

COUNTRYSIDE ALLIANCE BRIEFING NOTE

Animal Welfare (Sentience) Bill

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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, as does the current Bill, although the Government are looking at extending this to other animals, and the current Bill contains powers for this to be done by secondary legislation. The scope of the Animals (Scientific Procedures) Act 1986 has 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 - cephalopods or even decapod crustaceans such as lobsters?
- 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, at all. 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, 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.
- 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 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.

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?
- 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 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 lack of independence and its limited powers 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, 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 proper consideration as to how the work of this Committee relates to the Animal welfare Committee. 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?
- 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.

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.