Supplementary written evidence submitted by Compassion in world farming.

1. Compassion in World Farming is writing to the EFRA Committee about concerns we have regarding the Committee’s evidence session on 17 January on the draft Animal Welfare Bill.

2. We submitted written evidence ahead of the deadline on 17 January but at that stage had not heard the evidence session.

3. This letter does not repeat what we said in our written submission. It simply comments on certain matters that arose during the oral evidence session which in our view are damaging to an important and helpful Bill.

4. The impression was given during the evidence session that the Bill was an ill thought through piece of legislation. However, this suggestion assumes, mistakenly, that the Bill is an entirely new piece of legislation. It is not. It is simply bringing into UK law an EU Treaty provision that has been binding on the UK since 1999 when the Treaty of Amsterdam inserted it as a Protocol into the Treaty establishing the European Community (TEC). The TEC provides that “the protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof”. More recently the Protocol was replaced by Article 13 TFEU.

5. Clause 1 of the draft Animal Welfare Bill simply honours the Government’s commitment to ensure that Brexit does not lead to any diminution in the legislative protections provided for animals. The Bill closely follows the wording of Article 13 TFEU. Defra used this wording in response to calls from many animal welfare organisations, the public and the British Veterinary Association to incorporate Article 13 into UK law before the UK leaves the EU. The draft Bill’s wording differs from Article 13 only in the following respects:
   - Article 13 requires governments to pay “full regard” to animal welfare. The draft Bill omits the word “full”;
   - Article 13 applies to policies on agriculture, fisheries, transport, research and technological development and space. The draft Bill does not restrict the policy areas that are covered;
   - Article 13 applies to the formulation and implementation of EU policies while the draft Bill covers UK policies.

6. We strongly disagree with the evidence you heard suggesting that clause 1 would open the floodgates to litigation. It would not. Judicial review operates under tight constraints, because judges understand that policy is for Parliament. Courts will have no difficulty in dismissing cases with no merit at the initial permission stage. It would, in principle, be possible to judicially review a decision of a minister if he or she (i) failed to have any regard to the welfare needs of animals; or (ii) weighed welfare needs and public interest in a perverse way. However, as to (i), it is inconceivable that any minister, properly advised by officials, would fail to do what clause 1 directs. As to (ii) the threshold of perversity is very high and the courts would be acutely aware that it is for ministers to strike the appropriate balance. The notion that the courts would end up making policy is simply wrong. Even if a judicial review succeeded, on one of the above grounds, the court would refer the matter back to the minister to re-make the decision, this time in accordance with the law.

7. Witnesses to EFRA and Committee members expressed concerns that, in part because it is expressed in broad terms, Clause 1 could have a detrimental impact on Government policy making. This ignores the fact that the recognition of animals as sentient beings and the duty to pay full regard to animal welfare have been included as legally binding provisions in the EU Treaties since 1999. These provisions have not during the 18 years that they have already been in force in the UK (as we are a signatory to the EU Treaties) caused the problems raised in the EFRA Committee hearing. There is no reason to assume that
bringing these provision into UK law when the UK withdraws from the EU will lead to the problems discussed during the EFRA hearing.

8. The evidence session appeared to assume that Article 13 has been of little or no value and that accordingly clause 1 of the draft Bill is unnecessary. However, Article 13 and its predecessor Protocol have produced worthwhile benefits for animal welfare.

9. For example, it became clear some time ago that the body called Innovate UK was funding work that could have a detrimental impact on welfare. We raised our concerns with them in correspondence and meetings and received recognition from them that their funding needs to take account of Article 13. Jo Johnson MP, the Minister then responsible for Innovate UK wrote to us on 2 August 2016. He said: “Innovate UK has confirmed that where appropriate, it will specifically ask its assessors to give further thought to the likely impact of future projects on farm animal welfare. Bids deemed likely to improve farm animal welfare will be viewed favourably in this context and progress along with other key aspects of the overall assessment process. Bids deemed likely to compromise farm animal welfare will not be funded.”

10. This illustrates that the value of Article 13 is not limited to cases where judicial review proceedings are brought. Article 13 and clause 1 of the draft Bill can be of value in persuading Ministers to give serious consideration to animal welfare issues.

11. Article 13 is regularly a component of the European Parliament’s (EP) thinking on animal welfare. For example, the recognition of animals as sentient beings played a part in the EP’s wish to see a ban on cloning.

12. Article 13 (or its predecessor Protocol) is referred to in the recitals of EU legislation. The Protocol strongly informed the judgment of the Court of Justice of the EU (CJEU) in the Zuchtvieh case (C-424/13). This ruled, in the case of live exports from the EU to third countries, that the Regulation on the protection of animals during transport (1/2005) continues to apply even once the animals leave the EU.

13. Paragraph 35 of the Zuchtvieh judgment gives considerable weight to the importance of the ‘sentient beings’ Protocol. Paragraph 35 states: “It should be noted, as a preliminary point, that it follows, first of all, from recital 1 of Regulation No 1/2005 that that regulation is based on Protocol (No 33) on protection and welfare of animals, annexed to the EC Treaty, under which the Community and the Member States, in formulating and implementing the Community’s policies on inter alia agriculture and transport, are to pay full regard to the welfare requirements of animals. According to the case-law, the protection of animal welfare is a legitimate objective in the public interest, the importance of which was reflected, in particular, in the adoption by the Member States of that protocol (see, to that effect, Viamex Agrar Handel and ZVK, C-37/06 and C-58/06, EU:C:2008:18, paragraph 22, and Nationale Raad van Dierenwekers en Liefhebbers and Andibel, C-219/07, EU:C:2008:353, paragraph 27). The substance of Protocol No 33 is henceforth to be found in Article 13 TFEU, which is a provision of general application of the FEU Treaty, contained in Part One thereof, setting out the ‘Principles’.”

14. The importance of Article 13 is recognised by the European Commission. It has explained that Article 13 “puts animal welfare on equal footing with other key principles mentioned in the same title [Title II, TFEU] i.e. promotion of gender equality, guarantee of social protection, protection of human health, combating discrimination, promotion of sustainable development, ensuring consumer protection and the protection of personal data”.

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15. I am copying this letter to the EFRA Chair who I have known for many years.

**Conclusion**

16. Clause 1 of the draft Bill is not ill thought out. It closely follows the wording of Article 13 TFEU as Defra's intention is to incorporate Article 13 into UK law. This is not to suggest that no improvements can be made to the wording of Clause 1.

17. Clause 1 of the draft Bill would not open the floodgates to litigation. Judicial review operates under tight constraints, because judges understand that policy is for Parliament.

18. Article 13 has made a worthwhile contribution to advancing animal welfare. Clause 1 of the draft Bill would hopefully also be similarly beneficial.

19. Article 13 and its predecessor Protocol have not during the 18 years that they have already been in force in the UK (as the UK is a signatory to the EU Treaties) caused the problems anticipated in the EFRA Committee hearing.

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