

RSPCA RESPONSE TO THE SENEDD LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE ON THE RETAINED (EU) LAW (REVOCATION AND REFORM) BILL

Summary

There are 44 animal welfare laws that have come across under the European Union (Withdrawal) Act 2018 that need to be filtered and assessed or these will no longer apply. 31 are devolved to Wales including the battery hen ban, cosmetics testing on animals and the labelling of eggs. The RSPCA has three major concerns with the REUL Bill on its impact on devolution and Wales. While the majority of the 44 laws are devolved, the Bill is unclear as to how the Welsh Government can ensure that any laws with reserved powers are carried over and not lost. Also with animal welfare laws that are devolved the Senedd is given a very tight time period to assess all these laws (December 2023) and could see laws being lost due to time constraints. In addition, the filtering process to ascertain if a retained EU law should be maintained is unclear.

Defra, with responsibility for 570 laws which contain the UK's high animal welfare and environmental standards, has the hardest task. It will have to decide which are reserved before negotiating with the Welsh Government which ones they wish to keep. Defra and the Welsh Government will have to agree which ones are devolved and under the competence of Wales. Budgetary reductions now about to be imposed will make this task more difficult. Finally there is clearly a split between the Welsh Government position, of trusting and wishing to keep the devolved EU derived animal welfare laws and the UK Government view of mistrust of EU derived laws so that each needs to be assessed. This could lead to a large widening of standards between the two countries, and conflict on the Common Frameworks process and the interpretation of the Internal Markets Act 2020. The Government has already recommended withholding of consent on this Bill.

1. The RSPCA is pleased to respond to the Legislation, Justice and Constitution Committee on the Retained (EU) Law (Revocation and Reform) Bill and its impact on Wales. The RSPCA is the oldest and largest animal welfare organisation in the world and writes the standards used by RSPCA Assured, the UK's only animal welfare assurance scheme. RSPCA Assured accounts for over 85% of egg production in Wales and 23% of pig production in the UK. The RSPCA undertakes around 85% of enforcement effort under the Animal Welfare Act 2006 in Wales for animal welfare investigations and prosecutions. The RSPCA set up Eurogroup for Animals in 1980 to act as its European coordination office to campaign for and influence European legislation on animal welfare. Since 1980 Eurogroup for Animals has acted as the Secretariat of the Intergroup for Animal Welfare in the European Parliament and has worked on and influenced all 44 pieces of animal welfare legislation that are part of the *acquis* and were transferred over to UK law under the European Union (Withdrawal) Act 2018.

- *What is the Bill's impact in Wales*

2. Enormous. All EU derived legislation was carried over into UK and Welsh legislation

by a series of primary or secondary laws depending on whether they were Regulations, Directives or Decisions. When the UK left the EU on 31st December 2020 all the animal welfare legislation in Table 1 (below) had been carried over into Welsh and UK legislation and was only amended from a technical perspective, such as deleting language relating to the European Commission. Legislation was transferred under the principle that it was part of the legislative library, in some cases for nearly 50 years, and was therefore relevant and important to maintain. The Retained EU Law (Revocation and Reform) Bill works in the opposite principle. It deletes all legislation that has been transferred across unless it is proven to be useful. It also does so within a prescribed timetable and without any clear vetting or transparent audit process.

3. There are 570 pieces of legislation that are managed by Defra¹, responsible for the largest number of EU derived laws and so has the greatest burden in sifting and assessing these laws. 44 of these laws promote the welfare of animals. Thirteen of the 44 were Directives that are devolved and so have been implemented into Welsh legislation subsequent to their adoption and 31 were Regulations and Decisions. 18 of these could be devolved, 13 fall into reserved legislation. Legislation was transferred across on a piecemeal basis by Defra and the Senedd between 2018 and 2020 and it is fair to say that the quick time period did result in technical small legislative mistakes being made, some of which were correct in the past two years. Ironically this two time period is longer than the 12 month period prescribed under this Bill.
4. The largest body of animal welfare legislation concerns farm animals with 18 relevant EU laws adopted. All except the animal health ones are all devolved. For instance the five laws setting standards on the way farm animals are reared and produced such as laying hens, veal calves, meat chickens and pigs and the laws on how animals are transported and killed. Legislation covering consumer information, such as mandatory labelling of the provenance of eggs and beef, is also devolved. The legislation setting standards on the management of wildlife is devolved such as the hunting, trapping and protection of habitat and legislation.
5. However there is a large body of animal welfare legislation that is reserved. The RSPCA estimates these as 13 laws. For instance the bans on use of veterinary products such as the use of hormones in cattle, including BST, is reserved. Other EU derived animal welfare laws that are reserved include those part of international treaties such as the law to prohibit the import of wild caught birds, the import ban on seal products due to welfare concerns on the manner in which these animals are kept and killed. The use of animals in research and testing is also reserved.
 - *to what extent the Bill might impact Wales' regulatory landscape;*
6. The Bill's impact on Wales' animal welfare regulatory landscape is huge. The 44 animal welfare provisions that are being considered under the REUL Bill brought in some of the most totemic and important changes in animal welfare in Wales such as the prohibition of the conventional battery cage for laying hens, the sow stall ban, the veal crate ban, the end of cosmetics testing on animals and the banning of GMOs and cloned animals. EU retained laws brought in standards and protection for the management of wild animals, stopping the imports of wild caught birds and ending the use of growth promoters in farming. These could all be at risk under this process.

¹ <https://public.tableau.com/views/UKGovernment-RetainedEULawDashboard/REULMap?%3AshowVizHome=no>

7. The Welsh Government and Senedd have made clear in their LCM that they do not share the policy objectives of the UK Government and that “it is our view that the body of REUL is, in general, functioning well and does not need to be treated collectively in this way.”² The RSPCA believe that there are four main issues impacting on the Welsh regulatory landscape. Firstly the devolved animal welfare laws that the Senedd will have to carry over if they wish to, which has to be completed by December 31 2023. The time issue will be very pressing to get all the devolved legislation through the Senedd in time. The Bill makes no postponement of that deadline which seems to be penalising the devolved Governments. Secondly, the impact the Welsh Government can have on those animal welfare laws that are reserved to the UK Government so that these are carried over. The date for this could be extended to December 2026 but it is unclear how the Welsh Government will engage in this process. If it is through the Common Frameworks process but there is no agreement on process between the two Governments, it is unclear how this will be resolved. Thirdly the REUL Bill could have large constitutional consequences on devolution itself (LCM note para 83 footnote 2). Many of the powers in the REUL Bill are solely for Ministers of the Crown not Ministers of the Welsh Government. For instance the extension of the sifting deadline from 2023 for a further three years is not a power given to the Welsh Government who have to complete their sifting by December 2023. Finally the REUL has large implications on how products are produced and moved within Great Britain and it is not clear how it works with the Common Frameworks programme³ and the Internal Markets Act 2020.

- *what role should the Senedd have in the revocation and reform of retained EU law in devolved areas*

8. The Senedd should have a role in the revocation, reform or retention of all devolved EU retained legislation. As the UK Government may agree a different view and position on devolved animal welfare legislation in England it is important for the Senedd to sift all legislation relevant to Wales and within its competence.

- *implications arising from the potential deadlines introduced by the Bill;*

9. Clause 1 of the Bill sets out that the filtering process to assess the legislation will stop on 31 December 2023. Clause 2 allows for it to be postponed no later than 31 December 2026. However this power is only for the UK Government not the Welsh Government which has to complete all its filtering process by 2023. As Defra has over 570 laws to be sifted and it is envisaged that the majority of these are devolved, the Senedd will have to sift all those in under 13 months. 44 of these are animal welfare laws (Table 1). There are only around 170 parliamentary sitting days before the first deadline for the Senedd to consider which works out as a rate of over three pieces of legislation a day to meet that deadline. This is clearly not feasible and could result in relevant legislation being lost due to time constraints and lack of proper scrutiny. However if the Welsh Government intends to restate all EU retained legislation, which seems probable from its LCM², there may be a fast track solution to the time issue. There have been indications at 2nd Reading in Westminster that the Government will consider extending the sunset clause but this would only apply to reserved issues⁴. The RSPCA would support this as an interim measure, as it believes that it is practically impossible to filter and assess all the legislation in the

² Para 82 <https://senedd.wales/media/wu0fwcny/lcm-ld15434-e.pdf>

³ <https://www.gov.uk/government/collections/uk-common-frameworks>

⁴ [https://hansard.parliament.uk/commons/2022-10-25/debates/246DE276-1887-475F-8016-DB81309C6D81/RetainedEULaw\(RevocationAndReform\)Bill](https://hansard.parliament.uk/commons/2022-10-25/debates/246DE276-1887-475F-8016-DB81309C6D81/RetainedEULaw(RevocationAndReform)Bill)

allocated time frame and this risks good legislation being lost.

- *the Welsh Government's decision not to carry out its own assessment of REUL, including not forming its own view on what is devolved and reserved;*
10. The RSPCA would recommend the Welsh Government undertook its own assessment of REUL particularly on which of the 2,417 laws that come under the REUL are devolved. Should this not be undertaken the Government risks leaving that decision to the UK Government which may have a different view. There have been instances in the past few years on what animal welfare legislation is devolved and what is reserved so it is important that there is not a land grab by the UK Government on legislation.
- *the Welsh Government's capacity to carry out such an assessment and to use its powers under the Bill;*
11. This will be difficult from a time and financial perspective but if this process is not completed the concerns raised in para 10 could occur.
- *the Welsh Government's role in, and plans for, the UK Government's joint review, announced alongside the Bill;*
12. The Welsh Government should fully participate in the UK's joint review but to do so will need a position on which laws are devolved and which reserved which indicates they will need to form a view on the 2,417 laws and the RSPCA would recommend certainly to undertake on the 570 covered by Defra which include the 44 animal welfare laws. 13 of these are reserved.
- *the scope of regulation-making powers granted to the Welsh Ministers by the Bill including the scrutiny procedures attached to those powers;*
13. The Minister of the Crown has no limits under this Act in their power to bring in Regulations that are consequential from the Act (Clause 19). The process of tabling secondary legislation is clearly laid out under Schedule 3 but there is no clear process laid out for how each individual Ministry will approach the pieces of reserved legislation that come under it. As Defra has 570 relevant pieces of legislation, 13 of which are relevant to implementing our animal welfare and health standards and are reserved, a clear and transparent process is needed and followed.
14. There are no clear scrutiny processes laid out for Welsh Ministers for devolved legislation but the RSPCA would propose that Welsh Ministers clearly lay out which legislation they believe are devolved and a timetable for considering these laws. Should the Welsh Government wish to simply restate all these laws, which is in their power to do so, this could be completed in a timely manner by December 2023. The Welsh Government could then agree if there is any devolved legislation they wish to amend or reject and fully involve the Senedd in discussion on these laws.
15. The Welsh Government will need to agree a position on those animal welfare laws that are reserved to the UK Government so that these are carried over. The date for this could be extended to December 2026 but it is unclear how the Welsh Government will engage in this process. If it is through the Common Frameworks process but there is no agreement on process between the two Governments, it is unclear how this will be resolved.
16. The REUL Bill could have large constitutional consequences on devolution itself (para 83 footnote 2). Many of the powers in the REUL Bill are solely for Ministers of the

Crown not Ministers of the Welsh Government. For instance the extension of the sifting deadline from 2023 for a further three years is not a power given to the Welsh Government who have to complete their sifting by December 2023. Finally the REUL has large implications on how products are produced and moved within Great Britain and it is not clear how it works with the Common Frameworks programme⁵ and the Internal Markets Act 2020.

- *whether the Bill might introduce new limitations for the Welsh Government, which wants to improve pre-Brexit standards, where possible;*

17. The Bill does not have any impact on those devolved areas of animal welfare legislation that the Welsh Government may want to improve post Brexit but where those intervene with the operation of the internal GB market these may interact with the Internal Markets Act 2020 and the Common Frameworks Programme where those products are circulated to other countries in Great Britain.

- *steps that the Committee could take in future, including with regards to powers exercised under the Bill;*

18. Clause 2 of the Bill states the measures do not apply to any law specified in regulations from a national authority but it is not clear from the Bill how the UK Government will undertake this process or for measures that are reserved, such as the import ban on dog and cat fur, how they will ensure that the views of the Welsh Senedd are taken into account as the process of filtering the legislation occurs. The Welsh Government should clarify this process with the UK Government.

- *implications for Wales' legal landscape, including the introduction of new categories of legislation, and issues relating to clarity and accessibility.*

19. There are large implications for the Welsh legal landscape. Even if the Welsh Government decided to restate all the devolved pieces of legislation huge questions remain for the future Welsh landscape on reserved laws. For instance the Welsh Government has been clear that they have no wish to allow the use of growth promoters or the marketing of products made from them. This legislation (the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations⁶ would fall under the Bill. The provisions about allowing in meat treated with growth promoters has become an important issue for the UK in pursuing trade deals with countries that use these promoters such as Canada and Mexico. The UK has always maintained that such meat cannot enter the UK market as there is legislation to stop this happening. The Bill has the powers to revoke this legislation. As this decision is a reserved issue, the Welsh Government could find such products being sold in Wales despite its objections.

⁵ <https://www.gov.uk/government/collections/uk-common-frameworks>

⁶ <https://www.legislation.gov.uk/ukSI/2015/787/contents>

Table 1 Summary of the 44 pieces of retained EU animal welfare laws and which are reserved and devolved

	EU Legislation <i>Directives</i>	International agreements	Devolved ?	Main goals
Farm Animals <ul style="list-style-type: none"> ● General protection ● Laying hens ● Meat chickens ● Veal calves ● Live transport ● Pigs ● Slaughter ● Bans on BST ● Farm subsidies ● Country labelling ● Poultry meat ● Beef labelling ● Egg labelling ● Organic Production ● Horse identification ● Feed and food law 	98/58 1999/74 2007/43 2008/199 1/2005 2008/120 2016/336 1099/2009 1305/2013 1307/2013 1169/2011 543/2008 566/2008 1097/90 5/2001 834/2007	OIE Guideline OIE Guideline OIE Guideline	Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes	Baseline standards on welfare of farm animals Prohibits battery cage for laying hens Minimum standards on chickens Prohibits veal crate and white veal Maximum transport times for farmed animals Prohibits sow stalls Standards on slaughter of farmed animals Stops use of growth promoting hormones Agriculture Act 2020: animal welfare schemes Labels products on country of origin Sets terms for poultry labelling Sets terms for beef labelling Mandatory labelling of eggs Sets standards for organic food production Identification of equines Controls on the production of food and feed
Wildlife <ul style="list-style-type: none"> ● Trade in endangered species ● Whaling ● Habitat protection, hunting and trapping ● Wild birds protection ● Driftnet bans ● Seal import ban ● Zoos ● Traps management ● Wild bird import ban ● Invasive alien species ● Fur labelling 	338/97 812/2004 92/43, 82/72 2009/147 1239/98 2015/1850 1999/22 3254/91 139/2013 1143/2014 1007/2011	CITES IWC Bern Convention Bern Convention Bern Convention	No No Yes Yes No No Yes Yes No No Yes	Implements CITES to manage and regulate the trade in endangered species and products Bans trade in whale products Sets rules on wild animal protection, humaneness of hunting and trapping animals Protects and regulates hunting of wild birds Bans use of driftnets to protect marine life Bans seal products due to inhumaneness Licensing and management of zoos Regulates use of traps for wild animals Stops imports of wild caught birds Prevents import & spread of alien species Labels fur products
Animals in science <ul style="list-style-type: none"> ● The use of animals in research, testing ● EC party to ETS 123 	2010/63 1999/575 2003/584	OIE Guideline Council of Europe	No No No	Regulates use of animals in laboratories for research, testing and education Makes UK member of Council of Europe's Convention on the use of animals in laboratories

<ul style="list-style-type: none"> ● Updates ETS 123 ● REACH ● Plant Protection Products ● Biocidal Products ● Cosmetics ● Novel foods 	<p>1907/2006 1107/2009 528/2012 1223/2009 258/1997*</p>		<p>No No No No Yes</p>	<p>Sets rules on testing using animals for chemical production and use Sets rules using animals for biocidal/plants Bans the use of animals in testing for cosmetics and the marketing of such products Regulates the production of GMO animals</p>
<p>Pets</p> <ul style="list-style-type: none"> ● Non commercial trade dogs, cats. ● Pet Imports ● Commercial trade ● Imports on dog and cat fur 	<p>576/2013, 577/2013 2013/31 92/65 1523/2007</p>		<p>Yes Yes Yes No</p>	<p>Manages the cross border movement of pet cats and dogs Limits the commercial trade in cats and dogs Bans the import of dog and cat fur and its sale</p>