

BVA response to EFRA Committee inquiry: Animal Welfare (Sentience) Bill

Who we are

1. The British Veterinary Association (BVA) is the national representative body for the veterinary profession in the United Kingdom. With over 18,000 members, our primary aim is to represent, support and champion the interests of the United Kingdom's veterinary profession. We, therefore, take a keen interest in all issues affecting the profession, including animal health and welfare, public health, regulatory issues and employment matters.
2. We welcome the opportunity to respond to this inquiry into the Animal Welfare (Sentience) Bill.

Why legislating for animal sentience matters

3. Recognising animals as sentient beings provides the basis for our moral concern for animals. Animals are living beings with the capacity to have feelings, including pain and pleasure, so they should be legally protected.
4. This is an important issue for the veterinary profession. BVA led a long campaign for the principle of animal sentience to be embedded in law, which saw over 1,200 veterinary professionals signing an open letter of support.
5. The primacy of animal welfare for veterinary surgeons is conveyed in the declaration that each makes upon admission to the Royal College of Veterinary Surgeons.¹ Furthermore, as a One Health minded profession, vets understand that the wellbeing of animals is interconnected with the wellbeing of human beings and the environment.
6. Enacting legislation that recognises that animals are sentient beings is important. This is because the determination that certain animals hold the capacity to have feelings, including pain and pleasure, means that they must be brought “directly under the purview of the law”² and afforded protection.
7. As a member of the European Union (EU), the recognition of animals as sentient beings had been recognised in UK law through Article 13 of the Treaty on the Functioning of the European Union (TFEU), which reads as follows:

“In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.”
8. The UK has left the EU. Throughout this process, BVA has called for existing animal welfare standards to be maintained at the same level, or a level equivalent to current EU standards, while seizing the opportunity to improve standards in accordance with evidence. This call is underpinned and supported by the legal recognition, and full regard, of sentience in the development of all relevant government policy in the UK.
9. The protection of animal welfare is an international concern, and enshrining animal sentience in legislation is an international marker of the significance of animal welfare. The Animal Protection Index uses recognition of sentience as the first indicator in its methodology to rank countries according to their animal

¹ <https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/>

² Charlotte E. Blattner, The Recognition of Animal Sentience by the Law
<https://www.jstor.org/stable/10.5406/janimalethics.9.2.0121?seq=1>

welfare legislation and policy. Legislation that recognises animal sentience would underpin and extend animal welfare and the UK's reputation for animal welfare concern as we forge new trading relationships.

10. Therefore, we welcome the introduction of the Animal Welfare (Sentience) Bill to address the current deficiency in the statute book.

1. Will the Animal Welfare (Sentience) Bill ensure that animal sentience is properly taken into account in both new and existing Government policy in England?

11. BVA supports placing a duty to consider animal welfare on public authorities when formulating and implementing policies. We welcome that the scope of this duty is not limited to those areas listed in Article 13, i.e., agriculture, fisheries, transport, internal market, research and technological development and space policies. Animal welfare can be impacted directly and indirectly by all policy areas.
12. As currently drafted, the Animal Sentience Commission will consider any "adverse effect on the welfare of animals". Framing the question at the heart of the Commission's work around adverse effects can imply a minimum and does not promote going beyond basic needs to include positive aspects of wellbeing. To make a meaningful contribution to animal welfare, the Commission's duty should not be limited to mitigating negative consequences. Instead, it should also place a positive duty to help shape evidence-based improvements in animal welfare outcomes across all areas of government policy. We would wish to see this rectified within the legislation, and at the very least clearly articulated within the terms of reference of the Commission itself.
13. This legislation would place a duty on government to have or have had "all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings." Whilst the focus of the legislation itself is on the role of the Commission to report on how the government has fulfilled this duty, it is also important to consider how government will fulfil it in practice. In particular, consideration is needed on how to effectively incorporate the duty across all government departments, including those responsible for policy areas that would be less obviously associated with animals and their welfare.
14. We believe that complying with the duty should not place an overly bureaucratic process on government. To ensure the widest compliance, it should be the goal to ensure that meeting the duty is as simple as possible, in line with the EAST (Easy, Attractive, Social and Timely) framework developed by the Behavioural Insights Team.³
15. The introduction of a standard Animal Welfare Impact Assessment, that could be applied consistently to policies across government, would be welcome. This will allow for proportionate assessment of both animal welfare and the public interest, leading to appropriate policy development. Consideration should be given to existing approaches that have been developed including the Animal Welfare Assessment Grid which has a software app under development.
16. A standard Animal Welfare Impact Assessment would support the identification of negative consequences of policy on animal welfare at an early stage, which will allow appropriate mitigation before harm is incurred. Identifying positive opportunities at an early stage will also allow these to be maximised. Therefore, we advise including this assessment at an early stage of the policy development process, which will lead to more meaningful considerations and improved outcomes.
17. We would ask that efforts are made across government to reflect this duty within guidance to civil servants and public authorities, including amendments to *The Green Book: appraisal and evaluation in central government*, issued by Her Majesty's Treasury.
18. There will need to be adequate expertise embedded within government. We would suggest Defra take the lead by providing a central resource for all government departments. This would be similar to how Defra

³ Behavioural Insights Team, EAST: Four simple ways to apply behavioural insights. 2012.

supports rural proofing by working with policymakers across government to assess rural impacts and mitigate them. Veterinary expertise will be an essential element to enabling this.

2. Are there sufficient safeguards to ensure that the proposed Animal Sentience Committee will be (a) independent (b) have the necessary expertise and (c) have the necessary powers to be effective?

19. There is very little detail within the text of the legislation to provide any assessment of the Commission's independence, expertise, or powers. It would have been helpful for the legislation to have been accompanied by a substantial policy document that provided context to the legal text. This would have helped stakeholders to understand the government's objectives for the Commission and therefore to examine if those objectives would be met by the legislation.

Independence

20. To support the Commission's independence, it would be welcome to know if it will have its own budget and dedicated secretariat. The Commission's role will be to "make sure government ministers are held accountable to Parliament."⁴ Therefore, a dedicated secretariat will be important, as it would be difficult for a staff of civil servants who are working under the authority of a Minister to support a Commission which is tasked with determining whether that Minister has complied with a legal duty or not. We would therefore ask that the Government provide greater detail on the staffing and resourcing of the Commission.

Expertise

21. The Commission will be tasked with a wide remit- considering the impact of past and proposed government policy, across all policy areas, and inclusive of domestic pet animals, farm animals, wild animals, and a wide variety of species.

22. Having a commission membership that can have the requisite expertise will be a challenge. Therefore, we would recommend that government carefully considers the composition of the Commission to ensure it includes appropriate veterinary and animal welfare expertise.

23. It is foreseeable, given the broad remit of the Commission, that occasionally vital expertise may be absent. Therefore, it will be important to ensure the Commission is able to react, when necessary, to engage experts with knowledge of areas of public policy or relevant species. The option of temporary co-option onto the Committee to achieve this should be available.

Powers

24. The Commission itself has limited powers in statute. Whether these powers are sufficient for the objectives the Government has in mind is difficult to determine, because as noted above, no policy paper setting out the objectives of the Commission has been published.

25. However, beyond the powers in statute, it will be important for the Commission to utilise soft power to build relationships across government and influence the embedding of animal sentience in policy development across all government departments. In part, this will come from the standing of the membership of the Commission, in particular the Chair. Therefore, consideration should be given to the wider skills needed of Commissioners beyond subject area knowledge.

26. The Commission will be able to instigate a report when government policy "is being or has been formulated or implemented." It would be beneficial if all government departments were compelled to notify the Commission on their plans at the earliest possible stage. This would mean the Commission could advise whilst policy was being formulated and exert influence more effectively at an early stage.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985332/Action_Plan_for_Animal_Welfare.pdf

3. Are the proposed requirements on the Government to respond to an Animal Sentience Committee's report sufficient?

27. The relevant Secretary of State must lay a response to the report before Parliament within three months of the Committee's report being published. It is appropriate that the government is ultimately responsible to Parliament for the delivery of the duty to pay all due regard to the welfare of animals as sentient beings.
28. It will be important to elaborate on how Parliament engages with the Commission, especially through the EFRA Committee. Whilst the EFRA Committee will usually be the most relevant Committee, this will not always be the case. Therefore, we would wish to see consideration to how engagement with the Commission will progress as it develops and delivers reports responding to policy developments by departments mirrored by each Select Committee.
29. We note that a response will be expected whether the findings of the Commission are positive or negative. Hopefully, this approach, where a report is a neutral act and not necessarily a repudiation, will encourage government departments to engage constructively with the Commission and its findings.
30. However, as noted above, the best approach would be early engagement with the Commission by government departments as policy is being developed. This may mean the best examples of the Commission's work may not lead to a report being drafted at all. A useful addition to understanding the effectiveness of the Commission's interactions with government would be for the Commission to provide an annual report to Parliament highlighting how it has engaged across government.

4. How does the proposed Animal Sentience Committee compare to similar bodies, such as the Scottish Animal Welfare Commission?

31. The role of the Scottish Animal Welfare Commission (SAWC) is to provide advice to the Scottish Government on animal welfare, including, specifically, consideration of how Scottish Government policies take account of animal sentience, the wider welfare needs of animals and the type of improvements that could be made. The role of the SAWC is therefore different to that of the Commission, which is more orientated to holding Government to account to Parliament. Whilst the activating notion at the heart of both bodies is the concept of sentience, in effect the role of the SAWC is more akin to that of the Animal Welfare Committee (AWC).
32. The SAWC was tasked with determining its own definition for sentience and which animals met this definition. We welcome that SAWC has determined that cephalopods (e.g., octopus and squid) and decapod crustaceans (e.g., crab and lobster) are sentient.
33. It is important to consider how the Commission will interact and collaborate with institutions with similar functions such as the AWC, the Trade and Agriculture Commission (TAC) and the Animal Health and Welfare Board for England (AHWBE), as well as bodies in the devolved administrations.

5. Is the Government correct to limit the scope of the Bill to vertebrate animals?

34. BVA supports the fact that the definition of animal within the Bill includes wild animals, animals used in laboratories, sport and recreation animals, farm animals, equidae, companion animals, and animals kept as part of zoological collections.
35. S5(1) of the Bill states that for the purposes of "this Act "animal" means any vertebrate other than homo sapiens." However, this is insufficient as it fails to recognise and protect the sentience of cephalopods and decapods. Sentience legislation should incorporate such recognition and protection.
36. The Global Animal Law Project referred to above, states that scientific research confirms that all vertebrates (fish, amphibians, reptiles, birds and mammals) are sentient animals and indicates sentience in some invertebrates. Evidence indicates that cephalopods (e.g. octopus, squid) and decapods (e.g.

lobsters, crabs) are sentient, and are capable of experiencing pain and distress^{5,6,7,8,9,10,11}. Already the Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012 (administered by the Home Office),¹² includes “any living cephalopod” within the category of protected animals.

37. We are aware that an independent report, a Review of the Evidence for Sentience in Decapod Crustaceans and Cephalopod Molluscs,¹³ was commissioned by government and conducted by LSE Enterprise last year, accompanied by a Seafish report on the welfare risks to such animals in the food chain. No timeline has been released, but we understand that the results will be released imminently. If found to be favourable to decapod and cephalopod sentience, which would be in line with other available evidence, results must be incorporated into animal welfare legislation, including this Bill through the mechanism in s5(2).
38. We support the inclusion of s5(2), which provides a means for the Defra Secretary of State to, by regulations, amend the scope of the legislation so as to bring invertebrates within the meaning of “animal”. We would recommend a named individual within government who would be tasked with regularly engaging with research and advising the Secretary of State when the evidence suggests sentience exists. This would provide an appropriate route for species such as bees where emerging evidence suggests a complex central nervous system and highly sophisticated units within bee colonies with an abundance of homeostatic mechanisms.
39. The introduction of animal sentience legislation offers an opportunity to better align the different definitions of ‘animal’ found across different animal welfare legislation and ensure protections apply to all animals recognised as sentient. For example, there is inconsistency about when legislation applies to embryonic or foetal forms. The Animal Welfare Act 2006 does not apply “to an animal while it is in its foetal or embryonic form”,¹⁴ whereas, the Animals (Scientific Procedures) Act 1986 protects vertebrates when “two-thirds of the gestation or incubation period for the relevant species has elapsed”.¹⁵ New animal sentience legislation should be consistent with the evidence-based higher standard of protection for pre-natal forms afforded by the Animals (Scientific Procedures) Act (1986).

⁵ European Food Safety Authority, 2005. EFSA “Opinion on the “Aspects of the biology and welfare of animals used for experimental and other scientific purposes” Available at:

https://ec.europa.eu/environment/chemicals/lab_animals/pdf/efsa_opinion.pdf

⁶ Barr, S., Laming, P. R., Dick, J. T. A., & Elwood, R. W., 2008. Nociception or pain in a decapod crustacean? *Animal Behaviour*, 75(3), 745–751.

⁷ Elwood, R., 2012. Evidence for pain in decapod crustaceans. *Animal Welfare*, 21(1), 23–27.

⁸ Elwood, R. W., & Appel, M., 2009. Pain experience in hermit crabs? *Animal Behaviour*, 77(5), 1243–12

⁹ Magee, B., & Elwood, R. W., 2013. Shock avoidance by discrimination learning in the shore crab (*Carcinus maenas*) is consistent with a key criterion for pain. *Journal of Experimental Biology*, 216 (3), 353–358.

¹⁰ Sneddon, L. U., 2004. Evolution of nociception in vertebrates: Comparative analysis of lower vertebrates. *Brain Research Reviews*, 46 (2), 123–130

¹¹ Sneddon, L. U., 2015. Pain in aquatic animals. *The Journal of experimental biology*, 218 (7), 967–976.

¹² The Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012,

<https://www.legislation.gov.uk/ukdsi/2012/9780111530313>

¹³ <https://www.contractsfinder.service.gov.uk/Notice/e2877866-37a8-44db-b2e5-692c9e27b6fd>

¹⁴ Animal Welfare Act 2006 s1 (2) <https://www.legislation.gov.uk/ukpga/2006/45/section/1>

¹⁵ Animals (Scientific Procedures) Act 1986 s1 (2) as amended by The Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012 <https://www.legislation.gov.uk/ukdsi/2012/3039/regulation/3/made>