Written evidence submitted by Battersea Dogs and Cats Home

About Battersea

Established in 1860 to care for London's abandoned animals, Battersea Dogs & Cats Home aims to never turn away a dog or cat in need of help. We reunite lost dogs and cats with their owners; when we can't do this, we care for them until new owners can be found. We accept any breed of animal, at any age, including dogs or cats with serious medical and behavioural problems. Our expert team of dog trainers and veterinary staff give the animals in our care the best possible chance of a fresh start in a happy new home in the UK, or even further afield. There is no time limit on how long an animal stays with us until the perfect new owners are found.

Battersea's non-selective intake policy means that we often see dogs and cats come to us that have been through the worst kind of cruelty. We see animals that have been denied essential medical treatment, physically abused, starved and even those used in dog fighting come through our gates. This is why Battersea launched our campaign in February 2017 calling for five-year sentences for animal cruelty.

Executive summary

- Battersea welcomes the acknowledgement of animals being regarded as sentient in the draft Bill, which is an important principle.
- The Committee should also consider removal of Section 1(2) in its recommendations, as there is no definition of public interest. If retained, there is a risk of conflict between the welfare needs of animals and the public interest, without providing for a solution as to how such conflict is resolved.
- Battersea strongly welcomes the proposal in the draft Bill to increase the maximum sentence for animal cruelty offences, from six months to five years imprisonment.
- Changing the mode of trial for these offences is an essential consequence of this change, and Battersea supports the proposals in the Bill.
- Evidence suggests Magistrates will be sympathetic to changes to sentencing.

1. 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.

The draft Bill does not explicitly define a number of terms, such as: ‘sentience’, ‘animal’ and ‘welfare needs of animals’.

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

The words ‘sentient’ or ‘animal’ are both used without definition in current EU legislation - Article 13 of Title II of the Lisbon Treaty since 2009. However, should the Committee decide that sentence should be defined within your recommendations, in the absence of any legal definition, the Oxford English Dictionary defines sentient as ‘able to perceive or feel things’, to feel both pain and pleasure. Battersea believes that it is imperative that we recognise animals as sentient beings, with the capacity for both suffering and joy, and that their health and welfare needs should always be reflected in legislation.

So far, there has not been a general pre-existing legal definition of ‘animal’, and we are unaware of this having caused significant difficulty where dogs and cats are concerned. The term ‘animal’ is defined by the Oxford English

Dictionary as ‘an organism endowed with life, sensation and voluntary motion’. From a Battersea perspective, this more than adequately describes dogs and cats, which are the animals in field of expertise. However, Section 2 of the Animal Welfare Act 2006 defines the term ‘protected animal’ if:

a) it is of a kind which is commonly domesticated in the British Islands,
b) it is under the control of man whether on a permanent or temporary basis, or
c) it is not living in a wild state.

The Committee could consider that the draft Bill could transpose this definition in order to define ‘animals’ in its recommendations. Were the Committee minded to broaden the definition of ‘animal’, it may wish to include foetal or embryonic forms, and include other species of animals not currently protected under the Animal Welfare Act 2006, which have proven controversial points for debate since the 2006 Act was passed.

Battersea recommends to the Committee that the term ‘the welfare needs of animals’ is defined to outline the protection that animals are afforded as a result of them being sentient, offering further protection than existing EU legislation. This definition could be achieved by inserting in to the draft Bill Section 9(2) from the Animal Welfare Act 2006, the “Five Freedoms”.

To maintain consistency with Article 13 of Title II of the Lisbon Treaty, we recommend that Section 1(1) of the draft Bill should be amended from ‘must have regard to’ to ‘shall pay full regard to’, to provide further clarity that the Bill affords animals the same or better protection than previous legislation.

The Committee should also consider removal of Section 1(2) in its recommendations, as the Bill arguably protects animal welfare better without it. If it is retained, an indicative definition is essential. As currently drafted, with no definition of “public interest”, almost any circumstance could be put argued as meeting the concept. If retained, there is a risk of conflict between the welfare needs of animals and the public interest, without providing for a solution as to how such conflict is resolved. Indeed, the public interest is never defined, and so there is a risk that the assurances given to the sector on the toughening up of the law around sentence could be rendered worthless if in practice any wide definition of the public interest can offset animal welfare considerations. This is an important issue on which the Government must provide clarification.

Although in the draft Bill itself states under Section 3 ‘Section 1 extends to England and Wales, Scotland and Northern Ireland.’ This however, is not reflected in the Written Ministerial Statement presented with the draft Bill, which states ‘This provision does not apply to Ministers in the devolved governments of Wales, Scotland and Northern Ireland.’ If the provision applies but the duties conferred do not extend to the Ministers of the devolved Governments, then essentially the provision would appear to be worth little in practical terms outside England. Battersea wishes to see clarity from Ministers on the geographical scope of the sentence provision, and whether the duties conferred therein will apply across the UK. We are pleased that an arrangement has been reached with the Welsh Government so that Section 2 will apply in both England and Wales.

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 the Animal Welfare Act 2006.

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

Battersea entirely welcomes that Section 2 of the draft Bill reflects the increase in the maximum sentence for animal cruelty offences, from six months to five years imprisonment, that the Committee recommended in 2016 and as Battersea has long called for. This is the right move, and will provide clarity on the rejection of animal cruelty across

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England and Wales. The Committee should note that the Scottish Government, in its 2017/18 Programme for Government, has committed to enacting a similar change, raising the maximum sentence from one year to five in Scotland.

In February 2017, Battersea launched a campaign calling on the Government to increase the maximum penalty for animal cruelty offences to five years imprisonment, seeking to amend Section 32 of the Animal Welfare Act 2006 which sets out the penalties for animal cruelty offences. The current law sets out a maximum sentence of 51 weeks imprisonment and a level 5 (unlimited) fine. However, the 51-week maximum sentence was never enacted by Parliament. Currently, animal cruelty offences are summary only offences, which means that only magistrates adjudicate on cases of animal cruelty and they cannot be passed to a Crown Court (except on appeal against conviction and/or sentence).

To support and inform the campaign Battersea produced a research report called ‘Sentencing for animal cruelty in England and Wales.’ The key findings include:

- Almost two-thirds of the population (65%) believe that the maximum penalty for animal cruelty should be increased.
- The average length of sentence in 2015 for animal cruelty was 3.3 months. This is at the upper end of the scale when considering that those who plead guilty may only be sentenced to up to four months in prison. The current maximum sentence is therefore on occasion being used by the Courts.
- Six months is the lowest custodial penalty in the in 100 jurisdictions across four continents (including Europe, the USA and Australia) that Battersea examined.
- Northern Ireland currently has a five-year maximum sentence, whereas Scotland, England and Wales currently have some of the lowest animal cruelty sentences in Europe.
- Six months in prison for the gravest act of animal cruelty, such as torturing an animal to death, is disproportionately low relative to other offences – it is much less than the maximum sentence for fly tipping (five years) and theft (seven years).
- Animal cruelty offenders are five times more likely to have a violent crime record and animal abuse is 1.1 times more likely in domestic violence situations.

The introduction of a five-year maximum sentence is a significant and positive step forward for animal welfare and will mean that the Courts in England and Wales will have greater flexibility to treat each case properly on its merits.

Contrary to some views, maximum sentences for animal cruelty are actively being imposed by the Courts. Recently published Ministry of Justice statistics now show generally, for most offences, a smaller proportion of cases are punished to the maximum permitted. From research conducted in late 2017 Battersea found that as a proportion of the maximum sentence possible, the average sentence imposed for animal cruelty in 2016 is higher than for offences of assault, theft and burglary. This means the Courts currently have less flexibility to sentence proportionately for very serious cases of animal cruelty, than they do for other offences.

Although magistrates do not routinely comment on sentencing policy, there are cases where Magistrates in England have spoken out. These show significant frustration with the current limit. Now retired, Judge Michael Abelson has been particularly outspoken about the sentence limit for animal cruelty. In 2016, he sentenced an offender to 22 weeks in prison, for kicking a dog to death. He said:

“This is a brutal and unprovoked attack and this example of animal cruelty is one of the worst that I have seen and I have been hearing these cases for many years.

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6 Further to launching our Scottish animal cruelty sentencing campaign in August 2017, Battersea welcomes and supports the commitment from Scottish Government to increase the maximum sentence for animal cruelty sentences from one year to five years imprisonment for the most serious cases. A draft Bill to change the law has not yet been laid before Scottish Parliament.
“Your behaviour was wholly unacceptable and I have to send a message to young men like you that you will go to jail for offences like this.

“If I had not been limited to six months by law then you would have been going to prison for a lot longer but my hands are tied.”

Also in 2016, he sent an offender to prison for four months, for killing his dog with a shovel. He said that he would have imposed a longer sentence if the law allowed him to.

In 2015, District Judge Barron sentenced an offender to five months in prison for animal fighting. He said he would have passed a stronger sentence if the law allowed it. Furthermore, he stated:

"In reality, I don’t think that's long enough. I think you deserve a lot more than that."

Battersea supports the change proposed in the draft Bill to 'change these offences from being summary only to either way offences’, as Magistrates’ Courts do not currently have the power to impose penalties greater than six months for animal cruelty offences, in accordance with Section 78 of the Powers of Criminal Courts (Sentencing) Act 2000.

It would mean that for the specified offences that:

- Crown Courts would have the power to impose a maximum sentence of five years imprisonment for each offence.
- The trial could be either at the Crown Court or the Magistrates’ Court.
- On conviction at the Magistrates’ Court, they would have the power to remit the case to Crown Court for sentencing.
- Even if dealt with summarily, if there were two or more offences, Magistrates would have the power to sentence to up to 12 months imprisonment (even if the 51-week maximum is never introduced) as the Court could impose two sentences of 6 months to run consecutively.

The Committee must also be aware that the law change will also need to be reflected in new Sentencing Guidelines, updating the existing set of Guidelines currently available.

January 2018

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8 http://www.dogmagazine.net/graham-williams-gave-dog-drugs-then-beat-her-to-death-with-a-shovel/