

Regulating sanctuaries: You wait years then three Governments propose different laws simultaneously

David Bowles, Assistant Director at RSPCA

Abstract

After decades of unsuccessful lobbying to install regulation in this sector, three of the four devolved authorities in the UK are now drawing up standards and legislative mechanisms to manage sanctuaries and shelters, which will come into effect in 2019. It is vital that these are clear, transparent and enforced. Any regulatory system needs to prevent commercial vending and dealing enterprises using sanctuaries as a loophole for their business, raise the standards in sanctuaries and reduce the burden on local authorities and enforcements agents such as the RSPCA and SSPCA from failing or unregulated activities.

Background

Within the four devolved UK legislative systems, certain animal activities are licensable, others fall outside and are subject to voluntary or no regulation. The decision on where an activity falls, has been historical rather than strategically applied under a risk or animal welfare framework. Most activities around dogs are regulated, based on the human safety risk. So licensing to keep a dog has existed since 1878 in Northern Ireland and until 1987 for Wales, England and Scotland when it was abolished. Regulations making it mandatory to microchip a dog has existed in Northern Ireland since 2012 and in England, Wales and Scotland

since 2016. Pet shop licensing has existed in Great Britain since 1951, and licensing of dog boarding in England and Wales since 1963. In October 2018 the Animal Welfare (Licensing of activities involving animals) (England) Regulations¹ extended licensing in England to four new areas such as doggy day care as well as bringing the standards under the animal welfare framework for the first time. However, these did not bring other activities under its ambit such as running a farm, rescue centre or animal sanctuary.

Previous attempts to licence animal sanctuaries, such as in England and Wales the 2001 Animal Sanctuaries (Licensing) Private Members Bill were unsuccessful. Any vertebrate animal kept in a sanctuary or rescue centre has their welfare regulated under the Animal Welfare Act 2006 in England and Wales and the Animal Health and Welfare Act 2006 in Scotland. But this protection together with the lack of mandatory standards and guidance has placed difficulties on those agencies enforcing animal sanctuaries particularly as it is mainly enforced by non-governmental organisations such as the RSPCA in England and Wales and the Scottish SPCA in Scotland. The lack of harmonised standards also meant that it was left to umbrella organisations such as the Association of Dogs and Cats Homes² to set baseline standards and apply these to their 132 member organisations in the British Isles.

¹ <https://www.legislation.gov.uk/ukdsi/2018/9780111165485>

² <http://www.adch.org.uk/>



This paper will look at the situation in each of the devolved regions for rescue centres and sanctuaries, examine the proposals and assess the consequences.

Regulatory framework in the UK

There are also different enforcement mechanisms in each of the countries. In Northern Ireland animal welfare is regulated under the Animal Welfare Act 2011³ which provides for further Regulation on sanctuaries under Clause 11 but this has to date not been proposed. Enforcement on animal welfare is undertaken by the eleven local authorities and prosecution is undertaken by Belfast Council working with the Public Prosecution Service.

In England and Wales the Animal Welfare Act 2006⁴ also provides for Regulation on sanctuaries under Clause 13 which establishes licensing regimes and Clause 12 which allows for further Regulations to be laid in either England or Wales. Animal licensing is

managed by the local authorities in both countries, and prosecution undertaken on their investigations by the local authority or the Crown Prosecution Service. Enforcement of animal welfare is largely undertaken by the RSPCA in England and Wales which accounts for around 85% of prosecutions and enforcement activity under the Act.⁵ In Wales the Government are looking at providing statutory powers to the RSPCA.⁶ In Scotland the Animal Health and Welfare (Scotland) Act 2006⁷ gives powers to license activities under Clause 27. The Scottish SPCA have statutory powers of entry and seizure under the Act and they hand over evidence of investigations to the Procurator Fiscal to prosecute. With these four different models it's preferable that there is consistency between all four countries in terms of how Animal Welfare Establishments (AWEs) are defined, and how the standards are enforced.

Following many years of no regulation, in 2018, three of the four Governments in the UK announced that

³ <https://www.legislation.gov.uk/nia/2011/16/contents>

⁴ <https://www.legislation.gov.uk/ukpga/2006/45/section/13>

⁵ RSPCA. 2017 Prosecutions Annual Report

⁶ <https://gov.wales/newsroom/environmentandcountryside/2018/180619-steps-to-further-improve-animal-welfare-of-pets-unveiled/?lang=en>

⁷ <https://www.legislation.gov.uk/asp/2006/11/contents>

they were planning to put in a regulatory framework on sanctuaries and rescue centres, albeit for slightly different reasons. In Scotland the Government committed to licensing sanctuaries and rehoming centres in their 2017-8 programme primarily to ensure that the welfare of the animals in such centres are maintained, that rehoming centres are not operating to get around commercial pet vending legislation and to reduce the risk of disease from imported dogs. A consultation on licensing sanctuaries and rehoming centres opened in December 2017 and reported in 2018⁸ that there was support for such a programme. The Government are now writing up the proposals. Once these are agreed under the Animal Health and Welfare Act, it is likely that they will be enforced by the SSPCA and local authorities who will also audit standards in sanctuaries and rehoming centres.

In Wales the Animal Welfare Network of Wales, (AWNW), the umbrella group that acts as advisors to Government, produced a report on Animal Welfare Establishments (sanctuaries) to the Government in 2012.⁹ This was updated in 2016¹⁰ following suggestions from the Welsh Government, a draft code for sanctuaries was developed and handed over in March 2018. The incentive for this work has largely been to address animal welfare concerns in Welsh sanctuaries. The Government has committed to supporting the voluntary code drawn up by the Animal Welfare Network of Wales (AWNW) by publishing it as a Welsh Government voluntary code¹¹ in the first instance and then monitor its impact.

In England the Government committed to a ban on sales of dogs and cats through third party dealers in August 2018¹² but realised that if they implemented such a ban they would have to shut down any potential loopholes at the same time. AWEs which encompass rescue centres and sanctuaries were deemed to be

outside the legislation on licensing vending activities as rehoming an animal was seen as non commercial. However, this opened up the possibility that commercial dealers would fraudulently set themselves up as rescue centres to get around the ban and as rescue centres were unlicensed this would be an unregulated activity. To close this loophole Defra announced a consultation on both issues.¹³ A formal response is due in late 2018 but as both proposals gained overwhelming support it is likely that Defra will legislate at some stage in 2019 and bring in legislation to address both issues simultaneously. The Canine and Feline Sector Council is already working on Guidance for the licensing of cat and dog shelters and sanctuaries.

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What we are trying to solve

Sanctuaries and shelters have always been unregulated in the UK, unlike in certain other countries, including in the British Isles. Jersey has had legislation under the Animal Welfare (Jersey) Law since 2004 which mandates licensing for any sanctuary or shelter that has domestic and/or wild animals.¹⁴ This Regulation has a Code of Practice which sets out how any centre should meet the five welfare needs.¹⁵ This is regulated by the States Veterinary Service in Jersey and is now being reviewed and updated.

In Great Britain the lack of regulation has meant that anyone can set up a rescue centre or sanctuary. Applying to be a charity means that they are regulated

⁸ <https://consult.gov.scot/animal-welfare/animal-sanctuaries-and-rehoming-activities/>

⁹ <https://awnwales.org/wp-content/uploads/2013/03/AWE-report-final.pdf>

¹⁰ https://awnwales.org/wp-content/uploads/2013/03/AWE_report-final.pdf

¹¹ In a similar status to their Code on Snares <https://gov.wales/docs/desh/publications/150915-code-of-practice-snares-en.pdf>

¹² <https://www.gov.uk/government/news/government-backs-ban-on-third-party-sales-of-puppies-and-kittens>

¹³ <https://www.gov.uk/government/consultations/banning-commercial-third-party-sales-of-puppies-and-kittens-in-england>

¹⁴ https://www.jerseylaw.je/laws/revised/Pages/02.050.aspx#_Toc504059711

¹⁵ <https://www.gov.je/Industry/FarmingFishing/AnimalWelfare/Pages/WelfareSanctuaries.aspx>

by the relevant Charity Commission but this regulatory regime looks at how the charity is run particularly on finance and governance and not look at the standards under which the charity operates. If the AWE is not a charity the centre is not audited, and does not have to implement minimum welfare standards, other than to give animals the five needs as set out in the Animals Welfare Act 2006. The organisation is also not bound by any regulator which may increase its financial precariousness.

AWEs can play an essential service to improve animal welfare and the social and ethical needs of society. But the scale of the organisations range from very large organisations (the RSPCA has an annual budget of £140 million in 2016) to individuals operating out of their house⁹. There are four main issues that need to be addressed:

- The scale of the problem: numbers and types of animals varies widely although there are no data to show what AWEs are run for wild animals and what for domestic animals.
- Specialist knowledge is required to operate a sanctuary or rescue centre), both in terms of management and administrative skills as well as expertise in caring for animals (often of a variety of species and in significant numbers).
- Policies and records: an organization will need to keep accurate records and have policies on intake, euthanasia and rehoming or release. If an AWE has a reputation for taking in animals, this may encourage the public to dump animals on that centre. Unless the centre has an intake or a euthanasia policy soon the sanctuary will become overcrowded leading to welfare problems. As one rescue centre put it in 2012, “Compassion needs to be encouraged but compassion without a sense of responsibility can lead to cruelty.”¹⁶
- Sustainability: AWEs are vulnerable to rapid declines or large fluctuations in standards

which can put strain in turn on the financial and human resources. Good governance is essential to monitor, anticipate and respond to these.

Three of the four issues raised above, sustainability, policies and records and knowledge base, can be written into the Guidance. However before any new licensing or enforcement programme comes into place, it is important to get an understanding of the scale of the problem being addressed and what impact, if any a new regulatory regime will make. Unfortunately, the scale of the problem is only known in Wales, which uniquely of all countries in the UK, has undertaken a survey of sanctuaries. This found 88 sanctuaries and 54 collectors in 2009¹⁷ although this may be an under representation.¹⁸ It is not known what numbers of animals, or species of animals, these sanctuaries manage.

As there are no data for England and Scotland, a rough figure could be extrapolated from the numbers of members the Association of Cat and Dog Homes has as a ratio of all the sanctuaries in Wales. The umbrella body has over 103 members in England and eight in Wales. Using the ratio from Wales, that ADCH has about 10% of the actual numbers of rescue centres and sanctuaries, we could find there are between 800 and 1,000 sanctuaries in England. All of these are unlicensed and uninspected aside from ADCH members and those linked to larger organisations such as the RSPCA or Blue Cross, who already have a system of licensing and auditing. Indeed, it may be more as the Charity Commission’s website search engine shows over 1400 charities in England and Wales that provide a service for animals.¹⁹

The RSPCA undertakes around 85% of the enforcement action deriving from the Animal Welfare Act 2006 by investigating complaints, educating owners through advice, warning notices and where it is appropriate, prosecuting owners and/or keepers. This includes

¹⁶ <https://awnwales.org/wp-content/uploads/2013/03/AWE-report-final.pdf>

¹⁷ The Welsh Government CAWES data can be found in the AWWN report: <https://awnwales.org/wp-content/uploads/2013/03/AWE-report-final.pdf>

¹⁸ <http://politicalanimal.org.uk/wp-content/uploads/2014/09/AWNW-Report-Case-for-the-Regulation-of-Animal-Welfare-Establishments-in-Wales-October-2012.pdf>

¹⁹ <https://www.gov.uk/government/organisations/charity-commission>

investigating complaints made against rescue centres and sanctuaries.^{20 21} In the past eight years the RSPCA has investigated some eleven individuals and obtained 80 convictions against five persons. A further two people received a caution. These cases involved a total of over 150 animals of different species including dogs, cats, horses, farm animals and birds. This enforcement effort seems to be a small ratio of the numbers of AWEs that could exist in England and Wales, suggesting that most are sustainable and operating under good welfare management.

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However, of more concern is the on-going assistance the RSPCA has to give to failing AWEs to ensure that they meet the needs of the animals under their care which can involve advice and education over many years to the same establishment.

When regulation of a new activity occurs for the first time, there will always be a period of the legislation bedding in and in some instances examples of where the activity shuts down as it is no longer deemed to be economically viable. For instance, the proposed ban in England on third party sellers of puppies has already prompted some dealers to advise they will be dumping dogs or disposing of breeding stock.²² It is unknown what impact a regulatory regime on sanctuaries will have in England as this will partially be dependent on the level of enforcement effort.

Public support for better regulation seems to be evident. A YouGov poll in 2013 found that 69% of the public in Wales think the Welsh Government should regulate, against 8% who thought the Government shouldn't regulate.²³ However once sanctuaries and rescue centres start to close down and animals

ethanized or dumped this public support may change. There will also need to be contingency plans in place for the animals from rescue centres and sanctuaries that close down.

Next steps

Legislators in Wales, Scotland and England are all are trying to solve the same issues:

1. Raising the level of poor welfare standards, by bringing in baseline standards to give clarity to both those that run AWEs and those that audit them. Such standards were agreed in 2016 by the Association of Dog and Cat Homes and by 2018 had been audited in all its members. Standards should cover:
 2. Raising the level of trust and expectation the public has in these places, particularly as there is an assumption when the public donate their money or animals to AWEs that there is some level of knowledge, professionalism and accountability;
 3. Ensuring that any system can be properly audited and enforced so easing the burden on local authorities;
 4. Ensuring any unintended consequences from a ban on third party sellers of animals are negated by preventing commercial vendors setting up as non-commercial rescue centres.

Legislative proposals

Proposals to regulate AWEs are at different stages in each of the four devolved regions. Wales is proceeding down the voluntary non-legislative route based on Guidance produced by the Animal Welfare Network of Wales. However, there will be a Government consultation in early 2019 to look at regulation in anticipation of a ban on third party sales of dogs and cats. Scotland and England are due to legislate in the coming year. Northern Ireland has no current proposals as there is no legislative body in place.

²⁰ RSPCA 2017. Prosecutions Report. <https://view.pagetiger.com/RSPCA2017PR/RSPCA2017prosecutionreport>

²¹ RSPCA 2014 Prosecution Annual Report

²² <https://www.bbc.co.uk/news/uk-wales-46144799>

²³ <https://awnwales.org/wp-content/uploads/2016/03/Addendum-to-AWE-report-February-2016.pdf>

Defining an AWE is difficult in itself so a consistent definition is vital. In England and Wales the same definition is being used and it is hoped that this can also be used when proposals are announced in Scotland. England already has licensing legislation on animal activities which came into effect in October 1 2018²⁴. Any standards and Guidance on AWEs would come under these Regulations. Wales does not have any similar Regulations so it is unclear where the Guidance would sit legislatively if indeed it is agreed to change their status from voluntary guidelines into mandatory Guidance. Scotland would likely make the legislation under the Animal Health and Welfare Act (Scotland) 2006.

It is better for enforcement and for those organisations with premises in multiple countries that the standards are consistent across the devolved administrations. There is consensus on the list of issues that must be considered as coming under the standards, such as accurate record keeping, staff training, hygiene and disease barrier controls, and rehoming and release protocols and policies on euthanasia and intake. The Guidance already drawn up by the Animal Welfare Network of Wales gives a good summary.

The impact on the rescue sector of any new regime is largely unknown. This is because the number of AWEs are unknown, the number and type of species that they handle unknown and the number that would stop functioning if licensing came into effect also unknown. However, the present system whereby anyone with no previous experience or auditing can set up an AWE is also unsustainable and may be encouraging more people to set up AWEs.

Regulation is needed, preferably mandatory licensing under the relevant animal welfare legislation, based on standards in a Guidance document. There will need to be contingency plans in place to deal with any animals that can no longer be kept in AWEs. There will also need to be as much harmonization as possible across the three devolved countries to stop people moving their activities to a country with a lower enforcement threshold. But the alignment of three administrations looking at this issue at the same time underlines the

need and timeliness of the proposals which if implemented and enforced properly should drive up animal welfare standards in one of the more unknown and unregulated parts of animal activities.

²⁴ <https://www.legislation.gov.uk/uksi/2018/486/contents/made>