



## Briefing: Recognising animal sentience – principles for effective legislation

Updated January 2021

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 legal experts and the Environment Food and Rural Affairs Select 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. Organisations supporting this briefing<sup>1</sup> propose adoption of the following principles to ensure that the new legal recognition of animal sentience effectively enhances the welfare of animals. The new legislation should:

### 1. Apply widely: across species and across all 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.

### 2. Impose on a legal duty on Ministers to pay all due regard to the welfare needs of sentient animals

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 important 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 legislation could use the following wording: “Ministers of the Crown must pay all due regard to the welfare needs of sentient animals when formulating and implementing relevant policies.” Relevant policies would be defined as policies that are likely to have a significant effect on animals.

### **3. Incorporate clear and consistent processes for the effective discharge of animal sentience duties by Ministers across all government departments**

The legislation should set out the process by which Ministers and their departments will be required and supported to assess the welfare impacts of policy options on sentient animals, using the best available science, and in a consistent way across all government departments.

The effective discharge of this duty should be informed and supported by an Animal Welfare Committee and Commissioner, which would provide independent and transparent advice (further details on how the Animal Welfare Committee should operate are provided under point 4).

To ensure proportionality and focus, we believe that the duty should be applied to policies likely to have a significant effect on animals, and that the Animal Welfare Commissioner should have powers to identify such policies. Ministers would discharge their duty by:

- i) Reporting, when requested to do so by the Animal Welfare Commissioner, 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.
- ii) Providing an annual report to Parliament, summarising all policies to which the duty had been applied; advice from the Animal Welfare Committee; policy options considered and decisions taken.

The reporting stage would require Government to respond to requests from the Animal Welfare Commissioner 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 likely to significantly impact on animal welfare and requesting varying levels of detail from the Government, dependent on the expected scale of impact and the spectrum and complexity of policy options under consideration. The following two hypothetical examples set out how this could work in practice:



(A) 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 consults the Committee, seeking external independent expert opinion if needed, and agrees that this is a policy that could have a significant impact for animals’ welfare. The Commissioner therefore requires the Minister to make a statement on this issue and responding to questions in the House.

(B) The Government proposes to make major changes to the fox-hunting ban. The Animal Welfare Commissioner and Committee consider that this is a major issue and convenes meeting to discuss the proposals and write recommendations. The Commissioner sends them to the Minister, who discharges their duty by making a statement and taking questions in the House not only on the issue in general but also addressing specific recommendations of the Committee (as the Minister would for Select Committee recommendations).

In both cases, the Ministers would be required to consider and take a position on issues that the Animal Welfare Committee consider relevant, and to elaborate the position in Parliament. We feels this strikes a workable balance between ensuring sufficient scrutiny without disproportionate exposure to risk of judicial review. Ministers would be required to respond to animal welfare issues identified by the Animal Welfare Committee 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.

#### **4. Create an Animal Welfare Committee, chaired by an Animal Welfare Commissioner**

Animal sentience legislation should include a power for the creation of an Animal Welfare Committee, 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 liable to significantly affect the welfare of animals. This body would work in conjunction with existing expert groups such as 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 Animal Welfare Committee should be independent of Government, to enable it to support and scrutinise all departments without fear or favour.

The Committee 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. As Chair, the Animal Welfare Commissioner should be the public face of the body, boosting public understanding of the role of the Committee and the importance of effectively discharging duties to sentient animals. In line with this public-facing aspect, the Animal Welfare Committee should include a mechanism to take representations from the public.

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