

# ANIMAL WELFARE (SERVICE ANIMALS) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Animal Welfare (Service Animals) Bill as brought from the House of Commons on 11 February 2019 (HL Bill 159).

- These Explanatory Notes have been prepared by the Department of Environment, Food and Rural Affairs with the consent of the Peer-in-charge of the Bill, Viscount Trenchard, 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.

## Table of Contents

Subject	Page of these Notes
<b>Overview of the Bill</b>	<b>2</b>
<b>Policy background</b>	<b>2</b>
<b>Legal background</b>	<b>3</b>
<b>Territorial extent and application</b>	<b>3</b>
<b>Commentary on provisions of Bill</b>	<b>3</b>
Clause 1: Harming a service animal	3
Clause 2: Extent, commencement and short title	4
<b>Commencement</b>	<b>4</b>
<b>Financial implications of the Bill</b>	<b>4</b>
<b>Parliamentary approval for financial costs or for charges imposed</b>	<b>4</b>
<b>Compatibility with the European Convention on Human Rights</b>	<b>4</b>
<b>Annex A – Territorial extent and application in the United Kingdom</b>	<b>5</b>

## Overview of the Bill

- 1 The Bill provides for increased protection for service animals by amending section 4 of the Animal Welfare Act 2006 (the “2006 Act”). It addresses public concerns about the application of section 4(3)(c)(ii) of the 2006 Act to attacks on service animals, where a defendant accused of causing unnecessary suffering to an animal could claim they were protecting themselves and are justified in using physical force against a service animal, causing it, effectively, necessary suffering.
- 2 This Bill amends section 4 of the 2006 Act to require a Court to disregard the consideration at section 4(3)(c)(ii) of the 2006 Act in certain circumstances when assessing whether suffering was unnecessary in the context of causing suffering to a service animal.

## Policy background

- 3 A high profile campaign, known as Finn's Law, seeks to provide animals in public service, such as police dogs and horses, with greater protections. Finn, a police dog, was attacked whilst assisting a police officer to apprehend a suspect. While Finn's attacker was subsequently prosecuted and convicted for the attack the case highlighted concerns about the application of section 4(3)(c)(ii) of the 2006 Act.
- 4 Section 4 of the 2006 Act currently requires a Court to take various factors into account when determining whether suffering caused to an animal can be considered “unnecessary”. One of these statutory considerations, section 4(3)(c)(ii), is whether the conduct which caused the suffering was for a legitimate purpose, such as protecting a person, property or another animal. When a service animal is attacked, there was concern that this provision in the 2006 Act could have the effect of allowing people to claim they were defending themselves and that they were justified in using physical force against a service animal, causing it, effectively, necessary suffering.
- 5 Service animals are defined in the Bill by reference to the person who is in control of the animal. The amendment only applies to animals which are under the control of a relevant officer at the time of the conduct which led to the suffering. The definition of relevant officer in the Bill covers a constable (police) or a person who has the powers of a constable and a prison officer or other prison custody officer. The Bill also allows the Secretary of State to amend the list of officers via regulations subject to the affirmative procedure. However, only a person or officer in the public service of the Crown may be added.
- 6 The amendment proposed by the Bill also includes several important safeguards. For the consideration at section 4(3)(c)(ii) of the 2006 Act to be disregarded at the time of any attack the animal in question: (i) must be under the control of a relevant officer; (ii) should be being used by that officer in the course of their duties; and (iii) must be being used in a way that was reasonable in all the circumstances. This addresses a possible concern in relation to a service animal that might act in an unreasonably aggressive manner, or in situations where the relevant officer was off duty. In such cases a person would be able to use the self-defence consideration at section 4(3)(c)(ii) if the animal attacked them unduly, or if the officer in charge of the animal was not on duty at the time of any attack. However, in such circumstances an individual could still be convicted of causing unnecessary harm to the service animal if the Court considered they acted beyond what was reasonable to defend themselves.
- 7 The amendment to section 4 of the 2006 Act also provides for situations where a relevant officer may be required to use force against their service animal to restrain it or to protect

themselves or a member of the public. The amendment provides that the new section 3A will not apply in a section 4 prosecution where the defendant is a relevant officer.

## Legal background

- 8 The majority of the relevant legal background is explained in the policy background section of these Notes.
- 9 In relation to the law on self-defence, the amendment to the 2006 Act introduced by the Bill will not affect the applicability of the common law defence of self-defence or the statutory defence of self-defence under section 3(1) of the Criminal Law Act 1967, which will continue to apply. In practice this would mean that the Court would not consider self-defence as a relevant consideration for whether the suffering was unnecessary under section 4 of the 2006 Act, but then if a Court did find that the suffering caused was unnecessary, it would still be open for the defendant to claim self-defence. This has always been the case for any section 4 offence under the 2006 Act prior to the amendment in the Bill.

## Territorial extent and application

- 10 Clause 2 sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill forms part of the law. The extent of a bill can be different from its application. Application is about where a Bill produces a practical effect. This Bill both extends and applies to England and Wales.
- 11 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. Issues concerning animal welfare in Wales are considered to be within the legislative competence of the National Assembly for Wales. The Bill requires a Legislative Consent Motion from the National Assembly for Wales.
- 12 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: Harming a service animal

- 13 Section 4 of the Animal Welfare Act 2006 provides an offence of causing unnecessary suffering to an animal. Subsection (3)(c)(ii) of section 4 includes a consideration as to whether the conduct by the person which caused the suffering was unnecessary, and specifically for the legitimate purpose of protecting a person.
- 14 Clause 1 provides that this consideration should be disregarded if the animal was under the control of a relevant officer at the time of the conduct, and was being used by that officer at that time in the course of the officer's duties, in a way that was reasonable in all the circumstances and that the officer is not the defendant accused of causing the unnecessary suffering.
- 15 The Clause defines relevant officer as a constable; a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes; or a prison custody officer within the meaning of Part 4

of the Criminal Justice Act 1991. A prison officer is an example of a person "who has the powers of a constable" and who would be covered by the new section 3B(b).

- 16 The Clause provides a power for the Secretary of State by regulations subject to the affirmative procedure to amend the definition of "relevant officer" and that only a person in the public service of the Crown may be specified in the definition by virtue of any regulations under the Clause.

### Clause 2: Extent, commencement and short title

- 17 This Clause provides for the Bill to extend to England and Wales and that the Bill will come into force two months after Royal Assent. The Clause also specifies the short title of the Bill.

## Commencement

- 18 The Bill is due to commence two months after Royal Assent.

## Financial implications of the Bill

- 19 The Bill has little or no impact on costs to the criminal justice system. Attacks on service animals are rare.

## Parliamentary approval for financial costs or for charges imposed

- 20 This Bill does not require a Money resolution, which is required where a new Bill proposes spending money on something that has not previously been authorised by an Act of Parliament.
- 21 This Bill does not require a Ways and Means resolution, in which the Commons give consent to parts of a Bill that involve taxes or other charges being made on the public.

## Compatibility with the European Convention on Human Rights

- 22 Although this is a private members' bill, in the Government's view the Bill is compatible with the Human Rights Act 1998.

## Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	Yes (W)
Clause 2	Yes	Yes	No	No	Yes (W)



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