



ConsultationResponse

FROM THE RSPCA IN WALES

Economy, Trade and Rural Affairs Committee consultation - Common Framework scrutiny: Animal health and welfare March 2022

RSPCA Cymru welcomes the opportunity to respond to the Economy, Trade and Rural Affairs Committee's consultation on the provisional Common Framework between the four UK governments on animal health and welfare. Given the tight turnaround of the early deadline to this consultation, this response marks some preliminary observations from the RSPCA and we continue to scrutinise the Framework, its impact on animal welfare policy-making and the RSPCA's wider operations.

The RSPCA - as an organisation working in both Wales and England - has long-called for better coordination between the UK and devolved governments on the development of animal welfare law and policy, and therefore welcomes the establishment of an effective framework that could help facilitate this. However, we would make the following points:

1. That the Framework must not unduly inhibit an administration wishing to work independently on a devolved topic such as animal welfare in a way which could improve standards, should other governments in the UK not wish to work in the same way at that time. Proposals within the Framework for sharing evidence and expertise must also always be cognisant of the differences, and diverse challenges, which exist within the different UK nations.
2. Opportunities for effective collaboration may have been missed in recent years. Principles for Common Frameworks were first agreed at the Joint Ministerial Committee between the UK Government and Scottish and Welsh Government in 2017; and - following the formation of the Northern Ireland Executive - Common Frameworks principles were further agreed in 2020. Thus, while the provisional Common Framework is pending, it is unclear what coworking has happened to date under these principles. For instance, there are four different rules on the selling and breeding of puppies in the four different devolved nations. It appears to the RSPCA that there has been no coordination of these rules or use of any Common Framework principles yet - even though the puppy trade is an excellent example of how the trade is operating differently in each jurisdiction as illegal traders take advantage of these different rules; so this appears to have been a missed opportunity.
3. It is also unclear if the Framework could risk restricting the power of legislatures, or non-Governmental Parliamentarians - for example, in the tabling of backbench proposals from elected representatives which may be unable, or not wish to, align with the Framework; or if Parliaments amend legislative proposals away from principles agreed by governments under the Framework.
4. It is unclear how reserved issues, such as the impact of Free Trade Agreement provisions, which would impact on the different jurisdictions in different ways, would be covered in the process. It appears that there was no referral to the pre-agreed principles of this Common Framework

regarding the impact of the provisions on beef and lamb tariffs in the New Zealand and Australia FTAs on Wales, which were negotiated by the UK Government.

5. It is unclear if issues will have to proceed through the Common Frameworks process before being started on their legislative route. Recently, the issuing of licensing for the genetic editing of plants in England may have benefitted from this Common Frameworks process; and it would be helpful to get clarity on how, once the provisional Framework is confirmed, this would work in practice.
6. Transparency on how the Common Frameworks are working will be key, including how many issues pass through the Common Frameworks process, how many meet agreement at each of the different levels of authority and how many get passed to the Ministerial level for agreement.
7. It is also not clear how the process at Ministerial level will operate or exactly how the dispute resolution mechanism will function in practice. The RSPCA understands when the Common Frameworks were originally drawn up in 2017, there was provision for an independent board of experts to examine the provisions that could not be resolved, but it is unclear if this is still a proposal, and whether proposals for an independent review panel will carry out a similar function - given this seems to be based on reviewing the Framework as a whole, rather than specific issues.

HOW THE COMMON FRAMEWORK COULD SHAPE THE DEVELOPMENT OF WELSH LAW AND POLICY

The Framework document notes that “all parties have agreed to consider all future policy in the scope of the Framework - including existing and future legislation”. This includes “retained legislation as well as pre-existing (and future) domestic legislation” - meaning, we assume, all devolved policy decisions made by the Welsh Government related to animal welfare will now need to consider this Common Framework.

While animal health and welfare is largely devolved to the Welsh Government, there were previously some restrictions on certain areas of its competence as a result of European Union (EU) law, while some matters related to animals are still reserved to the UK Government (trade provisions and the use of animals in research being two clear examples). RSPCA estimates suggest that 80 percent of the UK’s animal welfare legislation previously derived from EU law, covering farm animals, wildlife, animals in research and companion animals¹. This is particularly relevant outside of companion animals as EU law was based on harmonising standards to prevent internal trade conflicts and implications. While the RSPCA remains concerned that some of Wales’, and the wider UK’s, high animal welfare standards could be compromised as a result of our exit from the EU, we are glad to have seen some opportunities seized too - including the recent development of replacement legislation at a UK Government-level such as the Animal Welfare (Sentience) Bill, which is due to be completed this month (March 2022), and the Animal Welfare (Kept) Animals Bill, which is anticipated to ultimately apply to Wales. Examining several laws and topics, as per below, will assess how useful a Common Framework could be as the Welsh Government and UK Government continue to develop policy outside of the European Union.

Animal Welfare (Sentience) Bill: While the UK was required to pay legal regard to animal sentience while crafting and implementing policy under EU law, this was no longer applicable after Brexit. As it stands, it is unclear as to if or how the UK Government’s Animal Welfare (Sentience) Bill will apply to Welsh law and policy, despite the Welsh Government previously indicating that Legislative Consent Memorandum (LCM) could be granted in this respect² (it is unclear what effect this would have had given what is contained within the Bill). Indeed, it is our understanding that the Animal Sentience Committee (ASC) that will be formed as a result of this Bill will only scrutinise UK Government policy for its impact

¹ RSPCA - [Brexit and animal welfare](#), accessed 4 March 2022

² Welsh Government Written Statement - [Animal Sentience](#), 17 January 2018

on animal sentience - meaning, in terms of policy decisions impacting Wales, only reserved matters would be scrutinised for sentience. As a result, questions still remain with regard to how the impact of devolved law and policy on sentience will be routinely scrutinised, if at all. The Common Framework could potentially assist with this particular issue by enabling the Welsh Government to co-consider whether there is scope for an independent advisory body similar to the ASC to be established in Wales or whether the remit of the ASC could be broadened so that it will be required to scrutinise Welsh legislation too. Indeed, the Framework's commitment to "engage one another at the earliest opportunity when considering any potential policy development or changes" suggests that uncertainties, such as the devolved implications of the Animal Welfare (Sentience) Bill, should be avoided. It is vital that animal sentience is recognised and reflected in devolved policy and that the Welsh Government pays legal regard to the needs of sentient animals and garners reports on how this is considered across government departments to send the strongest possible message that the welfare and status of animals is respected in Wales, and in all devolved decision-making.

Animal Welfare (Kept Animals) Bill, and other future LCMs: The Welsh Government, on occasion, encourages the Senedd to pass an LCM on an issue relevant to animal welfare; with the UK Government's Police, Crime, Sentencing and Courts Bill and its focus of hare coursing serving as a recent example. To this end, the Welsh Government is also aiming to see legislative consent given to Westminster in relation to the Animal Welfare (Kept) Animals Bill, which aims to tackle issues such as livestock worrying, puppy smuggling, live exports and primate ownership, pending Senedd Members approving an LCM. The drafting of LCMs, and supplementary LCMs, concerning this Bill reminds us how further coordination between the UK and Welsh Government could result in other positive developments for animal welfare policy in the future, with the potential for this to be facilitated by the proposed Common Framework. The recently-published Animal Welfare Plan for Wales (AWPW) recognises the benefits of working collaboratively with the other governments, with the Kept Animals Bill outlined as one such example³. While the Kept Animals Bill is far along the legislative process, such a wide-ranging UK Bill set to apply to devolved areas in Wales highlights how Common Frameworks could help formalise process where - when it is the intention of the Welsh Government and the Senedd to grant legislative consent - the drafting and amending of the UK Bill could become more of a product of co-production between different administrations with aligned policy goals.

Other issues in the Animal Welfare Plan for Wales: The AWPW states that the Welsh Government is "working with the UK Government and other administrations to consider how the protection of animal welfare during transport can be strengthened"⁴, so the Common Framework potentially provides an important opportunity for the development of this work. Similarly, the Common Framework could also help facilitate joint-work and the sharing of information and evidence relevant to other issues areas mentioned within the AWPW such as restricting the use of cages for farmed animals, the microchipping of cats and dogs and the alignment of current codes of practice, and help secure improvements to Wales' current animal welfare policies relating to these issues as a result. More generally, the sharing of evidence to deliver strong policy making could help pool the capacity and expertise of the different administrations; and help ensure issues of resource within the civil service are less of a barrier to policy change.

Tackling the puppy trade: While the Common Framework is provisional, principles were agreed in 2017 - but these have not been used to assess the implications of the four different approaches in the four jurisdictions to the puppy trade. England adopted its Licensing of Activities Involving Animals Regulations in 2018 and instituted a partial ban on the selling of puppies but crucially this did not cover imported

³ [Animal Welfare Plan for Wales](#) 2021-2026

⁴ Ibid

puppies. Wales then followed in 2021 with its own provisions including a ban on selling puppies from anyone other than the breeder's premises which effectively stopped any third party sales. Scotland in the same month passed its own law requiring anyone selling a puppy to be licensed including those rehoming as rescues. Northern Ireland has yet to change its legislation on selling puppies and allows third party sales. It is unclear how, if at all, these were discussed between the administrations, but it is clear that the lack of a harmonised approach has been exploited by illegal puppy dealers to access the market. It is hoped, once this provisional Common Framework is fully operational, that this could be addressed when these puppy trade policies are reviewed in the future.

Recommendation: there must be a clear process to understand what issues and rules will be subject to the Common Framework process, and explanation across civic society of how this process will work as policy proposals are first drawn up

Recommendation: where the Welsh Government intends to seek for the Senedd to grant legislative consent to an issue, and this is known early on, the Common Framework process can help ensure Wales' interests are understood in the development of the Bill, and that there is an element of co-production to such legislative proposals

The Common Framework should also assist with the development of Welsh law and policy on areas that were previously covered by EU law such as animals in research, as well as providing the Welsh Government with a platform to air concerns about the import of certain products into Wales. While matters relating to animals in research are currently reserved to the UK Government, the Common Framework could provide a more formal mechanism to involve the Welsh Government in decisions, given its emphasis on "collaboration, coordination and cooperation", while Northern Ireland already has its own responsibilities on animal testing.

Similarly, the establishment of a Common Framework could help ensure that the devolved governments are given an opportunity to more formally contribute to discussions relating to future trade agreements (FTAs) which impact animal health and welfare. The devolved governments had little formal say in the recent development of FTAs between the UK and Australia and the UK and New Zealand with trade being a reserved issue, despite the potential impacts the agreement could have on the viability of the Welsh lamb and Scottish beef industries. The UK Internal Markets Act 2020 also means that the devolved governments have little power to refuse the import of lower-standard products, so the Common Framework could potentially provide an important basis for collaboration on this issue. Food labelling is another area which could be strengthened via the Common Framework - where devolved levers exist, but cross-UK working may be more successful - with collaboration on this area having the potential to lead to the inclusion of the 'method of production' labelling the RSPCA has long called for to help consumers throughout the UK make informed and ethical choices.

Wholly devolved issues too can still have a significant impact on neighbouring nations - so the Common Framework could have an important role in facilitating discussions here too. For example, while a devolved matter, the recent decision to approve the Genetically Modified Organisms (Deliberate Release) (Amendment) (England) Regulations 2022 in Westminster - given its implications on Welsh agriculture - highlights the need for a functional Common Frameworks process; giving a formal route for such implications to be discussed.

The Common Framework should also encourage certain policy decisions to be implemented simultaneously, or at similar times. This would be useful, for example, on the present issue of banning glue traps in Wales. Bans are also being actively pursued in England and Scotland but there are

concerns that, without sufficient coordination, these bans will only apply to the use of glue traps; rather than the sale - due to rules under the UK's aforementioned Internal Market Act 2020. If all UK nations coordinated on this issue, which could become more likely under this Framework, then a ban on the sale would be far easier to introduce. However, notably, the Glue Traps (Offences) Bill in England is a Private Members' Bill, which again raises questions as to how non-governmental legislation will be facilitated by this Framework. Indeed, the Defra Minister has now acknowledged that if this Bill had been discussed under a Common Frameworks-type process, a sales ban rather than a use ban would have been possible in each of the GB jurisdictions.

More generally, RSPCA Cymru is very concerned that provisions contained within the UK Internal Markets Act leaves the Welsh Government with little power to restrict the sale and import of certain products that pose a threat to animal welfare into Wales, regardless as to whether there is the political will and public appetite in this respect. This could apply to restricting the future sale of items that impact animal welfare such as fireworks and commonly littered food and drink items that animals can become trapped in. While the Common Framework could provide an important basis in the formation of a united approach towards restricting the sale of certain products in the UK and ensure that each nation is given an equal say, the RSPCA is concerned about the impact on animal-focused devolved decision making if there is not agreement and the dispute resolution mechanism is triggered.

Recommendation: the Commons Framework process needs to apply to reserved issues such as trade which have implications on devolved issues such as animal welfare standards

Recommendation: where legislative proposals in different UK nations align, the Common Frameworks process can support coordinated timing of implementation to help surmount challenges posed by internal market rules; for example plans from all nations in Great Britain to legislate against glue traps

Recommendation: the dispute settlement process needs to be clear as to how it will operate if there is no Ministerial agreement - and what role any independent board of experts will play

The Common Framework could also provide the UK and devolved governments with important opportunities to consider whether additional competence could be granted to the Welsh Government and Senedd on areas which are currently reserved but do not derive from EU policy, such as fireworks and the hunting with dogs. Legislation relating to these matters, namely the Hunting Act 2004, the Fireworks Act 2003 and the Fireworks Regulations 2004, applies to both England and Wales, so the Welsh Government and Senedd presently have little competence in these areas, unlike its Scottish counterparts. Scotland has recently announced new legislation that further restricts hunting with dogs in the country and is also currently considering its own Fireworks and Pyrotechnic Bill. The RSPCA does not usually involve itself in constitutional matters but exploring a consistent devolution framework, where powers broadly related to a single policy area - such as animal welfare - aren't fragmented between reserved and devolved matters, has its advantages. In the absence of this, however, the facilitation of more coordination between the UK and devolved governments via the Common Framework could assist with the development of law and policy on these areas with the input of the Welsh Government, with Welsh Ministers having shown a willingness to act on both issues in recent months.

However, it should also be remembered that different UK nations have also observed law-making in other constituent nations and adjusted their future policy decisions accordingly - and this can prove beneficial for law-makers in different parts of the UK. For example, the Welsh Government studied the efficacy of a ban on the third party sale of puppies and kittens in England when drafting its own legislation, and later said that "*whilst we (the Welsh Government) were later than England ... we went*

*beyond Lucy's law ... we went beyond that, and ours is far stronger*⁵. In England, the Control of Horses Act 2015, introduced as a ballot bill by MP Julian Sturdy, is likely to have observed the success of the Control of Horses (Wales) Act 2014 in tackling illegal fly-grazing and abandonment of equines when being implemented.

Recommendation: there needs to be transparency in how issues are referred to the Common Framework and how decisions are made and at what level

Recommendation: there needs to be an annual review on how the Common Frameworks has been applied and what impact this has had on the capability of devolved jurisdictions setting their own standards

Recommendation: the Common Frameworks process could help deliver ongoing dialogue as to the suitability of the existing devolution settlement; or whether additional competencies - for example on topics like the regulation of fireworks - may help deliver a consistent devolution framework on issues such as animal welfare

RSPCA Cymru values its close working relation with Members of the Senedd and would also seek assurances that agreements made under this Framework will respect and be cognisant of their vital role in amending and voting on Wales' laws, and making Member-led legislative proposals. Regardless of what agreements are made with regards to co-ordinating legislation between governments, Senedd Members have the power to amend primary legislative proposals, which could then take a piece of legislation in a different direction and potentially beyond reach of agreements made between Framework Parties. Animal welfare advocates, and RSPCA supporters, across Wales may lobby their MS' to vote in certain ways or vote in favour of certain amendments to law. Furthermore, Senedd Members have opportunities to propose their own legislative solutions through ballots under the Member Bill Process - but require legal advice first before doing so. Recently, as part of the RSPCA's [#LawsForPaws](#) campaign, animal lovers across Wales sent 16,125 emails to their Members of the Senedd, urging them to use the Welsh Parliament's first ballot for Member-proposed legislation for three years to propose RSPCA-backed animal-friendly proposals, including our proposed Glue Trap Offences (Wales) Bill. This was prior to the Welsh Government announcing its own intention to act on glue traps; and the Member Bill proposals tabled by two MS' included a focus on banning the sale, as well as use, of glue traps; which presumably could fall foul of internal market provisions, had it been pulled from the ballot. It is unclear how Senedd Members could ensure their proposals would enable the functioning of the UK internal market - or whether they would wish to; for example if calling for a particular device which is damaging to animal welfare to be banned for sale in Wales. It is also concerning that the status of non-governmental backbench proposals in the eyes of governments could be diminished by the Common Framework's conditions.

Recommendation: the Common Framework process should not preclude or diminish proposals on changing standards and the law from being approved in the four legislatures if they are not proposed by the Governments

HOW THE COMMON FRAMEWORK COULD AFFECT YOUR ORGANISATION

With there being the potential for the development of a Common Framework on matters relating to animal health and welfare, the RSPCA has a clear policy role, and operational function, on this issue. If successful, the development of the Common Framework could lead to the aforementioned progression

⁵ [Record of Proceedings](#), September 15 2021

of laws and policies on matters that have long formed the basis of our lobbying work relevant to the welfare of farmed, companion and wild animals and help ensure that we are able to use our advocacy and campaigning resources to focus on new areas that also form the basis of our strategy to 2030 - *Together for Animal Welfare*. Our new strategy features targets that apply to both England and Wales, with the development of a Common Framework between the devolved nations and improved cooperation between the two nations having the potential to help us reach these goals and more easily raise issues, and share evidence, with both administrations in tandem.

Our of our key priorities to 2030 is to reduce the neglect, abuse and cruelty to companion animals - including exotic pets - in England and Wales by 50 percent, and the establishment of a Common Framework that focuses specifically on animal health and welfare could help facilitate this ambition by encouraging a joined-up approach on tackling animal cruelty and how it is policed. While there are several areas where more progress has been made in one nation versus another as previously outlined, tackling animal cruelty is one the many areas which require just as much policy attention in both England and Wales, with this issue potentially serving as the future joint priority of the Common Framework.

We are also calling for more than half of all the UK's farm animals to be reared to RSPCA welfare standards by 2030, with this being another issue that will inevitably require coordination between the devolved administrations if this is to happen. Following our exit from the EU, which previously provided subsidies to farmers, the devolved nations are currently working on their own post-Brexit farm payments schemes, with the RSPCA calling for farmers who adhere to higher welfare practices to be incentivised and rewarded on both sides of the border. In order to ensure that animal welfare standards are adhered to and strengthened, it is vital that farmers in Wales are given the financial support needed to produce higher-welfare products via the incoming Sustainable Farming Scheme, with the UK Government also having an important role to play by ensuring that sufficient finances are allocated to Wales to enable the success of such a scheme. The Common Framework could help with the facilitation of this to ensure that Wales' high animal welfare standards do not become a casualty of the future development of non-devolved policy.

The RSPCA's inspectorate staff work on the frontline in England and Wales, enforcing animal welfare law, and are accustomed to using different laws on both sides of the border. However, where both the UK Government and Welsh Government are exploring the introduction of the same legislative provisions which will impact the RSPCA's enforcement work, efforts to implement these concurrently would be welcome to reduce challenges where an officer works on both sides of the border. This will also help ensure information can be communicated to members of the public in both countries at the same time - potentially saving charity money and resources too. It seems fair to assume the Common Framework will make this scenario and focus on the timing of proposals more likely, which is a positive.

To this end, achieving statutory powers for RSPCA offices under the Animal Welfare Act 2006 is another key objective, with the Common Framework potentially providing an important opportunity for simultaneous discussions on how this could benefit both devolved non-devolved public services, as well as animals in both Wales and England. Should both governments wish to pursue empowering RSPCA officers in this way, introducing the measures simultaneously would be very beneficial to the RSPCA. The proposed framework could also enable the sharing of evidence with regard to how this could work by other devolved nations such as Scotland, with the Scottish Society for the Protection of Animals' (SPCA) officers already having statutory powers that allow them to use warrants to enter properties and seize animals.

As noted above, the RSPCA also seeks assurances as to the status of Member-proposed legislation in

Wales as a consequence of this Common Framework; and whether it impacts government approaches to amendments, backbench laws and other legislative interventions from non-governmental Parliamentarians.

With the RSPCA being operational in both England and Wales, a more coordinated and cooperative approach between UK nations via the proposed Common Framework could help secure important gains for animal welfare on both sides of the border, while also enabling all devolved administrations and the UK Government to share information, observations and evidence more fluidly. However, with the needs of both animals and people in the devolved nations having the potential to differ on occasions, it is vital that their respective governments are able to develop laws and policies that are right for their nations, without being overly-restricted by one another or the processes set by this Framework. RSPCA Cymru believes the proposed Common Framework on animal health and welfare must therefore enable constructive discussions and dialogue, bring some alignment to timing of announcements, encourage information sharing and transparency which enable secure joint-policy initiatives, while avoiding the examples of friction witnessed previously⁶. However, it must also still respect the autonomy of different administrations to make divergent policies in animal welfare - particularly given the likelihood of varying manifesto commitments and priorities. Interpretations of science and evidence, and a dispute resolution mechanism, should not prevent a government implementing a positive animal welfare policy because other administrations in the UK do not agree with it; or because they interpret animal welfare science or evidence differently.

⁶ Welsh Government - [Written Statement: Animal Welfare \(Sentencing\) Act 2021](#), 27 May 2021