

Transparency and Animal Experiments

A case for repealing section 24 of the
Animals (Scientific Procedures) Act 1986



Naturewatch Foundation

For the advancement of animal welfare

March 2017

Summary

Over 4 million animals are used annually in scientific procedures in Great Britain. Meanwhile, a culture of secrecy pervades discourse between researchers, the government and the public, thanks to an outdated and unnecessary legislative clause.

This report outlines the history and purpose of section 24 of the Animals (Scientific Procedures) Act 1986 (ASPA), and the many delays and missed opportunities to repeal it.

Section 24 of the ASPA blocks access to information about animal experiments held by public authorities, such as inspection reports or details about animal housing and treatment, making it a criminal offence to disclose this information – even if the institutions conducting the research have no objection to its disclosure.

For at least seventeen years, government representatives have acknowledged a conflict between section 24 and the central principles of the Freedom of Information Act 2000. In that time, despite calls from every associated sector, action to repeal section 24 has been routinely pushed aside.

After years of delay, a public consultation was run by the Home Office in 2014 with aims to review section 24. So far, no response from the Government to the consultation has been issued.

The consultation may be at risk of being shelved unless action is taken soon. For animals, the British public, the research community, and for government objectives towards openness and transparency, section 24 must be repealed.

Naturewatch Foundation

For the advancement of animal welfare

Naturewatch Foundation is a registered charity within the United Kingdom. Our Mission is to end animal cruelty and advance animal welfare standards around the world.

www.naturewatch.org

Registered Office: 49 Rodney Road, Cheltenham, Gloucestershire GL50 1HX, +44 (0)1242 252871
Registered Charity No. 1039679

What is section 24?

Basic data on animal experiments conducted in Great Britain is published every year by the Home Office. The report includes national statistics on the number of experiments conducted by type and species, and the severity of suffering the animals experienced.

But it does not detail any of the animal welfare conditions. Taxpayers, consumers, donors and shareholders pay for each of these experiments, but there is no way to learn about animal welfare. If anyone tries to find out, appeals for information are blocked under section 24 of the Animals (Scientific Procedures) Act 1986, the so called "Secrecy Clause".

Why was it included in the Animals (Scientific Procedures) Act 1986?

Section 24 was included in the Animals (Scientific Procedures) Act 1986 (ASPA) to protect confidential information and intellectual property of the establishments and individuals applying for licenses to conduct projects involving animal experiments.

The ASPA predates the Freedom of Information Act 2000 (FOIA), so was not drafted with public right to information held by public authorities in mind. Since the FOIA was drafted in 2000, however, there have been several moves to repeal this conflicting clause within the ASPA, whilst maintaining protections for establishments and individuals granted in the FOIA.

Section 24 of the Animals (Scientific Procedures) Act 1986

• • •

Protection of confidential information.

(1) A person is guilty of an offence if otherwise than for the purpose of discharging his functions under this Act he discloses any information which has been obtained by him in the exercise of those functions and which he knows or has reasonable grounds for believing to have been given in confidence.

(2) A person guilty of an offence under this section shall be liable –

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

What kind of information about animal experiments is withheld due to section 24?

Section 24 prohibits disclosure of information provided in connection with the Home Office's regulatory activities under the ASPA. This information includes, but is not limited to¹:

- Licence applications and any supplementary information or associated correspondence
- Assessments of licence applications by inspectors
- Advisory body or external advice on licence applications
- Non-compliance correspondence or reports
- Review papers or proceedings
- Home Office inspector visit reports
- Risk assessments of establishments applying for licences
- Information provided by overseas suppliers
- Animals in Science Committee (a non-departmental advisory body) records
- Ministerial and policy advice

Such documentation may include information detailing methods for breeding, accommodating, transporting, feeding, exercising, training, testing and killing animals for each experiment; and the methods by which over a million genetically modified animals are bred each year.

In order to monitor and improve animal welfare, of most relevance may be the information contained in licence applications, detailing the proposed procedures. Granting access to these applications prior to approval by the Home Office would enable greater public scrutiny of procedures before they are carried out, and help identify duplicated research, or research where comparable non-animal alternatives exist. Such access could avoid overuse of animals, in line with the Government's commitment to the '3Rs' of animal research – reduction, refinement and replacement.

Currently, members of the public can only access information about animal experiments through published reports, such as non-technical summaries (a legal requirement under Article 43 of the EU Directive 2010/63/EU), or the Animals in Science Regulation Unit's (ASRU) annual report, which are published long after experiments take place.

¹ Consultation on the review of Section 24 of the Animals (Scientific Procedures) Act 1986

Freedom of Information

There is clear conflict between the central principles of the Freedom of Information Act 2000 and section 24 of the Animals (Scientific Procedures) Act 1986.

Section 44 of the Freedom of Information Act prohibits disclosure of information by public authorities if such disclosure is prohibited by or under any enactment. Such an enactment exists in section 24 of the ASPA.

However, the ASPA predates the FOIA and was drafted without the right to information held by public authorities in mind.

Today, the landscape around rights to information held by public authorities is markedly different, however these two pieces of legislation still conflict after almost two decades of opportunity to review.

Personal information and commercial interests of those involved in projects licenced under the ASPA are protected by sections 38 and 43 of the FOIA. Project licence holders are legally protected by this legislation.

When the British Union for the Abolition of Vivisection (BUAV) requested access to information in project licences held by Newcastle University in 2011, their request was rejected on the basis of section 24². The clause made it illegal for the University to disclose the requested information, even if they wanted to. A series of appeals were made and a tribunal eventually found in favour of the BUAV. The University was ordered to disclose redacted versions of the two project licenses.

Almost all the information within the project licences was deemed in the public interest and, under the FOIA, able to be publicly disclosed. Only one short passage in one of the project licenses, a detailed document of 40 pages, was redacted to protect confidential information. The other license was disclosed in full.

It cost the University £250,000 in legal fees and months of time for the University, the Home Office, and the BUAV to ensure they did not breach the ASPA. And it all amounted to one short redacted passage.

In a 2012 Justice Committee review of post-legislative scrutiny of the FOIA, the University recommended that the conflict between ASPA and FOIA be resolved so that universities do not have to rely on the order of a tribunal as protection from prosecution under section 24 of ASPA³.

² Justice Committee, Written Evidence from Newcastle University, January 2012

³ House of Commons, Justice Committee, Post-legislative scrutiny of the Freedom of Information Act 2000: First report of Session 2012-13, Vol II. 3 July 2012

History of attempts to repeal the clause

The need to review openness and transparency on the use of animals in scientific procedures has been recognised by various governments of the United Kingdom. But instead, for almost two decades a series of delays and missed opportunities to repeal the clause has occurred.

1999

In 1999, the Animal Procedures Committee (APC), which then advised the Home Secretary on issues relating to the ASPA, formed a working group on openness. In January 2000, the APC published a report on their consultation on openness and animal procedures with a view to advise the Government as the Freedom of Information Bill went through Parliament⁴.

The Committee recommended that there was a need to change section 24 of the ASPA “to reflect the spirit of openness”⁵.

2002

In July 2002, a House of Lords select committee on animals in scientific procedures called for section 24 to be repealed⁶. The committee report stated:

We consider the current levels of secrecy surrounding animal experiments to be excessive. Difficulties in obtaining information do not only apply to the public... we, too, were only allowed to see five project licences after they had been anonymized. (9.13)

From the evidence we have received, we consider that there should be a presumption in favour of information being publicly available... Secrecy also contributes to public disquiet with animal experiments, as scientists and others are not seen to be held accountable. (9.14)

We consider that the debate surrounding animal experiments has been stifled for too long, and with damaging results, by the overly restrictive nature of the Act. (9.17)

We recommend that section 24 should be repealed. Specific justification should then be made for each class of information that needs to be kept confidential, such as the identity of researchers and matters of commercial confidentiality and intellectual property. (9.18)

⁴ Report of the Animal Procedures Committee for 2000, 19 July 2001

⁵ Animal Procedures Committee Report on Openness, August 2001

⁶ House of Lords, Session 2001-2, Select Committee on Animals in Scientific Procedures, Volume 1 – Report, 16 July 2002

2003

The Government replied to the select committee in January 2003, acknowledging the need for “more open and better informed debate about the use of animals in scientific procedures” and proposed to consult further with the scientific community about repealing section 24⁷.

2004

In 2004, section 24 was visited as part of the Government's review of statutory bars in advance of introducing public access rights under the Freedom of Information Act 2000⁸. The review concluded that section 24 should be retained until more was known about the effects of public access rights, and revisited in two years' time⁹.

2008

Then, two years later, a review of section 24 was delayed pending the outcome of a Freedom of Information case which did not conclude until 2008. This case showed that section 24 causes difficulty in interpreting the outcomes of disclosing information received in confidence about animal experiments¹⁰.

2010

In 2010, European Directive 2010/63/EU on the use of animals in scientific procedures came into force in the UK. As part of the consultation on the transposition of the Directive, the Home Office noted that section 24 as it stands “would not be compatible with the aims of the Directive”. They requested submissions on how to amend the clause to provide greater flexibility regarding disclosure of information while protecting proprietary rights and intellectual property¹¹.

The ASPA was duly updated to bring it into line with the new Directive, however section 24 was not amended at the time due to the assumption that this would occur during a pending Home Office review of the clause.

2012

In July 2012 the Justice Committee provided a report on post-legislative scrutiny of the Freedom of Information Act 2000. The committee made no recommendation as to how the Government should act on section 24 due to it being under review by the Home Office at that time. They said they will consider the outcome of the review when it was received.

⁷ The Government reply to the Report of the House of Lords Select Committee on Animals in Scientific Procedures Session 2001-2002, 20 January 2003

⁸ Department for Constitutional Affairs, Review of Statutory Prohibitions on Disclosure

⁹ Daily Hansards, 1 July 2004: Column WS15

¹⁰ Consultation on options for the transposition of European Directive 2010/63/EU on the protection of animals used for scientific purposes, Home Office, June 2011

¹¹ *Ibid.*

In November 2012, the Government responded to concur with the Committee's recommendations¹². They noted "This is especially the case give the fact that, the Home Office intends to review section 24 of ASPA in 2013."

2014

In February 2014, the Coalition Government published their Delivery Plan for reducing the use of animals in scientific research¹³. As part of the Plan, the Government committed to a consultation for the review of section 24. In Strategic Priority 3.4: A review of section 24 of the ASPA, they stated:

The inflexible confidentiality requirements of section 24 are now out of step with government policy on openness and transparency and with the approach taken in other legislation, such as the Freedom of Information Act.

The Home Office public consultation on section 24 finally took place in May and June 2014. They received almost 5000 submissions from individuals, animal welfare groups and scientific bodies, calling for a repeal of section 24.

The Home Office stated "Reforming section 24 demonstrates the Government's accountability, strengthening people's trust in government and ensuring that the public are informed about the use of animals in science¹⁴."

2017

After seventeen years of being called on to review section 24, the Home Office is still yet to provide a response to the consultation which finally took place in 2014.

¹² Government Response to the Justice Committee's Report: Post-legislative scrutiny of the Freedom of Information Act 2000, November 2012, Item 49

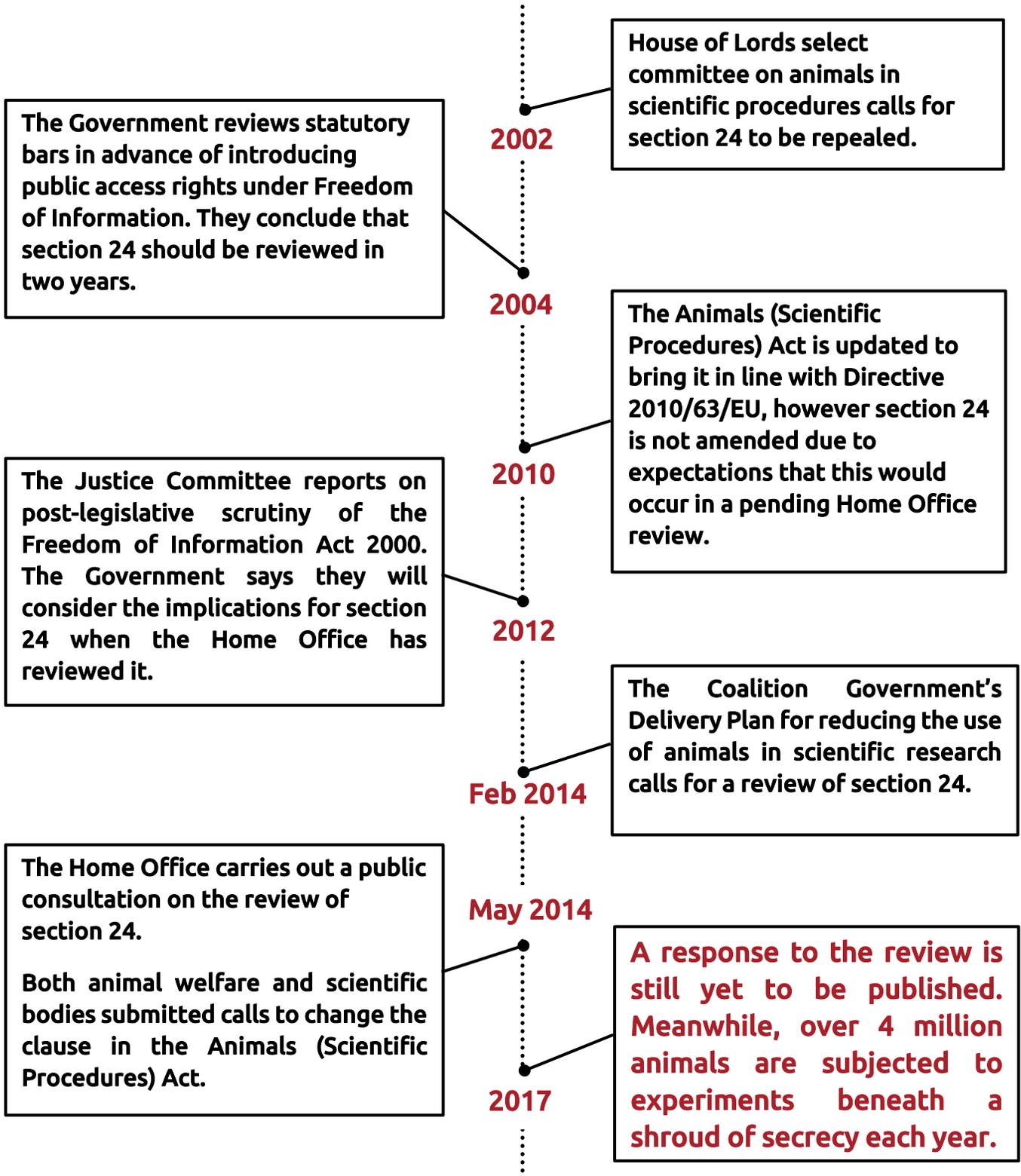
¹³ Working to reduce the use of animals in scientific research, Home Office, Department for Business Innovation and Skills, Department of Health, February 2014

¹⁴ Animals in Science Regulation Unit: Annual Report 2014, Home Office

Section 24 of the Animals (Scientific Procedures) Act



Timeline of Inaction



What are the benefits of repealing section 24...?

A. To people?

Repealing section 24 will enable public right to access information to allow them to determine whether animal experiments authorised under the ASPA are being regulated and monitored adequately, and meeting expectations around the use of animals in research.

Repealing section 24 would provide a firm statement against a culture of secrecy.

There is an acknowledged "crisis of trust" between scientists and the public. With a great weight of sentiment on both sides regarding the use of animals for scientific procedures, it is inevitable that such a clause would build a wall between scientists and the public.

The public expects the Home Office will uphold the provisions of the ASPA, but have no way to fully confirm it. This creates an unnecessarily turbulent climate wherein the crisis of trust has developed – and all for the purpose of withholding information which has already been shown to be in the public interest.

B. To animals?

Over 4 million live animals were used in scientific procedures in Great Britain in 2015¹⁵. The figures have risen every year since 2.5 million tests were recorded in 2000.

Mice, rats and fish were the most commonly used species. However, cats, dogs, primates, birds, sheep and pigs are amongst the many species routinely used in experiments for developing new chemical, medical, safety, agricultural and defence products, as well as for re-testing substances for regulatory purposes, and in teaching and training. Animals may be genetically modified to suit testing requirements, and are frequently bred and killed as "surplus to requirements". The number of surplus animals is currently not even recorded in published data.

The Home Office has also recently started reporting on the severity of procedures, indicating the level of pain, suffering, distress or lasting harm experienced by animals during the course of a procedure. In 2015, eight out of ten procedures were rated as causing pain, while a further 6% caused death to the animal under general anaesthesia. Severe pain was inflicted through 123 thousand procedures, including those that caused suffering so severe it killed the animal.

The 2014 consultation paper on the review of section 24 noted:

The greater amount of information that would potentially be publicly accessible following this review may increase awareness among the scientific community of current research involving the use of animals. This

¹⁵ Annual Statistics of Scientific Procedures on Living Animals Great Britain 2015, July 2016

may help to provide a constructive dissemination of technical knowledge, minimizing the potential for duplication of animal experiments¹⁶.

Duplication of research – rendering animal experiments unnecessary and a waste of both animal life and research funding – is at a high risk while regulators are prevented from releasing details of experiments. Such details might include information from incomplete studies where results were not published but could still be of use to the research community, and thereby minimise the numbers of animals used in future studies.

There is public, government and industry consensus that animal experiments must be reduced, refined, or replaced, in order to meet public expectations for animal welfare. This will never be possible while section 24 exists in its current state.

What will repealing section 24 not do?

Repealing section 24 will not threaten the health or safety of individuals involved in animal experiments.

It will not enable disclosure of information that may impact commercial interests of the project license holder.

It will not enable disclosure of personal details, including names or contact details, of any individual involved in the licensed project.

This type of information is protected by the FOIA and will remain so even if section 24 of the ASPA is repealed.

In cases where information initially denied under section 24 was later provided after a tribunal review – such as the case of Newcastle University – there was no evidence of endangerment to individuals or commercial interests as a result of that information being disclosed.

¹⁶ Consultation on the review of Section 24 of the Animals (Scientific Procedures) Act 1986, item 10

Who supports a repeal of section 24?

There is consensus amongst every associated sector that section 24 must be repealed.

A few early day motions calling for improvements to transparency in animal research:

EDM 1908 (2008-09)

EDM 277 (2009-10)

EDM 172 (2010-12)

EDM 716 (2012-13)

EDM 630 (2013-14)

EDM 110 (2014-15)

EDM 255 (2014-15)

EDM 117 (2015-16)

Animal welfare organisations overwhelmingly support a repeal of section 24 in the interest of upholding the 3Rs, and so they may further contribute expertise to minimise duplicated and unnecessary research on animals.

There is widespread support for repealing section 24 amongst the government. Hundreds of Members of Parliament across all major parties have signed early day motions calling for improvements to openness and transparency in animal experiments, and repealing the conflicting clause in the ASPA.

The Home Office itself stated “Section 24 is incompatible with the government’s policies on openness and transparency and the central principles of the Freedom of Information Act (2000)¹⁷”.

The British public, when polled on attitudes to the use of animals in scientific research, indicated they want to know more about what goes on behind closed doors in laboratories¹⁸.

There is also widespread support amongst the scientific community to repeal section 24. In fact, as a show of alignment with the central principles of the Freedom of Information Act, 112 organisations involved in bioscience – including universities, charities and research councils - have signed a Concordat on

Openness on Animal Research¹⁹. Signatories acknowledge the role they play in helping the public understand animal research.

Most organisations that responded to the 2014 section 24 consultation supported option 2b, of the three proposed options for amending section 24. This option was to “Repeal Section 24 and amend ASPA by creating a criminal offence of malicious disclosure of information about the use of animals in scientific research, with the amended legislative framework to include a statutory prohibition on disclosure of information relating only to people, place and intellectual property²⁰”.

¹⁷ *Ibid*, Item 4

¹⁸ Views on the use of animals in scientific research, Ipsos MORI, 19 October 2012

¹⁹ Concordat on Openness on Animal Research, Understanding Animal Research, Available at: <http://www.understandinganimalresearch.org.uk/policy/concordat-openness-animal-research/> [Accessed 14 March 2017]

²⁰ Consultation on the review of Section 24 of the Animals (Scientific Procedures) Act 1986

Scientific bodies that supported repealing section 24 said:

UK Bioscience Sector Coalition²¹

The UKBSC welcomes the review of Section 24.... The Coalition's preferred option would be 2b, subject to elucidation of a number of important details. These include clarity over whom the statutory bar applies to; proper definition of people, places, and IP; and clarity of the controls over malicious and reckless release.

The Physiological Society and the British Pharmacological Society²²

The Physiological Society and British Pharmacological Society wish to endorse the UKBSC's explicit statement that we have no wish to prevent release of information relating to the welfare of animals used in regulated procedures.

The Wellcome Trust²³

We see option 2b as the most appropriate of the options presented in the consultation... The Wellcome Trust welcomes the review of S.24 to move towards greater transparency regarding the use of animals in research.

British Veterinary Association and The Laboratory Animals Veterinary Association²⁴

Wherever possible or practicable, we consider there should be transparency relating to scientific research and this option should allow for increased transparency while protecting the health and safety of those involved in or connected with the use of animals for research.

British Pharmacological Society Animal Welfare and Integrative Pharmacology Committee²⁵

As signatories to the Concordant on Openness on Animal Research, we would support changes that conform to the spirit of openness, and provide clarity for the scientific community concerning publicly available information.

²¹ Response from the UK Bioscience Sector Coalition on the consultation on the review of Section 24 of the Animals (Scientific Procedures) Act 1986

²² Consultation on the review of Section 24 of the Animals (Scientific Procedures) Act 1986, Submission from The Physiological Society and the British Pharmacological Society, June 2014

²³ Consultation on the review of Section 24 of the Animals (Scientific Procedures) Act 1986, Response by the Wellcome Trust, June 2014

²⁴ Joint response of BVA and LAVA (via online survey), June 2014

²⁵ Dr Dominico Spina, Chair of the British Pharmacological Society Animal Welfare and Integrative Pharmacology Committee, Science Media Centre, Expert reaction to the news that the Home Office plans to abolish Section 24 of the Animals (Scientific Procedures) Act 1986, Available at: <http://www.sciencemediacentre.org/expert-reaction-to-the-news-that-the-home-office-plans-to-abolish-section-24-of-the-animals-scientific-procedures-act-1986/> [Accessed 14 March 2017]

What next?

The time to repeal section 24 arrived long ago. Despite almost two decades of acknowledgement that the clause in the ASPA conflicts with the central principles of freedom of information, that it contributes to a crisis of trust between the scientific community and the public, and that a repeal is supported by key stakeholders, section 24 lingers on.

It has taken far too long just to get to this stage, where the public consultation merely awaits a response to finally move forward with repealing section 24. So now the question arises: when will this happen?

It's a question that must be directed to the Home Office.

Please contact:

The Rt Hon Sajid Javid, Secretary of State for the Home Department

Home Office, 2 Marsham Street, London SW1P 4DF

Tel: 020 7035 4848

Email: privateoffice.external@homeoffice.gsi.gov.uk

Baroness Williams of Trafford, Minister of State with responsibility for animal testing

House of Commons, London, SW1A 0AA

Tel: 020 7219 5804

Email: wallaceb@parliament.uk