



Consultation Response

FROM THE EXTERNAL AFFAIRS WALES DEPARTMENT

National Assembly for Wales - Constitutional and Legislative Affairs Committee, Consultation on Making Laws in the Fourth Assembly - June 2014

RSPCA Cymru welcomes the opportunity to respond to the Constitutional and Legislative Affairs Committee's consultation concerning law-making in the Fourth Assembly.

The mission of the Society is to prevent cruelty, promote kindness to, and alleviate suffering of all animals. Therefore, some elements of this consultation are beyond the remit of RSPCA Cymru. However, crucially, the way in which legislation is made in Wales can ultimately have a considerable impact on animal welfare and, both directly and indirectly, on the work of the RSPCA. As such, a number of the processes involved in Welsh law-making are of considerable interest to the RSPCA.

OVERALL, WHERE POWERS ARE GRANTED TO MAKE SUBORDINATE LEGISLATION, DO THEY APPEAR TO BE SUBJECTED TO AN APPROPRIATE LEVEL OF SCRUTINY BY THE NATIONAL ASSEMBLY?

Secondary, or subordinate, legislation is vital to the work of the RSPCA; and plays a hugely important role in dictating the standards of care and welfare which must be delivered for animals.

Many significant developments in animal welfare in Wales in recent years were a consequence of secondary legislation, notably regulations made under the Animal Welfare Act 2006. Despite this, however, under current arrangements, these statutory instruments cannot be amended; with the most important proportion of subordinate legislation instead approved by the National Assembly for Wales via the affirmative procedure.

Whilst it may be inappropriate for all subordinate legislation to be open to amendment, in many cases, the current process hampers the ability which Assembly Members, stakeholders and others have in effectively scrutinising key legislative proposals brought forward by the Welsh Government. In RSPCA Cymru's case, this has meant the Society has had to urge AMs to vote in favour of legislation which is far from ideal, as the opportunity for it to be improved through amendment does not exist.

In July 2014, for example, significant proposals related to microchipping and dog breeding are scheduled. These will be brought forward as subordinate legislation and voted upon under the affirmative procedure by AMs. Whilst there are a number of possible amendments which AMs could propose to enhance the quality and effectiveness of this legislation, this opportunity will not be offered. Equally, the Animal

Welfare (Breeding of Dogs) (Wales) Regulations 2014 will replace provisions contained within an Act of Parliament, the Breeding of Dogs Act 1973, which itself would have been open to full Parliamentary scrutiny, yet regulations replacing part of that legislation will not be.

Resolution of this situation will provide opportunities for better law-making and enhanced scrutiny of proposals being brought forward by the Welsh Government, and we hope this will be a central focus of the Committee's deliberations.

AS A GENERAL RULE, ARE THERE SPECIFIC CAUSES FOR CONCERN IN THE QUALITY OF LEGISLATIVE DRAFTING FOR THE NATIONAL ASSEMBLY?

Last year, a further consequence of Assembly Members being unable to amend secondary legislation was highlighted following the Welsh Government's tabling of the proposed Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013, which unfortunately contained a key legislative drafting error.

The proposed regulations included the introduction of a staff to dog ratio at breeding establishments of one adult to 20 dogs. However, a notable discrepancy contained within supporting statements suggested that the Welsh Government's intended policy position was for this ratio to exclude puppies, a position opposed by RSPCA Cymru. Crucially, however, this exclusion had not been written into the tabled regulations, resulting in an inadvertent contradiction.

After the RSPCA sought clarity on this situation, including in writing to the Constitutional and Legislative Affairs Committee, the regulations were subsequently withdrawn and a further consultation took place. This process could have been avoided as a consequence of the regulations being open to amendment following their tabling.

DO THE PROCESSES FOR CONSULTATION IN THE DEVELOPMENT OF POLICY APPEAR TO BE APPROPRIATE AND EFFECTIVE?

Consultative processes should play a key role in the development of legislative proposals. RSPCA Cymru seeks to feed its viewpoints, experiences and expertise into relevant consultation exercises in the hope of informing policy.

RSPCA Cymru's supporters often take considerable interest in Welsh Government proposals which impact upon the welfare of animals. As such, the Society regularly facilitates opportunities for supporters to respond to certain consultations. Increasingly, however, we have noted the Welsh Government disregarding large number of individual consultation responses, highlighting them in such terms as - in one instance - "generic responses ... circulated via social media". To this end, we are deeply concerned by the Welsh Government's wider recognition of those seeking to engage with such processes, as well as its willingness to change policy positions as a consequence of the findings put forward within consultation responses.

A recent example of this was connected with the aforementioned Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013. Following the Welsh Government's error in drafting legislation which did not

match its intended policy position, a further consultation took place specifically concerning the exclusion of puppies from a staff to dog ratio in dog breeding establishments.

RSPCA and its supporters opposed the proposal to exclude puppies from any ratio. 815 members of the public submitted consultation responses to the Welsh Government, highlighting agreement with the Society's stance. Whilst the RSPCA enabled individuals to submit these consultation responses, each was fully editable by the respective member of the public, whom made a conscious choice to participate in an important consultation and should not be disregarded by the Welsh Government.

Despite this, in their summary, the Welsh Government stated that 18 out of only 47 responses were in favour of their position. The 'summary of responses' merely notes: "*815 postal campaign responses were received from the public stemming from the RSPCA that disagreed with excluding puppies from the proposed ratio*"; but makes no further reference to these, and excludes them outright from calculations outlining views of respondents.

The Welsh Government should have stated that only 18 out of 862 respondents supported their position. Yet, despite this overwhelming lack of support, alongside the scientific evidence which existed against their proposals, the decision was not taken to change this stance. This clearly raises question marks about the effectiveness and relevance of consultation procedures. It would be incorrect, of course, to suggest that policy decisions should be made solely on the number of consultation responses a viewpoint may generate. However, it is still concerning that the Welsh Government thus far appears ready to dismiss large numbers of participants who engage with its consultative processes.

CONCLUSION

The work of the RSPCA is impacted upon significantly by the process of law-making in Wales; and the role of subordinate legislation often proves significant in the Society's activities and, more generally, in shaping animal welfare standards. It is hoped, therefore, that the Constitutional and Legislative Affairs Committee will consider, as part of their deliberations, solutions to the deficit which presently exists in the level of scrutiny which subordinate legislation is subject to.

Furthermore, as the main enforcer of animal welfare legislation in Wales, we are eager to engage with consultations undertaken by the Welsh Government related to our sphere of work and will continue, where appropriate, to urge our supporters to submit viewpoints. We would encourage the Committee to urge the Welsh Government to not dismiss individual consultation responses solely because they may be associated to a particular campaign or organisation.