



## Briefing for Second Reading of Animal Welfare (Sentience) Bill

### Executive Summary

- Recognition of animal sentience, and an associated duty of regard for sentient animals, was not transferred across from EU legislation when the UK left the EU. The Government committed to bringing this into law as soon as possible.
- We welcome the Government's introduction of the Animal Welfare (Sentience) Bill.
- The bill needs further work to both strengthen it and add clarity to ensure it delivers effectively. We are concerned that as presently drafted, the application of a duty to have regard for the welfare needs of sentient animals could be ineffectively applied.
- Gaps around ministerial responsibility and Animal Sentience Committee powers and functionality are of particular concern.

The Animal Welfare (Sentience) Bill is a vital piece of legislation. Sentience, the ability of animals to have and experience feelings and sensations, both negative (such as frustration and fear) and positive (such as comfort and joy), is fully recognised by [modern science](#) and - following Brexit - it is important that it is also recognised in UK law.

After a long gestation period, starting with a period of intense media and public discussion of post-Brexit sentience recognition arrangements in [2017](#), it is good to see this bill advance at last.

There is much to welcome within the bill. The scope is all-encompassing, meaning all UK Government policy will be covered by this legislation and as such animal welfare considerations will be necessary in all policy formulation (except for devolved matters). The bill also applies to free living wildlife. 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.

However, considered as a whole, the bill does not yet achieve what has been promised: a new global gold standard for animal sentience recognition, shaping all government decision making. Support from all sides of the House will be required to ensure that the bill is improved, to deliver the ambition shared across the political spectrum for recognition of animal sentience to be effectively applied across all relevant policies.

## Key concerns in the Bill

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

### 1. The powers and remit of the Animal Sentience Committee (ASC) should be strengthened and clarified within the Bill

The bill does not place a direct duty upon Ministers, but instead entrusts much responsibility to the ASC for ensuring the effective discharge of a duty to animals, within relevant policy contexts. The ASC therefore needs to be an effective body, sufficiently and clearly empowered and resourced to undertake its work. 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 and independence it needs to be effective. As a statutory body, a lack of powers and a lack of clarity over intended duties could leave the ASC open to its operation being called into question via judicial review.

As recently reiterated to Defra by the [Secondary Legislation Scrutiny Committee](#), legislation needs to be detailed and clear enough that guidance does not need to be relied upon for the purposes of interpretation. Clarity on the following points should be given in the Bill, prior to guidance on the Bill being issued:

- **Diversity of expertise** – The ASC should be required 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.
- **Transparency** – The ASC should have an open, transparent recruitment process and publish all of 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.
- **Accountability** - The ASC must have a mechanism for being held accountable. An annual reporting mechanism of the ASC's work to Parliament could provide this function.
- **Autonomy and 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.
- **Explicit and clear duty** – The bill currently only creates a *discretionary* duty for the ASC to review whether a government policy has had appropriate regard to the welfare of sentient animals. Our view is that this creates unnecessary and unhelpful ambiguity. ASC should be mandated with a clear duty to review policies (both prospectively and, where appropriate, retrospectively) that fall within a 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, requiring 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.

- **Executive 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 a duty on the Secretary of State to provide the ASC with information at their disposal that is relevant to its function.
- **Resourcing** – Provision should be made in the Bill to ensure that sufficient resources will be provided to allow the ASC to perform its role, including maintenance of a full time Chair and small Secretariat.

## **2. The Bill should include a duty to create and maintain an Animal Sentience Strategy**

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.

This concentration of responsibilities on the ASC would make consideration of animal sentience an adjacent part of Government decision-making, rather than a direct and judicially enforceable duty. 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. By contrast, the Animal Welfare (Sentience) Bill does not create a direct legal duty on Ministers to consider animal welfare. As a result, it would not be possible to challenge a public policy decision in court on the basis that Ministers had not considered animal welfare.

To address this Ministerial responsibility gap, we recommend the addition of 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), 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 showing how Ministers have taken into consideration animal welfare when making decisions. 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, which we understand is a [Government concern](#). The Defra Secretary of State's duty would be discharged by creating the Strategy and laying the annual Strategy progress report.

### **3. The Animal Sentience Committee should consider positive effects for animal welfare**

The ASC will express views on whether the Government has appropriately recognised animal sentience in policy proposals. However, under clause 2 (2) of the bill, this consideration is limited to a consideration 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'. Adverse effects are just one side of the coin; as well as considering what the Government should not do in order not to *harm* animal welfare, the ASC should have the freedom to consider what the Government could do to *enhance* animal welfare. 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.

Without amendment to allow consideration of positive effects a policy could have, the current wording of clause 2(2) could lead to important opportunities to enhance animal welfare being missed. Examples of such opportunities can be found in the RSPCA's recent '[Act now for animals](#)' policy paper.

There should be the option available for the ASC to identify ways in which the welfare of sentient animals might be improved as a result of the policy, not just to identify negative impacts

### **4. The definition of 'animal' should be expanded**

Clause 5 of the Bill currently defines "animal" as any vertebrate other than homo sapiens. Ministers have said that this definition could be widened in future (by Statutory Instrument) to include invertebrates, if new evidence of sentience amongst invertebrates comes forward. We believe there is already sufficient evidence of sentience amongst [cephalopods](#) and [decapod crustaceans](#) to expand the definition of animal to cover both groups. This definition expansion was agreed this February [in Scotland](#). In 2020 Defra commissioned an independent review of the subject, due to be published [later this year](#), and we urge government to expedite publication in order that the study's findings can underpin inclusion of these animal groups into the bill scope during its passage through Parliament.

*(continued)*

### **Key recommendations**

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'.

The current text of the bill fails to deliver on this promise. Animal sentience is hived off to a scrutiny body adjacent rather than central to government, with limited and unclear powers to either reach an informed judgement or to express a view on decisions. It is essential 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.
- Expand the ASC's remit to scrutinise whether Ministers have had all due regard to animal sentience in considering how animal welfare can be enhanced, not just whether harm has been avoided.
- Extend the definition of sentience in line with the latest scientific evidence.

We would be grateful if these points could be made at second reading on 16 June, ahead of detailed amendments to equip the bill to fulfil its original purpose.

This briefing has been prepared ahead of Second Reading 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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