



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 but the Government has committed to bringing this into law as soon as possible.
- ★ We welcome the Government's publication of an Action Plan and also introducing the Animal Welfare (Sentience) Bill.
- ★ This is a positive step forward but it needs further work to ensure it delivers effectively. 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.
- ★ The law should set up an open, transparent process whereby all policy decisions affecting sentient animals would require a prospective (as well as retrospective) Animal Welfare Impact Assessment, which would consider the impact on the welfare of sentient animals against the public benefits.
- ★ 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.

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 2017¹. An initial attempt at legislation, through the Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill², was dropped in 2018 following concerns about the efficacy of the draft text raised by legal experts and the EFRA Select Committee³.

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

- an Animal Sentience Committee 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),
- 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:

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

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

³ 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

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

The role of the Animal Sentience Committee is welcome and crucial. The process by which the Minister will show how they have taken into consideration animal welfare when making a decision needs to be clearly laid out. As the Bill is currently drafted the UK Government may develop policy without, or with little, consideration for the animal welfare impact as the Animal Sentience Committee is only required to review “whether” or “to what extent” the Government has done that. It is also far from clear how the Animal Sentience Committee would be informed about such policies. This could lead to the continuation of the status quo in terms of policy development in some areas and 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 may be to require Ministers to inform the Committee when a policy is being developed that may have an adverse impact on animal welfare and keep the Committee advised on how it is being considered.

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

The Government should confirm that the Animal Sentience Committee is 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, political/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 Animal Welfare Commission set up in 2020 by the Scottish Government provides a useful model.

- [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. This Government needs to make clear how this will be defined.

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 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

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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 believes there is sufficient evidence to extend this recognition to cephalopods (such as octopuses and squid) and decapod crustaceans (e.g. crabs and lobsters), and a report from an 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. As such we feel the Bill should be amended to achieve this.

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.

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 and it would be helpful to secure responses from the Government on the following:

- What criteria will determine whether a government policy will be reviewed (i) prospectively and (ii) retrospectively; will all policies that might have an adverse effect on animal welfare go before the Committee? How will the Committee be made aware of such policies?
- It is good to see a three month response period, but will there be a requirement to provide reasons, with evidence, if the Committee's recommendations are not acted upon?
- 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?
- How will the composition and Terms of Reference of the Committee be defined? For example, will it include independent members, with all the requisite fields of expertise?