

# ANIMAL WELFARE (SENTIENCE) BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Animal Welfare (Sentience) Bill [HL] as brought from the House of Lords on 14 December 2021 (Bill 219).

- These Explanatory Notes have been produced by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Bill recognises that animals are sentient beings and creates an accountability mechanism which aims to ensure that UK Ministers have due regard to their welfare needs when formulating and implementing government policy.
- 2 An appropriate committee will be established to assess and report on the animal welfare impacts of policy decisions that have been taken, or which may be taken, by the Government. The relevant Secretary of State will be required to lay a written statement before Parliament responding to any such report.

## Policy background

- 3 The Government has made clear its commitment to raising animal welfare standards, and to ensuring animals will not lose any recognitions or protections now that the UK has left the EU.
- 4 The Government is therefore legislating to ensure that animal sentience is explicitly recognised in domestic law and to enhance scrutiny of major policy decisions taken by UK Ministers which impact on the welfare of sentient animals.
- 5 In its 2019 manifesto, the Conservative Party made a commitment to “bring in new laws on animal sentience.” The Bill fulfils this pledge. The Bill includes provision to maintain a committee called the Animal Sentience Committee (“the Committee”). The role of the Committee will be to consider the ways in which a policy might have an adverse effect on the welfare of animals as sentient beings and to give its opinion in the form of a report. The Committee will be able to investigate a policy, both during and after its development.
- 6 The Bill applies to all animals (other than humans) if they are vertebrates, decapod crustaceans or cephalopod molluscs. It therefore applies to wild animals, as well as domesticated animals.
- 7 In 2020, in response to ongoing discussion surrounding the potential sentience of decapod crustaceans and cephalopod molluscs, Defra commissioned LSE Consulting, part of the London School of Economics and Political Science, to produce a review of the scientific evidence on the subject. Following peer-review, the ‘Review of the evidence for sentience in decapod crustaceans and cephalopod molluscs’ was published on 19 November 2021. The Bill was subsequently amended during Report stage in the House of Lords to bring these invertebrates into the Bill.

## Legal background

- 8 Several amendments were tabled during the passage of the European Union (Withdrawal) Bill (now the European Union (Withdrawal) Act 2018), which sought to incorporate the principle in Article 13 of the Treaty on the Functioning of the European Union that animals are sentient beings. The then Government did not support this, stating instead that it would consider how it might explicitly reflect the sentience principle in wider UK legislation.

- 9 Article 13 of the Treaty on the Functioning of the European Union provides that Member States should pay full regard to the welfare requirement of animals when formulating policies in certain areas “since animals are sentient beings”. The expression “sentient beings” is not defined in the Treaty, but an EU Commission publication on the Animal Welfare Strategy 2012–2015 stated that sentience means that animals are “capable of feeling pleasure and pain”.

#### **Article 13 of the Treaty on the Functioning of the European Union**

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

- 10 In winter 2017-18, Defra consulted on a draft Animal Welfare (Sentencing and Recognition of Sentience) Bill. At the then Secretary of State's invitation, the EFRA Select Committee conducted pre-legislative scrutiny of the draft Bill. Ministers accepted the select committee's recommendation that animal sentience should instead be scrutinised in a standalone Bill.

## **Territorial extent and application**

- 11 Clause 6(1) sets out the territorial extent of the Bill.
- 12 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. No such matters are legislated for by this Bill, so no consent has been sought.
- 13 The provisions of the Bill extend to the United Kingdom as a whole. The Bill applies only to policies formulated or implemented by UK Ministers. This means that it does not apply to policies formulated or implemented by the Scottish Ministers, Welsh Ministers or the Northern Ireland Executive.
- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## **Commentary on provisions of Bill**

### **Clause 1: The Animal Sentience Committee**

- 15 This clause requires a new committee, the Animal Sentience Committee (the Committee), to be established and maintained.
- 16 Subsection (1) names the Committee and requires the Secretary of State to establish and maintain it. This means that the Secretary of State should take reasonable steps to ensure that the Committee, once established, remains extant and has the resources necessary to conduct the business specified in this Bill.
- 17 Subsection (2) states that the members of the Committee will be appointed by the Secretary of State. Standard public appointments rules apply to appointments made by the Secretary of State

(e.g. a fair recruitment process is required).

- 18 Subsection (3) specifies that the terms of appointment, such as appointment length and remuneration, may be determined by the Secretary of State.

## Clause 2: Reports of the Committee

- 19 This clause empowers the Committee to publish reports, for selected policies, giving its opinion as to whether the Government is having, or has had, “all due regard” to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings. When publishing its opinions, the Committee may include recommendations to Ministers about how to ensure effect on the welfare of animals is given “all due regard” in any further formulation or implementation of the policy. As the reports relate to “animals as sentient beings”, the clause recognises that animals within the meaning of clause 6(1) are sentient.
- 20 Subsection (1) allows the Committee to produce a report on any government policy which is being, or has been, formulated or implemented.
- 21 Subsection (2) says that any such report must give the Committee’s view on “whether, or to what extent, the government is having, or has had, all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings.” The Committee will be able to issue an opinion in relation to any central government policy. In order to produce a report on this question, the Committee will need to scrutinise the manner in which the policy in question is being, or has been, formulated or implemented and assess the type and level of consideration that the Government is giving, or has given, to any potential adverse effects of the policy on the welfare of animals as sentient beings. This does not mean that the welfare of sentient animals should take precedence over other considerations when formulating or implementing a particular policy.
- 22 Subsection (3) allows the Committee’s reports to include recommendations to the Government in relation to the policy covered by the report.
- 23 Subsection (4) explains that these recommendations will address the future development or application of the policy in question. Specifically, the Committee can advise on the steps that should be taken to ensure that any potential adverse effects on animal welfare arising from the policy are given due consideration.
- 24 Subsection (5) requires the Committee’s reports to be published, by whichever methods it deems appropriate. This is intended to promote transparency.
- 25 Subsection (6) excludes a Government policy from the Committee’s remit if, or to the extent that, the policy relates to legislative provision falling within devolved competence.
- 26 Subsection (7) defines legislative provision falling within devolved competence.

## Clause 3: Response to reports

- 27 This clause requires the relevant Minister to lay a written response before Parliament within three months. This is intended to encourage Ministers to engage with the Committee’s recommendations in appropriate detail in a timely manner and support Parliament in scrutinising the policy-making process.
- 28 Subsection (1) requires the Secretary of State to lay a response to a Committee report before Parliament within a certain time limit.
- 29 Subsection (2) specifies this time limit as three months beginning on the date on which the report is published.

30 Subsection (3) excludes from this time limit any days when Parliament is dissolved or prorogued, and any periods of more than three days when Parliament is adjourned.

#### Clause 4: Information

31 This clause includes the Committee and its work in the scope of existing transparency legislation, namely the Public Records Act and the Freedom of Information Act.

32 Subsection (1) lists the Committee as subject to the provisions of the Public Records Act 1958, with Defra as the responsible department.

33 Subsection (2) adds the Committee to the list of public bodies subject to the provisions of the Freedom of Information Act 2000.

#### Clause 5: Interpretation

34 This clause outlines to which animals the Bill applies, and stipulates that this definition may be amended by the Secretary of State by means of statutory instrument, which would need to be approved by both Houses of Parliament.

35 Subsection (1) defines an “animal,” for the purposes of this Bill, as any vertebrate other than *Homo sapiens* (e.g. birds, dogs, cats, reptiles); any cephalopod mollusc (e.g. octopuses, squid) and any decapod crustacean (e.g. crab, shrimp). All animals defined in this subsection are therefore considered to be sentient for the purposes of Clause 2(2) and (4) and will be within the scope of the Committee’s consideration.

36 Subsection (2) allows this definition of an “animal” to be extended by the Secretary of State by regulations. If the Secretary of State considers that a certain type of invertebrate (other than decapod crustaceans and cephalopod molluscs, which are already included) is sentient, then he or she may exercise the regulation-making power to apply the provisions of this Bill to that type of invertebrate.

37 Subsection (4) specifies that these statutory instruments can be made only under the affirmative resolution process. This means that both Houses of Parliament must actively approve any changes for them to become law.

38 Subsection (5) gives meaning to the terms “vertebrate” and “invertebrate”. These are the meanings given by section 1(5) of the Animal Welfare Act 2006, namely ““vertebrate” means any animal of the Sub-phylum Vertebrata of the Phylum Chordata and “invertebrate” means any animal not of that Sub-phylum”.

## Commencement

39 Clauses 1 to 5 of the Bill will come into force on a day to be appointed by the Secretary of State by regulations to be made by statutory instrument.

## Financial implications of the Bill

40 The Bill will give rise to one-off and recurring charges on central government revenue in setting up and maintaining the Animal Sentience Committee and supporting the Committee in the performance of its functions. The annual running costs of the Committee are not expected to exceed £500,000 a year.

## Parliamentary approval for financial costs or for charges imposed

- 41 No Ways and Means resolution will be sought for this Bill in the House of Commons, as the Bill authorises no taxes or charge on the people.
- 42 The Bill will require a money resolution. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. The Bill will give rise to additional public expenditure by the Government in the establishment and maintenance of the Animal Sentience Committee and supporting its statutory role.

## Compatibility with the European Convention on Human Rights

- 43 The Government does not consider that the provisions of the draft Bill engage convention rights under the European Convention on Human Rights. Accordingly, the Rt Hon George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

## Related documents

- 44 The following documents are relevant to the Bill and can be read at the stated locations:

- The Action Plan for Animal Welfare:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/985290/Action\\_Plan\\_for\\_Animal\\_Welfare.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985290/Action_Plan_for_Animal_Welfare.pdf)
- Review of the evidence for sentience in decapod crustaceans and cephalopod molluscs:  
[http://sciencesearch.defra.gov.uk/Document.aspx?Document=15299\\_SentienceinCephalopodMolluscsandDecapodCrustaceans\\_FinalReport\\_November2021.pdf](http://sciencesearch.defra.gov.uk/Document.aspx?Document=15299_SentienceinCephalopodMolluscsandDecapodCrustaceans_FinalReport_November2021.pdf)
- The Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill laid before Parliament by the previous Government in December 2017:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/666576/draft-animal-welfare-bill-171212.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666576/draft-animal-welfare-bill-171212.pdf)
- The EFRA Select Committee's pre-legislative scrutiny report on that draft bill:  
<https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/709/709.pdf>
- The previous Government's response to the Select Committee's report:  
<https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/984/984.pdf>

## Annex- Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 2	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 3	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 4	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 5	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 6	Yes	Yes	N/A	Yes	N/A	Yes	N/A

## Subject matter and legislative competence of devolved legislatures

- 45 No matters to which the provisions of the Bill relate are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly. Therefore, no legislative consent has been sought from the Devolved Administrations.
- 46 The Bill establishes the Animal Sentience Committee, which may scrutinise the policy decision making process within policy areas for which the UK Government is responsible. It imposes duties on UK Government Ministers to respond to these reports. No duties are imposed on the Devolved Administrations or legislatures and matters within devolved competence are specifically excluded from the Committee's remit.

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