

COUNTRYSIDE ALLIANCE BRIEFING NOTE

Animal Welfare (Sentience) Bill

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SUMMARY

- The Countryside Alliance fully supports legal recognition of the sentience of animals, although we would note that the sentience of animals has long been recognised, as evidenced by the animal welfare legislation passed by parliaments over nearly 200 years. However, we share the widespread concerns that have been expressed at each stage of the Bill in the House of Lords about the Animal Sentience Committee this Bill would create. Concerns have focused on the membership of the Committee and how it might be structured, operate and be resourced. The Bill has not been updated to address any of these concerns and is essentially the same as introduced.
- While providing a little more detail, the Animal Sentience Committee's draft Terms of Reference, published ahead of Report Stage in the Lords, provide little reassurance or clarity. Terms of reference are easily changed or amended; they are not an adequate substitute for good legislation.
- According to the Bill as written, the role of the Committee is not to scrutinise the substance of policy decisions, but the process by which those decisions were reached and whether all due regard had been had to animal welfare. By contrast the draft Terms of Reference seem to suggest that the Committee could have a role in scrutinising policies. This would be at odds with the Bill as it stands.
- The Bill allows the Committee to examine past policy decisions and implementation, so it could opine on any historical policy and report that the animal welfare consequences had not been duly considered. In highlighting and calling into question established policy it could start to drive its own agenda.
- The Bill fails to provide any definition of what amounts to 'policy'. Does policy include decisions not to do something, as well as to do something?
- The Bill provides no definition of sentience, perhaps because the issue is so hotly debated among scientists. Sentience is probably a scale and we are more inclined to recognise it in animals that seem to react as we do. Recognition of sentience was extended at the Report Stage in the Lords to cephalopods and decapod crustacea, in addition to vertebrates (other than humans).
- The Countryside Alliance believes that the Bill lacks the necessary detail and safeguards to ensure the Sentience Committee cannot be hijacked or extend its reach beyond its legally defined role. There need to be safeguards to ensure that the committee does not become a Trojan horse, used to attack proper wildlife management, farming or the economic well-being and way of life of our rural communities.
- We would note the recent concerns expressed in the House of Lords in a debate on 6 January on two joint reports from the Secondary Legislation Scrutiny Committee and the Delegated Powers and Regulatory Reform Committee. The debate "Skeleton Bills and Delegated Powers" highlighted the growing trend of government to rely on delegated legislation and skeleton bills, with implications for the ability of Parliament to scrutinise executive action and know clearly what it is that Parliament is being asked to consent to. As Lord Lisvane noted: "The Government's own definition of "good law" is that it is "necessary, effective, clear, coherent and accessible"", yet the Sentience Bill clearly fails to meet that definition. The Sentience Bill is largely a skeleton Bill. Parliament is being asked to approve a new statutory committee, which will report to Parliament, but a Committee lacking clarity as to its powers, its independence and its resources.
- We would also draw attention to the Lords Third Reading debate on the Bill on 13 December 2021, and in particular the comments of the Rt Hon Lord Herbert of South Downs from the Government benches and Baroness Mallalieu QC from the Opposition benches:

Lord Herbert:

“...The Government rejected every other amendment put to them. We pointed out that sentience is not actually defined in the legislation; apparently that does not matter. What matters is that Ministers must have regard to sentience, even if we do not know what it actually is. We asked for safeguards to ensure the expertise of the committee’s members. We were told that such protections were not necessary. We asked for constraints to the committee’s scope. We were told that limits to the committee’s unfettered remit were not necessary either. Crucially, we asked why the balancing provisions in the Lisbon treaty, which specifically exempt religious rites, cultural traditions and regional heritage, were not included and why the Bill goes so much further than the EU measure it claims to replace. We were told that this balancing provision was not necessary either. In fact, apparently no change was necessary.

The Government have been able to ignore every concern expressed, largely on this side, by relying on the kindness of strangers—uncritical support for the measures that would have guaranteed the defeat of any amendment.....”

Baroness Mallalieu:

“.... the former Master of the Rolls, the noble and learned Lord, Lord Etherton, told us during the passage of the Bill that it creates a magnet for judicial review; when the foremost vet in this House, the noble Lord, Lord Trees, who supports the Bill, tells us that its scope needs definition and its focus sharpened on to future policy decisions; when the former Leader of the House, the noble Lord, Lord Strathclyde, the former leader of the party opposite, the noble Lord, Lord Howard, and many others, tell the Government that they need to think again, yet they resist and reject all amendments, save for a small number of government ones, it makes me wonder whether this House has actual value as a scrutinising House when they have the comfort of a large majority in another place and know that they are able to push defective Bills through almost unamended there...”

INTRODUCTION AND BACKGROUND

Sentience and Welfare Considerations

- Animal sentience is often incorrectly referred to as being a ‘principle’ when it is a question of fact. Animals are either sentient or they are not. They either have the capacity “to be able to perceive or feel things” (Oxford English Dictionary) or they do not. The fact of animal sentience is the reason why the welfare of animals matters. Which animals are classified as sentient in law is a separate and disputed question.
- The fact of animal sentience being the reason for animal welfare laws is reflected in European law: “...the Union and the Member States shall, **since** animals are sentient beings, pay full regard to the welfare requirements of animals”. Similarly, the 2017 draft Animal Welfare (Recognition of Sentience and Sentencing) Bill read: “Ministers of the Crown must have regard to the welfare needs of animals **as** sentient beings.....” The current Animal Welfare (Sentience) Bill follows the same approach, referring to policy having an “adverse effect on the welfare of animals **as** sentient beings”. All the texts are declaratory in the sense that reference to sentience makes clear that it is because animals are sentient that their welfare matters. This understanding is confirmed by the oral evidence of Sir Stephen Laws, former First Parliamentary Counsel, and given to the Environment, Food and Rural Affairs Select Committee on 17 January 2018, as part of the Committee’s examination of the draft Animal Welfare (Recognition of Sentience and Sentencing) Bill 2017.
- Currently the law largely restricts recognition of sentience to vertebrate animals, although this Bill was amended in the Lords to extend sentience to cephalopods and decapod crustacea. The scope of the Animals (Scientific Procedures) Act 1986 had already been extended beyond vertebrates to include cephalopods. The Government’s 2018 consultation defined animals as being “an organism endowed with life, **sensation** and voluntary motion”. Does this mean that all animals could eventually be recognised as sentient? What scientific evidence would be required to justify extending the legal recognition of sentience to other classes of animal? The current Bill contains powers for recognition of sentience to be extended to other animals by secondary legislation, but is silent as to what the grounds are for exercising this power. This contrasts with the Animal Welfare Act 2006 which makes similar provision but states that: “the appropriate national authority is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering”.
- The consequence of acknowledging an animal as sentient is that man then has a duty towards that animal. In defining which animals are regarded as sentient the scope, or extent, of any welfare duty is also defined. Even where an animal is recognised as sentient the nature and proximity of the relationship between man and animal will determine the extent of that duty. Where an animal is kept by man, or is under his control, then a duty to ensure welfare arises, as well as the obligation to avoid causing unnecessary suffering. This is already enshrined in the Animal Welfare Act 2006. The situation for animals in the wild must be different, even when recognised as sentient. There cannot reasonably be a duty to ensure welfare as there is for kept animals or those under the control of man, but rather a duty to avoid causing unnecessary suffering such as when wild animals are culled. For example, man does not, and should not, have a responsibility to ensure wild rabbits have a suitable diet, but were a wild rabbit to be rescued by an animal sanctuary then while it is not living wild there would be a duty to provide a suitable diet. The welfare duty

as far as wild animals are concerned should only apply where there is some interaction between man and the wild animal, so as to avoid unnecessary suffering.

- It is possible to acknowledge that all animals, whether living wild or kept by or under the control of man, have certain needs which if not met would be detrimental to their welfare, while also acknowledging that man does not have the same duty to meet those welfare needs in all cases. The welfare duty to farmed deer would be very different to the welfare duty to wild deer. In the latter case the welfare duty may only apply when man is engaged in deer culling and then only to the extent that the deer is killed in a humane way which avoids unnecessary suffering. Therefore, formulating and implementing policy, having all due regard for the welfare of animals as sentient beings, clearly has to take account of the particular circumstances of the animals to whose welfare needs regard is to be had.
- However, the question remains as to whether we actually need sentience recognised explicitly in UK law. The recognition of animal sentience and the consequent need for animal welfare laws is nothing new. Parliament has always proceeded on the basis that animals are sentient and has legislated for animal welfare as a result. However, while welfare is enshrined in domestic law, as is cruelty (the intentional causing of unnecessary suffering), there is no statement in law of animals as 'sentient beings', largely because welfare laws would make no sense if sentience was not already understood and accepted.
- Animal welfare laws in the UK date back nearly 200 years to 1822 when the Cruel Treatment of Cattle Act was passed. Successive governments and parliaments have recognised the fact of animal sentience both prior to, and since our membership of the EU, as reflected in the body of animal welfare legislation on the Statute Book, including the Animal Welfare Act 2006. Welfare laws in this country go far beyond the minimum standards set by the EU, and it is unclear why simply putting the fact of animal sentience into a law would achieve any substantive improvement in animal welfare.
- In evidence before the Efra Committee examining the 2017 draft Bill, Professor Mike Radford, Reader in Animal Welfare law at the University of Aberdeen, noted: *"There has never been any question that Parliament recognises sentience in other species. Right from 1822, when this place passed the first animal protection legislation, it was based on the assumption that those animals had the capacity to feel pain and pleasure."* As such, he questioned whether placing animal sentience formally on the Statute Book would make any practical or "legal difference ... for the simple reason that it is open to Parliament to pass whatever legislation it wishes to protect animals and to promote welfare. In so doing, it is doing that on the basis that those animals are sentient."

The Draft Animal Welfare (Recognition of Sentience and Sentencing) Bill 2017

- The recent furore around animal sentience began as a result of Brexit because, with our departure from the European Union, there would no longer be an explicit reference in law applicable in the UK to the sentience of animals. The 2017 draft Animal Welfare (Recognition of Sentience and Sentencing) Bill was almost entirely motivated by politics on the back of a public campaign on animal sentience which was both inaccurate and misleading. A campaign which deliberately misrepresented the legal reality and the position of the then government. It was uncomfortable for MPs because the issue is far from straightforward or simple to explain. It is, however, vital to understand how sentience is treated in EU law and its effect in domestic law while we were a member state of the European Union.

- Within EU law, the obligation on the EU and Member States to “pay full regard to the welfare requirements of animals” is a long standing one and appears in the original Treaty of the European Union. Specific reference to animal sentience was inserted much later by an amendment made to the original wording in the Treaty of the European Union by the Lisbon Treaty and is now found as Article 13 of the consolidated treaty – Treaty on the Functioning of the EU (TFEU). The reference to animals as sentient is explanatory in purpose making clear that the reason why regard must be had to animal welfare is because animals are recognised as sentient.
- The 2017 draft Animal Welfare (Recognition of Sentience and Sentencing) Bill ran into trouble because, unlike EU law, the duty it sought to place on ministers to “have regard to the welfare needs of animals as sentient beings” was open ended, balanced only by reference to the “public interest”. The draft Bill covered all government policy where there is a potential impact on animal welfare. This potentially would have included key policy areas such as housing, infrastructure, and health which are not included in the scope of the TFEU.
- In contrast the obligation under the TFEU to “*pay full regard to the welfare requirements of animals*” is limited to specified areas of policy: “*agriculture, fisheries, transport, internal market, research and technological development and space policies*” and that the duty is also subordinate to the requirement to respect “*religious rites, cultural traditions and regional heritage...*”.
- The 2017 draft Bill represented a significant departure from the obligation under EU law, and would have left ministerial decisions open to repeated legal challenges. It was open to being weaponised by those opposed to policies across government and to be used to advance agendas, including those seeking to limit or curtail the activities of farmers and other land managers, even fishing and angling. The danger was very clearly highlighted by Sir Stephen Laws, former First Parliamentary Counsel, in his oral evidence to the EFRA Select Committee, when he noted that the draft Bill: “has enormous potential to create litigation that would be unprofitable, expensive and delay change where change is desirable”. He noted that the very ability for challenges to be brought would have a “chilling effect” on policy making and the focus would be on ensuring “compliance” rather than “sound judgment”.
- Moreover, because this requirement was enshrined in EU law there was little, if any, direct effect in UK domestic law. It could be assumed that the sentience, and therefore welfare, of animals had been duly considered in any EU regulation or directive applied in UK law, because of our membership of the Union. The risk of endless judicial review proceedings was real and Sir Stephen Laws commented that: “[the draft Bill] suffers from the defect of being an attempt to do politics with law and then to encourage people to do politics in the courts”. The evidence of Sir Stephen Laws and Professor Mike Radford to the Efra Committee made clear ministerial decisions could be repeatedly challenged in the courts on the basis that they had failed to have regard to animal welfare or indeed the public interest.
- The 2017 draft Bill was universally criticised and the Government was told, in no uncertain terms by the Efra Committee to go away and think again. The Report of the Environment, Food and Rural Affairs (Efra) Committee into the draft Bill can be found [here](#).
- One of the suggestions made to the Efra Committee was that there should be some sort of reporting requirement, or ability to hold ministers to account, to ensure that in the formulation and implementation of policy they have considered animal welfare, while

avoiding the risk of endless legal challenges and finding that the courts were dragged into animal welfare policy, which is rightly a matter for Parliament. The Government has clearly adopted this approach in the Animal Welfare (Sentience) Bill 2021.

THE ANIMAL WELFARE (SENTIENCE) BILL 2021

The Bill

- The Animal Welfare (Sentience) Bill is only six clauses long. It would establish an Animal Sentience Committee, with members appointed by the Secretary of State for the Environment. This Committee “may” produce a report in relation to “any government policy” that “is being or has been formulated or implemented”. The report will set out the Committee’s views on “whether, or to what extent, the government is having, or has had, all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings”. These reports are to be published and the Secretary of State must respond and share that response with Parliament. The Bill remains substantially unamended, since its introduction in the Lords.
- In effect the Bill establishes a mechanism for holding government to account but one that does not stop decisions or policies that may have negative animal welfare consequences, so long as those consequences have been properly considered. It does, however, mean that ministers will face greater scrutiny and policy development may experience a ‘chilling effect’, especially if the Committee starts to opine on whether a particular policy decision was right or wrong, as opposed to reporting on the question of whether due regard was had to welfare in the process reaching a decision, as the Bill sets out.
- The Animal Sentience Committee is in principle an oversight and reporting body. However, the name is misleading. The Committee is not concerned with decisions as to whether animals are sentient but rather whether in the development and implementation of government policy those animals, already deemed sentient in law, have had their welfare considered while policy is being developed and implemented. It is Parliament which ultimately decides which animals are sentient for the purposes of the law and therefore need to have their welfare considered.
- Much will depend on how the Animal Welfare Sentience Committee works in practice. As the legislation is drafted the Committee is a creature of government, whose members are appointed by the Secretary of State. Given that the Committee’s remit covers the entirety of government policy, from formulation to implementation, the Committee will need huge resources. It should be looking, not just at wildlife management and farming practices and the Defra brief, but also policy areas such as planning, trade, and even procurement of medicines for the NHS. There is seemingly no limit.
- Throughout its passage through the Lords there was widespread concern that the legislation was completely silent on the membership of the Committee and how it might be structured, operate and be resourced.
- It is also unclear from the Bill how this new statutory Committee, required to report to Parliament, is to relate to existing non-statutory committees advising on animal welfare but which do not have the same powers to act and advise on their own initiative, as the Sentience Committee is empowered to do.

- The Animal Sentience Committee is a Defra appointed committee but with a role which should see it roaming across a range of policy and across departments. However, there is no requirement for other government departments to notify the Committee of policies being formulated or implemented, which may have animal welfare consequences, or for other departments to co-operate with the Sentience Committee's work.
- The Bill not only covers all policy, across all departments, but across all time. The Bill allows the Committee to examine past policy decisions and implementation. The Committee could therefore opine on any policy decided by a former minister under a previous administration and report that the animal welfare consequences had not been duly considered. In practice the Committee would be highlighting and calling into question an established policy and in doing so could start to drive its own particular agenda.
- At the Lords Report stage the Minister responded to concerns about the retrospective powers of the committee, saying: "Prioritising policies that the Government are currently pursuing fulfils the committee's statutory function under Clause 3... There are limits to how far you can hold a current Government to account for the decisions they did not make, and this would certainly not be timely... To put it more simply, the committee would not be doing its job properly if it sought to rake over old coals and to reignite past policy issues that are now closed." That may be the Government's view but it is not what the Bill does.
- While the Bill does also establish the Committee as a mechanism for holding government to account by requiring it to report to Parliament, there is a danger that policy development may experience a 'chilling effect', especially if the Committee starts to report in a way which makes clear whether it believes a policy or policy proposal to be right or wrong. Ministers may be inclined not to take difficult decisions, preferring to avoid a negative report from the Sentience Committee.
- It should be remembered that animal welfare considerations have to be balanced against other competing public interest considerations. There are also scenarios where a policy may have negative consequences for one group of sentient animals but be positive for another group of sentient animals. The Bill should make clear that this balancing exercise remains for Ministers, and define more closely the limits of the Committee's powers.
- There also remains confusion as to whether the Animal Sentience Committee has a role to play in advising on which animals are to be considered sentient, as its name would suggest. Much seems to depend on how the Animal Welfare Sentience Committee works in practice, because the Bill is devoid of detail.
- The Bill fails to provide any definition of what amounts to "policy". Does policy include decisions not to do something as well as to do something?
- There is also no definition of sentience, perhaps because where sentience begins and ends in the animal kingdom is a hotly debated point and where scientific consensus is hard to reach. Sentience is probably a scale and we are more inclined to recognise sentience in animals that seem to react as we do, or to which we are closest. Already the Government has amended the Bill in the Lords to extend recognition of sentience to cephalopods and decapod crustacea.
- In response to all these concerns and questions the Government undertook to publish Terms of Reference ahead of Lords Report stage. The draft Terms of Reference were published on the 18 November 2021 and circulated to peers. While providing a little more detail, the Terms of Reference provide little reassurance or clarity. (see below)

At Report Stage in the Lords the Defra Minister, Lord Benyon, responded to criticisms of how the Bill had been drafted, saying:

“I am conscious that I am in the presence of experienced legislators and people very much more experienced, perhaps, than I was in the other place where, when a piece of legislation was described as “terrible” or “poorly drafted” it was usually code for the fact that the speaker did not agree with it. Here, I am sure that that is not the case”.

The draft Terms of Reference

- There is little in the Terms of Reference that is binding, either on Ministers or the Committee. They are expressed almost exclusively in terms of “may”, “could” or “is expected to”. This may be in the nature of terms of reference but is concerning for a committee established by statute and which could play an important role in driving government policy. Terms of reference are easily changed or amended, as Lord Benyon made clear at Lords Report Stage, and is perhaps illustrative of the fact that terms of reference are not an adequate substitute for good legislation. The draft Terms of Reference for the Sentience Committee would seem to confirm the concerns raised at previous stages of the Bill.
- The draft Terms of Reference also refer to an entirely new entity within Defra to be called the Animal Welfare Centre of Expertise (AWCE). The Terms of Reference suggest that any conflict between the Animal Sentience Committee and other committees will be avoided through negotiation within the AWCE, but fail to acknowledge the substantive difference between a statutory committee reporting to Parliament and non-statutory committees with no reporting function. It is stated that the members of the various committees are “in equal standing as members of AWCE”, but it is hard to see how this is the case when the committees are not themselves “in equal standing”.

At Lords Report Stage, Lord Benyon defended the Bill’s lack of detail, saying:

“Our approach strikes the right balance between offering clarity about the committee’s role and powers in legislation and allowing it sufficient flexibility. It provides flexibility to update the terms of reference when needed without the need to take up parliamentary time unnecessarily. Our other animal welfare expert committees, including the Animal Welfare Committee and the Zoos Expert Committee, have provided valuable advice to the Government for years without the need to set out their terms of reference in legislation.”

However, unlike the proposed Animal Sentience Committee, these are not statutory committees and could be reformulated or even abolished at the current government’s will. Statutory committees commonly do include terms of reference in their establishing legislation. A better comparison for the proposed Animal Sentience Committee would be the Climate Change Committee, a statutory committee established by the Climate Change Act 2008, which includes extensive detail as to terms of reference of the Committee in Schedule 1.

Statutory functions - Aims and purpose – Objectives and responsibilities

- The Bill states that when any government policy is being or has been formulated or implemented, the Animal Sentience Committee may produce a report containing its views on whether, or to what extent, the government is having, or has had, all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient

beings". According to the Terms of Reference the reports should also "contain recommendations on the steps the Committee considers the government should take for the purpose of ensuring that, in relation to any further formulation or implementation of the policy, the UK Government has all due regard to the ways in which that policy might have an adverse effect on the welfare of animals as sentient beings". The Committee's reports are to "support accountability to Parliament".

- However, the Terms of Reference state that: "Once established, it will be for the Committee to formally ratify its objectives and responsibilities". As a Committee established by statute the Committee's objectives and responsibilities are to be found in the establishing Act of Parliament. It is not for the Committee to ratify its "objectives and responsibilities". The Terms of Reference also state that the role of the Committee's members "could" include "ensuring that the "Committee's policy on transparency is adhered to". It would seem that the Committee determines its own level of transparency and they could ensure it is adhered to, or they might not.
- The Committee will be free to choose "particular policy decisions for the purpose of producing a report". According to the Terms of Reference, in order to maximise its "value-added" the Committee will be expected to take into account the extent to which some policy decisions are already subject to other scrutiny arrangements. The example given is the Trade and Agriculture Commission. It seems the Animal Sentience Committee is not expected to look at policy in respect of trade deals - "avoiding duplication of...functions such as scrutiny and reporting on Animal Welfare standards in Free Trade Agreements." This would seem an obvious policy area in which the Animal Sentience Committee should be exercising its scrutiny function. We have recently agreed a trade deal with Australia which involves imports that are produced using methods that, in animal welfare terms, would not be allowed in the UK. The very purpose of the Committee, at least according to the Bill, would be to investigate and report to Parliament as to whether in reaching that deal all due regard had been had to animal welfare. Similarly we find that the Committee is "not expected to...consider matters of fiscal policy", yet given that most animal welfare laws are delivered by local authorities, fiscal decisions matter and can have implications for animal welfare. Indeed the Glossary of the draft Terms states that policy is a decision made or implemented by a UK Minister" and includes "allocating resources". It would also seem to include decisions not to do something, as well as decisions to do something.
- The Terms of Reference also confirm that the Committee can, not only investigate current policy in formulation, but also past policy decisions. How is the Committee to assess the policy making process in past decisions unless they are of the view that the policy decided upon is itself questionable? The Terms of Reference also state that the Committee may wish to provide "non-statutory advice and support" and "bespoke advice where requested by Departments" but "in doing so would be expected to engage closely with the Animal Welfare Committee". What this would mean in practice is not clear and could involve the Committee exercising a role far in excess of what the Bill suggests.
- The Terms of Reference also note that the Committee may seek outside input including from "stakeholders amongst others". If the Committee is looking at process, rather than the policy decisions taken or under consideration, why consult stakeholders? Similarly, the Terms of Reference suggest the Committee "may wish to prioritise policies ... which are more significant in terms of "Parliamentary, Departmental, Stakeholder or public interest". Is this about ensuring all due regard is had to animal welfare in the process of reaching policy decisions or about the issues and decisions themselves? Will the Committee focus on animal welfare issues that are high profile as a result of campaigning by interest groups?

- The draft Terms of Reference state that: “The Committee is not expected to consider individual operational decisions (e.g. planning adjudication decisions) nor to consider matters of fiscal policy”. Individual operational decisions are then defined in the Glossary as “decisions for which no bespoke Ministerial direction is sought or required. For example, an official-level decision to grant an individual licence under a licensing scheme would constitute an operational decision and therefore not fall within the scope of the Committee”. This is contrasted with “the establishment and design of the licensing scheme” which “would constitute policy, and therefore be in the Committee’s scope”. This would appear to conflict with the Bill. The Bill makes no such distinction and does not define ‘policy’. It does, however, expressly allow the Committee to examine policy in terms of the way it “is being or has been” implemented. The Bill would seem to allow the Committee to examine the very things the draft Terms of Reference claim are excluded from its remit. It is also at odds with the definition of ‘policy’ in the same Glossary, where policy includes a decision “which affects the activities of government, business, charities or members of the public...including but not limited to, the process of making regulations, legislating, allocating resources or promoting a course of action”. The whole definition is open ended and not binding on anyone.
- The draft Terms of Reference state: “The Animal Sentience Committee is established...to furnish accountability to Parliament for consideration of animal welfare in Ministerial decisions... The Committee scrutinises policy decision by all UK Government Departments”. This is what is provided for in the Bill, but the Terms of Reference, like previous ministerial comments, suggest the Committee’s activities may extend far beyond what is set out in the legislation. The Terms of Reference refer to it being “beneficial for UK Government Departments to seek advice from the Committee to assist them in understanding the effects of particular policies on the welfare of animals”. It seems the Committee will not simply be looking at process but the policy itself under consideration.
- When discussing members of the Animal Sentience Committee, who are also members of other AWCE committees, it is noted that where they have advised a government department as a member of another committee they “may not participate in the Committee’s scrutiny of a related policy decision”. It is not the role of the Committee to scrutinise a policy decision but the process by which that decision was reached and whether all due regard had been had to animal welfare. It may be poor drafting, but the Terms of Reference as a whole seem to imply a role for the Committee at odds with the legislation bringing it into existence. For a committee established by statute and which cannot, unlike the other committees making up the AWCE, be abolished without further legislation this has significant implications.
- There is also the question as to how a policy decision by ministers can be acceptable if the process is identified by the Animal Sentience Committee as being defective. If Ministers failed to have all due regard to animal welfare in reaching that policy decision then by definition they cannot have been in a position to have undertaken the proper balancing exercise between the various public policy considerations in making a particular policy decision where there are consequences for animal welfare.

At Lords Report Stage, Lord Benyon responded to these concerns by saying:

“Clause 2(2) envisages that the committee can examine what adverse effects a policy might have on the welfare of animals and whether the Government are aware of all those possible adverse effects and fully understand them so they can properly take them into account in their decision. This is clearly about the process followed in decision-making.”

These remarks do not, however, address concerns about the draft Terms of Reference appearing to contradict this intention.

Engagement with government departments

- The Terms of Reference note that “departments are not subject to a legal duty to consult with the Committee”. There is also no obligation on departments to co-operate with the Committee. The Terms of Reference simply states what “Defra expects government departments” to do. A department which fails to cooperate will simply be reported as having not co-operated. What use is a report in the absence of co-operation from the relevant department?
- If the purpose of the Bill is to ensure animal welfare is properly considered in policy making and implementation, then the Committee should be independent of any particular department and set a standard process which is applied across departments. The Terms of Reference state that: “Departments will be provided by Defra with separate guidance relating to all their responsibilities under the Animal Welfare (Sentience) Act”, which will be “developed with the Committee”. Strictly speaking departments have no responsibilities under the legislation and cannot be compelled to co-operate with the Committee. It seems that fear of a negative report to Parliament is what Defra hopes will ensure the necessary co-operation from other departments.

At Lords Report Stage, Lord Benyon said:

“We are concerned about limiting the chance of the legal feeding frenzy that I referred to in Committee. That is why there are only two duties on Ministers: first, to create the committee, and secondly, for Ministers in the departments to which the committee reports to provide an answer within a reasonable period.”

However, he later went on to concede,

“...there will be attempts to judicially review Governments at every stage of a process of policy, particularly in areas that are emotive and that carry great weights of public opinion in one way or the other. The question is not whether judicial review will be attempted but whether it will be successful.”

Appointments to the Committee

- The Terms of Reference make clear that the appointments to the Committee are not regulated by the Office of the Commissioner for Public Appointments, only that the Secretary of State will “generally adhere to its guidelines on best practice”. The Secretary of State will merely “seek to appoint experts with appropriate experience relating to policy-decision making and/or the welfare of animals”. Despite the fact that the Committee is supposed to be an expert Committee it “shall be guided by expertise, including scientific matters”.
- There are to be 8 – 12 Committee members, but these are part time doing 15-20 days a year. Members are appointed by the Secretary of State and can be dismissed by the Secretary of State on the grounds of “unsatisfactory conduct”, whatever that means. The Chair is also part-time, working at least 20 days per year. It is evident that the Chair and members of the Committee could not possibly keep under review the animal welfare implications of past, present and future policy across government on that basis. The Committee’s work plan will it seems only cover “six to eight substantive reports a year”.

- Given that appointments to the Committee are effectively unregulated and that the Terms of Reference can be changed or amended at will, the Committee remains open to manipulation and to an ever-expanding remit. Moreover, it enjoys the permanence and the enhanced status of being statutory, in contrast to the other welfare committees with which it is expected to work.
- It is also of note that Committee members are only “expected to uphold the standards of conduct set out in the Committee on Standards in Public Life’s Seven Principles of Public Life”. Why is this an expectation and not a requirement?
- The role of members, according to the Terms of Reference, “could include ensuring that the Committee works within its statutory remit”. It is hard to see how that could be the case as the statutory remit is far more limited than the remit suggested by the Terms of Reference.

At Lords Report Stage, Lord Benyon said,

“Defra has a long track record of recruiting expert advisers to give balanced, reasonable advice on animal welfare issues. Appointments will be decided in accordance with the Governance Code on Public Appointments, and this is important. The aim of the code is to ensure the best applicants are appointed. Anybody suitably qualified and wishing to apply would need to be assessed alongside other candidates according to a rigorous selection procedure. Applicants would, in line with best practice, be required to declare any potential conflicts of interest to the recruitment panel.”

Later, however, when pressed for reassurance that Chris Packham and Mark Avery of Wild Justice would not be eligible to be on the Committee, Baroness Bloomfield of Hinton Waldrist responded for the government,

“I am afraid I am not able to give that reassurance. All I can say is that they might not be considered to be experts.”

The issue would not, however, be with their expertise but with their partiality. It should also be noted that while the Minister says appointments would be decided in accordance with the Governance Code on Public Appointments, but the Terms of Reference only state that the Secretary of State will “generally adhere to its guidelines on best practice”.

Countryside Alliance Position

- The Countryside Alliance welcomes the Government’s commitment to animal welfare and to ensuring that our departure from the EU not only does not result in any lessening of animal welfare standards but should be seen as an opportunity to raise standards in several areas, where previously this was not possible. For example, tackling puppy smuggling and the abuse of the pet passport scheme.
- The Countryside Alliance recognises the fact that animals are sentient beings. Those who have the task of husbanding animals and managing wildlife acknowledge and understand the fact that animals are sentient and the consequent need to avoid causing animals unnecessary suffering and of acting humanely in their dealings with animals. Indeed for animals kept by or under the control of man there is the additional duty of care as set out in the Animal Welfare Act 2006, which adopts the “five freedoms” also applied in EU law. Recognition of sentience and the welfare needs of animals is not the same as recognising

that animals have rights, in the sense that human beings have rights. It is important that animal welfare does not become confused with the animal rights agenda.

- In principle, recognising sentience and holding the Government to account in this area is not of itself a bad thing, and the Countryside Alliance has always supported all genuine animal welfare measures. The existence of this Animal Sentience Committee could ensure that animal welfare is given due consideration in policy making across government, and not just where Defra is concerned. It could drive a cultural shift across Whitehall.
- It is equally possible that the Bill will achieve little that could not have been achieved by other means, without the need for this Bill, and at considerably less public expense. Of course, such an approach is harder to explain to the public and would not get the Government the positive headlines it so clearly craves.
- There is already an Animal Welfare Committee, formerly the Farm Animal Welfare Council (FAWC). This Committee has a greatly expanded role now, beyond farming, and advises government on animal welfare. Why could the role and powers of this Committee not be expanded or placed on a statutory footing?
- The Government needs to address the following concerns and questions:
 - The Committee will be entirely appointed by the Secretary of State, assumably the Defra Secretary. There is no indication of who can be appointed, what their qualifications and expertise should be, nor any guarantee that these will be independent individuals.
 - What is to prevent the Committee becoming dominated by animal rights groups or individuals pushing agendas that are currently in favour with a particular government or Secretary of State?
 - The Committee is free to report across all areas of government policy. If it is genuinely going to ensure animal welfare is being duly considered it is going to have to be either an enormous committee, or have an enormous staff covering all government departments. The draft Terms of reference imply a Committee with very limited resources.
 - The Committee “may” report, it has no duty to report. As a creature of Defra will it in practice be focussed mostly on areas of policy in Defra? How will it be ensured that the Committee looks across all departments?
 - Will all ministers and departments have to notify the Committee of areas of policy formation, work streams etc so the Committee can decide what to investigate and report on
 - Will its remit extend to extra territorial considerations. For example, farming welfare standards in other countries in relation to trade policy or the testing of medicines on animals in relation to policy around the procurement of medicines? What about the sale and manufacture of weapons, or aid policy to countries with low levels of animal welfare?
 - The Committee’s reports will be published and the Secretary of State must lay a response before Parliament. The Reports are supposed to be ensuring that “all due regard” has been had to the impact of a policy on animal welfare, it is not the

Committee's role to comment on the merits of a decision, even where a negative impact on welfare could be argued, so long as ministers have had "all due regard". Why is it not made clear that the Committee is there to ensure due process has been followed but not to opine or comment on the merits of a decision except where there has been a failure to consider animal welfare as part of the process?

- There remains the danger that the Committee itself is hijacked by an animal rights agenda, using reports to stir up political controversy and thereby forcing decisions that satisfy the ideological agendas of campaign groups. How is this to be avoided?
 - The Committee's seeming lack of independence and its limited powers and resources (at least that is what the draft Terms of Reference seem to suggest) are clearly designed to prevent it being used against government, but it could also be used by the government of the day to justify decisions that are not based on principle and evidence but suit an agenda or narrative that is not really about welfare but about political advantage. It could give government a licence for decisions that go far beyond welfare. Will it be made clear that the Committee must concern itself with process and not policy and ministerial decisions?
 - There needs to be further consideration as to how the work of this Committee relates to the Animal Welfare Committee, recognising the distinction between statutory and non-statutory committees. The former should, according to the Bill, be concerned with due process, the latter with expert scientific advice on welfare to inform decisions. Why not reform, and expand the role and resources of the Animal Welfare Committee so it can report and proffer advice on its own initiative? Why not require animal welfare to be included as a distinct section in all regulatory impact assessments? Why not have a Committee outside any specific department with responsibility to set and oversee the necessary policy development processes to ensure animal welfare is being duly considered across government?
 - Animal Welfare could be advanced without creating another Committee, which risks being weaponised, especially against those in the countryside who are largely responsible for the management of animals both domestic and wild.
 - There also needs to be clarity as to how it will be funded and resourced, if it is to do the enormous job which the Bill seems to envisage, as opposed to what is suggested by the draft Terms of Reference.
- The Alliance believes that the current Bill lacks the necessary detail and safeguards to ensure the Sentience Committee cannot be hijacked or extend its reach beyond its role as set out in the Bill. We continue to believe there need to be safeguards to ensure that the committee does not become a Trojan horse, used to attack proper wildlife management, farming or the economic well-being and way of life of our rural communities.
 - The Committee's role in law is cross-departmental, but the Terms of Reference suggest that it should not interfere in areas where other bodies exist, such as the Trade and Agriculture Commission. There is little clarity as to how the Committee will relate to the Animal Welfare Committee, whose remit already covers most animals, or other committees. Given the existence of the other committees, is the Sentience Committee actually providing the 'value-added' referred to in the Terms of Reference?
 - The Sentience Committee has the power to report retrospectively on decisions taken by previous Ministers and governments. Far from being an independent expert committee

acting as a mechanism to ensure animal welfare is properly considered in all policy making and implementation across government and reporting to Parliament to assist with ministerial parliamentary accountability, the Committee's choice of investigations could end up driving particular campaigns and agendas. Its reports could lead to review of existing policy, and it is significant that in deciding what to investigate the Animal Sentience Committee can take account of public opinion.

- Despite being a statutory body, it is entirely in the control of Defra being dependent financially on Defra, having its secretariat in Defra and with the Defra Secretary of State's control of appointment and dismissal. It would be all too easy for it to be manipulated to support the particular agenda of the government of the day.
- The draft Terms of Reference show all the marks of being an attempt to address the deficiencies identified in the legislation, while avoiding having to amend the legislation. The result is a Bill which will create a statutory committee whose function, role and relevance remain very unclear.

CONCLUSION

- The Alliance is fully supportive of advancing animal welfare, but on the basis of principle and evidence, and effective laws and government action.
- The Alliance will continue to work constructively with the Government, other stakeholders and parliamentarians to ensure that the Bill does achieve what the Government says it wants it to achieve in ensuring animal welfare is integrated into policy formation and implementation.
- However, we believe there need to be safeguards to ensure that the committee does not become a Trojan horse, used to attack proper wildlife management, farming or the economic well-being and way of life of our rural communities.
- The sentiment behind the Bill is good, but sentiment should not drive legislation, nor animal welfare policy. This Bill's good intentions could be achieved without legislation, while at the same time avoiding the potentially harmful unintended consequences, and the expense to the public purse. It remains questionable as to whether the Bill is either necessary or desirable. The Government needs to consider carefully what it is doing and why; and whether there might not be a better and more effective way in achieving its laudable objectives, even if that way may not generate headlines.
- The Bill and the draft Terms of Reference are both unsatisfactory as they stand, both individually and when taken together. The Government's refusal so far to amend the Bill in any way is both extraordinary and regrettable.
- The Bill needs substantial amendment before it can be considered good law, or fit for purpose.