



House of Commons

Environment, Food and Rural
Affairs Committee

**Pre-Legislative Scrutiny of
the draft Animal Welfare
(Sentencing and Recognition
of Sentience) Bill 2017:
Government Response to
the Committee's Second
Report**

**Seventh Special Report of
Session 2017–19**

*Ordered by the House of Commons
to be printed 18 April 2018*

The Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department of Environment, Food and Rural Affairs and associated public bodies.

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

Committee reports are published on the Committee's website at www.parliament.uk/efracom and in print by Order of the House.

Evidence relating to this report is published on the inquiry publications page of the [Committee's website](#).

Committee staff

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

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Seventh Special Report

The Environment, Food and Rural Affairs Committee published its Second Report of Session 2017–19, *Pre-Legislative Scrutiny of the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill 2017* [HC 709] on 1 February 2018. The Government response was received on 29 March 2018 and is appended to this report.

Government Response

The Government welcomes the EFRA Committee's report on the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill and the Committee's recognition that the concepts enshrined in the draft Bill are important and worthwhile. The Government thanks the Committee for completing pre-legislative scrutiny of the draft Bill so quickly.

Article 13 of the Treaty of the Functioning of the European Union sets a duty on EU Member States to have regard to the welfare needs of animals as sentient beings in formulating and developing EU policy in six areas. The Government is committed to legislate to ensure that animal sentience is reflected in UK law after we leave the EU.

Responses to the specific conclusions and recommendations of the Committee are provided below.

The Pre-legislative scrutiny process

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.

We note the Committee's concern over Clause 1. We are actively looking at drafting solutions which will directly address the Committee's concerns and improve the clarity of the draft Bill.

We also note the Committee's concerns regarding the absence of an impact assessment. According to the interim guidance for the Better Regulation Framework,¹ an IA is only required where a policy will either add or remove significant regulatory burdens on business. The Government's view is that Clause 1 of the draft Bill generates direct impacts only on Government departments. Clause 1 should not have a direct impact upon business. Clause 1 should also have no impacts on criminal justice system costs or on local authority burdens. Nevertheless to aid consideration of this measure we have produced

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/683119/better-regulation-framework-interim-guidance-2018.pdf

a regulatory triage assessment on the sentencing provisions which describes the expected impacts. This draft assessment is attached, and a final version will be published when the Bill is introduced.

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.

We do not expect a large number of cases to come before the Crown Court. At present, relatively few sentences are at the top of the 6 month limit (one person in 2014, three people in 2015, and three people in 2016). In total, we estimate that around 25 cases which previously would have been heard in the Magistrates' Court would now be heard in the Crown Court. We consider that only a small number of animals would need to be held in kennels for an extended period.

An assessment of the impacts has been undertaken for Clause 2, which concluded that the impact of the sentencing provisions on the criminal justice system would be around £450k per year over the first three years.

Clause 2 of the Bill: sentencing provisions

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".

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.

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.

The Government proposed to increase maximum penalties for (i) unnecessary suffering to an animal; (ii) mutilation; (iii) docking of dogs' tails; (iv) administration of poisons; and (v) animal fights because these are the offences which can cause the most serious

pain or distress. There are other animal welfare offences such as that under section 9 of the Animal Welfare Act 2006 of failing to provide for the welfare needs of an animal (also known as neglect), which are not deemed as serious. Serious cases of neglect could lead to an offence of causing unnecessary suffering to an animal, which will attract the new maximum penalty.

The Government considers that it would be disproportionate to propose a maximum 5 year sentence for these less serious offences particularly as current sentencing practice does not suggest that the current maximum prison sentence of 6 months' imprisonment is too low.

Government has laid draft regulations in relation to dog breeding, pet sales and other activities involving animals licensed by local authorities which were trailed in the announcement on 22 December 2017 and which underline the importance Government regards animal welfare. Anyone inflicting unnecessary suffering on an animal in a licensed establishment or any other place – including through activities described in the 22 December announcement – risks prosecution under section 4 of the Animal Welfare Act 2006, and if convicted would be liable to the proposed increased maximum penalty of five years' imprisonment.

The scope of the draft Bill

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.

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.

We note the Committee's recommendation and remain committed to delivering both the sentencing and sentence measures as soon as possible.

Clause 1: animal sentience

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.

The Government is committed to legislate to ensure that animal sentience is reflected in UK law after we leave the EU.

Defra received over 9,000 direct responses (and 70,000 campaign responses) to the public consultation covering all aspects of the draft Bill, which we are analysing carefully. We

also received scientific evidence covering the status of organisms such as octopus and cephalopods. Separately we have asked the Farm Animal Welfare Committee (FAWC) to provide advice on the definitions and key concepts of animal welfare.

We note the Committee's concern over Clause 1. We are actively looking at drafting solutions which will directly address the Committee's concerns and improve the clarity of the draft Bill. We are also carefully considering EFRA's concerns over accountability mechanisms for Clause 1.

We will set out how we intend to take forward the measures contained in this draft bill in due course.