



Ensuring we continue to recognise animal sentience in law as we leave the EU

Key facts...

- ★ The RSPCA welcomes the Government's commitment to nationalising the intentions behind Article 13 of the Treaty of Lisbon concerning sentience of animals. However we believe further consideration is needed of the best way to achieve this in legislation.
- ★ Scientific knowledge about the anatomy, physiology and behaviour of animals has developed to the extent that a definition of sentience can be proposed which would be commonly understood.
- ★ The RSPCA believes that the term sentience should be explicitly defined and suggests a definition along these lines: Sentience is the capacity to have positive or negative experiences such as pain, distress or pleasure.
- ★ The RSPCA believes that the term 'animal' should be defined in its broadest sense 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 agrees that 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 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.
- ★ 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.
- ★ The RSPCA agrees with the EFRA Select Committee in its recommendation that clause 1 of the draft Bill should be removed and dealt with as a separate Bill to the remainder on sentencing.

Introduction

The RSPCA welcomes the Government's commitment¹ to nationalising the intentions behind Article 13 of the Treaty of Lisbon, which sets out a framework to pay 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. We do however believe further work is needed on this area to ensure an effective approach is taken.

¹ <https://www.gov.uk/government/publications/draft-animal-welfare-sentencing-and-recognition-of-sentience-bill-2017> (accessed 07.02.18)

For further information on this please contact politicalaffairs@rspca.org.uk

Main areas of concern:

- *Defining 'sentience'*

The RSPCA believes that it is essential to define the term 'sentience' explicitly. Scientific knowledge about the anatomy, physiology and behaviour of animals has developed to the extent that a definition can be proposed which would be commonly understood. We suggest a definition along these lines: *sentience is the capacity to have positive or negative experiences such as pain, distress or pleasure.*

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. 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 experience², indicate that animals who behave in these ways are having negative or positive *experiences*, thus categorising them as sentient. 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'.

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)³ previously regulated research on vertebrate species only, but now regulates the use of cephalopods (octopuses, cuttlefish and squid), in recognition of the scientific evidence that these animals are sentient. So, the RSPCA believes that in addition to vertebrates, cephalopods and decapod crustaceans (such as crabs and lobsters) are also sentient and should fall under the scope of the term 'sentient animals' in animal protection legislation.

- *Defining 'animal'*

The RSPCA believes that 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 2006 (AWA), 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.*

Although this definition includes animals without centralised nervous systems, the Bill only refers to sentient animals so would not cover activities that impact upon non-sentient species.

² 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 (accessed 07.02.18)

³ 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) (accessed 07.02.18)

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- *Defining ‘welfare needs of animals’*

The proposed scope of the Animal Welfare (Sentencing and Recognition of Sentience) Bill is wider than the AWA, 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 (Sentencing and Recognition of Sentience) 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.

Section 9 of the AWA has 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 draft 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.

Policy scope

The RSPCA agrees that the the Bill should apply to all policy areas. If an animal is sentient, they have the same welfare needs (as redefined above) no matter how they are being used by humans or where they are living, and most - if not all - human activities have a direct or indirect impact on animal welfare. 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.

We recognise that it is highly likely that conflicts will arise between the interests of humans and other animals, and 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. An independent, open and transparent framework would be required to weigh public interests against the welfare of sentient animals, incorporating different viewpoints, knowledge and expertise with respect to 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.

EFRA Select Committee report

The RSPCA agrees with the EFRA Select Committee in its recommendation that clause 1 of the draft Bill should be removed and dealt with as a separate Bill to the remainder on sentencing (para 47⁴). We agree with the points raised about definitions, accountability and inconsistencies.

For more detailed information see also the RSPCA’s submission to the EFRA Select Committee on the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill.

⁴ Pre-legislative scrutiny of the draft Animal Welfare (Sentencing and Recognition of Sentience) Bill, Second Report of Session 2017-19, EFRA Select Committee Report, HC 709 <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/709/709.pdf> (accessed 07.02.18)

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