Environment Food and Rural Affairs Committee


Wednesday 17 January 2018

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Watch the meeting

Members present: Neil Parish (Chair); Alan Brown; Paul Flynn, Dr Caroline Johnson; Kerry McCarthy; Sandy Martin; Mrs Sheryll Murray; David Simpson; Julian Sturdy.

Questions 1 - 103

Witnesses

I: Mike Radford, Reader in Law, University of Aberdeen; Sir Stephen Laws KCB, QC, former First Parliamentary Counsel.

II: Penny Hawkins, Head of Research Animals, RSPCA Science Group; Paula Boyden, Veterinary Director, Dogs Trust; Michael Webb, Head of Policy and Public Affairs, Battersea Dogs and Cats Home.

Written evidence from witnesses:

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- Mike Radford, Reader in Law, University of Aberdeen
- Sir Stephen Laws KCB, QC, former First Parliamentary Council;
- Penny Hawkins, Head of Research Animals, RSPCA, Science Group
- Paula Boyden, Veterinary Director, Dog's Trust

Examination of witnesses

Witnesses: Mike Radford and Sir Stephen Laws.

Q1 Chair: Good morning, gentlemen. Thank you very much for joining us. We are really pleased you are able to come to give us evidence. Hopefully we will be able to ask you some good questions, and you will
give us some straightforward answers. You are very welcome. Stephen, would you like to introduce yourself? Then we will have Mike, and then we will get on with it.


Chair: So you have had some experience in the field.

Mike Radford: I am Mike Radford. I am reader in animal welfare law and public law at the University of Aberdeen.

Q2 Chair: Thank you very much. I will start off with the first question. Have you ever seen a draft Bill in which the public are asked to supply so many of the fundamental definitions?

Sir Stephen Laws: It is difficult. It is quite a short Bill. Longer Bills would have had more definitions. It is fair to say that all the concepts in clause 1 seem to be problematic in one way or another.

Chair: Would you like to be a bit more specific?

Sir Stephen Laws: You start at the beginning. What are “welfare needs”? The word “welfare” can only be qualifying, so presumably it is intended to exclude other needs. What animals are covered? As for “sentient beings”, is that saying that we are only interested in their needs as sentient beings when they have needs as sentient beings, so asking whether they are sentient beings, or is it intended, as I think it probably is, to say that you must treat animals in all cases as sentient beings? That does not emerge from the language, however.

“Formulating policy” and “implementing policy” are more concepts that give rise to questions. Does it include making statutory instruments? Does it include things that have knock-on effects such as appointments to bodies and so on? It goes on. In discharging the duty, Ministers must “also have regard to matters affecting the public interest”. How wide does that go? How do these concepts interrelate with other duties?

In Mr Radford’s evidence, he points out that there are lots of duties on Ministers to have regard to things. How do those duties to have regard relate to these duties? These duties are in a later Act; do they impose on top of them or do they have to be balanced against them? What is the public interest in them?

Q3 Chair: Am I right in saying that there seems to be very little limitation as to where it could be taken?

Sir Stephen Laws: That is right. It suffers from the defect of being an attempt to do politics with law and then to encourage people to do politics in the courts. That seems to me to be unwise. These are worthy
objectives but they are probably objectives that are better dealt with by means of political accountability than by legal propositions.

Q4  

Chair: Perhaps I am putting words into your mouth, but in a way this Bill potentially could hand a lot of the powers of Parliament, or perhaps a lot of the decisions that should be made by Parliament, to be judged in the courts through judicial review. Is that where you would see it?

Sir Stephen Laws: It is making Ministers accountable to the courts. To the extent that they are accountable ultimately to the courts, they will not be accountable to Parliament, because they will decide that they will do what is within the law and then Parliament can comment on what they do that is within the law.

But the initial decision will be: what is compliant? I would take the view that imposing obligations that direct policy has the disadvantage that it persuades people to try to be compliant rather than to decide in advance what is a good idea and to exercise judgment. Compliance becomes a substitute for judgment.

Mrs Murray: A lot of Members of Parliament supported the amendment that was brought forward in the European Union (Withdrawal) Bill. Could you explain to me the difference between that amendment and this that we have in front of us today? Very clearly there was a lot of support for that amendment. Politicians voted for it, and this was then brought forward because the Government said they were planning their own situation. Would we not have been in the same situation had that amendment been supported?

Sir Stephen Laws: It would have been very similar, yes. I would have had the same comments to make about the amendment, though I can make points about the difference between them. The point of principle is the same. I can understand why people want to support it, because there is an obligation that is there at the moment in the treaty, and it is going to be very difficult to persuade people that they are not losing something if it is taken away.

I would say that the objection to this provision is that it has a lot of disadvantages. There are perhaps ways in which the Government could legislate or could act in a way that would provide some reassurance that they will continue to treat animal welfare as a serious matter that do not have the same objections that both that amendment and this Bill have.

Mrs Murray: There is no difference between that amendment and this Bill.

Sir Stephen Laws: There are differences, but not so far as the point I am making.

Mrs Murray: Very little.

Chair: No, not in terms of where the aspirations are, in some respects.
Mike, can you come in? Then we will go through detailed questions as well.

**Mike Radford:** I agree entirely with what Sir Stephen has just said. While my personal view is that I am entirely supportive of a provision or a duty on public policymakers to take account of animal welfare in developing policy, the problem with clause 1 is twofold. The first is that the political controversy that has developed over the withdrawal Bill focused on the issue of sentience. Now in article 13 sentience is not the crucial issue. The crucial issue is that sentience is the basis on which the active part of the provision—namely, to have regard to animal welfare—is based. There has never been any question that Parliament recognises sentience in other species. Right from 1822, when this place passed the first animal protection legislation, it was based on the assumption that those animals had the capacity to feel pain and pleasure. The focus on the issue of sentience is somewhat misplaced. It is symbolically important to recognise sentience, but whether legislation should be used for symbolic purposes is highly questionable.

The other issue is the nature of article 13, because that originates, as you are well aware, from EU law. It is not in a directive or a regulation; it is part of the founding treaty. It is a general principle that is addressed. Although, as it is part of the Treaty on the Functioning of the European Union, it is binding on the Governments of member states, in practice it has not had any effect on the Governments of member states, for the simple reason that the provision is limited to particular policy areas that are cited in article 13 and, by definition, policy on those issues is decided at an EU level. The only impact it has had in practical terms is at an EU level.

**Chair:** We will leave it there, because I am going to ask more detailed questions on sentience.

**Q6 Alan Brown:** Sheryll mentioned the amendment to the European Union (Withdrawal) Bill that was voted down—you might have touched on this, Mike. The Government’s argument was, “We do not need this, because the Animal Welfare Act 2006 is sufficient to protect the welfare of animals.” As we know, there was a political storm that has brought us here. Was the Government’s original argument correct that such legislation will not be required? I know the argument that the amendment was going to produce the same questions as the Bill is bringing up, but was the Government’s original argument correct? Is there merit in further legislation that is perhaps better than what we have in front of us?

**Mike Radford:** In terms of the issue of sentience, when one asks the question, “It is needed?” it depends whether one is talking legally or politically. In terms of whether it would have made any legal difference, I do not think it would, for the simple reason that it is open to Parliament to pass whatever legislation it wishes to protect animals and to promote
welfare. In so doing, it is doing that on the basis that those animals are sentient.

**Q7 Sandy Martin:** Mr Radford, rather than a symbolic concept of sentience, you say what actually matters is animal welfare; we have a very good Animal Welfare Bill already. However, this only covers animals that are in the control of human beings. Would a possible alternative to having a symbolic concept of sentience in a Bill, which does not actually do anything, be to have a further Animal Welfare Bill or an Animal Welfare Bill amendment that covered our duties to wild animals as well?

**Mike Radford:** There is, of course, other legislation that protects wild animals. The difference between wild animals and domesticated animals or animals that are under the control of humans is this: by and large, free living wild animals are left to get on with it, and they either prosper or they do not according to circumstances, whereas the welfare of domestic and kept animals is largely, if not entirely, dependent on human intervention.

My personal view is that there is something to be said for extending concern for welfare to all animals, both free-living and kept animals, but the nature of the duty is somewhat different. If one has a dog, clearly one has a responsibility to feed it, to look after it, to give it an adequate environment, to take it to the vet if it is ill and so on and so forth. There is not—and I cannot see how there practically could be—any similar duty to the birds in your garden or the rabbits in the field next door and so on and so forth. Yes, there is a duty to have regard to animal welfare, to take it into account, but the nature of the duty is probably significantly different compared with kept animals.

**Q8 Sandy Martin:** Clearly that is true, although I would take issue with the idea that wild animals in this country can be left to get on with it. Wild animals in the north of Canada might be left to get on with it, but in this country you cannot go very far without butting up against human activity, can you?

**Mike Radford:** Yes, what I meant was that whether or not they prosper in terms of the quality of their life or the length of their life is largely left to nature. On Darwinian principles, the majority of them do not prosper for very long.

**Chair:** It is the survival of the fittest, so it is probably a bit like politics.

**Mike Radford:** It is the survival of the best adapted, Chair.

**Q9 Sandy Martin:** It is also left to whether or not they get run over, whether or not they get electrocuted, whether or not they have their habitat chopped down or whether they are poisoned. There are all sorts of human activities that abut on animals in this country.

**Mike Radford:** Yes, but the Animal Welfare Act imposes a duty on individuals to ensure the welfare of animals for which they have assumed
responsibility. That is the crucial point. With domesticated and kept animals, a person has voluntarily assumed responsibility for those animals, whereas clearly wildlife is in a different situation.

Q10  **Paul Flynn:** I feel a sense of excitement about this Bill, because having been through the genesis of the Dangerous Dogs Act a long time ago, I think this will be a classic piece of bad legislation, in that it is prejudice-rich, politically charged and evidence-free. There does not seem to be any evidence that the areas to be addressed are the most severe forms or the most widespread forms of animal abuse. Neither does there seem to be any evidence that increasing sentences and fines necessarily alters behaviour. Those cases have to be made if this Bill is gone through.

We touched on the reason behind this. This Bill is not about improving the welfare of animals. It is a political stunt, because “sentience” is a highly charged word at the moment for the reasons Alan gave earlier. It is an attempt to paint one political party in a pleasant light rather than a nasty light, and in doing this it is an abuse of Parliament’s time. The effort and time that will go into this will not be worthwhile unless we can open it up and ask people to come in and say, “What are the areas of animal abuse that need to be addressed?” One would suggest getting rid of hunting altogether, and the mass rearing of animals to be shot by guns. These are the main areas, though maybe people will have others. The genesis of this Bill seems to be entirely party-political. What are you views on that?

**Chair:** I do not know how much you want to get into party politics, but I will pass it over to you, Sir Stephen.

**Sir Stephen Laws:** It is clear that it is an attempt to reproduce an obligation that exists via European law in our law at the moment. To that extent it is about the law, but is it an efficient use of the law? You cannot actually change people’s minds by making a law that says they have to change their minds. You can change people’s behaviour, and perhaps if you change their behaviour you can change their minds as a result.

This is not something that is directed at the most efficient use of the law. The most efficient use of the law is to change people’s behaviour, which you do with specific provisions. If you create general provisions that then potentially fight with specific provisions, what you do to the law is make it unclear and make the specific provisions less valuable than they would be if they stood on their own.

Q11  **Chair:** Right, so this is far too general in your view and far too open to be altered if necessary and challenged in court.

**Sir Stephen Laws:** It has enormous potential to create litigation that would be unprofitable, expensive and delay change where change is desirable.

Q12  **Angela Smith:** I suppose I ought to declare an interest at the very
beginning. I am Chair of the all-party parliamentary group for animal welfare, which is supported by a large number of welfare charities and professional organisations. Very quickly before I ask my question, I just wanted to ask Mike to give a little bit more detail, very quickly, on which policy areas at EU level are impacted by article 13.

**Mike Radford:** The policy areas are—it is listed in my submission—agriculture, fisheries, transport, internal market, research and technological development and space.

**Angela Smith:** That is interesting. It is really good to have that on the record.

**Mike Radford:** Of course, those are all areas that fall within the competence or jurisdiction of the EU.

**Q13**

**Angela Smith:** Now my question is—to be honest, I think you have answered it already—about whether clause 1 looks to you like a well thought through piece of legislation.

**Mike Radford:** No.

**Sir Stephen Laws:** I do not know how much thought went into article 13, but between article 13 and this there does not seem to have been much change, and presumably not a lot of thought except the desire to reproduce it.

**Q14**

**Angela Smith:** Can I just go on from that slightly? Sir Stephen, the point you made about this being too general and possibly having an impact on specific provisions is interesting. It seems to me that we could end up in a situation in which every new law proposed by every Department in Government would have to have on the cover, “This legislation is compatible with the Animal Welfare Act 2018.” At the moment we have to show compatibility with the European convention on human rights and the European Union and everything else. We could replace that with this. Is that possible? Could we end up there?

**Sir Stephen Laws:** The statement about human rights is a statutory requirement, so you do not have to say that, but it is not only formulating policy but implementing policy as well. Every step that is taken and every decision that is made to formulate or implement policy will need to demonstrate that it had regard to the requirements of this Bill. That is what it says. It says that every time the Government formulate or implement a policy they must have regard to animal welfare, which means that every decision is potentially able to be challenged on the grounds that that regard was not had.

**Mike Radford:** I agree with that. In practice, it would not actually make a great deal of difference, because it is increasingly the general practice that when Government are mindful of introducing new legislation they do a consultation. Therefore, interested parties can put in their views as to whether it is good, bad or indifferent. That will include issues on animal
welfare. It seems to me that that would probably satisfy the requirements of the legislation.

The issue here is that the clause is restricted to Ministers of the Crown. Now, Ministers of the Crown, so far as animal welfare legislation is concerned, have virtually no discretionary powers. The powers under animal welfare legislation are carried out by other organisations that are not covered by this Bill. If you want animal welfare taken into account in policy making, the focus needs to be on those organisations.

Q15 Angela Smith: There is just one final question from me. The point here as well is that this Bill could extend the protections offered by the Animal Welfare Act to wild animals and so on. It could have a much broader scope in terms of application. The spikiest question of all for me is this: is there a risk that this Bill could in effect embed animal rights in UK legislation rather than animal welfare?

Mike Radford: We will not have a seminar on what animal rights are. As Sir Stephen has said, one of the problems here is that it is so vague that nobody will be sure what it means. The animal welfare organisations will not be sure, and policy makers will not be sure. Therefore, it will ultimately fall to the courts.

Chair: It will be open to the courts to determine.

Mike Radford: That is right. One of the things legislation should give is a degree of certainty, so everybody knows where they are.

Q16 Chair: There is a total lack of certainty.

Mike Radford: No, because everything is up in the air.

Sir Stephen Laws: The mischief is not so much that there are lots of things that would result in successful litigation; it is the impact of something being capable of being challenged. It has a chilling effect on policy making, because people then go for the safe option. It does have this effect that people concentrate on compliance rather than on what is sound judgment.

Chair: That is a very interesting point.

Q17 Kerry McCarthy: You said earlier that “policy” was one of the vague things to be defined, as to whether it extended to statutory instruments and so on. A couple of years ago there was quite a row about the Government wanting to repeal animal welfare codes that governed each sector of the industry. The poultry code was the first one. They were basically going to let the poultry industry regulate itself. I do not know whether you remember that. They had to row back because there was quite a fuss. That was official guidance on animal welfare standards for the poultry sector and other sectors. Would that sort of thing be covered as policy? Could that have been challenged under this as opposed to something that is a piece of legislation?
Sir Stephen Laws: It could, but the example you give demonstrates that political accountability works, and you do not need legal rules to enforce it.

Q18 Kerry McCarthy: It worked in this instance because it happened to capture the public attention—there was a fuss. Presumably there could be other legal challenges to all sorts of things that generally go under the radar.

Mike Radford: Yes. It seems to me that if policy is not defined it covers more or less every decision that Government make in one form or another. Clearly, not all policy is going to impinge on animal welfare, but would it impinge on the Budget, for example? Clearly the settlement for local authorities, for example, will have an impact on their powers to exercise their discretionary powers under the Animal Welfare Act. The creep of this is limitless, it seems to me, as it stands.

Q19 Kerry McCarthy: If they do not fund councils, councils therefore might not be able to inspect pet shops, for example.

Mike Radford: Yes, exactly—“Have you taken this into account, Chancellor?”

Chair: We are potentially sending so much to the courts to decide. That is what I worry so much about with this.

Mike Radford: Of course, Chair, it is not just litigation; it is also freedom of information requests.

Sir Stephen Laws: The mischief of delegating policy decisions to the courts is that you have to consider how courts decide questions that are delegated to them. They decide them on the basis that they try to work out what Parliament intends. If Parliament intends that they should decide, you are in a sort of endless loop of deciding policy, by definition, in a way that is not calculated to produce the right result.

Chair: Animal welfare is so emotive for all political parties, really, that it will concentrate the minds of politicians. I do not see why we need to hand it over to the courts or that we are actually doing the right thing in doing so.

Q20 Alan Brown: You have both agreed that you do not think this is well thought through legislation. As the Chair said, it is emotive and there is politics involved. Do you have any concerns about what impact this could have on the devolved nations as well?

Mike Radford: It seems to me that if the duty is considered to be necessary, then it makes no sense that it does not extend to the devolved Administrations, who have similar sorts of responsibilities for animal welfare within their jurisdictions as the UK Government do for England.
Of course, as things stand, if it does not extend to the devolved Administrations, or if they do not voluntarily adopt a similar requirement, you would end up in a rather strange situation. When powers are repatriated from Europe, they are coming here, to Whitehall, with a view to them being devolved eventually at some point in the future. As things stand, whilst they were here, they would come into this legislation. Once they were devolved, they would no longer do so.

To answer your question, as I said when I opened, I am in favour of a requirement or a practice, in one form or another, that the impact on animal welfare is taken into account in policy making, but clause 1 is not the way to do it.

Sir Stephen Laws: It would have this impact on the devolved nations, in that it would apply to the formulation and implementation of policy by the UK Government in their relations with them. That may give rise to all sorts of knock-on effects so far as the devolved nations are concerned.

Chair: Then you add public opinion into the mix. You can imagine that something might be adopted in England but then was not to be adopted by Scotland. I can see the whole thing has a huge mix to it.

Alan Brown: Yes, the whole emotive thing almost forces your hands.

Chair: It will be emotive; it always is.

Q21 Mrs Murray: My question is actually to Sir Stephen, but I want to just clarify something. I have been really interested in looking at this legislation as compared to new clause 30. Paul said something about this being political and politically driven by one political party. Anybody can go to Hansard and see who signed new clause 30, so that actually clarifies that this was cross-party. The Government introduced this piece of legislation, but of course the original driver, which was the amendment, was actually signed by a lot of opposition parties. It actually said—I have it here now—that the intention was to bring article 13, the animal-sentience thing, into UK law. The result would have been exactly the same.

Sir Stephen, I was really interested in your written evidence. You highlight the example presented by the Fiscal Responsibility Act 2010 as a potential alternative approach to the draft Bill. I wonder whether you could explain the merits of this, please, and how the approach would work.

Sir Stephen Laws: My initial proposition is that it is inadvisable to have general duties that implement policy, because they bring the courts into matters that are properly for political accountability. Parliament is sovereign, and it can do what it likes. Sometimes it feels the need to give priority to particular policies. I can think of three examples of that: climate change legislation, child poverty legislation and the Fiscal Responsibility Act. In each of those cases, the Government decided that there was an area of policy that was so important that it needed to be
given priority over everything else and they were going to emphasise that by imposing a duty to put that thing first in legislation.

What was the mechanism it used? It imposed the duty, but it did not impose a general duty that could have an impact on all sorts of cases in the courts; it imposed a duty on Ministers to report to Parliament how they were doing in performing that duty. Therefore, it reinforced the policy with a legal duty but it ensured that it continued to be politically accountable. You did not go to court to enforce it; it was kept within the sphere of political accountability by a reporting mechanism, and, in the case of the Fiscal Responsibility Act, a clear statement that it was only accountability to Parliament that this duty was going to have.

If you are going to do that sort of thing, if you are going to try to emphasise a policy but it is a thing that should be left to political accountability, as drafters say, you say what you mean. That is what those Acts give you an example of. I am not saying it is necessarily a good idea, but it is the best—

Q22 Mrs Murray: You are basically saying that this should have a statement or something like that in it.

Sir Stephen Laws: What I am saying is that, if it is necessary to go down the road of reinforcing a policy commitment in legislation, the best and safest mechanism is one that expressly indicates that the intention is to keep the enforcement of the duty to the sphere of political accountability.

Chair: That can be done through this Act, can it?

Q23 Mrs Murray: If we had the Bill, then the real Bill—because this is a draft—could be amended to make that absolutely clear.

Sir Stephen Laws: Yes, it could. It presupposes—I am not expressing a view on this—that you think this duty has the same sort of need for priority that you give to climate change, child poverty and removing the deficit.

Q24 Chair: None of us here is a lawyer. What I want to check is this: is the Fiscal Responsibility Act different legislation from the Bill proposed? It is, is it not? That is what you were saying. Is it tighter, in that it cannot be challenged from all angles in court? Is that the advantage of what you are putting forward? Can you explain that to us in layman’s terms?

Sir Stephen Laws: It is much lower risk so far as the intervention of the courts in matters that are properly for Government and Parliament is concerned. It is not without risk, but it is much lower risk. It ensures that in practice Ministers will take notice of this legislation if they feel they have to report on it. It will be enough to make sure that Ministers take account of it, but it will not create this risk that it will constantly be litigated and everybody who wants to stop something will say, “Can we argue that this has an impact on animal welfare and can we argue that
the Minister did not properly take it into account?” That is the risk that it avoids.

Q25 **Chair:** It can be drawn much tighter then, can it, from the point of view of how it can be challenged in the courts? Is that what you are saying? I am just asking you as a layman.

**Sir Stephen Laws:** You impose a duty. The question is: what is the remedy for the duty? If the remedy is that Ministers have to report if they do not comply with it or they have to report whether they are complying with it, and you then say, “That is the only remedy,” then you reduce the chance that every policy decision is open to judicial review, because there has been a breach of the duty.

**Mike Radford:** Chair, I would suggest that that way of progressing may have a greater positive impact on animal welfare than what is proposed here, because the problem is that there is no relationship between subsections 1 and 2. Each of those subsections say the Minister has to have regard to animal welfare on the one hand and to matters affecting the public interest on the other.

Leaving aside what that means, the duty on the Minister is to have regard to both those areas. What weight a Minister gives is entirely up to them. You could go through all this, the Minister could have regard to it, and it may make no difference whatsoever, whereas a system in which Ministers have to come back to Parliament, or indeed to this Committee, and explain how they have taken welfare considerations into account may be a much more effective mechanism.

**Chair:** Certainly for us as parliamentarians, yes.

Q26 **Mrs Murray:** If that happened and that was the way it was progressed, would that be the same as paying attention to article 13 of the Lisbon treaty?

We are in the EU at the moment, so we have to adhere to article 13. I understand it is the Council of Ministers, but if we progress that way, would this Bill, if it were introduced in that way, be exactly the same as the European Council of Ministers paying the same sort of attention to article 13 of the Lisbon treaty?

**Sir Stephen Laws:** It could well have the same practical effect, because you could have a duty that would be equivalent. The question is whether you are satisfied with the way that duty is going to be enforced. I would suggest that a better way, and certainly a more efficient and less expensive way of ensuring it is complied with, is to rely on the mechanisms of political accountability, which I believe do work.

**Mike Radford:** I would agree with that. There are two issues here: first, one would want to see Ministers having regard to animal welfare in policy making; and secondly, one would want to see Ministers being accountable to demonstrate that they have done so. The issue that
Sir Stephen has highlighted extremely well is whether that accountability should be through the courts or through Parliament. We are moving towards a consensus that it should be through Parliament.

Q27 Mrs Murray: If we did that, we would actually be abiding by our obligations that we have now as members of the EU under article 13 of the Lisbon treaty.

Mike Radford: Yes, because the responsibility is to have regard to animal welfare. The issue is whether that is enforced politically or legally.

Q28 Dr Johnson: I have a supplementary question on what has just been discussed. Is this going to be overly bureaucratic? For example, we are talking about every different type of legislation, are we not, not just legislation that would be more directly related to animals or animal care? For example, if the Chancellor does the Budget and he stands up and he reduces the price of VAT—

Chair: We have been through this.

Dr Johnson: You have asked that question.

Chair: Yes.

Dr Johnson: I asked that question last week. We were told that it would be something he had to consider animals on.

Chair: Mike actually raised your precise point, Caroline. By all means repeat it, please.

Dr Johnson: I am sorry; I had a meeting this morning.

Mike Radford: To repeat the point, without “policy” being defined in the legislation, it covers potentially every decision that Government make that may have an impact, to a greater or lesser extent, on animal welfare, it seems to me. The example of the Budget was exactly the one I raised.

Q29 Dr Johnson: Yes, it seems to me that it could create a lot of bureaucracy. The other question is just to play devil’s advocate. If you want to have a judicial review, claimants need permission from a court to do it. Given that, would you say we can trust the courts to make sure that there are not lots and lots of judicial reviews? Can we trust the courts to ensure they are only taken in sensible situations and to keep the numbers down?

Mike Radford: The courts will not want to encourage vexatious litigation. Another problem here that we have not talked about is the definition of “animal” and the definition of “sentience”. If those were not clearly defined, I am not sure the courts are well equipped to get involved in a philosophical and scientific debate on what sentience means. In many respects, there is a danger here. If the courts decided that they were actually not equipped to deal with this and therefore closed down or restricted access to judicial review, the provision, if it were enacted, could be largely inoperable or not accountable. Political accountability is
preferable, because you can have Ministers back as many times as you want and you can have them sitting here until you get a reply.

Q30 Dr Johnson: You can redraft the Bill so that it says that.

Mike Radford: Yes.

Q31 Chair: That is what we were really talking about in terms of drawing it more like the Fiscal Responsibility Act. This is what we are trying to drill down on: whether we can draw it up in a tighter way.

Going on from Caroline’s question, at the moment, as it is written and drafted, I can see that any organisation that wishes to attempt to take a judicial review to court would certainly have the potential to do so. I know it would be the decision of a court, but the whole thing will be a hugely delaying tactic if nothing else. I can see very little change, rather than more change, with this process if we are not careful. Ministers will be so terrified of trying to change anything that they will do nothing.

Sir Stephen Laws: It is the potential for challenge. You can say, “Well, lots of cases will fail,” but the fact they may be brought will have an impact on policy makers. No court will ever rule out the possibility of a successful challenge. There will always be a door open, and that door is one that people will be constantly pushing at.

Q32 Chair: By the nature of lawyers and our case law, it will naturally always be that you try to bring a case in order to change the law and change the case law in an area. I am not blaming lawyers for that; that is the way the system works. Given the way this Bill is drafted, we are worried that it will just be almost a lawyers’ charter, if you like—not just because the lawyers want to challenge it but because various sections of society may want to use that process.

Mike Radford: In a way, what is being attempted here is to fit a round peg into a square hole. It is lifting an EU provision, and EU legislation is in a different form from UK legislation—it tends to be much more declaratory, laying down a general principle. Sir Stephen knows this better than me, but UK law is much more specific. That is what our courts are used to.

Q33 Chair: Of course, on animal welfare, if we draw it too tight, you could argue that would be good for that particular issue, but what it stops is any changes, if we are not careful. In some ways, what on the face of it looks like a good idea could in practice deliver quite the opposite.

Mike Radford: Yes, it is focusing on the wrong subjects. Ministers, first, do not have the discretionary power under statute for implementing animal welfare policy. In its inquiry last year, this Committee made exactly this point: that DEFRA owns this legislation but it does not have any hands-on implementation of it. The focus is wrong, and the nature of the duty is largely meaningless because it is just so vague.

Q34 Dr Johnson: Would it be very expensive for the Government to
implement, because of the potential for all these legal reviews? You say it is pushing at an open door. If they do exercise the duty properly, they are going to spend a lot of money on people to demonstrate that they have done it. Even if they do it properly, they are open to constant litigation and Government lawyers costing lots of money.

Mike Radford: Can I give you a concrete example? A couple of Sundays ago, the Prime Minister was on “The Andrew Marr Show” and she made an announcement that there would not be a free vote on foxhunting during the present Parliament. If this was legislation, because both sides of the debate claim that hunting or not hunting is in the interests of animal welfare, the issue would then arise, “Well, Prime Minister, to what extent can you demonstrate to us that you have taken account of animal welfare in this?”

Chair: Yes, whichever side of the argument you are on, you could still actually take it to court for a court decision. That is fascinating.

Q35 Julian Sturdy: Moving on from that, how much effort and time would be required by Government Departments to produce the written responses to applications for permission for judicial review? What I am trying to get at here is whether this would ultimately cause paralysis within the Department, if we are not careful.

Sir Stephen Laws: The potential for litigation is expensive, time-consuming and it consumes resources. Frankly, it is not a particularly good use of resources. People are better off getting on with making judgments and pursuing decisions. You have to think about what judicial review is good at doing. What it is best at doing is stopping change. That is what it is good at. It is not very good at producing change, but it is very good at delaying it and stopping it.

Chair: Yes. If you take planning, for instance, most people go to judicial review to stop a planning development. That is what you are saying, really. Judicial review is better at stopping than actually changing.

Q36 Julian Sturdy: I am sorry to interrupt, Chair, but are you saying that there might be a need for extra resources in the Department because of this?

Sir Stephen Laws: I would not like to say how much, but yes, there is a potential for extra resources.

Q37 Julian Sturdy: What impact might that have? I talked about paralysis within the Department. Might it have an impact on how the Department operates and how it might take forward further legislation?

Sir Stephen Laws: Doing politics in the courts rather than in Parliament is more expensive, less democratic and more time-consuming. Doing politics in the courts is a bit of a hobby-horse of mine—hobby-horses do not have welfare needs, but it is a hobby-horse of mine. I am against it for those reasons: it is expense, it delays things and, generally speaking, it stops change rather than promotes it.
Julian Sturdy: On the wider issue, if we actually did nothing, if we did not legislate at all on this, when we leave the EU would there actually be any change in the law relating to animal welfare? If we do not bring forward this Bill and we do not legislate on sentient beings, when we leave the EU would there actually be any change in the law to animal welfare?

Sir Stephen Laws: Article 13 is part of our law at the moment, so it would go. The question is whether that is something that is worth losing or worth keeping. If it is worth keeping, is it better to keep it in a different form?

Julian Sturdy: What you are saying is that you feel that we would still have to legislate, but maybe in a different form.

Sir Stephen Laws: No, whether you legislate is up to you. If you want to legislate, it would be better if you did it in a different form.

Mike Radford: If I may, Chair, it is important to note that article 13 and clause 1 do not impose a duty to give effect to animal welfare considerations; they only impose duties to have regard to them. They can still be overridden by competing interests. So far as legislation is concerned, it seems to me that Government practice is that they generally put out consultation proposals. Everybody who has an interest can submit their evidence, and that, it seems to me, would satisfy the provisions of this Bill. In other words, so far as Ministers are concerned, current practice already complies with these proposals.

You asked about resources. So far as DEFRA is concerned, it would not impact on them so far as animal welfare legislation is concerned, because they are already doing it. Where it may impact on DEFRA is that every other Department may have to run proposals past Defra to ask, “Are there any animal welfare implications in this?”

Chair: Yes, that would be the responsibility of other Ministers. Perhaps we should point that out to all the other Ministers. They may not be quite so enthusiastic.

Dr Johnson: Just quickly, I want to clarify the point you made in response to Julian’s question. At the moment, we are in the EU and we have article 13. If we leave the EU under the current plan, we would be left without article 13. Does that actually make any material difference to the law, as it is applied? If article 13 is merely a declaration—a virtuous statement—does it actually have any practical application or obligation with it that we are going to lose because we have not put it in?

Mike Radford: Yes, it does. Article 13 is restricted to those particular specified policy areas, whereas clause 1(1) is Government policy generally.

Dr Johnson: No, I do not mean between having sentience and not having sentience. Let us say that we did not have a sentience Bill at all.
If we left the EU and we had taken article 13 out, would the fact that we do or do not have article 13 actually have any practical effect at all? Does it create an obligation we will not have anymore, or is it a virtuous statement?

**Mike Radford:** It is the point I made, again when you were not here. It is a question of whether you are talking about legal implication or political implication.

**Dr Johnson:** I mean a legal implication.

**Mike Radford:** Legally, yes, it would potentially make a difference, because it would no longer be a legal duty. Whether it would make any difference in practice would depend on how politicians respond to Government.

**Q42 Kerry McCarthy:** I am not sure it is right to say that the Government always consult on animal welfare provisions. When they were trying to water down foxhunting legislation through a statutory instrument, they were hoping nobody would notice that a statutory instrument was coming through. Again, it was relying on campaign groups to make a fuss about that. There is not always a formal consultation.

Putting that to one side, I want to ask a different question. Article 13 has a caveat that says “respecting the legislative or administrative provisions and customs of the member states relating in particular to religious rites”, which is clearly meant to look at things such as non-stun slaughter in halal and shechita slaughterhouses. That is not in this Bill. The bit about “matters affecting the public interest” is the closest thing you have. Would it be more likely that a challenge to non-stun slaughter would succeed under this Bill?

**Sir Stephen Laws:** No, because it says that you must have regard to it; it does not exclude things you can also have regard to. Those things could still be taken into account. They would not necessarily be about public benefit, but they would be things that a Minister could take into account in making a decision. That this sort of decision might be open to challenge because of this is true, as is every other policy decision.

**Q43 Kerry McCarthy:** It is just that the caveat mentions “respecting” the customs of member states, relating in particular to religious rites. That sounds to me like it actually wants to get down in words that religious rights are important, whereas under this Bill it does not say that.

**Mike Radford:** Yes, it is important to appreciate that the specified caveats in article 13 were introduced specifically to promote subsidiarity so that this was not a one-size-fits-all for all 28 member states. Clearly, when one is talking about England or the UK, that is different from trying to protect the customs and traditions of all 28 member states.

To answer your question on religious slaughter, I cannot see that it is actually a great deal different from the situation at the moment, in that there is an ongoing debate about whether religious slaughter should be
better regulated or abolished altogether. In so doing, Ministers are, on the one hand, weighing up animal welfare interests against religious freedom. I do not see that imposing a statutory duty would make any difference to the process or the outcome.

Q44  **Kerry McCarthy:** In some regions of Belgium they are introducing a ban on slaughter without stunning. It was held that that was not incompatible with article 9 of the ECHR. You are saying that basically the same situation would apply. Being out of article 13 and under this legislation would not make any difference to our freedom to—

**Mike Radford:** No. Parliament is legislatively supreme. Therefore, with respect, it is down to you. If you vote the legislation through, it will take effect, one way or the other.

Q45  **Sandy Martin:** We are trying to look for an area where this proposed legislation might have made a difference to decisions that have been taken. I will move away from the issue of faith, although some of us might feel the support for badger culls was more to do with faith than science. Would having this legislation in place have made it less likely that the Government would have carried out their badger culling programme, or would it have had no effect whatsoever?

**Mike Radford:** My view is that it probably would not have had any effect, in the sense that Ministers have decided that there shall be a badger cull. There is a lively debate, with lots of lobbying going on, and they have weighed up the animal welfare arguments against the arguments for having a cull. Having decided that they are having a cull, they have then decided on the means of that cull. If one is taking that as an example, where the animal welfare issue would make a difference is if this applied not just to Ministers but to those who were actually carrying out the cull, but that is not what is proposed here.

Q46  **Sandy Martin:** If there were the recourses for judicial review, then it is entirely likely that a judicial review would have been carried out, or it would have been proposed or pursued by somebody, over the issue of badger-culling, if this legislation had been in place. Is that not right?

**Mike Radford:** The courts are not going to make a decision on the merits or otherwise of badger culling. What the courts are looking at in judicial review is: does whoever purports to have the power have the power to do it? Have they followed the correct procedures in arriving at their policy and implementing it?

**Sir Stephen Laws:** I agree with that. It would have prolonged the debate on what animal welfare is, but it would not necessarily have come to a different conclusion. Indeed, the impact of this provision is less likely to be significant in relation to those matters where animal welfare clearly is the issue, because it is unlikely that, where animal welfare is the issue, Ministers will not be able to show they have had proper regard to it. The main, and in my view mischievous, impact of this is where it
has an impact on things that are peripheral to animal welfare. It provides a handle for challenging other decisions.

**Mike Radford:** Another aspect of this that is important, which we must mention, is the fact that there is no definition of “policy”. We have said that there is no limit on that, but what exactly does “policy” mean? Clearly, if Government are intending to change something, that is a policy. But Government might be lobbied and say that they are not going to do anything. In other words, does inaction count? Does a decision not to do anything amount to the formulation of policy? If it does, Government arguably make more decisions not to do things than they do to do things. That is another can of worms.

**Sandy Martin:** What do you think about that, Sir Stephen?

**Sir Stephen Laws:** As I said earlier, it is easier to bring judicial review to stop something than to cause it to happen. It is an argument that shows there is yet another respect in which Government decision making is going to be delayed by potential litigation.

One interesting aspect is about policy for primary legislation, if the Government come forward with a proposal for primary legislation. Clearly, if Parliament passes an Act, it will not be able to be challenged under this provision, but we have seen from other things, such as airports and so on, that it is often possible to challenge policy at an early stage of its development towards legislation. That seems to me to be extremely undesirable. Ultimately, what is in legislation ought to be determined by Parliament, not by what courts have decided about a White Paper about what Government want to do.

**Chair:** What you are saying is that this is almost a “Yes Minister” situation. If this Bill was in place, civil servants would come along to Ministers and say, “You could try to do that, Minister, but the moment you try to do it, it could well be judicially reviewed and you could really have problems in the courts.” It may have the issue of Government not bringing things forward when they want to. Is that what you are saying?

**Sir Stephen Laws:** There is a development that results from judicial review of defensive policy making, yes. That is a fact.

**Mike Radford:** To answer Mr Martin’s earlier question about whether and where it would make a difference, it seems to me that the potential major difference is in relation to wildlife. At the moment there is no general statutory duty to promote or protect the welfare of wildlife, but what the nature of that duty would be under this legislation I have no idea at all.

**Chair:** It is too wide.

**Angela Smith:** I absolutely agree with that last comment. It could be incredibly divisive as well, socially and politically.

Just going back to the religious slaughter issue, which I know is very complex and very controversial, there is no clarity over how article 9 of
the ECHR applies here. Of course, two of the regions of Belgium, Flanders and Wallonia, have effectively said they are going to ban slaughter without stunning from 2019 onwards. They consider that article 9 does not apply here, which is interesting.

My question is: will the lack of definition of public interest in this Bill make that debate—the debate about having regard to religious traditions and cultures on the one hand and animal welfare on the other—even harder?

Mike Radford: Rather than make it harder, the problem is that it makes it less clear what the nature of the duty is on Ministers, because a phrase such as “matters affecting public interest” can mean all things to all people. If it is left like that, the only body that can define precisely what it means would be the courts. As Sir Stephen says, defining it is a job for politicians, not for the judiciary. Taking something like religious slaughter, it is important to understand what judicial review is there for. Judicial review is enforcement of the rule of law. All the courts are concerned about is, first, whether there is a legal authority for what has been done or what is proposed to be done; and, secondly, if there is legal authority, whether the right procedures have been followed. The courts are not the right place to have a debate on the policy of religious slaughter, which is complicated, emotive and deeply felt. Parliament is the place to sort these things out, because you can take account of everything, not just whether or not it is lawful.

Chair: I have also done an awful lot, both in the European Parliament and here, on religious slaughter. As far as I am aware, the way the law stands at the moment is that all animals should be stunned at slaughter, but there are exceptions made for religious slaughter, rightly or wrongly. What I am interested in is this. If this Bill was to go through in its present form, is there not a body of people who can say, “We believe all animals should be stunned. We do not accept that an exception should be made for religious slaughter, so we will challenge it in the courts”? Would that be possible?

Mike Radford: Yes, and it would therefore become more divisive. The courts cannot negotiate or compromise; they either say, “Yes, this is lawful”, or, “No, it is not lawful.” Whichever side comes out as the loser is going to feel more aggrieved than when it went in. With a political forum, you can get people in the room, you can negotiate, and you can give and take—you can try to find a consensus.

Chair: That is right. I have done a lot of work on it, as many have in this room. Some religions allow some partial stunning if there is recoverability and all of these things. I much prefer all animals to be stunned. If you are not careful you will drive this into a very polarised debate—and you will drive it into religious leaders as well. This is what worries me particularly about it, but you raise an interesting point.

Julian Sturdy: Sir Stephen, I just wanted to come back on something you said about the impact on other policies when we were talking about
the badger cull. I accept the point that it probably would not have changed the policy on badger culls; it might have just delayed it, but there is an interesting point on the impact on other policies. I just wanted to throw a couple of scenarios at you. For example, if we are looking at transport policy going forward, that might mean new road-building or new railway lines. We can talk about HS2. Could this actually impact on something like that? If we are talking about a new road going through a wildlife corridor or a specific habitat, would that have a wider impact?

Sir Stephen Laws: Insofar as it is a decision made by UK Government Ministers, this duty is something they would have to comply with.

Q51 Julian Sturdy: A Transport Minister would not have to do that at the moment, but they would have to do it under this.

Sir Stephen Laws: They would not have to by virtue of law, but they probably would as a matter of politics, which is enough, is it not? That is what I would say.

Q52 Julian Sturdy: What I am trying to get at is whether you feel there would be a potential change there. Could it be used, for example, to stop a bypass going forward? I am trying to tease out other scenarios that this might impact on.

Sir Stephen Laws: It will be another weapon in the armoury of the NIMBYs, will it not?

Chair: You are a brave man, Sir Stephen. I know you are not an elected politician.

Julian Sturdy: Moving on, the argument could be the same for housing policy as well.

Mike Radford: Could I give you another concrete example, Chair? This Committee is well aware of the problem of illegally imported puppies. Primarily, it is a responsibility of Government, of DEFRA, to monitor and enforce that provision. Historically, they have not done that adequately, largely because of the problem about what would happen to seized puppies.

The animal welfare organisations, primarily Dogs Trust, have moved in to cover that. Under this, I suppose there would be greater accountability. If DEFRA were not provided with adequate resources, Ministers would have to demonstrate that they had taken animal welfare into account in under-resourcing and they would have to explain it. Would it make any difference to the outcome? I do not think it would, because they would simply say, “DEFRA does not have enough money to do all the things it can. It has to decide on its priorities.” If, as my personal view is, they are abdicating their responsibility, again it comes back to the fact that it is down to you as politicians to hold the Government to account, not the High Court.
Mrs Murray: Very quickly, going back to the highways scenario that Julian raised, we already have to take wildlife and habitats into account when we are looking at planning for any new roads. Could you envisage this extending that? Very clearly, you have bats that are protected and you have to make sure you make provision for that and take it into account. Would it extend it beyond the specific species at the moment?

Mike Radford: You raise an important point. There is some wildlife legislation that covers specific types of animals, such as badgers, which are protected.

Mrs Murray: Yes, and bats.

Mike Radford: In general terms, however, wildlife protection legislation is focused on protecting species, habitats and environments, whereas welfare legislation—this is a really important point—in relation to domestic and kept animals focuses on the welfare of the individual, not populations. Under welfare legislation, if you have 20 dogs, it is not all right if the population is looked after in general; you owe a legal duty to ensure the welfare of each of those 20 dogs. If you lift the welfare needs from the Animal Welfare Act and apply them generally to wildlife, that is a bottomless pit, really.

Alan Brown: If we return to comparing this Bill with article 13, article 13 makes a statement of fact that animals are sentient beings. Therefore, can UK legislation effectively incorporate this, or is DEFRA actually seeking to do the impossible?

Mike Radford: If what one is looking for is a simple statement that animals are sentient beings, then you need to define what “animals” are, because there is no scientific consensus that all animals are sentient beings. The reason that sentiency was put there was because, up until that point, under EU law, or EC law as it previously was, animals were regarded as goods. This was particularly in the context of agricultural provisions. In terms of European Community and latterly European Union law, agricultural animals had no different status from a bag of potatoes or a lorry-load of carrots. The reason to put sentiency in there was to demonstrate that there was something different about animals from other traded goods.

Sentiency is recognised, and then on the basis of sentiency there is this duty to have regard to animal welfare. That was symbolically important, but it was also legally significant, because the European Union can only legislate on matters that fall within its competence. You will be familiar with EU directives that have a long preamble where they set out, point by point, the basis on which they are introducing this legislation. That is to illustrate that it falls within their legal competence.

Yes, the sentiency issue was symbolically important, but its legal significance was that it was making it absolutely clear that animal welfare properly fell within the competence of the EU because of sentiency—
because the animals were sentient, as opposed to carrots and potatoes and wheat, which is not.

**Alan Brown:** I can see what you are saying there in the EU context. I suppose it then comes back to what DEFRA are trying to achieve by replicating that.

Q55 **Chair:** Do we need to have this Bill to achieve sentience or not? Is that too blunt a question?

**Mike Radford:** It depends whether the need is political or legal, Chair.

**Chair:** From a legal point of view.

**Mike Radford:** From a legal point of view, it is symbolically important, but a statement in legislation that animals, however defined, are sentient does not make any difference unless the definition of animals goes wider than “vertebrates.” At the moment, Parliament, led by Government, has drawn a line as far as welfare is concerned, and it is essentially at vertebrates, because the theory is that they have a spinal cord so they have sentiency similar to us. The one exception is with octopuses in the Animals (Scientific Procedures) Act.

The principle could go beyond vertebrates, and there is a strong case that some crustaceans—crabs, lobsters and some molluscs—should be included. You do not need a general statement on sentience. So far as the Animal Welfare Act is concerned, there is a provision in section 1 that allows Ministers to extend the application. It has to be on scientific evidence, but there is actually a large scientific consensus that some molluscs and crustacea are sentient.

Q56 **Mrs Murray:** Of course, octopuses live about two years, do they not? They are a little bit different to others, perhaps.

**Mike Radford:** Yes, traditionally their sentiency was not appreciated because they did not have a spinal cord or a central nervous system, but work on octopuses has demonstrated—it was actually very well demonstrated on “Blue Planet”—that they are different from us, but there is an awful lot going on with octopuses.

Q57 **Mrs Murray:** Could I just ask another question? You said very clearly that there was no legal need. Is there a political need for us to preserve EU law and article 13 as we leave the EU? Might it be sufficiently exceptional if the legislation were properly drafted? It was very clear that you did say in your evidence that legislation should be introduced only in exceptional circumstances.

**Chair:** That was Sir Stephen—

**Mrs Murray:** I am sorry, Sir Stephen.

**Sir Stephen Laws:** As the Chairman has pointed out, I am maybe not the best person to express a view on what is politically necessary.
Chair: Anyway, you are quite entitled to.

Mrs Murray: It would be interesting. We will not hold you to it—we understand—but it would just be interesting to hear your view on it.

Sir Stephen Laws: I just infer from the fact the Bill has been produced that it is felt there is a political need, which is why I have directed my remarks to what would be the best way of doing it. Ideally there is no real legal need so it is better not to have clause 1 at all. If there is, there are better ways of doing it. I come back to that.

Q58 Mrs Murray: Very clearly, with all the publicity surrounding new clause 30 at the time, there was a very clear indication about this. Whether it was because it was misrepresented to the public or not is up to every individual to decide for themselves, but there was a clear demonstration that the public felt there was a need, rightly or wrongly, whether or not it was sold to them in the wrong way. Because of that, should it be treated as one of the exceptional circumstances in which we do introduce something?

Sir Stephen Laws: I recognise that that situation exists. The question I would pose back is whether or not the welfare needs of animals fall into the same sort of category of requiring legislative reinforcement of a policy objective that applies in the case of child poverty, climate change and fiscal responsibility. I can see that people might argue that it does.

Mrs Murray: Yes, a lot of people believe so.

Sir Stephen Laws: If they do argue that it does, then that would justify legislation.

Chair: It is about getting the right legislation. That is what we are trying to drill down on.

Q59 Kerry McCarthy: I was interested that you mentioned crustaceans, because I have been contacted by an organisation about this in the past and in the past I have tabled questions about it. Their argument would be that apart from the lack of a spine there is not much difference between a crustacean and a fish in terms of its capacity to feel pain. I understand that there would need to be a change to the definition of “animal” to bring them into it, and that is in the Animal Welfare Act. Is there scope in this Bill to start addressing those sorts of issues? Would it be better if the Government had brought forward an update to the Animal Welfare Act and tried to deal with it in a more specific way, rather than just having this general provision?

Mike Radford: I do not go so far as Sir Stephen in saying clause 1 should be done away with per se. There is merit in public bodies being under a duty to demonstrate that they are having regard to animal welfare in their decision making. Whether it should be in this form or whether it should be in the form of a report, as Sir Stephen has proposed, there is a lot of merit in that, because this is not an advisable
way of going about it. In doing that, there would have to be a clear
definition of what "animals" meant, although if it was done politically that
would not be so necessary, because you could decide which animals you
felt were being left out and hold Ministers to account on that.

Q60  **Kerry McCarthy:** At the moment, they do not come under the definition.

**Mike Radford:** No. The definition in the Animal Welfare Act is such that
an animal has to meet two conditions: first, it has to be a vertebrate
other than man; and secondly, it has to be either an animal normally
domesticated in the British islands or temporarily or permanently under
the control of man, or not free-living.

Q61  **Kerry McCarthy:** Once a lobster has been caught, that is defined as
being under the control of man presumably.

**Mike Radford:** Yes, but it is not a vertebrate.

**Kerry McCarthy:** It is not a vertebrate, yes. At the moment it does not
come under the definition.

**Mike Radford:** All that would have to happen is Ministers introduce a
statutory instrument, which has already been done in terms of the Animal
(Scientific Procedures) Act, extending it to octopuses and, two stages
further, crustaceans and molluscs.

Q62  **Mrs Murray:** You might have answered this as we have gone on, but just
to seek real clarity, if we do not legislate, would there be any significant
change in UK law related to animal welfare when we leave the EU?
Article 13 would no longer apply. Would there be any obvious change in
UK law?

**Mike Radford:** Not immediately in the substance because the whole
point of the withdrawal Bill is to incorporate existing EU law into UK law.
After that it is entirely up to you as Parliament to decide what you are
going to do.

Q63  **Mrs Murray:** If I could just seek clarity, very clearly a lot of people felt
that there would be because they brought forward new clause 30 of the
European Union (Withdrawal) Bill, saying that it had to be put into law.
Are you saying that those people were perhaps misinformed or
misadvised?

**Mike Radford:** The political controversy was misdirected in that it
focused on the issue of sentiency. Parliament and Government since
1822 have recognised through legislation that various types of animal are
sentient. The difference it would make is that there would no longer be a
legal duty to have regard in those specified areas, but the UK
Government have not had to legislate anew on those areas because it has
up until now been determined at an EU level and EU law has simply been
incorporated into UK law.

**Mrs Murray:** Maybe a little bit more research should have been
conducted before that new clause was put forward. Chair, that is just my personal opinion. I would not expect the witnesses to make a judgment on that. Thank you very much.

**Q64**

*Angela Smith:* Just to change it slightly, because we are talking a lot about definitions, does it surprise either of you that the Government did not put into the draft Bill a reference to definitions of “sentience” and “animal”, as set out in the Animal Welfare Act? In other words, it would have been quite easy for them just to say the definition of “animal” and the definition of “sentience” is as defined in the Animal Welfare Act. That is what normally happens, is it not?

*Mike Radford:* Absolutely. As I said in my submission, there is no express statutory meaning of “animal” in legislation. The term is used very widely, but it is defined for the purposes of each piece of legislation, and it can be very narrow or it can be as wide as one likes. If one looks first of all at the Secretary of State’s statement, he says, “This draft Bill will embed the principle that animals are sentient beings”. I do not know quite what that means, because Parliament already recognises them as sentient beings.

Then when one looks at DEFRA’S consultation paper, it seems to me that they really are at a bit of a loss, with all due respect, as to what this is all about and what they are doing, because they make it absolutely clear, on page 14, paragraph 7 of their document, that “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”.

This raises the question of quite what the policy objective of clause 1 is. Is it to incorporate sentiency, in which case it is symbolically significant but legally less so, or is the policy objective, which is not mentioned in the Secretary of State’s written statement, to impose a greater duty on Ministers to be accountable for demonstrating that they have taken animal welfare into account in policy making? There seems to me a disconnect there.

**Q65**

*Chair:* It is not just DEFRA Ministers, is it?

*Mike Radford:* No, it is all Ministers of the Crown.

*Sir Stephen Laws:* Maybe I need to say something about why you define expressions in legislation. On the whole, you try to draft in terms that do not require definition. You put in definitions if you know you want to cover something that might not be covered by the word you have used or if you want to exclude something that might be covered by the word you have used. If you do not know, you do not define. I feel what was attempted here was an attempt to reproduce article 13, in which the expressions are not, as far as I understand it, defined. To that extent, it
does not surprise me that the expressions are undefined, but it does not add to the clarity that they are used undefined.

**Chair:** Article 13 was drafted in EU law in order to make sure that it was not too defined, to be perfectly honest with you. The problem we have now is we have taken something that was not particularly defined and are trying to define it.

**Mike Radford:** Also, Chairman, in the policy areas that are covered by article 13 it is clear what animals one is talking about. It is significant, for example, that environmental issues fall within the competence of the EU but the environment is not included in article 13.

**Sir Stephen Laws:** It is an inherent problem with the difference between UK legislation and European legislation. European legislation is drafted to effect a compromise, so that it can mean different things to different people who have agreed to it. UK legislation on the whole is drafted in order to give effect to something we know we mean.

**Chair:** My final question to you is whether, rather than improving clause 1, you feel it would be better to be dropped entirely as a bad idea, as a legal view?

**Sir Stephen Laws:** It carries a risk of litigation that would mean it would be better to be dropped, but if it is essential for political reasons to have it, it should take a form where it emphasises political accountability.

**Chair:** That was your reference back to the different type of Bill, was it not?

**Sir Stephen Laws:** Yes, the fiscal responsibility.

**Mike Radford:** I am in favour of public bodies generally being accountable and having to demonstrate in some way that they have taken animal welfare into account. I would favour it being a statutory duty, but I am with Sir Stephen in thinking that the enforcement of that statutory duty should be primarily in the political forum rather than the judicial one.

**Chair:** Thank you, gentlemen. That is very clear at the end there. Thank you for some very good evidence. It is relatively complex, but you have been able to explain it to us very well and that has given us some very good evidence this morning. Thank you both very much for coming. Sorry for keeping you a bit longer, but it was a very interesting session. Thank you.

**Examination of witnesses**

Chair: Thank you very much. Welcome to our session on the draft animal welfare Bill. Please introduce yourselves and then we will get straight on with it.

Paula Boyden: Thank you, Chairman. I am Paula Boyden. I am veterinary director at Dogs Trust.

Penny Hawkins: I am Penny Hawkins and I am from the RSPCA science group.

Chair: Thank you.

Michael Webb: I am Michael Webb. I am the head of policy and public affairs at Battersea Dogs and Cats Home.

Chair: I will start off the questions. Why do you believe that it is necessary to transpose article 13 into UK law and recognise animals as sentient?

Penny Hawkins: From the RSPCA’s perspective, it is a critically important point of principle. Clearly we would welcome anything that would highlight the fact that animals are sentient and have welfare needs and require due regard to be paid to their welfare needs when setting up policy. From that point of view, it is a very important point of principle and what we would really like to see would be a way in which all of the potential legal issues that we have just been hearing about could be tightened up so that this can go forward in a workable way.

Chair: We all agree that we want animals to be recognised as sentient but, as we have heard this morning, it is about how we do it and whether it is achieved in this Bill or not.

Paula Boyden: I completely agree with my colleague, but also because sentience underpins the moral fundamentals of us giving regard to animal welfare, one of the challenges with the current Animal Welfare Act—and clearly that was a big step forward from the 1911 Act—is that it aims to make sure there are no negatives so that animals have a life worth living. What sentience does is push this forward to make sure that animals have a good life. It is quite critical to be able to have that.

Michael Webb: I would agree with both my colleagues, and I would just further add that when you are considering public policy there is very little in the way of public policy that does not in some way impact on animals, as animals are a huge part of our everyday life. Bearing in mind that there is already a provision that it is incumbent to bear in mind animal sentience and to consider animals when making public policy, we believe that it is important that that is maintained.

Mrs Murray: Can I just ask for clarification? Article 13 of the Lisbon treaty recognises specific areas. What areas of your interest would be lost when we leave the EU under article 13? Very clearly those areas are defined—agriculture, fisheries, space and travel. We have the live animal
transport, but what areas do you think you need this legislation to cover?

**Penny Hawkins:** From an RSPCA perspective, we are not looking at it so much in terms of what we can lose but it is what we stand to gain. Currently, as this draft Bill is laid out, it has the potential to extend the scope of the Animal Welfare Act, for example to include wild animals who are not being kept by humans.

Q71 **Mrs Murray:** You are talking about extending the Animal Welfare Act, not having additional legislation to cover what would be lost in article 13.

**Penny Hawkins:** We are suggesting that the sentience amendment is not made as an amendment to the Animal Welfare Act. We are suggesting that it is a separate piece of legislation, because then that would enable it to cover all policy areas. As my colleague said, every area of human-animal interaction has the potential to impact on animal welfare. It would have the potential to cover a much broader range of policy areas, more species and more situations, so for us it would be a gain rather than not wanting to lose something.

Q72 **Angela Smith:** Penny, on that point, you just referred to wild animals being kept by humans.

**Penny Hawkins:** Not being kept by humans.

**Angela Smith:** You said “not”. Sorry, I misheard you.

**Penny Hawkins:** Wild animals in the wild.

**Angela Smith:** Properly in the wild, yes, because wild animals kept by humans are covered.

**Penny Hawkins:** They are already covered by the Animal Welfare Act.

Q73 **Chair:** We have heard concerns that using legislation to show Government commitment, in this case to animal welfare, is legally quite controversial. What is your view of the Government’s decision to use a statutory provision to reinforce a policy commitment? Do you like it or not, or do you not have a view on it?

**Paula Boyden:** In terms of the legalities clearly that is not our area of expertise. However, putting sentience on the statute book is a strong message. For us, it is a positive step to say that this is really important. As has already been alluded to, there are areas where we can make positive steps in terms of animal welfare as a result of that. We would support it, notwithstanding the challenges that have been raised, and certainly we have concerns about how it is written at the moment.

Q74 **Chair:** You are all largely of that opinion. There are concerns that the clause in the draft Bill has been hastily drafted, and there is an argument that it was in response to a political storm generated in November during the parliamentary stage of the European Union (Withdrawal) Bill. Do you believe the Bill has been drafted in the right way? Are there particular
concerns you have about the drafting? It would be quite interesting to hear from you if you have; you may not.

**Paula Boyden:** As mentioned, we certainly support this going on to the statute book. However, there are concerns about how it is written. There are certainly concerns about public interest, which have already been discussed. We need to be able to look at that and address it before this could go forward in any sort of legislative way.

**Chair:** You will be making those representations, will you, because the whole idea of having this Bill in a draft stage is to be able to do that?

**Paula Boyden:** Yes, very much so. We support the principle. We have already seen experience of perhaps knee-jerk-reaction legislation, such as the Dangerous Dogs Act and the harmonisation of the pet travel scheme. They have both had unintended consequences and we need to look at those and horizon-scan to help draft something that is workable.

**Chair:** You are saying that we want to make sure that we do not do this in haste. We have to try to get it right.

**Paula Boyden:** Very much so.

**Michael Webb:** From our perspective, we agree with Paula. That is why we were somewhat surprised, to be honest, to discover that clauses 1 and 2, as they currently stand, appear in the same Bill at the same time. We take the view that something that is particularly important in this Bill that has not perhaps necessarily been discussed too much today is that, in contrast to clause 1, clause 2 on the sentencing provisions is quite simple. It has immense popular and political support and frankly should not be delayed in the event that there are overwhelming concerns with the other parts of the Bill.

**Q75** **Chair:** On the sentencing, perhaps Paul, if he was here, might take a slightly different view, but most of Parliament would be really very keen to see the higher sentencing. The argument is about whether it needs to be in this particular Bill in order to create tougher sentencing. It can be brought in via other means, but we all accept that the tougher sentencing is well overdue. It is just interesting that they are all put together in this way, because there are other ways that the tougher sentencing could be brought in. What you are making a plea for is to get this tougher sentencing on the statute book, either via this Bill or via another means that could be even faster.

**Michael Webb:** Although, Paula is entirely correct when she points out that there are significant issues with the wording of clause 1. It will not surprise you that we all feel that way.

**Q76** **Chair:** What would your significant issue with that be?

**Michael Webb:** There are a few issues, not least the phrase “have regard”, which seems a little weak to us. There is the fact that it confers
a duty only on Ministers of the Crown, who are not the only people who have a responsibility for carrying out policy around animal welfare. There is a rather confused issue in the consultation around the devolutionary impacts of it and to what extent this is in any way at all binding on countries other than England.

Chair: Alan made that point earlier.

Michael Webb: There are a number of such issues that need to be ironed out. I would also add that I do not feel, in order to do that adequately, that the consultation period that has been set out is necessarily long enough.

Chair: You are saying that you are not convinced that the consultation time is long enough. Is that what you are saying?

Michael Webb: Yes.

Chair: Without putting words into your mouth.

Michael Webb: I feel comfortable enough with those words being put into my mouth, Chair.

Penny Hawkins: I would echo the comments of my colleagues. There are some issues with the wording of clause 1, which we do not feel are insurmountable, but also for the RSPCA the key issue is that there has to be a mechanism in place for implementing this in a clear, fair and transparent way, and a mechanism for reporting and accountability under this legislation, because as we all know that was one of the failings of article 13. It does still allow activities to carry on that are hugely detrimental to animal welfare, so this should also be seen as an opportunity to really make it work and tighten up the accountability.

Chair: That is right. You make a good point. Over the years, many of us in this room have had a lot to do with animal welfare, and sometimes it is not always about having the legislation, is it? It is about implementing it and enforcing it. We have to produce a Bill that is capable of that, and we have to be mindful of that as we do it.

Sandy Martin: I am not going to be quite as reticent about putting words into your mouth, because I want to know whether you are in favour of a particular way forward. It seems to me that you want to have the word "sentience" on the statute book, but if it were on the statute book in a different Act than the Bill that is being proposed here, if we went ahead with clause 2 to make sure that we got the sentences that we want for the existing legislation and then had a separate new Act that dealt with the gaps—in particular, the gaps around wild animals—and also introduced the concept of sentience, then that might be a more effective way forward than this "two bits" Bill that we have at the moment.

Penny Hawkins: Yes.
Chair: You are happy, Penny, for those words to be put in your mouth?

Penny Hawkins: Yes. I have to admit it is touching at the very limits of my expertise here, because I am an animal welfare scientist. I have been involved in European legislation, as you know, Chair, through the revision of the directive, and I am aware of the other activities of the RSPCA, but I have had to have rather a crash course in animal welfare legislation. It is obvious to me that there are alternative ways of achieving a better outcome for animals, which I am sure we all want to see. On the face of it, I cannot see anything wrong with what you said, but I could consult with others with more legal expertise in the RSPCA.

Chair: It is always dangerous to give Sandy a blank cheque.

Penny Hawkins: If there is anything else the society would like to add, I can send it in.

Paula Boyden: We think that pushing ahead with article 2 as a stand-alone makes perfect sense. The only concern we would express at this stage is that clearly the increased sentences, which we absolutely agree with, mean that a number of these cases will go to Crown Court rather than magistrates’ court, because of the level of sentencing. We are already aware that there are quite a lot of animals that spend a lot of time kept in kennels, in terms of getting cases to court, and that has a big impact. For example, colleagues in Scotland, which I appreciate is a different jurisdiction but it a similar concept, seized a group of 80 puppies that were still in kennels nine months later. What we do need to look at is a means of either expediting cases or dealing with these animals.

Chair: That is a very good point, because the police very often hold dogs for years.

Michael Webb: If I might come off the back of that, I agree with Paula about the need for expedition of court cases. There are a number of cases regarding breed-specific legislation that are going on at the moment that have been repeatedly adjourned and delayed. What seems to be forgotten at times is that there is a living, breathing animal spending longer in a kennel than is naturally ideal for it to do so.

Chair: I am hoping that at some stage this Committee will be able to look at breed-specific legislation, because a dog is either dangerous or it is not. Doing it just by breed just sentences that dog to death; that is the problem, is it not? Has this Bill got the capability of incorporating any of that in it or not?

Michael Webb: With regard to treatment of dogs during the judicial—

Chair: Yes, breed-specific and dangerous dogs.

Michael Webb: It does not at the moment. Our understanding is that to do that you would have to go back, as the Government did with section 3 in 2014, and amend the original Dangerous Dogs Act. As you are all
aware by now, our position is that we would be very keen to do that anyway.

**Chair:** It is certainly interesting, because we are wondering whether we could do a short report on this whole draft Bill, and it is perhaps something that we could consider looking at.

**Kerry McCarthy:** You were here for the previous evidence session, and concern was expressed that so many things are going to end up being decided by the courts, which is almost pushing Government policy making to the courts for decisions rather than it being handled by politicians. Do you share those concerns, or do you think it is an opportunity to press the Government to go further?

**Paula Boyden:** Certainly, I share the concerns that this is not robust—clearly I am not a legal expert. There are many definitions that need clarity so that the boundaries are being set, so that Parliament is making that decision and making that call rather than it going down the court process. We would struggle with this in its current format. It needs a lot more work, particularly with regard to definitions.

**Angela Smith:** I have already declared my membership of the animal welfare group. There is no definition of public interest in the Bill. What do you all think should be included? If we were to argue for a definition of public interest, what do you think it should encompass?

**Penny Hawkins:** I am here as an animal welfare advocate but, being pragmatic, I presume there is a whole raft of public interests, including jobs, infrastructure, leisure activities, profitability and all those sorts of things. However, the public interest that I would like to highlight, although acknowledging that there is no one “public”, is that a very large section of the public is extremely concerned about animal welfare. That was evidenced by the recent very strong campaigning when the amendment was not included, although it was based on an erroneous concept. People thought that Ministers had voted that animals were not sentient, and of course we understand that is not what they voted, but the problem was there was enormous concern about this, which has led to this Bill being drafted. The interest of the public in ensuring that animal welfare has been properly considered, recognised and taken into account is every bit as strong as the other public interests that may be brought to bear and that presumably other people will be bringing to you at other times.

**Chair:** How do you define “public interest”?

**Angela Smith:** I know Paula and Mike want to contribute here, but Neil has anticipated my response to that, which is that we have research, for instance, with vivisection; there is a public interest there clearly. Religious rights: we have gone through that in the earlier session. There are cultures and traditions, and also sports. Where do we draw the line in all of this? Most people would agree that research for new drugs in the field of health, as opposed to cosmetics, is where you would draw the line
on public interest. I am sure there is a consensus, but there is not a consensus in other areas, is there, entirely?

**Penny Hawkins:** This is why it is so difficult. There are a large number of opinion polls that have shown that the public are concerned about animal welfare. It is, we are told, a major contributor to MPs’ postbags.

**Angela Smith:** I can confirm that.

**Penny Hawkins:** The RSPCA exists and has a huge amount of support also. When it comes to the actual sectors that are included, the RSPCA would not draw a line about any particular human use of animals. We would say within any given use of animals, on the whole it is fair to say that the public would not want animal welfare to be compromised avoidably. That is including research and testing, sport, entertainment, companion animals, farming and all uses of animals. I would argue that the public are interested in ensuring that animal welfare is not avoidably compromised and is given due regard. For the RSPCA that is a public interest, alongside many other public interests relating to jobs and profitability, which are often incompatible with the public interest in animal welfare, but that is the human condition.

Q82

**Angela Smith:** That is a very open-ended definition. I have some sympathy with what you are saying, Penny, but it is an open-ended definition. This is precisely why the legislation needs to avoid the risk of that definition ending up in court.

**Penny Hawkins:** Yes, I understand, coming at it as an animal welfare NGO, obviously we have devoted more thought to the definitions of “animal” and “sentience” rather than “public interest”.

**Michael Webb:** This is why we have suggested that clause 1(2) is at best as unhelpful as it is helpful at the moment and why, frankly, the Bill could be just as well served without it. You have to take a reasonably negative view of the potential consequences of a piece of legislation when assessing it. At the moment, as that reads, “public interest” could be defined as near enough anything. If you throw in the fact that there is only a requirement on Ministers to have regard, rather than a full or a stronger term of regard than is the case at the moment, it is hard not to assume that the requirement to safeguard animal welfare in this, such as it is, could be fairly easily overrun.

In terms of how to define “public interest”, getting back to Angela’s original question, I will be entirely honest and say this is a conversation we have had quite a bit internally since we first saw this Bill and, to be honest, we are yet to come up with something that is satisfactory.

**Paula Boyden:** As Michael said, it is very difficult to come up with a good definition. Michael has hit on another point in terms of the “have regard” for public interest and “have regard” for animals. What we would suggest as part of that is that there should be some sort of animal welfare impact assessment, so that it has been considered. You have
mentioned several scenarios where it may be clear-cut, but there are others that are not so clear-cut—for example, dogs going overseas with forces, bomb-disposal dogs and police horses. How do we weigh that up? Having an impact assessment on both of those may just help us come to a conclusion. It is not that we need to put a lot more thought into a phrase or a description of “public interest“, but bolstering those with impact assessments may just help that process.

Penny Hawkins: Within our submissions, at paragraph 14, we have emphasised the need for a framework of some kind for weighing public benefit against the sentence of animals. You could also include defining “public benefit“ within that framework. Researching around this, there is one model that you might find interesting, from the Dutch Council on Animal Affairs, which is an independent advisory body. It is operating along similar lines to the UK Code of Practice for Scientific Advisory Committees (COPSAC), which we would also endorse, because there is a requirement that people sit on those committees in an independent capacity and they ensure that a full range of stakeholders is represented. For example, on the Dutch committee there is somebody from World Animal Protection and they advise the Ministry of Agriculture. They can be tasked to advise the ministry or they can initiate their own inquiries or they can also be asked by members of the public to look into particular issues. We would suggest that if it is to be done at all, or if it is to be done properly, some kind of body like that might be a good model.

Sandy Martin: That leads very neatly into the question that I was going to ask, because we have been hearing from our legal experts that in many ways making the concept of sentience have any real effect will be better done through Parliament than it would be done through judicial review. You are suggesting that an independent body might be a good way of weighing up the needs and impacts of sentient animals against any public-interest test. How would such an independent body work? I would like to hear from you what you think would be the advantages of having it done by an independent body, rather than by Parliament.

Penny Hawkins: I have personally sat on the Animal Procedures Committee and the Animals in Science Committee, which is the advisory body that advises the Secretary of State and Animal Welfare and Ethical Review Bodies (AWERBs) on the implementation of the ASPA. There is a huge advantage in having an independent body with people sitting on it as individuals and not as represents of any particular stakeholder. That is extremely important because it provides a safe space, if you like, for having what can be quite difficult conversations and bringing in a range of different factors to try to ensure that issues are given a fair scrutiny and that everything possible is taken into account. On that basis, we were trying to think of various models and we have only made some suggestions within our document, but that kind of framework would be a useful way forward.
The Dutch Council on Animal Affairs includes 35 members. That would be our one criticism of the model. That is an awful lot of members, and certainly my own experience of sitting on a larger APC and a smaller Animals in Science Committee would suggest that—

Q84  **Chair:** Do you see it advising Government, or do you see it making the decision? Where is the cut-off point?

**Penny Hawkins:** We envisage it advising Government.

**Chair:** You see it as an advisory body to Government, Ministers and Departments.

**Penny Hawkins:** Yes.

**Sandy Martin:** You said it would be independent people not representing stakeholders. How would these people be selected? We do have a system in this country for getting people who are basically independent and not representing stakeholders, and it is called Parliament. People are elected to sit in Parliament and then, just in case you think that is going to be entirely in the hands of the leadership of a particular political party, which of course the administration at Parliament tends to be, you then have another group of particularly independent-minded Members of Parliament sitting as a Select Committee. Most of the people sitting on a Select Committee are there specifically because they are not willing to just go along with what the leadership of their party is saying. We already have a system for selecting independent people. How would you go about selecting independent people who are more independent than the independent people who have already been selected by the majority of the population of the country?

**Penny Hawkins:** I would suggest the same system that is already used for selecting people to sit on public bodies, which is in place for all the other scientific advisory bodies.

Q85  **Sandy Martin:** They are almost always stakeholders, are they not?

**Penny Hawkins:** No.

**Sandy Martin:** Or they are selected by Members of Parliament because of a particular view.

Q86  **Chair:** The nature of when you select is either they are stakeholders or they will probably be invited on or whatever because of particular interests they have. I can understand what you are trying to achieve, but it is very difficult to create true independence.

**Penny Hawkins:** Yes, of course it is, because you can argue by the time you have accrued a body of knowledge about something, you cease to be independent, do you not? The approach is to set out the expertise, the competencies and perspectives that you want and then you advertise, you follow the procedure that is already in place for these other bodies, you interview people and you assemble your committee. You have the
Farm Animal Welfare Committee and you have the ASC. There are various other bodies—the Food Standards Agency—that work under the same principle.

**Q87 Sandy Martin:** Could that not be set up by the various bodies working in the area of animal welfare? Why do you need to wait for the Government to do it? Do you not think it would be more independent if you got together with all the other bodies working in animal welfare and set up such a body yourselves?

**Penny Hawkins:** Quite possibly. There are various models. What is important is just to ensure that the whole process of setting up and recruiting is done openly and transparently, so that it seems to be fair and so that stakeholders are fairly represented and the public can have faith that it is independent and that it will be fair in its judgments.

**Q88 Dr Johnson:** How would such a body be accountable? As Sandy said, we have the Select Committees and we have Parliament. We have the House of Lords, but in terms of the House of Commons and the Select Committees, they are elected and as such are accountable. If the decisions made or the views taken by an individual parliamentarian are not liked by the people they represent, they have the opportunity to throw them out every five years. The Select Committees are elected by parliamentarians themselves to represent particular views. How would a quango, essentially, which is what you are suggesting, be more representative of people's views as opposed to the views of stakeholders, who are predominantly London-centric?

**Penny Hawkins:** It is helpful to have lay or independent representation on these bodies. In the case of the ASC there was also a requirement for somebody with expertise in philosophy coming from outside the sector to also sit on this body. You can select people with very specific expertise that perhaps MPs do not have because of the huge breadth of issues that you have to address.

I would just use the Farm Animal Welfare Committee, ASC and Animal Health and Welfare Board for England (AHWBE) again as examples. These have been set up for a reason. There is clearly a precedent for setting up these kinds of bodies because of their independent nature and their ability to identify issues and task themselves to advise Ministers. These bodies do a very good job and there is a lot of support for them. We are only suggesting a new independent body as a model. It may be possible to augment one of the other bodies that are in existence to cover a broader range of issues.

**Chair:** We will take that as evidence. We will add that into our report.

**Q89 Mrs Murray:** Just to the Dogs Trust, you have talked about extending beyond the Minister of the Crown and you have said about devolved Administrations, but you mentioned other public bodies. Could you just explain that a little bit?
Paula Boyden: Our concerns are that there are other public bodies that will have an impact on animal welfare. An example that we have been actively involved in is local authorities setting up so-called public space protection orders, which have not always been with the welfare of dogs in mind. Therefore, to be able to extend the responsibility to those groups, those individuals and those policymakers, it would be a significant benefit to do that. Clearly, there are also other bodies that are non-ministerial, for example the Food Standards Agency and HMRC. I do not suspect that HMRC has too much in terms of consideration for animal welfare, but there are bodies that do not fall within that ministerial remit.

Chair: Do you see environmental health and parts of the council then being held to account by this Bill as well?

Paula Boyden: I believe they have to. If we go back to public space protection orders, we have worked with a lot of groups where PSPOs have been proposed and tried to be implemented where it really has had a significant impact on dog owners in that area. Suddenly they are not allowed to let their dogs off a lead, or only at certain times of the year or in very restricted spaces. Clearly there are areas where dogs should not be allowed to go—for example, children’s playgrounds and parts of our beaches. However, again, going back to those basic welfare needs, are they being met by these restrictions? I would argue they are not.

Chair: Would it not be fair to say that a lot of these provisions are already there? It is just that a lot of the time they are just not implemented. Is it the extra law that we need or is it greater implementation of existing law that we have?

Paula Boyden: It is placing that responsibility on those individuals that are making the decisions. Certainly with the work that we have done, generally once it is pointed out to the local authorities they perhaps take a step back. If one is dealing with somebody who perhaps does not have a dog and does not realise the implications of what they are proposing, it creates a huge amount of angst for the individuals affected.

Michael Webb: Just to add to Paula’s point, local authorities are a good example. A large number of different areas—one thinks of housing policy as well—have a natural impact on animals as they come into contact with them. Were there a defined responsibility that people looking after these were required to consider animal welfare, we feel it would be a pretty useful reminder to people that there are a range of competing interests that they have to weigh up, and animal welfare is one of those.

Chair: It does need to be defined, does it not? Do you believe it will be defined better in this Bill? Do you believe that this Bill will have an effect on the welfare of that individual animal, through an officer from the council looking and checking it?

Michael Webb: It could be defined in terms of that duty better under this Bill, but is it perfect? Certainly not. Everybody is probably leaving the session this morning with the view that this is far from perfect.
Julian Sturdy: In the last session, we had a lot of discussion about the definition of "sentient animals", so whether octopuses or crustaceans should fall under the scope of the term "sentient animals" in animal protection legislation. I think I am correct in saying that you are in favour of that being the case. My question really was about what impact that could have in changing how these animals are currently treated. Could that have knock-on consequences on, for example, lobsters being served in restaurants or something like that?

Penny Hawkins: As the RSPCA says in our submission, we would include all cephalopods, because it is not only octopuses whose use is regulated under the Animal (Scientific Procedures) Act; it is all cephalopods, including squids and cuttlefish. We would include decapod crustaceans, because there is a wealth of evidence that these animals are capable of experiencing pain, suffering and distress. On cephalopods, clearly the decision has been made that their use in experiments should be regulated. It is mainly decapod crustaceans that we are considering here.

With the legislation on animal experiments, the fact that an animal being determined to be sentient may have knock-on effects should not deter their inclusion. To give an example, when the decision was made to include cephalopods in the European legislation on animal experimentation, the decision was correct because there is evidence that they are sentient. There was then a problem because nobody really knew the best way to anaesthetise these animals or to give them pain relief or to assess their welfare. It is not just a matter of whether they ink or not; there is a whole range of other things that you need to know. It was a problem, but it was addressed. The fact that they were included in the legislation meant that working groups were set up to accommodate all of these issues. It is still ongoing now.

Julian Sturdy: How was that addressed? Could you just go into a little bit of detail?

Penny Hawkins: It was addressed by gathering expert working groups comprising veterinarians, scientists, the animal technologists who look after the animals and people from learned societies, pooling their experience, reviewing the literature and identifying which areas needed to be further researched. As I say, that is still ongoing.

With respect to serving crustaceans in restaurants, no, provided they are humanely killed. Professor Robert Elwood, who I understand has also made a submission to your Committee, has set out how it is possible to kill crustaceans humanely. If that is done before they are taken apart and cooked, if people still want to eat them then there is nothing stopping them.

Julian Sturdy: But you are saying that it might change current practice.
**Penny Hawkins:** It should do and that would be a good thing, because if you look up what is currently done to these animals it is quite abhorrent; change is very long overdue.

**Dr Johnson:** You talked about the impact on wild animals, but presumably that would also affect vermin control. How do you think that the change would affect practice in things like the use of rat poisons or mousetraps?

**Penny Hawkins:** I have to say that “vermin” is not a term that the RSPCA uses.

**Dr Johnson:** It is a widely used term to refer to things like rats.

**Penny Hawkins:** You have unwanted populations of rodents who are exploiting situations and causing problems for humans. In that regard, clearly we understand sometimes if you have a very large population of these animals that you cannot cope with then something needs to be done. What we advocate currently is that first of all you make sure you are not exacerbating the situation, so you look at what you are doing with your food and you look at the structure of your building, to see what changes you can make to prevent the situation in the first place. You then choose the most humane method of killing these animals. For example, sometimes a mechanical snap trap can be the most humane solution. If poison is deemed to be necessary, it is increasingly possible to get poisons that include analgesics, so they do not cause so much suffering. It is all about identifying and considering the welfare impact and doing everything that you can to mitigate that, and then proceeding. That is the decision-making framework we would like to see associated with this Bill.

**Paula Boyden:** Just in terms of the scope of the definition of “animal”, what Dogs Trust would really like to see in this is that unborn offspring are also covered. New Zealand’s animal welfare Act covers embryos in the last half of gestation, but we would like to see them covered right the way through gestation. Our rationale for that is certainly addressing issues associated with dog breeding, such as extremes of conformation and inherited diseases. The challenge we have at the moment is around the question of when the offence occurs, and really the die is cast at the point of conception, so we would like to see that encompassed within that so that that could be addressed.

**Chair:** Some commentators have said that any definition of “animal” must include domestic animals, wild animals and wild animals living in a wild state. Do you agree, and how are you going to categorise all these animals?

**Paula Boyden:** That is somewhat beyond our remit. However, the one thing I would point out is that if wild animals in a wild state are included, then clearly the definitions with the Animal Welfare Act have to change, because at the moment there is a duty of care to protect from pain,
injury, suffering and disease. Can one realistically do that with a wild animal in a wild state?

Q97 **Chair:** I do not want to get too controversial, but there have been deer on certain land that were in a bad condition and were not fed. Are they wild or are they to be fed? It is a serious issue. I am not necessarily against that being included, but it is going to have to be clearly stated. Taking it to the nth degree—and I do not think this would be the case—if you have wild rabbits on your farm that were hungry because there was nothing for them to eat, would you be responsible for those wild rabbits? I know I am taking it slightly far, but there are issues here where we have to take it.

**Michael Webb:** That would be a monumentally difficult example to enforce.

**Chair:** I am not saying it would not be difficult to enforce. What I am asking is, if you are going to open it completely up, where you are going to take it.

**Michael Webb:** Although you may have possibly picked the wrong question to try to give Penny a rest, bearing in mind, as Paula has mentioned, this is neither her remit nor mine, what I would say is that any decision made in that direction should surely be guided entirely by science.

**Chair:** You are saying it must be entirely guided by science.

**Penny Hawkins:** We do not think it is that complicated. Animals have needs. If it is a rabbit on your farm or a rabbit being farmed for meat or a rabbit in a laboratory or in a hutch in somebody’s back garden, it is a rabbit, and they have the same welfare needs.

Q98 **Chair:** You do not invite the rabbit, do you? You do not invite the rabbit to come on to your farm. The rabbit comes there because it is wild. There is a difference between a wild animal and a domestic animal, and you have to accept that. It may have the same sentient feelings, but when you are coming to manage that, it is a totally different thing. That is why it has to be clear.

**Penny Hawkins:** I am talking about it from an animal-centric perspective, which I am bound to do. Animals have the same needs and the rabbits were living in that habitat before you put your farm there, so it is a moot point, philosophically, as to whose land it actually is. People are encroaching on wild animals’ habitats, so they are bound to come in. Of course they will. They are exploiting a situation.

**Chair:** That is not the point I am making. The rabbit may or may not have been there, but the rabbit is affected by nature and by the food that is there. If it is starving, would a farmer be liable for the wild rabbit?

**Penny Hawkins:** The point I wanted to make was if you think about the welfare needs they all apply across the board—four of the five welfare
needs. The only welfare need that is debatable with respect to wild animals is the need for protection from pain, suffering, illness and disease. If that is simply changed to the need not to experience pain, suffering, illness and disease, that gets around the responsibility aspect, because your responsibility begins when you initiate an activity that has an impact on those wild animals. We do not think it is that complicated.

Chair: Sandy wants to come in first, then Angela and then Julian. I have stirred up a lot of rabbits now.

Sandy Martin: Chair, I am quite pleased that you picked the example of rabbits, because it is a very good one with which to work through this idea that we have a responsibility to wild animals living in the wild in our own country, because rabbits are not native to this country. Rabbits were introduced to this country by the Romans in order to provide meat and the vast majority of rabbits throughout the middle ages lived in warrens that were tended by warren keepers and they were farmed. To a very large extent, they were farmed. I am not suggesting for one moment that the majority of rabbits in this country are actively farmed and I am also not suggesting for one moment that we should be going out there with bucketfuls of food to feed the rabbits that might not otherwise have quite enough to eat.

What I am saying is that whatever animal welfare protections we have in this country, we need to pay attention to those animals that may not be in the direct control of human beings at the moment, but which may have been or may be in the future. That encompasses deer, pheasants and Dartmoor ponies. It encompasses a whole range of creatures, where there has been a historical relationship between human beings, the animals and the land on which the animals live.

We need to have some sort of legislative control that makes sure that those animals are not being cruelly treated. I would just like to come back to Penny, and the other two as well, and ask: would you be fully in support of having a further animal welfare Act that did that sort of thing in addition to the one that we already have for domestic animals?

Paula Boyden: This is again outside of Dogs Trust’s remit, but it depends on whether we are talking about the Animal Welfare Act or this Bill, because this Bill places a responsibility on Ministers and not on the public.

Angela Smith: We have just demonstrated why this legislation could be incredibly divisive if we are not careful. I would broaden the question out in terms of applying the welfare needs of animals to wild animals out of human control. Rather than rabbits, I would look at some of the practices that currently are legitimate in both farming and field sports, so you are looking at practices such as snaring and shooting, to get to the nub of the argument here. I do not think it is particularly about rabbits and whether they are going to starve or not; it is about some of the agricultural practices and so on. Protection of animals from pain and
suffering may draw into question some traditional predator-control practices and the practice of shooting. Dogs Trust and Battersea may not have anything in particular to say on this.

**Michael Webb:** We do.

**Angela Smith:** You do. What is your general view on that?

**Michael Webb:** Just specifically on one thing that you brought up, we would entirely welcome anything that made the practice of snaring more difficult, simply because, as an unintended consequence, so many of the victims of snares are cats. Cats are a protected animal under the Animal Welfare Act and yet are frequently caught by snares.

**Angela Smith:** That is a really good point. There are some really bad snaring practices I have seen on the edge of Sheffield. I will not name the estate, but there you go.

**Penny Hawkins:** With reference to the points that Sandy was making, there is really no natural habitat left anywhere in the British Isles. There is a human impact everywhere with the effect that some populations sometimes may suffer if individuals are not taken out and managed.

**Chair:** What you are saying, then, is that there is nothing that is a natural habitat, so everything is managed and everything that is on the land is manageable and the person that is managing that land will be held responsible for what is happening on that land. That is exactly what you are saying.

**Penny Hawkins:** No, it is not what I am saying.

**Chair:** It is, because you said there is no land that is no longer a natural habitat. You could go to the highlands of Scotland and you could go to various places where I suggest we could probably prove you wrong on that particular one, but I accept a lot of land is managed. I just want to drill down on exactly what you mean.

**Penny Hawkins:** When I was doing my degree in biological sciences, I was taught—you are right—that some woods, forests and areas of Scotland are in a natural state, but very little land in the UK is natural. People think it is, but it is not. You can see the effects of human activity everywhere. The balance has been upset pretty much everywhere, and sometimes, unfortunately, it is necessary for humans to intervene and kill some members of a population in order to prevent further suffering. There is a very careful harm-benefit balance that needs to be done in every case and, if it is deemed necessary to kill some individuals, then it should be done in the most humane way possible.

Again, it would not mean that you could not shoot an animal, but it would make it incumbent on you to ensure that you have proper equipment and whoever was killing the animals was a good shot and it was ascertained that they were dead as rapidly as possible. It is all about just having that framework to make sure that this is done properly.
Q102 **Chair:** What I want to get clear in my mind is whether you are saying that the person managing that land is responsible for those animals, irrespective of where they come from and how they have come there, because of the very nature of the land being theirs or under their management—they may be a tenant. I am very worried about the open-endedness of this. I do not want to be cruel to animals and I try my very best not to be, but there are some animals on your farm that you do not invite there and you have no control over whatsoever. I am just trying to see where you want to take this.

**Penny Hawkins:** Again, being mindful of the fact that this applies to Ministers of the Crown and not individuals, so this would be about legislative requirements in different fields, your responsibility would be if you want to build a new barn over there, where there is a badger sett—I know the wildlife legislation would apply also—you would have to take account of the welfare of those animals. If you want to do something on a field that geese use to refuel when they are migrating, you would have to think about the welfare of those geese. Anything that you actively want to do in order to change that landscape that could impact on animals’ habitats or animals as individuals, you would have to pay due regard to their welfare. I do not think that is excessive.

**Chair:** That is clear. We do not agree entirely on it, but it is clear.

Q103 **Julian Sturdy:** Just following up on this, this raises a number of interesting arguments here. I will just use a couple of examples. I do want to go back to the rabbits, if I can. I want to go back to rabbits in a slightly different form, because I do not often see starving rabbits, but what I have seen are rabbits suffering from myxomatosis, which, if you have witnessed it, is an absolutely horrendous disease that is immensely cruel on the population. If we had cases of myxomatosis in the wild population of animals, or any disease affecting different wild populations, are you saying that, if the Minister deemed it was essential, the responsibility could go back down to the farmer, the landowner or the occupier of that land for doing something with that wild population that was suffering from what is a very nasty and cruel disease but that is in the wild population?

**Penny Hawkins:** You mean that a piece of legislation might come in whereby if somebody saw a rabbit with myxomatosis on their land—

**Julian Sturdy:** You would not see one; you would see a population. Myxomatosis comes in phases, does it not, but if it was affecting that wild population and was causing huge distress and cruelty to that wild population, would it mean that the owner, the landowner or the person looking after that particular land where the outbreak had happened, would be responsible for that? I know it has to come back through the Minister, but would you see that as part of this legislation?

**Penny Hawkins:** I would certainly say it was a moral responsibility.

**Julian Sturdy:** I am not going to argue about morals. I would agree...
there is a moral responsibility, but I want to know what impact the legislation has.

**Chair:** You mean the legal responsibility.

**Julian Sturdy:** Yes, the legal responsibility.

**Penny Hawkins:** It would be nice to think that it could be a legal responsibility. It is a very difficult question because how you would go about policing—

**Julian Sturdy:** This is a scenario that could come forward, is it not?

**Penny Hawkins:** Yes, that is a scenario that could come forward, and I appreciate that if I say to you, yes, that should be a legal responsibility, then that would raise a whole lot of other questions as to how it might be implemented and policed. I would have to say, yes, if there is somebody who sees an animal is suffering and they have the wherewithal to end that suffering, then they should, provided they can do it humanely.

**Chair:** Thank you very much for the evidence. It has been very interesting this morning. We have had two very good panels talking about different subjects, one on the legal side and now very much on the practical implementation of it. Thank you all very much.