

COUNTRYSIDE ALLIANCE BRIEFING NOTE

DOMESTIC ANIMAL WELFARE

House of Lords Grand Committee



**Short Debate on “Promoting and improving the welfare of domestic animals”
(Lord Black of Brentwood)**

Thursday 10 May, from 1pm

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Background:

- The Countryside Alliance is keen to see the highest standards of welfare for domestic animals but also believes that approaches to welfare must be based on principle and evidence, and that animal welfare should not be confused with animal rights.
- The Countryside Alliance supports efforts to promote and improve the welfare of domestic animals but believes enforcement of existing laws should be a priority before introducing further primary legislation. Any new legislation must be subject to proper consultation and impact assessment to avoid unintended consequences and increasing bureaucracy without improving welfare standards.
- The House of Commons Environment, Food and Rural Affairs Committee conducted an inquiry into Animal welfare in England: domestic pets in the last Parliament and published its Report on 16 November 2016. The Alliance welcomed the Committee’s recommendations and has welcomed the progress the Government has made in implementing many of these recommendations, in particular in reviewing the codes of practice under the Animal Welfare Act 2006 and in the Animal Welfare (Licensing of Activities Involving Animals) Regulations due to come into force on 1 October 2018.
- There are many animal welfare issues on the agenda at Westminster at present including electronic collars, breeding and sale of puppies, and the use of airguns. While it is right that the Government acts to address proven welfare issues it must also resist the temptation to legislate simply in response to emotive campaigning by animal rights groups. Such legislation can be harmful to animal welfare and should be resisted.
- The Alliance is also concerned by recent debates around the issue of animal sentience in the light of Brexit. While fully recognising animal sentience the debate seems driven more by animal rights and virtue signalling than real animal welfare considerations and a desire to see practical and enforceable law in this area.

Animal Sentience

- The Countryside Alliance has raised concerns about the Government's current proposal to enshrine in law a duty on ministers to have regard to the welfare of animals as sentient beings. The Animal Welfare (Sentencing and Recognition of Sentience) Bill was widely criticised when considered by the Commons EFRA Committee.
- There is a serious question as to whether the inclusion of animal sentience in legislation is really necessary, and the danger that it could be used to further an extreme animal rights agenda, as opposed to genuine animal welfare which the Countryside Alliance would support.
- In evidence to the Commons EFRA Committee Mike Radford, Reader in animal welfare law at the University of Aberdeen questioned whether placing the principle of animals as sentient 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 recognition of animal sentience and the consequent need for animal welfare laws is nothing new and animal welfare laws in the UK date back nearly 200 years. 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. Welfare laws in this country go far beyond the minimum standards set by the EU, and it is unclear why a new statutory duty is felt so necessary, or even whether this is the best way to advance animal welfare in this country.
- There is need for greater consideration as to how this EU duty is given effect in domestic law, and clarification as to the consequences for government decision making and the potential impact on people and animals.
- To date both the Government's draft Animal Welfare Bill and amendments proposed to the European Union (Withdrawal) Bill have gone far further than simply transposing the existing recognition of sentience in EU law. All the proposals would, in practice, go far beyond Article 13 of the Lisbon Treaty both in scope and perhaps more importantly in terms of legal effect. It must be remembered that the Article 13 duty had little, if any, direct effect in UK law because in practice the duty to have regard to welfare was applied in the formulation of EU policy at EU level and it could therefore be assumed when implementing EU laws in the UK that, so long as the resulting directive or regulation was properly implemented, the Article 13 duty was discharged.
- We are also concerned that any extension of a duty to have regard to welfare to wild animals, without further clarification could endanger properly conducted management of wildlife. The extent of the duty towards animals recognised as sentient must surely be determined by the nature and proximity of the relationship between man and animal. Where an animal is kept by man, or under his control, then a duty to ensure welfare arises, as well as the obligation to avoid causing unnecessary suffering. For wild animals there cannot reasonably be a duty to ensure welfare but there remains 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 vitally important for those who own and/or manage animals, whether domesticated or wild, that the law is proportionate, clear and workable and that there is legal clarity and certainty. We do not think this is the case with any of the approaches proposed to date.
- The duty to have “*regard to welfare*” could leave almost any ministerial decision open to legal challenge. The duty would apply to all aspects of government and every government decision from transport and planning to drug procurement. The law must make clear how ministers are to discharge any such duty; and to avoid matters being decided in the courts which properly belong to Parliament.

Prosecutions, Penalties and the RSPCA

- The Countryside Alliance welcomes the Government’s intention to increase sentences for the most serious animal welfare offences from a maximum of six months to five years imprisonment, and the inclusion of this policy in the draft Animal Welfare Bill. This reflects the recommendation of the Commons EFRA Committee following its inquiry into Animal welfare in England: domestic pets in the last Parliament.
- It is impossible to have a debate about animal welfare laws without considering the issue of enforcement and prosecution. Animal welfare, perhaps more than any other area of law, currently relies on private enforcement and prosecution, particularly by the RSPCA.
- The Commons EFRA Committee considered this issue in some detail during the 2016 inquiry and whether the current arrangements are serving public interest, charitable law, and animal welfare. The Committee concluded that: *“The RSPCA should continue its important work investigating animal welfare cases and working closely with the police and statutory authorities. It should, however, withdraw from acting as a prosecutor of first resort where there are statutory bodies with a duty to carry out this role. We are not convinced by its arguments that it is in a better position than the CPS to prosecute animal welfare cases”*.
- The RSPCA has an invaluable role in investigating allegations of animal mistreatment. However, concerns over a number of cases it has chosen to prosecute using charitable funds has led to its reputation being diminished in the eyes of the public and the organisation has itself acknowledged that it needs to be more transparent and accountable.
- The Wooler Report in 2014 recognised that the RSPCA needed to make changes in terms of accountability and transparency before receiving statutory authority. The Commons EFRA Committee noted that the recommendations of the Wooler Report were being implemented slowly and did not address the fundamental concerns about conflict of interest.
- The argument that if the RSPCA did not prosecute then no one else would because of a lack of resources or expertise is not justified and was rejected by the Commons EFRA Committee. The Solicitor General, Rt Hon Robert Buckland QC MP, has confirmed that the Crown Prosecution Service does not refuse to proceed with prosecutions because of a lack of expert knowledge and made it clear that resources are never a bar to prosecution.
- If custodial sentences increase to five years, the power and authority of those who enforce and prosecute animal welfare offences would be significantly increased. This would make it even more important to ensure that there was accountability and transparency in all prosecutions, which must include the RSPCA ceasing to act a prosecutor of first resort. Offences should ordinarily be prosecuted by statutory authorities except in exceptional circumstances.

Current Issues

i) Electronic Collars

- The Countryside Alliance has raised concerns about the Government's proposals to ban the use of electronic collars for cats and dogs in England.
- The Alliance believes that electronic collars should not be used for routine training of dogs. There may, however, be occasions where used properly and as a last resort they can prevent serious problems, such as sheep worrying. In these cases, the use of electronic collars can bring benefits to animals that might otherwise have led very restricted lives, or for which euthanasia would have been a likely or only option. This includes specific types of dogs, including some working dog breeds, which have a very strong instinct to chase other animals and which may not respond to other training methods.
- There is already protection against misuse of electric collars under existing legislation in England. The use of electric collars for cats and dogs is subject to the requirements of the Animal Welfare Act 2006, and there are separate statutory Codes of Practice in place for the Welfare of Cats and of Dogs. Defra has recently updated the Code of Practice for the Welfare of Dogs and strengthened the form of wording on the use of negative training methods. The updated code makes it clear that anyone who uses training techniques that include physical punishment may risk being prosecuted under the Animal Welfare Act 2006 for causing unnecessary suffering to an animal.
- The Government seems to have misunderstood the concept of 'cruelty' in its proposals. Cruelty is the intentional infliction of unnecessary suffering and the Alliance supports all legislation aimed at tackling it. In many cases, however, it is entirely acceptable to inflict necessary suffering on an animal for its own good, or for the good of society. For instance, neutering a dog or cat can cause a great deal of suffering, as well as restricting the natural behaviour of the animal, but it is rightly deemed necessary. It may be that a small degree of suffering inflicted by an electric collar is equally deemed necessary as it may save livestock and prevent the euthanasia of a dog.
- It is disappointing that the recent consultation document failed to consider options other than an outright ban. Consideration of alternatives such as further regulation, a licensing system, or statutory controls on the quality and specification of the devices available should be considered. Another option could be that devices are only made available under supervision and/or after training from a licensed or regulated practitioner. These proposals were not included in the consultation document but we hope that Defra will consider them before introducing any new legislation.
- Any ban on electronic collars in England should include an exemption for boundary fence systems. The use of these systems allows animals more freedom and greater safety when being kept outdoors, particularly near busy roads or other dangers.
- A ban on the use of such boundary fence systems would set a precedent which would have much wider consequences. Electronic boundary fence systems are already being used for cattle and ponies including many involved in 'conservation grazing' projects by organisations including the National Trust and Wildlife Trusts. There is no evidence that electric collars used in boundary fence systems are 'cruel' when used for cats and dogs, but not when used for cattle or ponies. Equally, there is no principle behind arguments that the infliction of an electric shock to an animal via

electronic boundary fence systems is 'cruel', but that the infliction of the same level of electric shock through a traditional electric fence is not. A ban on the use of electronic collars and boundary fencing systems as contained in the current proposals would therefore have far reaching consequences.

- A study into boundary fence systems by animal welfare researchers at the University of Lincoln, published in 2016, found no evidence of long-term welfare problems in cats wearing electronic collars as part of boundary fence systems. The last Defra research commissioned into electronic collars, published in 2014, did not examine boundary fence systems and it is unclear whether Defra has considered the latest research from the University of Lincoln in formulating the current proposals. A number of animal welfare professionals have expressed support for electronic collars used in boundary fence systems, and we hope that Defra will engage with these professionals in developing the current proposals.

ii) Breeding and Sale of Puppies

- The Government has announced its intention to ban the third party sale of dogs which was a recommendation of the Commons EFRA Committee and is fully supported by the Countryside Alliance.
- The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 due to come into force on 1 October 2018 will tighten the law around the breeding and sale of dogs. The changes which include:
 - Requiring all licensed dog breeders and licensed sellers of all pet animals, including sellers who are not also breeders, to adhere to enhanced strict statutory minimum welfare standards linked to the animals' welfare needs set out in the Animal Welfare Act 2006.
 - Prohibiting the sale of puppies, kittens, ferrets or rabbits below eight weeks of age.
 - Requiring any licensed pet seller advertising pets for sale to include their licence number in the advertisement as well as identifying the local authority that issued it, a photograph of the pet, its age, country of residence and country of origin.
 - Requiring the sale of a dog to be completed in the presence of the purchaser on the premises where the licensed seller or licensed breeder has been keeping the dog, thereby banning online sales by licensed sellers and breeders.
 - Ensuring licensed dog breeders must show puppies alongside their mother before a sale is made and only sell puppies they have bred themselves.
- However, the Alliance remains concerned that the regulations are not sufficiently clear in places and there will be uncertainty as to who should be licensed. It is vital the Regulations are applied consistently across local councils and the Government must keep their operation under review.

iii) Use of Airguns

- The Government has recently conducted a review of the law relating to airguns, including consideration of licensing or registration. One argument being advanced is the harm to the welfare of domestic pets as a result of airgun misuse, mostly in urban areas.

- While the Countryside Alliance has always supported the Government's aim to address any misuse of firearms, including airguns we do not believe that further legislation in this area is necessary at present.
- Where offences involving airguns are committed, or even minor nuisances caused, there is more than adequate legislation to enable prosecutions to be brought against offenders. The key issue is the proper enforcement of the existing law.
- The Alliance is strongly opposed to the introduction of any licensing regime for airguns in England and Wales. There is no evidence that the introduction of licensing will have any effect on those that wish to use airguns illegally. Licensing will add bureaucracy, through countless hours of work, for the already overburdened English and Welsh police forces, whilst efforts to catch the real criminals are neglected. There are already significant backlogs and delays with the administration of existing firearm and shotgun certificates. The addition of a further tier of licensing would only serve to exacerbate an already unsatisfactory system.
- Airguns are the gateway for young generations to enjoy shooting safely and progress other formats of the sport including many at Olympic level. The introduction of licensing could see many parents unwilling to pay the licence fee and, furthermore, think that because airguns are licenced they are now dangerous. England and Wales have a proud history of target and game shooting and the introduction of a licence will only affect the future of the sport not address airgun misuse.
- The British Shooting Sports Council (BSSC) estimates that there are approximately 4 million airgun owners in the UK. Airguns are widely used across the UK, by people of all ages, for the following purposes:
 - Pest and predator control – for shooting rats, rabbits, woodpigeons, corvids and other pests or predators. Airguns are lower powered than shotguns or rifles; as such they may be used in circumstances where it is not possible to use an alternative firearm, such as in or around farm buildings.
 - For target shooting - competitive target air gun shooting normally takes place at indoor shooting ranges. Many airgun enthusiasts, such as cadets and Pony Club triathlon competitors, also enjoy the outdoor discipline of field target shooting at artificial targets. Whilst competition shooting is normally conducted within a supervised environment many young people depend on being able to practice unsupervised at home in garages or on suitable private land.
 - At elite level, airgun shooting is an Olympic sport. For British teams to continue enjoying success in international competition it is essential that the sport continues to thrive at club and county level.
- Airguns are the 'entry level' gun for large numbers of new entrants to shooting sports and are crucial for the development of safe and competent firearm use. Most people who shoot with a shotgun or rifle start their shooting careers as young people with airguns.

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