 WT/DS363/R 2006. China Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products.

59 WT/DS400/R 2012. EU Measures prohibiting the importation and marketing of seal products

60 WT/DS381/RW. 2015. United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

61 WT/DS58/AB/R A 1998 USA Import prohibition of certain shrimps and shrimp products

62 WT/DS381/AB/RW 2015. United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

63 WT/DS477/R. 2014 Indonesia - Importation of Horticultural Products, Animals and Animal Products

64 WT/DS332/AB/R 2006. Brazil Measures affecting imports of retreaded tyres

65 WT/DS400/AB/R 2014. EU Measures prohibiting the importation and marketing of seal products

trade distorting domestic support policies to assist farmers and the rural economy<sup>66</sup>. However there has only been one dispute panel ruling on farm subsidies under the Agreement on Agriculture<sup>67</sup> so it is difficult to know when subsidies are in line with the rules. Under the AoA framework a country can pay its farmers any payments that are non trade distorting and not linked to production. These would include payments for animal welfare. These are denoted as Green Box payments<sup>68</sup>. These subsidies are exempt from the country's obligations under the AoA to reduce their total farm support by 20% by 1998. Payments that are related to production such as paying a farmer to produce beef, are called Amber Box payments. A country is not permitted to pay farmers subsidies that exceeds 5% of their total production of that product or 5% of the country's total agricultural output<sup>69</sup>.

Overall the WTO rules particularly on farm subsidies, labelling and even import restrictions give a fair degree of flexibility for a country when building its farm legislation. The SPS regime, covering animal health issues, is the most prescriptive and gives the least amount of flexibility. So a country would be allowed to subsidise farmers as long as those payments were delinked from production, and could be able to stop imports as long as the measures were proportionate, non discriminatory or a disguised restriction on trade. It just needs a government that is brave and prioritises such measures to improve farm animal welfare.

We have covered two of the three different pillars of legislation determining farming and food policy: retained legislation from the EU and the subsidy system set up under the Agriculture Act 2020 and have shown there is a degree of flexibility in how these are at the trade level. We now turn to the final area, ensuring that there is free movement of food and goods within the UK whilst respecting the right of devolved Governments to set their own standards.

66 WTO Agreement on Agriculture. 1994. [https://www.wto.org/english/docs\\_e/legal\\_e/14-ag\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm)

67 WT/DS511/R 2017:China - domestic support for agricultural producers

68 WTO. 1994 Agreement on Agriculture Annex 2 6 (b)

69 WTO. 1994 Agreement on Agriculture Part IV Article 6 (4)

## The UK Single market - how to square the circle of devolution and free movement

The Joint Ministerial Committee (JMC)<sup>70</sup>, set up in 2001, has the task of resolving and clarifying issues between the four countries, including conflicts between devolved and non-devolved matters. It has the tricky balance to ensure there are UK harmonised rules whilst respecting the devolution settlements. Under the JMC, the four devolved Governments published the Common Framework on Animal Health and Welfare<sup>71</sup> in November 2020. This essentially acknowledges the power of devolved Governments to set farm animal welfare policies but then states that any European Union inherited legislation should be decided at a UK level. As most farm welfare legislation is inherited from the EU anyway, this suggests that the powers of the devolved Governments to set farm standards above the GB baseline are limited. If a devolved government wishes to set higher standards they must apply to the UK Government with their reasons and if there is no agreement this goes to arbitration at the Joint Ministerial Committee<sup>72</sup>. The JMC has its own dispute resolution process and publishes regular updates on disputes or progress on issues under dispute<sup>73</sup>.

The Common Framework has important implications for devolution as it appears to curtail the powers of devolved governments to set their own farm policies if they diverge from the UK baseline but also has ramifications on future farm policy in each of the three British countries. At present there is only one farm animal welfare law inherited from the EU where a country, in this case Northern Ireland, has diverged from the other laws set by the other three Governments. Northern Ireland set a maximum stocking density of 42 kg/m<sup>2</sup> for chicken farming<sup>74</sup>, in line

70 <https://gov.wales/joint-ministerial-committee>

71 <https://www.gov.uk/government/publications/animal-health-and-welfare-framework-2018/animal-health-and-welfare-framework>

72 <https://senedd.wales/Research%20Documents/The%20Joint%20Ministerial%20Council%20-%20Quick%20guide-09012012-229160/qg12-0002-English.pdf>

73 <https://www.gov.uk/government/publications/joint-ministerial-committee-eu-negotiations-community-3-september-2020>

74 <https://www.legislation.gov.uk/nidsr/2012/9780337986475/contents>

with the EU baseline in Directive 2007/434/EC<sup>75</sup>, whereas the other three Governments opted for a slightly higher standard of 39 kg/m<sup>2</sup><sup>76</sup>. The impact of this divergence has been minimal over the past ten years since it was implemented as the space differences are minimal, but it remains to be seen if the future approach limits countries from adopting higher farm animal welfare standards.

Adding to this complexity is the Internal Markets Bill<sup>77</sup>, the aim of which is to ensure there is one UK market for food and food standards and products produced in different methods or labelled different ways in any of the four UK countries cannot be prohibited from being imported or sold in any of the three other countries. This law is being decided in Westminster although it clearly has an impact on what each of the devolved governments can propose on food standards and food labelling. It also plays a crucial role in deciding the level of food standards.

The UK Government has assured the devolved Governments that the independent Food Standards Agencies in England and Scotland are in charge of our food import policy<sup>78</sup>. Yet it is the UK Government that is in charge of trade negotiations so could agree to import products produced to lower standards or methods illegal to undertake in the UK such as chlorine washed chicken or hormone injected beef. Oversight of any free trade negotiations has been widely criticised in Westminster as it is the Government rather than Parliament negotiates and ratifies any agreements<sup>79</sup>.

Once in the Great Britain market (Northern Ireland is within the EU Single Market and Customs Union so follows those rules) these products can clearly circulate within all three countries of Great Britain even if a country has a marketing ban of the product in its legislation. The Bill, ex-

pected to be adopted in December 2020, preserves the different rules on food standards and labelling but crucially introduces market access conditions which essentially mean that any country cannot refuse entry of a food product produced or marketed in the UK based on how it was produced or how it is labelled. These are very similar powers that the European Commission has to maintain the Single Market rules in the EU, powers demarcated in the Cassis de Dijon case in 1978<sup>80</sup>. However the Internal Market Bill goes further as the rules apply not just to products produced in Great Britain but to products imported from third countries. This has two important implications. Firstly it could dampen a country's enthusiasm to implement higher farm animal welfare standards as they will not be in a position to stop imports from another part of Great Britain. These imports could undermine their high farm standards, as there is a cost implication of production at a higher level which has been clearly shown for eggs<sup>81</sup>, chickens<sup>82</sup> and pigs<sup>83</sup>.

Secondly if the UK decided to allow imports of a product currently banned in the UK such as hormone implanted beef, as part of a Free Trade Agreement, this would not just have implications for England as the product would be able to circulate into Wales and Scotland, even if that country still had a ban on imports or marketing of hormone beef. All three countries (Northern Ireland follows Directive 2003/74 which contains the sales and production prohibition<sup>84</sup>) have banned the use and sale of hormone implanted beef<sup>85, 86</sup>. A similar situation arises for imports of chicken washed in anything other than water (the chlorine-chicken question) which again

75 <https://eur-lex.europa.eu/legal-content/EN/TX/T/?uri=CELEX:32007L0043>

76 Eg <https://www.legislation.gov.uk/ukxi/2007/2078/contents/made>

77 <https://www.legislation.gov.uk/ukdsi/2020/9780348214987>

78 <https://hansard.parliament.uk/Lords/2020-09-08/debates/5BADA7DC-AC31-4745-9BA6-11C87010ABCA/Trade-Bill> accessed 29.11.20

79 <https://publications.parliament.uk/pa/cm201719/cmselect/cmintrade/1043/1043.pdf>

80 ECJ 22 May 1978, nr. C-120/78, Cassis de Dijon, paragraph 8, subparagraph 2.

81 <https://library.wur.nl/WebQuery/wurpubs/fulltext/469616>

82 [https://www.avec-poultry.eu/wp-content/uploads/2018/05/Wageningen-report-2017-005-competitive-ness-EU-poultry-meat-van\\_Horne\\_def....pdf](https://www.avec-poultry.eu/wp-content/uploads/2018/05/Wageningen-report-2017-005-competitive-ness-EU-poultry-meat-van_Horne_def....pdf)

83 [https://projectblue.blob.core.windows.net/media/Default/Pork/Documents/CostofPigProduction2018\\_200302\\_WEB.pdf](https://projectblue.blob.core.windows.net/media/Default/Pork/Documents/CostofPigProduction2018_200302_WEB.pdf)

84 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0074>

85 <https://www.legislation.gov.uk/ukxi/2015/787/contents/made>

86 <https://www.legislation.gov.uk/wsi/2019/569/contents/made>

has been transposed into legislation<sup>87</sup> by the UK Government. Again there are implications on devolution and farm animal welfare. Whilst there are exceptions to these prohibitions these are limited to issues such as pest control and not animal welfare<sup>88</sup>. Ironically the EU has less stringent rules as it allows exemptions under Article 36 for reasons that include public morality and animal health and life<sup>89</sup>. Again the Secretary of State at Defra can change these exemptions not the devolved Governments.

The same applies to information given to consumers on the provenance of their food. Although there are common rules on labelling that allow the devolved countries to agree their own labelling rules<sup>90</sup>, the Internal Markets Bill's principle of mutual recognition would stop a devolved country from unilaterally labelling a product that is imported from another part of Great Britain (or indeed from a third country via a GB country). This has created unsurprisingly, tensions between the three devolved Governments<sup>91</sup>.

## Conclusion

2020 will be seen as a landmark year for British farming and agricultural standards. The Agriculture Act provides the template for the four UK countries to prioritise farm payments to whatever sector or issue they desire including the environment or animal welfare. Leaving the EU on 31 December also gives the three British countries the flexibility in determining what level of animal welfare standards they want to see in its farming industry - and the scope to financially incentivise this. Both have to pass the tests set by international trade rules, but these are more flexible particularly on measures to promote animal welfare than are commonly understood.

More importantly any measures adopted by the devolved Governments also have to pass the tests set by the UK Government on allowing free internal circulation of food and agricultural produce within Great Britain. Any policies must also bear in mind what measures have been agreed in free trade agreements by the UK Government as these have the potential to undermine farm standards if they permit imports of produce that has been produced in ways illegal or below present farming standards. The future for British farm animals could be optimistic. England has already announced some radical ideas with their farm support payments. But ultimately the direction of travel in England, Scotland and Wales will heavily depend on the UK Government's trade policy and how much priority it gives to farm animal welfare and how closely it abides by its commitment not to lower farm welfare standards in any future trade agreements.

87 <https://www.legislation.gov.uk/uksi/2019/1247/contents/made>

88 <https://eurelationslaw.com/blog/goods-in-the-uk-internal-market-a-closer-look-at-the-exceptionclauses>

89 [https://ec.europa.eu/romania/sites/romania/files/tratatul\\_de\\_la\\_roma.pdf](https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf)

90 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925713/Nutrition\\_related\\_labelling\\_composition\\_and\\_standards\\_provisional\\_common\\_framework\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925713/Nutrition_related_labelling_composition_and_standards_provisional_common_framework_web_accessible.pdf)

91 <https://blogs.sussex.ac.uk/uktpo/files/2020/11/BP-49final.pdf>

# A Perspective on Dog Meat

Hannah Brown

## Introduction

On 20 December 2018, the Dog and Cat Meat Prohibition Act was signed into law by President Trump as a provision of the Farm Bill<sup>1</sup>. The new law makes it a federal offence to slaughter a dog or cat for human consumption. It is also an offence to possess, trade and import/export dogs and cats (including cat or dog parts) for human consumption in the 44 US states where it was previously legal.<sup>2</sup> In the UK, cross party support for a ban on consuming dog meat (and connected activities) has been gaining traction.<sup>3</sup>

On 19 February 2019 MP Bill Wiggin introduced a 10 Minute Rule Bill in the House of Commons:

*"It may seem extraordinary, but consuming dog meat is currently not illegal in the UK. Luckily, there is no evidence that dogs are eaten in the UK yet, but due to the vile way in which dogs are treated in Asia, I would like our country to join in setting an example to the world. China argues that, until we make it illegal, why should they? ...Making it an offence...would highlight our country's commitment to outlawing the practice globally."*<sup>4</sup>

When addressing the Backbench Committee on the proposal for the debate on banning the consumption of dog meat MP Jim Shannon stated:

*"Many of us have suddenly realised that there is a technical loophole in the legislation in the United Kingdom...[W]e have not made it illegal to eat dogs or cats in the United Kingdom. It is against the law to kill them and to sell the meat, but it is not against the law to eat them, and that is why we want to bring legislation*

*forward."*<sup>5</sup>

The UK government's position is that it is already illegal to sell dog and cat meat for human consumption in the UK and there is no evidence that dog or cat meat is being sold or consumed in the UK.<sup>6</sup>

The current position appears to be that: (a) it is legal to slaughter, cook and eat one's own dog or cat at home in the UK (for consumption by oneself/one's family), but (b) it is illegal if there is any commercial element (i.e. buying/selling dog meat, slaughtering one's own dog to sell the meat, slaughtering dogs in an abattoir etc).

The proposed law ("Bill 337") would make it "*an offence to consume dog meat and to transport, possess or donate dog meat for the purpose of consumption; and for connected purposes.*"<sup>7</sup>

The practical effect of Bill 337 therefore would be to make (a) illegal (even though it is generally accepted that this does not occur on any noticeable scale in the UK), and to make the position regards (b) clearer (once again, even though it is generally accepted that such activities do not occur in the UK).

The supporters of Bill 337 appear to be aware of this exceptional situation. Rather, their focus is on "*setting an example to the world*", in particular to countries where dog and cat meat consumption occurs such as China, Vietnam and Korea.

At the beginning of last year I considered the argument for a ban on the dog meat trade in China and focused in particular on the Yulin Lychee and Dog Meat festival. There was much debate about wheth-

1 Agriculture Improvement Act of 2018

2 <https://www.businesswire.com/news/home/20181220006023/en/>

3 Early Day Motion in October 2018 calling for the Animal Welfare Act 2006 to be amended "to make the eating of dog meat in the UK illegal and to close the loophole that is there at present" gained 25 signatures. See: <https://edm.parliament.uk/early-day-motion/52210>.

4 [https://hansard.parliament.uk/commons/2019-02-19/debates/9FA84D35-9B95-4529-B787-22F5D8C43EC7/DogMeat\(Consumption\)\(Offences\)](https://hansard.parliament.uk/commons/2019-02-19/debates/9FA84D35-9B95-4529-B787-22F5D8C43EC7/DogMeat(Consumption)(Offences))

5 <https://hansard.parliament.uk/Commons/2019-02-21/debates/5D81670F-D0F2-4024-8590-723985C49FA8/DogMeatInTheUK>

6 <https://www.parliament.uk/written-questions-answers-statements/written-question/commons/2018-11-02/187378>

7 Introduction to MP Bill Wiggin's Motion for leave to bring in Bill 337 on 19 February 2019: [https://hansard.parliament.uk/commons/2019-02-19/debates/9FA84D35-9B95-4529-B787-22F5D8C43EC7/DogMeat\(Consumption\)\(Offences\)](https://hansard.parliament.uk/commons/2019-02-19/debates/9FA84D35-9B95-4529-B787-22F5D8C43EC7/DogMeat(Consumption)(Offences))

er the criticism of dog meat consumption at Yulin could be justified given the millions of other animals slaughtered annually each year across the world without such intense condemnation. Ultimately, I concluded that events such as Yulin could be justifiably legislated against on the grounds of the source of the dogs and the particular issues surrounding welfare and suffering of the animals involved.

My purpose in making these arguments was not to defend meat consumption in the UK (being a vegan I do not support any meat consumption, regardless of species). However it was evident that unless the charges of speciesism could be addressed, progress may be hampered. I therefore sought to cut a path through the debate by identifying defensible arguments for a ban on Yulin, but cautioned against focusing on the fact that (1) the scenes of slaughter are uncomfortable to watch and (2) the animal in question is a dog *per se*.

One criticism of Bill 337 is that dogs and cats are being provided with preferential treatment when there is no moral justification to differentiate between say, a dog and a pig. From a practical perspective, if Bill 337 were to come into force in the UK then it would be illegal to slaughter and eat one's own dog, but it would be legal to slaughter and eat one's own pig, cow, goat or chicken etc. at home (provided relevant laws are adhered to, for example concerning welfare at the time of slaughter and health and safety requirements).

If Bill 337 banning dog and cat meat consumption in the UK is to avoid the same charge of speciesism then the basis for such law needs to be carefully explored. In this article I explore again the main arguments which lead to my conclusions last year concerning the dogs at Yulin.

### Yulin and dog meat consumption in China

During the Yulin Lychee and Dog Meat Festival, thousands of dogs and cats are slaughtered each year for their meat, as many as 10,000 to 15,000 during the festival's peak years. The festival is in essence a combination of a wet market (the largest being the Dongkou Market), where live as well as freshly slaughtered dogs are bought and sold, along with a number of restaurants serving dog meat (the most popular being found along the nearby Jiangbin Road). Festivalgoers can choose to buy a live dog from the wet market and slaughter him/her at home or purchase some freshly butchered meat (often having chosen the live dog for slaughter). Alternatively, visitors can feast at one of Yulin's dog meat restaurants.<sup>8</sup>

<sup>8</sup> In 2017 it was announced that sale of dog meat at the Yulin festival was to be banned. Whether or not the ban has practically resulted in an end to the festival is unclear. Nevertheless,

What is it about these scenes that drew so much international condemnation?<sup>9</sup>

For audiences who are accustomed to purchasing their meat already slaughtered and butchered at the local supermarket, the scenes of animals being transported, handled, and slaughtered are unfamiliar. They are troubling because, having never witnessed these scenes before, such audiences are unlikely to have fully acknowledged and accepted the connection between live animal and the food on their plate.

The capacity to experience pain and suffering is one of the most important criteria for the moral status of an animal in Western society. Once it is accepted that an animal is sentient, the next question is what to do with that knowledge. In countries such as the UK and USA, where animal welfare laws are based on the utilitarian theories of nineteenth-century philosophers such as Mill and Bentham, the difficult moral question of eating sentient animals is met by the theory that it is morally acceptable to eat animals provided that we do not subject them to "unnecessary suffering" (or in the case of the USA, "needless suffering" and "inhumane handling/slaughter"). With regard to animals intended for food (such as pigs, cows, sheep, etc.), there are laws and regulations in place in the UK which are intended to minimize suffering during transport, handling, and slaughter. In terms of slaughter, for example, the animal should be separated physically and visually from other animals waiting for slaughter, stunned first<sup>10</sup>, and then slaughtered using the method most appropriate to the animal in question so that death occurs as quickly as possible. This is the moral trade off that we make in order to permit meat consumption.

Consumers who eat meat buy (consciously or subconsciously) into a system that seeks to address the difficult moral issue of killing and eating a sentient animal by permitting pain and suffering provided it is minimized: i.e., the animal is not subjected to more pain and suffering than is considered necessary. However, the details of how to achieve that minimal level are left to the architects of the regulatory system, and the handling and slaughter of the animals take place behind closed doors so that the actuality of (at least some) pain and suffering does not need to be confronted by the consumer. The public scenes of dogs in cramped transport and bloody slaughter

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dog meat consumption still continues in China and across other parts of Asia, including at festivals and in restaurants. My experience of walking around wet markets in South East Asia in 2018 is that dog meat can be readily found alongside pork, chicken and beef etc. Pet thefts continue to be common in the region.

<sup>9</sup> For example in 2016 the Humane Society International gathered a petition signed by more than 11 million people calling for the Yulin festival to end (HSI/UK, 2016).

<sup>10</sup>





at Yulin are problematic for most Western consumers because they throw into sharp relief the connection between live animal and food and force acceptance of the fact that to eat meat a sentient animal must endure at least some pain and suffering.

This is compounded for Western audiences by the fact that the animal in question is a dog. In many countries a seemingly inviolable distinction has been drawn between dogs, who sit within the category of pet, and other animals such as cow, pig, sheep, and chicken, who sit within the category of farm animal, bred for human consumption. In those locations, such as the US, UK, and much of Europe it is generally considered socially unacceptable to eat dog; no matter how well the dog is treated prior to and during slaughter, eating dog is taboo.

Therefore scenes of frightened dogs being transformed into limp, lifeless bodies of blood, flesh, guts, and bones with diners tucking into dog meat hot pot a matter of meters away are shocking and upsetting to most Westerners. There is no escaping the connection between live animal and meat, and the animal in question is "*man's best friend*."

However, the personal moral dilemmas (surrounding the suffering inherent in eating meat) inconveniently exposed by Yulin cannot be the basis of criticism of

the festival. If the same consumers were to fully confront what happens behind closed doors in trucks and at slaughterhouses in their own countries (where they will also find animals crammed into small spaces, in distress, cowering, whimpering, shrieking, violence, lots of blood, guts, etc.), they might also wish for the whole process to stop.

Nor is the fact that the animal in question is a dog *per se* a ground for justification. Whilst it might be tempting to argue that dogs should be treated differently because, for example, they are emotionally evolved, intelligent creatures (i.e., they have attributes going beyond mere sentience, thereby justifying distinct treatment from animals which do not display such intelligence), the logical consequence of that argument would be that other animals displaying such intelligence, such as pigs, should also be excluded from the category of food animal<sup>11</sup>. Yet many of those arguing for a ban on dog meat consumption are not also suggesting pork be banned too.

Once these factors are removed from the equation, a rational debate on banning dog meat consumption can occur. And indeed, there are other reasons as to

11 Kerr, A., & Yu, D. (2015). Tradition as precedent: Articulating animal law reform in China. *Journal of Animal & Natural Resource Law*, 11, 71–86.

why the fact that Yulin and other such festivals feature dog, as opposed to say, pork or beef, is of significance. China has a long history of domesticating dogs, and in fact the Chinese were among the first to domesticate dogs, potentially some 15,000 years ago<sup>12</sup>.

The practice of keeping pet dogs trickled through to the Chinese gentry. However, in China pet dogs remained a luxury enjoyed by the elite. For the general Chinese population, with limited resources to even feed themselves, a pet dog was a luxury they simply could not afford. Dogs remained working animals, guarding homes and undertaking hunting and farming roles. For the lower strata of society the dog remained a source of food<sup>13</sup>. During China's Cultural Revolution (1966 to 1976) the keeping of companion animals was condemned as part of an undesirable 'bourgeois lifestyle' and with rabies rife among the dog population, they were condemned as pests. This disparaging view of dogs is reflected in Chinese law and to some extent remains today.

For example, the Family Dog Management Regulations (1980)<sup>14</sup> issued by the Ministry of Health and Ministry of Agriculture set out a nationwide policy which prohibited dogs in cities and outer suburbs near cities. Permitted dogs, such as those used for scientific research, had to be vaccinated for rabies. Dogs without the requisite vaccinations were deemed wild, giving a police officer or militia member the right to kill them. Catch-to-kill campaigns in which dogs, sometimes in the thousands, were beaten to death in the streets by local police took place in cities across China, often sparked by a single incidence of rabies or a dog bite<sup>15</sup>.

According to NBC News, an op-ed piece featured in *People's Daily* (a Chinese newspaper which is generally regarded as reflecting state views) as recently as 2014 described pet dogs as detrimental for "social peace and harmony" and decried the "dog infestation" in Chinese cities<sup>16</sup>.

The result is that dogs have, for predominantly political reasons, been demonised in China and are subjected to extreme levels of cruelty particularly

during the slaughter process. This is compounded by the belief that inflicting suffering raises the dog's adrenaline levels, tenderising his/her meat. Therefore many of the dogs slaughtered for human consumption at Yulin are subjected to extreme levels of cruelty, with reports of dogs being bludgeoned, boiled, skinned, hung and blow-torched alive. Many of the practices at Yulin are so far removed from what would be permitted in countries adhering to the "unnecessary suffering" concept that even without scientific evidence it is possible to conclude with some confidence that the treatment of the dogs at Yulin regularly crosses the "unnecessary suffering" threshold. Focus therefore on the extra suffering involved in certain countries where dog meat is consumed is appropriate.

Secondly, attention can be drawn to the source of the dog meat. Many dog meat companies claim that the meat they process comes from their own breeding farms. This suggests that there are dogs bred specifically for the meat trade in specialist facilities and distinct from domestic dogs. However, an Animals Asia investigation found that there are only a few dog meat farms in existence in China and those that do exist are not large scale. In other words, there is no evidence of facilities with the capacity to supply the thousands of dogs needed to meet the demands of Yulin (and the dog meat restaurants found in cities across China).

This is because unlike other animals such as cows, pigs, and sheep, dogs are prohibitively expensive to raise in the farming context due to their meat-rich diet, territorial nature (leading to fights if confined in groups), and the risk of disease among dogs in close confinement<sup>17</sup>. Gao Guan, vice secretary-general of the China Meat Association, has confirmed that China has no industry breeding dogs for meat<sup>18</sup>. So where do the dogs come from?

The dog meat trade in China is hidden and illegal, meaning that tracking meat to its source is difficult. However, the extensive research carried out by Animals Asia uncovered a widespread problem of stolen domestic dogs and captured strays. A survey in rural areas found that nearly 70 percent of villages had lost dogs and 75 percent of interviewees believed their dogs had been stolen and slaughtered for food<sup>19</sup>. It seems that much of the dog meat comes

12 Cao, D. (2015). *Animals in China: Law and society*. Basingstoke: Palgrave Macmillan.

13 See fn. 11 above.

14 As referred to in Cao, D. (2015). *Animals in China: Law and society*. Basingstoke: Palgrave Macmillan.

15 Littlefair, P. (2006). Why China is waking up to animal welfare. In J. Turner and J. D'Silva (Eds.), *Animals, ethics and trade: The challenge of animal sentience* (pp. 225–237). Abingdon: Earthscan.

16 Winn, P. (2014). China denounces pet dogs as filthy imports from the West. NBC News, 13 August 2014. Retrieved from [www.nbcnews.com/news/world/china-denounces-pet-dogs-filthy-imports-west-n179491](http://www.nbcnews.com/news/world/china-denounces-pet-dogs-filthy-imports-west-n179491) (Accessed 22 December 2016).

17 Animals Asia (2015). Lies, illegality and stolen lives: a true crime story. Retrieved from [www.animalsasia.org/assets/pdf/2015\\_FOF\\_reports-report1\\_A4-EN-20150609\\_low.pdf](http://www.animalsasia.org/assets/pdf/2015_FOF_reports-report1_A4-EN-20150609_low.pdf) (Accessed 20 June 2017).

18 Luan, X., & Yuan, S. (2016). Poll: Majority of Chinese oppose to "dog meat festival," call for its end. Retrieved from [http://news.xinhuanet.com/english/2016-06/19/c\\_135448611.htm](http://news.xinhuanet.com/english/2016-06/19/c_135448611.htm) (Accessed 7 April 2017).

19 Animals Asia. (2015). China's rural dogs in crisis. Retrieved from [www.animalsasia.org/assets/pdf/2015\\_FOF\\_re-](http://www.animalsasia.org/assets/pdf/2015_FOF_re-)

from stolen pets,<sup>20</sup> a conclusion supported by the fact that the dogs arriving at Yulin and similar places are of differing breeds (including pedigrees and domestic breeds such as Labradors, golden retrievers, huskies, German shepherds, greyhounds, Tibetan mastiffs, etc.) and sometimes still wearing collars<sup>21</sup>.

Dog thieves have numerous and ever more sophisticated methods of catching their prey. Many rural dogs are guard dogs that are free to roam outside rather than kept indoors. These dogs, who are used to human contact, can be easily captured with lassos. Dogs kept indoors are also at risk of being stolen – thieves break into family homes and threaten the occupants with knives. People who attempt to protect their dogs risk serious injury, sometimes death. There are also reported cases of dogs being stolen while on their leashes in public spaces. Sometimes this simply involves the dog thief snatching the dog and making a getaway in a waiting van. In other instances, dogs are shot with crossbows or darts loaded with poison or anaesthetic, and sometimes these weapons are used against people protecting the dog, with fatal consequences<sup>22</sup>.

Animal Asia's research found that violence was escalating, with many villagers believing they were under serious threat of harm. Quite apart from those who have been seriously injured or killed attempting to protect their dogs, those who have had their dogs stolen reported traumatic feelings, anger, sadness, and insecurity. They also felt that there was no hope of recovering their dogs and so did not attempt to find their lost dogs or report their dogs as stolen to the police. Around 40 percent of interviewees said that reducing the demand for dog meat would help stop the thefts<sup>23</sup>.

The same issues affect other Asian countries. To fuel the dog meat trade in Vietnam, pet dogs (as well as strays) are stolen from pet owners within Vietnam, but also brought across the border from Vietnam and Laos. In fact, the only country in Asia which does have dog meat farms is South Korea. Evidence from those farms is that the dogs are kept in exceptionally

cruel conditions and that a number of the dogs at these farms are also stolen pets<sup>24</sup>.

It is evident that dog is an inappropriate source of meat for general human consumption because it is not profitable to breed dogs on a commercial scale for consumption, meaning that the dogs are sourced illegally, fuelling crime and devastation in communities across Asia. Where dog farms do exist, the animals are kept in exceptionally cruel conditions

### Shaping the debate today

When MP Bill Wiggin introduced Bill 337 in the House of Commons he said *"This Bill...is particularly important as the conditions under which dogs are farmed, transported and slaughtered are deliberately cruel...[It] is not just about consuming dogs but about the extra suffering and cruelty involved."* He then went on to say *"In the UK, we spend £10 billion a year on our 8.9 million pet dogs. They provide companionship and love and, for many people, they are part of the family...Our laws usually reflect the respect that dogs deserve, and this Bill fits with our long and proud tradition of support for and insistence on the highest standards of animal welfare. As a nation of dog lovers and champions of animal protection, the UK must enact a ban on trading and consuming dog meat."*

If a ban on dog meat consumption in the UK is to be justified (on the basis of setting an example to other countries where such consumption occurs), it is critical that any notion of preference being given to dogs or cats as opposed to say, pigs, is avoided. Rather the focus must remain squarely on the extra suffering and cruelty involved in the dog meat trade in countries such as Vietnam, China and Korea in terms of both the source of the meat and slaughter of the dogs and cats. To that end, public statements made in support of Bill 337 need to be carefully worded.

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### Postscript

There has been significant focus on animal welfare in China due to the emergence of Covid 19 at a wet market in Wuhan. In addition to changes in the way wet markets operate (live poultry is being phased out and trade in wildlife at the markets is currently restricted), China's Ministry of Agriculture and Rural Affairs in April 2020 exempted dogs from its list of animals considered livestock, declaring them companion animals. This however is not a country wide ban on the consumption of dog meat and it appears that the Yulin festival continues, even in 2020. The pandemic seems to have changed little there.

<sup>24</sup> <https://www.hsi.org/news-media/13th-dog-meat-farm-closed-canada-100918/>

ports-report3\_A4-EN-20150609\_low.pdf (Accessed 20 June 2017).

<sup>20</sup> This concept of "stealing a pet" is predicated on the concept of a pet dog constituting the property of a human being. While this is not a concept I agree with morally, it is a concept that is widely accepted, including from the legal point of view, and hence is an acceptable and comprehensible argument for justifying a ban on dog meat consumption.

<sup>21</sup> See fn. 17 above.

<sup>22</sup> Animals Asia. (2015). The black market for dog and cat meat in China: Media reports 2001–2015. Retrieved from [www.animalsasia.org/assets/pdf/2015\\_FOF\\_reports-report2\\_A4-EN-20150609\\_low.pdf](http://www.animalsasia.org/assets/pdf/2015_FOF_reports-report2_A4-EN-20150609_low.pdf) (Accessed 20 June 2017).

<sup>23</sup> See fn. 19 above.

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