

UK CENTRE FOR ANIMAL LAW (A-LAW)

WILDLIFE AND COMPANION ANIMALS SPECIAL INTEREST GROUPS

OVERVIEW OF THE LEGAL REGIME RELATING TO PRIMATES AS PETS IN THE
UK AND RESPONSES TO THE DEFRA CONSULTATION

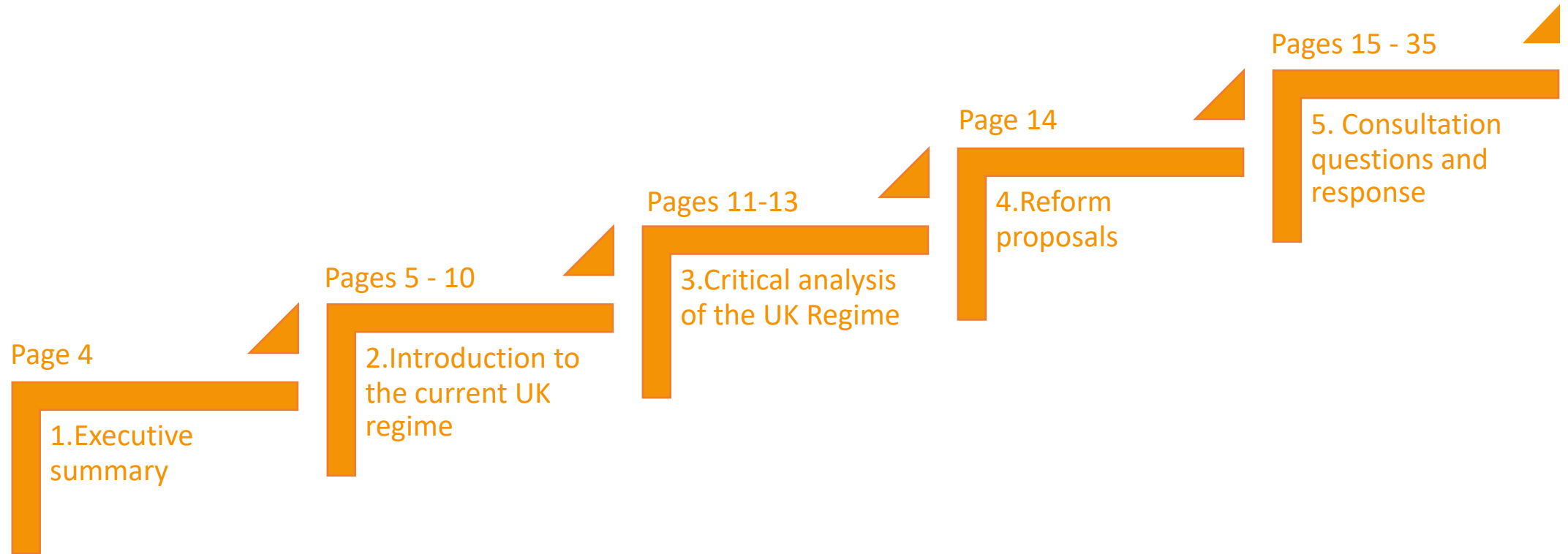
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ALAW – Primates in the United Kingdom - Contents



ALAW – Primates in the United Kingdom – Executive summary

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- 1 The UK's current piecemeal regime for privately kept primates is insufficient to ensure primates' welfare and is in severe need of reform and consolidation.
 - 2 The proposed blanket prohibition on domestic keeping and commercial trade of primates is welcomed but care is required to ensure it properly regulates and deters primate ownership.
 - 3 The proposed prohibition should be supported by proportionate penalties for infringement, including civil and criminal penalties, in order to properly deter abuse of primates.
 - 4 Enforcement agencies need to be adequately trained and resourced in order for the proposed regime to be practically effective.
 - 5 Given that the complex welfare needs of primates cannot be met by domestic conditions, all aspects of the new regime should be precautionate in upholding the highest possible welfare standards.

Primates in the United Kingdom – Introduction to the current UK regime

The UK's current regime is not codified within a single piece of legislation and instead consists of a patchwork of primary legislation, regulations and codes

1. No cohesive codified regime

- The UK does *not* prohibit the keeping of primates as pets by private individuals. Moreover the UK lacks a cohesive codified regime to determine the rules imposed on private individuals who seek to keep primates as "domesticated" animals.

2. Licensing for ownership of certain primate species – Dangerous Wild Animals Act 1976 ("DWAA")

- Ownership of certain species of primates is restricted by the DWAA, with section 1(1) DWAA meaning it's a criminal offence to keep a "*dangerous wild animal*" unless licensed pursuant to the DWAA. Under section 7(4), species constituting dangerous wild animals are set out in the schedule to the DWAA, which includes the Great Apes (Gorilla/ chimpanzee/ bono/ orangutan); Gibbons and New world monkeys (i.e. capuchin/ howler/uacari/ spider and wooly monkeys) (together the "**DWAA Primates**").
- Private individuals therefore need to attain a license from their local council's environmental health officer ("**EHO**") in order to keep a DWAA Primate. Whilst sections 1(2) and (3) DWAA provide a list of administrative conditions that must be satisfied before a EHO may issue a DWAA Primate licence, the main welfare focused conditions are provided by sections 3(c)-(f) DWAA as follows:
 - a) any animal concerned will at all times of its being kept only under the authority of the licence—
 - i. be held in accommodation which secures that the animal will not escape, which is suitable as regards construction, size, temperature, lighting, ventilation, drainage and cleanliness and which is suitable for the number of animals proposed to be held in the accommodation,;
 - ii. be supplied with adequate and suitable food, drink and bedding material and be visited at suitable intervals; and
 - iii. appropriate steps will at all such times be taken for the protection of any animal concerned in case of fire or other emergency,
 - b) all reasonable precautions will be taken at all such times to prevent and control the spread of infectious diseases; and
 - c) while any animal concerned is at the premises where it will normally be held, its accommodation is such that it can take adequate exercise. (together the "**DWAA Welfare Conditions**").
- Section 1(5) provides some veterinary oversight to the DWAA Welfare Conditions by stipulating that an EHO can only issue a DWAA licence where a vet has inspected the relevant premises proposed to hold the DWAA Primate and provided a report on the proposed premises suitability for keeping the DWAA Primates the licence applicant purports to keep.

Primates in the United Kingdom – Introduction to the current UK regime (2)

The UK's current regime is not codified in a single piece of legislation and is instead made up of a patchwork of primary legislation, regulations and codes

3. Primates and activities - The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“AWLR”).

- **Licensable activities:** The thrust of AWLR is to make the carrying out of commercial activities involving animals require a licence issued by the relevant local authority. “*Licensable activities*” are set out in schedule 1 of AWLR and such activities relevant to primates include selling primates as pets and keeping or training primates for exhibition.
- **Licensing safeguards:** AWLR puts in place a number of checks and balances for the licensing process, including:
 - a) **Inspection:** regulation 4(2) requires that the local authority arrange for a veterinarian inspect any premises where licensable activities are proposed to take place;
 - b) **Licence conditions:** regulation 4(3) means the local authority must make any license it grants subject to general and (where relevant) specific conditions (discussed further below) and regulation 4(2) means a licence can only be issued where the local authority is satisfied such conditions will be met. Regulation 4(7) means that the local authority must consider the applicant’s conduct and whether they are a fit and proper person when issuing any licence;
 - c) **General and specific conditions:** Schedule 2 sets out the general conditions which must be complied with irrespective of the nature of the licensable activity. Some of the general conditions include welfare points (suitable environment, behaviors and protection against suffering). Schedules 3-7 set out activity specific licence conditions which also include welfare focused conditions;
 - d) **Breach of licence:** Breach of any licence conditions permits the local authority to suspend or revoke the licence under regulation 15 and may result in a summary criminal offence under regulation 20; and
 - e) **Max duration:** the max duration for any licence is limited to three years under regulation 5.



Primates in the United Kingdom – Introduction to the current UK regime (3)

The UK's current regime is not codified in a single piece of legislation and is instead made up of a patchwork of primary legislation, regulations and codes

4. Primates and CITES (Convention on International Trade in Endangered Species) ("CITES")



- The UK is a party to CITES and the protections CITES affords to wildlife including primates is implemented through the retained Wildlife Trade Regulations ("WTR")¹. Whilst the provisions of the WTR do not seek to ban the cross-border trade of primates for private, non-commercial purposes, pursuant to the WTR, trade in species listed in its Annexes A-C (largely reflecting Appendices I-III CITES respectively) is restricted to different extents:
 - a) **International trade - Annex A:-** Under Articles 4(1) and 5(1) WTR primates listed in Annex A/Appendix I (including small, medium and larger primates such as Gorillas, Marmosets, Tamarins, New-world Monkeys, Howler Monkeys and Spider Monkeys) can only be imported/exported to or from the UK if the management authority issues a permit, the issue of which is conditional on certain requirements being satisfied. Such conditions include that:
 - a) A reciprocal import permit has been obtained (see further below);
 - b) The primates will be prepared and shipped as to minimize risk of injury, death or cruel treatment;
 - c) The intended accommodation is adequately prepared to conserve and care for the primates; and
 - d) The primates concerned will not be used for primarily commercial purposes.
 - b) **International trade - Annex B:** Under Article 4(2) WTR primates listed in Annex B/Appendix II can only be exported where an import permit is issued by the management authority of the importing state. Certain conditions apply to the issue of such permits including that the applicant provides evidence that the intended accommodation is properly equipped to conserve and care for the specimens properly.
 - a) **Domestic trade:** Article 8(1) WTR obliges Member States to outlaw the purchase, sale of and wider commercial use of specimens of the species listed in Annex A/Appendix 1. These restrictions on commercial use taken together are intended to restrict the international trade on such species.

1. The UK has retained the EU Wildlife Trade Regulations into UK law following the expiration of the brexit transition period through statutory instruments including the Trade in Endangered Species of Wild Fauna and Flora (amendment) (EU Exit) Regulations 2018.

Primates in the United Kingdom – Introduction to the current UK regime (4)

The UK's current regime is not codified in a single piece of legislation and is instead made up of a patchwork of primary legislation, regulations and codes

5. Licensing and regulation in other circumstances

- **Zoos:** The keeping of primates in zoos is subject to the separate regulatory regime for operating zoos in the UK pursuant to the Zoo Licensing Act 1981 (amongst other pieces of legislation). The regulation of welfare conditions in zoos in the UK is a significant yet separate topic which is not considered by this paper.
- **Animal testing:** The welfare of primates or the purposes of animal testing is subject to the separate regulatory regime and the regulation of primates used in animal testing procedures in the UK (pursuant to legislation such as under the Animals (Scientific Procedures) Act 1986) is a significant yet separate topic which is not considered by this paper.



Primates in the United Kingdom – Introduction to the current UK regime – Welfare

Welfare standards for privately kept primates are upheld by the Animal Welfare Act 2006 ("AWA") and an associated code

6. Primates and AWA

- **Applicability of AWA:** Section 2(1) AWA provides that a primate will be a "protected animal" receiving the protections afforded by AWA when it is:
 - a) of a kind which is commonly domesticated in the British Islands,
 - b) under the control of man whether on a permanent or temporary basis, or
 - c) not living in a wild state.
- Given the levels of private primate ownership in the UK, limb (a) can be considered fulfilled for at least most (if not all) of primates privately kept in the UK, whereas limbs (b) and (c) above are fulfilled where a primate is kept privately.
- **Protection against unnecessary suffering:** Section 4(1) AWA means a person will be guilty for causing unnecessary suffering to a primate where:
 - a) an act of his, or a failure of his to act, causes an animal to suffer;
 - b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so;
 - c) the animal is a protected animal; and
 - d) the suffering is unnecessary.

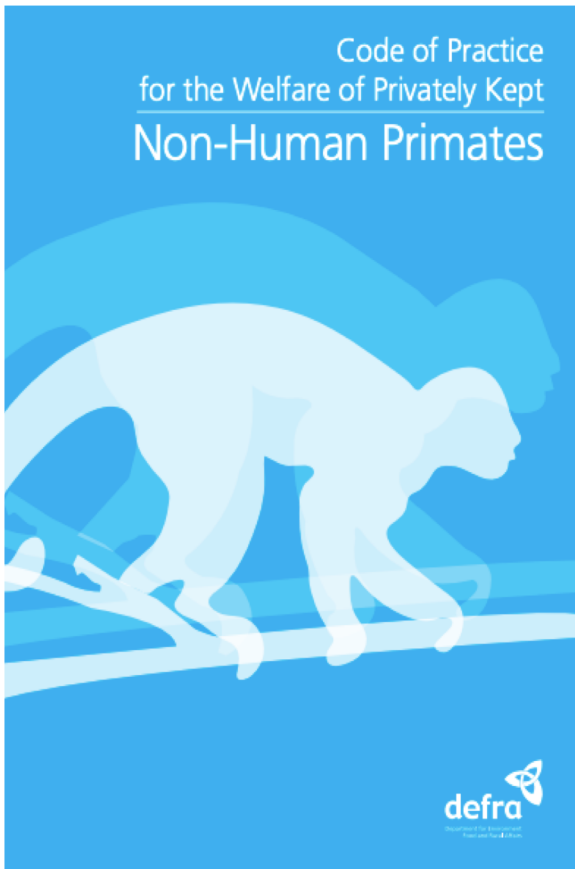


- **Protection against unnecessary suffering (continued):** Section 4(2) extends the offence to where a person is responsible for a primate acts/fails to act which causes unnecessary suffering where they permit this to happen or failed to take reasonable steps to prevent the act happening.
- **Duty of person responsible for animal to ensure welfare:** Section 9(1) means that a person who is responsible for a privately kept primate is guilty of an offence if they fail to take such steps as are reasonable in all the circumstances to ensure that the needs of any primate for which they are responsible are met to the extent required by good practice. Section 9(2) goes on to list the needs of primates which should be taken into account as including the primates need:
 - a) for a suitable environment;
 - b) for a suitable diet;
 - c) to be able to exhibit normal behavior patterns; and
 - d) it has to be housed with, or apart from, other animals, and its need to be protected from pain, suffering, injury and disease.

Primates in the United Kingdom – Introduction to the current UK regime – Welfare (2)

Welfare standards for privately kept primates are upheld by the Animal Welfare Act 2006 ("AWA") and an associated code

6. Primates and AWA (continued)



- **The Code:** In addition to the provisions of AWA, the welfare of privately kept primates is also regulated by the code of practice for the welfare of privately kept non-human primates (2010) (the "**Code**"). The Code is "voluntary" however and is explicit in stating that a breach of the provisions of the Code *does not* automatically amount to a breach of AWA. This creates the bizarre possibility that a person is found to have not complied with the provisions of the Code, but somehow not be in breach of AWA.
- **Use and enforcement of the code:** In addition to a magistrate presiding over any animal cruelty prosecution using the code to determine if an offence under the AWA has been committed, the Code can also be used by enforcement agencies when investigating an allegation of a primate being held in poor welfare conditions. The overview to the 2019 Call for Evidence states that "*an investigating officer can point out any welfare problems and refer the keeper to the relevant part of the Code so that they know what they need to do in order to correct the situation and avoid a possible prosecution*".
- **Behavior and practical care:** The Code is divided into two sections as explained by its introduction:

Section 1: Assessing the Welfare of Primates

Section 1 contains two main headings of: (1) Expression of Normal Behaviour; and (2) Physical Health. Each of these headings are broken down into "welfare outcomes" which discuss the behaviors healthy primates should and should not exhibit and the key characteristics for the the physical health of such primates. Each welfare outcome ends in "Key Resource Considerations" listing the resources a primate keeper need to ensure are properly provided to primates.

Section 2: Resources, including environment and diet

Section 2 shifts the focus onto the physical resources required to properly look after kept primates. Section 2 of the code is broken down into several subsections under which again multiple welfare outcomes are listed, the subsections being: (a) The need for a suitable environment; (b) Nutrition and the need for a suitable diet; (c) Care plans and records; and; (d) Breeding.

Primates in the United Kingdom – Critical analysis of the UK Regime

The UK's patchwork approach to primate welfare presents significant issues in law and practice

Piecemeal framework

Complexity: As the protections derive from varying pieces of national and international legislation different species are offered different levels of protection. Given that all primates are inarguably intelligent sentient beings capable of suffering, it is unclear why ownership of some primates requires greater administrative compliance (e.g. CITES permits, and a DWWA licence) and the protection to primates such regulation offers, whilst other primate species do not.

Monitoring: in the absence of one piece of legislation setting out the regime it is difficult and time consuming to see how monitor: (a) the number of privately kept primates in the UK; and (b) how well protections are being upheld.

The consequence of having a package of protections is that each piece of legislation provides different levels of protection for different primate species. For example freedom of information act requests showed that there were 48 DWWA licenses issued for 230 individual primates in 2018 (2019 Consultation Summary). However the 2019 Consultation Summary concedes that the most popular primate species (such as marmosets, 81% of identified individuals from RSPCA surveys) are not covered by the DWWA meaning the authorities instead rely on estimates using non-compliance rates as a multiplier to estimate that there is between 3,000-9,000 primates privately held in the UK.

Given that the authorities are dependent on estimates to determine how many primates are being kept in the UK it would be impossible for the government to say that the required welfare standards are being upheld for even the majority of primates.

Enforcement

Penalties: Breach of AWA can result in criminal penalties, however these penalties are limited to a maximum 6 month prison sentence in the most serious cases. Criticisms of such a low maximum penalty and associated lack of deterrent effect are well documented and it is noted that the government are proposing to amend this. Aside from AWA, breach of the licensing regulation discussed may result in fines and disqualification for owning certain primates in certain circumstances, such a weak penalty cannot be said to properly discourage infringement in cases of organized crime for commercial benefit.

Enforcement agencies: As several pieces of legislation being upheld by various different enforcement authorities (e.g. local authorities, the RSPCA, APHA, border authorities) a joined up proactive approach is required between authorities. This raises issues of increased time and cost expense in coordinating activities. Where local authorities are responsible in enforcing licensing activities, it is uncertain whether each team holds the requisite expertise. An example of this is that freedom of information requests from Wild Futures asked local authorities if *“in order to be granted DWWA licenses for primates, must applicants demonstrate that they meet the conditions laid out in the Code?”*, 210 local authorities said yes, 64 said no and 70 said they didn't know. Further whilst local authorities should involve qualified veterinarians in some parts of the licensing process, it's uncertain how often this is done in practice.

Such issues are compounded by the lack of a statutory requirement for local authorities to enforce animal welfare legislation. Therefore, there is no requirement on local authorities when doing enforcing the licensing regime to uphold the provisions of animal welfare legislation.

Primates in the United Kingdom – Critical analysis of the UK Regime (2)

The UK's patchwork approach to primate welfare presents significant issues in law and practice

Piecemeal framework (continued)

CITES: Responses to the 2019 Consultation Summary suggest that CITES does not play an active role in protecting primates welfare in practice. The 2019 Consultation Summary stated that *"Since 2011, no permits have been issued by APHA for importing primates for personal use"* and the collective opinion expressed by responses suggests that the majority of pet primates come from captive-bred stock in the UK.

It is further questioned why the UK has not gone further in its implementation of CITES by enacting legislation to implement the possibility provided for in article 8(2) WTR for member states to ban/regulate the domestic commercial trade of species listed in the WTR annexes, which would offer greater protection for primate species bred and traded domestically.

Domestic conditions: Notwithstanding the framework's attempt to recognise that primates have complex environmental needs which must be met to ensure their welfare is protected, nothing in the legislation explicitly recognises that domestic conditions are very rarely (if ever) suitable to keep any primates. This is despite the concession made by the 2019 Consultation Summary that *"There was strong agreement among respondents that a primate's welfare needs cannot adequately be met in a 'domestic environment', for example in an owner's home, and/or as a companion animal"*.

The government's failure to ban domestic keeping of primates in the face of their own recognition that the evidence overwhelmingly points to domestic conditions being capable of ensuring primate welfare cannot be said to be supporting primate welfare.

Enforcement (continued)

The Code: Whilst the code is detailed and discusses many elements of primate welfare, it is questionable whether a non-obligatory code of best practice lacking the force of law is effective to ensure the welfare of primates. Indeed, respondents to the 2019 Consultation submitted that *"since the Code was introduced, there has not been an observed reduction in the practice of keeping primates as pets"*. The RSPCA, in the years 2001 to 2010, received calls that involved 919 primates. 89% of these calls were complaints regarding neglect, suffering and suspected illegal activities. RSPCA filed staff identified welfare issues in 90% of confirmed incidents.

Further the code is general in its application to all primate species where different species have different needs, restricting the utility of the code unless expert interpretation is applied on a case by case basis.

Species: Given different primate species are afforded varying levels of protection, it can be difficult for the mosaic of involved enforcement authorities to quickly and determine which species are entitled to what protections in an enforcement scenarios. Marmosets are the most commonly kept pets in the UK and do not require licenses. Clearly more needs to be done to protect the most commonly bought primate.

Reliance on welfare charities: The 2019 Consultation Summary admits that welfare charities such as Monkey World and Wild Futures have rescued hundreds of primates over previous of years, and the need for their rescue efforts exceeds their capacity. Welfare standards can not be said to be consistently upheld where welfare charities are required to rescue hundreds of primates from abuse.

Primates in the United Kingdom – Critical analysis of the UK Regime (3)

The UK's patchwork approach to primate welfare presents significant issues in law and practice

Piecemeal framework (continued)

Pet shop and breeder conditions: In addition to frequent inadequacy of primates' living conditions in domestic environments, many primates are sold from exotic pet shops and the standard of their living conditions there are also important. Exotic pet shop sales of primates was comprehensively addressed in the report by Born Free Foundation* which identified that many licensed pet shops did not have the requisite knowledge of primates to determine who would/ who wouldn't make a good owner and often created situations contravening the Code (e.g. selling primates on their own instead of at least, in pairs).

DWAA: It is difficult to say that the licensing regime established by the DWAA is practically having a positive impact on the welfare of the primates to which it pertains. Non-compliance is thought to run as high as 85-95% . 82% of owners of UK ex-pet primates rehomed at the Monkey Sanctuary did not hold a licence for all or part of the animals' lives.

Further, local authorities appear unaware of their responsibilities under the act in respect to licence issuance. Local authorities lack primate expertise, with consequential confusion over species identification and which species are or are not permitted.

* Born Free Foundation - Pet shop primates an Investigations into the sale of non-human primates by licensed pet shops in England, 2014 (2014).

**estimate from hobbyists and the pet trade cited in Greenwood, A.G., Cusdin, P.A. (2001) – Effectiveness study of the dangerous Wild Animals Act 1976. Department for Environment Food and Rural Affairs

Enforcement (continued)

Breeding and trade of primates: Notwithstanding AWLR's licensing requirements for a person commercially breeding and selling primates the 2019 Consultation Summary sets out that evidence was received that primates were sold online and that there are *"welfare concerns about primates sold online included lack of information on how to care for primates; And the use of inappropriate terms in adverts such as 'toilet trained', 'tame' and 'bottle fed'"*.

This combined with evidence highlighting trade of primates taking place via closed forums or private channels suggests that licensing requirements set out by AWLR fail to maintain welfare standards for commercial activities involving welfare.** The 2019 Response summary notes evidence suggesting that persons who breed or otherwise sell primates as a *"side or small scale business"* would not necessarily be caught by the AWLR regulations, representing a lacuna through which many primates may slip through in losing their protections.

Hobby breeders: 'hobbyist breeders' of primates present another threat to primate welfare by breeding and selling primates without licence. Their principal argument is that they are simply selling off *"surplus stock"* as an adjunct to their hobby, such that their selling of animals is therefore not being done *"in the course of a business"*. Unfortunately, AWLR does not provide a clear test for determining whether the selling of animals is being done in the course of a business". 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 AWA, the local authority would have to prove that the seller was acting *"in the course of a business"* and such prosecutions often prove costly to bring.

Primates in the United Kingdom – Reform proposals

Following the 2019 Consultation Summary, DEFRA has proposed to introduced a general “grandfather policy” ban on the private keeping of primates, unless kept to zoo standards.

1. Prohibition on primate ownership

DEFRA's policy proposal is to introduce a *“new prohibition on keeping primates in England, backed by civil penalties which will restrict breeding, acquiring, gifting, selling or otherwise transferring primates, apart from to persons licensed to keep primates to zoo standards”*

2. Specialist primate keeper licence

DEFRA propose to permit people who privately keep primates in *“comparable conditions to those provided by zoo licence holders”* to be licensed as exempt from the general prohibition as long as they: (a) are licensed by their local authority; and (b) provide for standards of welfare equivalent to those required of zookeepers.

3. Primates currently privately held

DEFRA are conscious that the proposed prohibition would catch thousands of privately held primates and therefore propose that such primates should be registered with the owners relevant local authority with a follow inspection of the primate's conditions to determine a course of action.

4. Primates currently privately held (2)

Given DEFRA's cited absence of other viable alternatives to permitting private primate owners to keep their primates, following registration and inspection DEFRA propose to allow primates already in private ownership caught by the new prohibition to remain privately held for the rest of their lives.

5. Cruelty and suffering

DEFRA propose to maintain the welfare of primates currently held by private owners by mandating annual vet notices. DEFRA propose that improvement and (where necessary) removal orders under the new regime alongside the existing protections provided by the AWA will be sufficient to protect such primates against suffering or cruelty.