



Recognising animal sentience – principles for effective legislation

The Government has committed to incorporating recognition of animal sentience, enshrined in Article 13 of the Treaty of Lisbon, into UK law after the end of the Brexit transition period. It is expected that this legal recognition will be included in a wider Animal Welfare Bill, to be introduced to Parliament in 2021.

This commitment is welcome, however the legislative action to deliver it is well overdue – the commitment itself was first made in 2017. An initial attempt at legislation, through the Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill, was dropped in 2018 following concerns about the efficacy of the draft text raised by environmental NGOs and the Environmental Audit Committee.

Given the issues affecting the first attempt, the subsequent delays to progress and the clear public desire to see animal sentience successfully enshrined in UK law, it is essential that the 2021 legislation is fit for purpose. Wildlife and Countryside Link have proposed the following principles that, if adopted within the 2021 legislation will ensure that the new legal recognition of animal sentience effectively enhances the welfare of animals. The new legislation should:

Apply widely: across species & across policy areas

Animal sentience legislation must apply to all sentient animals - whether farmed, wild, research or companion - in all policy areas. At a minimum, all vertebrates, cephalopods and decapod crustaceans should be legally defined as within the scope of sentience legislation. The legislation should also provide a mechanism for this list to be expanded in future, based on the latest scientific evidence of sentience. All Government departments should be covered by the legislation. Sentience is a fact - and facts cannot be recognised in some circumstances but not others. Any exemptions would also reduce the scope of the legislation, reducing its positive animal welfare impacts.

Require the paying of all due regard to animal welfare

The central framing of animal sentience under the Lisbon Treaty '*the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals*' should be carried forward into UK legislation. The need to 'pay regard' is essential as it ensures that animals cannot be treated as 'goods' in the creation of new laws which impact them, and it ensures that animal welfare is given full consideration alongside other public policy needs. There will be a particular need for this built-in consideration of animal welfare in the post-Brexit trade deal negotiations the UK will be progressing over the coming years. We suggest that the new legalisation could use the following wording: "*Ministers of the Crown, public bodies and authorities must pay all due regard to the welfare needs of sentient animals when formulating and implementing their policies*".



Set clear processes for the discharge of animal sentience duties

The legislation should set out the process for how Government departments will assess on animal sentience, and how animal sentience is to be interpreted and applied by Government departments and public bodies when making, developing, and revising their policies. These processes should be supported by an Animal Welfare Commission appointed to assist Government - including individual departments and public bodies - in discharging its duty to animals, providing independent and transparent advice (further details on how the AWC should operate can be found below).

Their duty on Ministers of the Crown would be to have all due regard for the ways in which relevant policies might have an adverse effect on the welfare of sentient animals. 'Relevant policies' means policies likely to have a significant effect on animals, as identified by the AWC. Ministers would discharge their duty by:

- 1) Reporting, when requested to do so by the AWC, to Parliament to explain how animal welfare has been taken into account with respect to the formation or implementation of a specific policy and, where relevant, to explain the reasons why government policy has differed from the recommendations of the AWC.
- 2) Providing an annual report to Parliament.

The reporting stage would require Government to respond to requests from the AWC for Ministers to make an oral statement to Parliament on their consideration of animal welfare for any policy currently undergoing pre-legislative or legislative scrutiny. The AWC would scrutinise the full range of Government policy initiatives on a prospective basis, identifying policies impacting significantly on animal welfare and requesting varying levels of detail from the Government, dependent on the expected scale of that impact. The following two hypothetical examples set out how this would work in practice:

The Government plans to introduce new legislation on tenants' rights. The AWC is approached by NGOs who say that this is an opportunity for tenants to have non-disruptive pets. The Commissioner agrees and requires the Minister to make a statement on this issue. The Commission does not convene for detailed discussion, and the Minister's duty is discharged by making the statement and responding to questions in the House.

The Government proposes to make major changes to the fox-hunting ban. The AWC considers that this is a major issue and convenes meeting to discuss the proposals and write recommendations. The Commissioner sends them to the Minister, who is required to make a statement not only on the issue in general but also addressing specific recommendations of the Commission (as the Minister would for Select Committee recommendations). The Minister's duty is discharged by doing this.



In both cases, the Ministers would be required to consider and take a position on issues that the AWC team consider relevant, and to defend the position in Parliament. We feels this strikes a workable balance between ensuring sufficient scrutiny and not significantly widening the Government's exposure to judicial review – Ministers would be required to respond to animal welfare issues identified by the AWC on the record, and to open up parliamentary discussion on those issue. This responding, combined with an annual report on animal sentience by Government to Parliament, would fulfil the duty to give all due regard to animal welfare.

Create an independent Animal Welfare Commission, chaired by an Animal Welfare Commissioner

Animal sentience legislation should include a power for the creation of an Animal Welfare Commission (AWC), with a mandate of providing support to all Government departments and public bodies in discharging and reporting on animal sentience duties. This body would provide Ministers with scientific and ethical opinion and advice on animal welfare issues, and conduct welfare impact assessments and ethical appraisal for legislative proposals affecting the welfare of animals. This body would work in conjunction with existing expert groups such as the Farm Animal Welfare Committee and the Animals in Science Regulation Unit, ensuring a consistent approach across Government. It could also liaise with and provide expert opinion to relevant Select Committees (e.g. EFRA).

The AWC would replace and replicate the advisory role of key European animal health and welfare bodies such as the European Food Safety Authority. As has been the case with the European Food Safety Authority, the AWC should be independent of Government, to enable it to support and scrutinise all departments without fear or favour.

The AWC should represent the wealth of scientific, ethics and animal welfare expertise available in the UK. It should have an open, transparent recruitment process and include independent members with appropriately wide-ranging specialist perspectives and expertise (including animal welfare, ethical appraisal, veterinary science and law). A maximum of around twelve members would be most effective in reviewing and making decisions on a specific area. The Chair of the AWC should have the title of 'Animal Welfare Commissioner' and be the public face of the body, boosting public understanding of the role of the AWC and the important of animal sentience duties. In line with this public-facing aspect, the AWC should include a mechanism to take representations (including concerns and complaints) from the public.

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