

In response to the draft **Animal Welfare (Sentencing and Recognition of Sentience) Bill** laid before parliament on 12 December 2017 (ref: ISBN 978-1-5286-0149-8, CCS1217573596, Cm 9554)

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## 1. Executive summary of recommendations

- The removal of s.1 (2) (concerning the public interest) due to both its superfluity and its direct undermining of the purpose of the Bill.
- An amendment of s.1 (1) to include mention of cases of conflict with the public interest and a precautionary principle.
- The creation of *The Sentient Animal Tribunal Panel*, to review and provide ruling for cases where Ministers believe that matters affecting the public interest should have priority over the interests of a sentient animal.
- Expanding and making more specific the definition of 'sentience' in line with recent scholarship as follows: "the ability to perceive or feel things, including both positive and negative states, for example pleasure and pain".
- A proposed definition for the term 'animal'.
- Expanding the definition of 'animal welfare' in line with recent scholarship and examples of good practice as follows: "a positive state of physical and mental wellbeing when an individual is fit, healthy, free from suffering and able to experience and pursue pleasurable activities".

- Expanding the definition of 'welfare needs of animals' as follows: "a suitable environment; a suitable diet; the ability to exhibit a full range of 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; the need to be provided with regular opportunities to experience positive or pleasurable states".
- An amendment to the proposed sentencing to reflect a recognition of the gravity of cases in which high culpability can be established.
- The creation of a register of offenders, to facilitate monitoring and enforcement.

## 2. Introduction (organisation and reason for submitting evidence)

The EASE working group brings together academics and postgraduate students from within the School of Social Sciences and International Studies (SSIS) at the University of Exeter, whose research and teaching interests explore and address human interactions with other living things with an emphasis on the ethical dimensions of those interactions. Collectively, the group has authored over 50 publications in the form of peer-reviewed journal articles, books and chapters, and provides postgraduate teaching and research supervision in the specialised sub-discipline of Anthrozoology.

Due to this specialism, EASE is ideally (and uniquely) placed to advise the select committee addressing this bill. One of the primary goals of the EASE working group is to assist organisations and governing bodies to improve their animal welfare regulations and legislation. With reference to ethical questions arising from the fact of animal sentience, EASE seeks to offer pertinent evidence and argument.

We see the revision of the bill as an opportunity to update it and bring it into line with relevant recent developments in academic thought on ethics in relation to human-animal interactions.

## 3. Our views on the Bill in general

### 3.1. Recognition of ethical continuity

First and foremost this Bill is extremely welcome. We commend all ministers who have played a role in its formulation and particularly the Secretary of State for Environment, Food and Rural Affairs The Rt Hon Michael Gove MP. Whilst the recognition of animal sentience is certainly implied by the concept of animal welfare (and therefore part of the Animal Welfare Act 2006) an explicit recognition of sentience of the kind offered in this Bill places a clear and appreciable emphasis on the ethical weight of non-human animals' ability to suffer pain (and enjoy pleasure). This recognition, whilst it neither necessitates nor implies an ethical parity with humans, nevertheless articulates an ethical continuity which was otherwise lacking. As the Secretary of State for Environment, Food and Rural Affairs has suggested, this sentience and ethical continuity is not and cannot be doubted by any informed person. There is now a consensus amongst the scientific community concerning the neurological and psychological continuity of humans with other animals (see, for example, Broom 2014 and Webster 2006) and amongst the

philosophical community regarding the ethical continuity which accompanies these similar minds (see, for example, Hurn 2012).

Our concern here is not, then, primarily to establish that non-human animals are sentient. Our concern is, rather, with how best we can express this recognition and its ethical corollaries in legislation.

### 3.2. Scope of the Bill

We are pleased that the scope of The Bill applies to ALL activities of government, not just those specified in Article 13, Title II of the Lisbon Treaty (agriculture, fisheries, transport, internal market, research and technological development and space policies).

In addition, we think that it is positive development that (unlike Article 13) religious, cultural and regional heritage exemptions have not been specified in The Bill. We would not like to see these given a higher priority than concerns of animal welfare and sentience.

## 4. Our views on potential conflicts between (i) having regard for the welfare needs of animals and (ii) matters affecting public interest

### 4.1. Conflict between (i) and (ii)

We believe that s.1 (2): “In discharging that duty Minister of the Crown must also have regard to matters affecting the public interest” creates the potential for public interest to be judged to override concerns of animal welfare and sentience. In addition, we believe that s.1 (2) is superfluous, as the duty of a Minister of the Crown should always have regard to matters affecting the public interest.

We therefore recommend to the select committee that s.1 (2) be removed from the bill.

### 4.2 Recommended mitigation procedures to resolve potential conflict

In the event that the committee finds it necessary to include mention of the public interest in relation to potential conflict with the interests of animal sentience then we recommend the following:

1. That it be specified that Ministers of the Crown be obliged to submit evidence as to why public interest overrides the welfare needs of a sentient animal for assessment by an independent Sentient Animal Tribunal Panel.
2. That the Sentient Animal Tribunal Panel follows the 'precautionary principle' specified below in note 2:1.

In view of the above, we recommend that s.1(1) be reworded as something similar to the following:

"(1) Ministers of the Crown must have regard to the welfare needs of animals as sentient beings in formulating and implementing government policy. Where implementing government policy would conflict with the welfare of a sentient animal, Ministers of the Crown will generally presume that priority is given to the animal's needs, as defined in The Animal Welfare Act 2006. In a specific case where Ministers believe that matters affecting the public interest should have priority over the interests of a sentient animal, evidence must be submitted to The Sentient Animal Tribunal Panel for a ruling. The burden of proof shall lie with the Ministers of the Crown to demonstrate why matters of public interest

should outweigh the presumed priority given to animal sentience in the implementation of the specific government policy”.

#### 4.3 The Sentient Animal Tribunal Panel

The Sentient Animal Tribunal Panel shall be constituted as:

- (i) a senior legal practitioner with experience in animal ethics law and
- (ii) an internationally recognised academic / researcher in the philosophy of the biological sciences (with appropriate expertise in animal sentience) and
- (iii) an internationally recognised academic / researcher in animal biology and cognition

Note 2:1. The panel will operate the 'precautionary principle' that: "where there are threats of serious, negative welfare outcomes for a sentient animal, exceptional circumstances and a heavy burden of proof will be required for a claim of public interest to override the animal's interests". In addition, where public interest is deemed to override the animal's interests, ministers should plan mitigation measures to reduce the impacts on the animal.

The above recommendations reflect that:

- (i) animals have an ethical significance that is beyond the potential for their economic exploitation. For an example of how this principle is expressed in legislation in other countries, the Norwegian Animal Welfare Act (2010), section 3 states that, "animals have an intrinsic value which is irrespective of the usable value they may have for man". Note: we would recommend the use of gender-neutral language in the Bill.
- (ii) in line with other UK government policy (environmental, climate change, avoiding over-fishing etc.) there is precedence for applying a 'precautionary principle' approach, namely that the presumption should be to avoid harm to sentient animals. One of the primary foundations of the precautionary principle has its origins in The United Nations Conference on Environment and Development (UNCED) ('The Rio Conference', or 'Earth Summit') (UNESCO 1992). It has been applied to various aspects of UK policy and the UK Health and Safety Executive describe it as follows: "Although the precautionary principle was originally framed in the context of preventing environmental harm, it is now widely accepted as applying broadly where there is threat of harm to human, animal or plant health, as well as in situations where there is a threat of environmental damage" (UK Health and Safety Executive 2017). See Birch (2017) for a version of the precautionary principle designed specifically to deal with animal sentience, and for an accompanying framework for its practical implementation.

## 5. Our views on the definition of 'sentience'

### 5.1. Limitation of current definition of 'sentience'

We consider that the term sentience should be defined explicitly. We suggest that the definition of sentience be adjusted to explicitly acknowledge the ability to perceive or feel both positive and negative states, including pleasure and pain. Failure to explicitly mention pain and pleasure may result in persons responsible for ensuring animal welfare focusing exclusively on alleviating or limiting pain or suffering.

However, the ability to pursue and experience pleasure is as relevant to ensuring good welfare as is the ability to avoid pain or suffering (see, for example, Balcombe 2009).

## 5.2. Recommended amendment

We therefore propose the following definition of sentience be used in the Bill: "the ability to perceive or feel things, including both positive and negative states, for example pleasure and pain."

## 6. Our views on the definition of 'animal'

### 6.1. Limitation of current definition of 'animal'

We consider that the term 'animal' should be clearly defined, as the Oxford English Dictionary definition is insufficient. It excludes animals that don't possess locomotion and the recognition that there may always be a few exceptions to any strict list of defining characteristics.

### 6.2 Recommended amendment

Our proposed definition is as follows: "A multicellular organism with cells possessing a clearly defined nucleus and being a member of the biological kingdom Animalia. With few exceptions an animal is able to: (i) move, (ii) consume organic material, (iii) reproduce sexually and (iv) have an early embryonic stage of development called a blastula (a hollow sphere of cells surrounding an inner fluid-filled cavity)".

## 7. Our views on the definition of 'welfare needs of animals'

We consider that the term 'welfare needs of animals' should indeed be defined. We do not think that the plain English definition of 'animal welfare' is sufficient, and neither is the list of needs set out in s.9 (2) of the Animal Welfare Act 2006 (Act). Consequently, we suggest that the definition of 'animal welfare' and the definition/list of the 'welfare needs of animals' be revised as follows:

### 7.1. Animal Welfare:

Given the above acknowledgement that sentience is "the ability to perceive or feel both positive and negative states", the existing emphasis on preventing suffering both in the Bill and in the 2006 Act fails to make provision for promoting positive and pleasurable states in order for the welfare needs of sentient beings to be met.

Article 2 of the proposed UN Universal Declaration on Animal Welfare defines 'animal welfare' as a "positive state of wellbeing" when an "individual is fit, healthy, [and] free from suffering".

Our revised suggestion for a definition of 'animal welfare' acknowledges the definition of sentience as follows: "a positive state of physical and mental wellbeing when an individual is fit, healthy, free from suffering and able to experience and pursue pleasurable activities."

### 7.2. Welfare Needs of Animals:

Our revised definition of the 'welfare needs of animals' would incorporate factors which would enable sentient beings to flourish. Therefore, we propose the following revised list of needs:

"a suitable environment; a suitable diet; the ability to exhibit a full range of normal behaviour patterns (see note (b):1); the need to be housed with, or apart from, other animals; the need to be protected from pain, suffering, injury and disease; the need to be provided with regular opportunities to experience positive or pleasurable states."

Note (b):1: behaviours from an animal's full repertoire will be species-specific, but examples of these might include: rooting, grazing, nesting, grooming, suckling their own young, playing etc.

## 8. Our views on sentencing

### 8.1. Maximum sentencing

We welcome the proposed increase in maximum sentence as a movement in the right direction. We would, however, encourage the committee to increase the maximum sentence to ten years or more to make provision for cases where a particularly high degree of harm and/or level of culpability can be established, including cases involving deliberate, calculating and sadistic behaviour or large-scale suffering, for example due to crimes committed in industrial operations involving a large number of animals. We would suggest that it would be appropriate to acknowledge in this bill the extreme gravity of offences in which deliberate or gratuitous attempts to cause suffering or prolonged or deliberate ill treatment or neglect can be established. The contempt with which our society holds such behaviour must be reflected in our law.

The proposed increase in maximum sentence would bring England and Wales in line with jurisdictions such as Northern Ireland (five year maximum) and go some way to addressing the anomaly whereby the six-month maximum sentence in England and Wales is the lowest in Europe. The proposed new maximum would grant the courts the ability to impose sentences more proportionate to the harm and culpability of offences that come before them than at present. It would increase deterrence and would allow for more prolonged monitoring and/or rehabilitation of offenders whom, the criminological evidence suggests, pose an ongoing risk to humans and other animals (Ascione and Lockwood 1998, Ascione and Arkow 1999 and Fitzgerald 2005).

### 8.2. Register of offenders

We also recommend that this legislation should create a register of people who are banned from keeping animals, similar to the sex offenders register, which would facilitate monitoring and enforcement. This is something that has also been suggested by the Centre for Crime Prevention in a report from August 2017 (Cuthbertson and Spencer).

## 9. Other recommendations for action by the Government

The group notes that the following are listed as the 'most serious offences under the [Animal Welfare] act: "causing unnecessary suffering, illegally mutilating an animal, illegally docking a dog's tail, illegal poisoning and encouraging an animal fight". While we approve of the recognition of these offences as serious ones, we would question why it is ever legal to mutilate an animal. Why, for instance, is tail docking for dogs illegal while the docking of tails of livestock species is accorded legality? Why single out illegal poisoning when it is legal to poison some species with significant negative impacts on their

welfare? In short, we would point out the speciesism (defined as "the widespread discrimination that is practised by man [sic] against other species" (Ryder 1975: 16. See also Singer 2006: 3 and 2009) of offering legal protection from certain forms of harm to some animals while denying it to others who would suffer commensurate compromises to their welfare. We would therefore advocate for greater parity of treatment between livestock, companion and wild animals in the revised Bill.

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