



House of Commons

Environment, Food and Rural  
Affairs Committee

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# Pre-Legislative Scrutiny of the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill 2017

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**Second Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

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## The Environment, Food and Rural Affairs Committee

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The current staff of the Committee are Eliot Barrass (Clerk), Sian Woodward (Clerk), Daniel Schlappa (Second Clerk), Anwen Rees (Committee Specialist), Ian Blair (Committee Assistant) and Annabel Russell (Committee Assistant).

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# 1 The Pre-legislative scrutiny process

1. On 12 December 2017, the Secretary of State wrote to us drawing our attention to the imminent publication of draft legislation, “to enshrine the principle of sentience in UK law, and to increase the maximum penalties for animal cruelty offences under the Animal Welfare Act 2006”. That letter invited us to give comments on the draft Bill by the end of January 2018.<sup>1</sup> Our comments would be given simultaneous to a public consultation on the legislation, also scheduled to close on 31 January 2018.

2. We took this letter as an opportunity to conduct pre-legislative scrutiny, one of the core tasks set for us by the Commons Liaison Committee. Accordingly, we launched an inquiry on 22 December 2017. In order to fulfil the Government’s request to give comments by 31 January we conducted a very short period of evidence gathering; on 10 January we were informally briefed by officials (“the Bill team”) from Defra and on 17 January we took oral evidence from two panels of witnesses. In addition, we received over 40 pieces of written evidence. We are grateful to everybody who assisted our inquiry, especially given the tight deadlines to which we were working.

3. The draft Animal Welfare (Sentencing and Recognition of Sentience) Bill is a very short piece of proposed legislation, containing only three clauses:

- a) Clause 1 is the “animal sentience” clause. According to the Secretary of State this Clause will “embed [in UK statute] the principle that animals are sentient beings, capable of feeling pain and pleasure”. This Clause requires Ministers of the Crown to “have regard to the welfare needs of animals as sentient beings” when formulating and implementing policy. According to the Government’s explanatory memoranda the Clause is intended to ensure that “animals will not lose any recognitions or protections once the UK leaves the EU.”<sup>2</sup>
- b) Clause 2 of the Bill amends Section 32 of the Animal Welfare Act 2006 to increase the maximum sentence for various animal cruelty offences from six months to five years; and
- c) Clause 3 of the Bill clarifies that the sentencing provisions of the Bill do not apply in Scotland or Northern Ireland, while the provisions on Animal Sentience only apply to Ministers of the UK Government (i.e. would not apply to policies in areas of responsibility devolved to Ministers in Scotland, Wales and Northern Ireland).

The draft Bill itself, including the accompanying written ministerial statement and explanatory notes, is available on the Government’s website.<sup>3</sup> Unusually for draft legislation, no regulatory impact assessment has been produced.

1 Correspondence from the Secretary of State to the Committee, 12 December 2017

2 Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill, Explanatory Notes, December 2017

3 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/666576/draft-animal-welfare-bill-171212.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666576/draft-animal-welfare-bill-171212.pdf)

4. In addition to inviting our comments on the draft legislation, the Government is running a simultaneous public consultation. This consultation also closes on 31 January and seeks public comment on many of the key concepts within the Bill. These concepts include:

- a) The definition of “sentience”;
- b) The definition of “animal”;
- c) The definition of “welfare needs of animals”;
- d) The definition of the phrase, “Ministers of the Crown should have regard to”;
- e) The scope of the legislation, i.e. whether it should apply to all policy areas; and
- f) The appropriateness of the to-be-introduced sentence length.<sup>4</sup>

5. It appeared to us unusual for draft legislation to have so many of its key concepts out for consultation at this stage in the process. Sir Stephen Laws, former First Parliamentary Counsel concurred with our assessment, noting that “It is fair to say that all the concepts in clause 1 seem to be problematic in one way or another”<sup>5</sup> and as such it was not clear exactly what this Bill intended to do, how it intended to do it and how the duties it imposed on Ministers interacted with existing statute.<sup>6</sup>

6. Government guidance specifies that it is always necessary to assess the impact of policy proposals, and that there should be a formal impact assessment produced for any policy which imposes an additional administrative burden on the public sector, or introduces new regulatory costs. No impact assessment was published alongside this draft legislation, neither has one been produced to inform Parliament in its scrutiny. The rationale for this is not especially clear. There are clear additional administrative burdens and costs on the public purse brought on by this legislation; our witnesses highlighted, for example, that additional resources will be required of Defra in signing off other Department’s actions and quantifying the animal welfare implications.<sup>7</sup>

**7. The concepts enshrined in the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill are important and worthwhile. They deserve better than to be treated in a cavalier fashion yet the impression given to us is one of haste. It appears that this draft Bill has been presented to the public - and Parliament - in a far from finished state. Many of the key concepts in the Bill remain undefined, so limiting the value of our scrutiny, while the lack of a formal regulatory impact assessment is a further troubling matter. The absence of such a document further emphasises the impression that this legislation has not been properly thought through before publication. We recommend that the Government produce a regulatory impact assessment for this Bill in response to this Report, and before the Bill is introduced to Parliament.**

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4 Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill, Cm 9554, Section 2: Consultation Questions

5 Q2

6 Q2

7 See Q36 and Q39

## 2 Clause 2 of the Bill: sentencing provisions

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8. In the Written Ministerial Statement published alongside the draft Bill, the Secretary of State claims that this Bill is “part of a wider programme to deliver world-leading standards of animal welfare in the years ahead” and the “start of [his] ambition to set a global gold standard for animal welfare as we leave the EU”.<sup>8</sup>

9. Our predecessor Committee, in November 2016, published a Report, *Animal welfare in England: domestic pets*. That Report noted that “the current penalties for animal welfare offences in England are amongst the lowest in Europe” and called for the maximum penalty for animal cruelty to be increased to five years.<sup>9</sup> We were pleased to see the Government adopt this recommendation through Clause 2 of this draft Bill.

10. Clause 2 of this Bill amends Section 32 of the Animal Welfare Act 2006 to increase the maximum prison sentence available to those convicted of “the more serious prevention of harm offences that are usually associated with animal cruelty”<sup>10</sup> from six months to five years. This increase will bring England and Wales into line with Northern Ireland and the Republic of Ireland. Similar steps are being taken by the Scottish Government through the planned amendment of the Animal Health and Welfare Act 2006. These measures, if adopted, will mean that maximum sentences in the UK will become longer than those in France (two years), Germany (three years), Spain (18 months) and Italy (three years).

11. Our witnesses expressed little concern with Clause 2 as it stands. Michael Webb of Battersea Dogs and Cats Home told us that “Clause 2 on the sentencing provisions is quite simple. It has immense popular and political support”.<sup>11</sup> The Countryside Alliance<sup>12</sup> similarly “welcomed” the measure, as did the Donkey Sanctuary,<sup>13</sup> the British Veterinary Association reported “general support” for this measure.<sup>14</sup>

12. Some difficulties were raised, however, when discussing the consequence of this sentencing increase. While agreeing that the sentencing provisions in Clause 2 “make perfect sense”, the Dogs Trust highlighted a practical problem that may arise from the increased sentencing provisions:

the increased sentences, [will] mean that a number of these cases will go to Crown Court rather than magistrates’ court, because of the level of sentencing.<sup>15</sup>

Given the length of time it can take to bring a case before the Crown Court, one result of the increased sentencing provisions in Clause 2 could be that animals are kept in kennels, pre-trial, for a longer period.<sup>16</sup> It was suggested that a supplementary measure, which

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8 Written Ministerial Statement - Animal Welfare, HCWS340, 12 December 2017

9 Animal welfare in England: domestic pets, Third Report of Session 2016–17, HC 117, Para 175

10 Specifically: causing unnecessary suffering, mutilation, docking of dog’s tails, administration of poisons etc., and encouraging an animal fight, Correspondence from the Secretary of State to the Committee, 12 December 2017

11 Q74 [Michael Webb]

12 AWB 0016 (Countryside Alliance)

13 AWB 0027 (The Donkey Sanctuary)

14 AWB 0036 (British Veterinary Association)

15 Q77

16 Q77

allowed the expediting of court cases requiring the kennelling of animals be brought in to prevent harm or distress to animals potentially kept away from their owners for many months.<sup>17</sup>

**13. The Crown Court generally has a busier workload than the magistrates' courts and cases usually take longer to come before it. The sentencing provisions of Clause 2 will lead to an increased number of animal welfare cases before the Crown Court. This will therefore increase both the number of animals held in kennels for long periods of time and the amount of time such animals are held with consequent welfare impacts on the animals and, presumably, an increased charge on the public purse. The regulatory impact assessment we have recommended be produced such provide an estimate of these costs and impacts as well as an indication of the steps the Government is considering to alleviate them.**

14. The Secretary of State's ambition is to deliver "world-leading standards of animal welfare".<sup>18</sup> There have been various announcements on this topic from his Department over recent months. As an example, on 22 December 2017 Defra released a press notice promising "to crack down on puppies being reared in unhealthy circumstances by unscrupulous breeders".<sup>19</sup> Many of these announced measures had been recommended by our 2017 Report, *Animal welfare in England: domestic pets*. These included:

- Regulating adverts, including on the internet, by ensuring licensed sellers of all pets, including puppies, include the seller's licence number, country of origin and country of residence of the pet in any advert for sale;
- Addressing the breeding of dogs with harmful genetic disorders; and
- Tackling puppy smuggling by increasing the age at which dogs are allowed to enter the UK.

15. None of the above measures are included in the draft Bill, which is limited to increasing sentences for specified offences under the Animal Welfare Act 2006. Our witnesses noted this apparent inconsistency between the Government's professed objectives and the limited scope of this Bill.<sup>20</sup>

16. This inconsistency was further highlighted by witnesses who noted that the Bill was limited to increasing sentences for specified offences against domestic animals. The League Against Cruel Sports noted that animal welfare offences against wild animals in the wild, such as those covered by the Hunting Act 2004, will remain covered by existing sentencing provisions<sup>21</sup> and will not have their sentences increased). In a similar vein, the Dogs Trust highlighted that maximum offences under the Non-Commercial Movement of Pet Animals Order 2011 are not being increased and will remain at three months.<sup>22</sup>

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17 Q77

18 Written Ministerial Statement - Animal Welfare, HCWS340, 12 December 2017

19 Press Release: "Government proposals on puppy welfare", published 22 December 2017 (Accessed 20 January 2018), <https://www.gov.uk/government/news/government-proposals-on-puppy-welfare>

20 Q95

21 AWB 0004 (League Against Cruel Sports)

22 AWB 0008 (Dogs Trust)

17. In November 2016, our predecessor Committee called very strongly for the introduction of a five-year maximum sentence for animal cruelty. We are pleased to see our recommendation acted upon by the Government. In so doing, the Government has taken a positive step toward bringing England and Wales into line with Northern Ireland and therefore realising the Secretary of State’s vision of setting a “global gold standard”.

18. We question why the Government has restricted its efforts to increasing sentences for offences under the Animal Welfare Act 2006 but has not taken this opportunity to increase sentences for other breaches of animal welfare in other legislation or introduce other welcome measures such as those announced as under consideration on 22 December 2017. A true “gold standard” in animal welfare will require the introduction of legislation which will increase sentencing across the board.

19. *We recommend that the draft Bill be amended to increase sentences for animal welfare offences other than just those contained in the 2006 Animal Welfare Act. This revised Bill should include, but not be limited to, provisions to increase sentencing for those offences referred to in Defra’s announcement of 22 December 2017 which drew heavily on our predecessor Committee’s Report, Animal welfare in England: domestic pets.*

### 3 Clause 1 of the Bill: Recognition of animal sentience

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20. If Clause 2 of this Bill is relatively unproblematic in its objectives and drafting, the same cannot be said for Clause 1 - “the animal sentience clause”. According to the Secretary of State, this Clause “will embed the principle that animals are sentient beings, capable of feeling pain and pleasure, more clearly than ever before in domestic law” and “contains an obligation, directed towards Government, to pay regard to the welfare needs of animals when formulating and implementing government policy.”<sup>23</sup>

21. More precisely, Clause 1 of the draft Bill requires “Ministers of the Crown [to] have regard to the welfare needs of animals as sentient beings in formulating and implementing government policy”<sup>24</sup> while also having “regard to matters affecting the public interest”.<sup>25</sup>

22. As we have noted above, this Clause is in many ways unfinished. Almost all of the concepts within it are undefined and the Government, apparently unwilling to set out its own view, is consulting on the exact definition of key elements of the clause, such as the meaning of “animal” or “have regard to”.<sup>26</sup> As a result, the exact effects of this Clause are unclear. We will therefore limit our remarks to the Clause as currently drafted. We commend the transcript of our session of 17 January to the Government in the anticipation that it will help inform the ongoing consultation and help provide definition to some of these legal concepts.

#### ***Background to the introduction of Clause 1***

23. The Explanatory Memoranda published alongside the draft Bill makes reference to “the Government’s commitment to ensuring animals will not lose any recognitions or protections once the UK leaves the EU.” This refers primarily to Article 13 of the Treaty for the Function of the European Union (“Lisbon Treaty”). Article 13 requires the EU and the Member States “when formulating and implementing ... policies [in stated areas<sup>27</sup>] ... [to] pay full regard to the welfare requirements of animals”.<sup>28</sup> While Article 13 imposes binding obligations on Member States of the EU:

in practice, it has not had any effect on the Governments of member states, for the simple reason that the provision is limited to particular policy areas that are cited in Article 13 and, by definition, policy on those issues is decided at an EU level. The only impact it has had in practical terms is at an EU level.<sup>29</sup>

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23 Written Ministerial Statement - Animal Welfare, HCWS340, 12 December 2017

24 Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill, Cm 9554, Clause 1(1)

25 Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill, Cm 9554, Clause 1(2)

26 See: Q2 and AWB 0014 (Mike Radford)

27 These areas are agriculture, fisheries, transport, internal market, research and technological development, and space

28 AWB 0014 (Mike Radford), paragraph 11

29 Q5

24. Clause 1 of this Bill attempts the same general objective as that of Article 13 of the Lisbon Treaty and will, in practical terms, transpose the provisions of Article 13 into UK law.<sup>30</sup> In some ways, though, it can be said to go further since it will apply to all animals, not just those animals used in the specified policy areas in Article 13.<sup>31</sup>

25. Later in our report we will discuss the weaknesses and failings of Clause 1 as drafted. Despite this, the idea and intention behind the clause received strong support. According to our witnesses, Clause 1 is a “critically important point of principle” which would be “a strong message”<sup>32</sup> While - as we discuss - its legal implications may be limited, Clause 1 (or something close to it) is a politically significant step.

### **Clause 1, as drafted**

26. Our witnesses were supportive of the principle behind Clause 1 of the draft Bill, namely that animals are sentient and their rights should be considered by the Government when formulating and implementing policy. The concerns we heard addressed the ambiguity of the legislation and its potential practical effects.

27. At a fundamental level, it was noted that the “symbolic” intention behind the Bill, to reinforce that the Government recognises sentience in (some) animals was probably unnecessary. According to Mike Radford, Reader in Animal Welfare law at the University of Aberdeen:

There has never been any question that Parliament recognises sentience in other species. Right from 1822, when this place passed the first animal protection legislation, it was based on the assumption that those animals had the capacity to feel pain and pleasure.<sup>33</sup>

As such, he questioned whether placing the principle of animals as sentient formally on the statute book would make any practical or “legal difference ... for the simple reason that it is open to Parliament to pass whatever legislation it wishes to protect animals and to promote welfare. In so doing, it is doing that on the basis that those animals are sentient.”<sup>34</sup>

28. Many other criticisms of Clause 1 of the draft Bill were made to us, chiefly around its scope and accountability mechanisms. We present a selection of these below as indicative of the general concerns heard. Many others were raised with us. We acknowledge that the Government consultation exercise is intended to help clarify some of these issues. We trust that the transcript of our session will therefore be of use to the Government in informing the amendment of this Bill.

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30 AWB 0014 (Mike Radford), paragraph 17

31 AWB 0014 (Mike Radford), paragraph 18

32 Q69 and Q73

33 Q5

34 Q6

29. The main concern raised with us was Clause 1’s vagueness and ambiguity; it introduces a degree of legal unpredictability. As drafted, almost any Government policy or announcement (or non-policy and non-announcement) will be open to judicial review to determine whether sufficient, but ill-determined “regard” had been given to the welfare needs of animals.<sup>35</sup> In practice therefore, swathes of Government policy-making will be thrown on to the courts to adjudicate, with all the consequent problems that would bring.<sup>36</sup>

30. The practical problems of this approach were set out for us by Sir Stephen Laws: since it is not clear to what degree Ministers should “have regard to” animal welfare needs, and not specified how this will be demonstrated, “it makes it impossible in practical terms for Government to make any reasonable prediction on whether its policies and other actions will survive judicial challenge”.<sup>37</sup> In a similar vein, Mike Radford told us that

one of the problems here is that it [Clause 1] is so vague that nobody will be sure what it means. The animal welfare organisations will not be sure, and policy makers will not be sure. Therefore, it will ultimately fall to the courts.<sup>38</sup>

The RSPCA similarly worried that:

the key issue is that there has to be a mechanism in place for implementing this in a clear, fair and transparent way, and a mechanism for reporting and accountability under this legislation, because as we all know that was one of the failings of article 13.<sup>39</sup>

Mike Webb of Battersea Dogs and Cats Home shared the concern that the problems with Clause 1 of the Bill would impede the introduction of the necessary measures in Clause 2, stating “clause 1(2) is at best as unhelpful as it is helpful”. Mr Webb went on to share his surprise “to be honest, to discover that clauses 1 and 2, as they currently stand, appear in the same Bill at the same time” and his concern that the measures in Clause 2 “be delayed in the event that there are overwhelming concerns with the other parts of the Bill”.<sup>40</sup>

### ***Practical consequences of Clause 1***

31. The concerns we had heard of the effects of the draft Clause 1 were troubling. We pushed our witnesses for more indication over what the practical problems of this approach would be.

32. It was repeatedly stated that the most obvious consequence of this Clause as drafted would be to increase the cost of, and hinder the efficiency of, government. At the very least, we were told that there would be a need for Defra to be given greater resources to effectively “sign off” any other Department’s policy proposals on animal welfare grounds and/or prove that animal welfare had been given “regard”.<sup>41</sup> In addition, there would be the greater cost of proving to the courts that the provisions of this legislation had been complied with:

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35 Q14 and Q46

36 See, for example, Q29, Q37 and Q49

37 AWB 0003 (Sir Stephen Laws), paragraph 15

38 Q15

39 Q76

40 Q74

41 Q39

The potential for litigation is expensive, timeconsuming and it consumes resources. Frankly, it is not a particularly good use of resources.<sup>42</sup>

33. A more abstract and harder to quantify cost was also mentioned to us. This was the cost arising from decisions not taking or reforms not made. We were told that Clause 1, as drafted, would have a “chilling” effect on policy-making:

imposing obligations that direct policy has the disadvantage that it persuades people [policy makers] to try to be compliant rather than to decide in advance what is a good idea and to exercise judgment. Compliance becomes a substitute for judgment ... people then go for the safe option.<sup>43</sup>

34. In a similar vein, as well as Clause 1 causing decisions or actions not to be taken or rejected as “non-compliant”, greater use of the Courts to adjudicate whether a policy is compliant with this legislation will tend to impede the work of Government and prevent legislative change. Sir Stephen Laws cautioned us:

You have to think about what judicial review is good at doing. What it is best at doing is stopping change. That is what it is good at. It is not very good at producing change, but it is very good at delaying it and stopping it.<sup>44</sup>

Sir Stephen Laws went on to note that this process of “stopping change” would impact across all areas of Government policy, not just areas concerned with “animal welfare”. Indeed, he went further suggesting that:

the impact of this provision is less likely to be significant in relation to those matters where animal welfare clearly is the issue, because it is unlikely that, where animal welfare is the issue, Ministers will not be able to show they have had proper regard to it. The main, and in my view mischievous, impact of this is where it has an impact on things that are peripheral to animal welfare. It provides a handle for challenging other decisions.<sup>45</sup>

35. It was made clear to us by our witnesses that the scope of Clause 1, as drafted, would apply to all areas of Government activity and encompass not only legislative change, but all policy announcements and non-announcements. A decision not to take action would be just as liable to challenge under Clause 1 of this Bill as a decision to act, while seemingly irrelevant Government decisions such as levels of local authority funding or the Budget could be potentially challenged in the Courts on whether sufficient “regard” had been given to animal welfare needs.<sup>46</sup>

### **Models for Government accountability**

36. Many of the difficulties encountered with Clause 1 of this Bill stem from the lack of specificity in how the Government will be held accountable. As the Clause is currently drafted, the courts will be asked to rule - through a judicial review - whether any Government policy has been formulated or implemented with “regard to” animal welfare needs. As we noted above, this has many detrimental consequences: it will not be clear

42 Q35

43 Q4 and Q16

44 Q35

45 Q46

46 See Q18 and Q28

whether any Government policy is “legal” (and compliant with the legislation) unless and until a court action is brought against it, legislative change will become harder to bring forward and the overall cost and complexity of policy-making in Government will increase.

37. One option to remedy this may be to introduce alternative accountability mechanisms and thereby clarify how a Government Minister will demonstrate compliance (or non-compliance) with the legislation.

38. A suggestion put to us was the idea of an “animal welfare impact assessment”. While it was acknowledged that this in itself would not prevent numerous and perhaps vexatious claims for judicial review, it was put forward as a mechanism by which the Government could demonstrate that it has assessed and “had regard to” the animal welfare needs of a given policy proposal.<sup>47</sup> As such it would prevent successful legal challenges by acting as proof of compliance.

39. Whilst examining the legal consequences of Clause 1, as drafted, we noted that this was not the first time Parliament had wanted to legislate on an area where Ministerial compliance was hard to define. Indeed, our expert witnesses highlighted legislation that had been drafted to achieve this whilst preventing the likelihood of judicial challenge in the first instance.<sup>48</sup>

40. The Fiscal Responsibility Act 2010 (FRA 2010) was similar to this draft Bill in being a piece of legislation intended to reinforce policy commitments by statute. The major difference between the FRA and this Bill, however, was in its accountability mechanisms. While the Fiscal Responsibility Act imposed a duty on Ministers, it did not impose a general duty on them. Instead, it specified that Ministers were only accountable through a reporting mechanism to Parliament, rather than through the courts. As such a judicial review could not - except in exceptional cases - be brought against Ministers for non-compliance with the legislation.<sup>49</sup>

41. It was argued that, if a similar mechanism were adopted into this legislation, then in addition to clarifying the roles of Parliament and the judiciary in holding the Government to account - and clarifying to Ministers how to demonstrate compliance with the legislation - animal welfare might more readily be improved:

[as the Bill is currently drafted] the duty on the Minister is to have regard to both [animal welfare and the public interest]. What weight a Minister gives is entirely up to them. You could go through all this, the Minister could have regard to it, and it may make no difference whatsoever, whereas

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47 Q82

48 Q24 and AWB 0003 (Sir Stephen Laws), paragraph 25

49 The exact wording of the relevant Clause of the Fiscal Responsibility Act 2010 was:

The only means of securing accountability in relation to—

(a) the duties in section 1, and

(b) duties imposed by orders under section 2, is that established by the provision made by or under section 3 for the making of progress reports and reports as to compliance and the duty imposed by subsection (1).

(3) Accordingly, the fact that—

(a) any duty in section 1, or

(b) any duty imposed by an order under section 2, has not been, or will or may not be, complied with does not affect the lawfulness of anything done, or omitted to be done, by any person.

a system in which Ministers have to come back to Parliament, or indeed to this Committee, and explain how they have taken welfare considerations into account may be a much more effective mechanism.<sup>50</sup>

### **Existing inconsistencies**

42. As well as not introducing clear accountability mechanisms and clarifying how Ministers will (or will not) be compliant with this legislation, Clause 1 was also criticised by some of our witnesses for its timidity and its limited scope. At present, the Bill does not define “animal” for the purpose of defining “animals as sentient beings”. Without such a definition, it is not clear which creatures Government Ministers should “have regard to”.

43. The Animal Welfare Act 2006 gives a definition of “animal” as a “vertebrate other than man” and explicitly excludes creatures in their foetal or embryonic form. In addition, the provisions of that Act only apply to “protected animals” who are, generally, domesticated, i.e. dogs or cats, whether stray or not are classed as “animals”, wild rabbits or foxes are not.

44. Other statute however, recognises sentience in creatures which are invertebrates. The Animals (Scientific Procedures) Act 1986, for example acknowledges octopus and other cephalopods as capable of feeling pain and therefore sentient. Concern was raised with us that without a clearer definition of “sentient animals” in this Bill, then the duties of Ministers to have regard to the welfare needs of animals which are not vertebrates would be weakened. It was further noted that any new definition of “sentient animals” should not just replicate existing definitions but make allowance for scientific advances suggesting sentience in invertebrates other than octopus as well as in animals in a foetal form.<sup>51</sup>

**45. As strong advocates of the need for a five-year maximum sentence for animal cruelty we worry that the vagueness and ambiguity of the purpose and meaning of Clause 1 of this draft Bill will impede and delay the introduction of this measure.**

**46. We recommend that the Government separate Clause 1 of this draft Bill entirely, and proceed with the Bill as the Animal Welfare (Sentencing) Bill, incorporating the changes we recommend in paragraph 19. Introducing legislation which increased sentencing for animal welfare offences across the board should do more for the rights and welfare of animals as sentient beings than the measure contained in Clause 1 of this draft Bill.**

**47. We further recommend that another, separate piece of legislation on animal sentience be introduced. This new piece of legislation will allow the problematic concepts in the existing Clause 1 to be better defined, clarify the accountability mechanisms to be applied and should remedy some of the other existing inconsistencies in present statute - such as the status of octopus and cephalopods - that we have highlighted in our scrutiny. We would be delighted to undertake further pre-legislative scrutiny on this putative stand-alone “Animal Sentience” Bill.**

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50 Q25

51 Q55 and Q61

## Conclusions and recommendations

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### The Pre-legislative scrutiny process

1. The concepts enshrined in the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill are important and worthwhile. They deserve better than to be treated in a cavalier fashion yet the impression given to us is one of haste. It appears that this draft Bill has been presented to the public - and Parliament - in a far from finished state. Many of the key concepts in the Bill remain undefined, so limiting the value of our scrutiny, while the lack of a formal regulatory impact assessment is a further troubling matter. The absence of such a document further emphasises the impression that this legislation has not been properly thought through before publication. *We recommend that the Government produce a regulatory impact assessment for this Bill in response to this Report, and before the Bill is introduced to Parliament.* (Paragraph 7)

### Clause 2 of the Bill: sentencing provisions

2. The Crown Court generally has a busier workload than the magistrates' courts and cases usually take longer to come before it. The sentencing provisions of Clause 2 will lead to an increased number of animal welfare cases before the Crown Court. This will therefore increase both the number of animals held in kennels for long periods of time and the amount of time such animals are held with consequent welfare impacts on the animals and, presumably, an increased charge on the public purse. The regulatory impact assessment we have recommended be produced such provide an estimate of these costs and impacts as well as an indication of the steps the Government is considering to alleviate them. (Paragraph 13)
3. In November 2016, our predecessor Committee called very strongly for the introduction of a five-year maximum sentence for animal cruelty. We are pleased to see our recommendation acted upon by the Government. In so doing, the Government has taken a positive step toward bringing England and Wales into line with Northern Ireland and therefore realising the Secretary of State's vision of setting a "global gold standard". (Paragraph 17)
4. We question why the Government has restricted its efforts to increasing sentences for offences under the Animal Welfare Act 2006 but has not taken this opportunity to increase sentences for other breaches of animal welfare in other legislation or introduce other welcome measures such as those announced as under consideration on 22 December 2017. A true "gold standard" in animal welfare will require the introduction of legislation which will increase sentencing across the board. (Paragraph 18)
5. *We recommend that the draft Bill be amended to increase sentences for animal welfare offences other than just those contained in the 2006 Animal Welfare Act. This revised Bill should include, but not be limited to, provisions to increase sentencing for those offences referred to in Defra's announcement of 22 December 2017 which drew heavily on our predecessor Committee's Report, Animal welfare in England: domestic pets.* (Paragraph 19)

### Clause 1 of the Bill: Recognition of animal sentience

6. As strong advocates of the need for a five-year maximum sentence for animal cruelty we worry that the vagueness and ambiguity of the purpose and meaning of Clause 1 of this draft Bill will impede and delay the introduction of this measure. (Paragraph 45)
7. *We recommend that the Government separate Clause 1 of this draft Bill entirely, and proceed with the Bill as the Animal Welfare (Sentencing) Bill, incorporating the changes we recommend in paragraph 19. Introducing legislation which increased sentencing for animal welfare offences across the board should do more for the rights and welfare of animals as sentient beings than the measure contained in Clause 1 of this draft Bill.* (Paragraph 46)
8. *We further recommend that another, separate piece of legislation on animal sentience be introduced. This new piece of legislation will allow the problematic concepts in the existing Clause 1 to be better defined, clarify the accountability mechanisms to be applied and should remedy some of the other existing inconsistencies in present statute - such as the status of octopus and cephalopods - that we have highlighted in our scrutiny. We would be delighted to undertake further pre-legislative scrutiny on this putative stand-alone “Animal Sentience” Bill.* (Paragraph 47)

## Formal minutes

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**Wednesday 31 January 2018**

Members present:

Neil Parish, in the Chair

Alan Brown	Mrs Sheryll Murray
Paul Flynn	David Simpson
John Grogan	Julian Sturdy
Sandy Martin	

Draft Report (*Pre-Legislative Scrutiny of the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 47 read and agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of *Standing Order No. 134*.

[Adjourned till Wednesday 7 February at 10.00 am

# Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

## Wednesday 17 January 2018

**Mike Radford**, Reader in Law, University of Aberdeen; **Sir Stephen Laws** KCB, QC, former First Parliamentary Counsel [Q1–67](#)

**Penny Hawkins**, Head of Research Animals, RSPCA Science Group; **Paula Boyden**, Veterinary Director, Dogs Trust; **Michael Webb**, Head of Policy and Public Affairs, Battersea Dogs and Cats Home [Q68–103](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

AWB numbers are generated by the evidence processing system and so may not be complete

- 1 Animal Defenders International ([AWB0033](#))
- 2 Animal Welfare Research Network and University of Bristol Animal Welfare and Behaviour Group ([AWB0037](#))
- 3 Battersea Dogs and Cats Home ([AWB0045](#))
- 4 Blue Cross ([AWB0034](#))
- 5 Born Free Foundation ([AWB0031](#))
- 6 British Association for Shooting and Conservation ([AWB0040](#))
- 7 British Veterinary Association ([AWB0036](#))
- 8 Cats Protection ([AWB0019](#))
- 9 Centre for Animal Welfare, University of Winchester ([AWB0038](#))
- 10 Compassion in World Farming ([AWB0013](#))
- 11 Compassion in World Farming ([AWB0049](#))
- 12 Conservative Animal Welfare Foundation ([AWB0010](#))
- 13 Countryside Alliance ([AWB0016](#))
- 14 Crustacean Compassion ([AWB0041](#))
- 15 Dogs Trust ([AWB0008](#))
- 16 Dr Steve Cooke ([AWB0009](#))
- 17 EASE (Exeter Anthrozoology as Symbiotic Ethics) working group, University of Exeter ([AWB0018](#))
- 18 Friends of the Earth ([AWB0047](#))
- 19 Friends of the Earth (England, Wales and Northern Ireland) ([AWB0030](#))
- 20 German Shepherd Helpline ([AWB0048](#))
- 21 Greg Fletcher ([AWB0001](#))
- 22 Hope for Horses ([AWB0046](#))
- 23 Humane Society International UK ([AWB0050](#))
- 24 International Fund for Animal Welfare (IFAW) ([AWB0017](#))
- 25 League Against Cruel Sports ([AWB0004](#))
- 26 Melinda Janki ([AWB0039](#))
- 27 Mike Radford ([AWB0014](#))
- 28 Miss Rebecca Clarke ([AWB0007](#))
- 29 Mrs Carolyn Shires ([AWB0029](#))
- 30 Mrs Linda Noble ([AWB0002](#))
- 31 Ms Pat Wallwork ([AWB0022](#))
- 32 NC Sweeney ([AWB0042](#))

- 33 PDSA ([AWB0026](#))
- 34 RSPCA ([AWB0006](#))
- 35 Speaking of Research ([AWB0023](#))
- 36 Stephen Laws ([AWB0003](#))
- 37 The British Horse Society ([AWB0028](#))
- 38 The Donkey Sanctuary ([AWB0027](#))
- 39 The Kennel Club ([AWB0005](#))
- 40 The Self Help Group for Farmers, Pet Owners and Others experiencing difficulties with the RSPCA (The SHG) ([AWB0021](#))
- 41 The Soil Association ([AWB0043](#))
- 42 UK Centre for Animal Law (A-Law) ([AWB0011](#))
- 43 Understanding Animal Research ([AWB0015](#))
- 44 World Animal Protection ([AWB0035](#))
- 45 World Horse Welfare ([AWB0032](#)).

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	2 Sisters and Standards in Poultry Processing	HC 490
First Special Report	Food waste in England: Government Response to the Committee's Eighth Report of Session 2016–17	HC 444
Second Special Report	Forestry in England: Seeing the wood for the trees: Government Response to the Committee's Fifth Report of Session 2016–17	HC 445
Third Special Report	Feeding the nation: labour constraints: Government Response to the Committee's Seventh Report of Session 2016–17	HC 446
Fourth Special Report	Post-legislative scrutiny: Flood and Water Management Act 2010: Government Response to the Committee's Sixth Report of Session 2016–17	HC 447
Fifth Special Report	2 Sisters and Standards in Poultry Processing: Government Response to the Committee's First Report	HC 772