

Animal Welfare (Sentience) Bill

Written Evidence to Commons General Committee on behalf of Better Deal for Animals

Executive Summary

- Better Deal for Animals is supportive of the Animal Welfare (Sentience) Bill, which delivers on Government commitments that there would be no loss of legal protections for animals following the UK's departure from the EU. The Bill replaces and in part improves upon duties to consider sentience that applied when the UK was a member of the EU.
- We believe that the Bill could be further improved by amendments to make sure that the Animal Sentience Committee is robust enough to do the task the Bill entrusts to it; to ensure that impacts on the welfare of animals as sentient beings are considered when developing policy across Government.
- Criticisms of the Bill during its passage to date appear to have been based on a misunderstanding of the role of the Animal Sentience Committee. It is important to clarify that Ministers will be able to disregard committee conclusions if they do not agree with them or feel that other factors (including socio-economic factors) override animal sentience considerations. The committee will be a provider of information to enable fuller assessment; it will advise, and Ministers will decide.

Introduction

1. Better Deal for Animals (BDFA) is a coalition of over 50 animal protection groups in the UK¹, who have joined forces to campaign for a strong law that recognises animal sentience. Core members of the group include the UK Centre for Animal Law, Compassion in World Farming, FOUR PAWS UK, Humane Society International UK, RSPCA and Wildlife & Countryside Link.
2. Prior to the introduction of the Animal Welfare (Sentience) Bill in May 2021 BDFA campaigned for a post-Brexit Animal Sentience Act to replace and improve on EU sentience duties.

The need to enshrine sentience in law

3. A commitment to animal welfare requires us to treat animals humanely, to avoid unnecessary suffering and to allow them to experience good lives. This treatment must be informed by the knowledge of what constitutes both suffering and a good life for animals.
4. Over recent decades, scientific research has established that the capacity of animals to both suffer and have good lives is considerable. We now have evidence that most animal species can feel pain, pleasure, joy, sadness, comfort, discomfort, hunger, thirst and warmth.² This capacity to have feelings is known as sentience. As summed up by a 2019 paper reviewing the available evidence "formal recognition that some animals are sentient beings is now widespread and continues to increase internationally."³

¹ <https://www.wcl.org.uk/better-deal-for-animals.asp>

² See evidence to EFRA Select Committee on the Bill, from Dr Jonathan Birch of LSE <https://committees.parliament.uk/oralevidence/2611/pdf/>

³ <https://www.mdpi.com/2076-2615/9/7/440/htm>

5. This new knowledge of what constitutes both suffering and a good life for animals requires new mechanisms to ensure that it is considered, as policies that affect animals are developed and implemented.
6. The first attempt to ensure this formal consideration amongst policy makers was introduced across the EU in 1999 as part of a legal acknowledgement of animal sentience. What is now Article 13 was initially a Declaration annexed to the 1992 Maastricht Treaty. It then became a legally binding Protocol annexed to the 1997 Treaty of Amsterdam when this was proposed by the UK during its 1997 EU Presidency. Finally, it became a Treaty Article when the Lisbon Treaty amended the TFEU to include Article 13. Article 13 imposes a duty on EU Member States to recognise animals as sentient beings. It also imposes a linked duty on EU Member States to pay regard to their welfare requirements when formulating and implementing policy, in specified areas.⁴
7. With the end of the Brexit transition period in January 2021, Article 13 sentience recognition and duties fell out of UK law. This leaves a considerable gap. Whilst existing welfare laws such as the Animal Welfare Act 2006 protect against the mistreatment of animals by those responsible for them, there is now no legal requirement for the welfare of animals as sentient beings to be considered within UK Government policy processes.
8. Such a requirement is necessary if the UK is to continue to maintain high animal welfare standards. The sentience of most animals is now an established fact. Any country committed to following the science on animal welfare should formally recognise this salient fact, and have a mechanism for considering it in policy making to inform the treatment of animals.

The effect of the Animal Welfare (Sentience) Bill

9. The Animal Welfare (Sentience) Bill will recognise animal sentience and provide a mechanism for considering it in policy making. It will do this by:
 - Legally recognising the sentience of all vertebrate animals, decapod crustaceans and cephalopods.
 - Imposing a duty on the Secretary of State to establish an Animal Sentience Committee (ASC), with licence to scrutinise the extent to which the Government is considering the ways in which any and all policies may impact the welfare of animals as sentient beings.
 - Imposing a further duty, whenever the ASC produces a report, for the Secretary of State relevant to the policy area to lay a written response before Parliament.
10. BDFa believes that this recognition and two duties, taken as a whole, provide a workable replacement to sentience provisions contained in the EU's Article 13.
11. On the negative side of the ledger is the effective outsourcing of sentience consideration to the ASC, a body that can make recommendations to decision makers but has no decision-making powers itself. Our coalition would have preferred a more direct approach, putting sentience consideration responsibilities directly on ministers rather than on an adjacent body, but we accept that the Government is not prepared to go down this road. This delegation of responsibility can only work if the ASC is given the independence and powers it needs to do the job it has been tasked with (see below).
12. More positively, the scope of animal welfare consideration is wider than the EU duties. The ASC will have the ability to consider impacts on the welfare of animals as sentient beings across the whole

⁴ https://ec.europa.eu/food/animals/animal-welfare_en

range of UK Government policy, with the exception of fiscal policy. This improves on the Article 13 duties, which applied to only prescribed policy areas, with some specified activities within those areas (such as bullfighting) then exempted through derogation. The expanded range of welfare consideration in the Animal Sentience Bill marks a genuine enhancement of UK animal welfare policy, compared to previous EU policy.

The work of the Animal Sentience Committee

13. As stated above, the ASC will need to be an independent and empowered public body if it is to secure meaningful consideration of animal sentience within policy making. The proposed terms of reference (ToR) for the ASC, laid by Defra in the House of Lords Library in January 2022⁵, will broadly deliver the required independence and powers.
14. Under the ToR the ASC will be an independent public body with a diverse and experienced membership, tasked with providing expert input to inform complex policy questions touching on the welfare of animals as sentient beings. Its remit will extend to any area where it can inform these questions – a range that includes all government departments, and the implementation of existing legislation. The ASC chair and members will have sufficient independence to determine their own priorities and ways of working, informed by practical guidance that they should focus their work on policies that have the greatest impact on animals.
15. The ToR make clear that the ASC will inform policy, but not direct it. The scope of the ASC will be wide, but its powers will be advisory only. Ministers will be able to disregard ASC conclusions if they do not agree with them or feel that other factors (including socio-economic, religious or cultural factors) override animal sentience considerations. The ASC will advise, Ministers will decide.
16. This wide-ranging advisory scope aligns with UK and international best practice, following precedents set by animal welfare advisory bodies that are already established and improving policy processes. These precedents include the Scottish Animal Welfare Commission (SAWC)⁶, established in 2020 to provide advice on the welfare of animals, and the Dutch Council on Animal Affairs (Raad voor Dierenaangelegenheden (RDA)⁷ which has been giving solicited and unsolicited advice on animal welfare to the Dutch Government since 1993.
17. The ToR also provides useful clarity as to the ASC's operational details. The ASC will be supported by a small secretariat, provided by Defra, and will work closely with the existing Animal Welfare Committee (AWC). The two committees have adjacent rather than overlapping responsibilities; the AWC provides scientific advice when asked to by Defra, primarily on farm animal welfare issues, whereas the ASC will proactively review government policy decisions with respect to animal welfare across all departments. The ToR creates a framework for productive liaison between the two committees, making them both components of an 'Animal Welfare Centre of Expertise'. This strikes an appropriate balance between preserving the independence and differing focuses of both committees, whilst enabling close working where useful.

Strengthening the Bill

⁵ <https://depositedpapers.parliament.uk/depositedpaper/2283872/files>

⁶ <https://www.gov.scot/groups/scottish-animal-welfare-commission/>

⁷ <https://english.rda.nl/>

18. BDFA supports the Bill, as a workable (and in some key aspects improved) replacement for Article 13 sentience duties.
19. However, the Bill does have a weakness. The delegation of animal sentience responsibilities to the ASC, a body adjacent to rather than part of Government, creates the risk that the ASC (and with it, animal sentience issues) could be effectively ignored by decision makers. This risk was highlighted in the letter from the Chair of the EFRA Select Committee to the Secretary of State for Environment, Food and Rural Affairs ahead of second reading in the Commons, which warned that “the ASC risks becoming simply another toothless Whitehall committee whose reports gather dust, while critical issues of animal welfare within policy-making go largely unaddressed.”⁸
20. Whilst the ToR provide some assurance that the ASC will have the independence and powers it needs to do its job, amendments to the face of the Bill would go further in ensuring that the ASC and its work is closely tied into government operations and Parliamentary business, to such an extent as to make it difficult to ignore.
21. A duty on the Secretary of State to produce an animal sentience strategy, as proposed at Lords Committee⁹, would help secure this closer connection with decision making. This strategy would prospectively set out how the Government intends to have due regard to animal sentience, including upcoming policies it intends to ask the ASC to review and plans for research around animal welfare. This early notice would help the ASC plan its work and encourage strategic, proactive working between the Government and the ASC on animal welfare considerations. The duty would also require the Secretary of State to make an annual verbal statement to Parliament, reporting on the strategy and presenting changes to policy or implementation made in response to the ASC’s recommendations over the past year. This would provide a process to give an overall view of how Ministers have taken into consideration the welfare of animals as sentient beings when making decisions. It would also create an opportunity for Parliament to be able to evaluate the effectiveness and impact of the ASC, and to debate sentience issues more generally.
22. Similarly, we recommend that the duty on the Secretary of State to lay a written response in Parliament to each ASC report should be amended to a duty to lay an oral response. This will enable greater parliamentary scrutiny of each ASC report, and the Government’s response to it.
23. These new duties on Government would not significantly increase the risk of Judicial Review (we understand that this is a particular concern of the Government). The Secretary of State’s responsibility would be entirely discharged by creating the Strategy and giving the annual Strategy report to Parliament. The duty to lay an oral response to each ASC report would be discharged by a statement to Parliament on the part of responsible Ministers.
24. A further helpful change to the face of the Bill would confirm the freedom of the ASC to consider policies that have a positive impact on animal welfare. This freedom is suggested in the ASC ToR, which states the “the committee may consider how ministers have had a positive effect on animals as sentient beings in the policy-making process. However, the committee should prioritise supporting government departments in minimising policies’ actively harmful effects on the welfare of animals”. This sensible approach is however directly contradicted by the Bill itself, which restricts the ASC’s consideration to “the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings”. This contradiction could lead to significant complications, as an ASC report focused on positive effects could be dismissed as being outside the scope allowed by the Bill. Any defence against this based on the licence to consider positive effects conferred by the ToR

⁸ <https://committees.parliament.uk/publications/8506/documents/86078/default/>

⁹ See amendment 45 <https://bills.parliament.uk/publications/42074/documents/470>

could be undermined by the prohibition on doing so in the text of the legislation. A simple amendment, removing the word 'adverse' from the text of clause 2(2), would allow the sensible approach proposed in the ToR to be safely and fully implemented by the ASC, ensuring that opportunities to actively enhance animal welfare through policy are not missed.

25. A duty on government departments to co-operate with the ASC would also help its effectiveness as a committee. During Commons Second Reading on 18th January 2022¹⁰, it was reasonably suggested that a large department, historically removed from animal welfare issues, could feel empowered to ignore committee requests for information, as there is currently no legally binding obligation to engage. A new duty to co-operate would provide an obligation, ensuring that the ASC receives the information it needs to prepare its reports. Action to ensure departments co-operate with the ASC was recommended by the Chair of the EFRA Select Committee in his pre-second reading letter, in which he asked the Secretary of State "to set out how you will ensure the ASC is able to gather the information it needs to do its job and how Defra will support the ASC to ensure its reports are taken seriously by other departments."¹¹

Addressing misunderstandings about the Bill

26. A number of misunderstandings about the Bill have arisen over the course of its parliamentary passage.
27. The first of these, as alluded to above, is that recommendations made by the ASC will force the hand of Ministers. It was suggested at Commons second reading that any ASC reports on hunting, shooting, and religious slaughter would in time lead to prohibitions of these practices, and could even see animal welfare concerns stop infrastructure projects. This is not the case. Ministers will retain decision making powers on policies affecting the welfare of animals as sentient beings, decisions informed but not directed by any relevant ASC reports. Cultural and socio-economic considerations will be weighed up alongside animal welfare and other factors.
28. Historically, animal welfare considerations have been largely absent from the field of government decision making. The Animal Welfare (Sentience) Bill has been introduced in part to remedy that absence, to add the welfare of animals as sentient beings as one factor among many taken into account by Ministers when developing and implementing policy. The ASC will add to the diversity of policy considerations, rather than in any way monopolising it. In their judgements on the differing weight of these factors, Ministers will be responsible to Parliament.
29. It has also been suggested that the ASC represents a heavy bureaucratic burden. Again, this is not the case. The ToR propose a small secretariat for the Committee (of around 3 staff members), provided by Defra. The moderate outlay of time and resources this represents should be measured against the 5.3% budget increase over the course of the Parliament agreed for Defra in the 2021 Comprehensive Spending Review.¹²

¹⁰ See column 255 [https://hansard.parliament.uk/commons/2022-01-18/debates/33984457-F036-4329-B701-FC4F71A26E62/AnimalWelfare\(Sentience\)Bill\(Lords\)](https://hansard.parliament.uk/commons/2022-01-18/debates/33984457-F036-4329-B701-FC4F71A26E62/AnimalWelfare(Sentience)Bill(Lords))

¹¹ <https://committees.parliament.uk/publications/8506/documents/86078/default/>

¹²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043689/Budget_AB2021_Web_Accessible.pdf see p40

30. It has been suggested that the evidential basis for the sentience of animal groups covered by the Bill is lacking. The scope of the Bill is based on years of scientific research, which has established sentience in the following animal groups:
- Mammals: The sentience of mammals has been long established. Reports showing elephants [displaying](#) empathy, pigs [enjoying](#) computer games and cetaceans [having](#) complex social bonds that last for a lifetime provide some striking recent examples.
 - Bird: An illustrative scientific study highlighting levels of cognition in bird species on a par with ape species can be found [here](#).
 - Fish: An illustrative scientific study on fish sentience can be found [here](#). The study concludes that “the evidence for pain perception strongly suggests that fish experience pain in a manner similar to the rest of the vertebrates”.
 - Reptiles & amphibians: An illustrative evidence review of sentience amongst reptiles, concluding they “possess all of the necessary capacities to be classified as sentient beings”, can be found [here](#), with a further review available [here](#). Amphibian sentience is an under-studied area, a paper showing that amphibians “show many traits common in birds and mammals including sophisticated communication, problem solving, parental care, play, and complex sociality” can be found [here](#).
 - Cephalopods & decapod crustaceans: During the passage of the Sentience Bill through the House of Lords, a [study](#) commissioned by Defra confirmed earlier studies showing strong evidence of sentience amongst cephalopods (including octopuses) and decapod crustaceans (including lobsters and crabs). The Government followed the evidence and rightly added both groups to the scope of the Bill in November 2021.

Conclusion

31. The Animal Sentience Bill has the BDFA coalition’s support. Whilst there is scope for improvement, the Bill delivers on the Manifesto commitment to replace the sentience recognition and duties which applied when the UK was a member of the EU. Indeed, in the key area the scope of sentience duties, the Bill improves on the EU provisions. We hope that this landmark piece of animal welfare legislation progresses swiftly to Royal Assent, allowing animal sentience to be once again recognised in UK law.

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