

P1671/J

Humane Society International UK submission of 7 February 2018

Designed to trap, but not kill, rats and mice, the innocuous images and evasive wording on the packaging of glue traps belie the evidence that shows their use routinely causes trapped animals extreme physical pain, suffering and a death that takes hours or even days.

Used by professional rodent exterminators as a last resort when all other options have failed (at least in theory), the industry, represented by the Pest Management Alliance¹ has drafted a Code of Best Practice² in order to promote the most humane use of the traps by professionals. Yet, rodent glue traps are also sold throughout the UK for domestic use both online and in stores. According to a poll commissioned by HSI UK, almost a quarter of the UK public has used or would consider using them.³

Many websites and hundreds of retailers, including corner-shops, pet shops, chemists, hardware stores, and DIY and garden centres, sell these traps to members of the public whether or not they have tried, or even considered, other options.

The sale of glue traps to the public puts the purchaser at risk of breaking the law without even realising it. Unless the person who laid the trap checks it frequently, and kills a caught animal immediately and humanely (with one sharp blow), he or she may have caused 'unnecessary suffering', a prosecutable offence under the Animal Health and Welfare (Scotland) Act (2006). Our polling³ shows that the majority of people are either not informed, willing, able, or motivated enough to avoid causing 'unnecessary suffering' when using glue traps, and indeed in a significant percentage of the public responded that they would opt for a killing method likely to be prosecutable under the Animal Health and Welfare Act, such as drowning. An additional cause for concern is the accidental capture of non-target animals, including birds and cats, who may be injured and even perish after becoming stuck to a carelessly-placed trap.

The 2015 poll commissioned by HSI UK also revealed significant support for regulation on glue traps – in Scotland 71% of people polled said they would support a ban.³

Humane Society International UK is pleased to back the call in petition 1671 calling on the Scottish government to follow the examples of Ireland and New Zealand and ban the public use of glue traps, coupled with significantly restricting and formally regulating their use by industry. Such a ban would set an important precedent for the UK government, and the devolved administrations of Wales and Northern Ireland, to ensure that the welfare of animals termed 'pests' is properly and consistently considered and protected.

¹ 1 The Pest Management Alliance consists of the British Pest Control Association, the Chartered Institute of Environmental Health, the National Pest Technicians Association and the UK Pest Controllers Organisation

² http://www.cieh.org/uploadedFiles/Core/Policy/Environmental_protection/Pest_management/NPAP/COP_Glue_Boards.pdf

³ See tables in Appendix 1. All polling figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2,044 adults. Fieldwork was undertaken between 16th and 17th June 2015. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

Our full report detailing the welfare issues with glue traps can be accessed at:
<http://www.hsi.org/assets/pdfs/hsi-glue-trap-report.pdf>

In Appendix 2 we are pleased to share with the Committee a legal opinion commissioned by HSI UK, from Mr. Scott Blair, Advocate with Terra Firma Chambers, which includes considered options for legal reform

Appendix 1: All polling figures are from YouGov Plc. Total sample size was 2,044 adults. Fieldwork was undertaken between 16th and 17th June 2015. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

Humane Society International Glue Traps GB Sample : 16th - 17th June 2015 		Total	Gender		Age					Region							
		Base	Male	Female	18-24	25-34	35-44	45-54	55+	North	Midlands	East	London	South	England	Wales	Scotland
In the UK, glue traps are available to buy as a method of catching mice and rats. Glue traps are boards covered in very strong glue that will catch an animal when it walks onto it. The strong glue completely prevents the animal from escaping but is not designed to kill it. If animals are left on glue traps for hours or days they can typically die from thirst, starvation, exhaustion or suffocation.																	
Have you ever used, or would you consider using, a glue trap to catch a mouse or rat? (Please select the option that BEST applies)																	
	Unweighted base	2044	978	1066	241	253	342	474	734	476	296	196	266	480	1714	102	228
	Base: All GB Adults	2044	981	1063	245	334	351	398	716	503	335	196	262	468	1764	102	178
	Yes, I have used a glue trap and would consider using one again	3%	4%	2%	2%	5%	4%	3%	1%	2%	1%	3%	6%	2%	3%	3%	3%
	Yes, I have used a glue trap, but wouldn't consider using one again	1%	2%	1%	3%	1%	2%	0%	1%	1%	1%	-	6%	1%	2%	-	0%
	No, I haven't used a glue trap, but would consider using one	19%	25%	13%	25%	25%	16%	20%	15%	16%	25%	22%	23%	17%	20%	12%	14%
	No, I haven't used a glue trap and wouldn't consider using one	71%	64%	78%	60%	62%	70%	73%	79%	76%	69%	70%	53%	74%	70%	79%	81%
	Don't know	6%	6%	6%	11%	7%	8%	4%	4%	5%	4%	4%	12%	7%	6%	7%	2%
Please imagine that a friend was to call you to say they have caught a mouse/ rat using a glue trap...																	
Which ONE, if any, of the following actions would you recommend for your friend to do with the mouse/ rat?																	
	Unweighted base	2044	978	1066	241	253	342	474	734	476	296	196	266	480	1714	102	228
	Base: All GB Adults	2044	981	1063	245	334	351	398	716	503	335	196	262	468	1764	102	178
	Kill the mouse/ rat by submerging the glue trap in water and throw it away	9%	11%	7%	3%	8%	6%	11%	13%	9%	10%	12%	10%	7%	9%	11%	8%
	Try to pull the mouse/ rat off of the glue trap and release it far from the home	22%	20%	25%	37%	25%	23%	21%	17%	24%	19%	22%	16%	26%	22%	34%	20%
	Kill the mouse/ rat by hitting it with a heavy object (e.g. hammer or brick) and throw it away	20%	26%	15%	12%	18%	21%	20%	24%	17%	22%	22%	28%	21%	21%	12%	18%
	Put the trap with the live mouse attached into the bin	3%	4%	2%	2%	3%	3%	3%	3%	4%	3%	5%	3%	1%	3%	1%	4%
	Leave the mouse/ rat on the glue trap until it dies and then throw it away	3%	3%	2%	4%	4%	3%	3%	1%	3%	4%	2%	3%	2%	3%	2%	-
	Other	7%	5%	8%	8%	6%	4%	7%	8%	6%	7%	7%	9%	6%	7%	9%	6%
	Don't know	36%	30%	41%	33%	36%	41%	34%	35%	38%	36%	29%	31%	37%	35%	33%	43%

To what extent do you agree or disagree that glue traps should also be banned in the UK?

Unweighted base	2044	978	1066	241	253	342	474	734	476	296	196	266	480	1714	102	228
Base: All GB Adults	2044	981	1063	245	334	351	398	716	503	335	196	262	468	1764	102	178
Strongly agree	45%	35%	55%	38%	33%	44%	49%	52%	48%	44%	46%	33%	47%	44%	50%	53%
Tend to agree	22%	26%	19%	21%	24%	23%	21%	23%	22%	22%	21%	21%	25%	23%	26%	18%
Neither agree nor disagree	14%	15%	13%	17%	17%	15%	14%	11%	14%	15%	13%	18%	12%	14%	12%	15%
Tend to disagree	5%	7%	2%	8%	6%	2%	4%	4%	4%	6%	1%	6%	6%	5%	3%	3%
Strongly disagree	4%	7%	2%	2%	7%	4%	4%	4%	2%	6%	4%	9%	4%	5%	2%	2%
Don't know	9%	9%	9%	14%	12%	12%	9%	6%	11%	7%	14%	13%	6%	10%	6%	8%
Net: Agree	68%	61%	74%	58%	57%	67%	70%	75%	70%	66%	68%	54%	72%	67%	77%	71%
Net: Disagree	9%	14%	4%	11%	13%	6%	7%	8%	6%	12%	5%	15%	10%	9%	4%	5%

Appendix 2:

Background

Traps are pieces of board or other material to which a strong adhesive has been applied. A rodent will become stuck to the adhesive and is thus unable to escape. The creature may die from stress, exhaustion or starvation or it may be released and killed by other means, typically blunt force. I have assumed that suffering is inherent in the use of such traps.

Current law

As a general point animal welfare is subject to reservation under Animals (Scientific Procedures) Act 1986, devolved to the Scottish Parliament and Scottish Government under the Scotland Act 1998. The devolved bodies therefore have clear legislative competence to deal with matters relating to the sale and use of these traps.

I have considered the legality of such traps under the Animal Welfare Act 2006. That Act is similar to albeit different in some respects to the Animal Health and Welfare (Scotland) Act 2006.

I would say that notwithstanding the differences my own view would be that as matters stand under the Scottish Act, a trap in itself is not likely to be regarded as, in itself, a basis for prosecution for an offence of causing unnecessary suffering under section 19(1) of that Act. Section 19(1) of the Animal Health and Welfare (Scotland) Act 2006 makes it an offence for a person to cause “unnecessary suffering” to a “protected animal” but also an “animal”. The definition of “protected animal” in section 17 of the 2006 Act includes, not only an animal which is “*of a kind which is commonly domesticated in the British Islands*”, but also an animal which is “*under the control of man whether on a permanent or temporary basis*” or “*not living in a wild state*”.

It seems to me to be clear that Parliament intended its use of the words “*under the control of man*” to have the effect of making the “unnecessary suffering” offence in section 19(1) of the 2006 Act applicable to at least some situations in which a wild animal is trapped. The expression “under the control of man” seems to refer to any situation where the animal has in fact been rendered under the control of humans even if until under such control it had been “living in a wild state.”

I consider that the latter is about ensuring that for example, hunting a wild animal when it is in such state, is not capable of making it a protected animal. The distinction may be academic as the Act via the section 19 offence extends to both protected animals and animals i.e vertebrates.

For the purpose of considering whether or not users of Traps are likely to be committing an offence under the Act, it is therefore necessary to consider both whether, and in what circumstances, a rodent, caught in a Trap is a “protected animal” or an “animal” within the meaning of the Act; and in relation to such a rodent, what acts or omissions on the part of the person using the Trap are likely constitute the commission of an offence under the Act.

Of note as regards protected animals only acts are caught but as regards animals, both acts and omissions are caught. I am not sure why this should be but it does seem to me that mice are plainly capable of being protected animals. Mice are commonly bred as domestic pets. Rats are often pets as well but it might be stretching it to treat them as falling within the definition of a protected animal given that the breeding or domestication of rats is probably not sufficiently common as to make them fall within the definition. However plainly mice and rats are vertebrates for the purposes of section 16 of the Act and so, are at least “animals” for which the section 19 offence applies and for which one can be responsible.

The problem in seeking to use section 19(1) as a basis for a criminal prosecution which seeks to establish that the use of a trap is in itself an act which causes unnecessary suffering is that the offence is qualified. I refer in particular to section 19(4)-(5) for (non-exhaustive) considerations as to what is relevant to unnecessary suffering. I note that it provides-

“(4) The considerations to which regard is to be had in determining, for the purposes of subsections (1) to (3), whether suffering is unnecessary include—

(a) whether the suffering could reasonably have been avoided or reduced,

(b) whether the conduct concerned was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment,

(c) whether the conduct concerned was for a legitimate purpose, for example—

(i) the purpose of benefiting the animal, or

(ii) the purpose of protecting a person, property or another animal,

(d) whether the suffering was proportionate to the purpose of the conduct concerned,

(e) whether the conduct concerned was in the circumstances that of a reasonably competent and humane person.

(5) This section does not apply to the destruction of an animal in an appropriate and humane manner.”

One can envisage circumstances where traps are used to protect property (and arguably other animals or people when one is dealing with rats) given the destructive tendencies of rodents-see 4(c) (ii). Where one releases the animal and kills it in an instantaneous way then that may be covered by 4(a) and to some extent 4(e). Where the killing is quick e.g. a crushing blow to the head that could go to 4(d) and (e). However, the use of a method of killing under which death is almost instantaneous, or which is at least such as to render the mouse immediately unconscious, would not amount to causing “unnecessary suffering”-see the Scottish case of *Patchett v Macdougall* 1984 SLT 152 (Note).

Section 19(5) would probably justify killing by a blow which had instantaneous or near instantaneous effect. Clumsy or slow actions are not likely to be protected and I cannot rule out that leaving an animal to die by e.g. starvation or stress (and I note

that suffering in any event includes mental suffering under section 48), by use of such a trap (such as by failing to inspect at regular intervals), might not be viewed as reasonably avoidable. I doubt if a trap is unlawful mutilation under section 20.

The courts must assess on the basis of the facts whether or not the causing of the suffering is proportionate to the pursuit of a legitimate objective. Conduct that would be considered unacceptable if done to a canine might be considered acceptable if done to a creature that is commonly regarded as a pest. That has long been the law-see *Ford v Wiley* (1889) 23 QBD 203-and Parliament must be taken to have legislated against the background of knowing existing caselaw.

The use of such Traps is not an offence. Those who do use them must take care to reduce the suffering caused by such traps by inspecting them regularly and promptly killing anything found. The killing process must be one that causes instant or near-instant death. Some users of Traps may have difficulty in achieving this, perhaps as a result of "squeamishness" which causes them to use a method of killing that would not be considered by most people to be appropriate and humane. Such users may be committing an offence under section 19(1) of the 2006 Act.

It does seem to me that the use of such Traps will often create a situation in which section 19 might be breached. However as a matter of practicality, it does not seem at all likely that such suffering will be detected or reported, much less lead to prosecution in the public interest (the latter being the test the Crown would apply to deciding if someone should be prosecuted).

It does not seem at all likely that such a prosecution of a squeamish user would ever take place, unless there were exceptional facts (e.g. a budgie or parrot or a small dog or puppy or a cat or a kitten being caught and harmed in one) -or where there was a series of incidents.

The reality is that while section 19 might in theory be capable of covering the way in which such Traps are used, it is not at all likely, to provide effective protection to mice and other rodents in practice. This suggests that a more general measure of control might be more likely to optimise protection for such creatures.

Section 19 is not likely to afford a sufficient basis for holding that Traps in themselves when used are necessarily causative of suffering caught by section 19. Cases are far too fact sensitive.

Equally, section 27 of the 2006 Act on licensing is not likely to avail in providing a source for control of Traps via a licensing regime. It gives ability to the make Regulations to licence activities of persons who are "responsible" for animals. Responsibility is defined by section 18 and I doubt whether that is intended to cover responsibility for an animal which one has trapped.

I am not clear that this would be the licensing of an activity under section 27. Moreover the sale of a Trap does not relate to a relevant activity as sale in itself does not involve an animal for which one becomes responsible. The use of a Trap is not likely to be seen as an activity which involves animals for which a person is responsible.

It therefore seems to me that as the law stands the sale and use of a Trap is not likely to be caught by section 19 nor is it likely to be seen as something which is capable of being licenced for the purposes of generating regulations under section 27.

Law Reform

Standing my views on the scope and utility of current law it seems to me that the options for reform is likely to primary legislation which (i) bans these traps or (ii) determines by whom and in what matter they can be lawfully sold and used.

These are really matters of political will as to the route taken and not matters of strict law. However given my own views the evidential basis that seems to be out there in terms of the Australian and New Zealand experience, the second option might be thought to be the most realistic in terms of likelihood of securing approval.

Option (ii) could involve introducing a licensing style regime (like the New Zealand system) as to who can sell them and to whom they can be sold and why (for example one might consider a limitation to commercial use by food producers/storers; commercial pest-controllers; farmers; animal breeders etc) as opposed to domestic users who might be less likely to deploy or be prepared to use potentially humane methods of use or destruction as compared with (arguably) more organised or experienced operatives like pest controller or farmers.

Subject to limited licences to a limited number of operators dealing with rodents, the New Zealand regime also permits their use in relation to insects (these are not vertebrates and so not animals for our own 2006 Act purposes or lizards (which could be covered by the 2006 Act). For example a possible licence condition under the New Zealand Animal Welfare (Glueboard Traps) Order 2009 is that-

“Glueboard traps may only be used as part of an established Integrated Pest Management programme, and where necessary to monitor rodent presence or to prevent incursion or infestation, or manage a suspected or identified incursion or infestation.”

Such a regime could be bolstered by offence conditions modelled on for example, some of the concerns that I have identified such as requiring users to inspect traps at reasonable intervals and when an animal is caught to kill it in a humane way. Again suggested New Zealand conditions are, as regards inspection of traps-

“Glueboard traps must be checked as often as possible while they remain set. As a minimum, they must be checked once within 12 hours of sunrise each day they are set, beginning day after initial setting, as required by Animal Welfare Act 1999.”

As regards disposal or killing, the following conditions might be thought useful, as examples of what can be done, namely-

“Where a glueboard trap contains a rodent, the rodent must be euthanased without delay by a blow to the head with a suitable instrument that is carried for this purpose followed by exsanguination or pithing, or by neck dislocation using a suitable instrument that is carried for this purpose, or by gaseous euthanasia using

equipment constructed for the purpose. Rodents may be contained in a bag prior to euthanasia, as described in the PMANZ Standard Operating Procedure.

Operators must check that trapped rodents are dead before disposal of the glueboard trap, by testing the corneal reflex or ensuring physical destruction (crushing) of the skull.”

Another potential option might be to consider using the Civic Government regime. Ministers have power to add to the list of activities capable of being licenced under the Civic Government (Scotland) Act 1982. This was done by adding section 27A et seq in relation to the licensing of knife dealers and as supplemented by various Orders made under that Act. The provisions require such dealers to be licenced and conditions as to such sale e.g. the keeping of records of a sale.

It is arguable that section 44 of that Act could be used to add Trap sales (or indeed hire etc) to the list of activities which could be require to be licenced under the Act. I say “could be” because typically the 1982 Act usually gives discretion to local authorities as to whether an activity needs to be licenced. That may lead to a patchwork approach across Scotland.

While section 44 can be used to generate law by way of statutory instrument approved by the Scottish Parliament and so is less expensive and time-consuming than primary legislation, even if section 44 could be used there may be an inherent limitation in using section 44 given the overall 1982 Act approach.

This is because 1982 Act licence conditions and related offences are typically aimed at the user of the licence as opposed to the customer using a product secured by a purchase from such a licenced dealer. Those who buy knives from a licenced knife dealer such as a hardware store (and where one might well see Traps for sale) are not subject to conditions as to use of a knife so acquired, at least in terms of the 1982 Act. Use is regulated by the general criminal law whether at common law or under statute.

This is why we have the sort of scheme we see with the Firearms Act 1968 Act as regards shotgun sale and use. Both the seller and user are licenced and are both subject to conditions as to the sale and use of a shotgun independent of the general body of criminal law on the use and abuse of such a weapon.

Knife dealing was brought under the local authority licensing regime under the Civic Government (Scotland) Act 1982.

Knives are often sold in hardware outlets and traps may have the same client base and retail profile. Online sales are another matter and thought would need to be given as to how that was tackled.

However local authorities might be thought to have in-house expertise and/ or external agency assistance (environmental health and or/ their preferred veterinary provider akin to dog breeding) in assessing animal welfare concerns and a regime whereby the local authority was the regulator of the sale and use of traps might be considered to be a model which has some basis in current practice and where conditions as to sale and use could be set down in statute and perhaps

supplemented by local conditions determined by the local authority with conditions applying to both the provider of the Trap and the user of it akin to the regime operated by Police Scotland under the Firearms Act 1968 as regards shotgun sale and use.

For example a nationally prescribed condition could be a limitation as to sale for prescribed commercial purposes or as to what methods of killing a trapped rodent are deemed to be (or at least are capable of being) humane, but a local condition might be relevant to e.g. the number of traps that anyone commercial operator could use at a given time.

Of course if primary legislation is contemplated that could be either via a Government Bill or from an MSP.