



## League Against Cruel Sports consultation response

### Economy, Trade and Rural Affairs Committee: Agriculture (Wales) Bill inquiry

November 2022

#### 1. Overview

The League Against Cruel Sports has long called for a full ban on snares in Wales and strongly welcomes the inclusion of a ban on the use of these devices in the Agriculture (Wales) Bill.

We welcome the Government's acknowledgement of the significant animal welfare issues linked to the use of snares, the strong public support for a ban and the high level of public engagement in the consultation process. We also welcome the Welsh Government's decision to ensure that the use of snares cannot be licenced in Wales – making Wales the first UK nation to take such decisive action.

#### 2. Public support

Public opinion is overwhelmingly in favour of a ban on snaring in Wales. A nationally representative opinion poll conducted by YouGov in January 2021 found that 78% of the Welsh public support a ban on the use of snares<sup>1</sup>. This strong support is also reflected by the scale of the response from the Welsh public to the Agriculture (Wales) Bill White Paper consultation in favour of a full snaring ban.

#### 3. The need to ban all snares

The League particularly supports the approach that has been taken to introduce an outright ban on the use of the devices. We feel that is proportionate given the suffering snares cause to animals and is necessary in order to eliminate this suffering and the capture of non-target animals.

As recognised by the Welsh Government, animals continue to suffer under a system in which the use of free-running snares remains legal alongside a voluntary *Code of best practice on the use of snares in fox control*. Regardless of whether a snare is code compliant, it can still cause suffering and catch non-target animals and the League believes that there is no such thing as a humane snare.

Field trials conducted as part of Defra's 2012 report *Determining the Extent of Use and Humaneness of Snares in England and Wales*<sup>2</sup> suggest that around three quarters of animals caught in snares are not the intended target, which can include protected species such as badgers as well as priority species under section 7 of the Environment (Wales) Act.

Non-target capture is not removed by the use of code compliant snares, and proponents of their continued use acknowledge that reduction in non-target capture would be dependent upon careful placement and best practice being followed. Defra found that during field trials for its 2012 report, 'non-target species were captured despite careful adherence to the CoP by a competent and

<sup>1</sup> [https://league0wit-my.sharepoint.com/:x/g/personal/willmorton\\_league\\_org\\_uk/EZEp5TUr0ABLv1hRvjp\\_r3kBFaInvGXRf0sJlvjEwEXPhw?e=dTRdKC&wdLOR=c07ECD16F-FD69-4C76-A39D-1ED85878356E](https://league0wit-my.sharepoint.com/:x/g/personal/willmorton_league_org_uk/EZEp5TUr0ABLv1hRvjp_r3kBFaInvGXRf0sJlvjEwEXPhw?e=dTRdKC&wdLOR=c07ECD16F-FD69-4C76-A39D-1ED85878356E)

<sup>2</sup> <https://randd.defra.gov.uk/ProjectDetails?ProjectId=14689>

conscientious operator'. In practice, the risks are even greater – not a single fox snare operator visited during the study was fully compliant with the Code of Practice that was valid at that time, a full seven years after it was introduced.

Lack of evidence that the existing Code of Practice in Wales is being followed or has improved animal welfare is therefore of particular concern and indicates the risk to wildlife and animal welfare that continued reliance on adherence to its recommendations would entail, nor would greater adherence to the code be the solution.

Proponents of code compliant snares have argued that they are humane based on measurement against the Agreement on International Humane Trapping Standards (AIHTS) and the assessment of Defra's 2012 report that 'type D' snares meet its requirements. However, the physical and behavioural indicators of poor welfare included in the AIHTS are at the extreme end of the scale and do not include physical injuries such as penetrating or slicing tissue wounds, claw loss and muscular, ligament and tendon damage short of severance. Defra's report also notes that no assessment was made of the fear and distress experienced by animals caught in such snares and that predation of captured non-target animals was not included in the assessment of their welfare impact.

Wales can aim higher than such limited and outdated measures of animal welfare and can best protect animals, whether wild or domestic, target or non-target, from the risks of capture, suffering, injury and death in snares by banning the use of all snares.

#### 4. Queries in relation to the wording of the snaring ban

##### Section 43

Subsection (ba) makes it an offence to **set in position** '*any snare, or other cable restraint, which is of such a nature and so placed as to be likely to cause bodily injury to any wild animal coming into contact with it*'. Meanwhile, subsection (bb) makes it an offence to **use** a snare '*for the purpose of killing or taking any wild animal any snare, or other cable restraint, whether or not of such a nature or so placed as aforesaid*'.

This mirrors the terminology used in the current provisions of the Wildlife and Countryside Act 1981 (WCA) which outlaw the use of self-locking snares. However, Sections 11(a) and (aa) of the WCA applicable to Scotland and as amended by Schedule 6(10) of the Nature Conservation (Scotland) Act cover anyone who '*sets in position or otherwise uses*' a self-locking snare or any other snare calculated to cause unnecessary suffering.

The League is concerned that the wording '*sets in position*' may not cover all instances of the use of a snare, potentially posing a challenge for enforcement. For example, there have been cases in which defendants have claimed that snares have been left in situ but not set<sup>3</sup>. To avoid ambiguity and unintended loopholes arising, it would be preferable to amend sections 43(ba) and (bb) of the Bill to read '*sets in position or otherwise uses*'.

The League would also welcome clarification as to what, if any, uses of snares the Welsh Government intends to remain legal in Wales. Section 11(1)(a) of the WCA as it applies to Scotland outlaws the use of self-locking snares, with no qualification as to their likelihood to cause suffering or their use for taking or killing an animal. Enforcement of a ban on snaring in Wales may be simpler without the latter qualification in particular, due to potential challenges of proving intent, unless it is required to avoid unintended consequences.

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<sup>3</sup> <https://www.thetelegraphandargus.co.uk/news/17462776.amp/>

As well as considering whether the wording used is as clear as possible, we also urge the Welsh Government to continue to ensure that the ban is applicable to all snares, including those branded as 'humane cable restraints' or similar. Welfare issues with the use of such code-compliant snares remain, for example as detailed by the recent report *A Review of the Use of Snares in the UK* (Professor Stephen Harris, 2022). To protect animal welfare and ensure the ban functions as intended, the ban should apply to all snares and cable restraints as it does in its current format.

#### *Section 44*

The explanatory memorandum states that Section 44 amends section 11(2) of the WCA so that the prohibitions on 'setting in position any trap or snare, or any electrical device for killing or stunning, or any poisonous, poisoned or stupefying substance' will apply where the use of those devices is "*likely*" – rather than "*calculated*" – to cause injury to a protected wild animal.

The League supports this change from 'calculated' to 'likely' as we believe that it will aid in enforcement of the snaring ban by setting the evidential burden to a more appropriate level.

However, the amended subsection would apply to '*any trap other than a glue trap*' in Wales, rather than the existing formulation of '*any trap or snare*'. In light of the removal of the word '*snare*', we would welcome clarity as to whether snares are encompassed by the term '*any trap*', or whether the wording of the Bill creates ambiguity in this area.

### **5. Suggestions the snaring ban could amended at a later date**

Clarity as to whether the current terms of Agriculture (Wales) Bill could be modified at a later date is also needed, as section 46 (2) of the Bill states that Ministers could make regulations to '*modify any enactment (whenever enacted or made, and including this Act)*'. Section 51 states that the word '*modify*' is to be interpreted as including amending, revoking and repealing. This raises the question as to whether regulations could be made in future which directly weaken or repeal the snaring ban. The potential for primary legislation to be amended in this way is also implied under Section 47(8) which mentions regulations which '*modify any provision of primary legislation*'.

This general power to make regulations appears to be explained in the explanatory memorandum's 'summary of powers to make subordinate legislation' table as being 'appropriate to ensure, that where amendments to other legislation are found to be necessary, to give full effect to this Bill, further primary legislation is not required'. However, we are concerned that the powers under Section 46 could be much broader than this in allowing regulations which create exceptions and/or permit snares to be used in certain circumstances – something the League would be strongly against. It is therefore important that we achieve clarity on this so that stakeholders such as ourselves can fully assess its potential implications.

### **6. No references to the sale, manufacture and possession of snares**

While a ban on the use of snares is much welcome, we are concerned that these traps will continue to pose a threat to animals if the possession, sale and manufacture of them is not also covered by the Agriculture (Wales) Bill. In December 2020, the Welsh Government launched a consultation on the Agriculture (Wales) White Paper which suggested that legislation could be amended 'to increase the control over their manufacture, sale and use'. The League was strongly supportive of this proposal within our consultation response and is now seeking clarity on why controls on the manufacture and sale of snares are not being considered at this stage.

The White Paper consultation document also noted that the Welsh Government has stated that a ban on both the sale and use of snares would be sought if evidence showed that the voluntary *Code of Best Practice on the use of snares in fox control* was not being adhered to. While it was

stated that 'regular meetings and communications with snare-user groups have failed to provide sufficient evidence to demonstrate that the Code is being adhered to across Wales' in the consultation document, there is no reference to prohibiting the sale of snares within the recently published Agriculture (Wales) Bill.

As it stands, it is unclear as to whether this is due the introduction of the Internal Market Act 2020 which seeks to prevent internal trade barriers among the four UK nations. While the Internal Market Act may affect the Welsh Government's ability of legislation on the sale of snares to be enforced, it is currently unclear as to whether other options have been explored. It is worth noting in this context that the Welsh Government has described the Act as 'an unwarranted attack on devolution and the right of the Senedd to legislate without interference in areas devolved to Wales'.

For example, if including a ban on snares within the proposed legislation would not be feasible due to an inability for it to be implemented, could Ministers instead be granted the power to regulate the sale of snares. This would allow regulations to be brought forward at a later date. Alternatively, a ban on the sale of snares in Wales could be potentially included within the Agriculture (Wales) Bill, with commencement of this provision taking place at a later date if and when issues relevant to the loss of devolved powers are resolved.

We strongly believe that the sale and manufacture of snares should be addressed in order to reduce the immediate availability of these devices in Wales and assist with compliance with the proposed ban on the use of snares.

If the use of snares is banned in Wales due to their cruelty and the suffering they cause, making, selling and potentially exporting tools of such cruelty should not be permitted either. It is our view that there would be no good reason to make snares in Wales when their use is outlawed, nor should it be possible to profit from or trade in these cruel traps. Removing the avenues for the supply of snares, and preventing the potential for their use at an earlier stage, could assist with ensuring that the ban on snares protects animals from the suffering they cause, provide additional enforcement tools and ensure that Wales continues to lead by example. Under Section 11(3) of the WCA as it applies to Scotland, the sale of self-locking snares is an offence.

There is currently no reference to prohibiting the possession of snares included in the Agriculture (Wales) Bill. The majority of snares are used on private land and are left unaccompanied for hours at a time, which could make proving who has used them a challenge. Addressing the possession of snares without reasonable excuse within the Bill could assist with the enforcement of a ban on their use by enabling prosecution of those who possess them without legitimate reason, as with prescribed poisons under the WCA. It would also provide additional opportunities to remove snares from circulation which would otherwise be used to commit an offence. Under Section 11(3) of the WCA as it applies to Scotland, the possession of self-locking snares without reasonable excuse is an offence.