



**RSPCA SUBMISSION TO THE ENVIRONMENT, FOOD AND RURAL AFFAIRS  
COMMITTEE**

**THE ANIMAL WELFARE BILL (SENTIENCE AND SENTENCING)**

**The EFRA Committee is conducting pre-legislative scrutiny on this Bill and would be interested in your views on the Bill in general, on the scope of the Bill, and in particular on:**

1. Welfare needs of animals as sentient beings:

The Bill requires Ministers to have “regard to the welfare needs of animals as sentient beings in formulating and implementing government policy”. In discharging that duty the draft Bill also states that Ministers of the Crown must “also have regard to matters affecting the public interest.”

**a) We would be interested in your views on any potential conflict that may arise in discharging these two duties.**

Definitions within the Bill

The draft Bill does not explicitly define a number of terms, such as:

- ‘sentience’.
- ‘animal’
- ‘welfare needs of animals’.

**b) Do you consider definitions are required for these terms and, if you do so, what definitions should be used?**

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

The draft Bill proposes to increase the maximum penalty for the specified animal welfare offences from six months to five years’ imprisonment under Section 7 of the Animal Welfare Act 2006.

**a) We would like to know your view on the proposed new maximum sentence.**

**Executive summary**

- The RSPCA believes that many species of animal are sentient, and that this engenders human responsibilities, including not to cause these animals avoidable harm.
- The Society welcomes the Government commitments to transposing the intentions of Article 13 of the Treaty of Lisbon into UK legislation, and to establishing an effective system to ensure that legislators pay regard to the welfare of sentient animals whilst developing public policy in all areas.
- The RSPCA believes that most - if not all - human activities have a direct or indirect impact on animal welfare. It is therefore highly likely that conflicts will arise in discharging the two duties of paying regard to the welfare needs of sentient animals and to ‘matters affecting the public interest’. We set out our views on this in paragraphs 2, 12 and 14 to 17.
- We consider that definitions are needed for ‘sentience’, ‘animal’ and ‘welfare needs of animals’.
- The RSPCA proposes that a definition for ‘sentience’ could be: The capacity to have positive or negative experiences such as pain, distress, pleasure.
- We define ‘animal’ as a living organism belonging to the biological kingdom Animalia, typically characterised by having a multicellular body, specialised sense organs, voluntary movement, responses to factors in the environment and the ability to acquire and digest food.
- The RSPCA recognises that not all animals (as defined above) are sentient. We believe that in addition to vertebrates, cephalopods and decapod crustaceans are sentient and should fall under the scope of the term ‘sentient animals’ in animal protection legislation.
- We define and discuss the ‘welfare needs of animals’ in paragraphs 10 and 11.

- We also suggest that legislation concerning sentience should be a stand-alone piece of legislation, i.e. separate from sentencing and the Animal Welfare Act 2006.
- The RSPCA welcomes the Government commitment to raising sentencing for offences under S4-8 of the Animal Welfare Act 2006 to five years. We explain this in paragraphs 18 to 26.

### **Introduction**

1. The RSPCA welcomes the Government commitment to nationalising the intentions behind Article 13 of the Treaty of Rome, which sets out a framework to pay full regard to the sentience of animals when developing public policy, particularly as it was a British Government that proposed and negotiated the animal welfare Protocol during its Presidency in 1997. The RSPCA acknowledges that the Protocol and subsequent Treaty Article have not worked as well as they should in developing European animal legislation, due to the lack of a transparent process framework and the lack of any review during its 18 years in place. The RSPCA welcomes the Government's commitment to improvement regarding both these aspects as the Animal Welfare (Sentencing and Recognition of Sentience) Bill is implemented, agrees there are many challenges to achieving this goal and sets out below clear definitions, and a process framework, to help ensure the same mistakes will not be repeated.

### **Sentience**

2. With respect to paying regard to the welfare needs of animals as sentient beings and 'public good' considerations; the RSPCA recognises that it is highly likely that conflicts will arise in discharging these two duties. This is because most - if not all - human activities have a direct or indirect impact on animal welfare. It will be necessary for those charged with managing these conflicts to work in a way which allows openness, transparency and the ability to challenge. Knowledge and expertise will be required with respect to both animal welfare and legitimate public interests, as well as expertise and experience in ethical review. All decision-making processes relating to the implementation of the new Act must be appropriately balanced, fair and robust. A process for this is suggested below. However, that process is predicated on clear definitions for each of the terms a) sentience, b) animal and c) welfare needs of animals. The proposed definition and rationale for each is now described.
3. **Definition of Sentience:** it is essential to define the term 'sentience' explicitly. Scientific knowledge has, particularly over the past 30 years, developed in this area to the extent that a definition can be proposed which would be commonly understood.

Taking account of the key considerations (outlined in 4. below), we would suggest a definition along the following lines:

**Sentience is the capacity to have positive or negative experiences such as pain, distress or pleasure.**

4. We believe any definition should have further explanation and guidance in the 2018 Bill. This should include the following concepts:
  - It is currently believed that a complex, centralised nervous system is essential in order for an animal to be sentient. This does not have to be in the form of a mammalian brain, but the nervous system must be sophisticated enough to take in sensory input and process this to create a conscious experience.

- The presence of natural analgesics (such as endorphins) is supporting evidence for sentience, as these are released when animals are injured, helping to reduce pain. However, absence of these does not necessarily denote absence of sentience. Although the presence of ‘pain’ in itself does not indicate sentience, if endorphins are released in response to pain we can infer that pain is a problem for the animal, and therefore the animal is aware of (experiencing) the pain and is suffering.
  - Behavioural manifestations of pain/suffering - such as groaning or crying in humans, or joy/pleasure - such as rats ‘laughing’ in response to tickling by humans, and actively seeking the experience<sup>1</sup>, indicate that animals who behave in these ways are having negative or positive *experiences*, thus categorising them as sentient. Many animals exhibit behaviours that indicate an understanding, based on previous experiences, of beneficial or harmful aspects of the environment (e.g. avoiding fire in future after being burnt; returning to a location where food was previously found; showing signs of distress in an environment where something painful or stressful happened). However, such behaviours, while suggesting consciousness, cannot alone provide evidence of suffering or enjoyment - and hence of sentience. The most relevant point here with regard to deciding whether an animal is sentient is not how an animal reacts in *specific* cases, but how they behave in general. Having positive and negative experiences is what motivates animals to react positively or negatively to the huge range of often unpredictable things that bring those experiences about - and this reaction could not be ‘programmed’ in animals lacking the kind of motivation that is made possible by the capacity for conscious awareness and ‘feelings’.
  - There is debate as to the level of ‘self-awareness’, or self-consciousness, an animal needs to possess in order to be considered sentient. For example, this can range from a basic awareness of oneself as different from the rest of the world, through to being aware of one’s own self-awareness. The RSPCA believes that animals can be aware of pain, distress and pleasurable feelings without higher-order self-consciousness.
5. Not all animals (as defined below) meet the above criteria, and it is generally accepted that not all animals are sentient. However, the number of species understood to be sentient has increased, and is likely to increase further, as new scientific discoveries are made about the physiology and behaviour of invertebrates. For example, the Animals (Scientific Procedures) Act 1986 (ASPA, amended 2012)<sup>2</sup> previously regulated research on vertebrate species only, but now regulates the use of cephalopods, in recognition of the scientific evidence that these animals are sentient. The RSPCA called for, and strongly supported, the inclusion of cephalopods (e.g. octopus; squid; cuttlefish) in the ASPA, and also promoted the regulation of scientific procedures using decapod crustaceans (e.g. crabs and lobsters) when EU Directive 2010/63/EU<sup>3</sup>, which regulates animal use, was revised. So, the RSPCA believes that in addition to vertebrates, cephalopods and decapod crustaceans are also sentient and should fall under the scope of the term ‘sentient animals’ in animal protection legislation. We also recognise that in the future evidence could arise that other species previously not considered sentient, such as some insects and spiders, may be sentient. The Bill should therefore be worded such that new species can be added, once there is a sufficient evidence base to do so, without needing to revise the primary legislation. The Animal Welfare

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<sup>1</sup> LaFollette MR et al. (2017) Rat tickling: A systematic review of applications, outcomes, and moderators. *PLOS ONE* **12(4)**: e0175320. [doi.org/10.1371/journal.pone.0175320](https://doi.org/10.1371/journal.pone.0175320)

<sup>2</sup> Home Office (2012) *Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012 (SI 2012/3039)*. [gov.uk/government/publications/consolidated-version-of-aspa-1986](https://www.gov.uk/government/publications/consolidated-version-of-aspa-1986)

<sup>3</sup> European Commission (2010) Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the Protection of Animals used for Scientific Purposes. *Official Journal of the European Union* **L276**: 33-79. [eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0063](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0063)

Act 2006 provides such a framework (section 1(4)) and this language could be used in the new Bill: *The power to add further species may only be exercised if the appropriate national authority is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering.*

6. Given the above, the wording of clause 1(1) of the Bill - ‘the welfare needs of animals as sentient beings’ - could cause confusion because it implies that all animals are sentient. We suggest rewording to ‘*the welfare of sentient animals*’ to overcome this.
7. It is also important to recognise that animals have an intrinsic value which must be respected. Indeed, this is already explicitly made in the Recitals to Directive 2010/63/EU, which the UK is nationalising under the EU Withdrawal Bill. The RSPCA believes that this concept is important with respect to ameliorating human-induced harms to sentient animals, as well as to respecting the natural world in general. In our view, it would be very encouraging to see a similar statement in the guidance to the legislation.
8. **Definition of Animal:** the term ‘animal’ should be defined in its broadest sense to be consistent with the already well established biological definitions that are in current use. Clearly, this would necessarily extend the definition of ‘animal’ that is used under the Animal Welfare Act, which restricts the use of the term to vertebrates only. Therefore, we propose that ‘animal’ be defined as follows:  
  
**A living organism belonging to the biological kingdom Animalia, typically characterised by having a multicellular body, specialised sense organs, voluntary movement, responses to factors in the environment and the ability to acquire and digest food.**
9. It is unnecessary to restrict the definition of ‘animal’ further, as the Bill will be applicable only to those animals that are considered sentient, as defined above. Defining sentience will adequately restrict the application of the Bill to those animals of concern. However, adopting a broad biological definition of the term ‘animal’ will automatically enable species that are not currently considered sentient to be covered under the Bill without amendment, should new evidence arise demonstrating their sentience. This, therefore, helps future-proof the Bill despite recognition that not all animals (as defined) will be sentient.
10. **Welfare needs:** The proposed scope of the Animal Welfare (Sentience and Sentencing) Bill is wider than the Animal Welfare Act 2006, as the latter only applies to animals under the control of humans and has specific exemptions to the use of certain animals. The RSPCA supports the wider scope of the Animal Welfare (Sentience and Sentencing) Bill. However, widening the scope has an impact on how an animal’s needs are defined and assessed, particularly the need to be protected from pain, suffering, injury and disease. The needs of the animal that have to be met under the AWA 2006 only apply to human obligations to ‘protected’ animals (as defined by the Act) rather than other animals, such as, principally, wild animals not under human control. Assessing the welfare needs of animals not under human control could present problems.

The welfare needs of the animal, as set out in Section 9 of the Animal Welfare Act 2006, have provided a sound framework for considering and facilitating good animal welfare over the eleven years the Act has operated to date. However, to include animals not kept by humans, the fifth need, ‘*to be protected from pain, suffering, injury and disease*’, needs revision. This can be solved by either replacing the term ‘*welfare needs*’ in Clause 1 of the Bill with ‘*the welfare of sentient animals*’, or alternatively by revising the fifth need so that it reads ‘*not to experience pain, suffering, injury and disease*’. Clearly, it is not realistic to expect humans to be able, at all

times, to ‘protect’ a wild animal from experiencing these negative states, but this does not detract from (i) the fact that this is a ‘need’ for good welfare and (ii) the responsibilities of humans not to cause wild animals avoidable harm.

11. It should be made clear that if the welfare needs are properly implemented, the outcome should be a ‘good life’ for the animal, including positive and pleasant emotional states. The promotion of positive emotional states, and not just the absence of those which are negative, is increasingly emphasised within animal welfare. Indeed in 2009, the Farm Animal Welfare Council proposed that ‘all farm animals should have a life worth living, from their point of view, and that an increasing proportion should have a good life in 2009’<sup>4</sup>. Assessing the positive and negative emotional state of an animal can be facilitated using the Five Domains model which was developed to further enhance the framework of the welfare needs (Mellor and Beausoleil, 2015)<sup>5</sup>. We therefore suggest that those tasked with making decisions around the welfare of sentient animals use this model.
12. The RSPCA agrees that the policy scope of the Bill should apply to all policy areas and all animals. If an animal is sentient, they are sentient no matter how they are being used by humans or where they are living. However, we acknowledge that the criteria used when weighing and balancing the welfare of the sentient animal against the public benefit will depend upon the policy area under discussion. There needs to be careful consideration of what constitutes a meaningful public benefit and how the associated potential conflicting pressures might be fairly considered, as there will be significant challenges to achieving an appropriate balance that genuinely pays proper regard to the harms to sentient animals.
13. Given that the proposal regarding the recognition of sentience represents overarching Government policy applicable to all areas, and is not solely relevant to the interpretation of the Animal Welfare Act 2006, **the RSPCA believes that legislation concerning sentience should be a stand-alone piece of legislation, i.e. separate from sentencing and the Animal Welfare Act 2006.** A benefit of separating the ‘recognition of sentience’ part of the proposal from sentencing is that it would help to ensure that all sentient animals would be afforded the same consideration regardless of their status under the AWA 2006. As indicated elsewhere in this submission, the sentience policy affects animals not currently afforded protection under the 2006 Act, whereas the sentencing part of the Bill can be neatly incorporated into the AWA 2006 by amending Section 32 of the Act.
14. **The framework for weighing the public benefit against the sentience of animals:** Government needs to decide how the process of ‘giving regard to the welfare of sentient animals in all policy areas’ would work. The RSPCA believes this requires an independent, open and transparent framework which, if it takes the form of a body or committee, should operate according to the Code of Practice for Scientific Advisory Committees (COPSAC principles<sup>6</sup>). In our view, how such a decision making process would operate will likely require a further consultation, due to the importance of ensuring it is effectively and appropriately undertaken, to address the complexities associated with its delivery, and to identify the level and breadth of expertise and viewpoints needed to ensure it is achieved.
15. Given these considerations, the RSPCA believes that no existing body could undertake this role effectively. For example, the Animal Health and Welfare Board for England (AHWBE) gives

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<sup>4</sup> [gov.uk/government/publications/fawc-report-on-farm-animal-welfare-in-great-britain-past-present-and-future](http://gov.uk/government/publications/fawc-report-on-farm-animal-welfare-in-great-britain-past-present-and-future)

<sup>5</sup> Mellor DJ & Beausoleil NJ (2015) Extending the ‘Five Domains’ model for animal welfare assessment to incorporate positive welfare states. *Animal Welfare* 24: 241-253

<sup>6</sup> [gov.uk/government/publications/scientific-advice-to-government-principles/principles-of-scientific-advice-to-government](http://gov.uk/government/publications/scientific-advice-to-government-principles/principles-of-scientific-advice-to-government)

advice on strategic issues, with much focus on animal disease, to Defra, and the Farm Animal Welfare Committee (FAWC) provides scientific advice on farm animals. The membership of those bodies rightly reflects the roles allocated to them. Neither has a specific role of weighing up the needs of, and impacts on, all sentient animals against a public interest test. Any body set up to perform this function would need to have an open recruitment process, include independent members with appropriately wide ranging specialist perspectives and expertise (including, crucially, in both animal welfare and ethical review), understand the views and interests of stakeholders and be transparent in its advice to Government. All of these factors are critical because the proper functioning of such a body, and associated decision-making processes, will be crucial in delivering public confidence that the weighing process is fair, proportionate and meaningful. There should also be a mechanism to take representations (including complaints) from the public. Bodies of this nature can work well with a pool of members, but it is envisaged that a maximum of around twelve would be most effective in reviewing, and making decisions on, a specific area. In this regard the European Food Safety Authority may provide a good operational template. The RSPCA believes that funding for such a body could be delivered for under £350,000 as shown by the FAWC and Animals in Science Committee (ASC) models.

16. Animal welfare impact could be found in many, if not all, policy areas looked at by Government, but the RSPCA recognises that to operate successfully such a body, which would likely be time limited, would have to focus on a specific number of issues. It is proposed that Government should direct the body as to which policy areas to examine, in much the same way as the European Commission tasks EFSA, though we propose that in order to do this, the Government should be able to refer to guidance including clear criteria against which the need to refer the policy - or not - can be judged. In addition, all stakeholders should have the opportunity to suggest to Government any policy areas that they consider should be examined.
  
17. When analysing the welfare impact on sentient animals against the public benefit the Ministers of the Crown *must have regard* to the needs of the animal (emphasis added). Article 13 states that the States *shall pay full regard*, but as no process was established to implement this, it is not possible to audit its effectiveness. The concept of having ‘regard to an issue’ is well established in English law and the RSPCA would not want to see any decision making body having its hands tied on this issue; we believe that it should have the flexibility to adjudicate according to the specific situation and circumstances<sup>7</sup>. So, the RSPCA supports the present wording provided that animal welfare issues are effectively identified, properly considered and given due regard and sufficient, appropriate weighting. It is clear that appropriate expertise will be vital within the process, to ensure that sentient animals are afforded the consideration and protection they deserve.

### **Sentencing**

18. The RSPCA welcomes the increase in the maximum penalty which would bring sentences in line with Northern Ireland and a number of other countries, for three principal reasons:
  
19. Firstly, there is a public demand for longer sentences for animal cruelty. For example, 72% of respondents in one poll said that six months was too short<sup>8</sup>.
  
20. Secondly, the recent increase in high value animal crime such as puppy trading, which generates huge profits for offenders at the expense of animal welfare, is without adequate sanction. The RSPCA has established that puppy traders can earn in excess of £2 million annually from the

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<sup>7</sup> See, for example, sections 4(3) and 9(3) Animal Welfare Act 2006

<sup>8</sup> TNS 2016. OnLineBus Survey (S7087 - 260133119)

trade and that six months maximum custodial sentence is not a deterrent. Indeed, the RSPCA has resorted to prosecuting under other legislation such as the Fraud Act 2006 to broaden the sentencing power of the Courts.

21. Thirdly, the courts have already raised their frustration at the lack of adequate sentencing in a number of cases prosecuted in 2016<sup>9</sup>, particularly those which involve the deliberate or extreme infliction of cruelty upon animals (S4 and 8 offences).
22. The RSPCA agrees that sentencing should only be raised for offences under S4-8 of the AWA 2006. Government and RSPCA data bear out that in a small number of cases the present sentencing ceiling has been reached (Tables 1 and 2). The number of S4-8 prosecutions (2012-6)<sup>10</sup> and prison sentences handed out<sup>11</sup> are laid out in Table 1 showing that prison sentences equal around 10% of all guilty verdicts.

**Table 1 Total number of prosecutions and prison sentences under S 4-8 of the AWA 2006 2012-6<sup>11,12</sup>**

	2012	2013	2014	2015	2016
<b>Prosecutions</b>	1132	1022	814	622	585
<b>Prison sentences</b>			82	58	63

23. The RSPCA currently prosecutes around 85% of offences under the Animal Welfare Act 2006. RSPCA prosecution data for 2015 and 2016 are given in Table 2 and show that in 2015 and 2016 the ‘ceiling’ prison sentence of over 12 weeks was given in 41 cases each year<sup>12</sup> (the RSPCA suggest the ceiling as being at or above three months prison, as this allows for mitigating circumstances such as pleading guilty, which can be deducted from the six month maximum term). So we can infer from Tables 1 and 2 that around half of prison sentences given reached the ceiling, and sentences may have been higher, but the present maximum sentencing of six months did not permit this.
24. Of the 1401 convictions obtained under RSPCA prosecutions in 2016, 59% were for cruelty (section 4 offences) and 0.6% were for fighting (section 8)<sup>13</sup>. Only one conviction occurred for an offence under either Sections 5, 6 or 7.

**Table 2 Prison sentences given under RSPCA prosecutions 2015-6 under AWA 2006<sup>14</sup>**

	2016	2015
<b>1-3 weeks</b>	2	0
<b>4-7 weeks</b>	6	10
<b>8-11 weeks</b>	8	20
<b>12-15 weeks</b>	13	13
<b>16-19 weeks</b>	13	20

<sup>9</sup> [walesonline.co.uk/news/wales-news/gang-men-used-dogs-carry-12283563](http://walesonline.co.uk/news/wales-news/gang-men-used-dogs-carry-12283563);  
[liverpoolecho.co.uk/news/liverpool-news/teenager-who-kicked-girlfriends-dog-11476264](http://liverpoolecho.co.uk/news/liverpool-news/teenager-who-kicked-girlfriends-dog-11476264);  
[hartlepoolmail.co.uk/news/crime/hartlepool-dog-baiter-branded-evil-over-horrific-attacks-on-animals-1-7247054](http://hartlepoolmail.co.uk/news/crime/hartlepool-dog-baiter-branded-evil-over-horrific-attacks-on-animals-1-7247054)

<sup>10</sup> Written Question 106795 9.10.17

<sup>11</sup> Written Question 6583 20.7.17

<sup>12</sup> RSPCA 2015-6 Prosecution data

<sup>13</sup> RSPCA Prosecutions Annual Report (2016) [view.pagetiger.com/RSPCAProsecutionsAnnualreport2016](http://view.pagetiger.com/RSPCAProsecutionsAnnualreport2016)



20-23 weeks	7	5
24+ weeks	8	3

25. During the past five years the maximum fine imposed on anyone the RSPCA has prosecuted under the Animal Welfare Act 2006 is £15,000 (£2,500 for each of six offences). Courts take the position that unless someone can pay a fine and costs incurred within a reasonable period there is little point in imposing large fines. This suggests that the focus should be on prison sentences.
26. The EFRA Select Committee concluded in 2016 that the maximum penalty should be increased to five years<sup>14</sup> and the Law Commission, in its 2015 review of wildlife law in the UK, recommended a maximum sentence of two years for those convicted of offences involving wild animals. It is therefore appropriate that the law relating to animal cruelty to reflect the trend of increased custodial sentences.

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<sup>14</sup> EFRA (2016) *Animal Welfare in England: Domestic Pets*  
[publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/117.pdf](https://publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/117/117.pdf)