EFRA Select Committee Inquiry: Animal Welfare (Sentencing and Recognition of Sentience) Draft 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 17,000 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.

Introduction

The veterinary profession welcomes the pre-legislative scrutiny of the Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill by the Environment, Food and Rural Affairs Committee. Given the time sensitive nature of the legislation, we believe the Committee will play an essential role in ensuring the draft legislation meets its proposed purpose.

The veterinary profession is an animal welfare-focused profession, providing strong and visible leadership on animal welfare in society.¹ Consequently, 1,194 individual veterinary surgeons, veterinary nurses and veterinary students added their names to an open letter calling on the UK government to ensure there is a duty on the state to have due regard for animal welfare in the development and implementation of policy, as Article 13 of the Treaty on the Functioning of the European Union (TFEU) sets out.²

BVA has argued existing animal welfare standards must at least 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. Therefore, we welcome the

¹ British Veterinary Association, Vets speaking up for animal welfare: BVA animal welfare strategy 2016
introduction of the Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill and the commitment to recognise animals as sentient beings in statute. It will be essential that the final statute has effect on the date the UK leaves the EU to ensure continuity in animal welfare standards.

Animal welfare concern arises as a result of welfare harms sustained by sentient animals. It is essential that government, within the policy making process, identifies and assesses these harms to determine the extent to which animal welfare is compromised. Identifying negative consequences of policy on animal welfare at an early stage will allow appropriate mitigation to be applied before harm is experienced.

This draft legislation should not be limited to mitigating negative consequences, but also place a positive duty to help shape improvements in animal welfare outcomes across all areas of government policy.

BVA believes the duty that arises from this draft legislation should be meaningful, with animal welfare given due weight within the policy-making process. BVA do not wish to see an overly bureaucratic process or one which creates a burden on government.

Against this background, the present submission focuses predominantly on the technical issues to which, in its present form, the Bill gives rise and thereby merit the Committee’s consideration.

1. Defining ‘sentience’

The draft Bill does not explicitly define the term ‘sentience’, and in the absence of a legal definition this term may be given its ordinary meaning. The Oxford English Dictionary defines sentient as ‘able to perceive or feel things’. This would include feeling both pain and pleasure. Do you consider that the term ‘sentience’ should be defined explicitly? If so what definition should we use?

There is growing scientific understanding of animal sentience, and of how to objectively assess animal interests, due to the growth of animal welfare science as a scientific discipline and to the growing number of universities, including veterinary schools, offering animal welfare courses.

We propose the definition of sentience developed by the Global Animal Law Project:
‘Sentience shall be understood to mean the capacity to have feelings, including pain and pleasure, and implies a level of conscious awareness.’

Including a definition of sentience will be necessary to avoid confusion, as several terms and concepts are used interchangeably or with mixed meanings— for example, sentience, cognition and consciousness. Cognition relates to thoughts and information processing. Consciousness can be tiered, ranging from the basic capacity to feel through to higher order consciousness (e.g. self-reflection and ‘thinking about thinking’).

2. Defining ‘animal’:

The draft Bill does not explicitly define the term ‘animal’, and in the absence of a legal definition this term may be given its ordinary meaning. The Oxford English Dictionary defines animal as ‘an organism endowed with life, sensation and voluntary motion.’ Do you consider that the term ‘animal’ should be defined explicitly? If so what definition should we use?

Over the last 50 years novel scientific methods have been employed to help determine how animals perceive the world, and to better understand their needs, preferences, pleasures and pains. This new knowledge has shown that the abilities and functioning of non-human animals are more complex than had previously been assumed. It is therefore sensible to use a definition of animal within this legislation that is based on existing evidence and flexible to allow changes reflecting new and emerging research.

We recommend that New Zealand’s legislation provides an appropriate model for how animals should be included within this legislation. The New Zealand Animal Welfare Act 1999, as originally enacted, defines ‘animal’ as:

(a) any live member of the animal kingdom that is—

(i) a mammal; or

(ii) a bird; or

(iii) a reptile; or

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(iv) an amphibian; or
(v) a fish (bony or cartilaginous); or
(vi) any octopus, squid, crab, lobster, or crayfish (including freshwater crayfish); or
(vii) any other member of the animal kingdom which is declared from time to time by the Governor-General, by Order in Council, to be an animal for the purposes of this Act.

The above definition remains in force but, in 2015, the long title of the Act was amended to include an express statement that the basis of the legislation was, in part, ‘to recognise that animals are sentient’.

This model would recognise the growing consensus, based on evidence, that species of octopi and crustaceans are sentient. Already the Animals (Scientific Procedures) Act 1986 (administered by the Home Office), 5 has added Octopus vulgaris to the category of protected animals. This model will also future-proof the final legislation allowing animals to be added to the list of sentient beings as evidence emerges.

As with the New Zealand legislation, we would recommend a named individual within Government who would be tasked with engaging with research and declaring 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 mechanism.

We also support the inclusive nature of this definition where: wild animals, animals used in laboratories, farm animals and companion animals are all included equally.

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3. Defining ‘welfare needs of animals’:

The draft Bill does not explicitly define the ‘welfare needs of animals’. Section 9(2) of the Animal Welfare Act 2006 includes a list of needs, notably: a suitable environment; a suitable diet; the ability to exhibit normal behaviour patterns; the need to be housed with, or apart from, other animals; the need to be protected from pain, suffering, injury and disease. Do you consider that the term ‘welfare needs of animals’ should be defined explicitly in the clause? If so what definition should be used, and should the list of needs in the Animal Welfare Act 2006 be changed if at all?

BVA believes that animal welfare relates to both the physical health and mental wellbeing of the animal, as encapsulated by the five welfare needs:

- the need for a suitable environment
- the need for a suitable diet
- the need to be able to exhibit normal behaviour patterns
- the need to be housed with, or apart from, other animals
- the need to be protected from pain, suffering, injury and disease

We therefore support the use of this definition within the scope of this new legislation. This would have the added benefit of being consistent with the approach taken within the animal welfare acts of the UK.\(^6\)

Thought should be given to how the responsibility to have regard for the five welfare needs will be different for wild and domesticated animals. Clearly, it will not be appropriate for humans to, at all times, protect wild animals from experiencing ‘pain, suffering, injury and disease’, but this does not detract from the fact that this is a ‘need’ for good welfare and the responsibilities in the formulation and implementation of policy not to cause wild animals avoidable harm.

We note, however, that framing care requirements as ‘needs’ can imply a minimum, and doesn’t promote going beyond basic needs to include positive aspects of wellbeing. Additional wording could be included to clarify that while meeting an animal’s needs gives a baseline, additional opportunities for positive welfare should also be given whenever possible.

4. Policy scope:

The draft Bill would apply to all policy areas. Do you agree with this?

BVA supports placing the duty to consider animal welfare on all Ministers of the Crown across all policy areas. Animal welfare can be impacted directly and indirectly by all policy areas, not only those explicitly linked to animals.

There will need to be adequate expertise embedded within government. We would suggest Defra take a lead by providing a central resource for all government departments. This would be similar to the way Defra supports rural proofing by working with policy-makers across government to assess rural impacts and to mitigate them. Veterinary expertise will be an essential element to enabling this. Therefore, we would encourage further consultation with the veterinary profession.

We would ask that efforts are made across government to quickly reflect this duty within guidance to civil servants, including amendments to The Green Book: appraisal and evaluation in central government issued by Her Majesty’s Treasury.  

We would ask that the Committee consider the scope of the proposed legislation. Local authorities and arm’s-length bodies such as the Animal and Plant Health Agency formulate and implement policy that will have direct and indirect impacts on animal welfare. Extending the duty beyond Ministers of the Crown to all public authorities could potentially fulfil the aims of the legislation.

5. Specifying the level of regard:

The draft Bill adopts the term ‘should have regard’. Do you agree with this?

We understand that having ‘regard’ would entail taking a proportionate approach in determining the relevance of animal welfare to policy. The Minister of the Crown will be required by the statute to take the welfare of animals into account and give them the required weight when formulating and implementing policy. BVA believes this to

be an appropriate level of consideration, and a suitable reflection of the duty that is set out in Article 13 of the TFEU.

We note and support the use of ‘must’ within section 1 (1) of the draft legislation. This is a stronger duty than ‘should’ as stated in the above question.

All policies promote the public interest. It is therefore appropriate consideration of animal welfare to be considered alongside the public interest. We believe this to be an improvement on Article 13 of the TFEU where animal welfare is balanced against ‘the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.’

6. Overall approach:

The draft Bill presents one possible formulation for delivering stated policy objectives. Views would be welcome on what you consider may be the consequences of this new duty and also on whether a different formulation or approach might achieve the policy objectives. Views would also be welcome on how the approaches adopted in other countries might apply here.

BVA supports the actions taken by the government to embed the sentience of animals in statute and ensure animal welfare will be considered within the formulation and implementation of policy. This legislation should act to meet the aims of safeguarding animal welfare and the United Kingdoms’ reputation for animal welfare as we leave the European Union. It will also build upon the world leading animal welfare legislation already present across the UK.

We would ask for clarification from Defra on how this legislation will be given effect and implemented across government. The introduction of a standard Animal Welfare Impact Assessment to be applied consistently to proposed new policies across Government would be welcome. This could allow for a proportionate assessment of animal welfare and the public interest leading to sensible outcomes. We advise embedding this assessment at an early stage of the policy development process which will lead to more meaningful considerations and improved outcomes.
7. Sentence length:

The draft Bill proposes to increase the maximum penalty for the specified animal welfare offences from six months to five years’ imprisonment. Do you agree with the new maximum sentence?

As the representative body for veterinary surgeons, BVA does not have expertise in sentencing policy. However, in consultation with our members the responses indicate general support for the proposals to increase the maximum penalty for the specified animal welfare offences from six months to five years’ imprisonment.