ANIMAL WELFARE (SENTENCING) BILL

First Sitting
Tuesday 23 July 2019
(Morning)

CONTENTS
Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
Motion to sit in private agreed to.
Examination of witnesses.
Adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 27 July 2019

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The Committee consisted of the following Members:

*Chairs:* † Mr Adrian Bailey, Dame Cheryl Gillan

† Chalk, Alex (*Cheltenham*) (Con)
† Debbonaire, Thangam (*Bristol West*) (Lab)
† Duffield, Rosie (*Canterbury*) (Lab)
† Grant, Bill (*Ayr, Carrick and Cumnock*) (Con)
† Harrison, Trudy (*Copeland*) (Con)
Hayman, Sue (*Workington*) (Lab)
† Heald, Sir Oliver (*North East Hertfordshire*) (Con)
† Hollinrake, Kevin (*Thirsk and Malton*) (Con)
† Latham, Mrs Pauline (*Mid Derbyshire*) (Con)
† McCarthy, Kerry (*Bristol East*) (Lab)
† Martin, Sandy (*Ipswich*) (Lab)
† Newton, Sarah (*Truro and Falmouth*) (Con)
† Pollard, Luke (*Plymouth, Sutton and Devonport*) (Lab/Co-op)
† Rutley, David (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
Sobel, Alex (*Leeds North West*) (Lab/Co-op)
† Stewart, Iain (*Milton Keynes South*) (Con)
† Turley, Anna (*Redcar*) (Lab/Co-op)

Rob Page, Adam Mellows-Facer, *Committee Clerks*

† attended the Committee

Witnesses

Michael Flower, Deputy Head of Prosecutions, Royal Society for the Prevention of Cruelty to Animals

Claire Horton, Chief Executive Officer, Battersea Dogs and Cats Home

Mike Schwarz, Senior Consultant (Crime, Fraud and Regulatory), Bindmans LLP

Inspector Paddy O’Hara, National Police Chiefs’ Council group lead on dangerous dogs/animal welfare, Metropolitan Police
Tuesday 23 July 2019

Animal Welfare (Sentencing) Bill

9.25 am

The Chair: Welcome, everybody. Before we begin, I have a few preliminary announcements. First, please switch off electronic devices or put them on silent. I remind you that tea and coffee are not allowed during our sittings. We have copious water, if that is the right adjective, and please feel free to drink it in these temperatures.

Today, we will first consider the programme motion, which is on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication and a motion to allow us to deliberate in private about our questions, before the oral evidence session. I assume we have to go through that, even though we have no one in the Public Gallery. In view of the time available, I hope we can take these matters formally, without debate.

Ordered,
That—
(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 23 July) meet—
(a) at 2.00 pm on Tuesday 23 July, and
(b) at 11.30 am on Thursday 25 July;
(2) the Committee shall hear oral evidence in accordance with the following Table:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
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<tr>
<td>Tuesday 23 July</td>
<td>Until no later than 10.15 am</td>
<td>RSPCA; Battersea Dogs and Cats Home</td>
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<tr>
<td>Tuesday 23 July</td>
<td>Until no later than 1100 am</td>
<td>Metropolitan Police; Bindmans LLP</td>
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(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 2.00 pm on Thursday 25 July.

—(David Rutley.)

Resolved,
That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(David Rutley.)

The Chair: Copies of written evidence the Committee receives will be made available in the Committee Room.

Resolved,
That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(David Rutley.)

9.27 am

The Committee deliberated in private.

9.31 am

The Chair: We will now begin our public sitting and hear evidence from representatives of the RSPCA and Battersea Dogs and Cats Home. I remind Members that questions should be limited to matters within the scope of the Bill and that we must stick to timings—I will be ruthless on that. Do any Members of the Committee wish to declare any relevant interests?

Good morning to our witnesses. Will you introduce yourselves for the record?

Claire Horton: I am Claire Horton, chief executive of Battersea Dogs and Cats Home.

Michael Flower: I am Michael Flower, deputy head of prosecutions, RSPCA.

The Chair: Thank you. I invite Luke Pollard to open the questioning.

Q1 Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): Good morning. There is a lot of cross-party support in this Bill Committee for the key measure of increasing the sentence from six months to five years, so there will not be too much back and forth in arguing about that. Why is it important that this sentencing maximum is increased? Can you give examples of animal cruelty you think should be punished with a much greater sentence than the current six months?

Michael Flower: I will start, if I may. It is important that sentencing is increased because the current maximum penalty does not reflect the serious offences that we see in the animal cruelty world. There is a huge upsurge in public opinion, which seems to want increased sentences. We have encountered comments from the judiciary in our prosecutions and they would also like to see higher penalties so that they could deal adequately with the types of offence that have been encountered.

For example, we would be looking for increased sentence in cases such as “man pours lighter fluid on a dog and sets it on fire” and “man puts kitten in microwave, switches it on and kills it”. We have had recent cases involving puppies being kicked to death. We had a recent case involving two men who wanted to kill a dog, with some reason to do so, but rather than take it to the vet, one chap hammered a nail into the dog’s head. Then they buried the dog, and the dog was still alive. I could go on, but I don’t think I need to. Some of the cases we are encountering are, frankly, awful.

Claire Horton: I endorse everything that my colleague has said. I think probably the most significant case that brought it home to me and really kicked this off was Baby the bulldog, which Ms Turley has fought for significantly. That is the most horrific example of animal cruelty: it was filmed on a mobile phone; people joked and laughed and deliberately sought to cause injury to that animal. The sentence that they got was a matter of weeks. The sentences are way too low given the scale that we see this happening: six months is the maximum, with a 20% reduction if a defendant pleads guilty. Battersea, as well as the RSPCA and other animal rescues around the country, sees almost on a daily basis animals coming in as victims of cruelty.
Q2 Luke Pollard: Thank you both for that. That sets the context and shows why it is important that we get this legislation through. On the scope of the Bill, as I mentioned, there is cross-party support for including domestic animals and increasing the sentence to five years. The Bill deliberately has been drawn quite narrowly, around just domestic animals. Could you set out whether you feel there should be a distinction between domestic animals and wild animals in a Bill such as this? In the past, there has been a sense that cruelty to animals in general is what the public want action on, and the distinction between domestic and wild is a legal definition rather than one that the general public take to heart.

Michael Flower: We would have to concede that there are differences with the legislation. The Animal Welfare Act 2006 protects animals that are considered protected animals. Broadly speaking, those are domestic animals. It does include wild animals if they are under the control of man. Some cruelty cases will involve wild animals, such as a badger or a fox, which often are caught during illegal hunting activities. Those animals will have dogs set on them. We had a case in Wales recently where a group of men were involved in that activity, and a young baby badger was skinned alive by two dogs pulling at each end.

Some offences relating to wild animals will be caught by this legislation. Some will not be. The crux is whether the wild animal is under the control of man. In some circumstances that is not the case, whatever cruelty is perpetrated upon them. In an ideal world, at some point in the future I hope there will be some merit in looking at animal-related sentences across the board, because we have the Protection of Badgers Act 1992, the Deer Act 1991 and Wildlife and Countryside Act 1981, which protects wild birds, but all those animals can be caused to suffer in the course of other activities. The Bill does not solve all problems for all animals, but, given that the vast majority of cruelty cases that are prosecuted relate to domestic animals, it is an extremely important first step.

The Chair: Trudy Harrison indicated that she would like to ask a question, presumably on the same theme.

Q3 Trudy Harrison (Copeland) (Con): It is. Listening to the accounts that you just gave, which were absolutely horrific, I cannot comprehend the thinking that must have gone on before those incidents took place. Do you think that this Bill will reduce the number of those acts and, if so, why? Do you think it will act as a deterrent?

Michael Flower: I certainly hope so. To my mind, one of the great drives behind the Bill is to try to deter people from committing those offences. I go back a few years working for the RSPCA, and one of the main drives we had for bringing in the welfare offence at the time of the original Act was to introduce to English law preventive measures to stop animals being caused to suffer. The RSPCA is about preventing cruelty, not prosecuting it. We will prosecute it where offences are committed, but we want to prevent it. I hope that, if there is a five-year custodial sentence, that will act as a deterrent. It seems to me that there is a huge difference between an offender serving a 16-week custodial sentence, as is the case at present, and serving two and a half years. That must make some difference to some people, and it can only be beneficial.

Claire Horton: We are aware of research by the University of Birmingham and similar research in Italy that found even a relatively small change in sentences can have a significant deterrent effect. Certainly, given some of the examples we have cited, the sentence at the moment is disproportionate, considering that the sentence for fly tipping is five years, the sentence for theft is seven years and the sentence for driving while disqualified is significantly more than this. For someone who knowingly and determinedly kills animals in the way you have heard about, there has to be a deterrent. There has to be a punishment that fits the crime. At the moment, it just does not at all.

Of course, as was said, there is significant public and cross-party support for this change. I think people recognise that we need to be seen to be taking this seriously and to be acting. Certainly, at the moment, we are the worst of 100 countries in the sentence we offer. Battersea did some research in 2017—I am sure most of you have already seen it, but I have brought some copies for the Committee’s benefit, which I will leave here—that looked at sentencing for animal cruelty in England and Wales. We surveyed 100 jurisdictions around the whole of Europe, the US and Australia, and all of them, including Ireland and Northern Ireland, had higher sentences than England. We really do need to act on this, and we need to do it soon.

Q4 Sir Oliver Heald (North East Hertfordshire) (Con): On deterrence, do you agree that it would help if the courts and the Sentencing Council worked up a list of aggravating features that would merit a long sentence within the bracket of up to five years? For example, you mentioned torture—setting one animal on another. You will know about my interest in service animals—I thank you both for all the support we had with Finn’s law. I suggest that if a service animal that is defending a police officer is attacked with a 10-inch knife and stabbed to within a very close shave of losing its life, that would be an aggravating feature too. What do you think of that?

Michael Flower: The Sentencing Council has actually produced sentencing guidelines for Animal Welfare Act offences already—the most recent version was introduced in 2017, I think—and they contain examples of aggravating features. As a prosecutor, we find them very useful. We would certainly welcome the Sentencing Council revising those guidelines to take account of the Bill, if it is enacted. In fact, I suggest that it is essential that it does. We have had an indication somewhere down the line that it is prepared to look at this fairly quickly if the Bill comes into force. Yes, I would definitely welcome Sentencing Council guidance.

Q5 Sir Oliver Heald: I understand that is the position, but do you agree that if you have up to five years to work with, it is possible to make those distinctions more clearly than if you have just a very short sentence, such as six months?

Michael Flower: Oh yes, it gives you much more scope, because in that short period of six months, when you take account of discounts for early guilty pleas and so on, you have a very limited band in which to work. So five years should improve the situation quite considerably.
**Claire Horton:** Yes, we agree with that. Certainly, we are expecting up to five years to be used for the most serious offences, and aggravated offences come under that banner. We would certainly welcome the capacity and the ability to do that.

**Q6 Sir Oliver Heald:** Would you see torturing an animal, setting it on another animal or attacking a service animal as being the main areas for aggravating features, or are there others?

**Michael Flower:** All those should be aggravating features. Some already are, under current guidelines. The use of an animal to cause injury to another is also an aggravating feature at the moment. Another aggravating feature that already exists, and that should continue to exist, is cruelty to multiple animals. Although the examples I have cited have all been physical abuse of an individual animal, there are some very serious cases involving the wholesale gross neglect of multiple animals. It can be a horse dealer with 100 horses, and the vast majority of them are in a suffering state. In my view, that must become an aggravating feature.

**Claire Horton:** Of course, the law now is that if an animal—a dog—attacks a service dog, then the owner can receive up to three years’ imprisonment. However, if that owner himself attacks that service dog or any other dog, the owner would get up to six months, and that is it.

**Sir Oliver Heald:** I think there is an overwhelming case. Thank you very much.

**Q7 Anna Turley (Redcar) (Lab/Co-op):** First, I thank both of your organisations for all the campaigning work that you have done to support us in getting to this place, and for all the work that your staff do every day. The case of Baby the bulldog, which was mentioned earlier, is what drove me to get involved in this, and that came to sentencing only because of the really good work by the RSPCA and your members of staff. I am sure that they felt the same as the public did—all that hard work, and then to see just a suspended sentence, an electronic tag and a fine. That was insufficient. Thank you for everything that you do.

Building on Sir Oliver’s point about aggravating, I have an interest in filming and the use of social media. Is the filming of incidents of abuse and harassment for entertainment on the increase? How is that affecting your ability to prosecute or to take cases forward, and could that be an aggravating element in the seriousness of a case?

**Michael Flower:** We receive quite a number of complaints that make reference to the social media site Snapchat. The figures I have seen show that in 2015 there were 27 complaints that mentioned Snapchat, and in 2018 there were 214. That would tend to indicate that there is a significant increase.

On an individual case-by-case basis, I am often asked why cruelty continues and seems to be increasing, and why serious cruelty seems to be increasing. I do not really know the answer, but I have a very strong suspicion that social media is a contributory factor. I have children who are on Facebook and so on, and a lot of people on these sites seem to live an almost artificial life, where they want to glorify their activities. One way a proportion of people seem to do it is to commit acts of cruelty and then put them on the internet so that others can see it. It is damaging, because it is almost publicising and promoting cruelty. To my mind, this is yet another aggravating feature. I believe that the Sentencing Council will recognise that fact—it has included that in the current sentencing guidelines. That is all positive, but it is an issue and I am sure that it leads to more cruelty.

From an enforcement point of view, it is sometimes helpful, because if we can secure the material that is being posted, we have pretty good evidence of what is being done by which individuals to which animals. It does not always work, because some of the material on these social media sites is deleted very quickly and cannot always be retrieved. It is quite surprising that we have had a number of pretty high-profile cases, including dog fighting. In one of the last cases I dealt with, they were going into fields in Bedfordshire, I think, and staging fights in the middle of the field and filming them. Then they put it on social media, where one of our researchers saw it and we were able to deal with the offending. It is a mixed blessing. It helps to perpetuate cruelty and it does not always solve it.

**Claire Horton:** We see that in all sorts of other issues. It is not just in animal cruelty; it is in everything. It is people trolling young people and encouraging suicide. Social media has an awful lot to account for. Certainly, anecdotally, I would agree. I agree, actually, that in some places it is quite useful to have that footage. It works as some sort of shock tactic, for many people. It raises awareness for many people, but it also drives copycat behaviour with others. That is probably the real concern. I don’t think it is going away any time soon, but the more we can be clear about our intolerance of that sort of behaviour and how it is punished, that has got to help in tackling these crimes.

**Q8 Anna Turley:** Just to confirm, you say that social media companies take these videos down, but they are under no obligation to pass them to either the police or yourselves—they are just deleted, gone, and that is it?

**Michael Flower:** I do not think it is the social media companies that take them down. From people who know about these things—I am not one of them—my understanding is that on Instagram, for example, where a lot of people seem to post images, it automatically comes off after 24 or 48 hours, so it comes and goes.

**Q9 Bill Grant (Ayr, Carrick and Cumnock) (Con):** Thank you for sharing your knowledge of social media and the impact it has on cruelty. Do you have somebody monitoring the footage that appears on Instagram or Snapchat, for instance? How are you made aware of it? Have you any examples where you have approached the company or platform provider, and if you have, have they proved helpful to you?

**Michael Flower:** The footage tends to come to our attention partly by other people who have seen it reporting it. That is particularly common with juvenile offenders of school age, where peers in school will see their friends publicising themselves on one of these sites and are appalled by it, and so they report it. We do have officers who tend to trawl the internet looking for evidence of cruelty, particularly the more organised
crime, such as large-scale puppy trading or dog fighting. I cannot recall a time when we have had to go to one of the internet company providers. I do not know what sort of reaction we would get. I am not aware of it being done.

**Bill Grant:** Thank you very much.

**Q10 Sarah Newton (Truro and Falmouth) (Con):** Like Trudy, I am sure that having to hear these appalling examples is extremely disturbing for us all. I am curious to know what sentences were meted out for such atrocious crimes. That would help us to appreciate how important our work is here today.

My question follows on from the discussion we have just had. It strikes me that there are, as Claire said, a lot of similarities with other types of crime, such as the sexual exploitation of children and how the internet is used there. What lessons should we be learning about raising awareness and educating people that this is absolutely unacceptable in our society? As you mentioned, children, who will be exposed at home and on social media, might be tempted to copycat. What more can we do to raise awareness that it is unacceptable, that these are crimes in our country, and that the people who perpetrate these crimes, or who are associated with them, will encounter the full force of the law?

**Michael Flower:** When we had discussions with the Department for Environment, Food and Rural Affairs about the Animal Welfare Bill, one of the important things that had to follow its enactment was publicity to educate the public that the law had changed and to make it clear that there were now new requirements for animal care, particularly in relation to the duty of care. When DEFRA introduced the codes of practice for domestic animals, that did not really happen.

Were this Bill to be enacted, I would now say that there needs to be a fairly significant media campaign to educate the public—to say that this is a new law with new penalties and that the Government and the country take the crime seriously—and to drive that message home to them. We try to educate people. Most of the work our officers do—although we talk in here about investigations and prosecutions—is about educating and advising people, and providing guidance to resolve problems before we get to the prosecution stage. We can put the message out, and I am sure that other agencies and charities will do so, but the Government need to do that as well—it needs to come from on high.

**Claire Horton:** I think it is a partnership. We work very closely with the Government in other areas. Certainly, as an animal welfare sector, all the agencies work closely together. We all know each other well and share common ground when it comes to issues such as this. Certainly, we are able to join with the Government to share messaging—it does not matter what sort; we will happily do it.

There is a multitude of messages that we are trying to get out to people. One is how to make wise choices and decisions about the purchase of puppies, because puppy farming and illegal puppy smuggling and dog breeding are always huge issues. How do we make people much more aware of responsible ownership? How do we stop animals getting out and worrying livestock? How do we make people think differently about all manner of things? There is always a danger that messages can get mixed up—that they get muddled and ultimately people become blind to awareness messages that are constantly hitting them. It is about thinking carefully about the nature of the message, how it is put out to the population and what methodology or channel is used, which is quite important.

Earlier, I mentioned copycat behaviour, which worries me a lot, because of the issue of promoting responsible ownership as it relates to animal cruelty and not being cruel to animals. Inevitably, in those messages, we will be giving examples of animal cruelty and there will always be people who pick those messages up in the wrong way and go and do it. None the less, that does not stop us needing to be clear about this.

Ultimately, the biggest deterrents will be a much harsher sentence, a much more serious punishment and naming and shaming. One of the interesting things about the internet and some of the cases we have heard about is that when those perpetrators’ identities become public, life can get difficult for those people simply because of the public reaction. I make no comment on that, other than that it can clearly work in different ways when people or the issue are exposed.

**The Chair:** I will come to Sandy Martin and then the Minister. We have 15 minutes left, so perhaps you can ensure that the Minister has plenty of time to ask his questions.

**Q11 Sandy Martin (Ipswich) (Lab):** Thank you, Mr Bailey. Has either of you seen judges or magistrates deliberately choosing a sentence that is dependent on whether the animal is domesticated or wild?

**Michael Flower:** No, I can’t say I have encountered that. From my experience, the courts tend to consider the nature of the offence, rather than the animal, which is entirely right. You cannot really differentiate between extreme cruelty to a dog, cat, fox or badger—if it is cruel, it is cruel, and that is the way the courts tend to look at this, which is the right approach.

**Claire Horton:** I cannot give an answer to that I am afraid, as I have no experience of court sentencing.

**Q12 Sandy Martin: Would you agree that there is some legitimate concern, particularly from farmers, that if wild animals were included in this or any subsequent Bill, that might circumscribe their activities? Do you agree that killing is not necessarily the same as cruelty, and that you can have a system where an animal needs to be killed, but that does not need to be done in a cruel way?**

**Michael Flower:** Yes, I think that is right. There is already a clear distinction, and legitimate pest control continues. The Animal Welfare Act 2006 does not prevent that, and the Bill does not change that situation. I do not think the RSPCA has an issue with pest species animals being killed if that is done humanely—that is key. Cruelty is causing suffering unnecessarily, and there is a clear distinction.

**Q13 Sandy Martin:** You raised the issue of a baby badger being skinned alive. There is some controversy about or question whether that would be covered by the Bill. Do you believe it would be sensible to review the
Committee members to hear, particularly from the RSPCA, that in the work that you do and more generally there is a view that the guidelines can be of assistance and are meaningful.

Michael Flower: They certainly are from the RSPCA’s point of view. Those of us who deal with prosecutions for the RSPCA will frequently refer to the guidelines because they give a clear indication of how society in the broader context may view these types of offence. The aggravating factors, which we referred to, are listed. Obviously, the more aggravating factors there are for a particular behaviour, the greater the likelihood of prosecution should be. They tend to give us a very useful steer.

Q17 David Rutley: Claire, do you have any thoughts on sentencing guidelines? Are you comfortable that the way we are taking things forward is a useful approach?

Claire Horton: Absolutely, and I would agree. The entire welfare sector is of the same view. We are very comfortable.

The Chair: In the absence of any further questions from Members, I thank both witnesses for their evidence, and move on to the next panel.

Examination of Witnesses

Mike Schwarz and Inspector Paddy O’Hara gave evidence.

10.11 am

The Chair: Good morning. We will now hear from a representative of Bindmans LLP—is it Bin-dmans or Bind-mans?

Mike Schwarz: Bind-mans.

The Chair: There was a 50:50 chance of getting it right first time. We will also hear from a representative of the Metropolitan police. Will the witnesses please introduce themselves for the record?

Inspector O’Hara: Good morning. I am Inspector Paddy O’Hara from the Metropolitan police. Today, I represent the national policing lead for dangerous dogs and companion animals.

Mike Schwarz: My name is Mike Schwarz. I am a solicitor, working in the criminal system. I am a consultant at Bindmans.

The Chair: We have until 11 am for this session.

Q18 Luke Pollard: Thank you both for coming. Mike, in the biography that you kindly provided to the Committee, you note that you have “concerns about the impacts of a significant increase of potential sentences in one area of animal protection law, but not in other comparable areas.”

Is that about what happens with domestic animals versus wild animals? If that is the case, why do you have those concerns, and what might the implications be of increasing sentences in one area?

Mike Schwarz: Yes, it is precisely that: the danger of disparities and distortions, and even confusion, caused by the ramping up—that is not a critical comment—of maximum sentencing in one area, which is the domesticated...
and under-control-of-man area, while leaving well behind the maximum sentence in other areas. As you know, the disparity is between six months in most other areas—in the Hunting Act 2004, it is even less—and five years under the Bill. That may cause problems when it comes to sentencing.

The root of the problems is the Criminal Justice Act 2003, which is about sentencing, and two provisions in particular. The first is section 143, which says that the essential issues when it comes to sentencing are the culpability of the offender—that is not so relevant to today—and the “harm...caused”. That term begs the question why harm, cruelty and suffering in one sector are sentenced at a more serious level than in another. That is one provision that sparks potential problems.

The other provision is in section 152 of the same Act, when the court is required to look at whether the threshold for custody is passed. It is not a helpful comment—it is rather circular—but the section asks whether custody is justified and whether a fine or a community sentence is not appropriate. That begs the question whether the sentencing and custody threshold should be passed in one area when similar activity in another that causes similar suffering and harm might not reach the threshold. I can develop that if you like, but you might want to ask another question. I am happy to continue with that.

You know as well as I do that the “unnecessary suffering” provision in the Animal Welfare Act 2006 is perhaps key to today’s discussion. As far as I can see, “unnecessary suffering” is not significantly different in terms of cruelty from the animal affected in all the other areas of animal welfare and wildlife law. One thinks of the Wildlife and Countryside Act, the Protection of Badgers Act and the Hunting Act. We are talking about the same sort of serious offence and the same cruelty, so there is nothing to distinguish between the activities and the suffering caused in those areas.

That brings us to the obvious point, which is that different sectors of the same activity—animal welfare, animal care, animal husbandry—are treated differently. I cannot think of an area, although I am happy to be corrected and I might be wrong, where there is that difference in sentencing when it comes to the same offence. I am not an expert in the area, but one thinks about health and safety law and the same principal offences that apply. Obviously, the sectors are regulated differently, but it would be unusual in that and similar areas for the sentences to be significantly different for the same offence and the same mischief in one area than another.

Q19 Luke Pollard: Thank you. I think the Committee has found that quite helpful in setting it out so clearly. If you were to dropkick—not that you would—a domesticated rabbit, it would be a potential sentence of five years, but the same act on a rabbit in a field could be only six months, even though the harm to the animal might be similar in both instances. Do you feel that the distinction between wild and domestic animals might be used as a legal defence by the people being prosecuted, or is your concern a moral one about the law treating those two scenarios differently?

Mike Schwarz: Obviously, we are talking about sentencing here rather than defences. That is the starting point for now, but I agree entirely with your example about the rabbit, or the hare. If we think of a rabbit or a hare that is kept in a hutch by a child and that is being mistreated by the father, why should he be liable to such a significantly greater sentence than if he had just gone into a field to injure and be deliberately cruel to a wild hare? One can think of lots of other examples. You have heard the evidence already, but that encapsulates the problem of, why should things be treated differently? But it goes wider than that.

One disparity, which I am sure you are aware of, is that if one increases the sentence beyond six months—again, I am not saying that that should not happen; in fact, quite the opposite—that entitles a defendant to a Crown court trial. Therefore, a defendant—let us say the abuser of the rabbit in the hutch—would be entitled to a Crown court trial, whereas the abuser of the rabbit or hare in the field would not. That starts playing into the substance of the criminal justice process where one is entitled to a jury for apparently random reasons as a result of this perhaps artificial, though it appears inevitable, distinction that has been drawn.

One can think of other ways that the system is distorted, particularly for judges when they come to sentencing, or even for prosecutors when they decide whether to prosecute. For example, in the case of catching a badger or a fox for no other reason than for dog baiting and killing it, if one focuses on the impact on the fox, that is, arguably, in the wildlife area where there is a maximum sentence of six months. The fox dies. If one looks at the impact on the dogs that are controlled by a hunt or the abusers, they are “under the control of man”, as the Act says, and therefore if one focuses on the injury to the dogs, which invariably will survive, the maximum will be five years. That throws up another point, which is the question that was discussed earlier: what “under the control of man”, according to the terms of the Act, means.

For what it’s worth, and this has no legal weight as I don’t have any legal authority for saying it, my view is that just because a badger or a fox is caught, and if it is caught simply for the purpose of baiting and killing it, that does not make it not a wild animal, because that is part of the offence, otherwise every single offence would be caught by the protected species and domesticated animals provision. It might be different. If, for example, the fox or the badger was already in a domesticated or controlled setting and was then set upon, it might be different, but that plays into the point that because of the disparities in sentencing, any prosecutor in court, and particularly a judge sentencing, would need to bear in mind those considerations about what exactly is the definition of “under the control of man”.

Luke Pollard: Fantastic. I would like to come back to Inspector O’Hara later when other Members have put their questions.

Q20 Sir Oliver Heald: As you know, there has been a recent change in the law to make it more straightforward to prosecute under the Animal Welfare Act, in the case of service animals. At the moment, the sentencing guidelines talk about taking account of the fact that an animal is in public service.

Do you think there is a case for making the situation of the service animal clearer in the sentencing guidelines, and making it absolutely clear that it is an aggravating feature to attack a service animal? Inspector O’Hara might like to start on that.
Inspector O’Hara: Obviously, the service animal provision is relatively new, and we have yet to see how that will play out in court. I take quite a pragmatic view that the courts will be able to read between the lines with what is specifically written in the guidelines, to come to a correct conclusion in that regard.

Q21 Sir Oliver Heald: So, you do not think there is a need? There is a general view, expressed by earlier witnesses, that there is a case for reviewing the sentencing guidelines to make them clearer on a number of aspects. That is partly because with a sentence of five years there is more scope to make distinctions than there is with a very short sentence. Do you think that is worth while?

Inspector O’Hara: Clearly, it is a matter for the judiciary, and not necessarily the police, to put that forward. We have certainly called over the past couple of years for an increase in penalties. That is something that we put forward with the Environment, Food and Rural Affairs Committee on companion animals a couple of years ago. I just think that we have not got the evidence base at the moment, with the service animals notion particularly, to suggest that it is posing a particular problem that requires a review.

Q22 Sir Oliver Heald: There was a problem with criminal damage, as you know. Finn, the famous police dog, was attacked and there was no separate penalty at court. The reason was that criminal damage is largely judged by the value of the animal. Of course, a seven or eight-year-old police dog is not really worth very much money, although it does a very valuable job.

The aim of the change in the law and, I hope, this increase in sentence is to have something that is more tailored to the situation. Is that something that you would recognise as worth while? Do you not think that the sentencing guidelines would need to be looked at in those new circumstances?

Inspector O’Hara: With any change in legislation or provision, a review of the subsequent sentencing is useful, because five years is a long period.

Q23 Sir Oliver Heald: Mr Schwarz, would you like to comment?

Mike Schwarz: That was obviously an important piece of legislation and I know you are rolling it out. I think the sentencing guidelines—the 2017 ones—on the Animal Welfare Act do cover that point. They say that if the animal is being used in public service or as an assistance dog, there is an aggravating feature, but that might not have the priority that you and others might wish to accord it.

Q24 Sir Oliver Heald: The Animal Welfare Act was devised by the right hon. Member for Exeter (Mr Bradshaw) when he was Secretary of State to cover a particular area. Obviously, as you have said, Mr Schwarz, there are many other similar areas that are covered by other Acts. There is a short period available to us before the end of the Session and the opportunity to pass this Bill. Do you accept that it is well worthwhile to do that, even though the Bill does not have the wider coverage that you had hoped for?

Mike Schwarz: I would not come here either as an expert or a politician, but my personal answer is, “Yes, but.” The “but” may come in the proposed amendments, recommending a report or a review to see what disparities and distortions may be caused, with a view to that being the trigger to further analysis of the whole sector—or both sectors.

As I understand it, though others here will know better than I do, there was the existing wildlife law and then Labour passed the Animal Welfare Act to get domesticated animals on the same level. As you know, that makes things more advantageous for prosecutors in one sector, leaving another behind. That would be a reason for trying to build in some sort of process, such as a report or a review, to try to get the other sector back up to speed with the first.

Sir Oliver Heald: Thank you.

Q25 Rosie Duffield (Canterbury) (Lab): I have a friend who lobbies on this Bill on behalf of Battersea Dogs and Cats Home. One thing we often discuss is the fact that people who are capable of committing unspeakable acts against animals are surely quite likely to display that lack of empathy and go on to harm people. If we get any sort of comeback, it is along the lines of, “It’s just animals. Why is it so important to sentence people?” I would like to know Paddy’s experience. Do such people go on to carry out acts of domestic violence or other acts against people?

Inspector O’Hara: Some research from the US in particular tends to suggest a link between animal-related violence and human-related violence. I do not know that we are quite so far advanced in this country to have the dataset available to help us understand that, but the five-year penalty broadly brings causing suffering to an animal in line with actual bodily harm, which is the human equivalent. That is something we strongly suggested at the last EFRA Committee.

Q26 Rosie Duffield: So you would be behind that, and you think it might prevent people from going on to do other things to people?

Inspector O’Hara: I don’t know whether it would prevent that. We do not have a dataset that we can rely on in that regard, but it would certainly be a deterrent.

The Chair: Sarah Newton.

Sarah Newton: I am going to pass my opportunity over to Alex.

Q27 Alex Chalk (Cheltenham) (Con): Thank you very much. I declare an interest: I am pretty sure I have prosecuted offences that were defended at the bar by Bindmans.

Mr Schwarz, can I ask briefly about your helpful point on an apparent inconsistency between domestic and wild animals and explore a little bit about how much that matters? I am conscious that, if a robbery takes place and there are two robbers, one of whom is 18 years and one day old at the time of the offence and the other is 17 years and 360 days, they will be sentenced under different regimes, even though, as far as they are concerned, they are two young men of effectively identical age. Equally, if there is a traffic offence and a prosecutor decides the driving fell far below the standard of a
reasonably careful and competent driver, they get charged with dangerous driving. Equally, if another prosecutor says, “Well, I don’t think it quite crosses ‘far below’, but it was below the expected standard, so I’m going to charge it as careless driving,” that offending would be sentenced under different regimes. Have the courts not shown themselves to be well able to deal with such discrepancies without any real manifest injustice to anyone?

**Mike Schwarz:** I can see I have struck a lawyer here. There is a difference, actually, and it is one of substance. There is a principle behind treating adults differently from juveniles, and a principle behind treating careless driving differently from dangerous driving. As we all know, the law has to draw a line because there is a reason for doing so. The distinction between the sectors of domesticated and wildlife animals, and treating them differently in terms of sentence, does not appear to have a principle, unless Parliament is saying that the animal suffers less in the wild as the result of unnecessary cruelty, or that it is more important to punish suffering in the domesticated area. For what it is worth, I think the suffering is the same, and it is for Parliament to decide whether the two should be distinguished from each other. That is where the distinction lies.

It begs the question of what the animal welfare legislation is generally about. It seems to be about protecting animals, punishing bad behaviour by humans and stopping it being propagated elsewhere. In the sentencing guidelines and the offences, however, there is no demarcation between sectors to say that one sector is more worthy of protection than the other is, which is why I go back to the point on the level playing field across the two areas.

**Q28 Alex Chalk:** It is an entirely fair and appropriate observation to make. Do you accept that the law has shown over time to be capable of growing organically? For example, the stalking legislation did not even exist—it was not even recognised by the law prior to 2012. Then the offence came in, the sentencing powers increased, and there were various other aspects on top of it. That would not in and of itself be a reason not to enact this legislation, even if, in the fullness of time, it may be that it has wider ramifications. Would you accept that?

**Mike Schwarz:** Obviously I accept that the legislation can and should be passed, but with the health warning that it is creating a disparity. It is not an artificial, in-principle, lawyer’s type of disparity; it creates problems for judges to have a judge in the Crown court sentencing on one set of facts and in the magistrates court on another. If one looks at the guidelines, however, there is a disparity between sectors to say that one sector is more worthy of protection than the other is, which is why I go back to the point on the level playing field across the two areas.

**Q29 Alex Chalk:** One very last point, if I may. Surely if, for the sake of argument, the sentencing guideline is there in place and says that, where a dog has had its tail docked and it was a sustained act of degrading violence, the brackets should be one to three years, and the defence counsel turns around and says, “Oh, well, if this were a wild dog I wouldn’t get as much,” the judge will say, “I am not terribly interested in that. The sentencing guideline is clear for this offence. Parliament has indicated that it takes it extremely seriously. We have no difficulty with dismissing that rather ambitious submission,” and take him down? Is that not, in fact, what would happen?

**Mike Schwarz:** I think that would happen, but it might bring the law into disrepute when, in the next court, something similar—

**Alex Chalk:** I take that point. Thank you very much. That is all I wanted to explore.

**Q30 Anna Turley:** Thank you very much for your evidence so far. Could you share from your experience on the degree of consistency or inconsistency in what you see from the sentencing so far in such cases under the existing legislation? As a second part of that, could you talk about how, when lawyers are defending their clients, they seek to convince the court that their client should face a lesser sentence? What mitigating factors, or even aggravating factors that work against them, have you seen so far? I will start with Inspector O’Hara.

**Inspector O’Hara:** The majority of offences that I have seen prosecuted by the police are probably not cases that would hit the higher end of the sentencing bracket. They are largely cases involving an animal hoarder—generally somebody who has some mental health problems or another underlying reason for amassing 20 animals in a property. It is that sort of offence that we typically see day in, day out. At the last count, when I ran the figures for the EFRA Committee inquiry report a couple of years ago, broadly speaking—this is from memory—around 85% of the prosecutions were done by the RSPCA and about 15% by police or local authorities, with the burden of that shared by the police.

That typically tends to be my experience. We have not had any tail-docking cases that I can think of in London, but we have ear-cropping mutilations and general animal cruelty rather than organised crime or that more serious end of it. All those cases have been dealt with in a magistrates court so far, but the sentencing in London is fairly consistent because all those cases go to one court, although elsewhere in the country it is probably not so. Most of those cases are dealt with by way of a fine or other ancillary orders rather than imprisonment.

**Q31 Anna Turley:** What proportion of the cases that you have seen have pushed the envelope and outstripped the existing sentencing bracket?

**Inspector O’Hara:** It is a very small number.

**Mike Schwarz:** I do not know whether I can add to that. The only point I would make, triggered by that thought, is about the position in Northern Ireland, where the unnecessary suffering provision in section 4 is not limited to domesticated animals but applies across the board. There would be a significant disparity...
of sentencing for exactly the same facts for a case in Northern Ireland compared with England and Wales if the Bill is passed. That is the only helpful contribution I can make, other than to refer to the existing sentencing guidelines, which are very helpful.

Q32 Sandy Martin: Mr Schwarz, we have heard about the need to get the Bill passed. We have also heard about the difficulties of making a distinction between wild animals and domestic animals. I asked the representative of the RSPCA about a review, which he thought was a sensible idea. How soon after passing the Bill would it be sensible to have a review?

Mike Schwarz: I would like to think the points I make are sound in principle and therefore one does not need a great deal of evidence in order to have that review. I am not being vain about it, but there are flaws in the structure of the Bill which, if recognised, merit a review. Having said that, I would not dismiss evidence or views, particularly from the judiciary.

You mentioned how the judges might be grappling with this. Suppose the Bill were passed today, the first prosecutions might come about in the next six to 12 months, particularly they were Crown court cases. After 12 months, there might be some instances where problems—or lack of problems—emerge. I see that there were about 700 or 800 prosecutions in 2018 under the Animal Welfare Act. During that year, there was likely to be a significant proportion of helpful cases. Soundings could be taken of the judiciary and it could be advised after the Bill passes that Parliament would be assisted by view.

It would take perhaps a year, if one attaches importance to evidence, but sooner if it is accepted that, as a matter of principle, the absence of a level playing field needs to be addressed earlier.

Q33 Sandy Martin: On a separate subject, Inspector O’Hara, would you agree that this Bill might be helpful in clamping down on dog fighting in London?

Inspector O’Hara: Most definitely.

Q34 Sandy Martin: Clearly, having a stricter sentence for that will also fit in with other criminal activities that surround dog fighting. I am sure that it is not a problem in London, but your fellow police officers in other parts of the country have terrible problems with hare coursing. Would you support the idea that it would be sensible to have a Bill of this sort that would help to prevent hare coursing as well as dog fighting?

Inspector O’Hara: It is not really my area of expertise. I generally stick to companion animals and the position on that should probably come from wildlife crime. I suspect it dovetails very much into Mike’s point around the disparity of the two genres, for want of a better phrase.

Q35 David Rutley: Thank you both for your support today and for your very useful evidence. The question of guidelines and how important they are came up in the previous session and has come up in this one. Can you give your thoughts on the role of sentencing guidelines in how you deal with animal welfare legislation? Inspector O’Hara, how do they help with the cases that you have to deal with? It would be helpful to have a perspective from both you. It is clear that other members of the Committee feel that the guidelines are going to play an important role.

Inspector O’Hara: The guidelines play a very important role for any offence because they are the starting point at which the court will look upon sentencing as to where the offence will sit along with any mitigating or aggravating factors. It is really key that those guidelines are there and that they are robust. Having them in place will ensure consistency across the board, depending on which courthouse the matter sits.

Mike Schwarz: As you know, there are two sets of guidelines: one is the overarching principles for sentencing in all criminal cases, which I referred to earlier when I talked about harm and culpability; then, as has been mentioned a number of times, there are the specific guidelines of the Animal Welfare Act and animal welfare laws. I think they are very good, but nothing should escape review. It is important that it is reviewed with the passing of this legislation.

Earlier we heard that the point that when the threshold for custody is passed is now more important, bearing in mind the threshold goes up and the length of sentencing goes up. So far, the guidance is just in section 152 of the Criminal Justice Act 2003, but the sentencing guidelines for animal welfare would benefit from some guidance on when the custody threshold is reached and what sort of sentences should lead to what greater lengths of custody. That exercise may throw up the disparity between the two areas, which is why I think a review is important and probably quite urgent.

David Rutley: Thank you.

Q 36 Luke Pollard: Inspector O’Hara, when the Bill is passed into law—hopefully very soon—how will it be implemented, and what about the deterrent effect that was spoken about earlier? From an outsider’s perspective, the idea that the cruelty sentencing could increase to such a large degree should have an effect. From your point of view, as someone who works in this area, how best will that be communicated to individuals who would consider abusing an animal? What is the best way of communicating the increased sentence to the general public and to those individuals, so that it has a deterrent effect?

Inspector O’Hara: Typically in this topic, media have been led and have focused on case results and outcomes, on the back of some successful prosecutions with high sentencing. I think there is a key prevention message that can go out before the legislation comes through. There is one thing that worries me slightly: I have not known many people charged with animal welfare offences to enter a guilty plea at the first hearing. I can see that there will be quite a lot of cases, particularly if sections 4 to 8 are charged, where somebody will elect to go to Crown court, so it will be some considerable time down the road before we get those sentences coming through, but you might find that the cases that go up to the Crown court get no more severe a penalty than they would have got in a magistrates court. We have to manage our expectations of what that will bring.

In my other area of work, dangerous dogs, following the legislation changes in 2014 and the 14-year penalty that came in for a dog dangerously out of control...
causing death, we have not seen significant sentencing increases as a result of that legislation. While the current provisions are very good, and we very much support them and hope they will come in quickly, expectations in the court outcomes will need to be managed.

Q37 Luke Pollard: Thank you, that is an important point. Do you get the sense that with greater sentencing there will be greater public awareness of animal cruelty, and therefore more people coming forward? In particular, I am thinking about cases that currently are not reported. Do you think there is a possibility that greater awareness and the higher penalties might encourage more people to step forward, or do you think the opposite will be true—that the greater penalty might make people more hesitant, because the consequences will be more extreme?

Inspector O’Hara: I certainly do not think it will cause people to be more hesitant; the British public are a nation of animal lovers, and nothing riles people more than animal cruelty. I do not see a negative effect as a result.

Q38 Luke Pollard: Brilliant. In all our postbags, animal welfare is by far the most important topic, beating Brexit hands down. Looking at your CV and your work in this area and on status dogs, I want to ask about individuals whose behaviour and control of an animal might be beyond what you and I would expect of a dog owner. Do you think that the idea of increased punishment will prevent people doing things in terms of using animals as a status symbol, or using animals as a sign of bravado and machismo?

Inspector O’Hara: It is a difficult question because we are starting to see, and have been seeing for a number of years, a reduction in the number of section 1 dogs in particular coming to notice as status-type symbols. However, people are moving on to non-prohibited breeds, and we see quite a lot of those. Simple possession is not an offence in any way, so whereas a pitbull terrier would have been a typical dog in the past, there are now people with, for example, dogs that are larger than a pitbull terrier. Typically, we do not see a lot of dog fighting, and we do not see a lot of mutilations and ear-croppings, although we do see them occasionally, and they do come to note. If I look at my animal welfare offences prosecuted alongside the Dangerous Dogs Act 1991 offences, I am not necessarily sure that there is a real strong parallel. If anyone is charged with a Dangerous Dogs Act 1991 offence, mostly there are not really cruelty offences on top of that, other than in the odd case.


Thangam Debbonaire (Bristol West) (Lab): I want to follow up some of the questions asked by Members. You may be aware of the wildlife law report from the Law Commission—There was a consultation, and recommendations were published in 2015. Among those recommendations was one that the patchwork of existing legislation be replaced by a single statute. This Bill does not cover wildlife, as we have said, but as mentioned by my hon. Friend the Member for Plymouth, Sutton and Devonport said, to our constituents that distinction would not be quite so understood. I do not see how our constituents who care greatly about animal cruelty will understand why there is a distinction, and why there is still effectively a patchwork. Whilst we welcome this Bill, it does seem to be doing that. Do you have any thoughts on the differences and the continued existence of what seems to me and to the Law Commission to be a patchwork?

Inspector O’Hara: It seems to me that we are pressed for time to put this Bill through. It would be a great shame, in my view, if we were to do that consolidation work now at the expense of this Bill. With the Animal Welfare (Service Animals) Act 2019 there has been a split into piecemeal chunks to get them through, essentially, and to get them in. There could perhaps be a review at a later date, as mentioned today in the Committee. A review could look at a consolidation piece of work, along with any other bits that needed tidying up.

Mike Schwarz: I agree entirely with the thesis that there needs to be some systematic review. Animal cruelty has the same effect on animals regardless of where the animal lives, and whether it is husbanded. The impact on the humans involved is the same, and the culpability of the humans is the same. We all know that the way of inflicting injury, cruelty or death on animals varies according to the sector, but the disparity of sentences and the patchwork nature of the current legislation risks distortions, as I said earlier, and even risks bringing the law into disrepute when there is not a sense of fair prosecution and sentencing. It may help judges and the public understand the situation, as they may have difficulty piecing together the legislation as well.

Q39 Thangam Debbonaire: Inspector, you referred to the lack of time. That puzzled me a bit. Where does this idea of the lack of time comes from? We have done virtually nothing legislatively since April. Where has this idea that there was a lack of time to pass a bigger Bill come from?

Inspector O’Hara: I got the feeling from the other questions raised around the table, and the earlier session, that there was a lack of parliamentary time to bring the matter forward.

Thangam Debbonaire: Interesting. I wonder, where could that have come from? Thank you.

The Chair: I am not sure that the issue is really within the scope of the witnesses to comment on, but you made the point. If there are no further questions from Members, I thank the witnesses for their evidence. That brings us to the end of our oral evidence session. The Committee will meet again this afternoon to begin a line by line scrutiny of the Bill.

Ordered, That further consideration be now adjourned.

—(Iain Stewart.)

10.50 am

Adjourned till this day at Two o’clock.
ANIMAL WELFARE (SENTENCING) BILL

Second Sitting
Tuesday 23 July 2019
(Afternoon)

CONTENTS

Clauses 1 and 2 agreed to.
New clause considered.
Written evidence reported to the House.
Bill to be reported, without amendment.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 27 July 2019
The Committee consisted of the following Members:

*Chairs:† MR ADRIAN BAILEY, DAME CHERYL GILLAN*

† Chalk, Alex (*Cheltenham*) (Con)
† Debbonaire, Thangam (*Bristol West*) (Lab)
† Duffield, Rosie (*Canterbury*) (Lab)
† Grant, Bill (*Ayr, Carrick and Cumnock*) (Con)
† Harrison, Trudy (*Copeland*) (Con)
† Hayman, Sue (*Workington*) (Lab)
† Heald, Sir Oliver (*North East Hertfordshire*) (Con)
† Hollinrake, Kevin (*Thirsk and Malton*) (Con)
† Latham, Mrs Pauline (*Mid Derbyshire*) (Con)
† McCarthy, Kerry (*Bristol East*) (Lab)
† Martin, Sandy (*Ipswich*) (Lab)

† Newton, Sarah (*Truro and Falmouth*) (Con)
† Pollard, Luke (*Plymouth, Sutton and Devonport*) (Lab/Co-op)
† Rutley, David (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
† Sobel, Alex (*Leeds North West*) (Lab/Co-op)
† Stewart, Iain (*Milton Keynes South*) (Con)
† Turley, Anna (*Redcar*) (Lab/Co-op)

Rob Page, Adam Mellows-Facer, *Committee Clerks*

† attended the Committee
Public Bill Committee

Tuesday 23 July 2019

(Afternoon)

[Mr Adrian Bailey in the Chair]

Animal Welfare (Sentencing) Bill

2 pm

The Chair: I remind everyone to switch electronic devices off or to silent mode, and that teas and coffees are not allowed in the room. We now begin our line-by-line consideration of the Bill. We must proceed in the order set out in the programme order agreed by the Committee this morning.

Clause 1

Mode of Trial and Maximum Penalty for Certain Animal Welfare Offences

Anna Turley (Redcar) (Lab/Co-op): I beg to move amendment 1, in clause 1, page 1, line 10, at end insert—

“(2A) After subsection (1) insert—

‘(1A) Subsection (1B) applies where the court is considering for the purposes of sentencing the seriousness of an offence under any of sections 4, 5, 6(1) and (2), 7 and 8, and the person guilty of the offence—

(a) filmed themselves committing the offence, or

(b) posted online a video of themselves committing the offence.

(1B) The court—

(a) must treat the fact mentioned in subsection (1A)(a) or (b) as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and

(b) must state in open court that the offence is so aggravated.’

It is, as always, a pleasure to serve under your chairmanship, Mr Bailey. Before I move on to the specifics of the amendment, I beg the indulgence of the Committee to say a few words of thanks to everyone who got us to this position. As I did on Second Reading, I thank my constituents, who responded so powerfully to my amendment. I am very happy with the Bill, but I would never want to miss an opportunity to add an extra couple of thoughts. As much as anything, my intention with the amendment was to stimulate a bit of debate. One of the most overwhelming issues in the case of Baby the bulldog was the fact that the young men involved filmed themselves undertaking the abuse, laughing as they did it. The filming was part of the abuse—part of what made the incident so horrific was that they glorified it and thought it was something worth capturing, saving and possibly even sharing.

The other side of the social media aspect is that, because the abuse was videoed and stored on a chip in a mobile phone, which was subsequently found on a supermarket floor, we had evidence that enabled us to bring those young men to justice. There is something very powerful about the role of social media and video in tackling the scourge of this cruelty, as we are seeking to do. That was why I wanted to raise awareness of the role of social media through my amendment. Although we are all outraged at any animal abuse, the use of social media and the sharing of video is a horrible aspect of abuse, which as a society we cannot condone and must not allow to continue. Videos of abuse must not be allowed to be shared and amplified in this way.

My amendment seeks to require courts, where people filmed themselves committing the offence or posted online a video of themselves committing the offence, to treat that as an aggravating factor in sentencing. In explaining the amendment, I want to set out some of the examples I came across in the course of my research that made me more determined to raise awareness. Again, I beg the Committee’s indulgence. We have already heard some horrible evidence—I know we have all had our fill of seeing and hearing about horrific abuse—but I want to demonstrate the severity of what we are dealing with and what social media has done.

Three men in the Forest of Dean were jailed for filming their dogs while they mauled badgers to death. The judge described that as “medieval barbarity”, and there is sickening footage showing the young men in peals of laughter as their dogs slaughtered the badgers. They had a total of 447 video clips of animal cruelty on their phone, but were jailed for just 22 weeks.

A pony was removed by police after video footage showed it being mounted by a man and falling backwards to the ground, which caused widespread outrage on Facebook. That was in Tunbridge Wells in Kent. Two teenage girls in Scotland admitted animal cruelty after a video showing them abusing a snake went viral. A Snapchat video of the couple, who were clearly drunk, showed them laughing as they tortured the reptile, which sparked online outrage. A video was shared on
social media showing a black and white dog being thrown off a cliff into the sea. The dog is then seen swimming back to the shore. That video was shared widely on Snapchat, as we heard this morning. In June this year, another video was circulating online of a man laughing as he violently beats a terrified cat: he smacks it in the face and throws it down on the bed so hard that the video is absolutely horrific to anyone who watches it.

A Sunderland poacher is now behind bars after making shocking videos of his whippet brutally killing wild foxes. He posted graphic photographs and videos of him forcing his dog to chase the foxes, which he claimed was for sport. Three girls were arrested in March after shocking footage showed two kittens being abused and hurled into the air, and a man has been jailed and disqualified for life from keeping animals after appalling videos showed him setting his dog on a cat and a fox. This is happening, and we only have to tap something like “animal cruelty” into a search engine to see an awful lot of those horrendous videos.

It is clear that people are posting this stuff for clicks or likes, or as a way of making themselves notorious. It is awful to see: not content with simply inflicting injury on animals, these people are motivated by the prospect of their films going viral and being shared. It is grotesque and horrific, and demonstrates a greater level of malicious intent, which is why I felt we ought to debate the possibility of a specific deterrent. My amendment would make these crimes subject to an aggravated sentence for intent, which is why I felt we ought to debate the possibility of a specific deterrent. My amendment would make these crimes subject to an aggravated sentence for those who film themselves undertaking such an attack.

I found the evidence submitted by the Royal Society for the Prevention of Cruelty to Animals very powerful. We heard its representative say during this morning’s Committee evidence that, in 2015, the RSPCA investigated 27 cruelty complaints related to videos and social media. By 2017, that figure was 167—a fivefold increase just two years. That shows the scale of this issue and, as ever with legislation, we are struggling. Sometimes, we are on the back foot when it comes to catching up with changes in society and technology. This is our chance to get on the front foot.

Even more strikingly, the RSPCA’s evidence included a statistic from a recent survey showing that 48% of young people have witnessed some form of animal cruelty. Only 3% of those witnessed it directly, but a huge number—23%—had witnessed it on social media. What effect does exposing our young people to this material have on them? Does it have a normalising effect—glamorising, even—or lead to dehumanisation and lack of empathy? What effect will it have on our young people, particularly given the role of social media, with videos, clicks, likes and going viral seen as a means of success and of being popular? I worry that this is enabling and facilitating a nasty streak in society that we would not want to expose our children to, and would not want them to witness.

That is all I wanted to say to share why this deserves to be discussed and debated in this place. It is a great concern to me and, I think, anyone who cares about animal welfare or of the distribution of the kind of material we are discussing. The Government have rightly made much effort to tackle online abuse, address mental health concerns and deal with offensive imagery and online behaviours—a critical issue, especially for our young people. However, when I skimmed through the online harms White Paper in advance of this Committee sitting, I found no mention of animal welfare or of the distribution of the kind of images that my friend mentioned. There is an opportunity for the Minister to reflect on how a conversation between the Department for Environment, Food and Rural Affairs and the Department for Digital, Culture, Media and Sport might help to support the collective Government effort against the sharing of these disgusting images and videos, and create a more comprehensive system.

Alex Chalk (Cheltenham) (Con): I pay tribute to the hon. Member for Redcar. No one has done more than she has to advance this legislation. I entirely endorse the spirit and intention behind what she proposes, and simply want to volunteer some thoughts by way of context.

It is important to note that the recording of an offence is already set out as an aggravating factor in certain other criminal offences such as rape and sexual assault. As we know, the Sentencing Council publishes guidelines that the court is obliged to take into account. It is therefore important to ensure that the Sentencing Council has the widest possible rein to reflect the full spectrum of aggravating features in respect of this offence, as it has done with other offences.

My only question mark relates to whether there is a risk that, if we legislate for one particular aggravating feature, the Sentencing Council might not have as broad a remit as it might like. I say that because its guideline on the Animal Welfare Act 2006 lists “Other aggravating factors”, including “Use of a weapon” and “Use of another animal”. My rhetorical question is whether, in focusing legislation purely on one aspect, however heinous an aggravating feature it is, we risk inadvertently downplaying other aggravating features.

While I respectfully and entirely endorse the hon. Lady’s intention and the spirit of her amendment, I venture to suggest that the Sentencing Council has shown itself well capable of reflecting the issue of degradation through publication, and well attuned to the need to do so. Inevitably, I think it would include that factor, but it would also include other aggravating features such as use of another animal, use of a weapon, or whether the victim—so to speak—was a public service dog. That would ensure that the offending received the condign punishment it deserves.
Sue Hayman (Workington) (Lab): It is a pleasure to serve under your chairmanship, Mr Bailey.

The main thing that I want to make clear is the Opposition’s support for the Bill, for which we have waited a long time. We also support the intention behind the amendment of my hon. Friend the Member for Redcar, who has done so much to bring the Bill forward. We believe strongly that increasing the maximum penalty for the worst offences is important in order to send a clear message that society simply will not tolerate the gratuitous cruelty to defenceless animals that she described so vividly on Second Reading—to be honest, it nearly brought us to tears in the Chamber.

We know that perpetrators of such abuse are five times more likely to have a violent crime record and are more likely to engage in domestic violence against women and children. We need penalties to create a very effective deterrent, right at the beginning, when people do these appalling crimes. We do not necessarily expect many more people to be locked up for longer, but the sentence has a deterrent purpose. If people think they will get a maximum of only six months—or only 22 weeks, as has happened in the past—they are less likely to take their crime seriously as a criminal offence.

We need to ensure that the Bill gets a speedy Royal Assent. The Animal Welfare Act was brought into law to level the playing field for animal cruelty penalties. That includes domestic pets, farmed animals and other wild animals, so that they all have the same sentence. Unfortunately, it has been only a one-month maximum, which has not acted as a deterrent as it was designed to do. Northern Ireland led the way in 2016 with a maximum five-year sentence for the worst cases. That also applies to causing unnecessary suffering to any animal. The equivalent under the England Wales and Animal Welfare Act is limited to protected animals, commonly defined as domesticated, under the control of man, or not living in a wild state.

2.15 pm

One of our concerns, which I have spoken to the Minister about, is that we will be left with a two-tier penalty regime. Why was it decided that the Bill should not follow the Northern Ireland approach for England and Wales? We know that other issues have been raised, but the main point is for the Bill to reduce animal offences and make sure that the people who commit the most heinous crimes—particularly those described by my hon. Friend the Member for Redcar—are punished.

The Battersea Dogs and Cats Home has published a great book on sentencing—it is worth reading. It shows that the case of Baby, to which my hon. Friend the Member for Redcar referred, is one of the most distressing documented cases. It is made even more distressing because the offender took pleasure in filming it, and not just filming it, but sharing it with his friends and enjoying watching the cruelty over and over again.

It is absolutely right that tougher sentences reflect our abhorrence, and we put different sentencing guidelines around things that are absolutely disgusting. I cannot imagine why anybody would want to watch something like that but, to the best of our ability, those who do watch need to be stopped. As the hon. Member for Cheltenham said, guidelines would normally be set by the independent Sentencing Council. It is very helpful that the guidelines for animal cruelty offences cover the use of technology to publicise or promote cruelty as an aggravating factor, and that filming an offence is specified for other offences. I hope that that means that it will be a simple matter for the Sentencing Council to take this into account when updating the animal cruelty guidelines after Royal Assent. It would be helpful if, on behalf of the Committee, we could place on record our clear view that filming should count as an aggravating factor.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (David Rutley): I want to put on record our sincere thanks to the expert witnesses who took their time to present to us in the evidence sessions this morning. I think everybody benefited from that and we are all grateful to them. It is a pleasure to serve with you, Mr Bailey, in the chair once again.

Amendment 1 would oblige the court to consider whether the accused filmed themselves committing the offence or posted a video of themselves committing the offence online when establishing the seriousness of the offence. Subsection (1B) means that this consideration would be treated as an aggravating factor and would be stated as such in open court. This would be used by the court to determine the appropriate sentence and result in an upward adjustment of the sentence for those who conducted such filming activity. I am aware of and am horrified by the abhorrent actions of some people who film animal cruelty with the aim of sharing and uploading videos on social media. The hon. Member for Workington highlighted how terrible that was.

I think we all recognise that the hon. Member for Redcar movingly explained her concerns, fears and worries. In the best traditions of the House, she explained the issues in a non-partisan way. As she spoke about the need to introduce guidelines and how to approach this, it was interesting that everybody on both sides of the Committee said: “Good point.” That is very unusual in this place, so well done. One of the great things in this place is when we see somebody has a grip on an issue and brings people with them. I congratulate her for doing that.

There are many other great examples of Back-Bench support in the Committee, including the work done on the mighty Finn’s law in North East Hertfordshire. There is some really good work going on, and that should inspire people about what can be done in this place.

Sir Oliver Heald (North East Hertfordshire) (Con): I also want to pay tribute to the campaigners for Finn’s law, including Sarah Dixon, who was the leader of the campaign in many ways, and who is with us today.

David Rutley: Of course—congratulations, and I thank her. It is such campaigning zeal that enables us to make the case to take this legislation through when there are competing demands. Full credit should go to our team of Committee members today; many of them have served in Committee on other animal welfare legislation. There is a commitment to get this legislation through Parliament, but we can do that because we have made the case collectively and there is common ground. I am thankful for all the campaigning work that has gone on to make it possible.
I believe that any cruelty caused to an animal should be met with a proportionate response. That is why we are here today to encourage the passage of the Bill. Aggravating factors are most often dealt with in the sentencing guidelines, as was highlighted and supported by the witnesses this morning, and not always in statute. The amendment tabled by the hon. Member for Redcar would create a statutory aggravating factor. Statutory aggravating factors are used only for the most heinous criminal offences, such as domestic violence or terrorism. For other offences, it is normal for other aggravating factors to be included in the sentencing guidelines, which the courts are required to follow when determining the appropriate sentence in a particular case.

There are sentencing guidelines for animal cruelty, drawn up by the independent Sentencing Council, and they were last reviewed and updated in April 2017, following a public consultation. Under those guidelines, the use of technology to publicise or promote cruelty is already considered an aggravating factor, as has been referred to. Officials from the Department for Environment, Food and Rural Affairs have been in contact with the Sentencing Council. As the Bill will change the maximum sentence available for animal cruelty, the sentencing guidelines for animal cruelty will be subject to review by the Sentencing Council, which will publicly consult on the updated guidelines.

My hon. Friend the Member for Cheltenham was, I think, concerned about the question of statutory guidance. Our view is that this behaviour will be one of the other aggravating factors. The good news is that it is already included in the Animal Welfare Act guidelines, so, as the hon. Member for Workington said, we hope that it will be more straightforward. The fact that DEFRA officials are speaking to the Sentencing Council gives us real cause for optimism.

The hon. Member for Plymouth, Sutton and Devonport made an interesting point about the online harms White Paper. Based on that suggestion, we will be meeting the Department for Digital, Culture, Media and Sport and talking closely with it about what we can do in that area. It is scary when we see what people—young or old—are watching now. They seem to get relative highs on really disgusting material, animal cruelty being one. That has to stop, and hopefully we can make some inroads on that.

The proposed aggravating factor of filming an offence is already taken into account by the courts when sentencing for certain relevant offences. For example, the sentencing guidelines on “Robbery—sentencing children and young people” includes the following other aggravating factor: “filming of the offence…or circulating details/photos/videos etc of the offence on social media or within peer groups”.

That is for consideration by the court when sentencing the offender. I assure the hon. Member for Redcar that DEFRA will raise that issue and will continue to engage with the Sentencing Council, which I am sure takes this matter very seriously.

In addition to the guidelines on sentencing, existing legislation provides an offence that covers filming animal cruelty. Section 127(1) of the Communications Act 2003 creates a specific offence of sending grossly offensive, indecent, obscene or menacing messages over a public electronic communications network. It is a matter for the Crown Prosecution Service to decide which charges to bring, but it is possible that someone filming an act of animal cruelty could be charged with an offence under section 127(1). That would result in a maximum sentence of six months simply for the offence of posting abhorrent or offensive material online. Evidently, there are options to ensure that the offenders who film and upload or distribute footage of their animal cruelty are met with an appropriate response. When this Bill is passed, these pre-existing options could enable courts to impose a higher sentence. It is useful to see what legislation is out there in the round and also what guidelines are there.

Committing animal cruelty is repugnant and filming it to share with others is beyond comprehension. As mentioned, we will discuss this matter further with the Sentencing Council. When they review the guidelines, we will ensure that this point is raised during the public consultation. On that basis, I ask the hon. Lady whether she would be kind enough to consider withdrawing her amendment.

Anna Turley: I appreciate the Minister’s thoughtful and considered response, which was very helpful. I thank his civil servants for their work in responding to my amendment. I am pleased to hear that the sentencing guidelines will have a big role in deciding aggravating factors and it was interesting to hear that we tend only to put things on the statute books when they are major issues, such as terrorism. I was also particularly interested to hear about the fact that those responsible for animal cruelty films could already be prosecuted under the Communications Act 2003. As we move towards Royal Assent, in terms of the promotion of, and education and awareness about, the issues we have discussed in the Bill, I hope that that will be pushed further. I am particularly pleased to hear that as a consequence of the Bill the Sentencing Council has confirmed that it will have a public consultation and update the guidelines with reference to filming and sharing. I appreciate the Minister’s consideration and beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

David Rutley: Before I discuss clause 1, I want to comment on and welcome the widespread support that the Bill has received, across the House and beyond. It was clear on Second Reading that the Bill has strong backing across the House, which was unified in its view that there is no place for animal cruelty in this country and that we must deal with it in the strongest possible terms. I welcome the spirit in which our discussions today have taken place. I am sure that that is part of our collective view that the United Kingdom should continue to be a world leader on animal welfare.

The Government committed to increasing maximum sentences for animal cruelty offences in September 2017 and I am pleased to see hon. Members who have supported this measure here today. I know that some hon. Members will feel that we should have moved faster, but collectively we have moved quickly in recent weeks to see much animal welfare legislation move forward and I am grateful for that.

As was made clear on Second Reading, under the Animal Welfare Act 2006 the current maximum penalty for animal cruelty offences is six months imprisonment.
and/or an unlimited fine. This Bill amends the Animal Welfare Act to extend the maximum penalty available to five years imprisonment and/or an unlimited fine for the worst animal cruelty offences relating to animal welfare in England and Wales. We heard this morning just how important it is that this Bill reaches the statute book as soon as possible.

Clause 1 is the Bill’s main clause and outlines the mode of trial and maximum penalty for certain animal welfare offences. As it is proposed that the maximum custodial sentence is extended to five years, these offences will become triable either in the magistrates court or the Crown court, depending on the severity of the offence. Specifically, clause 1(2) changes the maximum custodial sentence for the most serious offences under the 2006 Act. These are: causing unnecessary suffering to a protected animal; carrying out a non-exempted mutilation; docking the tail of a dog, except where permitted; administering a poison to an animal; and involvement in an animal fight—a dog fight or something similar, as we talked about earlier today.

Under the Animal Welfare Act 2006, which this Bill amends, all protected animals are covered. In its legal definition, a protected animal is a vertebrate animal of a kind commonly domesticated in the British Isles. Animals not commonly domesticated, such as wildlife, are “protected animals”, but only to the extent that they are under the control of man or are not living in their wild state.

2.30 pm

Clause 1(3) relates to the mode of sentencing. Under section 78 of the Powers of Criminal Courts (Sentencing) Act 2000, magistrates courts do not have the power to impose penalties greater than six months. Section 154(1) of the Criminal Justice Act 2003 increased the maximum custodial sentence imposable by a magistrates court to 12 months. However, to date this section has not been commenced and the clause reflects that position. In practice, that means that the existing maximum penalty of six months or an unlimited fine is retained if the offender is summarily convicted through a magistrates court. However, with the passing of the Bill, offenders may now receive a higher penalty of up to five years imprisonment or an unlimited fine if they are convicted on trial by indictment in a Crown court.

This country has some of the highest animal welfare standards in the world, but among the lowest maximum penalties. Clause 1 will ensure that in those rare but shocking cases that we have heard about too often today offenders will be properly punished. The new maximum sentence will also send a clear signal to any future potential offenders that animal cruelty will not be tolerated.

Sue Hayman: As I said before, we are pleased to support the Bill and the increase in sentences. It is good finally to see it here and I hope we can get it on the statute book shortly. As I said on Second Reading, we have no intention of voting against it, but would rather seek to improve it where we can through amendments such as that tabled by my hon. Friend the Member for Redcar.

As I mentioned, we are concerned about the scope of the Bill and its narrowness, because it applies only to the Animal Welfare Act 2006, and therefore does not apply to wild animals. I will come on to that in more detail when we reach new clause 2.

I will not say much, because it is important that the Bill moves forward as swiftly as possible. We welcome the fact that it will increase maximum sentences to five years and the fact that that brings England and Wales more into line with the rest of the UK. The Minister mentioned that Northern Ireland has moved on to five years. Scotland, as we know, has been consulting on doing the same. It is important we are not left behind in England and Wales.

As we have heard, public consultation was an important part in getting the general public and animal welfare organisations to support the work that the Government are doing. I know that Battersea Dogs and Cats Home, the Dogs Trust, the RSPCA and many others have worked with us and the Government to support the Bill and enable it to come forward. I know that a lot of people have worked very hard to get us to the place we are at now. I thank all those who have worked on this Bill.

The Environment, Food and Rural Affairs Committee’s 2016 report on animal welfare referred to the increasing disparity in sentencing powers on a range of offences relating to animals. That report also included the recommendation to increase the maximum sentence for cruelty offences against animals to five years.

Sir Oliver Heald: Does the hon. Lady agree with me and the evidence we heard this morning that one great advantage of increasing the sentence is that in the horrible cases where there is torture, where a service animal is attacked, or where a number of animals are killed or badly treated, it is possible to mark that if the maximum sentence is five years, so those aggravated features can be reflected in the sentence?

Sue Hayman: The right hon. and learned Gentleman makes an extremely important point. One thing that has been quite difficult when looking at the evidence is some of the extraordinary cruelty against animals of which people are capable. The work he did with other colleagues on Finn’s law was really important, because service animals put themselves in front of their police officers or whoever they are working with to protect them. It is important that that has now been recognised.

It is important that we are finally giving judges the tools they need to start handing out the kind of sentences that are required if we are to have not only a punishment that will act as a deterrent, but a punishment that is right for the crime. We do not have that at the moment. In conclusion, the Opposition will support the Bill, and I thank everyone for their work on it.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

EXTENT, COMMENCEMENT AND SHORT TITLE

Question proposed, That the clause stand part of the Bill.
David Rutley: Clause 2 provides the extent, commencement and short title of the Bill. Clause 2(1) provides for the Bill’s extension to England and Wales only. Animal welfare is a fully devolved matter, but in this case the Welsh Government have confirmed that the maximum penalty will apply in Wales. The Bill is drafted on that basis. The Welsh Government are preparing a legislative consent motion so that the Bill can be extended and applied in Wales, which is excellent news.

Clause 2(2) provides the date and commencement of the Bill. The Act will come into force two months after Royal Assent. The clause also ensures that the application of revised maximum penalties is not retrospective and is not applied to offences committed before the Bill comes into force. It specifies the short title of the Bill, that being the Animal Welfare (Sentencing) Act 2019.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

New Clause 2

REPORT ON EFFECTS

(1) The Secretary of State must publish a report on the effects of the provisions of this Act.

(2) The report must include assessments of—

(a) trends in sentencing practice;

(b) the effects of this Act on animal welfare;

(c) the extent to which this Act has had a deterrent effect on animal welfare offences;

(d) the coherence and adequacy of animal welfare legislation in aggregate in the light of the operation of this Act.

(3) The assessment under subsection (2)(d) must include consideration of—

(a) the welfare of animals that are not “protected animals” under section 2 of the Animal Welfare Act 2006;

(b) sentencing for offences under—

(i) all sections of the Animal Welfare Act 2006;

(ii) the Wildlife and Countryside Act 1981;

(iii) the Deer Act 1991;

(iv) the Protection of Badgers Act 1992;

(v) the Wild Mammals (Protection) Act 1996; and

(vi) the Conservation of Habitats and Species Regulations 2017 (S.I.2017/1012).

(4) The report must be laid before Parliament within two years of this Act coming into force.

This new clause would require the Secretary of State to lay before Parliament, within two years of the Act coming into force, a report on the effectiveness of the Act, including specific assessments of its effect on animal welfare, the overall coherence of animal welfare legislation, and other matters.

Brought up, and read the First time.

Sue Hayman: I beg to move, That the clause be read a Second time.

New clause 2 would provide for an assessment of the effectiveness of the Act, and for a report to be laid before Parliament. I hope the Minister agrees that it is good practice for our legislation to be reviewed, and for Parliament to have the opportunity to consider the extent to which it is achieving its objectives, and indeed to consider whether any adjustments might be needed. Within that, we believe that there is a specific need to examine the level of penalties available to the courts for cruelty offences across animal welfare legislation as a whole.

The Bill improves the deterrence impact of penalties for cruelty under the Animal Welfare Act 2006, but introduces a two-tier system—maximum penalties for cruelty offences under the legislation listed in new clause 2 remain at six months. It is clear that offenders do not discriminate between wild and domestic animals in inflicting cruelty. The RSPCA has a shocking catalogue of offences, just a few of which I will mention: a wild rabbit hit with a log and stabbed with a pen; a sheep beaten to death with a gold club; a goldfish’s eye cut out; a squirrel set on fire; a cat chocked and suffocated; and two hens beaten to death. I find it extraordinary that anyone can behave like that.

How do we work out what maximum penalty should be available to the court in each of those cases? If a person kicks their pet rabbit, it should be clear that, under the Bill, the maximum penalty would be raised to five years, but what if the poor animal that has been kicked to death is a wild rabbit in the middle of a field? The nature of the offence is arguably identical, and most people would agree that the offender should face the same penalty, but would they? What about the case we heard about from the hon. Member for Southend West (Sir David Amess) on Second Reading, of a driver who put down chips in a road to attract wild birds so that he could then run them over? Should wild birds, squirrels or hedgehogs be regarded as under the control of man in a situation such as that, and would they come under this penalty? What about people putting out poisoned foods at a wild bird feeding station? What if wild chickens are taken and tortured? Is it different if chicks are taken from a hedgerow or from a garden nest box? These are genuine questions and I find the definitions confusing.

My hon. Friend the Member for Bristol East spoke on Second Reading about cruelty committed against game birds that are specifically reared for shooting before being released in the wild. Where does that sit within an offence of cruelty? What concerns me is that guilty offenders might well seek to persuade a court that a lesser sentence should be imposed if the victim could be classed as a wild animal.

We heard in evidence from Mr Schwarz that the two-tier approach could end in confusion for both the judiciary and prosecutors. We need to consider carefully whether the Bill’s good intentions to deter the worst acts of cruelty could unintentionally lead to offenders targeting more wild animals. The Opposition are pretty clear that all animals are equal and deserve to be treated with respect and kindness. As our animal welfare plan stated:

“Our vision is one where no animal is made to suffer unnecessary pain and degradation and where we continue to drive up standards and practice in line with the most recent advances and understanding.”

Our preference would be for the Bill to set a maximum sentence according to the level of cruelty in the offence, rather than whether the animal is domestic or wild, which I have discussed with the Minister. New clause 2 offers the option of looking into that and giving Parliament an opportunity to consider it once the Act has taken effect. As I have said, we do not want to delay the Bill—we want it on the statute book quickly, which is why we are asking for a review. I hope the Minister considers it and I look forward to his response.
Sandy Martin (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Mr Bailey. I believe that the evidence we heard this morning from both the Royal Society for the Prevention of Cruelty to Animals and the lawyer and police officer made it fairly clear that there was confusion about which offences come under the Bill. Clearly, there are questions about whether an offence relates to a feral cat or a domestic cat, or a wild rabbit or a tame rabbit, but there are also questions about organised crime. We heard from the police officer about dog fighting, which would come under this Act. Serious and organised cases of cruelty can now be prosecuted and a sensible and serious sentence incurred, yet the equally serious and equally organised crime involved in hare coursing probably would not.

All sorts of issues need to be tested in the courts. Very often in this place we seek to tie all the knots, cross all the t’s and dot all the i’s, but it is not always effective. We need to test these issues in the courts, but if they are to be tested in the courts, we need to review the result in order to establish whether the Act is doing what we intended it to do.

We heard from Mike Schwarz that serious issues will be aired by members of the public as a result of the sentences that will be handed down if, as we suspect, the sentences for domestic and wild animals are suddenly, obviously and publicly very different. We have heard on several occasions from the Minister that the Bill needs to be passed as soon as possible. We could not agree with him more. In fact, we could not have agreed with him more if he had said that 18 months ago, when we could have passed it. There is no good reason why, if we accept proposed new clause 2, that would add a single minute to the length of time it takes for the Bill to pass into law.

I urge us to accept the amendment and ensure that, whatever the results in the courts, we review them swiftly and effectively with a view to ensuring that we get consistent sentencing for consistent levels of cruelty.

2.45 pm

David Rutley: New clause 2(1) and (2) would create a statutory obligation for the Government to report to Parliament on the effectiveness of the Act within two years of it coming into force, including specific assessments of its effect on animal welfare and the overall coherence with animal welfare legislation, including sentencing under specified Acts relating to wildlife.

It is important to note that the Animal Welfare Act 2006 was subject to review by the Select Committee on Environment, Food and Rural Affairs in 2010 and informally through its domestic animals inquiry in 2016.

The 2010 assessment concluded that there was broad agreement that animal welfare had been improved as a result of the 2006 Act by bringing together diverse legislation and adding a preventative measure that allows action to be taken without animals suffering unnecessarily. The 2016 inquiry encouraged the Bill and the proposed increase in maximum penalties.

New clause 2(3)(a) would commit the Government to including an assessment of the welfare of animals that are not protected animals under section 2 of the Animal Welfare Act 2006. Subsection (3)(b) would commit the Government to look at sentencing for offences under various pieces of legislation pertaining to wildlife.

Wildlife legislation that protects animals in a wild state is a separate matter and, as we know, not in the scope of the Animal Welfare Act 2006. All animals that come under the control of man, whether domesticated or wildlife, will be subject to the maximum penalty. Indeed, there are separate pieces of legislation that focus specifically on wildlife, with appropriate sentences and penalties.

Relevant points are being made here and, of course, we want to respond to them. I do not think we know the general consensus but we need to move forward with the Bill. We do not want to let the perfect be the enemy of the good. We have heard that before but it certainly applies to the Bill. Notwithstanding that the courts will have to make some interpretation, as is always the case, I reinforce the fact that any act of serious cruelty against a wild animal would most likely, by its very nature, entail that animal being under the control of man, and so would be caught by the Animal Welfare Act 2006.

Some of the deeply upsetting cases we heard about this morning, such as putting an animal in a microwave—if one could ever consider somebody doing that—could be committed only if the animal were under control of man. Although I understand the concerns, and that there are lawyers in the room, I am sure that courts will be well able to identify the most serious acts.

Sir Oliver Heald: I do not know whether the Minister would agree with me on a point that may need further consideration. If an animal is under a person’s control, does that not give that person a duty towards that animal? In those circumstances, is it not part of the wrongdoing that, having control of an animal, a person abuses it?

David Rutley: As I said, we have distinguished lawyers in the room for a reason—they make important points such as that one, which only my right hon. and learned Friend could make with such eloquence. I completely agree that there is an added responsibility. It is a privilege to be able to look after animals and, when we do, we should expect higher standards of ourselves. There are laws that are relevant to other wild animals but, when these animals are in the control of man, a higher standard needs to be adhered to.

I do not really want to mention these cases, but I am trying to provide clarification and confidence to members of the Committee. We heard the example of a rabbit being kicked in a very serious way. Whether a rabbit is wild or not, rabbits are commonly domesticated, and that would be covered by the Bill. Similarly, if other animals were mistreated under the control of man, they would be covered. I understand that there are concerns, but I reassure members of the Committee that the courts will be in a better position, as a result of this legislation, to hold people to account and put the right sentences in place. They will be able to make judgments that will help domesticated animals and, in many cases, wild animals too—I will come to the point about wild animals more broadly in a second.

A review of wildlife legislation has already been conducted. At the request of the Department for Environment, Food and Rural Affairs, the Law Commission commenced in 2011 its wildlife law project to develop proposals for a modern, simpler and more flexible
framework. The commission published its report and draft Bill in November 2015, and recommended that the existing pieces of wildlife legislation be replaced with a single statute.

Exit from the EU provides an opportunity to re-examine our regulatory framework and how it works so that it is fit for purpose to meet our national needs in the future and to fulfil our international obligations. As hon. Members may be aware, much of our wildlife law stems from EU directives. That is why EU exit would provide an opportunity to take that wider look. We will need to consider the implications of EU exit for our approach to wildlife policy before deciding whether and how to implement the Law Commission proposals.

In addition to the existing reviews of the Animal Welfare Act 2006, the Ministry of Justice regularly publishes criminal justice statistics. Under the 2006 Act, data on prosecutions, convictions and sentencing speak to the impact of higher penalties on animal welfare.

In summary, I completely understand the point made by the hon. Member for Workington, but the Bill focuses on the most heinous crimes involving animals, including wildlife, under the control of man. The penalties for wildlife crimes that focus on animals in their wild habitat are separate from this legislation. Welfare groups have long called for an increased maximum sentence for the serious crimes under the 2006 Act. It is important that we get this change of an increased maximum penalty on to the statute book as soon as possible and without amendment.

I would be happy to commit to meeting the hon. Lady in the very near future to discuss different maximum sentences for Animal Welfare Act offences and offences relating to the welfare of wildlife. In line with our normal, standard procedure, we will look at the impact of the Bill in three years’ time. On that basis, and with a commitment to hold an early meeting, I ask the hon. Lady to consider withdrawing her new clause. I hope she can support the passage of this important Bill at this stage without amendment.

**Sue Hayman:** I thank the Minister for his considered response. He will probably think that I am a bit odd, but I have a copy of the report and the proposed legislation from the Law Commission by my bed. [HON. MEMBERS: “Hear, hear!”] Thank you.

I would very much appreciate a meeting to discuss how we take this matter further. Some of the Law Commission work is excellent, and it would be good to see how we move forward. On that basis, I am happy to beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

Bill to be reported, without amendment.

2.54 pm

Committee rose.
Written evidence to be reported to the House

AWSB01 RSPCA
AWSB01(a) RSPCA (further written evidence)
AWSB02 Mark Randell
AWSB03 Mike Radford, Reader in Animal Welfare Law, University of Aberdeen
AWSB04 Dogs Trust
AWSB05 Animal Equality
AWSB06 UK Centre for Animal Law (A-law)

AWSB07 Forensic Access Limited
AWSB08 John McKenna
AWSB09 Battersea Dogs and Cats Home
AWSB10 Viva!
AWSB11 Naturewatch Foundation
AWSB12 Wildlife and Countryside Link
AWSB13 Conservative Animal Welfare Foundation
AWSB14 The Self Help Group for Farmers, Pet Owners and Others experiencing difficulties with the RSPCA (The SHG)
AWSB15 Martina Stuart, Veterinary Surgeon