

Animal Welfare (Sentience) Bill: Briefing for Lords Committee (Day 2)

Committee debate so far

We are grateful to those peers who made the case for an effective Animal Sentience Committee (ASC) at the [first day of Grand Committee](#) on 6 July. We particularly welcomed assurances from the Minister on the following points:

Committee diversity: *"We want a committee that has expertise and is not trying to carry out some political campaign or is weighted too much in one direction or another. It will be balanced, expert, the right size and properly resourced"*. We welcome this commitment. The ASC will function best if it is able to draw on a range of expert opinion, from ethics to veterinary science, rather than being dominated by any industry or sector.

Committee resourcing: *"I can also confirm that it will receive all the administrative resource it needs to do its job. This will include a dedicated secretariat. Committees such as this are financed, as I said earlier, from the sponsoring department's budget"*. A secretariat furnished by Defra will enable the ASC to do its job well. Contrary to a suggestion made by a peer, the cost of this secretariat is unlikely to require any cuts within Defra. The cost of secretariat provision for similar committees in the past has ranged around [£300,000 p.a.](#) To put this in context, the Defra budget received a £600 million uplift in the last [Spending Review](#), to reflect the importance the Government places on environmental and animal welfare issues.

Committee consideration of both positive and adverse effects: *"I am of one mind with the noble Baroness that the committee should be free to consider positive effects and am happy to confirm that it will be encouraged to do so"*. This is an important assurance – the ASC must have the freedom to consider how policies could have a positive effect on the welfare of animals as sentience beings, as well considering possible adverse effects. Support for this common-sense faculty for ASC came from all sides of the house on the first day of committee. We hope that the Government will act on this consensus by tabling a simple amendment ahead of report stage, to align the text of the bill with Ministerial assurance.

The remaining amendments, due to be discussed at second day of Grand Committee on 20 July, can broadly be grouped into three categories – concerning the scope of the ASC, the planning of its work, and animals covered by the bill. We comment on these three areas below.

Scope of the Animal Sentience Committee

A series of amendments have been tabled to limit the scope of ASC work, including an amendment restricting that scope to cover only Defra policy (**amendment 37**) and others removing the committee's ability to consider anything but future policy (**amendments 18, 21 and 34**).

These amount to a significant weakening of the ASC, and a retreat from the original vision of a body free to consider sentience questions across the range of Government policy. As Minister Benyon said at the first stage of Committee *"in our manifesto, this Government as a whole committed to the introduction of new laws on sentience, with no suggestion of carve-outs or exemptions"*.

It is important that this initial vision is retained within the bill, to allow the ASC to make a positive contribution to policymaking. It can best do so as a public body, providing expert input to inform complex policy questions touching on the welfare of animals as sentient beings. The remit of the ASC should extend to any area where it can inform these questions – a range that includes all Government departments, and the implementation of existing legislation. Erecting arbitrary barriers to such expert advice will impoverish the policy process; law should not prevent Ministers from accessing knowledge that could improve their decision making.

It is important again to highlight that ASC advice will provide an additional evidence base to inform policy, rather than directing it. The scope of 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 or economic factors¹) override animal sentience considerations². ASC will be a provider of information, not a director of policy; an ASC report will stand many degrees closer to a technical briefing than it will to a green paper. The committee will advise, Ministers will decide.

Giving the ASC a 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.

The Scottish Animal Welfare Commission (SAWC) was established in 2020 to provide advice on the welfare of animals. The regulations that set up SAWC [allow](#) it offer advice to all Scottish 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 SAWC work on a range of subjects over the past year, from salmon farming to glue traps.

New Zealand also provides an instructive example. The New Zealand National Animal Welfare Advisory Committee ([NAWAC](#)) and National Animal Ethics Advisory Committee ([NAEAC](#)) were both set up by the [Animal Welfare Act 1999](#) and between them 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) is an independent Dutch council of experts, established in 1993, that gives the solicited and unsolicited advice on animal welfare and health policy issues. This advice is [given](#) *“across the spectrum of public policy on animals: about farmed and non-farmed, in other words animals that are ‘living in the wild,’ about hobby farm animals, about companion animals and about production and laboratory animals”*. Reports issued by the Council on Animal Affairs provide a good illustration of the sort of useful research and advice the Animal Sentience Committee could carry out. For example, the Council’s 2020 [report](#) on the Digitisation of the Livestock Farming Sector looked at the growing use of data collection and application in livestock

¹ On the first day of Committee Minister Benyon gave the examples of medical testing and religious slaughter as areas where economic, health and social considerations were likely to always take precedent over any animal welfare recommendations.

² Animal welfare, economic, health and social considerations often align together. For example, it is now established that more humane animal handling in livestock farming improve the quality and safety of the meat produced, benefiting animals, consumers, producers and the overall reputation of the industry. A paper summarising the evidence for this can be found [here](#).

farming and highlighted opportunities to enhance the welfare of livestock animals through policy interventions in this area, covering both new policy and the implementation of existing policies.

The ASC should follow these successful precedents and provide advice wherever that advice can inform and enhance the quality of decision-making affecting animals.

The planning of Animal Sentience Committee work

The wide-ranging ASC remit does require minor, positive amendments to the bill, to ensure the ASC is able to strategically plan its work.

By receiving early notice of policy matters that will significantly impact on the welfare of animals as sentient beings, the ASC will be able to appropriately order its work by ensuring that these significant impacts are given the timely and full consideration required. As currently drafted, the bill does not contain a mechanism for such early notice.

A number of helpful amendments have been tabled to provide such a mechanism, including elements of the following:

- **Amendment 39** (Baroness Hayman and Baroness Bakewell): Requiring Ministers to inform the Animal Sentience Committee, in a timely manner, of the formulation of any policy which is within the remit of the Committee.
- **Amendment 45** (Baroness Hayman and Baroness Bakewell): Requiring the Secretary of State to publish an Animal Sentience Strategy at the start of each Parliamentary session, including upcoming policies that the Secretary of State may ask the Animal Sentience Committee to review.
- **Amendment 62** (Baroness Jones and Baroness Fookes): Requiring Government to take reasonable steps to advise the Committee of its intention to formulate or implement any policy which might have an adverse effect on the welfare of animals as sentient beings.

At the first day of committee stage Minister Benyon responded to amendment 39 by saying that the Government's [Action Plan for Animal Welfare](#), published in May 2021, provided details of the legislative and non-legislative animal welfare measures the Government intended to take. This would appear to acknowledge the importance of early notice of such measures and the need for successor documents to the Action Plan for Animal Welfare, which only covers the next year or so.

We hope that the Government can consider the three helpful amendments tabled by peers, with a view to introducing a mechanism for early notice to the bill at report stage.

It is important to clarify that such a mechanism would not significantly increase ministerial exposure to Judicial Review. To take the mechanism proposed by amendment 45 as an example, the Secretary of State's duty would be discharged by publishing an Animal Sentience Strategy at the start of each parliamentary session, including within it some upcoming policies that the Secretary of State intends to ask ASC to review. It is difficult to envisage circumstances that would prevent the Secretary of State from publishing such a document, or any significant burdens that would arise from doing so.

By amending the bill to allow for ASC work prioritisation, the Government would be following international best practice. The New Zealand Government have provided the National Animal Welfare Advisory Committee with a [prioritisation framework](#) to guide their work.

Animals covered by the bill

Several amendments have been tabled to remove groups of animals from the coverage of the bill. **Amendment 50** would remove wild animals from bill scope, with **amendments 48, 52 and 53** removing fish (amendment 52), birds (amendment 53), reptiles and amphibians (implied by amendment 48, which would restrict coverage to mammals, excluding the remaining vertebrate groups of fish, birds, reptiles and amphibians).

The bill gives the ASC the ability to consider policies that effect the welfare of animals as sentient beings. Before exempting a group of animals from this coverage, evidence is first required to show that the animal group are unaffected by policies and/or are not sentient.

The evidence points the other way for:

- Wild animals: Once we recognise that an animal is sentient, this applies whether an animal is wild, farmed or kept as a companion. To give a species-specific example, if we accept that ducks are sentient, this sentience applies just as much to a duck that happens to be wild, as to a duck that happens to be farmed. Policy also impinges on wild animals, just as it does on farmed and companion animals. These impacts can be significant, ranging from mortality because of culling to displacement due to development³. It would be arbitrary to prevent ASC consideration of such policy impacts on wild animals, while allowing consideration of impacts of similar magnitude affecting companion and farmed animals.
- Fish: Wild, farmed and companion fish are all affected by different Government policies. The scientific consensus is that fish are sentient, an illustrative scientific study on this 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”*.
- Birds: Wild, farmed and companion birds are all affected by different Government policies. The scientific consensus is that birds are sentient, an illustrative scientific study highlighting levels of cognition in bird species on a par with ape species can be found [here](#).
- Reptiles & amphibians: Wild and companion amphibians and reptiles are all affected by different Government policies. The scientific consensus is that amphibians and reptiles are sentient. 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](#).

³ An informative exploration of human impacts on wild animals can be found in the Dutch Council for Animal Welfare’s 2012 report [‘Duty of Care, Naturally’](#). The report concludes *“Humans bear a moral responsibility for the welfare of animals because animals are sentient creatures and because humans exert, directly and indirectly, an influence on the capacities of individual animals and animal populations to adapt to the prevailing conditions.”*

The evidence clearly shows that wild animals, fish, birds, reptiles and amphibians are all sentient, and affected by policy. As such they should be retained within the scope of the bill.

The scientific evidence also points to the inclusion of two further groups of animals within the bill scope - cephalopods (including octopuses) and decapod crustaceans (including lobsters and crabs).

In December 2005, the Scientific Panel on Animal Health and Welfare of the European Food Safety Authority published a report⁴ that examined 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.

Subsequent scientific papers support these conclusions and show that both cephalopods and decapod crustaceans experience pain and suffering⁵. An illustrative example can be found in the work of Professor Robert Elwood of Queens University, a world expert in this field, who has carried out a large number of studies into whether or not decapod crustaceans experience pain. In one [recent experiment](#), he tested whether shore crabs were able to remember pain. The crabs were electrically shocked when they went into one shelter but not shocked when they went into the other. Over a number of trials, the crabs quickly learnt not to enter the shelter in which they had been shocked. This showed that not only did they feel pain but also that they could remember the experience of pain between trials. Elwood also found that hermit crabs were more likely to exit from poor quality shells in which they had been shocked than from good quality shells in which they were shocked. This showed that there were motivational trade-offs involved rather than reflex reactions on the part of the crabs, an indicator of advanced cognition.

In February 2021, the Scottish Animal Welfare Commission issued a [definition of sentience](#) to cover both groups, in light of the accumulation of evidence showing sentience amongst cephalopods and decapod crustaceans.

Given the clear evidence of sentience, and the clear effect of marine policy decisions on cephalopods and decapod crustaceans, there is a strong case for including them as sentient animals within the bill.

⁴ 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

⁵ Tonkins, B., (2016) "Why are Cephalopods Protected in Scientific Research in Europe?" Working Paper <https://goo.gl/eVHVfy>

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We support **amendment 49** tabled by Baroness Hayman, Baroness Bakewell and Lord Randall and **amendment 51** tabled by Baroness Jones and Baroness Fookes, both of which would achieve this. We are pleased that this issue has received significant [press coverage](#), ahead of the imminent release of the Defra commissioned LSE study into cephalopod and decapod crustacean sentience.

This briefing has been prepared ahead of Grand Committee day 2 on 20.07.21 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. Our briefing for day 1 of Grand Committee can be found [here](#).



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