



RESEARCH PAPER 98/12
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Animal Welfare

This paper examines UK policy in several fields of animal welfare: farm animal welfare (poultry, pigs, cattle, slaughter and animal transport), animal testing, fur farming and fur trapping. An underlying theme is the extent to which UK action is constrained by the need to avoid creating barriers to trade.

This paper supersedes Research Paper 97/140.

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I Introduction

Animal welfare is an area in which the Labour Government has undertaken several initiatives, sometimes building on moves by the previous Conservative Government. This paper examines several animal welfare issues in which there have recently been policy activity, including farm welfare, fur farming and animal experiments. In many cases, the desire for higher welfare standards has to be balanced against commercial pressures and the need to operate within the Single European Market. It is not always possible to have higher standards than other countries.

II Farm animal welfare

A. British controls

There has always been reluctance in the UK to legislate in too much detail over animal welfare, for several reasons. For one thing, the detail required would make such legislation complex, so that the farmers would spend considerable time and energy in complying with it. Then, there is a danger that legislation would limit innovation in animal husbandry. Equally important, it is generally agreed that legislation cannot, of itself, make animals well looked after. For example, one important factor is having a stockman who can recognise when animals are unwell. Another major problem is enforcement, since complex welfare legislation might require checking by inspectors on individual farms.

The normal approach has been to develop codes of practice, based on the recommendations of the Farm Animal Welfare Council, an independent advisory body of experts, appointed by the Minister of Agriculture. It is not an offence to infringe the terms of the codes of practice, but failure to conform to them can be cited in court as evidence of cruelty in the case of a prosecution for cruelty to animals. It is a legal requirement that anybody attending to livestock must be acquainted with the relevant welfare codes and have access to them. However, codes of practice have been found inadequate in some contexts and it has been found necessary to have minimum standards for which it has been possible to legislate.

The Welfare of Livestock Regulations 1994 (SI 2126),¹ a statutory instrument consolidating earlier measures, stipulates definite prohibitions in the way that poultry, calves and pigs may be kept, as well as provides the above requirements relating to codes of practice. The conditions for laying hens set the minimum acceptable cage sizes, along with requirements as to ventilation, lighting and regular inspection.² See section II B for more detail. For calves, the conditions rule out so-called “veal crates”, where calves are kept in close confinement with a restricted diet, so as to produce white veal.³ See section II C for more detail. The Regulations contain the ban on the tethering of pigs, to come into force on 1 January 1999.⁴ See section II D for more detail

The Animal Welfare Minister, Mr Elliot Morley has called for moves towards higher animal welfare standards across Europe, as part of the UK’s Presidency priorities for the first half of

¹ Made under section 2 of the Agriculture (Miscellaneous Provisions) Act 1968 and section 2(2) of the European Communities Act 1972

² These conditions were originally introduced by the Welfare of Battery Hens Regulations (1987 SI 2020)

³ These conditions were originally introduced by the Welfare of Calves Regulations (1987 SI 2021)

⁴ These conditions were originally introduced in the Welfare of Pigs Regulations (1991 SI 1477)

1998.⁵ He said that in the UK there was a highly developed framework of rules on welfare, but there were no common minimum standards in Community law. He pointed out that although there are common EC rules for welfare in transit and at slaughter, there were no overall controls for animals on farms. The directive would build on the Treaty of Rome protocol classifying animals as “sentient beings”. He also hoped for Commission proposals on welfare at slaughter. He also said that he would urge the Commission to bring forward proposals on bringing an end to battery cages in the long-term.

B. Poultry

1. Background

This is perhaps the best-known farm animal welfare issue. Battery hens are laying birds reared and kept in multi-bird cages arranged in rows one above the other. The space allowance can be as little as 450 sq cm per bird, where four or more hens are kept in the cage. In the UK, these cages are often considered cruel, but the main problem with banning them would be that British producers would face higher costs, and therefore be unable to compete with eggs imported from countries with less stringent welfare rules.

The Agriculture Select Committee reported on the poultry industry in April 1994.⁶ The Committee argued that in the long-term, battery cages should be replaced, but noted the problems of banning them too soon:

80 A considerable amount of research and development is still required in order to establish viable alternatives to the battery cage, and any sudden wholesale switch to alternative methods of production would not be economically practical; nor would it necessarily enhance the overall welfare of laying hens. Moreover, we consider it essential that any revisions to the ECs current regulations governing the welfare of battery hens should allow the industry sufficient lead-in time to replace its equipment and to train staff adequately in the necessary husbandry skills.

The Farm Animal Welfare Council (FAWC) reported on laying hens in 1997. The report concluded:⁷

Battery cages which do not provide a nest box, perch or litter arguably cause hens frustration and suffering. It may be that battery cages in their present form should be phased out throughout the EU if hens can be practically provided with greater space, nests, perches and possibly scratching, foraging and dust bathing facilities in other systems without increasing injurious pecking. FAWC is of the opinion that the use of conventional battery cages should be phased out in the long term with the following provisos which should be energetically pursued:

⁵ *MAFF News Release*, 15 January 1998

⁶ *1993/94 HC 67*

⁷ Farm Animal Welfare Council, Report on the Welfare of laying Hens, July 1997

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-The UK industry must be protected from unfair competition from elsewhere within the EU; phasing out throughout the EU must take place simultaneously.

-Imports of shell eggs and egg products into the EU must be banned from those countries in which conventional battery cages are still used. GATT/WTO arrangements should not be allowed to prevent these measures and, if necessary, the UK Government should seek an amendment to the agreement in order to protect the welfare of animals.

-There are signs that genetic selection for reduced injurious pecking behaviour may remove an obstacle to the widespread use of non-cage systems. The phasing out of battery cages should not be effected until after the elimination or successful control of injurious pecking and cannibalism through genetic progress or improvements to management techniques.

In fact, it is often difficult to know which methods of rearing do correspond to improved welfare. One study⁸ reviewed the scientific evidence and concluded that there are specific problems with battery cages which could be legislated against, but the Farm Animal Welfare Council rejected that approach.

Broilers are chickens raised for the table, usually under intensive conditions. The welfare issues are very different from those for battery hens. Broilers start life in a large shed with plenty of space. They then grow for about six weeks before being taken away for slaughter. By the end of their lives there are in cramped conditions. They have been selectively bred to grow so fast that their legs are often not strong enough to carry their weight comfortably. Leg injuries and chronic pain are therefore potential problems.

2. What the Government has done

In New Labour New Britain New Life for Animals, Labour in Opposition stated:⁹

Labour is committed to the long-term phasing out of battery-cage egg production as currently practised in Europe, and to the promotion of alternative systems. We will outlaw de-beaking of poultry, except for veterinary reasons.

The Animal Welfare Minister, Elliot Morley MP, called for an end to battery cages, in commenting on the report of the Farm Animal Welfare Council on the welfare of laying hens:¹⁰

The Council is to be congratulated for undertaking this wide ranging and thorough review. Its recommendations give independent support to the Government's own view that we must plan an end to the practice of keeping laying hens in battery cages. The report identifies a

⁸ M.Appleby, *Do hens suffer in battery cages ?* University of Edinburgh, October 1991

⁹ December 1996, Labour Party

¹⁰ *MAFF News Release* 24 July 1997

number of issues that need to be addressed as part of this planning process. These include the need to ensure that the welfare of birds in alternative systems is properly protected and that phasing out does not put UK producers at a disadvantage compared to their competitors.

As a first step we will be pressing the EU Commission to bring forward its proposals for updating the current legislation on the battery cage and to extend Community controls to all types of production system. This is a report with potentially wide reaching implications for all those who are concerned with the welfare of laying hens. We will be seeking the views of all interested parties before drawing up our detailed response.

A new welfare code for broiler chickens is also to be introduced, to endorse the Farm Animal Welfare Council's recommendation that a maximum stocking density should be set in order to ensure the welfare of the birds.¹¹

C. Pigs

1. Background

There is a large British pig industry, supplying the competitive market for pork and bacon. The pigs are reared intensively, although it is possible to have an intensive free range system, and these are becoming increasingly popular. However, it remains common to keep pigs in close confinement, in crates where they cannot turn round, in some cases tied with tethers. This method is considered cruel in the UK and the Conservative Government imposed a ban, coming into force on all premises in 1999. There has also been concern about tail docking, a practice of more importance in free range systems. Farmers undertake this operation to avoid tail-biting, but critics claim that it is painful. They say that the husbandry system should be adapted, so that pigs would no longer want to bite tails. Farmers deny that tail-docking involves a significant amount of suffering, and argue that there is no obvious way of avoiding tail-biting, which they see as a far more important welfare problem.

For pigs, the use of tethers is to be banned from 1 January 1999, when paragraph 1(1) of Schedule 2 of the Welfare of Livestock Regulations 1994 comes fully into force:

No person shall tether or cause to be tethered any pig except while it is undergoing any examination, test, treatment or operation carried out for any veterinary purpose.

The Regulations create offences under section 2 of the Agriculture (Miscellaneous Provisions) Act 1968 for which the penalty on summary conviction is imprisonment for a term not

¹¹ *MAFF News Release* 14 October 1997

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exceeding three months or a fine not exceeding level 4 on the standard scale (currently £2,500) or both.

It is important to note that the use of pig stalls and tethers is not illegal in other EU countries and the import of pork or bacon from pigs kept in this way is not illegal either. There was an EC Directive in 1991 laying down minimum standards for the protection of pigs.¹² However, it imposes fewer conditions on the way in which pigs are kept and comes into force more slowly than the British rules. Article 3(1) lays down modest requirements for the unobstructed floor area available to each weaner or rearing pig reared in a group. These apply to buildings built after 1 January 1994, but only to all buildings after 1 January 1998. Under Article 3(2):

" the construction or conversion of installations in which sows and gilts are tethered shall be prohibited after 31 December 1995. However, the use of installations built prior to 1 January 1996 which do not meet the requirements of point 1 may be authorised by the competent authority...for a period which shall in no circumstances extend beyond 31 December 2005."

There are many rules concerned with pig husbandry in the 1994 Regulations covering, among other things, lighting, space and food. There are also specific requirements for piglets, including a restriction on tail docking:¹³

Neither tail docking nor tooth clipping shall be carried out routinely but only when there is evidence, on the farm, that injuries to sows' teats or to other piglets have occurred or are likely to occur as a result of not carrying out these procedures. Where tooth clipping appears necessary, this shall only be carried out within seven days of birth.

Piglets must not be weaned from the sow at an age of less than three weeks unless the welfare or health of the dam or piglets would otherwise be adversely affected.

2. What the Government has done

In *New Labour New Britain New Life for Animals*¹⁴ Labour stated

The routine tail-docking and tooth-clipping of pigs are illegal, but current legislation has many loopholes that allow these painful practices to continue. Labour will ensure that the law is enforced to end these practices, except when they are carried out for veterinary purposes

¹² Council Directive of 19 November 1991 laying down minimum standards for the protection of pigs, 91/630/EEC

¹³ Schedule 3 Part IV paragraph 3

¹⁴ December 1996, Labour Party

The Government intends to prepare a revised welfare code for pigs to take into account recommendations by the Farm Animal Welfare Council on welfare standards for pigs kept outdoors. The Government response to the 1996 FAWC report appeared on 22 August 1997.¹⁵

Although there has been no Government action yet, Chris Mullin MP introduced the *Welfare of Pigs Bill* [Bill 91 1997/98] under the ten minute rule, to ban tail-docking.¹⁶ His Bill is strongly opposed by the National Farmers Union who claim that it would not improve the welfare of pigs. In practice, it is unlikely to have enough parliamentary time to become law, even if it is supported, but of course the ideas might be introduced in other legislation.

D. Cattle

1. Background

The main issue is the use of veal crates, an intensive method of veal production, where calves are kept in crates. A Report by the Agriculture Select Committee expressed disapproval of the veal crate system:¹⁷

65. The system which has aroused criticism was described in evidence in terms ranging from studiously neutral to severely critical. The main features criticised were confinement in pens too narrow for the calf to turn round, groom itself or at times get up and lie down easily; reduced lighting (sometimes it was said, total darkness); slatted floors said to damage the animals' feet; lack of bedding; and a diet which excluded roughage and prevented rumination.

This system has been banned in the UK since 1990 by the Welfare of Calves Regulations 1987 (SI 2021), consolidated in the Welfare of Livestock Regulations 1994. A few of the more demanding conditions do not apply until 1 January 2004, to accommodation in use before 1 January 1994. Already, however, the rules stipulate that, when kept in an individual stall, “the calf must be able to stand up, turn round, lie down, rest and groom itself without hindrance”. In addition, the calves must not be kept permanently in darkness. In other EU countries, however, veal crates remain legal.

¹⁵ MAFF News Release 22 August 1997

¹⁶ HC Deb 26 November 1997 c976-8

¹⁷ House of Commons Agriculture Select Committee Report on *Animal Welfare in Poultry, Pig and Veal Calf Production* (1980/81 HC 406).

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The EU reached agreement on veal crates in December 1996, and the rules come into force for all new or rebuilt holdings from 1 January 1998. However, existing holdings will have until 2006 to comply with the new rules. Calves under eight weeks may still be housed individually, but new rules on the size of their pens will ensure that they have enough space to turn around. Over eight weeks, they will be housed in groups, not individual pens. For these older calves, there will be minimum space requirements which will increase as the calves gain in weight. Feed for calves will have to contain a minimum iron requirement.¹⁸

The Farm Animal Welfare Council has recently reported on the welfare of dairy cattle. It recommends that urgent action is taken to reduce significantly the prevalence of lameness. It also expressed concern about the slaughter of very young calves under the EU calf processing scheme, noting that they should not be exposed to unnecessary long distance travel within the UK before slaughter.¹⁹ The Government has not yet had time to reply.

2. What the Government has done

Clearly the Government does not need to ban veal crates in the UK, since that has already been done. However, that very ban increased animal exports, since British calves were sent into foreign veal crates, until that trade was cut short by the ban on the export of British cattle or beef as a result of BSE. This is further discussed in the next section.

E. Slaughter

1. Welfare Law and Religious Slaughter

British legislation requires the pre-stunning of animals before slaughter, so that death should be painless. The main problem is enforcement, although there are some disagreements over particular techniques. Religious slaughter, on the other hand, is a controversial issue, because the animals are not stunned. The requirement in British legislation for the pre-stunning of animals in slaughterhouses has always provided exemptions for the Jewish and Muslim methods of slaughter. The Jewish method of slaughter is called Shechita. Food fulfilling the requirements of Jewish law is called Kosher. The Muslim method is called Halal. The exemption dates back to the Slaughter of Animals (Scotland) Act 1928 and the Slaughter of Animals Act 1933 (which applied to England and Wales). The European Directive requiring the stunning of poultry and animals before slaughter (Directive 74/577/EEC) did not affect the position of religious slaughter. More recently, Council Decision 88/306, approved the

¹⁸ Council Directive 97/2/EC of 20 January 1997 amending Directive 91/629/EEC laying down minimum standards for the protection of calves

¹⁹ *Farm Animal Welfare Council Press Notice*, 5 December 1997

(Council of Europe) *European Convention for the Protection of Animals for Slaughter, 1979*.²⁰
This convention allows for ritual slaughter in *Article 17*.

1 Each Contracting Party may authorise derogations from the provisions concerning prior stunning in the following cases:

slaughtering in accordance with religious rituals,...

2 Each Contracting Party availing itself of the provisions of paragraph 1 of this Article shall, however, ensure that at the time of slaughter or killing the animals are spared any unavoidable pain or suffering.

Halal meat does not always require slaughter without pre-stunning. Some Muslims accept pre-stunning. In both Denmark and New Zealand pre-stunning is a legal requirement for Halal slaughter, with the consent of the Muslim population.²¹ However, there is no single authoritative body that can definitively rule as to the Muslim law on this subject. Kosher slaughter, necessary for orthodox Jews, always requires that the animal is not pre-stunned.

The Farm Animal Welfare Council, in their Report of 1985, concluded that religious slaughter involves the animal in greater suffering than methods involving pre-stunning.²²

The up-to-date scientific evidence available and our own observations leave no doubt in our minds that religious methods of slaughter, even when carried out under ideal conditions, must result in a degree of pain, suffering and distress which does not occur in the properly stunned animal.

A recent PQ says that information is not held centrally on the number of animals slaughtered by Schechita or Halal methods.²³ In 1985, the Farm Animal Welfare Council noted that the figures varied from one year to another, but quoted Agriculture Departments estimates that each year in Great Britain up to 91,200 cattle (54,700 Schechita, 36,500 Halal) and 1,559,000 sheep and goats (28,000 Schechita and 1,531,000 Halal) were slaughtered by religious methods. In addition, an average of 220,000 poultry (45,000 Schechita and 175,000 Halal) were estimated to be slaughtered each week by religious methods in licensed poultry slaughterhouses. Almost all of the Halal poultry was believed to be pre-stunned, and about 20% of the sheep and goats, but few of the cattle.²⁴

²⁰ Council Decision of 16 May 1988 on the conclusion of the European Convention for the Protection of Animals for Slaughter, 88/306/EEC, 1988 OJL 137

²¹ Report on the Welfare of Livestock when Slaughtered by Religious Methods, *Farm Animal Welfare Council* HMSO 1985, p. 40

²² *op. cit.*, para 92

²³ HC Deb 25 November 1997 c.524W

²⁴ Report on the Welfare of livestock when Slaughtered by Religious Methods, *Farm Animal Welfare Council* HMSO 1985, para 23 and 24

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2. What the Government has done

A recent PQ asked the Minister what proposals he had to end ritual slaughter:²⁵

Mr.Morley: The Government do not propose to remove the right of the Jewish and Muslim communities to slaughter animals in accordance with the requirements of their religion. We do, however, believe that animals should be stunned before slaughter wherever possible. We will continue to discuss our concerns with representatives of the religious communities, with a view to encouraging, where possible, an increase in the incidence of stunning before slaughter.

Another important issue relates to labelling. Much of the meat from animals slaughtered by religious methods is not sold as such, because it comes from the wrong cut of meat. The Farm Animal Welfare Council estimated that no more than an estimated third of the weight of all animals slaughtered according to Jewish methods finds its way into Kosher shops and a high proportion of Shechita meat is therefore distributed to the open market.²⁶ Many people believe that if such meat had to be labelled as coming from animals slaughtered without pre-stunning, they would not buy it. That might undermine the economics of Kosher meat.²⁷ Proposals for such labelling requirements have tentatively appeared in EC documents, but have always been fiercely resisted. The Minister was recently asked what proposals he had to ensure that all religiously slaughtered meat was clearly labelled as such.²⁸

Mr.Rooker: We shall cover this approach in our forthcoming discussions with the religious communities about all aspects of religious slaughter.

F. Transport of Live Animals

1. Background

This has been a major problem, particularly in the 1990s. Large numbers of British calves and lambs were exported to the Continent. The export of calves was greatly increased as a direct result of the British ban on veal crates, on animal welfare grounds. British calves were sent abroad to go into veal crates that would have been illegal in the UK. The lambs, often suffered a long, highly unpleasant, journey without food or water, only to be slaughtered in a country like Spain where the EC rules on pre-stunning were routinely ignored.

²⁵ HC Deb 26 November 1997 c.585W

²⁶ Report on the Welfare of Livestock when Slaughtered by Religious Methods, *Farm Animal Welfare Council* HMSO 1985, para 27

²⁷ *Daily Telegraph*, 3 May 1991

²⁸ HC Deb 1 December 1997 c.19W

The problem for many years was that the UK had stricter animal welfare legislation than the rest of the European Union. This made it very difficult for the UK to enforce its law, because the offences would take place abroad. The situation is slowly changing, partly because of the accession to the EU of the Scandinavian countries, which have traditionally cared about animal welfare, and therefore form a bloc with the UK and Germany to press for higher standards.

The welfare of livestock in transit is regulated by EU Directive 91/628²⁹ implemented in Great Britain through the Welfare of Animals during Transport Order 1994 (SI 3249).³⁰ However, there were years of negotiation before any agreement could be reached between EU countries on limits to journey times, one of the most important issues. In 1995 the Directive was amended to include new requirements including limits on journey times and an authorisation system for transport undertakings.³¹ Basically there is a journey limit of eight hours, unless the animals are being transported in vehicles of approved design.

The Welfare of Animals (Transport) Order 1997 (SI 1480) came into force on 1 July 1997, introducing a two-tier Authorisation Scheme in Great Britain. All commercial transporters of vertebrate animals must operate under either a General or a Specific Authorisation issued by the Minister of Agriculture. Transporters of cattle, sheep, goats, pigs and horses for journeys of over 8 hours in road vehicles, and for all journeys by sea or air have to hold Specific Authorisations. The legislation allows the Minister to withdraw Authorisations from transporters who break the rules. Similar provisions will be introduced in other Member States.

2. What the Government has done

In *New Labour New Britain New Life for Animals*³² Labour in Opposition stated

Suffering during transit

Animals being transported experience unnecessary suffering if they travel long distances in poor conditions and in the care of inexperienced personnel. Labour wishes to see more effective control and training of all those involved in the commercial handling of livestock. The European Union has accepted our proposal to introduce licensing for handlers and hauliers, and we will ensure that an effective scheme is implemented...Labour fully supports the principle of maximum journey times. We will work within the EU for a maximum journey time of eight hours, and aim to have slaughter carried out as near as possible to the

²⁹ Council Directive 91/628/EEC on protection of animals during transport and amending Directive 90/425/EEC and Directive 91/496/EEC, 1991 OJL 340

³⁰ Made under the Animal Health Act 1981

³¹ Council Directive 95/29/EC amending Directive 91/628/EEC concerning the protection of animals during transport, 1995 OJL 148

³² December 1996, Labour Party

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farm where the animal was reared...Labour would, if possible, use the law to ban the export of calves destined for the cruel veal crate.

The Labour Government announced an urgent review of animal welfare controls on live exports in May 1997.³³ The Parliamentary Secretary (Mr Morley) said:

The Government strongly prefers meat to be exported on the hook rather than on the hoof. It acknowledges that European law precludes legislating to require this, but welcomes the fact that the judicial review initiated previously by RSPCA/Compassion in World Farming/International Fund for Animal Welfare will help clarify whether the Government has power to restrict the export of calves for rearing in veal crates. Where animals are exported live, the public must have full confidence that the strictest possible welfare rules are being applied to this trade. Accordingly, we have ordered an urgent review of the arrangements for ensuring that animals are rested, fed, watered and cleared as fit prior to export in accordance with the law.

³³ *MAFF News Release*, 20 May 1997

III Barriers to trade - can the UK have stricter rules than other countries?

A. The EU Protocol recognising animals as sentient beings

There have been moves for several years for the Treaty of Rome to acknowledge animals as sentient beings. The Labour Party Manifesto for animals included the following statement on farm animals:³⁴

Cruelty in our Food Production

Animals are currently designated by the EU as agricultural products. Labour wants to see this changed to “sentient beings” so that it becomes officially recognised that animals can feel pain, fear and stress...We will give a strong role to the Farm Animal Welfare Council (FAWC), and will seek higher welfare standards for farm animals and improved welfare at slaughter. We believe that the public shares our views, and that a comprehensive labelling scheme should be introduced so that shoppers can, if they choose, purchase products which come from animals that have been reared in high-welfare systems.

The recent EU Amsterdam Treaty contains the following protocol on animal welfare:³⁵

The High Contracting Parties

Desiring to ensure improved protection and respect for the welfare of animals as sentient beings

Have agreed upon the following provision which shall be annexed to the Treaty establishing the European Community:

In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

Quite what this will mean in practice remains unclear, but there are other signs of increasing interest in animal welfare. The EU has finally agreed to phase out close confinement veal crates by the year 2006. Rules have been agreed, after years of negotiation, on the transport of live animals. Basically, journey time is limited to eight hours unless the animals are carried in vehicles conforming to strict standards. The entry of Scandinavian countries and Austria into the EU has strengthened the group supporting stricter rules on animal welfare.

³⁴ New life for Animals, *Labour Party*, 1996

³⁵ Treaty of Amsterdam, 2 October 1997, amending the Treaty on European Union, Cm 3780. The European Communities (Amendment) Bill is described in Library Research Paper 97/112

B. The possibility that imports would undermine strict rules

Many farmers fear that they might be forced to comply with strict rules in the UK, so as to satisfy British public opinion, thereby incurring higher costs of production. Yet imports within the European Union are uncontrolled, and imported produce could be sold more cheaply because farmers outside the UK had not incurred the cost of the higher welfare standards. If that were to happen, British farmers would lose sales and the British public would buy meat from animals often kept to lower standards of animal welfare than was the practice in the UK, even before the imposition of the stricter regulations. The public may be totally unaware that this is happening. That has happened to some extent with veal, where imports of Continental veal increased after the British ban on veal crates. Even worse, British calves were exported to the Continent to go into Continental veal crates. The meat was then imported back in to the UK. Something similar might also happen with pig tethers, which are to be banned in the UK from 1 January 1999. Eggs offer yet another example, with the case of Denmark:³⁶

Danish egg production became less cost competitive in the mid-1980s as a result of the unilateral adoption of higher welfare standards. The effect was that Danish self-sufficiency fell significantly. A valuable export market in Germany was lost and eggs produced under lower welfare standards were imported to replace lost output.

C. The power of the supermarkets

The market domination of the supermarkets in the UK offers a major opportunity for stricter animal welfare rules, since they impose a considerable amount of control over their suppliers, whether in this country or abroad. There have been some cases in which they have considered the imposition of stricter animal welfare rules to be a selling-point.

The supermarket chain Tesco has launched a series of animal welfare codes, to improve the conditions for livestock from which its meat and other products are obtained.³⁷ It will phase out its use of markets for the procurement of livestock, so as to increase traceability. For each category of livestock, the codes specify specific certain requirements which, it claims, go above and beyond existing standards. From August 1 1997, the company will not take fresh pork from suppliers whose farms use sow stalls and tethers for piglets entering the production chain. It intends to extend this requirement over all of its pigmeat products within 12 months. The total journey time for finished pigs should not exceed 8 hours, with a target transport time of 6 hours, effective from 1 January 1998.

³⁶ *Caring for Livestock*, NFU 1995 p.5

³⁷ *The Veterinary Record*, 26 July 1997 p.87

There are other sectors of the market, beyond the control of the supermarkets, notably high street butchers and restaurants. In those sectors, cheaper imported meat might be preferred, regardless of the lower animal welfare standards.

British pig processors are hoping to capture a larger share of the British market at the expense of existing Danish, Dutch and French suppliers by highlighting the farm welfare improvements from the ban on stalls and tethers from 1999. Around 10% of Danish and 2% of Dutch pig units are said to be free of stalls and tethers, so they would find it difficult to conform to strict animal welfare rules if these were taken up by the leading supermarkets.³⁸

D. Can trade be banned on animal welfare grounds?

This issue has arisen in the case of exports, when there were widespread popular demands to ban the export of live animals under *Article 36* of the *Treaty of Rome*. However, the same question arises in areas where the UK might be importing food from animals reared in a way that would be illegal in the UK.

In principle, any restriction of trade within the EU is contrary to the Treaty of Rome, but Article 36 lists some exceptions. The question is whether such a trade ban would fall under them.

Article 36

The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

The general view, consistently taken by MAFF, has been that Article 36 would not allow a ban to be imposed on the export of live animals from the UK.

It is worth noting that this part of the Treaty of Rome follows almost exactly the wording of Article XX of the GATT (General Agreement on Trade and Tariffs). In other words, the EU rules that do not allow a ban on exports are free trade rules, rather than a product of the common agricultural policy. The relevant part of the GATT reads as follows.

³⁸ *Agra Europe*, 5 December 1997 M/2

Article XX

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;

However, in 1995 the RSPCA produced a legal opinion by Mr Gerald Barling QC arguing the opposite. His main conclusions were the following:³⁹

- (a) Current legislation at the Community level intended to provide for the welfare of calves reared for veal production imposes minimum requirements for a transitional period pending further research; these requirements fall short in significant respects of the internationally agreed standards which are binding on both the Community and individual Member States.
- (b) The Community is thereby in breach of its obligations under international law and any Member State which achieves no more than the minimum standard required by the Community legislation in question will itself be in breach of those obligations.
- (c) In all material respects the United Kingdom's domestic legislation in respect of the rearing of calves for veal meets these international standards.
- (d) In these circumstances neither the existence of this Community legislation nor the fact that calves and their meat are subject to Community regulations providing for common organisation of the market preclude the United Kingdom from relying upon Article 36 of the EC Treaty in order to justify measures restricting the export of live veal calves to a Member State whose domestic legislation, whilst complying with the Community legislation, falls short of achieving the internationally agreed standards adhered to by the United Kingdom, or where there is widespread non-compliance with those standards.

The internationally agreed standards are those in the (Council of Europe) European Convention on the Protection of Animals kept for Farming Purposes.⁴⁰ Part C contains the Recommendation Concerning Cattle, and Appendix C contains special provisions for calves.⁴¹ These provisions include requirements that the accommodation for calves shall be well lit, that individual pens, if used, must be of a certain size, and that calves older than two weeks shall have access to a nutritious diet, containing appropriate amounts of iron and roughage. In other words, they would rule out the veal crate system practised in some EU countries.

³⁹ Welfare of calves: lawfulness of export restrictions, *RSPCA Press Release*, 27 March 1995

⁴⁰ Opened for Signature 10 March 1976

⁴¹ Entering into force, 21 October 1989

The Conservative Minister of Agriculture announced his reply on 22 May 1995.⁴²

I have now received advice from lawyers on the opinion from Mr Gerald Barling QC entitled "Welfare of Calves : Lawfulness of Export Restrictions".

My legal advice in the light of that opinion remains: namely that a ban on calf exports - whether a blanket ban or a selective ban on exports to certain countries or to rearing units using veal crates - would be at serious risk of successful challenge under European law.

There are also policy considerations. By far the best outcome, which I believe is achievable, would be EU measures to prohibit the use of the veal crate across Europe. That, I am sure all would agree, would be the best way of achieving a real increase in the sum of animal welfare. A unilateral restriction on exports from the UK (if it could be made to stick) would only be a gesture in terms of animal welfare: continental rearers would carry on using veal crates, and would obtain calves from alternative, more distant, sources from which they would probably be transported in conditions less humane than those we impose on our own exports. There would be no net gain across Europe in animal welfare terms.

In addition, to attempt to introduce a unilateral ban would be counter-productive in relation not only to the chances of getting an Euro-wide ban, but also to the very delicate negotiations on welfare in transit in general...

Mr Barling's opinion does, however, raise an interesting new point in highlighting the fact that the provisions of Community Directive 91/629 on the welfare of calves fail to reflect those of Appendix C to the Recommendations on Cattle which the Council of Europe adopted under the European Convention for the Protection of Animals Kept for Farming Purposes. As I have said, this does not alter the legal position in respect of a unilateral ban on calf exports.

Since then, the RSPCA and Compassion in World Farming have challenged the British decision in the European Court of Justice (Case C-1/96), and a judgement is expected shortly.⁴³

The Advocate General of the European Court of Justice delivered his opinion on 15 July 1997, concluding that a ban could not be supported in these circumstances, but that it might be supported in different circumstances (para 151):

1 Article 36 of the EC Treaty must be interpreted as not allowing a Member State, even where no directive provides for full harmonisation of the measures necessary to achieve the specific objective which recourse to Article 36 is meant to protect, to invoke grounds of public policy and/or the protection of the health and life of animals in order to justify measures restricting the export of live calves with a view to preventing those calves from being reared in the veal crate system used in another Member State.

Article 36 of the treaty must be interpreted as allowing a Member State, in the same circumstances, to justify such measures on the grounds of public morality where protection of the health and life of animals is regarded in that Member State as falling

⁴² *MAFF News Release*, 22 May 1995

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within that field, the harm to the health or life of animals resulting from the rearing method in question is established by objective scientific evidence and the measures adopted are proportionate to the objective pursued.

- 2 Consideration of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves has disclosed no factor of such a kind as to affect its validity.

However, this is only an opinion and the final judgement will not necessarily follow it.

⁴³ The RSPCA withdrew from the case, leaving Compassion in World Farming to carry on.

IV Animal testing

The use of animal models for testing medicines, and more particularly cosmetics, provokes a great deal of public interest. The UK has strict controls on animal testing.

A. Animals (Scientific Procedures) Act

The *Animals (Scientific Procedures) Act 1986* requires the licensing of all scientific 'procedures' carried out on 'protected animals' which may cause pain, suffering, distress, or lasting harm.

Section 1 of the Act defines 'protected animals' as all living vertebrates except man, including embryos which have reached a specified stage of development and including the common octopus. 'Procedures' regulated under the Act include any procedure causing pain or distress, regardless of whether or not the effects are mitigated by any means, such as anaesthetic.

The latest edition of the Home Office *Statistics on scientific procedures on living animals in Great Britain*⁴⁴ showed that 2.7 million procedures were started in 1996, which was a slight rise (0.2%) compared to 1995. 2,800 procedures were for testing cosmetics, up 900 from 1995.

Under sections 3, 4 and 5 of the Act, two kinds of licence are required for any scientific work covered by the Act. The project must be part of an approved programme of work covered by a project licence. Before granting a project licence the Home Secretary must be satisfied that the use of animals is justified and that the methods are appropriate. He weighs the likely adverse effects on the animals against the likely benefits of the work.

A personal licence must also be issued to the person who will carry out the work. The person must have the necessary qualifications and experience to perform the experiments and care for the animals. A senior sponsor must endorse new licence holders. Under section 6, experiments should be carried out at designated scientific procedure establishments, where possible, on animals bred for the purpose. The establishment has to nominate a person who will be responsible for the day to day care of animals and also a vet who can advise on the animals' welfare. Establishments are subject to inspection by the Home Office Inspectorate.

⁴⁴ Cm 3722, *Statistics of Scientific Procedures on Living Animals 1996* July 1997

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The Act gives statutory recognition to the Home Office Inspectorate (section 18) and describes the duties of Inspectors. The Inspectors hold medical or veterinary qualifications and are available to advise licensees. They consider in detail each application and advise the Home Secretary, so that only properly justified work is licensed. The Inspectors carry out visits, 'mainly without notice' to designated establishments, to ensure that work is being carried out properly.

Section 21 of the Act requires the Home Secretary to lay guidance and codes of practice on the operation of the Act before Parliament. *Guidance on the Operation of the Animals (Scientific Procedures) Act 1986*,⁴⁵ a *Code of Practice for the housing and care of animals used in scientific procedures*⁴⁶ and *The Humane Killing of Animals under Schedule 1 to the Animals (Scientific Procedures) Act 1981 Code of Practice*⁴⁷ have been produced by the Home Office. The Guidance booklets give details of, for instance, standard conditions that are attached to licences, records that must be kept and the responsibilities of the project licence holders.

1. Animal Procedures Committee ten-year review

The Animals Procedures Committee (APC) is established under sections 19 and 20 of the 1986 Act to oversee its operation and advise the Secretary of State on changes needed and on the production of guidance under the Act. It has at least 12 members, and the interests of animal welfare must also be 'adequately represented'.

In 1996 the APC began a review of the first ten years of the operation of the 1986 Act and sought the views of a wide range of organisations including animal protection groups, receiving 157 responses.

Its interim findings were published within the APC's annual report for 1996.⁴⁸ The interim report suggests that while the Act provides an 'adequate framework', some improvements could be made including a revision of the Guidance under the Act.

The review is still continuing and the APC 'hopes to reach final conclusions about the overall efficacy of the Act during 1998.'⁴⁹

⁴⁵ HC 182 1989/90

⁴⁶ HC 107, 1989

⁴⁷ HC 193 13 January 1997

⁴⁸ *Report of the Animal Procedures Committee for 1996* Cm 3777 Home Office October 1997 Appendix B Interim report on the review of the operation of the Animals (Scientific Procedures) Act 1986

⁴⁹ *Ibid* p.5

2. What the Government has done

Before Labour took power, it stated in its policy document on animals:⁵⁰

Labour will insist on the highest standards of welfare for animals in the laboratory, and ensure that they are used only when essential for medical and other scientific purposes. We will support a Royal Commission to review the effectiveness and justification of animal experiments, and to examine alternatives...

EDM 77 1997/8⁵¹ tabled by Dr Lynne Jones MP stated:

That this House welcomes the Government's pledge to support a Royal Commission to review the procedures and ethics of animal experimentation; urges that such a Commission should be set up as quickly as possible; looks forward to legislation outlawing the test of weapons, cosmetics, cigarettes or alcohol products on animals and the use of the LD50 test, as promised in the pre-election publication *New Labour, New Life for Animals*; in the meantime, strongly recommends that more resources are made available to ensure proper implementation of the *Animals (Scientific Procedures) Act 1986*; proposes that the technical details of licences granted under the Act and information regarding breaches of the regulations are made more easily available to the public; and strongly condemns the secrecy and lack of public accountability surrounding animal experimentation.

After coming into power, the Government reversed its undertaking to establish a Commission, at least pending the outcome of the APC review into the 1986 Act;⁵²

Mr. Howarth: We do not consider that a royal commission on the use of animals in experiments is necessary at this time. In the Animal Procedures Committee, the Secretary of State already has an excellent source of independent expert advice on all aspects of the use of animals in scientific procedures. The committee is currently reviewing the operation of the *Animals (Scientific Procedures) Act 1986* and I expect to receive shortly a report setting out the committee's deliberations made [sic], interim findings and initial recommendations. Setting up a royal commission would divert resources from progressing the committee's review, from responding to their recommendations and from other planned Home Office initiatives.

The Government will work to ensure that the highest possible standards of animal welfare are implemented and that animals are used in scientific procedures only where this is fully justified. We will promote alternatives which replace animal use, which reduce the number of animals used and which refine procedures to minimise suffering. We will pursue initiatives across Europe rather than risk exporting animal experiments to countries with less rigorous controls. The measures we take must also be sustainable and must not unnecessarily disadvantage United Kingdom research, medicine and industry or compromise public safety

⁵⁰ *New Labour New Britain New life for animals*, Labour Party December 1996

⁵¹ *Animal Experimentation* 5 June 1997

⁵² HC Deb 30 June 1997 c259W

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In the Government's response to the APC's interim report (similarly published within the APC Annual Report) the Home Secretary accepted all of the APC's recommendations and noted that the 1986 Act was one of the most rigorous regulatory systems of its kind in the world. However, the response also included the following statement:⁵³

Whilst the Government looks forward to the time when animals will not need to be used in scientific procedures, there appears no realistic prospect that this will be possible in the foreseeable future. In the meantime, it is essential that animals are only used where this is fully justified and where suitable alternatives are not available.

Norman Baker MP has asked the Government to increase the number of inspectors (18) enforcing the Act. The Home Office Minister, George Howarth said that such issues were under consideration,⁵⁴ since then it has been acknowledged that the Inspectorate is overworked, the Government hopes to fund 2-3 extra inspectors next year.⁵⁵

B. Cosmetics testing

1. What the Government has done

As noted above, 2800 cosmetics tests were performed on animals in the UK in 1996. In *New Labour New Britain New life for animals*⁵⁶ Labour said

We will not license the testing of cosmetics, tobacco or alcohol products on animals ... Labour is totally committed to stopping cosmetics testing on animals ... the beauty business already has at its disposal a huge range of perfectly safe ingredients ...

Instead of revoking the four existing cosmetics licences⁵⁷ straight away, the Government said it was seeking a Europe-wide ban to avoid experimentation simply switching to other Member States.⁵⁸ The Government had also received legal advice that it could not cancel the existing licences.⁵⁹

⁵³ *Report of the Animal Procedures Committee for 1996* Cm 3777 Home Office October 1997 Home Secretary's Response to the Committee's Interim Report...Appendix C pp.36-39

⁵⁴ HC Deb 7 July 1996 c602-3

⁵⁵ Lord Williams of Mostyn at the All Party Group for Animal Welfare - minutes from meeting 28 October 1997

⁵⁶ *New Labour New Britain New life for animals*, Labour Party December 1996

⁵⁷ *Herald* 22 October 1997 p.9

⁵⁸ HC Deb 7 July 1997 c602-3

⁵⁹ Home Office press notice 310/97 6 November 1997 *Cosmetic product testing on animals ends today* - Lord Williams

However, some Labour Members and Anita Roddick (the founder of the Body Shop and campaigner against animal testing) urges the Government to take a lead on the issue.⁶⁰ At the start of November 1997, following two weeks of discussions with industry, the Government announced that it would indeed end cosmetics testing,⁶¹ although it would do this through a voluntary agreement with those companies that still performed testing. They would return their licences to the Home Office for amendment. Since the Government will not licence further testing, this should indeed end cosmetics testing in the UK.

The Government will make £259,000 available to the Animals Procedures Committee in 1998-99 to sponsor research to reduce, refine or replace [the so called 'three Rs'] animal experiments in 1998-99.⁶²

2. EU Cosmetics Directive

Cosmetics testing accounts for just 0.03% of all animal tests in the EU, but because they are perceived as being ethically unacceptable their reduction has been given priority by the Commission.⁶³ The numbers of cosmetics tests performed annually has been falling far more rapidly than the overall decline in animal testing, largely because of public pressure.

The EU ban on cosmetics testing has, however, been delayed. The 1976 EC Cosmetics Directive (76/768/EEC, implemented in the UK by the *Consumer Products (Safety) Regulations 1989*, both as amended) is currently being strengthened by a 1992 Sixth Amendment, Directive 93/35/EEC.

This would have forbidden the testing of products on animals by manufacturers after 1 January 1998, *provided that alternative testing methods had been found by 1 January 1997*. While manufacturers have been working towards alternatives, it has been difficult to find adequate substitutes for, for instance, Draize tests (which involve introducing irritants into animals' eyes). The validation and bureaucracy has also, it is alleged, delayed acceptance of alternatives.

⁶⁰ for example, *Guardian* 24 October 1997 p.17; *Daily Telegraph* 22 October 1997

⁶¹ Home Office press notice 310/97 6 November 1997 *Cosmetic product testing on animals ends today - Lord Williams*

⁶² HC Deb 10 December 1997 c586w

⁶³ *1996 Report from the Commission on the development, validation and legal acceptance of alternative methods to animal experiments in the field of cosmetic products*. COM(97) 182 final 12 May 1997

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The European Parliament Environment Committee has adopted reports criticising the Commission's 'overall lack of urgency and commitment to implement the animal test restriction in 1998' – it believes that tests on finished products, skin absorption, skin irritation, photo-irritation and mutagenicity could be banned immediately.⁶⁴

Despite this, following the Commission's 1996 annual report on *Progress on the development, validation and legal acceptance of alternative methods to animal experiments in the field of cosmetics*,⁶⁵ a Directive (97/18/EEC) has been adopted to postpone the date of the ban to 30 June 2000. The Commission is also however preparing an amending Directive seeking to make it possible to ban the testing of finished products.⁶⁶

The sixth amendment does introduce the new requirement that claims made on labels about animal testing must clearly indicate, whether they relate to the ingredients or to the *finished product*. Many shops have stocked products labelled 'cruelty-free' or 'not tested on animals'. However, in the past this could have meant merely that the product itself had not been tested on animals, although its ingredients had been.

3. Alternative methods for cosmetic testing

The European Centre for the Validation of Alternative Methods (ECVAM) is based at the Ispra Joint Research Centre in Italy. The principle tasks of ECVAM are to co-ordinate validation studies of alternative methods and to establish a database of alternative methods and act as an information centre. A British scientist, Professor Michael Balls, of the Fund for the Replacement of Animals in Medical Experiments (FRAME), a 'neutral' body, was appointed to head ECVAM.⁶⁷

In 1996, ECVAM organised workshops evaluating the safety of cosmetics products and published a number of validation studies. Several of the Directorates-General of the Commission, the OECD and the EU's Scientific Committee on Cosmetology are also involved. So far, no alternative method has been validated *and accepted*. However, regarding the testing of cosmetic ingredients, 'progress has been made and it looks as though alternative methods will progressively become available in the various safety domains pertaining to percutaneous absorption⁶⁸ and local risks to the eye and skin (photo-irritation,⁶⁹ eye irritation⁷⁰ and skin irritation⁷¹)'.

¹⁹ *Report on the Commission report on the development, validation and legal acceptance of alternative methods to animal experiments in the field of cosmetic products- 1995 (COM(96)0365)* Committee on the Environment, Public Health and Consumer Protection, Rapporteur Dagmar Roth-Behrendt

⁶⁵ 12 May 1997 EC Cons Doc 8039/97

⁶⁶ DTI Explanatory Memorandum on European Community Document 8039/97 11 June 1997

⁶⁷ ATLA [a scientific journal] volume 21, pp.123-124, 1993

⁶⁸ the Scientific Committee on Cosmetology has agreed to use in vitro data for several ingredients now but formal validation and acceptance is incomplete

Tests for skin sensitisation, and mutagenicity are being developed, but all tests on ingredients for systemic effects (acute toxicity, subchronic toxicity, carcinogenicity and teratogenicity) are linked to the exposure of the organism as a whole. Thus ‘...there is no hope that alternative methods to replace animal trials will be available in the foreseeable future’. However, the Commission says that the refinement of tests has reduced the number of animals used and their suffering.

Regarding finished cosmetics products, the Commission believes these can now be evaluated on the basis of available knowledge (apart from rare, exceptional cases when a vehicle may facilitate the toxicity or skin penetration of the ingredients or the ingredients may interact). COLIPA⁷² has said it could progressively establish a voluntary ban on testing finished products (apart from those exceptions) and disseminate findings.⁷³ Hence, presumably, the Commission’s willingness to draw up an amending Directive on a ban on products testing.⁷⁴

4. Barriers to trade

The Commission believes that any Community ban on cosmetics products purely because these had been tested on animals would not be defensible under GATT/Technical Barriers to Trade (TBT) rules. Article XX of the GATT (general exceptions) authorises only measures to protect human, animal or plant life or health, not animal welfare. According to the Commission ‘in the absence of case law in this area it is not possible to claim that protection of animal welfare would be covered by the exception’.⁷⁵

The World Trade Organisation also outlaws *qualitative* restrictions on imports (the way in which a product has been tested has no physical manifestation in the cosmetic product itself). In addition to this, even within the EU the cosmetics directive states that results of conformity assessment procedures performed in other Member States must be accepted, even if these differ from those of other Members, provided they provide equivalent protection.

⁶⁹ used mainly to test uv filters

⁷⁰ validation studies for alternatives to the Draize test have been disappointing and ECVAM and COLIPA, the European Cosmetic, Toiletry and Perfumery Association, met in December 1996 to plan new initiatives

⁷¹ ECVAM has conducted a formal validation study for four skin corrosion tests - progress ‘should continue apace’ but not fast enough for the 1 January 1998 deadline

⁷² the European Cosmetic, Toiletry and Perfumery Association

⁷³ *1996 Report from the Commission on the development, validation and legal acceptance of alternative methods to animal experiments in the field of cosmetic products.* COM(97) 182 final 12 May 1997 pp.14-17

⁷⁴ DTI Explanatory Memorandum on European Community Document 8039/97 11 June 1997

⁷⁵ *1996 Report from the Commission on the development, validation and legal acceptance of alternative methods to animal experiments in the field of cosmetic products.* COM(97) 182 final 12 May 1997 p.13

V Leg hold traps for fur

A. The attempted EU ban

EU Council Regulation 3254/91 banned the use of leg hold traps to catch animals for fur in Member States. It also banned the import of furs of certain species from countries which had not effectively banned the leg hold trap, or where trapping methods were used which did not meet internationally agreed humane trapping standards. The leg hold trap, also called the gin trap or sometimes drowning trap has been illegal in the UK since 1958.

The ban was to have started on 1 January 1995, but first of all a one-year derogation was allowed for countries that had made 'sufficient progress towards developing alternative, humane methods of trapping' and then the Commission proposed a one-year suspension of the ban applicable to all countries.⁷⁶ Against the wishes of the UK (under the former Government), Sweden and the Netherlands, two further postponements were made.⁷⁷

The problem is that the fur-producing states have been opposing the ban on the grounds that it impedes free trade. They say trapping supports indigenous ethnic groups (Canada says 100,000 people are employed in its fur trade and generates ECU 400 million in economic activity). Canada in particular also maintains that it has been working towards the development of humane traps. 70% of the US and Canada's fur exports go to the EU⁷⁸ and Canada's exports alone to the EU are worth from ECU 20-65 million a year.⁷⁹ The fur producing nations have threatened to use the World Trade Organisation, since it is possible that any EU ban could be challenged under the GATT.

The Environment Committee of the European Parliament feels that in failing to implement the ban, the Commission is being undemocratic. There was an an overwhelming majority in the European Parliament which supported a total ban on imports of fur caught in leg hold traps.⁸⁰ This is a position also supported by the Council of Environment Ministers.⁸¹ The UK and nine other Member States voted against a Commission proposal to implement the

⁷⁶ EC Draft 4198/96 Proposal for Council Regulation amending REG(EEC)3254/91 prohibiting the use of leghold traps in the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards 12 January 1996

⁷⁷ *Europe Environment* no. 485 8 October 1996 p.4

⁷⁸ *Financial Times* 23 December 1996 p.2

⁷⁹ *Europe Environment* 24 July 1997 EU Ministers approve leg-hold trap accord p.24

⁸⁰ REG (EEC) 3254/91 EP resolution on leghold traps. 21 February 1997

⁸¹ *Europe Environment* 28 January 1997 p. 5 Leon Brittan accused of Machiavellian manoeuvre on leg-hold traps; Explanatory Memorandum on EC Legislation COM(97)251 FINAL Amended proposal for Council Decision concerning the signing and conclusion of an Agreement between the EC, Canada and Russia on International humane trapping standards 19 June 1997 DETR

ban with a list of exempted countries in January 1997.⁸² John Gummer took a particularly strong stance on this, writing to the Environment Commissioner, stating his 'serious concern' at events.⁸³

Because it is wary of causing a trade dispute the Commission sought a compromise deal (the 'framework agreement on fur trapping standards') with the fur producing countries of Canada and Russia.⁸⁴ The US was not party to the agreement.

B. What the Government has done

The European Environment Ministers and Parliament felt the Commission had made too many compromises in the Agreement, which would in effect ban only a limited number of the leg hold traps used in Canada. It could permit untested traps to be used and reduce the incentive for humane alternatives to be developed. The Labour Government therefore considered it unacceptable.⁸⁵

Nevertheless, the UK position was overturned by qualified majority at the General Affairs Council, *not* by the Environment Council, on 22nd July 1997 when the Foreign Ministers endorsed the Agreement and list of countries from which the import of furs into the European Union will be permitted. The Trade Commissioner, Sir Leon Brittan, said the agreement was a 'major step forward for animal welfare' since it would set minimum standards for fur trapping. The Eurogroup for Animal Welfare disagreed, claiming that.⁸⁶

This may be a painless political solution but under the terms of this Agreement trapped animals will continue to suffer immensely, while Canada and Russia can now claim that their trapping is humane. Traps which cause five minutes of pain should not be classified as humane.

Under the Agreement, Canada will immediately ban all kinds of steel-jawed leg hold traps on seven out of the twelve species under consideration (beaver, otter, marten, fisher, ermine, muskrat and badger). Their use on the remaining five species (coyote, wolf, bobcat, lynx and racoon) will be illegal from 31 March 2000. Russia will ban the traps by the end of 1999 and be given financial aid to do so.

⁸² Explanatory Memorandum on EC Legislation COM (97) 251 FINAL Amended proposal for Council Decision concerning the signing and conclusion of an Agreement between the EC, Canada and Russia on International humane trapping standards. 19 June 1997 Department of the Environment, Transport and the Regions

⁸³ *Financial Times* 23 December 1996 p.2 London urges hard line by EU on leghold traps

⁸⁴ *Agreement on international humane trapping standards between the European Community, Canada and the Russian Federation*. Council of Ministers. 1997. 15 July 1997

⁸⁵ Explanatory Memorandum on EC Legislation COM(97)251 FINAL Amended proposal for Council Decision concerning the signing and conclusion of an Agreement between the EC, Canada and Russia on International humane trapping standards 19 June 1997 DETR

⁸⁶ *Europe Environment* 24 July 1997 EU Ministers approve leg-hold trap accord p.24

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The UK's view on the turn of events was given by the Minister of State at the Foreign and Commonwealth Office, Doug Henderson:⁸⁷

The Council agreed, by a qualified majority, the framework agreement on humane trapping standards under which the import of furs into the European Union will be permitted. It also agreed a declaration that the Commission would do everything possible to accelerate the implementation of the agreement. We argued that the Community should not put its name to an agreement which continued to allow the use of leg hold traps, which we consider inhumane. The United Kingdom therefore voted against the framework agreement, with the support of Austria and Belgium. We also tabled a minutes statement explaining why we had voted against the proposal and pointing out that we consider the agreement to be an interim measure only and expect work to continue to ensure that the use of leghold traps is brought to an end as quickly as possible.

The United States was not part of the Agreement and in its first offer to the Commission in July had given no undertaking to ban any traps. The Commission's fear was that if a list of countries whose imports were banned were published, the US would be free to take the EU to the WTO.⁸⁸ Nevertheless, the Commission was still threatening to ban the import of furs from the US if agreement was not reached by 1 December 1997.⁸⁹ This prompted a new offer from the US at the end of November to phase out leg hold traps for muskrat and ermine in four years, and for other species within eight years.⁹⁰ Being even less stringent than the agreement with Canada, this was turned down by the Commission.

On the day on which the ban was due to take effect, the US made a last minute offer to phase out leg hold traps within six years. This was again less than the Canadian ban within five years, but the Commission accepted this, prompted, some reports felt, by the forthcoming US-UK six monthly summit.⁹¹ The US will ban the use of the steel-jawed leg hold traps for muskrats and ermine within four years and for other species (including mink, wolverine, skunks and foxes) within six years.⁹²

Again the use of some types of leg hold traps will be allowed indefinitely, a fact acknowledged by the Environment Minister Michael Meacher in a Department of the Environment, Transport and the Regions press release:⁹³

Environment Minister Michael Meacher expressed deep disappointment that the EU was on the point of dropping its policy of banning imports of US furs following a last-minute deal with the

⁸⁷ HC Deb 25 July 1997 c801-2W

⁸⁸ *Europe Environment* 24 July 1997 EU Ministers approve leg-hold trap accord p.24

⁸⁹ *Financial Times* 24 November 1997 p.4

⁹⁰ *Financial Times* 28 November 1997 p.5 US fur-trapping offer is rejected

⁹¹ *Financial Times* 1 December 1997 p.7 New offer from US on leg hold traps and 2 December 1997 p.5 EU relents over US fur ban

⁹² Department of the Environment, Transport and the Regions press release 486/Env 1 December 1997

Government criticises EU decision on leghold traps

⁹³ *ibid*

US. The deal will allow the US to use steel-jawed leghold traps for at least another six years, and some other leghold traps indefinitely.

Mr Meacher said:

"Once again, the UK supported the original ban and opposed the deal, which is too weak. However with just Belgium and Austria supporting us, the majority were in favour of the Commission's recommendation to accept the deal on offer from the US.

"I share the anger expressed by the RSPCA, IFAW and other animal welfare bodies about the outcome of the negotiations. We are all disappointed that the agreements reached with the three main fur producers will continue to allow some forms of leghold trap, although at least the cruellest type of old-fashioned "gin traps" should now be phased out world wide.

"Without the voluntary bodies' campaign, as well as the strong stance taken by the UK, Austria and Belgium within the European Union, I doubt whether even this could have been achieved."

The EU seems to be placing its faith in the hope that the international legal Agreement may be tightened in time and provide a forum for establishing humane trapping standards. This is because talks at the non-statutory International Standards Organisation on humane trapping standards have not progressed.⁹⁴

⁹⁴ *Europe Environment* 5 September 1997 p.6 Mixed reaction to EU/Canada/Russia fur trapping accord

VI Fur farming

A. Background

In the UK, a licence to keep mink is required under the *Mink (Keeping) Order 1992*⁹⁵ which is issued if MAFF is satisfied that the premises are secure enough to stop escapes. The order does not deal with welfare or animal health aspects of fur farming.⁹⁶

The keeping of fox species including the Arctic fox is not subject to control and there is no legislation covering minimum cage sizes for these animals or for mink.⁹⁷ The Farm Animal Welfare Council expressed its disapproval of fur farming in April 1989, but stopped short of calling for fur farming to be banned.⁹⁸

B. What the Government has done

When in Opposition Labour stated:⁹⁹

Conditions in fur farms restrict normal behaviour patterns. Animals currently used for fur production do not adapt to a caged existence. Mink and fox, for example, need to establish a territory which they then defend. They are solitary and aggressive in the wild, and suffer greatly when confined in large numbers close to others of the same species. Caging frustrates them, and can literally drive them mad. Labour is totally opposed to fur farming and will take action to end this cruel method as soon as possible.

Since taking office, Elliot Morley, now Minister for Fisheries and the Countryside, has confirmed that the Government does indeed want to see fur farming in the UK come to an end. In August 1997, MAFF issued a consultation paper on the Order.¹⁰⁰

Regarding mink, the proposal is that while the Mink Keeping Order will be renewed this year (to ensure that welfare standards are adhered to) the Ministry will not issue any new licences. This approach has been criticised by some animal welfare campaigners who see it as a back-

⁹⁵ SI 1992/3324

⁹⁶ MAFF News Release *Mink licensing review* 24 August 1992

⁹⁷ HC Deb 6 December 1993 c103w

⁹⁸ for example, HC Deb 8 December 1992 c814

⁹⁹ *New Labour New Britain New life for animals*. Labour Party December 1996

¹⁰⁰ *Fur farming: review of the Mink Keeping Order 1992* Deposited paper 3/5313 11 August 1997

down from an immediate ban, and allege that the reason is that the Government is worried about having to pay compensation if existing licences are cancelled.¹⁰¹

However, licences run for twelve months each – 16 farms are currently licensed and 16 licences are due to expire during the course of the next twelve months according to a recent PQ. The Government has also undertaken to perform, through the Farming and Rural Conservation Agency, an Executive Agency of MAFF, an unannounced inspection of mink farms once a year in addition to the present annual check when a licence is issued.¹⁰²

Regarding Arctic fox, the feeling now seems to be that an Order should ban its keeping.¹⁰³ This has not pleased animal welfare campaigners either, because they claim that the move is purely academic, since no Arctic fox farms exist in the UK.¹⁰⁴ The latest statement suggests that the Government is still considering the best way to end fur farming.¹⁰⁵

Mr. Morley: We have already put in place improved arrangements for the monitoring of compliance with existing national legislation protecting the welfare of animals farmed for fur. Internationally we are participating actively in the review of the Council of Europe's recommendation with the aim of ensuring adoption of the highest possible standards consistent with scientific evidence and expert opinion. Following completion of our recent consultation exercise, we are considering how best to take forward our proposals for ending fur farming in the United Kingdom as soon as practicable.

The reference to the Council of Europe concerns its moves towards setting international standards for the welfare of farmed mink and fox. The Standing Committee of the European Convention on the Protection of Animals Kept for Farming Purposes¹⁰⁶ is reviewing its 1991 recommendation¹⁰⁷ on the welfare of animals farmed for fur.¹⁰⁸ The former Government had said that any improvement in the welfare of farmed mink and fox would have had to be sought at a European level.¹⁰⁹

While this might improve conditions in other European countries, any standards likely to be set in Europe would not satisfy the standards demanded by animal welfare campaigners in the UK. There has been no statement from the Government yet as to whether it will therefore oppose any Convention in the Council of Europe or seek to use it to set much higher welfare standards for

¹⁰¹ *Observer* 26 October 1997 p.30 Labour's U-turn on mink stinks

¹⁰² HC Deb 12 December 1997 c715w

¹⁰³ *Fur farming: review of the Mink Keeping Order 1992* Dep 3/5313 11 August 1997

¹⁰⁴ *Observer* 26 October 1997 p.30 Labour's U-turn on mink stinks

¹⁰⁵ HC Deb 4 November 1997 c137w

¹⁰⁶ European Convention for the Protection of Animals Kept for Farming Purposes: European Treaty Series, No 87: opened for signature on 10 March 1976. Council of Europe

¹⁰⁷ Protocol of amendment to the European Convention for the Protection of Animals kept for Farming Purposes. European Treaty Series 145. Council of Europe 1992

¹⁰⁸ HC Deb 29 October 1997 c820w

¹⁰⁹ HC Deb 22 November 1995 c196w

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animals kept in other countries. However, it has made its intentions clear so far as the UK is concerned.

The *Mink Keeping (Amendment) Regulations 1997*¹¹⁰ were made in November 1997, but these simply raise the fees for licences under the legislation.

¹¹⁰ SI 1997/2750