

# **Animal Welfare (Sentience) Bill: Briefing for Lords Report Stage**

## **Better Deal for Animal Coalition**

### **Developments since July**

We are grateful to those peers who made the case for an effective Animal Sentience Bill during the two days of committee in July. Since then, there have been two welcome developments:

#### Government amendment to include cephalopods & decapod crustaceans in the bill

The Government's amendment of the bill to allow the Animal Sentience Committee (ASC) to consider policy impacts on the welfare of cephalopods and decapod crustacean as sentient beings brings the legislation in line with the scientific consensus. The ASC should cover all animal groups where there is clear evidence of sentience, and the amendment ensures this is the case. We extend our thanks to all the peers who have worked to secure this welcome outcome.

#### Circulation of Animal Sentience Committee Terms of Reference

The ASC Terms of Reference circulated to peers in November set out an effective framework for the committee to operate within. The Terms of Reference broadly strike the right balance between the requirement for the ASC to work closely with the existing Animal Welfare Committee, and the need for the ASC to be a distinct and independent body, capable of effectively scrutinising a range of policies across a range of departments. We were also pleased to see appropriate resourcing earmarked for the committee, along with confirmation that its membership will be diverse, experienced and accountable.

The addition of cephalopods and decapod crustaceans has strengthened the bill<sup>1</sup> and, when combined with the robust terms of reference now circulated, sets a fair wind for its progression. The following briefing makes the case for this progression and presents recommendations on key amendments tabled for report stage.

### **The democratic imperative to progress the Animal Sentience Bill**

The stated purpose of the bill is to 'to ensure that animal sentience is taken into account when developing policy across Government'.<sup>2</sup> This commitment derives from the 2019 manifesto promise to pass new laws on animal sentience, as part of wider programme to use the freedoms conferred by Brexit to improve animal welfare policy.

Both the bill, and the wider animal welfare programme it forms part of, are popular with the public. New polling commissioned by our organisations show that over two thirds (68%) of people support a new

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<sup>1</sup> <https://www.gov.uk/government/news/lobsters-octopus-and-crabs-recognised-as-sentient-beings>

<sup>2</sup> <https://www.gov.uk/government/news/animals-to-be-formally-recognised-as-sentient-beings-in-domestic-law>

Animal Sentience Committee, as proposed by the bill, to ensure that animal welfare is considered in all policy making. This support holds across political parties.<sup>3</sup>

The Animal Sentience Bill is a manifesto commitment, strongly supported by the British public. It is imperative that it now progresses on through Lords report and third reading, onto the House of Commons.

### **The pragmatic settlement reached on the Animal Sentience Committee**

The bill does not place a direct duty upon Ministers, but instead entrusts responsibility to the ASC for considering the impact of policies on the welfare of animals as sentient beings. Our organisations would have preferred a more direct approach, putting sentience responsibilities directly on Ministers rather than on an adjacent body, but we accept that the Government is not prepared to go down this road. In light of the delegation of sentience responsibility to the ASC, it is vital that the committee has the independence and power it needs to do the job the Government has entrusted to it.

Under the circulated terms of reference, the committee will be an independent public body, with a diverse and experienced membership, providing expert input to inform complex policy questions touching on the welfare of animals as sentient beings. Its remit will extend to any area where it can inform these questions – a range that includes all Government departments, and the implementation of existing legislation. This 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.<sup>4</sup>

The proposals for the ASC contained in the bill and published terms of reference should be seen as a floor, not a ceiling. Further measures to strengthen the effectiveness and accountability of the committee would be helpful (see below); any regression to those aspects will undermine the bill and the practical recognition of animal sentience it seeks to deliver.

Finally, it is important 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 factors) override animal sentience considerations. 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.

### **Amendments we encourage Peers to support**

#### **Clause 2: Amendment to page 1, line 19 tabled by Lord Howard**

Peers have previously discussed<sup>5</sup> the prescriptive wording of the question clause 2 requires the ASC to consider. These discussions have highlighted how this wording, specifying, that only 'adverse effects' should be considered, could lead to important opportunities to enhance animal welfare being missed.

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<sup>3</sup> [https://www.wcl.org.uk/docs/WCL\\_Results.pdf](https://www.wcl.org.uk/docs/WCL_Results.pdf)

<sup>4</sup> See precedents from [Scotland](#), [New Zealand](#) and the [Netherlands](#).

<sup>5</sup> [https://hansard.parliament.uk/lords/2021-06-16/debates/81851658-6B9F-4739-8199-22398F81085F/AnimalWelfare\(Sentience\)Bill\(HL\)](https://hansard.parliament.uk/lords/2021-06-16/debates/81851658-6B9F-4739-8199-22398F81085F/AnimalWelfare(Sentience)Bill(HL))

On the first day of committee on 6 July, Minister Benyon signalled his agreement, saying that “*the committee should be free to consider positive effects*”.<sup>6</sup> This appears to have informed the welcome provision in the circulated terms of reference for the committee, which state:

*“The Committee may consider how ministers have had a positive effect on animals as sentient beings in the policy-making process. However, the Committee should prioritise supporting government departments in minimising policies’ actively harmful effects on the welfare of animals.”*

This is a sensible approach, which balances giving the committee the freedom to consider all opportunities to enhance animal welfare with the need to prioritise the avoidance of harmful effects.

However, the wording of the bill itself remains unchanged and continues to require the committee to only consider adverse effects. This contradiction could lead to significant complications. An ASC report focussed on positive effects could be challenged, with any defence based on the license to consider positive effects conferred by the terms of reference being undermined by the prohibition on doing so in the text of the legislation.

This simple amendment, removing the word ‘adverse’ from the bill text, would allow the sensible approach proposed in the published terms of reference to be safely and fully implemented by the committee.

### **New clause after clause 3, tabled by Baroness Hayman**

The ASC will be a Non-Departmental Public Body (NDPB) with an advisory function. The latest available figures suggest that 63% of NDPBs present an annual report to Parliament<sup>7</sup>. It is clearly in the interests of accountability and transparency for the ASC to be in the reporting majority of NDPBs, and for MPs and peers to regularly scrutinise their work. A yearly report will also allow parliamentarians to gain a wider view on animal sentience issues over preceding twelve months, and of emerging policy trends that impact on it. Requiring an annual report through this new clause will ensure that this essential transparency and accountability measure is sustained throughout the lifetime of the committee.

We also **strongly support** the Government’s **amendment to Clause 5, page 2, line 32**, tabled by Lord Benyon with the support of Baroness Hayman and Baroness Bakewell, adding cephalopod molluscs and decapod crustaceans to the bill. This follows the latest scientific evidence.<sup>8</sup>

### **Comments on other amendments**

#### **Clause 1: Amendment to page 1, line 4 tabled by Lord Trees, Earl of Kinnoull & Lord Moylan**

This amendment would prohibit the ASC from considering policy formulated and implemented before the committee’s formation. The Earl of Caithness’ **amendment to clause 2 (line 9)**, Baroness Mallalieu’s

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<sup>6</sup> [https://hansard.parliament.uk/lords/2021-07-06/debates/B8CBC730-DC86-4D6C-B915-C145CF158B80/AnimalWelfare\(Sentience\)Bill\(HL\)](https://hansard.parliament.uk/lords/2021-07-06/debates/B8CBC730-DC86-4D6C-B915-C145CF158B80/AnimalWelfare(Sentience)Bill(HL))

<sup>7</sup> <https://www.nao.org.uk/wp-content/uploads/2014/02/Progress-on-public-bodies-reform.pdf> p25

<sup>8</sup> <https://www.lse.ac.uk/News/News-Assets/PDFs/2021/Sentience-in-Cephalopod-Molluscs-and-Decapod-Crustaceans-Final-Report-November-2021.pdf>

**amendments to clause 2 (line 9)**, and Lord Howard's **amendment to clause 2 (line 20)** also seek to prevent the ASC from considering previous policy.

Such prohibitions would prevent the committee from considering how the ongoing implementation of both recent and historic legislation affects the welfare of animals as sentient beings. These impacts can be significant; for example, the primary pieces of legislation used to prosecute hare coursers are the Hunting Act 2004 and the Game Act 1831. The ASC should be free to consider how the implementation of both of these laws affect the welfare of hares as sentient beings.

Whilst the ASC will be likely to focus its work on emerging policy, it needs the freedom to also consider existing legislation when it feels it is appropriate to do so.

#### **Clause 1: Amendment to page 1, line 4 tabled by Lord Forsyth**

This amendment would subsume the existing Animal Welfare Committee (AWC) into the ASC.

This would cause significant complications, as 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. The AWC also gives advice to the Scottish and Welsh Governments, whereas the ASC will be England only. Merging these two very different committees into one would be a category error, reducing the effectiveness of both.

The terms of reference for the ASC set out a practical framework for AWC and ASC to work together on areas of common interest, whilst maintaining their independent statuses and differing focuses. This approach should be retained, to the benefit of both committees.

#### **Clause 2: Amendment to page 1, line 9 tabled by the Earl of Kinnoull, Lord Moylan & Lord Trees**

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: Amendment to page 1, line 11 tabled by the Earl of Caithness**

This amendment would require the ASC to publish relevant scientific evidence and seek the permission of the relevant Secretary of State before preparing a report. Lord Forsyth's **amendment to line 11** would also require the ASC to secure consent from the Secretary of State before preparing a report. Such a requirement could reduce the effectiveness of the committee as a scrutiny body - it is not good practice to require scrutinisers to seek permission of the scrutinised before proceeding.

The scientific evidence requirement could also impair the committee, by limiting its work to areas where a body of research already exists. Such research will not be in place for every policy that would impact the welfare of animals as sentient beings – indeed part of the value of the committee will be its ability to examine questions that have not been considered before. For example, the Council for Animals Affairs (a precedent body for the ASC, operating in the Netherlands) have produced useful reports for their

government considering very new questions around policy and digitalisation in farming<sup>9</sup>, and biotechnology in the zoo sector<sup>10</sup>, both areas where prior research material was limited. The ASC should have a similar freedom to apply its core welfare question to policies where its consideration could add value, including areas not previously covered in detail by the scientific community.

Lord Moylan's **amendment to clause 2 (line 16)** could also place a scientific barrier in front of committee work, by requiring all recommendations to be published in an academic journal following peer review before being presented to Parliament. Given that the process of peer review and publication can take many months<sup>11</sup>, this would hugely delay committee work, as well as forcing outputs into an ill-fitting journal framework. Policy scrutiny reports differ in purpose, content and form, from academic journal articles. Again, it is important to stress that the role of the ASC is not to make detailed policy proposals, but to draw attention to areas where the Government may wish to develop policy proposals.

### **Clause 2: Amendment to page 1, line 20 tabled by Earl of Kinnoull, Lord Moylan, Lord Trees & Baroness Deech**

This amendment seeks to sustain an aspect of the sentience responsibility that applied when we were EU members – the derogation to Article 13 of the Lisbon Treaty which exempts cultural practices from animal welfare considerations. The derogation was negotiated during the Lisbon Treaty by a small number of EU governments, seeking to preserve practices such as bullfighting.<sup>12</sup> Lord Forsyth's **amendment to line 18** also seeks to carry the derogation into UK law.

As stated above, there is no need for such continued alignment with the EU now the UK has left. We now have the freedom to widen our ambitions for animal welfare. Indeed, the restrictions in Article 13 have frequently been cited as one of the key flaws on EU sentience policy, that post Brexit UK sentience policy can improve on. As stated by then Defra Secretary of State Michael Gove in 2017:

*"The current EU instrument – Article 13 – has not delivered the progress we want to see. It does not have direct effect in law – in practice its effect is very unclear and it has failed to prevent practices across the EU which are cruel and painful to animals...Article 13 has not stopped any of these practices – but leaving the EU gives us the chance to do much better."*<sup>13</sup>

Rejecting the flawed Article 13 derogation is part of the package of post-Brexit measures that will deliver UK leadership on animal welfare.

### **Clause 2: Amendment to page 2, line 3 tabled by Lord Forsyth**

This amendment would reduce the scope of the ASC to policies pursued by the Department for the Environment, Food and Rural Affairs.

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<sup>9</sup> <https://english.rda.nl/publications/publications/2020/02/13/digitisation-of-the-livestock-farming-sector>

<sup>10</sup> <https://english.rda.nl/publications/publications/2015/06/16/visible-change-biotechnology-and-animal-exhibitions>

<sup>11</sup> See sample peer review and publication timescales: <https://www.journals.elsevier.com/social-science-and-medicine/policies/peer-review-policy-and-publication-times>

<sup>12</sup> <https://www.newsweek.com/eu-ruling-hardly-victory-democracy-or-animal-rights-389358>

<sup>13</sup> <https://www.gov.uk/government/news/environment-secretary-confirms-sentience-of-animals-will-continue-to-be-recognised-and-protections-strengthened-when-we-leave-the-eu>

This would undermine the role of the committee, which is to provide 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.

### **New clause after clause 5, tabled by Lord Howard of Rising**

This amendment sets a sunset clause on the bill, mandating its expiry five years after it reaches Royal Assent. Sunset clauses are rare and are usually associated with emergency legislation to deal with time specific problems. Sunset clauses have most recently been used in the Coronavirus Act, and in anti-terror legislation passed in the 2000's.

The Animal Welfare (Sentience) Bill is not a piece of emergency legislation passed to deal with a time-specific emergency. Instead it establishes the Animal Sentience Committee for the long term, to 'ensure that animal sentience is taken into account when developing policy across Government'.<sup>14</sup> A sunset clause is not appropriate for this bill.

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This briefing has been prepared ahead of report stage on 06.12.21 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 previous briefings on the bill can be found [here](#)

### **For more information please contact:**

Claire Bass, Executive Director, Humane Society International UK, [cbass@hsi.org](mailto:cbass@hsi.org)

David Bowles, Head of Public Affairs, RSPCA, [david.bowles@rspca.org.uk](mailto:david.bowles@rspca.org.uk)

James West, Senior Policy Manager, Compassion in World Farming, [James.West@ciwf.org](mailto:James.West@ciwf.org)

Matt Browne, Advocacy Lead, Wildlife and Countryside Link, [matt@wcl.org.uk](mailto:matt@wcl.org.uk)

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<sup>14</sup> <https://www.gov.uk/government/news/animals-to-be-formally-recognised-as-sentient-beings-in-domestic-law>

