Written evidence submitted by the Centre for Animal Welfare, University of Winchester

Executive Summary

The Bill must pose no risks to weakening the legal protection of sentient animals compared to that under Article 13 of the Treaty of Lisbon.

- The Bill should define the term ‘sentience’ broadly to cover a wide range of positive and negative consciously experienced mental states. If the term is not defined broadly then the Bill risks limiting the protection afforded to sentient animals and in this event the term should not be defined.
- The Bill should not define the term ‘animal’. Defining ‘animal’ leads to excluding some species of sentient animals and thus reducing the protections afforded to animals. This would be inconsistent with the stated policy objectives.
- The Bill should refer to ‘welfare interests’ and not ‘welfare needs’. Welfare interests are a broader category than welfare needs. Welfare interests focus on encouraging positive welfare as opposed to a focus solely on the elimination of suffering. Alternatively, ‘welfare requirements’ is to be preferred than ‘welfare needs’.
- The Bill should apply to all policy areas. It would be arbitrary to limit the scope of the Bill to certain policy areas. It would furthermore be inconsistent with the objective of the Bill to ensure that animals do not lose any legal recognition upon the UK leaving the EU.
- The Bill should specify ‘full regard’. Article 13 of the Lisbon Treaty specifies ‘full regard’. Any change to the level of regard other than to a true synonym of ‘full’ will weaken the Bill and be inconsistent with the stated intentions of the Government.
- A robust policy tool is required to operationalise the Government duty to pay regard to animal welfare. Animal Welfare Impact Assessment (AWIA) is similar in concept to Environmental Impact Assessment. It measures the impacts of Government policy on sentient species. The Bill should include a commitment to apply AWIA to all policy options that significantly impact sentient species.
• The recognition of animals as sentient beings and the duty of government to pay full regard to animal welfare are analogous to constitutional statements. Rolling Clause 1 on sentience and Clause 2 on sentencing into a single Government Bill does not respect the fundamental importance of the recognition of sentience and related duty to pay full regard to animal welfare. The two clauses of the draft Bill should be contained in two distinct and separate Bills.

• A substantial increase in sentencing from six months to five years imprisonment for offences under the Animal Welfare Act 2006 is long overdue.

Centre for Animal Welfare, University of Winchester

The University of Winchester Centre for Animal Welfare (CAW) was established in 2016. The Centre is located in the Department of Politics and Society and has expertise in Animal Law and Policy. The Centre runs a BA in Human Animal Studies and an MSc in Animal Welfare Science, Ethics and Law.

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**Introduction**

1. The Written Ministerial Statement that accompanies the draft Bill states the following:

   The Government is committed to raising animal welfare standards, and to ensuring animals will not lose any recognitions or protections once we leave the EU.

2. The same Government, including its Prime Minister, has made a number of further policy statements that leaving the EU will not diminish animal protection in Britain. The major purpose of the Animal Welfare (Sentencing and Recognition of Sentience) Bill is to replace the recognition of sentience and protections contained in Article 13 of the Treaty of Lisbon when the UK leaves the EU.

3. Hence, the fundamental principle lawmakers should follow when drafting the Bill is that nothing in it should introduce any risk to weaken the protection afforded to sentient animals under Article 13 of the Treaty of Lisbon. To introduce such risks may not only negatively impact the welfare of billions of sentient animals but would constitute a breach of the Government commitment on Brexit and animal welfare. Indeed, given the vast numbers of animals impacted by Government policy, it is not unreasonable to claim that the impact Brexit has on sentient animals has the potential to be greater than that on human society.

4. The following components of Article 13 must be maintained to avoid the Bill weakening animal welfare protection and resulting in policy failure on Brexit:
   - The scope of the category of ‘animal’
   - The scope of the meaning of ‘sentient’ or ‘sentience’
   - The scope of the actors, institutions or bodies to which the duty in the Bill applies
   - The degree to which these actors, institutions and bodies have a duty (i.e. the level of ‘regard’)
   - The scope of the meaning of ‘welfare’, ‘welfare requirements’, ‘welfare needs’ or ‘welfare interests’.

5. Reducing the scope of any of the above will necessarily weaken the Bill compared to Article 13 and thus the protection of sentient animals on Brexit.
1. Defining ‘sentience’

6. **Summary:** The Bill should define sentience. The definition should be sufficiently broad to include all sentient animals and be informed by scientific research in animal welfare science and cognitive ethology.

7. The following discusses some of the salient points about sentience. A sentient being consciously experiences subjective mental states that are hedonically positive, negative or neutral. Sentient beings feel a wide range of primary and secondary emotions and other states such as hunger and thirst (Broom, 2014; DeGrazia, 1996; Duncan, 2006). Thus, sentient animals can subjectively experience a range of mental states such as but not limited to pleasure, pain, fear, joy, boredom and grief. Such mental states are comparable to those felt by humans and have positive or negative value for the being which experiences them (Bekoff, 2014; Benz-Schwarzburg & Knight, 2011; Boissy et al., 2007).

8. Sentience, or the capacity to consciously and subjectively have experiential feelings, means that nonhuman animals have lives that go well or badly (FAWC, 2009; Haynes, 2008). In contrast to sentient beings, things that are not sentient include non-living things such as stones and also living things such as plants. Scientifically, the capacity of sentience emanates from the nervous system of animals. Science holds that all vertebrate species, including mammals, birds and fish, are sentient. Many invertebrate species, such as decapods crustaceans, are also sentient (Broom, 2007).

9. As sentience is a subjective mental state, it is difficult to prove without any doubt that many species are sentient. However, research based on anatomical, physiological and behavioural-based evidence very strongly supports the claim that all vertebrate and a wide range of invertebrate species are sentient (Dawkins, 2006; DeGrazia, 1996; Fraser, 2013). The theory of evolution strongly supports sentience in a wide range of animal species. Evolution implies continuity between species and not categorical differences (Darwin, 1859/1968; Rachels, 1990). Feelings confer evolutionary advantages to species enabling greater adaptation to changes in their lived environments (Dawkins, 1998). Furthermore, there is a trend that as time goes on science demonstrates sentience in a greater number of species and to a higher level that we were hitherto aware of.
2. Defining ‘animal’

10. **Summary:** The Bill should not define the term ‘animal’.

11. The key consideration in whether to define ‘animal’ or not relates to the objectives of the Bill and how defining or otherwise will impact sentient species when implemented. The major objective of the Bill is to replace the protection Article 13 of the Lisbon Treaty afforded to sentient animals. Article 13 is stated in full below:

   In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

12. Article 13 does not define ‘animal’ or provide guidance as to which animals are sentient. Modern science supports the claim that many but not all animal species are sentient. Consider the relevant part of Article 13: “the Union and Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals”. The operational clause is effectively “the Union and Member States shall ... pay full regard to the welfare requirements of animals”. Sentience is a pre-condition of animal welfare. Therefore, the operational clause of Article 13 necessarily limits the duty on the Union and Member States to species of animal that *have welfare requirements*, and therefore that are sentient.

13. There is a very great risk to the Bill’s policy objectives and to animal welfare if ‘animal’ is defined. Any definition necessarily limits the scope of the defined term. Any further specified definition of ‘animal’ will have the unintended but very substantial consequence of not applying to many species of animals, and potentially millions of individual sentient animals. Policy failure in this sense is clearly applicable to the Animal Welfare Act 2006. The Animal Welfare Act defines protected animals as vertebrate animals other than human. This necessarily rules out invertebrate species. Science holds that many invertebrate species, such as decapod crustaceans, are sentient beings (Broom, 2007). There is a clause in the Animal Welfare Act for the Minister of State to add species to the list when he or she is satisfied that scientific evidence is clear that the
species is sentient. This provision has evidently failed animal welfare. Sentient invertebrate species are currently without legal protection, because the Animal Welfare Act has limited protection to certain species.

3. Defining ‘welfare needs of animals’

14. **Summary:** The Bill should be amended to refer to the ‘welfare interests’ of animals. ‘Welfare requirements’, as per Article 13, would be an improvement on ‘welfare needs’.

15. Needs are a subset of interests and the language of needs is likely to result in a focus on negative welfare at the expense of positive welfare. If the Bill defines animal welfare, a broad conception of animal welfare should be employed. Policy makers must ultimately balance the welfare of animals with the public interest. Hence, a conception of animal welfare that facilitates comparison with human wellbeing is beneficial for the objectives of the Bill.

16. It is interesting to note that the draft Bill refers to the ‘welfare needs’ of animals but the ‘public interest’. Interests are generally considered to be what are good, or have prudential value for sentient beings, whether humans or nonhuman sentient animal species (Haynes, 2008). In normal everyday language, we divide interests into needs and wants. Thus, the category ‘needs’ is generally considered to be a subset of interests. In the context of human wellbeing or animal welfare, needs are likely to be considered as what is strictly necessary to maintain a basic level of wellbeing or welfare. Wants are likely to be considered as additional and what may contribute more to positive welfare. There is a growing consensus that animal welfare science and policy have neglected positive welfare with an excessive focus on the avoidance of suffering (FAWC, 2009; Yeates & Main, 2008)

17. In the language of the Farm Animal Welfare Council (FAWC), focus on ‘needs’ will limit policy objectives to sentient animals having a *life worth living*. A broader focus on animals’ interests is more consistent with the more enlightened position of policy that aims for sentient animals to have a *good life* (FAWC, 2009). In this context, FAWC, advisor to the British government on farm animal welfare, has recommended that government policy should be that all farm animals have a life worth living as a legal minimum, and an increasing number have a good life.
18. Article 13 of the Lisbon Treaty uses the term ‘welfare requirements’. A requirement is a broader category than a need because a requirement is something that is both needed and wanted (Merriam-Webster, 2018). It is therefore recommended that the Bill refers to ‘welfare interests’ or ‘welfare requirements’.

19. The draft Bill can in part be traced back to the Brambell Committee investigation into animals kept in intensive farming systems in Britain. The 1965 Brambell Committee recognised the complexity of animal welfare and defined it as follows:

   Welfare is a wide term that embraces both the physical and mental well-being of the animal. Any attempt to evaluate welfare, therefore, must take into account the scientific evidence available concerning the feelings of animals that can be derived from their structure and functions and also their behaviour. (Brambell et al., 1965, p. 9)

20. Broom has defined welfare as the ability of an animal to “cope” in its environment (Broom & Fraser, 2007). Duncan defines animal welfare as “primarily to do with the feelings experienced by animals, by the absence of negative feelings known as states of suffering and (probably) by the presence of positive feelings known as states of pleasure” (Duncan, 2005, p. 488) Rollin relates animal welfare to the telos of an animal. The telos is the species-specific function, or nature of the animal. It can be considered as the “dogness of the dog” or the “pigness of the pig”. Animals have good welfare when their environment permits them to actualise their telos (Rollin, 2006, 2007).

21. Fraser has documented how different conceptions of animal welfare. He describes conceptions based on i) physical/functional, ii) mental, and iii) nature-/natural-based considerations (Fraser, Weary, Pajor, & Milligan, 1997). McCulloch (2015) has constructed the following definition of animal welfare:

   Animal welfare describes a state of complete physical health and mental wellbeing, where the nature of the sentient animal is in harmony with its living and non-living environment and its bodily integrity is respected.

22. The definition has the merits of incorporating physical/functional, mental and nature-based animal welfare considerations. It is also constructed to facilitate comparison of animal welfare with human wellbeing. The definition is in part based on the WHO
definition of human health. This is important in policy making as government is concerned with the distribution of goods. Furthermore, the draft Bill suggests the need to balance the duty to pay regard to animal welfare with the consideration of public interest. It should also be noted here that the British public consistently demonstrates a substantial interest in animal welfare (European Commission, 2007).

4. Policy scope

23. **Summary:** The Bill should be applicable to all policy areas.
24. The purpose of the Bill is to recognise animals as sentient and to confer a duty on government to respect the sentience of animals by accounting for their interests when making policy. It would be arbitrary to rule out some policy areas from the scope of the Bill.

5. Specifying the level of regard

25. **Summary:** The language of Article 13, to pay full regard to animal welfare, should be retained. This duty should apply to all public bodies. The Bill should apply to the Westminster Government and devolved administrations. The Bill should state that **Animal Welfare Impact Assessment (AWIA)** should be applied to policy that significantly affects sentient species.

26. Article 13 of the Treaty of Lisbon states that when formulating and implementing policies, the Union and Member States “shall, since animals are sentient beings, pay full regard to the welfare requirements of animals”. The draft Bill states “Ministers of the Crown must have regard to the welfare needs of animals as sentient beings in formulating and implementing government policy”. The wording of the draft Bill weakens the protection afforded to sentient animals in three ways:

27. The Bill should specify ‘full regard’. The draft Bill has omitted ‘full’ from “full regard” in Article 13 and the consultation document asks respondents to comment on the level of regard. This is a simple issue. Since ‘full’ means ‘complete’ or ‘total’, then any term to replace ‘full’ that is not a true synonym necessarily reduces the level of ‘regard’ and thus the level of protection for sentient animals on leaving the EU. Similarly, ‘regard’ alone, is
most reasonably interpreted as less than ‘full regard’, hence is opposed to the stated intentions of the Bill.

28. The Bill should place the duty to pay full regard on all bodies that formulate and implement policy. Article 13 places the duty to pay full regard to the welfare requirements of animals on the ‘Union’ and ‘Member States’. The draft Bill places the duty on ‘Ministers of the Crown’. As a Member State of the EU, the UK as a nation state had a duty to pay full regard to the welfare requirements of animals. The draft Bill proposes ‘Ministers of the Crown’ must have regard to the welfare needs of animals. It is understood that a Minister of State has responsibility for departmental policy making. However, a Minister of State is necessarily only a part of the state of the UK. Animal health and welfare policy making is formulated and implemented as many levels, including the Westminster Parliament, devolved administrations and local authorities. Thus, the draft Bill substantially weakens protection of sentient animals compared to Article 13 by reducing the scope of the institutions that have a duty to regard those animals in formulating and implementing policy.

29. The Bill should retain the wording “pay full regard” of Article 13. There is a subtle but important distinction between the terms ‘pay’ regard and ‘have’ regard. To ‘have’ regard requires a fleeting thought about animals. It does not entail any active measure to do something that might improve their situation. In contrast, paying regard implies a more active process whereby the responsible body must take a more significant role.

**Animal Welfare Impact Assessment**

30. The Bill should include a commitment to conduct Animal Welfare Impact Assessment. The English word ‘regard’ is etymologically derived from the French verb ‘regarder’ meaning to watch. In the context of Article 13 and the draft Bill, the term is most reasonably interpreted as the government having a duty to ‘look at’ animal welfare. To ‘look at’ animal welfare in any meaningful sense means to assess the impacts of government policy options on animals. Thus, the duty conferred by either Article 13 of the Treaty of Lisbon or the draft Bill entails the government to assess the impacts of policy on sentient animals.

31. The standard way that government assesses the impacts of policy is by using impact assessments. Animal Welfare Impact Assessment (AWIA) is similar in concept to
Environmental Impact Assessment (EIA). To pay regard to animal welfare in any meaningful sense requires the government to conduct AWIA on all policy options that significantly affect sentient species. McCulloch and Reiss (2017) have outlined the concept of AWIA and applied it to bovine TB and badger policy options. AWIA estimates positive and negative welfare impacts and life and death impacts of policy options. The purpose of AWIA is to provide objective information about the impacts of policy options on sentient species.

32. McCulloch and Reiss (2017) recommend that AWIA is conducted in government departments such as Defra. It remains the responsibility of the Minister to make decisions on policy, and AWIA can be considered as a further source of objective evidence on which to guide decision making.

6. Overall approach

33. Summary: The sentience clause and the sentencing clause should be contained in two distinct Bills.

34. Article 13 of the Treaty of Lisbon is of fundamental importance for the protection of sentient nonhuman animals. It operates to recognise animals as sentient and confers a duty on the Union and Member States to pay full regard to animals when formulating and implementing policy. Hence, Article 13 is more fundamental than regulations and directives of the EU and is analogous to a constitutional statement (Radford, 2001).

35. The purpose of the draft Bill is in effect to replace Article 13 and thus maintain the legal protection of animals in Britain. It similarly embeds the legal recognition of animal sentience and confers a duty on the government to pay full regard to animal welfare. Hence, the Bill also operates in a way that is analogous to a constitutional statement. The current format of the Animal Welfare (Sentencing and Recognition of Sentience) Bill 2017 does not recognise the fundamental importance of the protections in the Bill in this regard. A Bill of such importance should not be rolled together in a double Bill in the manner that it is.

36. There should be two separate Bills, which thus recognises the fundamental importance of the British government recognising animals as sentient beings and paying full regard to animal welfare when formulating and implementing policy. This could be called the
Animal Welfare (Sentence) Bill. There should therefore be a separate Animal Welfare (Sentencing) Bill.

7. Sentence length

37. A substantial increase from six months to five years imprisonment is long overdue.

References


