



Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill

Presented to Parliament

by the Secretary of State for Environment, Food and Rural Affairs

by Command of Her Majesty

December 2017



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Department for Environment, Food and Rural Affairs

Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill 2017

December 2017

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SECTION 1 – WRITTEN MINISTERIAL STATEMENT

Written Ministerial Statement, 12 December 2017

Animal Welfare

I am delighted to publish today a draft Animal Welfare (Sentencing and Recognition of Sentience) Bill which will reflect the principle of animal sentience in domestic law and increase maximum sentences for animal cruelty tenfold, from six months to five years in England and Wales.

This draft Bill will embed the principle that animals are sentient beings, capable of feeling pain and pleasure, more clearly than ever before in domestic law. There was never any question that our policies on animal welfare are driven by the fact that animals are sentient beings, and I am keen to reinforce this in legislation as we leave the EU.

The Government is committed to raising animal welfare standards, and to ensuring animals will not lose any recognitions or protections once we leave the EU. The draft Bill I am publishing makes our recognition of animal sentience clear. It contains an obligation, directed towards government, to pay regard to the welfare needs of animals when formulating and implementing government policy.

This provision does not apply to Ministers in the devolved governments of Wales, Scotland and Northern Ireland. I look forward to working closely with my devolved colleagues and I will be exploring with them the best way forward on this important matter, including whether they wish to take a similar or different approach.

In addition we will not tolerate cruelty against animals and we will give the courts the tools they need to deal with abhorrent acts of animal cruelty. This draft Bill increases the maximum penalty for animal welfare offences in the Animal Welfare Act 2006 from six months to five years' imprisonment.

This applies to the most serious offences under the Act – causing unnecessary suffering, illegally mutilating an animal, illegally docking a dog's tail, illegal poisoning and encouraging an animal fight. My proposed increased maximum penalties will also apply to convictions relating to attacks on service animals, including guide dogs, police and military dogs. This provision will apply in England and Wales.

The draft Bill that I am publishing today is subject to a seven week consultation, ending on 31st January. It is part of a wider programme to deliver world-leading standards of animal welfare in the years ahead. We are making CCTV mandatory in slaughterhouses, banning plastic microbeads which harm marine life, and have set out proposals for a total ban on ivory sales which contribute to the poaching of

elephants. This is the start of our ambition to set a global gold standard for animal welfare as we leave the EU.

Michael Gove

Secretary of State for Environment, Food and Rural Affairs

SECTION 2 – CONSULTATION QUESTIONS

Animal sentience

A draft Bill has been produced which introduces a duty on Ministers of the Crown in relation to the welfare needs of animals as sentient beings.

We seek your views both on the provisions within draft Bill itself, and more widely on the approach being taken.

In terms of the specific provisions within the draft Bill itself:

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?*
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?*
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?*
4. Policy scope: The draft Bill would apply to all policy areas. *Do you agree with this?*
5. Specifying the level of regard: The draft Bill adopts the term ‘should have regard’. *Do you agree with this?*

In terms more widely of the approach being taken:

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.

Maximum sentences for animal cruelty

We are seeking views on this question, in addition to other views you may have:

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?*

Responses

Citizen Space is a site that lists consultations run by the Department for Environment, Food and Rural Affairs. On this site you can find, share or take part in our consultations. Public participation is very important to the development of our policies so please use the following link to have your say:

<https://consult.defra.gov.uk/animal-health-and-welfare/consultation-on-the-animal-welfare-bill>

or post your responses to:

Animal Welfare Team

Area 5B Nobel House

17 Smith Square,

London

SW1P 3JR

Please make sure your responses reach us by **31 January 2018**, otherwise we will not be able to consider them.

What happens next?

This is an opportunity for all interested parties to consider the draft Bill. After the consultation has concluded we will publish a summary of the responses received. This will inform the final Bill we will lay before Parliament.

Confidentiality and data protection

A summary of the responses to this consultation will be published and placed on the Government website at www.gov.uk/defra

The summary will include a list of names and organisations that responded but not personal names, addresses or other contact details. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes e.g. Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998.

If you want information, including personal data, that you provide to be treated as confidential, please say so clearly in writing when you send your response to the consultation why you need to keep these details confidential. If we receive a request for disclosure under the FOIA, we will take account of your explanation, but we cannot provide an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, if itself, be regarded as a confidentiality request.

This consultation is being conducted in line with the “Consultation Principles” as set out in the Better Regulation Executive guidance which can be found at <https://www.gov.uk/government/publications/consultation-principles-guidance> If you have any comments or complaints about the consultation process, please address them to: Consultation Co-ordinator, Room 629, Millbank, 17 Smith Square, London SW1P 3JR Or email: consultation.coordinator@defra.gsi.gov.uk

**THE DRAFT ANIMAL WELFARE (SENTENCING
AND RECOGNITION OF SENTIENCE) BILL**

**Animal Welfare (Sentencing and Recognition of Sentience)
Bill**

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- 1 Welfare needs of animals as sentient beings
- 2 Mode of trial and maximum penalty for certain animal welfare offences
- 3 Extent, commencement and short title

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TO

Impose a duty on Ministers of the Crown in relation to the welfare needs of animals as sentient beings; and to make provision about the mode of trial and maximum penalty for certain offences relating to animal welfare.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Welfare needs of animals as sentient beings

- (1) Ministers of the Crown must have regard to the welfare needs of animals as sentient beings in formulating and implementing government policy.
- (2) In discharging that duty Ministers of the Crown must also have regard to matters affecting the public interest.
- (3) In this section “Ministers of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

2 Mode of trial and maximum penalty for certain animal welfare offences

- (1) Section 32 of the Animal Welfare Act 2006 (post-conviction powers: imprisonment or fine) is amended as follows.
- (2) In subsection (1) (penalty for offence under section 4, 5, 6(1), 6(2), 7 or 8 of the Animal Welfare Act 2006), for the words from “on summary conviction” to the end substitute “—

- (a) on summary conviction, to imprisonment for a term not exceeding 51 weeks, or to a fine, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.”

3 Extent, commencement and short title

- (1) Section 1 extends to England and Wales, Scotland and Northern Ireland.
- (2) Section 2 extends to England and Wales only.
- (3) Section 1 comes into force on a day appointed by the Secretary of State by regulations made by statutory instrument (and different days may be appointed for different purposes).
- (4) Section 2 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (5) The amendment made by section 2 does not apply to offences committed before that section comes into force.
- (6) This Act may be cited as the Animal Welfare (Sentencing and Recognition of Sentience) Act 2018.

ANIMAL WELFARE (SENTENCING AND RECOGNITION OF SENTIENCE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Animal Welfare (Sentencing and recognition of sentience) Bill as published in Draft on 12 December 2017 (Bill 54/1).

- These Explanatory Notes have been prepared the Department of Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The draft Bill explicitly recognises that animals are sentient beings and places a duty on Ministers of the Crown to have regard to their welfare needs when formulating and implementing government policy. The draft Bill specifies that matters affecting the public interest should be taken into account when exercising this duty.
- 2 As a result there should be no diminution of animal welfare recognitions or protections when the UK leaves the EU. The draft Bill presents one possible formulation which seeks to deliver these objectives, and other possible formulations or approaches may also exist.
- 3 The duty in clause 1 applies solely to Ministers of the Crown, and therefore does not apply when decisions are being taken by the devolved governments in areas within their competence. Ministers of the Crown will wish to explore with devolved governments whether they wish to take a different or similar approach, and there is of course scope to do things differently in different parts of the UK.
- 4 The Bill increases the maximum penalty for specific offences relating to animal cruelty. It does so by extending the current maximum penalty, specified under the Animal Welfare Act 2006, of six months and/or an unlimited fine to a penalty of five years and/or an unlimited fine. These offences therefore become triable either-way, and may be heard in the magistrates' court or the Crown Court. These provisions apply to both England and Wales, following the agreement of the devolved government of Wales.

Policy background

Animal sentience

- 5 The Government has made clear its commitment to raising animal welfare standards, and to ensuring animals will not lose any recognitions or protections once the UK leaves the EU. To ensure this, the Government is legislating to ensure that animal sentience is explicitly recognized in domestic law. This should provide a seamless transition when the UK leaves the EU.
- 6 As explained, the draft Bill clauses relating to animal sentience apply solely to Ministers of the Crown. Ministers of the Crown will wish to explore with the devolved governments whether they wish to take a different or similar approach, and this will be a matter for their consideration.
- 7 The draft Bill presents one possible formulation for delivering the policy objectives. We are seeking views on whether this is the best approach for achieving the stated policy objectives. We also welcome views on the perceived consequences such a duty may have.

Maximum sentences for animal cruelty

- 8 This draft Bill amends the Animal Welfare Act 2006, which sets out a maximum penalty of six month's imprisonment and an unlimited fine for the more serious 'prevention of harm' offences. There are five such offences under section 32(1) of the Animal Welfare Act 2006:
 - Causing unnecessary suffering (section 4, Animal Welfare Act 2006);
 - Carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
 - Docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);

- Administering a poison to an animal (section 7, Animal Welfare Act 2006); and
 - Involvement in an animal fight (section 8, Animal Welfare Act 2006).
- 9 There have been a number of recent cases related to these offences in which judges have expressed a desire to impose a higher penalty than that currently provided for under the Animal Welfare Act 2006. There is a particular desire to increase the penalties available in the case of crimes that relate to deliberate, calculating and sadistic behaviour. Particular concerns have also been raised that increased penalties should be available for attacks on service animals, including guide dogs, police dogs and military dogs. The Bill meets these needs by increasing the maximum penalties for the most serious offences listed above.
- 10 The majority of the relevant legal background is explained in the Policy Background section of these Notes and is not replicated here. This section provides further legal clarity around the current maximum sentences which may be applied.
- 11 The current drafting of section 32(1) of the Animal Welfare Act 2006 lists the maximum penalty as imprisonment for a term not exceeding 51 weeks or a fine, as opposed to the maximum imprisonment for a term not exceeding six months as discussed above. This discrepancy is explained by section 32(5) of the Animal Welfare Act 2006. Section 32(5) provides that in relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in section 32(1)(a) to 51 weeks is to be read as a reference to six months. As at the date of the publication of the Bill, section 281(5) of the Criminal Justice Act 2003 has not been commenced. The maximum imprisonment term for offences under section 32(1) of the Animal Welfare Act 2006 therefore remains as six months.
- 12 Under section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 magistrates' courts do not have the power to impose penalties greater than six months. As a result of increasing the maximum penalty available for the offences under section 32(1) of the Animal Welfare Act 2006 to a period of five years the Bill must also change the mode of trial available for these offences.

Territorial extent and application

- 13 Clause 3 sets out the territorial extent of the draft Bill, i.e. the jurisdictions which the draft Bill forms part of the law of. The extent of a draft Bill can be different from its application. Application is about where a Bill produces a practical effect. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 14 Clause 1 of this draft Bill, relating to animal sentience, extends to the United Kingdom as a whole, however the duty contained therein only applies to Ministers of the Crown. This means that the animal sentience provisions do not apply to policies which have been devolved to the Scottish parliament, the National Assembly for Wales and the Northern Ireland Assembly. The application of these animal sentience provisions to Ministers in the devolved governments of Wales, Scotland and Northern Ireland is a matter for their consideration.
- 15 Clause 2 of this draft Bill both extends and applies to England and Wales, following the agreement of the Welsh government.
- 16 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Welfare needs of animals as sentient beings

- 17 The Policy Background and Legal Background sections of these Notes provide an explanation of the policy intent and of how this has been applied in the draft Bill.
- 18 In summary Section 1 contains the following the key elements:
 - Animals are explicitly recognised as sentient beings.
 - Ministers of the Crown are required to have regard to their welfare needs when formulating and implementing policies.
 - This duty applies to all areas of Government policy that are not devolved
- 19 In addition Section 2 requires the Ministers of the Crown, in discharging the duty, to have regard to matters affecting the public interest.

Clause 2: Mode of trial and maximum penalty for certain animal welfare offences

- 20 Section 32(1) of the Animal Welfare Act 2006 provides that particular offences should carry a maximum penalty of 51 weeks imprisonment and/or a level 5 fine. In practice, this has effect as a maximum penalty of 6 months and an unlimited fine, as explained in the Legal Background section of these notes. This clause changes the maximum penalty available for the following offences:
 - Causing unnecessary suffering (section 4, Animal Welfare Act 2006).
 - Carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006).
 - Docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006).
 - Administering a poison to an animal (section 7, Animal Welfare Act 2006).
 - Involvement in an animal fight (section 8, Animal Welfare Act 2006).
- 21 The existing maximum penalty, outlined above, is retained if the offender is tried in a magistrates' court. However offenders may now receive a higher penalty of 5 years imprisonment and/or an unlimited fine where they are convicted on trial by indictment.

Clause 3: Extent, Commencement and Short Title

- 22 This clause provides that:
 - Clause 1 of the draft Bill extends and applies to the United Kingdom as a whole, and will come into force on a day appointed by the Ministers of the Crown by regulations;
 - Clause 2 of this draft Bill extends and applies to England & Wales and will come into force two months after Royal Assent.
- 23 The clause provides that the application of revised maximum penalties is not retrospective and does not apply to offences committed before the Bill comes into force.
- 24 The clause also specifies the short title of the Bill.

Commencement

- 25 Clause 1 of the draft Bill comes into force on a day to be appointed. Clause 2 of the draft Bill will come into force two months after Royal Assent.

Financial implications of the Bill

Animal sentience

- 26 The compliance costs of the animal sentience provisions take two broad forms:
- Administrative resource costs to government from the activity of taking animal sentience into account in policy formulation and implementation, in the ways specified in the draft Bill. This includes demonstrating (or being able to) that Ministers had regard to animal sentience in formulating and implementing government policy, including in relation to any information requests or challenges.
 - Resource costs from government policies and the implementation of those policies differing as a result of Ministers having had regard to animal sentience. It is worth noting that other existing domestic legislation, especially the Animal Welfare Act 2006, already provides animals with significant protections and requires their welfare needs to be taken account of.
- 27 The consultation period will enable the extent of any new burdens to be explored further. The final position will depend upon the provisions contained in the final Bill.

Maximum sentences for animal cruelty

- 28 Clause 2 of the Bill, on the maximum sentences for animal cruelty, has a limited impact on costs to the criminal justice system. The increase in maximum penalties will not result in an increase in the number of offenders being sent to prison, but only in the length of time served by the most serious offenders. The increase in costs to the criminal justice system is estimated to be £465,000 per year. This includes provision for an increase in court costs, legal aid, and offender management services.

Parliamentary approval for financial costs or for charges imposed

- 29 This draft Bill does not require a a Ways and Means resolution, in which the Commons give consent to parts of a Bill that involve taxes or other charges being made on the public.

Compatibility with the European Convention on Human Rights

- 30 Defra does not consider that the provisions of the draft Bill engage convention rights.

Annex A - Territorial extent and application in the United Kingdom

As currently drafted, clause 1 of the Bill, on animal sentience, extends and applies to the United Kingdom. At the same time clause 1 applies specifically to the Ministers of the Crown and not to the Ministers of the devolved governments of Wales, Scotland and Northern Ireland. The application of these animal sentience provisions to Ministers in the devolved governments of Wales, Scotland and Northern Ireland is a matter for their consideration.

Clause 2, on maximum sentences for animal cruelty, extends and applies to Wales as well as to England, following a decision by the devolved government in Wales that the Bill should also apply there. It is the view of the UK government that the subject matter of the Bill is within the legislative competence of the Welsh Assembly. Therefore on the basis of the current draft Bill, the UK Government intends to seek a Legislative Consent Motion in the National Assembly for Wales.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Clause 2	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Clause 3	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (W)

Minor or consequential effects¹

The provisions of the Bill have no minor or consequential effects outside England and Wales. Subject matter and legislative competence of devolved legislatures

Clause 2: Mode of trial and maximum penalty for certain animal welfare offences

As the draft Bill currently extends and applies to both England and Wales. We consider this draft Bill to be within the legislative competence of the National Assembly for Wales because it falls within the area of 'agriculture, fisheries, forestry and rural development' devolved under Schedule 7, Part 1 of the Government of Wales Act 2006. By convention, previous legislation relating to animal welfare has fallen under this area. For example, welfare legislation has been considered devolved in the case of both the Welfare of Farmed Animals (England) Regulations 2007 (England only) and the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 (Wales only).

¹ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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