

COUNTRYSIDE ALLIANCE WRITTEN EVIDENCE

ENVIRONMENT, FOOD, AND RURAL AFFAIRS SELECT COMMITTEE INQUIRY INTO DRAFT ANIMAL WELFARE BILL

January 2018

Executive Summary

- The Countryside Alliance supports the principles behind the draft Bill. However, we have concerns about the potential for this to be turned from a bill to protect animal welfare into a bill to promote animal rights. We also question the timing of this draft Bill given the demands on the Government's time in this session of Parliament. Defra must not be distracted from the task of implementing new domestic legislation in the key areas of agriculture, fishing, and the environment in preparation for leaving the EU.
- The Countryside Alliance recognises the fact that animals are sentient beings. If animals were not sentient then there would be no need for animal welfare legislation, which successive governments have passed over nearly 200 years. We note that the scope of the duty in the draft Bill appears to be far wider than the duty under the European treaty, and will create new obligations on Ministers of the Crown to have regard to animal welfare for all animals and across all areas of government policy. We would like to see further information and clarity from the Government on the extent of these new obligations, and an assessment of the impact of this change.
- The Countryside Alliance welcomed the Government's announcement last year 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 Bill. This was a key recommendation of the EFRA Committee's inquiry into animal welfare in the last Parliament. We believe this change should be taken forward with the broader range of recommendations in the Committee's report, particularly in respect of the RSPCA ceasing to act as a prosecutor of first resort for animal welfare offences.

Introduction

1. The Countryside Alliance is a membership-based organisation that works for everyone who loves the countryside and the rural way of life. We reflect the views and interests of 100,000 members and supporters who come from all walks of life and every part the United Kingdom.
2. We welcome the EFRA Committee's work in conducting pre-legislative scrutiny of the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill, and the opportunity to submit written evidence as part of this inquiry.
3. Whilst we support increased sentences for the most serious animal welfare offences we are concerned that creating a statutory duty on all Ministers of the Crown "to have regard to the welfare needs of animals as sentient beings" might be seen by some as an opportunity to limit and curtail the activities of farmers and other land managers, despite the additional requirement that Ministers of the Crown must also have regard to "matters affecting the public interest" in discharging that duty. The Government must resist any

attempts to turn this from a bill to protect animal welfare into a bill to promote an animal rights agenda. We also note that the scope of the duty in the draft Bill is far wider than the duty under the European treaty.

4. We note that the duty being created is one of having regard to animal welfare in policy formation and implementation and that the reference to animals as sentient is simply a statement of fact which, if not the case, would render animal welfare laws and the proposed duty pointless.
5. We also question the timing of this legislation. Defra must not be distracted from the task of implementing new domestic legislation in the key areas of agriculture, fishing, and the environment in preparation for leaving the EU. One of the best ways to improve animal welfare is through an improved agricultural policy to replace the Common Agricultural Policy once we are outside of the EU, and the proposed Agriculture Bill should be the priority for the Government at this time.

Animal Sentience

6. Animal sentience is 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. This is reflected in the drafting of both the European legislation and the draft Bill. The wording used in European law is: "the Union and the Member States shall, **since** animals are sentient beings, pay full regard to the welfare requirements of animals"; while the draft Bill reads: "Ministers of the Crown must have regard to the welfare needs of animals **as** sentient beings....." While the European wording is clearer, both texts make clear that it is because animals are sentient that their welfare matters.
7. 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 is not confused with animal rights.
8. It is worth noting that the recognition of animal sentience and the consequent need for animal welfare laws is nothing new. 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. 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.
9. It is also important to note that 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). As set out above, 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.

10. The UK's exit from the EU may mean that the legal duty to "pay full regard to animal welfare" would no longer apply in UK law, although this is debatable. It is the duty which the draft Bill seeks to transpose into UK law, reference to sentience is, as in the Treaty, simply explanatory as to why this duty should exist. However, there are important differences between the EU treaty and the draft Bill. The obligation under the TFEU to "pay full regard to the welfare requirements of animals" is balanced against the need to respect "the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage", and is limited to specified areas of policy: "agriculture, fisheries, transport, internal market, research and technological development and space policies".
11. It might be argued that the draft Bill seeks to replicate the limitations on the duty to "pay full regard to the welfare requirements of animals" in the TFEU by requiring Ministers of the Crown to have regard to "matters affecting the public interest" in discharging that duty. However, there is no clarity as to what is included in "public interest", or which duty should take priority where what might be in the public interest conflicts with animal welfare.
12. Given that this duty extends to all Ministers of the Crown, all areas of government policy, and all animals, we are concerned that not enough assessment has been made of the potential implications for formulating and implementing policy. Further information and clarity is required from the Government on the proposed nature of the new obligations and how Ministers are to be able to demonstrate that they have had regard to animal welfare and the public interest in discharging this duty.
13. The key differences between the general open-ended duty proposed by the draft Bill and the duty set out in the TFEU are as follows:
 - I. In the TFEU the duty is limited to the areas of "agriculture, fisheries, transport, internal market, research and technological development and space policies". In contrast the draft Bill covers all government policy where there is a potential impact on animal welfare. This would potentially include key policy areas such as housing, infrastructure, and health which are not included in the scope of the TFEU. We are unaware of any assessment by the Government of the impact of extending the obligation, especially in additional policy areas, and whether changes to existing policy would be required as a result.
 - II. The TFEU states that "the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage" should be respected when taking the welfare requirements of animals into account. The draft Bill simply states that Minister must have regard to "matters affecting the public interest" when formulating and implementing policy. It is unclear what will be included in the public interest test, and we are concerned that this could be confused with public opinion. Public interest in a policy area should not be reduced to an assessment of public opinion. It should be made clear in the draft Bill that public interest should be assessed on "social, economic, and cultural" criteria in order to clarify this obligation, or adopt the wording currently used in the TFEU.
 - III. The TFEU makes clear that the duty to "pay full regard to the welfare requirements of animals" is not only limited to specific areas of policy but also subordinate to the requirement to respect for "religious rites, cultural traditions and regional heritage" of Member States. It is not clear in the draft Bill as to the relationship between the duty to have regard to animal welfare and the duty to have regard to the public interest

when discharging that duty. How is a Minister to decide which takes precedence where a conflict arises between animal welfare and the public interest, especially as the Bill does not indicate what “public interest” includes? In giving parity to the two duties, the draft Bill represents a significant departure from the existing obligation under EU law, and we are concerned that this could result in conflict and possible repeated legal challenges to ministerial decisions. This could become a barrier to sustainable development, and potentially be used to limit and curtail the activities of farmers and other land managers.

14. Defra’s consultation document on the draft Bill is somewhat misleading as in seeking views on defining the “welfare needs of animals” it refers to the Animal Welfare Act 2006 and the welfare needs (five freedoms) on which the welfare duty is based. What is not made clear is that the duty of care in the 2006 Act is limited to animals kept by or under the control of man. By contrast, the draft Bill appears to apply to all animals, including wild animals. The ordinary meaning of ‘animal’, referred to in the Defra consultation document, would include not just mammals and birds (vertebrates) but insects, crustaceans etc. It is also unclear whether in formulating or implementing policy animal welfare is to be understood as relating to the overall welfare of a species or to an individual animal, or where there is a conflict between species which species’s welfare takes precedence. Similarly, where there is a conflict between the welfare of domesticated animals and wild animals, as in the case of badgers and cattle, how would this new duty work. How would it have worked, for example, in the formulation and delivery of the badger cull in England?
15. Whether “welfare needs” should be defined depends on whether Ministers intend this duty to apply to all animals from the smallest insect upwards, or only to vertebrate animals as currently under the Animal Welfare Act 2006. The Act’s Explanatory Notes state: “The Act will apply only to vertebrate animals, as these are currently the only demonstrably sentient animals. However, section 1(3) makes provision for the appropriate national authority to extend the Act to cover invertebrates in the future if they are satisfied on the basis of scientific evidence that these too are capable of experiencing pain or suffering”. The Government must provide clarification on whether the draft Bill applies to all animals without distinction, including those currently outside the scope of the 2006 Act, or only to vertebrate animals.
16. It is also worth considering whether 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. As the duty exists under EU law it is hard to see how a Minister of the Crown could be challenged in court on the basis of the wording in the TFEU, not least because it has restricted application and is explicitly subordinated to wider considerations. This might not be the case once this duty is enshrined directly in UK law and in much wider and more general terms. This would impact across many government departments, not just Defra.
17. The Government needs to think again and provide clarity as to how this duty is to both apply across all sectors of Government and policy areas, and how the duty is to be discharged and shown to have been discharged to avoid legal challenges to ministerial decisions.

Increase in Sentencing

18. We welcomed the Government’s announcement last year 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 Bill. This reflects the

recommendation of the EFRA Committee's report into animal welfare in the last Parliament.

19. It is important that any changes to sentencing are taken forward in the broader context of the other recommendations of the EFRA Committee Report, particularly in respect of private prosecutions. 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, as the Committee recommended in September 2016.
20. It is impossible to have a debate about changes to 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 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".
21. 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.
22. The Wooler Report in 2014 recognised that the RSPCA needed to make changes in terms of accountability and transparency before receiving statutory authority. The 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.
23. 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 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.
24. An increase in sentencing should come with guidance from Government that animal welfare offences should be prosecuted by statutory authorities except in exceptional circumstances.