



Department
for Environment
Food & Rural Affairs

Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill

Consultation response

August 2018



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Any enquiries regarding this publication should be sent to us at

Defra

Animal Welfare Team

Area 5B

Nobel House

17 Smith Square, London

SW1P 3JR

Email: AnimalWelfare.Consultations@defra.gsi.gov.uk

www.gov.uk/defra

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Overview

Introduction

This document provides a summary of responses to the Department for Environment, Food and Rural Affairs' (Defra) consultation on the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill (the draft Bill). Given the number of responses to the consultation, this summary does not offer a detailed opinion on all the comments received.

The draft Bill was published on 12 December 2017. The consultation on the draft Bill ran for seven weeks from 12 December 2017 to 31 January 2018. This document also sets out the next steps for the proposals contained in the draft Bill.

Background

Animal Sentience

The government is committed to raising animal welfare standards once the United Kingdom (UK) leaves the European Union (EU). The draft Bill signalled the government's intention to legislate to meet two objectives:

1. To explicitly recognise animal sentience in domestic law.
2. To take account of the welfare needs of animals when formulating and implementing policies.

The draft Bill contained provisions to achieve these government objectives. As explained in the Command Paper and in the consultation questions, the draft Bill represented one possible formulation for delivering these objectives.

Clause 1 of the draft Bill obliged Ministers of the Crown to have regard to the welfare needs of animals as sentient beings in formulating and implementing government policy. Further, in discharging this duty, Ministers of the Crown were also required to have regard to matters affecting the public interest.

Several terms in the draft Bill were not explicitly defined and we invited views on how we might do so as part of the public consultation exercise. The House of Commons' Environment, Food and Rural Affairs Select Committee also expressed views on these (and other) matters.

Maximum sentences for animal cruelty

The draft Bill proposes to raise the maximum penalty for specific offences related to animal cruelty.

Clause 2 increases the maximum penalty for particular offences, specified under section 32(1) of the Animal Welfare Act 2006, from six months' imprisonment and/or an unlimited fine to five years' imprisonment and/or an unlimited fine. This means that these offences would be triable in either the Magistrates' Court or the Crown Court.

The House of Commons Environment, Food and Rural Affairs Select Committee initially made a recommendation to increase the maximum penalty for animal cruelty offences in November 2016. The proposals set out in the draft Bill follow a number of instances in which judges commented that they would impose longer sentences if they were available. They are also in line with campaigns from Battersea Dogs and Cats Home, the RSPCA and Dogs Trust.

The second part of the consultation asked whether respondents agreed with this new proposed maximum penalty for specified animal welfare offences.

Consultation and views sought

Views on the proposals in the draft Bill were sought during a seven-week public consultation period from 12 December 2017 to 31 January 2018. Responses were received via a Citizen Space survey, by post and by email. During the consultation and analysis period, Defra officials met a number of animal welfare stakeholders, including the British Veterinary Association, Compassion in World Farming, the Royal Society of Biology and the RSPCA. We also discussed the draft Bill with welfare experts at a workshop run by Bristol University and the Royal Agricultural University.

The House of Commons' Environment, Food and Rural Affairs Committee undertook pre-legislative scrutiny of the draft Bill. The Committee published their [report](#) on 1 February 2018. The government is grateful for the Committee's work and has responded to them directly.

Additionally, Defra asked the Farm Animal Welfare Committee to review the scientific evidence submitted during the consultation and provide advice on some of the potential definitions in the draft Bill, including definitions for 'sentience', 'animal' and the 'welfare needs of animals'.

Summary of statistics

Defra received 9,084 direct responses to the consultation, of which 8,871 (98%) were from individuals, and 191 (2%) were from organisations. Some respondents stated that they were responding both as an individual and on behalf of an organisation. A further 58 respondents did not state the capacity in which they were responding to the consultation.

Defra also received 64,169 responses from the campaign organisation 38 Degrees, who conducted their own survey of the public. The summary document provided by 38 Degrees was considered as part of the consultation. A brief summary of some of the findings of that campaign response is provided later in this report.

Summary of responses

The responses received in relation to the specific questions raised in the consultation paper and in the Citizen Space survey are summarised below. This summary tries to reflect the general views offered but, inevitably, it is not possible to describe all the responses in detail.

Animal sentience

Responses to Question 1 - Defining 'sentience': Do you consider that the term 'sentience' should be defined explicitly? If so what definition should we use?

Summary: 9,009 respondents directly addressed this question. Of these, 80% said that the term 'sentience' needed to be defined explicitly and 76% commented on the suggested definition of 'sentience'. 56% of these responses were variations on the Oxford English Dictionary definition.

79% of responses selected that the term 'sentience' needed to be defined explicitly; 15% of responses selected that the term did not need to be defined.

76% of respondents commented on the definition of 'sentience'. Of these:

- 56% were based on the Oxford English Dictionary definition which references animal's ability to 'perceive and feel things'. Of these:
 - 31% were based on the Oxford English Dictionary definition as well as the capacity to experience a broader range of positive and negative emotions.
 - 26% were based on the Oxford English Dictionary definition with no additions.
 - 22% were based on the Oxford English Dictionary definition as well as the capacity to feel negative emotional states and/or pain. A large proportion of these definitions used the phrase 'capable of experiencing pain or suffering', which is included in the Animal Welfare Act 2006.
 - 11% were based on the Oxford English Dictionary definition as well as the capacity to feel both pain and pleasure.
 - 9% were based on the Oxford English Dictionary definition alongside the capacity to experience emotions as well as other non-emotion based criteria e.g. interaction.
- 27% formed part of a campaign response from People for the Ethical Treatment of Animals (PETA): 'The term "sentience" can be applied to any non-human organism

which has the capacity to feel or perceive things, including but not limited to awareness of one's surroundings, relationships with others, and both physical and emotional sensations such as pain, fear, and distress' (27%).

- 5% of definitions were based on higher cognitive abilities e.g. reasoning. The majority of participants referencing these abilities included them as additional criteria to the Oxford English Dictionary definition.
- 1% declined to provide a definition. Many of these respondents commented that the Oxford English Dictionary definition was too broad, or not scientific enough. Some indicated concern that the final definition might be inflexible or exclude specific types of animal.

Responses to Question 2 – Defining 'animal': Do you consider that the term 'animal' should be defined explicitly? If so what definition should we use?

Summary: 8925 respondents directly addressed this question. 71% selected that the term 'animal' needed to be defined explicitly and 68% commented on the suggested definition of 'animal'. 18% of these responses were classified as variations on the Oxford English Dictionary definition.

71% of responses selected that the term 'animal' needed to be defined explicitly and 23% of responses selected that it was not necessary to define the term.

68% of respondents commented on the suggested definition of 'animal'. Of these:

- 30% formed part of a campaign response from PETA: 'For the purpose of this Bill, "animal" should be defined as all non-human vertebrate or invertebrate species. To avoid doubt, this definition should at the very least incorporate all mammals, birds, reptiles, amphibians, cephalopods, and decapod crustaceans and should be defined so as to allow additional invertebrate groups to be included based on appropriate scientific evidence. Notably, in response to a request from the European Commission related to "Aspects of the biology and welfare of animals used for experimental and other scientific purposes", the Scientific Panel on Animal Health and Welfare opined that a wide range of invertebrates demonstrate a capacity to experience pain and suffering and thus should be considered sentient beings. Likewise, the panel concluded that many foetal forms of animals are considered to have the capacity to feel and to suffer and should also be protected. Therefore, in the interest of prudence, the precautionary principle should be adopted and the term "animal" should include both invertebrates and foetal forms.'
- 18% were based on the Oxford English Dictionary definition which references 'an organism endowed with life, sensation and voluntary motion'.
- 14% used biological definitions of 'animal', including references to 'being alive'.

- 8% included unclassified definitions, including the term ‘creature’ and the need to specify that the draft Bill applied to all ‘non-human animals’.
- 7% provided taxonomic definitions.
- 6% provided definitions relating to physical and emotional sensations.

Some responses made references to specific classes of animal. In addition to the PETA campaign, a small proportion of responses referenced invertebrates (4%), crustaceans (3%), foetal young (1%) and cephalopods (1%). The campaigning organisation ‘Crustacean Compassion’ also submitted a letter and petition on the topic of crustacean sentience. At the time of submission, the online petition had been signed by 23,000 people. The associated scientific briefing has been considered as part of the consultation analysis process.

Other responses of note suggested definitions included in the New Zealand Welfare Act, the 2016 Cambridge Declaration on Consciousness, and a variety of academic texts and authors.

Responses to Question 3 – Defining the ‘welfare needs of animals’: 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 at all?

Summary: 8,929 respondents directly addressed this question. 84% of respondents said that welfare needs of animals needs to be explicitly defined in the clause. 49% of respondents agreed with the definitions of welfare needs in the [Animal Welfare Act 2006](#)¹.

¹ The full text of the Animal Welfare Act 2006 can be viewed at <https://www.legislation.gov.uk/ukpga/2006/45/contents>

What is the definition of 'Welfare Needs' in the Animal Welfare Act 2006?

For the purposes of this Act, an animal's needs shall be taken to include—

- a. its need for a suitable environment,
- b. its need for a suitable diet,
- c. its need to be able to exhibit normal behaviour patterns,
- d. any need it has to be housed with, or apart from, other animals, and
- e. its need to be protected from pain, suffering, injury and disease.

84% of respondents selected that the 'welfare needs of animals' needs to be explicitly defined in the Bill clauses and 11% selected that the welfare needs of animals does not need to be explicitly defined in the Bill clauses.

49% of respondents agreed with the definition of welfare needs in the Animal Welfare Act 2006 (AWA) or considered that the AWA definition should be included in the Bill clauses with further additions.

7% of respondents thought that suitable diet and environment should be better defined in the AWA. Popular suggestions were a healthy diet, a natural diet and environment, and expanding what 'suitable' might mean through species-specific guidance.

The Five Freedoms² were the most popular alternative suggestion for defining welfare needs (5%). A number of respondents also suggested the Five Provisions³ as an alternative definition for welfare needs.

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319292/Farm_Animal_Welfare_in_Great_Britain_-_Past__Present_and_Future.pdf

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5082305/table/animals-06-00059-t001/>

What are the 'Five Freedoms'?

1. **Freedom from hunger and thirst**
by ready access to fresh water and a diet to maintain full health and vigour.
2. **Freedom from discomfort**
by providing an appropriate environment including shelter and a comfortable resting area.
3. **Freedom from pain, injury or disease**
by prevention or rapid diagnosis and treatment.
4. **Freedom to express normal behaviour**
by providing sufficient space, proper facilities and company of the animals' own kind.
5. **Freedom from fear and distress**
by ensuring conditions and treatment to avoid mental suffering.

29% of responses, including those from the PETA and other campaigns, suggested that psychological and emotional wellbeing should be recognised, either in the list of welfare needs in the AWA or separately. This included a broad range of suggestions from positive experiences to contentment and happiness.

The right to access timely and appropriate veterinary care was also frequently mentioned.

A number of respondents stated that welfare needs should extend to areas not covered directly in the AWA (4%). The most frequently mentioned extensions were:

- compulsory stunning at the point of slaughter;
- reference to farming practices (particularly dairy farming and poultry rearing);
- freedom for all animal to nurture their young;
- conditions for transportation of animals;
- conditions for live exports;
- the rights of service animals (Finn's Law);
- conditions for puppy breeding.

Some respondents stated that there should be a distinction between the welfare needs of wild and domesticated animals.

Responses to Question 4 – Policy Scope: Do you agree that the draft Bill should apply to all policy areas?

Summary: 8,964 respondents directly addressed this question. 93% of responses supported the duty applying to all policy areas.

93% of responses selected that the duty should apply to all policy areas. Some respondents stated that animal in scientific experiments, farming and zoos should be explicitly considered. In addition to all policy areas, some respondents said the scope should apply to all public bodies, beyond Ministers and core central government departments.

6% of respondents said that they did not know which areas of policy the draft Bill should apply to, or did not understand the question.

1% of respondents asked for limits to the policy areas, reflecting current legislative provisions, predominately for angling and scientific experiments.

A particular point raised by some respondents was to request special provisions for service animals, often citing “Finn’s Law”. Finn’s Law is a campaign for service animals such as police dogs to have special recognition in law.

Responses to Question 5 – Specifying the level of regard: Do you agree that the draft Bill should adopt the term ‘should have regard’?

Summary: 8,885 respondents directly addressed this question. 42% respondents supported the proposed wording, i.e. should have regard. Many respondents said this could be strengthened with the inclusion of ‘must’ and / or ‘full’.

42% of respondents agreed with the proposed wording, i.e. ‘should have regard’.

48% of respondents disagreed with the proposed wording. The PETA campaign pressed to include ‘must have full regard’, retain the Article 13 wording and strengthen the duty.

34% of respondents called for ‘must’ to be included and 29% called for ‘full regard’ to be included.

The most common point amongst other respondents was to make sure that the duty was explicitly compulsory; many noted that 'should' did not feel sufficiently robust or clear.

Responses to Question 6 – Overall approach: Do you have any views on the consequences of the new duty and also whether a different formulation or approach might achieve the policy objectives?

Summary: 4,975 respondents directly addressed this question. Of these respondents, 11% provided views on the consequences of the new duty and 15% provided views on whether a different formulation or approach might achieve the policy objectives.

Consequences of the new duty

48% responses did not suggest specific consequences of the draft Bill.

6% of respondents referenced consequences for:

- policy making, such as the opportunity to act as a role model to the rest of the world for considering animal sentience in policy decisions, and the risk that the duty could lead to 'defensive policy making' within departments.
- related industries, such as pets and farm animals.
- specific policies such as live exports, livestock transportation and slaughter.
- fishing practices, for example by using the draft Bill to tag amendments on field sports and animal rights issues.

3% of responses raised concerns about enforcement of the draft Bill. Many of these responses said that enforcement is necessary and government must have the capacity to fully execute the duty.

40% of responses were from the PETA campaign: 'The duty as it stands in the draft Bill requires Ministers of the Crown solely to take animal sentience into account during the decision-making process. This requirement should apply to all public policymakers – including but not limited to ministers, local authorities, and devolved legislatures.'

Alternative approaches

7% of respondents provided alternatives to the Bill. The most frequent responses included:

- provide more education about animal welfare.
- extend duty to others including: all public bodies, countries from which we import live animals and meat from, and countries that we export live animals and meat to.
- update Animal Welfare Act 2006.
- adopting approaches taken by other countries such as Sweden or New Zealand.

Additionally, 37% of responses were based on the PETA campaign:

- 'The Animal Welfare (Sentencing and Recognition of Sentience) Bill should be used as the backbone to introduce other forward-thinking animal-protection measures to ensure that the United Kingdom is at the forefront of global animal welfare.'

44% of responses did not directly answer the question. Many of these were content with the content of the draft Bill and did not provide an alternative approach. 4% mentioned that they wanted tougher sentencing and 2% commented on the definition of animals. 3%

commented on specific policies such as preventing live animal exports, banning circus animals and preventing non-stun slaughter.

A number of responses stated that they did not know, or did not understand the question.

Maximum penalty for animal cruelty

Responses to Question 7 – Sentence length: Do you agree with the new maximum sentence?

Summary: 9,018 respondents directly addressed this question and 70% indicated that they agreed with the new maximum sentence.

70% of respondents indicated that they agreed with the new maximum sentence.

49% of respondents provided a caveat or further explanation in their response. Of these:

- 54% indicated that longer sentences should be available. Some of these respondents felt that longer sentences were necessary in extreme cases of animal cruelty or where multiple offences/reoffending occurred. Other respondents indicated that sentences should be increased to allow for the fact that 'maximum sentences are rarely used'. This concern was also raised by respondents who did not state a preference for longer sentences.
- 34% of responses formed part of a campaign response from PETA: 'The increase in the maximum sentence is welcomed, however, it should not be applicable only for "specified animal offences". Non-specified acts, such as starvation and conscious failure to provide necessary veterinary care, are just as deserving of the new maximum penalty'.
- 6% of respondents requested that those convicted under the Bill receive a lifelong ban in relation to keeping or working with animals.
- A high proportion of respondents said the government should implement "Finn's Law" in relation to attacks on service animals such as police dogs and horses, and that the proposed increase in maximum penalties should be applied to attacks on such animals.

38 Degrees response

The campaign organisation 38 Degrees ran a survey on animal sentience and 64,169 members of the public responded. 38 Degrees submitted the findings and some of the raw data to Defra. Defra has considered the analysis provided by 38 Degrees as part of the review of the consultation. Of the survey respondents:

- 98% indicated that the draft Bill should apply to 'all animals'.
- 98% believed that the draft Bill should include a definition of 'sentience'.
- 92% agreed with the proposed maximum sentence increase for animal cruelty.

Between 94 and 98% of respondents also suggested that animals should be entitled to specific protections under law. These recommendations were as follows:

- Freedom from cruelty and abuse - 98%
- Safe and suitable living conditions - 97%
- Freedom to express normal behaviour - 96%
- The right to be humanely slaughtered - 95%
- Freedom from fear and distress - 95%
- A healthy diet, including freedom from hunger & thirst - 95%
- Freedom from pain, injury & illness - 94%
- Freedom from discomfort - 94%

The responses and analysis submitted by 38 Degrees have been considered as part of our overall recommendations.

Next steps

We thank all those who responded to the consultation on the draft Bill. We have now analysed the wide range of responses given to each question, and given careful consideration to the next steps.

Animal sentience

The government notes the concerns raised by the House of Commons' Environment, Food and Rural Affairs Select Committee and the breadth of comments received to the consultation. The government also notes the proposal brought forward by Lord Trees during the passage of the EU Withdrawal Act to place a duty on ministers to report regularly to parliament on how they pay due regard to the needs of animals as sentient beings.

Bearing these representations in mind Defra will continue to engage with stakeholders over the coming months to further refine the government's proposals on sentience.

The government will ensure that any necessary changes required to UK law are made in a rigorous and comprehensive way to ensure animal sentience is recognised after we leave the EU.

Maximum sentences for animal cruelty

Taking into consideration the high proportion of responses that indicated that they agreed with the new maximum penalty, the government intends to bring forward proposals to increase the maximum penalty, specified under section 32(1) of the Animal Welfare Act 2006, to five years' imprisonment and/or an unlimited fine. The government accepts the EFRA committee's recommendation that the sentencing clauses are taken forward in a separate bill to the sentience clauses, in order to ensure the higher maximum penalty is available to the courts as soon as possible. The necessary legislation will be brought forward as soon as Parliamentary time permits.

The government has also confirmed its support for the Animal Welfare (Service Animals) Bill, introduced to Parliament by Sir Oliver Heald MP. This would introduce Finn's Law, ensuring service animals such as police dogs and horses will be offered greater protection. The proposed legislation will remove a section of the current law of self-defence, often used by those who harm a service animal.

Annex: List of organisations who responded to the consultation

Adur and Worthing Councils

Angling Trade Association

Animal Aid

Animal Protection Agency

Animal Welfare Matters

Animal Welfare Research Network

Animal Welfare Science, Ethics and Law Veterinary Association

British Egg Industry Council

British Veterinary Association

Centre for Crime and Justice Studies

Compassion in World Farming

Countryside Alliance

Crustacean Compassion

Durham County Council

Finns Law Ltd

Horse Welfare Campaigners

Humane Society International UK

Humanists UK

Laboratory Animal Science Association

Laboratory Animal Veterinary Association

Lancashire County Council Trading Standards

League Against Cruel Sports

National Farmers Union

National Pig Association

Nuffield Council on Bioethics

Ornamental Aquatic Trade Association

People for the Ethical Treatment of Animals

Plymouth City Council

Preston City Council

ProMed Recruitment Ltd

QNM Ltd

Royal Society for the Prevention of Cruelty to Animals

Royal Society of Biology

Surrey Hunt Monitors

The Howard League for Penal Reform

The Humane League UK

Transform Justice

UK Centre for Animal Law

Understanding Animal Research

Universities Federation for Animal Welfare

University of Edinburgh

Winchester City Council

Wirral Council

38 Degrees