



## Animal Welfare (Sentience) Bill: Briefing for Lords Committee

### Executive Summary

- This is a briefing on behalf of the animal welfare coalition 'Better Deal for Animals', prepared ahead of the Lords Committee stage of the Animal Welfare (Sentience) Bill 2021.
- Several welcome amendments to the bill have been tabled, including proposals to clarify the composition, remit and work of the Animal Sentience Committee, to enable the Committee to consider opportunities to enhance animal welfare and to extend the definition of sentience in line with the latest scientific evidence.
- There are also unhelpful proposals, which would limit the scope of the Animal Sentience Committee and undermine the bill.
- It is important to remember the [intent](#) behind the bill, which is to 'ensure that animal sentience is taken into account when developing policy across Government'. This intent is supported by all major parties and by an overwhelming majority of the British public. It is essential that the [public will](#) and [political commitments](#) for meaningful sentience legislation are both met.
- The Animal Welfare (Sentience) Bill, especially if strengthened by the above helpful amendments, has the potential to deliver on this democratic mandate for sentience legislation.

### Amendments we encourage Peers to support

#### Clause 1: Amendment 5, tabled by Baroness Hayman and Baroness Bakewell

This welcome amendment would ensure that the Animal Sentience Committee (ASC) benefits from a diversity of expertise, including veterinary science, agricultural science and ethical review. It is essential that such a wide range of informed viewpoints informs the work of the ASC, and that this diversity is guaranteed in the text of the bill.

Under the current text of the bill future Secretaries of State will have full discretion to appoint committee members, potentially enabling a narrow committee, dominated by one industry or sector, to be appointed. Baroness Hayman and Baroness Bakewell's amendment would safeguard against this

scenario, ensuring that the ASC will always draw on a diversity of knowledge, allowing it to give balanced consideration to animal sentience issues across the whole scope of Government policy.

The amendment also stipulates the appointment of a chair for the ASC. This dedicated chair role will allow the committee to speak with an established and independent voice, boosting its effectiveness.

**Amendment 62, tabled by Baroness Jones and Baroness Fookes**, would also secure a diversity of expertise and an independent chair for the ASC, as well as ensuring the committee receives early notice of any policy likely to have an adverse effect on the welfare of animals as sentience beings.

#### **Amendment 14 tabled by Baroness Hayman and Baroness Bakewell (New clause after clause 1)**

The ASC will need to be adequately resourced to fulfil the tasks the bill confers upon it. A small secretariat and other facilities are essential to committee functioning and will not place an undue burden on public funds. An example of previous annual costs for a comparable committee can be found on page seven of this briefing.

We encourage support for Baroness's Hayman and Baroness Bakewell's new clause, to ensure that appropriate resourcing is made available to the committee.

**Amendments 46 and 47**, tabled by Baroness Young and Baroness Hayman are also helpful. They would enable the ASC to submit an annual report, and to call witnesses and access information needed to complete its work.

#### **Clause 2: Amendment 15 tabled by Baroness Hayman and Baroness Bakewell**

The current text of clause 2 allows the ASC to prepare reports on any government policy that is being or has been formulated or implemented. Whilst this wide scope is welcome, some organisation of activity is also required. Without it, in the face of the overwhelming range of Government policy, the committee may struggle to take a strategic and prospective approach to its work.

Baroness Hayman and Baroness Bakewell's amendment to clause 2 would provide this organisation, creating a category of Government policies that the committee must report on; policies that can be reasonably be expected to have a significant effect on the welfare of animals, judged by the duration and severity of effects and the number of animals effected. Beyond these mandatory reports on policies within its remit, the committee would retain the freedom to report any other policy it felt may have impacts on the welfare of animals as sentient beings.

Crucially, the amendment would also allow ASC reports to contain recommendations on how the policy could be made to have a positive effect on the welfare of animals as sentience beings. At [second reading](#), Lord Benyon suggested that the committee would be able to "encourage policymakers to think about the positive improvements that they can make to animal welfare—not just minimising adverse effects". Whilst these remarks are very welcome, the text of the bill needs to be brought into line with them – clause 2 currently specifies "adverse" effects as being the subject of ASC reports. Given that the Government believes, as we do, that the ASC should have the freedom to consider how policies could enhance animal welfare, we hope that this unnecessarily prescriptive bill drafting can be speedily amended.

We encourage support for Baroness Hayman and Baroness Bakewell's amendment to clause 2, which will provide ASC with helpful organisational direction and useful freedom of manoeuvre, enhancing its effectiveness.

**Amendment 25**, tabled by Lord Howard, Viscount Trenchard and Baroness Meyer would also allow the ASC to consider positive opportunities to enhance animal welfare.

**Amendment 27**, tabled by Baroness Jones, Baroness Fookes and Lord Trees, is also helpful, would adding clarity to ASC reports.

### **Amendment 45 tabled by Baroness Hayman and Baroness Bakewell (New clause after clause 3)**

This new clause is essential to ensure that the bill provides a functional replacement to the sentience duty that applied in law when the UK was a member of the European Union.

Article 13 of the Treaty on the Functioning of the European Union has two intertwined elements – recognition of animals as sentient beings and a duty to pay 'full regard' to animal sentience in the formulating and implementing of policy. Although it was limited to certain areas of EU policy (agriculture, fisheries, transport, internal market, research and technological development and space policies), Article 13 imposed a direct legal obligation on the EU and on its Member States to pay full regard to animal sentience. It was a direct responsibility on decision makers, in the form of UK Government Ministers.

The bill replaces this direct duty with two indirect responsibilities on Ministers – to establish and maintain an Animal Sentience Committee (clause 1), and to lay a response in Parliament in response to ASC reports (clause 3). This is a weaker set of responsibilities, effectively outsourcing the bulk of animal sentience responsibility to the ASC, a body that can make recommendations to decision makers but sits outside the decision-making process.

To address this gap between EU sentience duties and the proposed replacements, the new clause creates a third responsibility for the Defra Secretary of State. This would require the Secretary of State to create and maintain an Animal Sentience Strategy that prospectively sets out how the Government proposes to have to regard to animal sentience, including upcoming policies it intends to ask ASC to review and plans for research around animal welfare. This early notice will help the ASC plan its work and encourage strategic, proactive working between Government and ASC on sentience.

The new clause 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 will provide a process and framework for showing how Ministers have taken into consideration the welfare of animals as sentient beings when making decisions. It will also allow Parliament to be able to evaluate the effectiveness and impact of the ASC.

It is important to clarify that the new clause would not increase ministerial exposure to Judicial Review. The Defra Secretary of State's responsibility would be entirely discharged by creating the Strategy and giving the annual Strategy progress report to Parliament.

The new clause would encourage a strategic approach to sentience on the part of the Government, and allow for regular parliamentary scrutiny of that approach, without increasing JR risk. As such it constitutes a practical measure to increase effective consideration of sentience across policy and should be supported.

#### **Clause 5: Amendment 49 tabled by Baroness Hayman, Lord Randall and Baroness Bakewell**

Clause 5 of the Bill currently defines “animal” as any vertebrate other than homo sapiens. Section 2 of clause suggest that this definition could be widened in future (by Statutory Instrument) to include invertebrates if evidence of sentience amongst invertebrates comes forward.

Evidence of sentience amongst two groups of invertebrates, cephalopods (e.g. octopuses) and decapod crustaceans (e.g. lobsters and crabs), is already established – and has been for many years.

In December 2005, the Scientific Panel on Animal Health and Welfare of the European Food Safety Authority published a report<sup>1</sup> that examines the scientific evidence as to the sentience and capacity of certain invertebrate species to experience pain and distress. The Scientific Panel’s report concluded that decapod crustaceans and cephalopods are able to experience pain and distress. The Scientific Panel concluded that the largest decapod crustaceans are complex in behaviour and have a pain system and considerable learning ability. As regards cephalopods, the Scientific Panel concluded that they have a nervous system and a relatively complex brain similar to many vertebrates and sufficient in structure and function for them to experience pain. Notably, they can experience and learn to avoid pain and distress such as avoiding electric shocks. In addition, they have significant cognitive ability including good learning ability and memory retention; elaborate communication systems; and individual temperaments.

More recently a number of scientific papers strongly point to the conclusion that both cephalopods and decapod crustaceans are capable of experiencing pain and suffering.<sup>2</sup>

In February 2021, the Scottish Animal Welfare Commission issued a [definition of sentience](#) to cover both groups, in light of this accumulating evidence.

Baroness Hayman, Baroness Bakewell and Lord Randall’s amendment to clause 5 seeks to acknowledge this evidence within the bill, by extending the definition of animal to cover [cephalopods](#) and [decapod crustaceans](#). We support this amendment. The recognition of cephalopods and decapod crustacean sentience has already taken place within the scientific community and there is no good reason to delay acknowledgement of it within the bill.

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<sup>1</sup> European Food Safety Authority (2005) “Opinion on the “Aspects of the biology and welfare of animals used for experimental and other scientific purposes”, The EFSA Journal, 292, 1-46

<sup>2</sup> Tonkins, B., (2016) “Why are Cephalopods Protected in Scientific Research in Europe?” Working Paper <https://goo.gl/eVHVfy>

Appel, M & Elwood, R (2009), 'Motivational trade-offs and potential pain experience in hermit crabs' Applied Animal Behaviour Science, vol 119, no. 1-2, pp. 120-124

Magee, B., and Elwood, R., (2013) "Shock avoidance by discrimination learning in the shore crab (*Carcinus maenas*) is consistent with a key criterion for pain", Journal of Experimental Biology, vol 216: 353-358

Conte F, Voslarova E, Vecerek V, Elwood RW, Coluccio P, Pugliese M, Passantino A. Humane Slaughter of Edible Decapod Crustaceans. Animals. 2021; 11(4):1089. <https://doi.org/10.3390/ani1104108>

In 2020 Defra commissioned an independent review of the subject, the results are due to be published soon. We urge Ministers to expedite publication in order that the study's findings, so that they can underpin inclusion of these groups into the bill scope during its passage through Parliament.

**Amendment 51**, tabled by Baroness Jones and Baroness Fookes, would also secure the inclusion of cephalopods and decapod crustaceans in the bill. We hope it will be supported.

### **Comments on other amendments**

#### **Clause 1: Amendment 2 tabled by Lord Forsyth**

The amendment suggests the merging of the bill's Animal Sentience Committee (ASC) bill with the existing [Animal Welfare Committee](#) (AWC).

This is not a practical suggestion, as the AWC and ASC have very different roles. The AWC provides scientific advice when asked to by Defra and works with only that Department, primarily on farm animal, welfare issues. The ASC will proactively review Government policy decisions across all Departments with regard to animal sentience. It will have the power to choose which policies to review and a scope that covers companion animals, farm animals and wild animals.

Merging these two very different committees into one would be a category error, reducing the effectiveness of both.

#### **Clause 1: Amendment 8 tabled by Lord Molyan, Earl of Caithness and Lord Hamilton**

This amendment would require 50% of the Animal Sentience Committee to have had recent commercial experience of farming, or managing game or fish stocks. This would bias the ASC towards one group (those involved in the production of animal products from farmed and wild animals), reducing its ability to provide balanced recommendations drawn from a diversity of viewpoints and knowledge bases.

#### **Clause 2: Amendment 16, tabled by the Earl of Kinnoull and Lord Hannan**

This amendment would limit the scope of the ASC to the areas of policy covered by EU sentience responsibilities. There is no need for this continued alignment with the EU now the UK has left – we have the freedom to widen our ambitions for animal welfare.

#### **Clause 2: Amendments 22 and 37 tabled by Lord Forsyth, Lord Etherton & Viscount Trenchard**

Two sets of amendments proposed to clause 2 by Lord Forsyth and Lord Etherton would limit the scope of ASC to new policy proposed by the Department for the Environment, Food and Rural Affairs. It would require permission to be received from the Defra Secretary of State before a report could be prepared.

This amounts to a signification weakening of the ASC, reducing it from a body free to consider sentience questions across Government policy to a Defra scrutiny body, who could only scrutinise with Secretary of State permission.

It is unclear what utility such a body would have. It would certainly not be able to ensure that animal sentience is taken into account across Government policy making, which is the stated purpose of the bill. Whilst Article 13 of the TFEU limited sentience consideration to certain policy areas, limiting the ASC to simply monitoring Defra would constitute an even more limited replacement for this law. These amendments amount to a critical undermining of the bill and should be rejected as such.

#### **Clause 2: Amendments 18, 23 and 34 tabled by Lord Howard and others**

These amendments would prevent the Animal Sentience Committee from considering the implementation of existing law. This reduction in scope would tie ASC's hands – the implementation of existing policy can have just as much of an impact on the welfare of animals as sentience beings as new policy. The greater the freedom of manoeuvre ASC has, the greater its effectiveness. Ministers will be able to disregard any recommendations – ASC will advise, Ministers will decide.

#### **Clause 5: Amendment 50 tabled by Lord Robathan, Viscount Trenchard and Earl of Caithness**

This amendment would remove wild animals from the scope of the bill.

The case for this removal is weak. If we accept that animals are sentient by virtue of their biology, sentience applies whether an animal is wild, farmed or kept as a companion. Human activity impinges on wild, farm and companion animals alike. As such, consideration of how human activity impacts on the welfare of sentience should extend to all three groups of animals.

The impacts of policy on wild animals should not be underestimated, ranging from mortality as a result of culling to displacement due to development. It would be arbitrary to prevent consideration of these impacts by ASC, while allowing consideration of impacts of similar magnitude affecting companion and farmed animals.

#### **Clause 5: Amendments 48, 52 and 53 tabled by Lord Moylan and others**

These amendments would limit the bill's coverage to mammals. This would be an entirely arbitrary limitation, given the overwhelming evidence of sentience that exists across vertebrates. An illustrative recent study of consciousness in corvid birds, on a scale on previously only seen amongst the primate group of mammals, can be found [here](#).

#### **Responses to wider claims about the bill**

During second reading on 16.06.21, several claims were made about the bill that do not stand up to scrutiny. This below 'mythbuster' examines these claims and clarifies the purpose, impact and scope of the bill.

Whilst the bill can be improved, as we set out above, it does represent a practical and significant step forward for animal welfare in the UK. Crucially it will also deliver on the commitment to legislate for animal sentience contained in the [Manifesto](#) on which the current Government was elected, a position also held by every other major party. The bill fulfils democratic promises to recognise sentience in the UK law, in line with the [deeply-held views](#) of the majority of the UK population.

## Mythbuster

Claim about the purpose of the bill:

*The bill serves no purpose and duplicates existing protections.*

**Reality:**

The bill has a clear purpose. It replaces the recognition of animal sentience that applied from 1999 but fell out of UK law when the Brexit transition period came to an end in January 2021. As a result, for the first time in over two decades, there is currently no requirement for the interests of animals to be considered in the policy process.

The bill will fill the gap and provides this requirement. It will not bind Ministers to any particular course of action but will ensure that their decisions are properly informed of any relevant animal welfare aspects.

Claim about the purpose of the bill:

*The bill will not advance animal welfare.*

**Reality:**

The bill does not impose duties or responsibilities on citizens. However, the bill will mean that the law-making process is better informed about the impacts of policy on animals, enabling Ministers to take steps to ameliorate negative impacts and advance positive ones.

Claim about the purpose of the bill:

*The bill reflects an anthropomorphic and sentimental agenda.*

**Reality:**

The opposite is true, the intention of the bill is to ensure that decision making is properly underpinned by scientific and ethical expertise. Animal sentience is an established [scientific fact](#) and as such should inform evidence-based policy making.

Claim about the purpose of the bill:

*The bill is being driven by emotive and populist opinion.*

**Reality:**

There is certainly [strong public support](#) for the bill and it reflects a manifesto commitment of the Conservative party, also enjoying strong cross-party support. There is no reason to assume that public opinion is not properly informed simply because the subject matter relates to animals.

<p>Claim about the purpose of the bill:</p> <p><i>The bill forms part of a radical animal rights agenda, which has nothing to do with animal welfare.</i></p>	<p><b>Reality:</b></p> <p>A commitment to animal welfare requires us to treat animals humanely, compassionately and properly. In order to treat animals properly, we must factor in the key facts about them. These facts include the sentience that we know animals possess.</p>
<p>Claim about impact of the bill:</p> <p><i>The Government is giving powers to an unelected committee.</i></p>	<p><b>Reality:</b></p> <p>There are a number of expert committees that advise government. The Animal Sentience Committee (ASC) will be one such committee - its role will be limited to scrutiny and advice; decision making will remain with Ministers.</p> <p>Ministers will be able to disregard advice from the ASC in making their decisions, either because of they disagree with it or because they feel other factors override it.</p>
<p>Claim about impact of the bill:</p> <p><i>The committee could end the exemption for non-stun slaughter that religious communities require.</i></p>	<p><b>Reality:</b></p> <p>As Defra Minister Lord Benyon pointed out at <a href="#">second reading</a> on 16.06.21, "The committee may decide a particular point on this, but a Minister will have to take into account the wider considerations of cultural and religious organisations and form a view in accordance with that".</p> <p>As stated above, the committee will advise, Ministers will decide.</p>
<p>Claim about impact of the bill:</p> <p><i>The committee will constitute a new and expensive bureaucracy.</i></p>	<p><b>Reality:</b></p> <p>The committee is likely to consist of 10 to 15 people, supported with a small stipend and with expenses. 2 to 3 Defra civil servants are likely to provide secretarial support.</p>

	<p>The former Farm Animal Welfare Committee operated on this basis and required under <a href="#">£300,000 per year</a> in funding.</p> <p>To put this number in context, a <a href="#">2016 Cabinet Office Review</a> found that 141 bodies advising Government typically each had annual budgets of between £100,000 and £1 million. It is likely that the ASC would be towards the bottom half of this scale.</p>
<p>Claim about scope of the bill:</p> <p><i>The Animal Sentience Committee duplicates the work of the Animal Welfare Committee and should be merged with it.</i></p>	<p><b>Reality:</b></p> <p>The Animal Sentience Committee (ASC) will need to be separate from the current Animal Welfare Committee (AWC), as they have very different roles.</p> <p>The AWC provides reactive advice to Defra alone when asked to, the ASC will proactively review Government policy decisions across all Departments, choosing when and where to intervene.</p>
<p>Claim about impact of the bill:</p> <p><i>The bill will enable mischief makers to take advantage of judicial review powers.</i></p>	<p><b>Reality:</b></p> <p>Judicial review is only available to hold the executive and public bodies to account if they act unlawfully. If these bodies act within the law, there is nothing to fear.</p> <p>The only duties within the current bill that could open Ministers to judicial review are their duties to set up the ASC and to lay a written response to Parliament, responding to Animal Sentience Committee reports. We also support a new clause from Baroness Hayman that would require the creation and maintenance of an Animal Sentience Strategy.</p> <p>It is very difficult to see any circumstances whereby Ministers fail to set up the ASC, provide a written response to a report or fail to create and maintain a strategy. As such the risk of judicial review is minimal to non-existent.</p> <p>Judicial review operates under tight constraints because judges understand that policy is for Parliament. Courts will have no difficulty in dismissing cases with no merit</p>

	<p>at the initial permission stage. Even if a judicial review succeeded, the court would refer the matter back to the minister to re-make the decision, this time in accordance with the law.</p> <p>For example, in Compassion in World Farming’s 50 year history, they have only taken up four judicial reviews, and only three of those were against the UK Government (the fourth was against the Scottish Government).</p>
<p>Claim about scope of the bill:</p> <p><i>The bill covers wild animals – it is ridiculous to legislate to control the behaviour of wild animals.</i></p>	<p><b>Reality:</b></p> <p>The bill concerns the relationship between wild animals and humans. Human involvement in the natural world can have very serious consequences for wild animals and it is right for those consequences to be considered.</p> <p>For example, if a proposed power plant requires the destruction of ancient woodland that is home to a range of wild species with limited other habitats available to them, it is reasonable this impact to be considered. After taking advice from the Animal Sentience Committee on the likely number of wild animals killed or displaced by the destruction, Ministers will be able to weigh it up alongside other factors (such as economic consequences) in making their decision.</p>
<p>Claim about scope of the bill:</p> <p><i>The bill gives the Secretary of State power under secondary legislation to expand the definition of animals for the purpose of the legislation – this is too much power.</i></p>	<p><b>Reality:</b></p> <p>The proposed power to make secondary legislation mirrors that contained in the Animal Welfare Act 2006. It enables rules to be changed, reflecting advancements in scientific knowledge about the sentience of certain species. Even if the definition is expanded, the legislation does no more than require the interests of those species to be considered as part of the policy making process.</p>

This briefing has been prepared ahead of Lords Committee stage on 06.07.21 by [Better Deal for Animals](#), a coalition of 50 animal protection groups in the UK, who have joined forces to campaign for a strong law that recognises animal sentience.

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02.07.21