



EXOTIC (NON-NATIVE, WILD ANIMAL) PET OWNERSHIP

Scottish Animal Welfare Commission
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Written evidence submitted by the UK Centre for Animal Law (A-Law)

Who we are

1. The UK Centre for Animal Law (A-Law) exists to promote knowledge and education about the law relating to animal protection, and the more effective enforcement of legislation relating to animals. We seek to be a source of objective, independent legal analysis on animal protection law issues. Whilst legal topics are often complex, it is our job to explain them as clearly as possible, so as to increase the effectiveness of UK animal protection organisations collectively, and to promote informed public debate. We are registered as a charity in England and Wales and are politically neutral.
2. In addition to publishing legal analyses to inform public debates, we provide animal protection organisations with access to high quality legal advice to assist their work. We also promote the teaching of animal law in UK universities.
3. A-Law is led by lawyers – predominantly practising solicitors and barristers – and works closely with legal academics. This present submission is the product of a working group made up of a barrister, a practising solicitor, an attorney (U.S. qualified), a law student, and A-Law’s (non practicing) barrister chairperson.
4. For further information about us, or to access our online resources, please see our website: www.alaw.org.uk

Executive summary

5. As a legal organisation, our expertise lies in the legal and regulatory framework which governs our relationship with animals; thus we have confined our comments to questions 6 - 9.
6. We draw upon our knowledge of the licensing framework under which animals are bought, sold, and kept across the UK. We consider the additional legal restrictions that apply to the keeping of ‘dangerous’ wild animals and the approach taken in other countries also grappling with similar issues around the domestic ownership of wild, non-native animals (hereinafter referred to as ‘exotic species’).

7. We suggest that a ban on the trade of exotic species should be given consideration in light of public health, environmental, and animal welfare concerns posed by the trade. However, we note that a relatively recent attempt to ban such trade in Norway did not prove effective.
8. At the other end of the spectrum, there are concerns about permitting unregulated trade, subject only to the Dangerous Wild Animals Act 1976 which is primarily aimed at protecting the public from animals that may pose a safety risk, although it does require local authorities who issue licences to be satisfied that 'reasonable precautions will be taken at all such times to prevent and control the spread of infectious diseases.'
9. We suggest that if trade in exotic species is permitted, it should be subject to a reformed and enhanced licensing regime covering the trade in exotic animals, supported by a 'positive list' system for the keeping of pets, which enables public identification of those species whose needs can be met in captivity and who do not present risk of zoonotic disease or risk driving species extinction. Such an approach has been adopted in other jurisdictions and proved successful.

Policy objectives

10. Animals who are owned retain the legal status of property. Historically, property rights have been a paramount consideration. Until Martin's Law of 1822, the state had no power to interfere with the property rights of an owner over his animal, even in cases of deliberate and unnecessary abuse. Today, significant inroads have been made into ownership rights over an animal, and owners are prohibited from causing unnecessary suffering and are subject to welfare obligations towards their animal.
11. However, the ownership and trade in animals is not an unqualified right, and it may legitimately be balanced against other policy considerations. In particular, in the case of ownership of exotic species, there are powerful animal welfare considerations to be weighed in the balance, as well as biodiversity loss, species extinction, danger to public safety, and zoonotic disease risks. It is important that the UK is not a driver of species loss on other continents.
12. A recent paper¹ acknowledges that "*the exotic pet trade can deliver societal and economic benefits by providing companionship, pleasure and livelihood opportunities*". We cannot provide insight into the economic benefits in the UK, which are better addressed by others. We suggest, however, that such analysis will consider the economic benefits alongside the costs to society, including, for example, increased costs to rescues and sanctuaries and medical costs associated with disease and wounds as a consequence of owning and handling exotic species.

¹ Elwin, A.; Green, J.; D'Cruze, N. On the Record: An Analysis of Exotic Pet Licences in the UK. *Animals* 2020, 10, 2373

13. We also express caution about drawing an inference that legal wildlife trade is an important source of income to people in countries in which the animals are taken - which are often developing nations. We note that one study² in Madagascar concluded that the wildlife trade did provide an income to some households as part of a diverse livelihood strategy, but “*wildlife trapping was sporadic and perceived to be unreliable and risky*”. Thus, whilst greater restriction on exotic pet trade and ownership may have some impact on these communities, we suggest policy makers should be cautious about inferring that communities are heavily reliant upon the income from it.

Legislative framework

14. In brief, the Animal Health and Welfare (Scotland) Act 2006 provides a general prohibition against causing unnecessary suffering to animals falling within scope of the Act and imposes a duty upon persons responsible for an animal to meet its welfare needs.

15. In Scotland and Wales, local authorities operate a licensing system under the Pet Animals Act 1951, as amended. The licensing system applies to buyers and sellers of animals who operate a business.

16. The equivalent to the Animal Health and Welfare (Scotland) Act 2006 in England and Wales is the Animal Welfare Act 2006.

17. In England, under the auspices of the Animal Welfare Act, the commercial sale of animals as pets is a licensable activity under new licensing regulations, which replace the licensing scheme operating under the Pet Animals Act 1951, as amended, for the commercial sale of animals.

18. In England, the 2018 regulations aim to strengthen animal welfare and accountability through a number of key features, including:

- a requirement that licensed sellers of pets include the seller’s licence number, country of origin, and country of residence of the pet in any advert for sale;
- the introduction of a star rating system indicating the risk of a business in meeting the standards, assessing traders on record keeping and animal welfare standards;
- adoption of specific guidance imposing animal welfare conditions related to specific taxa;
- changes to the inspection regime, including the timing of inspections and life cycle of licences that may be granted.

² Robinson, Janine & Griffiths, Richard & Fraser, Iain & Raharimalala, Jessica & Roberts, David & St. John, Freya. (2018). Supplying the wildlife trade as a livelihood strategy in a biodiversity hotspot. *Ecology and Society*. 23. 10.5751/ES-09821-230113.

19. Additionally, in Scotland, England and Wales a separate licence is required for keeping certain animals listed in a schedule to the Dangerous Wild Animals' Act 1976. The act aims to reduce the risk to public safety presented by wild animals considered dangerous if they escape from captivity. The law requires that those animals are only kept under a licence with specifications about where and how such animals should be kept.
20. The trade in species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is restricted by separate export/import legislation; however, there is no restriction on their sale to the general public once within the country of destination. This lack of oversight poses a particular issue when self-sustaining populations of endangered species are established and continue to go unregulated within country borders. In the case of the EU, there is no restriction on sale to the general public within the common market.
21. Finally, there is national and international legislation which aims to prevent the introduction and spread of invasive alien species³ (i.e. 'species of Union concern whose adverse impacts are such that they require coordinated action across the EU') by placing 'strict restrictions on these species so they cannot be imported, kept, bred, transported, sold, used or exchanged, allowed to reproduce, or be grown, cultivated, or released into the environment.'

A total ban on keeping non-domesticated, non-native animals.

22. The ethics of keeping non-domesticated, non-native species as companions in people's homes must be given serious consideration. For some species, it is questionable whether their needs are ever capable of being met in a domestic setting. To a large extent, it is local authorities who have responsibility for the regulation of this industry through the administration and enforcement of the licensing system. Given the current strain on local authority resources, it is right to ask if society can afford to implement the necessary measures to ensure the protection of the species' welfare needs, even in the most basic sense.
23. The Elwin paper notes that exotic pets adapted to a specific environment in the wild 'retain complex social, physical and behavioural needs inherent in wild animals' and the authors refer to the substantial care and specialist knowledge required to maintain a basic level of welfare in captivity. Research into welfare issues presented by the keeping of exotic species highlights the difficulties in maintaining a good level of welfare when keeping these animals domestically, with one paper setting out, "... *conditions for captive exotic animals (e.g., amphibians and reptiles) have been described as "depauperate," and even in the best zoos as "controlled deprivation" ... The prospects for*

³ For example SI 2019 No 527 - The Invasive Alien Species (Enforcement and Permitting) Order 2019 which implements EU Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species. The order applies to the United Kingdom. Part 6 (civil sanctions) however does not apply to Scotland or Northern Ireland.

*exotic species in domestic environments without the relative benefits of professional management and facilities are highly concerning, and several studies demonstrate that poor husbandry is commonplace—even for commonly traded and kept species*⁴.

24. Other policy considerations are high on the priority list. The risk of zoonotic disease has been brought into sharp focus by the covid-19 pandemic and an unregulated, undetermined trade in wild, non-native animals is unthinkable, in a way that was not previously appreciated⁵. Against the backdrop of the pandemic, the lack of information about the scale of the trade and diversity of species (see below) is concerning⁶. During the current pandemic, wildlife trade did not lessen due to the zoonotic concerns of the disease's origin but simply moved online, which is disconcerting for many reasons including the risk of future zoonotic diseases⁷. The quantification of the risk of zoonotic disease transmission from an unregulated market in wild, non-native animals is beyond the scope of this paper, but, we suggest, deserves serious consideration and a species-by-species risk assessment, if trade is allowed to continue.
25. Another relevant policy concern is the risk that trade in Scotland drives species extinction overseas and that it may contribute to the loss of animals taken from the wild for the purposes of supply to the pet trade⁸.
26. Furthermore, the risk of exotic species escaping and presenting a risk to local species or biodiversity is also a legitimate consideration⁹. Intentional release or abandonment of exotic species, by owners keeping them as pets or by actors at any stage in the process of trade, poses the same threats and is considered a 'growing problem.'¹⁰
27. Whilst we believe there are good welfare, ethical, and public health and safety reasons for imposing a ban on the trade in exotic pets, we would sound one note of caution about imposing a complete ban. In 1976, Norway introduced a new law fully prohibiting the trading and keeping of exotic pets¹¹. However, the practice reportedly continued illegally

⁴ Warwick, C.; Arena, P.; Steedman, C.; Jessop, M.; Pilny, A.; Nicholas, E. Exotic pet suitability: Understanding some problems and using a labeling system to aid animal welfare, environment, and consumer protection. 2018. *Journal of Veterinary Behavior* Vol: 26, p. 17-26 (at p. 19). 2018. Available online.

⁵ Loeb, J. Covid-19 wake-up call for exotic pet trade. 2020. *Veterinary Record* 186, 432. (Available online at <https://veterinaryrecord.bmj.com/content/186/14/432.full>)

⁶ Toland, E. et al; Turning Negatives into Positives for Pet Trading and Keeping: A Review of Positive Lists. *Animals*, Vol. 10, Issue 12, 2020, at p. 5. Available online.

⁷ Cross, Daniel T. "The online wildlife trade carries the risk of another pandemic." *Sustainability Times*. Dec. 29, 2020. Available at: <https://www.sustainability-times.com/environmental-protection/the-online-wildlife-trade-carries-the-risk-of-another-pandemic/>

⁸ *ibid*

⁹ *ibid*

¹⁰ Maceda-Veiga et al., What's next? The release of exotic pets continues virtually unabated 7 years after enforcement of new legislation for managing invasive species. *Biological Invasions* 21 (1), September 2019.

¹¹ Warwick, C.; Arena, P.; Steedman, C. Reptiles and Amphibians as Pets & the Norwegian Positive List Proposal. Assessment & Opinion. 2009. Available online: <https://www.apa.org.uk/pdfs/norwegian-reptile-ban-report.pdf>

on such a scale that authorities could not fight it.¹² Acknowledging that authorities could not exercise any control over a trade which had become entirely illegal, the government subsequently introduced a positive list system.¹³ The decision was met with expected controversy, as voices from the welfare sector pointed out that the breaking of a law is no valid reason for legalisation of that issue, and that the solution when “some individuals may flout the law is a simple matter of improving enforcement of the ban.”¹⁴

28. If a ban is being given consideration, the failure of the Norwegian endeavour should not be used as a reason not to pursue the issue, but rather we believe as a lesson and a basis on which to consider how a ban could be implemented effectively. We would also caution citing this example as a reason not to pursue a ban until further research is undertaken to understand the reasons why it was unsuccessful and whether those reasons are likely to prevail in Scotland 40 years after the implementation of the Norwegian ban. The effects of Norway’s modern positive regulation will also provide important guidance on the effects of stricter, shorter lists on curbing illegal trade as compared with blanket bans.

Reformed licensing regime

29. If the trade in exotic pets is allowed to continue, we suggest that it operate under an enforceable and properly enforced licensing regime. We suggest that any reforms to the licensing regime should ensure that all trade in exotic animals is encapsulated and that information in licences should enable authorities to monitor and assess any risks arising.
30. We further suggest that the government introduce a ‘positive list’ system for people keeping exotic species. We suggest a mechanism below, whereby this could be incorporated into a separate licensing regime for people who keep these species.
31. In relation to the licensing of purchasers and sellers of animals in the course of a business, reforms were introduced in England by the 2018 regulations, which may go some way to addressing the challenges posed by keeping ‘exotic’ animals, in Scotland.
32. The key reforms include (i) the ability of local authorities to issue licences at any point in the year, to help to spread the workload across the year; (ii) the introduction of a risk-based star rating system; and (iii) flexibility to issue licences of 1, 2 or 3 years, with longer licences going to high-performing, low-risk businesses, reducing burden on business performing well and incentivising best practice, leaving more resources available to tackle poor performers.
33. However, while these are important reforms, so far as the sale of exotic animals is concerned, these are not a complete answer. There has been long-standing concern

¹² Toland, *supra*, at p. 23.

¹³ Warwick, *supra*, at p. 29.

¹⁴ *Ibid*

expressed¹⁵ that regulation of this industry falls to local authorities who do not have the funding, or in a related way, the expertise to carry out the activities and supervision necessary to prevent welfare breaches.

34. Furthermore, a significant amount of trade may fall under the radar of the licensing authorities, if the only licensable activities are those carried out in the course of a business.
35. For example, Schedule 3 to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (SI 2018/486) contains “relevant specific conditions” that a local authority must include as conditions of a licence granted for the “specified activity” described in paragraph 2 of Schedule 1, i.e. “Selling animals as pets (or with a view to their being later resold as pets) in the course of a business including keeping animals in the course of a business with a view to their being so sold or resold.”
36. Where a holder of a licence breaches one of those conditions, then the local authority may suspend or revoke the licence in accordance with regs.15 & 16. Breach of a licence condition may also constitute an offence: see reg.20.
37. In many cases, however, the seller will not have obtained a licence from their local authority. Many exotic animal sellers consider themselves to be “hobbyists” and do not apply for a licence.
38. In these cases, it will be necessary to consider whether the seller is carrying out a “specified activity” described in paragraph 2 of Schedule 1, i.e. “Selling animals as pets (or with a view to their being later resold as pets) in the course of a business including keeping animals in the course of a business with a view to their being so sold or resold.”
39. If the seller is carrying out such activity, then his doing so without a licence is an offence under section 13 of the Animal Welfare Act 2006.
40. So-called ‘hobbyist breeders’ of exotic animals typically rely on two arguments to seek to justify their not applying for a licence:
41. The main one is that they are simply selling off “surplus stock” as an adjunct to their hobby, and that their selling of animals is therefore not being done “in the course of a business”. Unfortunately, the 2018 Regulations do not provide a clear test for determining whether the selling of animals is being done in the course of a business”; instead, para. 1 of Schedule 2 to the 2018 Regulations sets out, under the heading “Business Test”, various circumstances which it is relevant to take into account when deciding whether someone’s activities of selling animals as pets is being done “in the course of a business”.
42. The other argument sometimes advanced is that the exotic animals are not “pets” (as defined in reg.2) but are intended for breeding.

¹⁵ Blue Cross (2016) Unpicking the Knots: A case for a more cohesive approach to pet welfare legislation. Available online. p30,35, 37

43. Local authorities find it very difficult to take enforcement action against unlicensed sellers of exotic animals because of these complexities. In order to obtain a criminal conviction under section 13 of the Animal Welfare Act, the local authority would have to prove that the seller was acting “in the course of a business”. Such prosecutions can be quite costly to bring. Local authorities often have little resources set aside for dealing with enforcement of animal welfare legislation, and they may also lack the in-house expertise to investigate such matters effectively. For example, whilst some local authorities employ an “animal welfare officer”, others do not.
44. The academic literature also captures problems with enforcement. The Elwin paper¹⁶ highlights a lack of information collected through the licensing regimes across the U.K. about the scale of trade and diversity of animals involved. The study was based on information received from local authorities between May and September 2019 from Freedom of Information requests about wild vertebrate animal listings (excluding ornamental fish) across the U.K. The paper cites that of the 95 local authorities who responded to FOI requests, 6.3% were in Scotland.
45. The findings indicate a lack of sufficient, detailed information contained in the schedules to many pet shop licences. The paper cites a lack of information about the specific type and number of animals permitted for sale, e.g. ‘various birds’ or ‘selection of snakes’ with taxonomic information missing or listed without stating a maximum number of animals for sale. This was the case even in England, where the 2018 regulations state that no animal other than the type of animal specified in the licence may be sold and require that the licence must state the numbers for each species or species group that may be kept on premises.
46. The authors conclude that this lack of information makes enforcement of the licensing requirements difficult. For example, if local authority inspectors do not know the specific type and number of animals permitted, it will be impossible to identify the legality of the species or the type of training required for inspection and to ‘make meaningful assessments of the risk to human health and the welfare needs of the animals.’ Similarly, it will be difficult to determine if an animal is a ‘dangerous’ wild animal or non-invasive species that could pose a risk to biodiversity or indigenous species if it escaped from captivity.
47. Furthermore, in England, which operates a star rating system under the new regulations, the authors found that 9.5% of pet traders in England had been given a one star rating, indicating ‘minor failings’ which equate to a failure to meet the minimum conditions set out in the 2018 regulations for record keeping or animal welfare.
48. These problems are potentially compounded by the lack of a statutory requirement for local authorities to enforce animal welfare legislation. Thus, whilst local authorities enforce the licensing regime, there is no requirement on them when doing so to uphold the provisions of animal welfare legislation. This highlights a further problem: the

¹⁶ [1] Elwin.

legislation above operates largely independently and often overseen by different bodies which can result in a lack of cohesion in the implementation¹⁷.

49. A wholesale reform of the licensing system is beyond the scope of this paper, but it is important to note the positive reforms in the 2018 regulations in England, but also its limitations.

Online sales and advertising

50. Another challenge faced by regulators is the growth in online trade. Differences in regulatory rules within the U.K. relating to online sales inevitably create enforcement difficulties, since exotic animals can easily be traded between parts of the U.K. and between the U.K. and Ireland. Any new rules concerning the exotic animal trade in Scotland must consider how such rules may potentially be undermined by trade between the aforementioned routes as well as by virtue of the UK Internal Market Act 2020. Furthermore, in the interests of animal welfare, SAWC may wish to consider how Scotland might be contributing to the undermining of relevant rules in the 2018 Regulations in England if it does not adopt similar rules concerning online sales and advertising of exotic animals, with regard to the Internal Market Act. It is essential that any amendments to the licensing regime address the risks posed by unregulated or poorly enforced trade across online platforms.
51. There has recently been a move towards mandating that online platforms require sellers to publish licence registration numbers and information about good husbandry. An example of this type of system is in Ireland regarding the sale of dogs online - where commercial sellers are required to publish their registration details as well as the microchip numbers of the dogs being sold¹⁸.
52. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 contain specific provisions tightening up advertising standards, as below:
- ‘(3) Any advertisement for the sale of an animal must—
- (a) include the number of the licence holder’s licence,
 - (b) specify the local authority that issued the licence,
 - (c) include a recognisable photograph of the animal being advertised,
 - (d) (except in the case of fish) display the age of the animal being advertised,
 - (e) state the country of residence of the animal from which it is being sold, and

¹⁷ Blue Cross & Born Free Foundation (2016) One Click Away. Available online. p13

¹⁸ Animal Health and Welfare (Sale or supply of pet animals) Regulations 2019 (No. 681 of 2019)

(f) state the country of origin of the animal.’

53. Such a system could work in conjunction with a traffic light system for the licensing of sellers (which should be publicly available). The provision of licensing details would allow purchasers the opportunity to research the seller and access their rating. Where a seller fails to provide the requisite details, online platforms could prevent the ads being published.

Pet fairs

54. A particular concern across the U.K. has been exotic animal fairs at which large numbers of exotic animals are offered for sale by multiple different sellers.. Such events are difficult to regulate effectively, and could provide major opportunities for zoonotic diseases to spread between exotic animal species and potentially beyond. Infection control is hard to implement at such events, given their temporary nature, and the presence of large numbers of ‘mini-businesses’ operated by hobbyist breeders, some of whom may argue they are not subject to any licensing legislation at their home premises where they are breeding animals. Such temporary events also provide no physical point of sale to which the purchasers may return subsequently if their animal is unwell or if they need advice/support.
55. Fortunately local authorities that wish to stop such events from taking place have historically been able to rely on the prohibition in section 2 of the Pet Animals Act 1951 on “selling animals as pets in a street or public place, or from a stall or barrow in a market”. The Animal Health and Welfare (Scotland) Act 2006 includes provision for section 2 of the 1951 Act to cease to have effect in Scotland, but that provision of the 2006 Act has not so far been brought into force: therefore section 2 of the 1951 Act currently remains in force in Scotland (as it does in England). It is important that this remains the position, and that section 2 remains the law. That section creates a criminal offence, and is an effective means by which action may be taken to stop exotic animal markets without having to rely on licensing legislation (which is intrinsically difficult to enforce in relation to such events, since traders present at the event will have travelled from multiple locations across the U.K., and many of them will not have applied for licences and therefore will not be subject to any licence conditions).

Statutory positive list systems.

56. A reformed licensing system could be supported by the adoption of positive lists for the keeping of exotic species.
57. Since 1 October 2009, Belgium has implemented a positive list system for 42 types of mammal species permitted for private keeping. The list was introduced earlier but legally challenged on grounds that it hindered trade between EU member states; the ECJ ruled

that the list did not violate free trade regulations so long as the list was based on objective, non-discriminatory criteria and that procedures were in place for requesting inclusion of further species. A species can be added if sufficient data shows the species can be kept without the need for specific knowledge in caring for it and without jeopardizing the welfare of the animal.

58. Belgium's assessment criteria includes findings that the species: "must be easy to keep in terms of its basic physiological, ethological, and ecological needs; must not present an overt risk of becoming invasive in the natural environment; must not pose a disproportionate risk to human health; must have reliable husbandry guidance available."¹⁹ In the event of inconclusive evidence on these criteria, the benefit of the doubt is in favor of the animal not being listed - a position that any UK law should take.
59. In 2016, Eurogroup for Animals conducted a study of the effectiveness of Belgium's regulation. Their data showed that the positive list had reduced exotic mammal trade overall, and online trade in illegal species was low. Notably, the Belgian government widely publicized every confiscation of a non-listed species, leading to increased public knowledge and familiarity with the list.
60. Data on the effects of negative lists versus positive lists on exotic trade and pet-keeping (mainly comparing jurisdictions with Belgium) show evidence in favor of positive lists when comparing the efficacy of the two systems on reducing illegal trade and controlling trade and keeping in general. The exotic pet industry tends to favour negative lists over positive lists, likely because negative lists are less restrictive..²⁰
61. The key consideration in creating a positive list will be the scientific methodology behind a species' inclusion on the list. Any undomesticated animal being kept as a domestic pet is arguably a de facto welfare violation, and so any allowance of exotic pets should keep the animal's welfare - and the ability of the average pet owner to address the animal's welfare - at the forefront of decision-making. "The overriding principle is that species included on positive lists should be those that, according to the latest scientific evidence, can be competently kept by an average member of the public in an ordinary domestic setting, and consistent with modern understanding of animal welfare, environmental, and public health and safety considerations."²¹ Also, there is less information on exotic pet keeping in the public sphere for owners to easily find; they can't depend on common knowledge as they can with traditional domesticated pets. Any exotic animal requiring highly specified care that would be at all difficult for the average person to provide should be stricken from consideration for a positive list.
62. A positive list would reduce the number of species that could be kept and is probably likely to reduce the regulatory burden. It will be easier to regulate the keeping of these

¹⁹ Toland et al., *supra*; Di Silvestre, I.; van der Hoeven, S. The Implementation of the Positive List for Mammal Pets in Belgium: A Success Story; Eurogroup for Animals: Brussels, Belgium, 2016.

²⁰ The Pet Industry Joint Advisory Council (PIJAC) Canada. Responsible Pet Ownership Review. 2013. Available online: <http://clkapps.winnipeg.ca/DMIS/ViewPdf.asp?SectionId=335039>

²¹ Toland et al., *supra*.

species and the research into which species are suitable to be kept could feed into any welfare guides. Research indicates that this is likely to assist consumers in selecting appropriate pets which in turn is more likely to have a beneficial impact of the welfare of the animal²².

63. Positive lists benefit from clarity and transparency. Citizens in jurisdictions enacting such lists should be able to easily determine which animals may be kept as pets. In contrast to negative lists, which list species that are banned from being kept, positive lists contain more complete information and help constituents make more informed decisions as they can clearly see which species have been specifically approved. Negative lists, on the other hand, instruct only on which species may not be kept, risking grey areas and confusion regarding species which may not have been properly considered but which will be seen as 'approved' simply because they were not included.
64. Positive lists are better for animal welfare than negative lists, because species have been specifically considered for domestic keeping, as opposed to being simply not considered inappropriate. The proactive decision connotes consideration and attention, whereas pets allowed in negative list situations essentially come from a void of information. When the choice is between positive and negative lists, the better choice is clearly for positive lists, which avoid the chance of problematic species being permitted through loopholes, a void of information, or incomplete legislative consideration. Even seemingly exhaustive negative lists could not cover every potential exotic species that could enter trade, and so they will never be as complete as positive lists.
65. Conversely, negative lists tend to be reactionary, formed in response to existing issues or knowledge of certain species in trade. Negative lists need to be continually updated in a slow and burdensome process as new species are observed being kept as pets, the conservation status of a species becomes critical, or incidents occur with species threatening human and animal health and the environment. For these reasons, negative lists will always lag behind new trends in exotic pet keeping and shifts in the trade, and create a false sense of acceptability regarding the safety and welfare of keeping certain species²³.
66. A further consideration in favour of the 'positive list' approach to regulating the keeping of exotic animals in Scotland is that it would enable Scotland to regulate the *keeping* of animals within its territory, whereas it is harder to see how Scotland can unilaterally regulate the *trade* in exotic animals in a way that is effective, having regard to the legal and territorial limits of Scottish legislation.

²² Warwick, C.; Arena, P.; Steedman, C.; Jessop, M.; Pilny, A.; Nicholas, E. Exotic pet suitability: Understanding some problems and using a labeling system to aid animal welfare, environment, and consumer protection. 2018. Journal of Veterinary Behavior Vol: 26, Page: 17-26
2018. Available online.

²³ <https://www.prijatelj-zivotinja.hr/index.en.php?id=1759>

How could a positive list system work within the licensing framework?

67. A mechanism we have considered for the operation of a positive list system would be the introduction of 'general licences' for animals on the positive list. Keeping animals as pets without a licence would be prohibited, but a general licence would be granted for anyone keeping species on the positive list.
68. This approach would enable rescue centres and other persons, who might have good reasons for keeping unlisted animals and could demonstrate the expertise to be able to do so, to keep them. However, such persons would need to apply for an individual licence as they would not be covered by the general licence. The licensing system could be fairly 'light touch', depending on the particular species which the person wanted to keep, and the extent of any risks posed (e.g. for some species there may be specific welfare considerations which could be addressed by certain licence conditions, but no major zoonotic disease risks; whereas there may be high disease risks for other species).
69. Such a system would not involve a major incursion on personal freedoms. Someone who is a knowledgeable enthusiast would still be able to keep exotics, having gone to the effort of applying for a licence for the relevant species and purchasing appropriate animal housing etc. But the requirement to obtain an individual licence would deter impulse purchases of such species, and steer prospective purchasers towards pets that are easier to care for without specialist knowledge or support.
70. It is possible that such an approach would require an amendment to primary legislation, since one of the key rationales for the proposals is the protection of public health, whereas the Animal Health and Welfare (Scotland) Act 2006 is concerned solely with animal health and welfare, and it may be difficult to create and operate a licensing system under the Act in its present form which seeks also to address potential risks to human health. However, this is a technical issue which will no doubt be explored as necessary at the appropriate time.

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APPENDIX

Countries operating 'positive list' systems (this is not necessarily an exhaustive list)

Belgium.

The Belgian Positive list entered into force on 1 October 2009, 7 years after the start of the process, containing 42 mammal species. It is a flexible instrument, meaning that anyone may request to have a species added. However, the application must show that there is sufficient scientific data available to show that the species in question can be kept by any person without the need for specific knowledge and without jeopardizing the welfare of the animal.

(<https://www.aap.nl/en/blog/blog-10-years-positive-list-exotic-pets-belgium>)

Luxembourg:

Luxembourg's list of 30 mammals is based on Belgium's law. It was based on the criteria that approved animals must not pose a risk to public safety and must be able to be properly cared for. (Grand-Duché de Luxembourg. Règlement Grand-Ducal du 16 Novembre 2018 Fixant les Listes Des Animaux Autorisés et les Modalités Particulières des Demandes D'autorisation de Détention. 2018. Available online: <http://legilux.public.lu/eli/etat/leg/rgd/2018/11/16/a1055/jo>)

Netherlands:

The positive list for mammals was enacted in the Netherlands in 2015 but was challenged on the grounds that it was not prepared with due diligence. New regulations based on different methodology appear to be close to finalization.

(<https://www.rvo.nl/onderwerpen/agrarisch-ondernemen/dieren/huisdieren-houden-en-fokken/huisdierenlijst>;

<https://www.eurogroupforanimals.org/news/adoption-dutch-positive-list-mammal-pets-delayed>)

Malta:

Malta's positive list for mammals, birds, reptiles, and aquatic species only applies to the sale of these animals through pet shops and does not apply to pet keeping.

Croatia:

Croatia's positive list falls under its Nature Protection Act regarding forestry and hunting purposes, and is thus we believe is not specific to pet trade or keeping.

Norway:

Norway introduced a positive list of 19 reptile species in 2017, replacing their previous wholesale ban on reptile keeping. These regulations require traders and keepers to have documentation stating that the animals are second generation captive-bred (ostensibly to avoid wild capture for subsequent trade and sale). (Lovdata Foundation. Forskrift om Forbud Mot å Innføre, Omsette og Holde Eksotiske dyr. Available online:

<https://lovdata.no/dokument/SF/forskrift/2017-05-11-597>)

Norway has a positive list for mammals that restricts the sale and private ownership of mammals to traditionally kept species. The Norwegian government's strict guidelines and adherence to a wide range of welfare issues when deciding their list of acceptable exotics is noted. For example, the government excluded species that are typically wild-caught, demonstrating consideration of welfare concerns and not just public safety.

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