



# Recognising animal sentience in law

*Ensuring animals have a good life by advocating on their behalf*

## Key facts...

- ★ Animal sentience was the only issue not transferred across from the EU's legislation when we left and we welcome the Government's introduction of the Animal Welfare (Sentience) Bill.
- ★ This is a positive step forward and we welcome the establishment of an Animal Sentience Committee to advise the Government on specific policy issues impacting on the welfare of sentient animals. This should comprise independent members with an appropriate range of expertise and perspectives.
- ★ However, we are concerned that, as presently drafted, the Bill is a missed opportunity with lacunas meaning the policy behind this legislation could be implemented inconsistently and ineffectively.
- ★ Furthermore, we remain unclear on how this legislation will work in practice and whether it will have the positive impact we and other organisations had hoped for as so much of the detail is left for Guidance, which has not been drafted or published yet.
- ★ The law should set up an open, transparent process whereby all policy decisions affecting sentient animals would require an Animal Welfare Impact Assessment (including prospectively), which would consider the impact on the welfare of sentient animals against the public benefits.

## Background

The Government has committed to incorporating the recognition of animal sentience, enshrined in Article 13 of the Treaty on the Functioning of the EU (TFEU), into UK law. With the introduction of the [Animal Welfare \(Sentience\) Bill](#) it has taken the first step towards that. While we welcome this development, the legislative action is well overdue – the commitment itself was first made in 2017<sup>1</sup>. An initial attempt at legislation, through the Animal Welfare (Sentencing and Recognition of Sentience) draft Bill<sup>2</sup>, was dropped in 2018 following concerns about the efficacy of the draft text raised by legal experts and the EFRA Select Committee<sup>3</sup>. We welcome the fact that the EFRA Select Committee is taking evidence<sup>4</sup> on the proposals within the current Bill and will be contributing to that process.

The RSPCA believes there are some positive points in the Bill, not least:

- an Animal Sentience Committee (ASC) will be established to advise the Government on this matter,
- 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), and
- because all policies are covered, free living wildlife will be included.

In particular we welcome the application of the legislation across all policy areas. If a given species is recognised as sentient, an individual will have the same welfare needs no matter how they are being used by humans or where they are living, and most - if not all - human activities have a direct or indirect impact on animal welfare. However, we acknowledge that the criteria used when weighing and balancing the welfare of sentient animals against the public benefit will depend upon the policy area under discussion.



That said, the RSPCA believes the Bill is lacking in a number of areas and further work is needed to ensure the Bill can effectively deliver on this matter. For example:

<sup>1</sup> [House of Commons Written Statement](#) made by Rt Hon Michael Gove MP, 23.11.17, HCWS267

<sup>2</sup> Draft [Animal Welfare \(Sentencing and Recognition of Sentience\) Bill](#)

<sup>3</sup> EFRA Select Committee, [Pre-legislative scrutiny of the draft Animal Welfare \(Sentencing and Recognition of Sentience\) Bill 2017](#) second report of session 2017-19, 2018, HC 709

<sup>4</sup> EFRA Select Committee, [Will the Government's new Animal Welfare Bill go far enough? MPs launch inquiry](#), 28 May 2021

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- there is [no express positive duty on Ministers to have all due regard for animal welfare](#)

As currently drafted the UK Government may develop policy without, or with little, consideration for the animal welfare impact as the ASC can consider “whether” or “to what extent” the Government has made that consideration. This could lead to the continuation of the status quo in terms of policy development in some areas. In addition, this process only comes into play if the Committee takes the initiative in producing a report; we question how it will be possible for the Committee to make a considered and informed report on every policy, that is assuming they are aware of all policies. The RSPCA believes that the Bill should be amended to include a specific requirement for all Ministers to ensure policy development is considered in this way.

- there is [no express positive duty on the Animal Sentience Committee to take any action, or guidance as to its Terms of Reference](#)

As currently drafted the Bill puts a discretionary requirement on the Committee to consider or take any action with the use of the term ‘may’ (clause 2(1)). While we appreciate that the amount of Government policy developed each year is extensive, the difficulty of putting a mandatory provision with regard to the Judicial Review process and that the Committee could easily become overwhelmed in its workload without effective management, this does provide a lacuna in the legislation. One way forward with regard to new policy, could be to impose on Ministers a duty to inform the Committee when a policy is being formulated which may have an impact on animal welfare and to keep the Committee advised of how animal welfare is being taken into account. This would, of course, be in addition to the Committee’s power to initiate an inquiry leading to a report, not instead of it.

- [the composition of the Committee is not defined](#)

We understand these provisions will be in the guidance, however we have not received any confirmation of this or assurances regarding its composition. The ASC should be appropriately composed, supported and resourced to provide independent advice covering the ethical considerations as well as conducting animal welfare impact assessments. The Committee should be independent, with independent members, and include scientific, ethical, legal, economic, business, policy and animal welfare expertise. It should be self-tasking and the public should be able to raise issues with it, as well as being commissioned to advise on specific issues by the Government.



The Government Office for Science Code of Practice for Scientific Advisory Committees<sup>5</sup> (CoPSAC) states that such Committees should be free of influence from the sponsor department and that appointments should be made on the basis of whether applications match agreed person specifications, and members should not serve as representatives of stakeholder organisations. The RSPCA believes this is essential we welcome the fact the Minister, at Second Reading, confirmed that the appointment process would follow “*standard public appointment rules*”<sup>6</sup>.

The Animal Welfare Commission set up in 2020 by the Scottish Government provides a useful model. The Scottish Animal Welfare Commission (SAWC) members were recruited through open advertisement and sit on the Commission in an individual capacity, not as representatives of particular groups or organisations, which is what we would expect to see with the ASC. However, SAWC focuses on wild and companion animals, within the normal current remit of the UK Animal Welfare Committee and the UK Zoo Expert Committee. The ASC should include all human uses of, and interactions with, animals. This is important because the current UK Committees are advisory only, whereas the ASC has an accountability function.

- [there is no express provision for formal animal welfare impact assessments](#)

The RSPCA believes that the legislation should set out the framework 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 expertise, and in a consistent way across all government departments. We recognise that it is highly likely that conflicts will arise between the interests of humans and other animals, and it will be necessary for those charged with managing these conflicts to work in a way which allows openness, transparency and the ability to

<sup>5</sup> Government Office for Science, [Code of Practice for scientific advisory committees: CoPSAC](#) 2011

<sup>6</sup> Hansard, 16 June 2021, Second Reading Animal Welfare (Sentience) Bill, col 1947

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challenge.

An independent, open and transparent framework would be required to weigh public interests against the welfare of sentient animals, incorporating different viewpoints, knowledge and expertise with respect to animal welfare and legitimate public interests, as well as expertise and experience in ethical review. All decision-making processes must be appropriately balanced, fair and robust. In addition this would go some way to assist with workload management of the Committee and introducing a specific requirement on Ministers.

- **at present invertebrates are excluded from the scope of the law, we believe decapod crustaceans (e.g. crabs and lobsters) and cephalopods (e.g. octopuses and squid) should be included**

It is recognised (e.g. within the current Animal Welfare Act) that all vertebrates are sentient. The RSPCA strongly believes there is sufficient scientific evidence to extend this recognition to cephalopods (such as octopuses and squid) and decapod crustaceans (e.g. crabs and lobsters). The SAWC has already reached this conclusion, and the use of cephalopods and decapod crustaceans in scientific procedures is already regulated in a number of countries including Switzerland, Norway, some Australian states and New Zealand. Cephalopod use is also regulated in the UK, European Union and Canada.

The Government will be out of step with the science, and fall behind other countries with respect to animal welfare, if cephalopods and decapods remain outside the scope of the Bill. The final report from the expert working group on the potential for sentience in cephalopods and decapods, commissioned by Defra, is currently being finalised. If this finds that these animals should be deemed sentient, the mechanism to bring invertebrate species within the meaning of ‘animal’ in clause 5(2) should be implemented without delay.

- **the Animal Sentience Committee’s remit is limited to focusing on policy so far as it might have an adverse effect on animal welfare, and does not extend or comment upon how policy might improve animal welfare**

The RSPCA believes this is a missed opportunity to help ensure better lives for animals. There should be the option available for the Committee to identify ways in which the welfare of sentient animals might be improved as a result of the policy, not just identify negative impacts. Although we note the Minister, at Second Reading, said that the “committee’s role will encourage policymakers to think about the positive improvements that they can make to animal welfare”<sup>7</sup>, we still remain concerned this is unclear on the face of the Bill and as such this should be considered further.

While we understand Defra intends to produce guidance in support of these measures, this inevitably means legislation will be scrutinised and passed with limited information about the scope, workings and accountability of the proposed Committee. Neither does this address the fundamental points we have raised above.

We recognise that Scotland has already implemented such a Committee and the Welsh Government is yet to make a statement on this matter. It is therefore unclear at this stage quite how the proposed framework in this Bill will engage with the other governments and work alongside them and any structures they already have in place.

## Action

The RSPCA welcomes the introduction of this important Bill; however, a number of questions still remain due to the lack of detail in the Bill and it would be helpful to secure responses from the Government on the following:

1. **What criteria will determine whether a government policy will be reviewed (i) prospectively and (ii) retrospectively?**
2. **Will all policies that might have an adverse effect on animal welfare go before the Committee?**
3. **How will the Committee cope with monitoring existing policies in addition to new ones?**
4. **How will the Committee be made aware of policies being formulated?**
5. **Will the Committee’s remit/powers be investigatory (i.e. will it be able to call in papers, seek evidence, etc) or will it only be able to intervene if there is a prima facie case of no due regard being paid?**
6. **What will the consequences be if a retrospective review determines that the Government did not pay all due regard to the ways in which a policy might have had an adverse effect on the welfare of animals as sentient beings?**
7. **How will the composition and Terms of Reference of the Committee be defined? For example, will it**

<sup>7</sup> Hansard, 16 June 2021, Second Reading Animal Welfare (Sentience) Bill, col 1945

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include independent members, with all the requisite fields of expertise?

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