

EFRA Select Committee Call for Evidence on the Animal Welfare (Sentience) Bill
Wildlife and Countryside Link response: June 2021

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 60 organisations to use their strong joint voice for the protection of nature and animals.

Introduction

The Animal Welfare (Sentience) Bill 2021 is a significant improvement on the Animal Welfare (Sentencing and Recognition of Sentience) Bill that failed to progress in 2018.

Unlike the 2018 bill, the recognition of sentience contained in this bill covers all UK Government departments, meaning that animal sentience considerations can apply to all policy formulation (except for devolved matters). This bill also applies to the free-living wildlife that forms the majority of animal life in this country. The Animal Sentience Committee (ASC) created by the bill has the potential to be an effective body, working to increase recognition and application of animal sentience principles and responsibilities across government.

These elements are essential to effective animal sentience legislation, and we commend Defra for including them within the new bill. We would also like to put on record our appreciation of the thorough and constructive stakeholder engagement process run by Defra around the bill.

However, there are key parts of the bill that require strengthening. It is important that the bill is amended to:

- Create clear duties and powers for the ASC as the body scrutinising decision making, ensuring that all relevant policies are considered.
- Create an Animal Sentience Strategy duty to provide for clear and prospective planning, and enable appropriate Ministerial accountability and impact reporting.
- Allow for the ASC to consider positive opportunities to enhance animal welfare, as well as adverse effects.
- Extend the definition of sentience in line with the latest scientific evidence.

With these amendments, which we set out in more detail below, the bill will go beyond providing a functional replacement for sentience duties that applied when we were members of the EU and deliver a new gold standard for animal welfare legislation.

Responses to consultation questions

1. Will the Animal Welfare (Sentience) Bill ensure that animal sentience is properly taken into account in both new and existing Government policy in England?

The Government's Action Plan for Animal Welfare, published along with the bill, states that recognition of animal sentience will be 'at the very heart of central government decision making going forward'.¹ The current text of the bill falls short of this promise, as it places the bulk of animal sentience duties on a scrutiny body adjacent rather than central to government.

The bill replaces the animal sentience recognition and duty that had applied when the UK was a member of the European Union. The duty, enshrined in Article 13 of the Lisbon Treaty, recognised animals as sentient beings and imposed a linked duty on the EU and its Member States to pay full regard to their welfare requirements in their decision making, in specified policy areas. The bill replaces this recognition and duty with two duties 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 effectively outsources the bulk of animal sentience responsibilities to the ASC, a body that can make recommendations to decision makers but has no decision-making powers itself.

It renders animal sentience an adjacent part of Government decision-making, rather than a direct and judicially enforceable duty. Ministers will be entirely free to disregard ASC recommendations, with the only requirement upon them being to lay their response to the recommendations in Parliament within three months. This laying of a response will be in written form, precluding any active parliamentary scrutiny of decisions to reject ASC recommendations. It is unclear what further recourse ASC will have, beyond a statement of public concern, when then they feel that regard has not been duly given to animal sentience.

We understand that the Government has opted for such light duties on Ministers as part of its wider efforts to reduce the exposure of Ministers to Judicial Review (JR).² However, it is important to remember that judicial reviews occur infrequently, with the bar for a judicial review being set very high and having a prohibitive cost attached to it. For example, in 50 years, Compassion in World Farming has launched just 4 judicial reviews on animal welfare issues, only three of which were against the UK Government.

The placing of the bulk of animal sentience responsibilities upon an arms-length committee with limited teeth, as opposed to on Ministers directly, is a disproportionate response to JR exposure concerns and will limit the extent to which animal sentience will be properly taken into account in both new and existing Government policy in England.

2. Are there sufficient safeguards to ensure that the proposed Animal Sentience Committee will be (a) independent (b) have the necessary expertise and (c) have the necessary powers to be effective?

At present, clauses 1 and 2 of the bill, which set up the ASC, are light on detail as to how the Committee will have the powers, expertise and independence it needs to be effective. As such further safeguards are required to ensure that ASC functions effectively – these safeguards should be placed on the face of the bill, as opposed to being left to accompanying guidance. As recently reiterated to Defra by the

¹ <https://www.gov.uk/government/publications/action-plan-for-animal-welfare/action-plan-for-animal-welfare#sentience-and-enforcement>

² https://www.wcl.org.uk/docs/assets/uploads/Judicial_Review_Proposals_Link_Briefing_Note_April_2021.pdf

Secondary Legislation Scrutiny Committee³, legislation needs to be detailed and clear enough that guidance does not need to be relied upon for the purposes of interpretation.

The effective outsourcing of animal sentience responsibilities from Ministers to the ASC makes it all the more important for the committee to be independent, expert and empowered to do its job well.

2a) Independence

Ministers should respect the independence of the ASC, and appoint a full-time chair supported by a secretariat, to ensure that the Committee speaks with an established and independent voice. The ASC should also be separate from the current Animal Welfare Committee (AWC), as they have different remits. The AWC provides reactive scientific advice to Defra alone, the ASC proactively reviews Government policy decisions across all Departments.

The ASC should have an open, transparent recruitment process and publish all its advice to Government. Given the keen public interest in animal welfare issues, it should have a mechanism to take representations (including concerns and complaints) from the public, as other independent bodies do. Similarly, the ASC must have a mechanism for being held accountable. A mandatory progress report of the ASC's work at the end of each Parliamentary session could provide this function.

It will be critical for the ASC to be able to speak with an independent voice to Parliament, the public and the media, as this will effectively be the Committee's only mechanism to assert its opinion in response to Ministerial statements on its reports.

2b) Expertise

The Bill as drafted defers entirely to the Secretary of State to appoint persons to Committee on such terms they 'deem appropriate', which we find to be lacking the necessary clarity and specificity.

The ASC should be required, under clause 1 of the bill, to include independent members with appropriately wide-ranging specialist perspectives and expertise, including expertise in animal welfare and ethical review. The ASC should not be dominated by any one industry or sector and should also include lay members. It should also be empowered to invite input from specialist experts (including those with practical or experiential expertise) to conduct research and reviews of particular policies where this is needed. The Scottish Animal Welfare Commission is utilising this power to good effect (see response to question four for more details on this).

2c) Powers

To allow the Committee to come to informed judgements on the question as to whether animal welfare has received appropriate regard in policy formulation and implementation, it should have the ability to call witnesses, and to have access to necessary documentary evidence. This could be achieved by placing

³ <https://publications.parliament.uk/pa/ld5801/ldselect/ldsecleg/242/24203.htm>

a duty on the Secretary of State to provide the ASC with information at their disposal that is relevant to its function.

Clarifying the duty on the ASC

A further safeguard is required, clarifying the duty on the ASC to review whether a government policy has had appropriate regard to the welfare of sentient animals. The discretionary nature of this duty as drafted in the bill risks ambiguity and challenge over which policies the Committee may be expected to review, to the extent whereby the committee may struggle to take a strategic and prospective approach to its work.

The ASC should be mandated with a clear duty to review policies (both prospectively and, where appropriate, retrospectively) that fall within defined criteria (such as all policies with the potential to have a significant adverse effect on the welfare of animals, taking into account metrics such as the number of animals affected and the duration and severity of welfare compromise). The bill should provide a mechanism to ensure the Committee is made aware of all such policies that fall within these criteria. This mechanism would require Ministers to inform the Committee when a policy within the ASC's scope is being developed and to keep the Committee advised on how it is being considered.

Consideration should also be given to whether the ASC duty to review policies should be extended beyond UK Government policy, to cover the policies of statutory agencies.

Finally, the clarified duty on ASC should allow the committee to identify ways in which the welfare of sentient animals might be positively improved as a result of the policy under consideration, not just to identify negative impacts. Under clause 2 of the bill as drafted consideration is limited to an assessment of whether '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'.⁴ Adverse effects are just one side of the policy coin. Recognising animal sentience means acknowledging that animals have the capacity for both negative and positive emotions, acting on that recognition requires consideration of choices to minimise the former *and* opportunities to maximise the latter.

3. Are the proposed requirements on the Government to respond to an Animal Sentience Committee's report sufficient?

As set out in our response to question 1, the requirements on Government to respond to ASC reports are insubstantial. A duty to lay a written response before Parliament within three months of an ASC report is a very light Ministerial tie to sentience consideration.

We propose strengthening this tie by the creation an additional duty for the Defra Secretary of State to create and maintain a cross-Whitehall Animal Sentience Strategy that prospectively sets out (i) how Ministers, supported by the ASC, plan to have all due regard to animal sentience (e.g. through animal welfare impact assessments and commissioning of any necessary independent research or opinions),

⁴ https://publications.parliament.uk/pa/bills/lbill/58-02/004/5802004_en_1.html

and (ii) which upcoming policies are determined as within the scope of the Act and ASC review. The ASC would have the ability to consider policies not included in the Sentience Strategy.

The duty should 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 recommendations. The report should 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 Government has recognised animal sentience in policy options considered. This will provide a process and framework for more meaningful responses to ASC reports, showing how Ministers have taken into consideration animal welfare when making decisions over the preceding twelve months. It will also allow Parliament to be able to evaluate the effectiveness and impact of the ASC.

This proposed additional duty on Ministers carries minimal risk of Judicial Review, as the Secretary of State's duty would be discharged by creating the Strategy and laying the annual Strategy progress report.

4. How does the proposed Animal Sentience Committee compare to similar bodies, such as the Scottish Animal Welfare Commission?

We welcome the fact that the Scottish Animal Welfare Commission (SAWC) consists of independent experts covering a wide range of disciplines, including expertise in animal welfare, health and behaviour, ethical review, as well as animal protection law and enforcement. As discussed under point 2(b), it is critical for the ASC to bring together a similar diversity of animal welfare expertise and to not be constrained or hampered by vested industry representations.

As discussed in point 2(a) the ASC should follow an open and transparent recruitment process. This could be modelled on the process undertaken for the SAWC, where members are recruited through open advertisement. Commissioners are then selected for appointment solely on the basis of their knowledge and expertise and sit on the Commission in an individual capacity and not as representatives of particular groups or organisations, we would advocate for the ASC to follow this example.

We welcome the regulatory requirement for the SAWC to produce both an annual work plan and progress report (absent from the Animal Sentience Committee's proposed duties), ensuring accountability for the exercise of its functions. We note and welcome that reports and opinions produced by the SAWC for Scottish Ministers, as well as minutes of its meetings, are made available for Parliamentary and public scrutiny.

The SAWC is afforded 'general powers' (section 6) to 'do anything which appears to it— (a)to be necessary or expedient for the purpose of, or in connection with, the performance of its functions, or; (b)to be otherwise conducive to the performance of its functions.' The Commission has already interpreted and used such powers, including to invite a range of external stakeholders to submit statements of evidence and opinion on various issues (e.g. glue traps and exotic pets). As discussed in point 2(c), the ASC must also be afforded certain executive powers, including the ability to call on

external expert views where these are required to inform advice to Ministers or opinions on government policy actions.

New Zealand also provides an instructive example. The New Zealand National Animal Welfare Advisory Committee (NAWAC)⁵ and National Animal Ethics Advisory Committee (NAEAC) were created and are empowered by the New Zealand Animal Welfare Act (1999).⁶ The NAWAC covers all areas of human-animal interaction except use of animals in research and testing, which are covered by the NAEAC.

Whereas the Animal Welfare (Sentience) Bill proposes that 'The appointment of a person to the Committee is to be on such terms as the Secretary of State may determine when making the appointment.', the New Zealand Animal Welfare Act establishing the NAWC creates a duty (58/3) for the Minister to appoint individuals with knowledge and expertise in a prescribed list of areas, including animal behaviourists and welfarists, veterinary surgeons, and public interest in respect of animals. The Committee reports directly to the Minister, takes views from stakeholders and has a clear framework to work with regarding the process that needs to be followed when balancing the needs of humans against the welfare needs of animals. Unlike section 2 of the Animal Welfare (Sentience) Bill which creates rather vague and discretionary reporting duties, the NAWAC is required under section 60 of the Animal welfare Act to provide an annual report on its operations. The Act also specifies a 3-year term of office (a provision currently absent from the Animal Welfare (Sentience) Bill).

The NAWAC has developed a series of clear and informative guidelines⁷ to govern its work, including a 'Prioritisation framework'⁸ setting out how the Committee makes transparent and impact-driven decisions about where to focus its time and resources.

The Netherlands also provides a helpful precedent. The Dutch Council on Animal Affairs (Raad voor Dierenangelegenheden RDA)⁹ is an independent Dutch council of experts that gives the Minister of Agriculture, Nature and Food Quality solicited and unsolicited advice on animal welfare and health policy issues (including farm animals (commercial and hobby), animals living in the wild, companion animals and laboratory animals). The Council comprises around 40 members with very different backgrounds and expertise, whose membership is in a personal capacity and not bound by any instructions or binding mandate. The Council documents the outcome of its considerations in an advisory report. This gives details of the scientific and social background of an issue and gives advice on policy directions and solution directions for dilemmas. Consensus is not necessary; a Council advisory report can contain minority opinions.

5. Is the Government correct to limit the scope of the Bill to vertebrate animals?

⁵ <https://www.mpi.govt.nz/animals/animal-welfare/national-animal-welfare-advisory-committee/national-animal-welfare-advisory-committee-membership/>

⁶ <https://www.legislation.govt.nz/act/public/1999/0142/latest/DLM49664.html>

⁷ <https://www.mpi.govt.nz/animals/animal-welfare/national-animal-welfare-advisory-committee/national-animal-welfare-advisory-committee-guidelines/>

⁸ <https://www.mpi.govt.nz/dmsdocument/8491-NAWAC-guideline-12-Prioritisation-framework>

⁹ <https://english.rda.nl/>

No. There is already sufficient evidence of sentience amongst cephalopods¹⁰ and decapod crustaceans¹¹ to expand the definition of animal to cover both groups. This definition expansion was agreed this February in Scotland.¹² In 2020 Defra commissioned an independent review of the subject, due to be published later this year.¹³ The government should expedite publication in order that the study's findings can underpin inclusion of cephalopods and decapod crustaceans into the bill during its passage through Parliament.

This response is supported by the following Link members:

Naturewatch Foundation
FOUR PAWS UK
Whale & Dolphin Conservation
Badger Trust
Born Free
Humane Society International UK

The following members of the [Better Deal for Animals](#) coalition have also signed onto this response:

World Animal Protection
OneKind
Animal Free Research UK
Crustacean Compassion
Wild Animal Welfare Committee

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¹⁰ <https://www.onekind.scot/are-lobsters-crabs-and-octopuses-sentient/>

¹¹ <https://www.crustaceancompassion.org.uk/do-crustaceans-feel-pain>

¹² <https://www.gov.scot/publications/scottish-animal-welfare-commission-statement-on-animal-sentience/>

¹³ <https://www.theyworkforyou.com/wrans/?id=2021-01-13.137154.h>