

Animal Welfare (Sentience) Bill: Briefing for Second Reading 18.01.22
Better Deal for Animals Coalition (BDFA)¹

Executive Summary

- BDFA expresses our strong support for the Animal Sentience Bill, which delivers on manifesto and government commitments that there would be no loss of legal protections for animals following the UK's departure from the EU. The legislation replaces and improves upon the duty to consider sentience that applied when the UK was a member of the EU.
- The legislation commands strong public support, exemplified by an e-petition that reached 103,000 signatures² and a 2021 YouGov poll showing over two thirds of the British public to be supportive of requiring the consideration of animals' interests across government policy.³ The legislation also attracts significant media interest, and has cross-party political support.⁴
- The Bill will deliver three key outcomes:
 1. Legal recognition of the sentience (capacity to experience feelings and/or emotions, both positive and negative) of all vertebrate animals, decapod crustaceans and cephalopods.
 2. A responsibility for ministers to consider the welfare needs of animals as sentient beings when making and implementing policies.
 3. The establishment of 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. It also creates a duty, whereby the ASC produces a report, for the minister relevant to the policy area to lay a response before Parliament.
- Criticisms of the Bill during its passage through the Lords appear to have been based on a misunderstanding of an inflated role and powers of the ASC. It will continue to be up to ministers, under scrutiny from Parliament, to weigh up animals' interests against other public policy needs, including economic, environmental, social, and religious considerations. Ministers will not be answerable to the ASC but will be accountable to Parliament.
- BDFA welcomes that the scope of the Bill is based on years of scientific research and numerous scientific reports.
- We welcome the inclusion, by government, of an amendment to include decapod crustaceans and cephalopods, which followed a comprehensive scientific review by the London School of Economics.⁵
- Whilst we welcome the Bill in its' current form, we acknowledge that the Bill could be further improved by the addition of a new duty to require ministers to proactively and strategically engage with sentience issues, including through a requirement for the government to maintain a cross-Whitehall Animal Sentience Strategy.
- We encourage members of the House of Commons to unite to progress this landmark piece of welfare legislation, which will significantly help to deliver on the desire of over 80% of the British public, to see UK animal welfare laws maintained or improved following our departure from the EU.⁶

¹ The Better Deal For Animals coalition comprises over fifty of the UK's leading animal protection organisations. See page seven for supporting organisations.

² <https://petition.parliament.uk/archived/petitions/242239>

³ https://www.wcl.org.uk/docs/WCL_Results.pdf

⁴ See for example [Sentience and Welfare of Animals - Hansard - UK Parliament](#)

⁵ <https://www.gov.uk/government/news/lobsters-octopus-and-crabs-recognised-as-sentient-beings>

⁶ [Survey Report \(d25d2506sfb94s.cloudfront.net\)](https://www.surveymonkey.com/Reports/2506sfb94s)

Animal Sentience Bill: Frequently Asked Questions

What does the latest scientific evidence on animal sentience say?

In giving evidence on the Bill to the Environment, Food & Rural Affairs Select Committee on 19 July 2021, Dr Jonathan Birch, associate professor of philosophy at the London School of Economics and principal investigator on the Foundations of Animal Sentience project⁷, provided a helpful definition of animal sentience: *“Sentience is the capacity to have feelings. This can include feelings of pain, pleasure, joy, sadness, comfort, discomfort, hunger, thirst and warmth.”*⁸

Dr Birch went on to give a *“general sense of the sorts of indicators we can look for to develop a robust scientific case for sentience”*, saying: *“How do we look for it scientifically? Of course, we cannot directly observe the feelings of other animals, but we can look at a battery of cognitive, behavioural and neuroscientific indicators of sentience. In this area, pain has been particularly important, and rightly so, because of its special significance for animal welfare law...It is partly also about looking for behaviour. For example, is there behaviour such that, if an animal is injured, it will develop a lasting aversion to the place where it received the injury?”*

A robust scientific case for sentience, drawing on the above indicators, has been established for each of the animal groups covered by the Sentience Bill. These include all vertebrate groups, namely:

- Mammals – The sentience of mammals has been long established. Studies showing elephants [displaying](#) empathy and pigs [enjoying](#) computer games provide some striking recent examples.
- Birds - 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](#).

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).⁹ The Government followed the evidence and rightly added both groups to the scope of the Bill.

⁷ <https://www.lse.ac.uk/cpnss/research/ASENT>

⁸ <https://committees.parliament.uk/oralevidence/2611/pdf/>

⁹ <https://www.lse.ac.uk/News/News-Assets/PDFs/2021/Sentience-in-Cephalopod-Molluscs-and-Decapod-Crustaceans-Final-Report-November-2021.pdf>

Why does animal sentience need to be enshrined in law?

A commitment to animal welfare requires us to treat animals humanely, and with respect for the species-specific conditions and treatment that will allow them to experience good lives. The Animal Welfare Act 2006 protects against the mistreatment of animals by those responsible for them, e.g. their owners or carers. It is about the relationship between individuals and animals. It does not cover the same area as the Animal Welfare (Sentience) Bill, which creates an imperative or framework for policy makers to take animals' welfare needs into account when making and implementing policies.

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. This was proposed by the UK during its 1997 EU Presidency and became known as Article 13 (based on the 1997 Treaty of Amsterdam, it became Article 13 of the Lisbon Treaty, signed in 2007, and subsequently the Treaty on the Functioning of the EU (TFEU)).¹⁰ Article 13 imposes a duty on EU Member States (including the UK, until January 2021) 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.

Since January 2021, for the first time in over two decades, there is currently no legal requirement for the welfare of animals as sentient beings to be considered in the UK Government's policy process.

The Animal Welfare (Sentience) Bill fills this gap and will ensure that the impact of policies on the welfare of animals as sentient beings will be considered in UK Government policy making once again. Such formal consideration should be seen as a minimum requirement for any government committed to maintaining high animal welfare standards.¹¹

What does the Animal Sentience Bill actually do?

The Animal Sentience Bill replaces the EU's Article 13 animal sentience duty with two duties on the UK Government – to establish and maintain an Animal Sentience Committee (clause 1), and to lay responses before Parliament in reply to Animal Sentience Committee (ASC) reports (clause 3).

The ASC is empowered by clause 2 to produce reports on any government policy, considering the question *"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."*¹²

These provisions return formal consideration of policy impacts on the welfare of animals as sentient beings to UK law. However, they effectively outsource that 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. In light of the delegation of sentience responsibility to the ASC, it is vital that the committee has the independence and power it needs to do the job the government has entrusted to it.

¹⁰ https://ec.europa.eu/food/animals/animal-welfare_en

¹¹ <https://www.gov.uk/government/news/lobsters-octopus-and-crabs-recognised-as-sentient-beings>

¹² <https://publications.parliament.uk/pa/bills/cbill/58-02/0219/210219.pdf>

The Bill represents an improvement on the EU's Article 13 duties in one key regard – the scope of animal welfare consideration. The ASC will have the ability to consider impacts on the welfare of animals as sentient beings across the whole 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.

It is also the case that the practical application of Article 13 duties was limited. As highlighted by Dr Steven McCulloch of University of Winchester in his evidence to the Environment, Food & Rural Affairs Select Committee on 19 July 2021, UK Government policy under Article 13 duties gave little consideration in practice to animal welfare impacts:

"The UK policy-making process in a number of ways excludes and undervalues the interests of sentient animals...I will give you one example of how that is done. The Treasury Green Book, which all of you will be familiar with—the central government guidance on appraisal and evaluation—was updated in 2020 and runs to 152 pages. To quote the book, it is the central book on "how to appraise policies, programmes and projects" in central government. It essentially provides advice. If you search within that book, you will not find one mention of animal. You will not find one mention of animal welfare or animal sentience."¹³

The ASC has the potential to be the mechanism to address the animal welfare gap in current policy making.

How will the Animal Sentience Committee operate?

In November 2021 Defra laid proposed terms of reference (ToR) for the Animal Sentience Committee in the House of Lords Library.¹⁴ BDFA agrees with and supports these ToR. Under the proposed ToR the ASC will be an independent public body with a diverse and experienced membership, 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 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 social, economic, religious or cultural factors) override animal sentience considerations. The ASC will be a provider of information, not a director of policy. The ASC will advise, ministers will decide. Equipped with expert opinion from the ASC, Parliament and the public will have the opportunity to scrutinise the outcomes for animals.

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)¹⁵, established in 2020 to provide advice on the welfare of animals. The regulations that set up the SAWC allow it to offer advice to all Scottish

¹³ <https://committees.parliament.uk/oralevidence/2611/pdf/>

¹⁴ <https://depositedpapers.parliament.uk/depositedpaper/2283872/files>

¹⁵ <https://www.gov.scot/groups/scottish-animal-welfare-commission/>

Government Ministers, both on topics referred to it by ministers and on any matters on which the Commission considers it should offer its advice. This wide-ranging remit has seen the SAWC work on a range of subjects over the past year, from salmon farming to rodent glue traps. They have also given an opinion on animal sentience.¹⁶

- The New Zealand National Animal Welfare Advisory Committee (NAWAC)¹⁷ and National Animal Ethics Advisory Committee (NAEAC)¹⁸, set up by the Animal Welfare Act 1999. The two committees offer advice to ministers on all areas of human and animal interaction, with no policy areas exempted from coverage.
- The Dutch Council on Animal Affairs (Raad voor Dierenaangelegenheden (RDA))¹⁹ was established in 1993 and gives solicited and unsolicited advice on animal welfare and health policy issues.

The ASC will be supported by a small secretariat, provided by Defra, and will work closely with the existing Animal Welfare Committee (AWC).²⁰ The two committees will have adjacent rather than overlapping responsibilities, framed within a newly formed 'Animal Welfare Centre of Expertise'. The AWC will continue in its role of providing scientific advice when asked to by Defra, primarily on farm animal welfare issues, and the ASC will proactively review government policy decisions with respect to animal welfare across all departments. The proposed ToR allow for productive liaison between the two committees, whilst giving the ASC chair and members sufficient independence and autonomy to determine their own priorities and ways of working, informed by guidance that they should focus their work on policies that have the greatest impact on animals.

The proposals for the ASC contained in the Bill and published ToR should be seen as a floor, not a ceiling. Further measures to strengthen the effectiveness and accountability of the ASC would be helpful (see below); any regression to those aspects will undermine the Bill and its aim of ensuring the consideration of the welfare of animals as sentient beings within policy making.

Improving the Bill

It would be helpful if you would consider raising the following points at second reading:

1. Broad support for the Bill

The Bill, its introduction of animal sentience, the species it covers including cephalopods and decapod crustaceans, and the formation of the Animal Sentience Committee to advise ministers are welcome. This legislation will increase the global status and reputation of the UK on animal welfare.

2. The Bill should not prevent the ASC from considering positive welfare effects

At the Bill's second reading in the Lords on 16 June 2021, Peers raised concerns about the prescriptive wording of the question clause 2 of the Bill requires the ASC to consider.²¹ By limiting consideration to ways in which the policy might have an *adverse* effect on the welfare of animals as sentient beings, the

¹⁶ <https://www.gov.scot/publications/scottish-animal-welfare-commission-statement-on-animal-sentience/>

¹⁷ <https://www.mpi.govt.nz/animals/animal-welfare/national-animal-welfare-advisory-committee/>

¹⁸ <https://www.mpi.govt.nz/animals/animal-welfare/national-animal-ethics-advisory-committee>

¹⁹ <https://english.rda.nl/>

²⁰ <https://www.gov.uk/government/groups/animal-welfare-committee-awc>

²¹ [https://hansard.parliament.uk/lords/2021-06-16/debates/81851658-6B9F-4739-8199-22398F81085F/AnimalWelfare\(Sentience\)Bill\(HL\)](https://hansard.parliament.uk/lords/2021-06-16/debates/81851658-6B9F-4739-8199-22398F81085F/AnimalWelfare(Sentience)Bill(HL))

clause appears to prevent the ASC from considering *positive* effects. This could lead to policy opportunities to actually enhance animal welfare being missed. The framing and assessment of animal welfare not only in terms of *avoidance of harm* but also in the measurement and promotion of *positive welfare states* is an enlightened scientific approach, as set out in Mellor et al's 'Five Domains' approach.²²

On the first day of Lords Committee on 6 July 2021, Minister Benyon signalled his agreement with Peers, saying that "*the committee should be free to consider positive effects*".²³ This appears to have informed the proposed ToR for the committee, which state:

"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 is a sensible approach, which balances giving the ASC the freedom to consider all opportunities to enhance animal welfare with the need to prioritise the avoidance of harmful effects.

However, the wording of the Bill itself remains unchanged and continues to require the ASC to only consider adverse effects. This contradiction could lead to significant complications, as an ASC report focused on positive effects could be challenged, with any defence based on the licence to consider positive effects conferred by the ToR being 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, would allow the sensible approach proposed in the proposed ToR to be safely and fully implemented by the ASC, ensuring that opportunities to actively enhance animal welfare through policy are not missed.

3. The Bill should require ministers to proactively consider sentience

The new duties imposed by the Bill place the lightest of burdens on ministers. A requirement to react to an ASC report by laying a written response before Parliament is far from onerous.

In a worst-case scenario the slightness of this responsibility could allow for a future government's engagement with sentience to degrade to a level that is no longer meaningful, comprising solely of sporadic, one-line dismissals of ASC reports. This would technically discharge the duties in the Bill but would fall far short of the Bill's aims of enshrining animal welfare in policy making.

An additional duty in the Bill would help guard against this outcome; we would recommend a duty to require government to create and maintain a cross-Whitehall Animal Sentience Strategy that prospectively sets out how ministers, supported by the ASC, plan to have all due regard to animal sentience during the upcoming Parliamentary session, including through animal welfare impact assessments and the commissioning of any necessary independent research or opinions.

Such a duty could also require the Defra Secretary of State to report on the strategy on an annual basis before Parliament, presenting a summary of the policies that have fallen under the purview of the ASC, and any changes in policy or implementation that have occurred in response to the ASC's

²² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5575572/>

²³ [https://hansard.parliament.uk/lords/2021-07-06/debates/B8CBC730-DC86-4D6C-B915-C145CF158B80/AnimalWelfare\(Sentience\)Bill\(HL\)](https://hansard.parliament.uk/lords/2021-07-06/debates/B8CBC730-DC86-4D6C-B915-C145CF158B80/AnimalWelfare(Sentience)Bill(HL))

recommendations. This report could be made in person by the Secretary of State, as opposed to merely laying it in writing, to allow full and constructive parliamentary scrutiny of the extent to which the government has recognised animal sentience in the policy options considered.

The Government's duty would be discharged by creating the strategy and laying the annual strategy progress report, resulting in minimal judicial review risk.

This strategy, and its' reporting mechanisms, would ensure that both ministers and Parliament proactively, regularly and meaningfully engage with how policies affect the welfare of animals as sentient beings.

This briefing has been prepared ahead of the Commons' second reading by Better Deal for Animals (BDFa), a coalition of over 50 animal protection groups in the UK, who have joined forces to campaign for a strong law that recognises animal sentience. Our previous briefings on the bill can be found [here](#).

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