Welfare needs of animals as sentient being:

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

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

Clearly conflict will arise. For instance corvids can be as intelligent as chimpanzees [https://www.sciencedaily.com/releases/2016/04/160426101527.htm](https://www.sciencedaily.com/releases/2016/04/160426101527.htm) but farmers need to be able to protect their crops and livestock from them.

Each decision will be subjected to campaigning from groups that support particular animals, usually those that appear cuddly irrespective of their true natures or the damage they can do. Foxes and badgers usually have a great press while those who seek to control them generally suffer bad publicity. In Australia a similar proposal has produced a sharp response from the Victorian Farmers Federation:

*The VFF has warned of chaos in animal production farms and crippled supply chains as a result of a new Victorian laws.*

*The VFF has slammed aspects of the Andrews Government’s Animal Welfare Action Plan, including proposed recognition of animal sentience and the formation of the new Animal Welfare Victoria.*

‘‘We’re sending a stern warning to government that introducing sentience is unnecessary and would cause significant implications for farm businesses,’’ VFF president David Jochinke said.

He said the VFF recognised the need for modern welfare laws but the introduction of sentience would cause ‘‘adverse welfare outcomes for animals as production systems are thrown into chaos’’.

‘‘It will render some farm businesses unviable, causing job losses and untold economic damage to regional communities and cripple the supply chains that rely on these businesses.

‘‘Animal welfare law is about addressing human behaviour towards animals, not addressing animals.

‘‘It will add nothing to improve standards that farmers currently meet for their animals, who will continue to make the best choices available.

‘‘What it does do is introduce language into law that can be manipulated by animal extremists for their own purposes.


It would be far simpler to require Ministers to have regard to the welfare needs of animals without
including a term that is virtually impossible to define and which opens the doors to extremists who want to see the end of all human-animal contact.

Definitions within the Bill

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

‘sentience’.

‘animal’

‘welfare needs of animals’.

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

Definitions are definitely required for these terms. They are subjective and will lead to endless hours of court time being wasted as definitions are battled over, perhaps leading to final definitions that were never even imagined by the proposers of this legislation.

‘Sentience’

The best summary we have found of the scientific literature is that of Animal Ethics which concludes that the issue of which beings are sentient is still unresolved.
http://www.animal-ethics.org/criteria-for-recognizing-sentience/

Even consciousness is difficult to determine.
http://www.animal-ethics.org/sentience-section/animal-sentience/what-beings-are-conscious/

The SHG considers it an impossible task to produce a definition in the face of such scientific uncertainty. If we use the Oxford Dictionary definition, ‘able to perceive and feel things’, there is no scientific certainty that any animal feels things and perceives them in the same way that we do.

For example: Every creature is designed by nature and driven by evolution to find damaging situations and circumstances unpleasant. Even an amoeba will move away from adverse stimuli. It clearly detects something unpleasant but does it feel or perceive? It is inevitable that the courts will be invited to assess the state of the scientific literature in each case. It is a nightmare for court time, costs and injustice with campaigners waiting in the wings to ensure that this happens.

‘Animal’

Is the legislation to apply to all animals? Insects? Parasites? Viruses? Will we really see Parliament debating whether de-fleaing a dog is cruel to the fleas? Of course it is, but we currently give more moral worth to the dog than the flea. As already said, even an amoeba will move away from adverse stimuli. Is the motion voluntary? Any more than the mollusc which floats in the sea until it lands and never moves again other than to catch food? And is that movement voluntary or instinctive? Indeed, how many of our movements and decisions are voluntary? That of snatching a
hand back from a burning flame? It is possible that we and other animals have no free or voluntary will and that our actions and decisions are controlled by the parasites that reside within us. [https://www.irishexaminer.com/lifestyle/features/how-much-control-do-we-really-have-over-how-we-think-and-act-465568.html](https://www.irishexaminer.com/lifestyle/features/how-much-control-do-we-really-have-over-how-we-think-and-act-465568.html)

There must be a concise definition provided that deals with these issues.

‘Welfare needs of animals’

The list of needs in s.9(2) have created a plethora of experts who are brought into court to attempt to clarify what is needed by each animal in any particular circumstances. Greater clarity is needed.

We have traditionally used the term ‘unnecessary suffering’ to determine the reasonableness of our interactions with animals and have limited the species to which such protections can apply.

Unnecessary suffering itself can be a difficult term to define when the aim of those prosecuting seems to be to make it impossible to keep and interact with increasing numbers of animals.

An example is a case we sat in on in Aberystwyth where an RSPCA inspector was talking the Magistrates through a video showing a healthy Staffordshire Bull Terrier wagging its tail and dancing around with its water bowl in its mouth. The Inspector claimed that this was proof that the animal was suffering because it didn’t have water right at that moment. (The water had clearly just been tipped up and was present on the floor). The Chair of the Bench stopped him and asked if that meant that if his dog tipped its water bowl up when he came out to court in the morning he would be committing an offence. The inspector said that yes it was and he would prosecute him unless he did exactly what he told him to. Obviously the Staffie had become excited at the sight of all the visitors and wanted to play and there was no evidence that it had been without water up until then or that it would have been left without water if there had been no raid that day.

Protections intended to cover all situations only work if those enforcing them are working to help those concerned. This is why animal welfare should be enforced by government agencies not campaigning charities.

The SHG believes that a better measure of unnecessary suffering would be a comparison between the life the animal is living in captivity and the life it would live in the ‘wild’. If the animal has lived longer, not been subject to the fear of being hunted, has an environment similar to or better than that it would have in the wild, shows similar bodily changes to those animals of its kind that live in the wild, then no matter how opposed a campaigner may be to the way it is kept, it should not be classed as suffering. For instance, the nest of a wild rat would lead to prosecution if a tame rat was allowed to live in such conditions. Why? Are we imposing our perceptions of cleanliness onto the animals? If so then it is nothing to do with suffering or welfare needs and the reason for it being an offence needs careful consideration. Concerns have been raised in the media that wild animals and laboratory animals are left unprotected if we do not have a requirement to consider sentience in any proposed legislation but the Animal Welfare Act 2006 applies to wild animals that are temporarily in the control of man and other legislation protects laboratory animals.
2. Mode of trial and maximum penalty for certain animal welfare offences

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

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

The SHG is in favour of the choice of Crown Court trial in animal welfare cases. We are, however, surprised that, at a time when the prisons are already overcrowded and there is no evidence from those jurisdictions that have already increased the maximum sentence for animal welfare cases that it has done anything to reduce offending, consideration is currently being given to increasing sentences. We note that people still smuggle drugs in countries where the penalty is death or flogging. Increased penalties were introduced in Queensland, Australia in 2013 [http://www.abc.net.au/news/rural/2013-09-11/nrr-animal-cruelty/4951418](http://www.abc.net.au/news/rural/2013-09-11/nrr-animal-cruelty/4951418) but by 2015 cruelty and neglect cases were at an all time high [http://www.abc.net.au/news/2015-03-23/animal-cruelty-cases-in-queensland-at-record-high/6330686](http://www.abc.net.au/news/2015-03-23/animal-cruelty-cases-in-queensland-at-record-high/6330686).

Penalties for animal cruelty offences in Australia vary state by state [http://kb.rspca.org.au/What-are-the-penalties-for-animal-cruelty-offences_271.html](http://kb.rspca.org.au/What-are-the-penalties-for-animal-cruelty-offences_271.html). It is interesting that there is no move towards conformity in Australia or evidence that higher sentences lead to lower levels of offending.

RSPCA prosecutions in England and Wales appear to have decreased steadily over recent years, implying little need for greater deterrents.

If there is to be an increased sentence then it needs to be coupled with a proper government run prosecutions authority. Either animal welfare prosecutions are important or they are not. There is no point in increasing sentences if the organisation running the investigations and prosecutions can do so on a whim in order to further its political agenda or is restricted in the number it can bring by the rate at which donations rise or fall.

The RSPCA are complaining that so far in 2017 just 40 people have received custodial sentences for animal welfare offences.

What does that actually mean?

According to the RSPCA "in 2017 so far (up to 8 December), just 40 people have received immediate jail sentences - 6.5% of the 620 people convicted - having been convicted of an offence under the Animal Welfare Act." (Quite a drop since in 2016 744 people were successfully prosecuted down by 6.55% on the figures for 2015). [https://www.sunderlandecho.com/news/rspca-chiefs-welcome-plans-for-tougher-animal-cruelty-sentences-1-8905753](https://www.sunderlandecho.com/news/rspca-chiefs-welcome-plans-for-tougher-animal-cruelty-sentences-1-8905753).

How does that compare to the percentage of people sent to prison in general? In 2016, 89,812 defendants were given a custodial sentence, representing 7 per cent of all sentences in 2016. [https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/custodial-sentences/](https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/custodial-sentences/)

Bear in mind that these figures include those who threw acid at people, committed murder and child abuse or terrorist acts, while the RSPCA prosecution figures include prosecutions of the elderly,
disabled, children and poor, often for minor offences such as not killing an elderly much loved animal quickly enough. Overt cruelty cases represent a very small minority of RSPCA prosecutions. Also remember that in a country of nudging 70 million people who keep 8 million cats and 8 million dogs plus assorted other pets plus all of the farm animals etc for the RSPCA to successfully prosecute only 620 people and imprison 40 is either the height of incompetence or a reflection of the amazing care that the people of this country provide for their animals.

The SHG wishes to see animal welfare cases given the opportunity to access Jury trials but without having to face such a high sentence that intense pressure can be put on to a defendant in order to get them to plead guilty to a lesser offence rather than face the risk of attempting to prove their innocence and facing 5 years in jail. We suggest that introducing a special case whereby animal welfare cases are all triable either way without an increase in sentence might be the way forward, or if sentences are to be increased then increase them to 12 months and see what happens. The statistics indicate that very few people will be affected (unless the RSPCA decides to go on a prosecution binge) and the many irregularities and abuses that are part and parcel of RSPCA prosecutions will be given the chance of proper investigation by the Crown Court. There is one more thing we could learn from Australia. While the courts have great sentencing power they do not always use it. There is a provision for No Conviction to be recorded. This means that people are not hounded for life by a mistake. We should consider introducing it into our Animal Welfare Act.

For instance a girl who repeatedly kicked a dog was given a two-year probation order with no conviction recorded unless her probation was breached. She must also take part in counselling and anger management sessions.


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