

COUNTRYSIDE ALLIANCE BRIEFING NOTE

ANIMAL WELFARE (SENTIENCE) BILL

HOUSE OF LORDS, THIRD READING

13 DECEMBER 2021

Key points

- **The Countryside Alliance fully supports legal recognition of the sentience of animals but shares the widespread concerns that have been expressed at each stage 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 issues and is essentially the same as introduced.**
- **While providing a little more detail, the Committee's draft Terms of Reference 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 to scrutinise not 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 legislation bringing it into existence.**
- **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. Already recognition of sentience was extended at the Report stage to cephalopods and decapod crustacea.**
- **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.**

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 unamended to date.
- However, at previous stages 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 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 recognition of sentience is to be extended to cephalopods and decapod crustacea. (see amendments in Lord Benyon's name)
- In response to all these concerns and questions the government undertook to publish Terms of Reference ahead of Report stage. The draft Terms of Reference were published on the 18 November and circulated to peers. While providing a little more detail, the Terms of Reference provide little reassurance or clarity. (see below)

At Report 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 the Minister made clear at Report, 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.
- They 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 Report, 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 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 he 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 Report, 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 Report, 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 Report, 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, 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.
- 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 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.
- The Bill and the draft Terms of Reference are both unsatisfactory as they stand, both individually and when taken together. The government's refusal to amend the Bill in any way is both extraordinary and regrettable.

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