

Written evidence submitted by Countryside Alliance (AWB0005)

Animal Welfare (Sentience) Bill

July 2021

Executive Summary

- The Countryside Alliance is a membership-based organisation that works for everyone who loves the countryside and the rural way of life. We reflect the views and interests of 100,000 members and supporters who come from all walks of life and every part the United Kingdom. The Countryside Alliance welcomes the EFRA Committee's Inquiry into the Government's Animal Welfare (Sentience) Bill.
- The Countryside Alliance welcomes the Government's commitment to animal welfare and to ensuring that our departure from the EU not only does not result in any lessening of animal welfare standards but should be seen as an opportunity to raise standards in several areas, where previously this was not possible. For example, tackling puppy smuggling and the abuse of the pet passport scheme.
- The Countryside Alliance recognises the fact that animals are sentient beings. Those who have the task of husbanding animals and managing wildlife acknowledge and understand the fact that animals are sentient and the consequent need to avoid causing animals unnecessary suffering and to act humanely in their dealings with animals. Indeed, for animals kept by or under the control of man there is the additional duty of care as set out in the Animal Welfare Act 2006, which adopts the "five freedoms" also applied in EU law. Recognition of sentience and the consequent welfare needs of animals is not the same as recognising that animals have rights, in the sense that human beings have rights. It is important that animal welfare does not become confused with the animal rights agenda.
- In principle, recognising sentience and holding the Government to account in this area is not of itself a bad thing, and the Countryside Alliance has always supported all genuine animal welfare measures. The existence of this Animal Sentience Committee (ASC) could ensure that animal welfare is given due consideration in policy making across government, and not just where Defra is concerned. It could drive a cultural shift across Whitehall. It is equally possible that the Bill will achieve little that could not have been achieved by other means.
- On balance, we do not believe this Bill is necessary or desirable. Recognising the political desire to have animal sentience referenced in UK law, following our departure from the European Union, we believe that this could have been achieved by a simple amendment to the Animal Welfare Act 2006.
- The creation of the Animal Sentience Committee could have been achieved without the need for primary legislation, nor would it seem necessary, given that we already have an Animal Welfare Committee (formerly Farm Animal Welfare Council), whose remit was extended in 2019 to cover all animals.
- The ASC is not concerned with considering sentience but whether due regard has been had to the welfare of animals that have been deemed sentient in the development and

implementation of policy across all government departments. Which animals are considered sentient remains a decision for the secretary of State and Parliament.

- While the Bill requires the Committee to publish reports and the Secretary of State to respond, it appears that so long as ministers have due regard, ministers remain free to take decisions, which have negative welfare consequences. What is not clear is what happens when the ASC reports that due regard has not been given, or goes beyond its apparent remit and comments on the merits of a ministerial decision. In other words the Committee finds that while due regard was given, the decision taken was not in their opinion justifiable on the evidence. Would this not leave ministerial decisions open to legal challenge by judicial review?
- The threat of judicial review can be a powerful weapon in driving government policy. Government's will generally take the path of least resistance and we have seen the way judicial review, and the threat of judicial review, has been used as part of Wild Justice's campaign against shooting in the UK. We cannot end up with Government policy being driven by campaign groups weaponising the courts and forcing the courts to make decisions that properly belong to accountable politicians and ultimately to Parliament.
- We are concerned that the ASC will lack expertise, resources and independence, and rather than focussing on animal welfare could be hijacked by those with extreme animal rights agendas. That would allow the ASC to be used against farming, religious slaughter, wildlife management, shooting and angling on ideological rather than evidential grounds. The Government are in danger of creating a rod for their own back, which is not necessary and could see a proper welfare agenda hijacked by one of animal rights.
- The Alliance position on the Bill in relation to the Committee's five questions are set out below.

Inquiry Questions:

1. Will the Animal Welfare (Sentience) Bill ensure that animal sentience is properly taken into account in both new and existing Government policy in England?

- Requiring animal welfare to be taken into consideration in policy making across government is welcome. However, we would respectfully suggest this could have been achieved without this current Bill. We would also suggest that it is because animals are sentient that their welfare matters. It would make little sense to legislate for the welfare of something that was not sentient. Which animals should be recognised as sentient in law is a separate and disputed question.
- The proposed Animal Sentience Committee (ASC) will not be determining which animals are to be deemed sentient, but whether those animals which the Secretary of State and Parliament have decided are sentient have had their welfare considered in policy making. Given that we already have an Animal Welfare Committee, what purpose is served by the ASC? Why not reform, and expand the role and resources of the Animal Welfare Committee? Why not require animal welfare to be included as a distinct section in all regulatory impact assessments?
- References to sentience in law are declaratory/explanatory and make clear that where an animal is considered sentient then its welfare must also be considered. It is on this

basis that Parliament has been legislating for several centuries. In evidence before the Efra Committee examining the 2017 draft Animal Welfare (Recognition of Sentience and Sentencing) Bill, Mike Radford, Reader in Animal Welfare law at the University of Aberdeen noted: *“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.”* As such, he questioned whether placing animal sentience formally on the Statute Book would make any practical or “legal difference ... 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.”

- The Animal Welfare Act 2006 recognises that for animals deemed sentient we have a duty to meet an animals welfare needs and avoid causing “unnecessary suffering”, where those animals are under our control. The law rightly distinguishes between the duty we owe to an animal that is kept, or under our control, and those in the wild.
 - It is notable that the reference to sentience in EU law was limited in the sense that the resulting duty to have regard to welfare was confined to specific policy areas, and had to be balanced against other considerations. Under the Treaty for the Functioning of the European Union the duty to “pay full regard to the welfare requirements of animals” is limited to specified areas of policy: *“agriculture, fisheries, transport, internal market, research and technological development and space policies”* and that the duty is also subordinate to the requirement to respect *“religious rites, cultural traditions and regional heritage...”*. This Bill contains no such limitations or constraints and nowhere is there a requirement to balance the animal welfare duty with other public interest considerations. There need to be similar safeguards in the Animal Welfare (Sentience) Bill.
- 2. Are there sufficient safeguards to ensure that the proposed Animal Sentience Committee will be (a) independent (b) have the necessary expertise and (c) have the necessary powers to be effective?**
- This ASC ‘may’ produce a report in relation to “any government policy’ that ‘is being or has been formulated or implemented’. The report will set out the Committee’s views on ‘whether, or to what extent, the government is having, or has had, all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings’. These reports are to be published and the Secretary of State must respond and share that response with Parliament.
 - In effect the Bill seeks to establish a mechanism for holding government to account while not apparently preventing decisions or policies that may have negative animal welfare consequences, so long as those consequences have been properly considered in the process of reaching that decision. It does, however, mean that ministers will face greater scrutiny and policy development may experience a ‘chilling effect’, especially if the Committee starts to opine on whether a particular policy decision was right or wrong, as opposed to reporting on the question of whether due regard was had to welfare in the process reaching a decision.
 - It also seems to be open for ministerial decisions and government policy to be judicially reviewed, either where due process is reported by the ASC not to have taken place, or where the Committee takes the view that the minister should have reached a different decision, assuming it is open to the ASC to give such an opinion. This is not clear in the Bill. Clarity is needed as to the legal status of the ASC’s reports and what this means in terms of judicial review. We cannot have the courts making policy and policy decisions

which rightly belong to elected governments accountable to Parliament and ultimately the electorate.

- The welcome given to this legislation by extreme animal rights organisations would suggest they see the ASC as a means to advance an extreme agenda. This view has only been encouraged by the various government documents and comments on the Bill, which seem to suggest that the role of the ASC is more than a reporting mechanism to ensure that in policy making any adverse impact on the welfare of animals deemed sentient has been fully considered, but that it can opine on the policy decisions taken. There is a real danger that the Committee is hijacked by an animal rights agenda, using reports to stir up political controversy and thereby forcing decisions that satisfy the ideological rights agendas of campaign groups.
 - If the Committee can consider more than process, and take positions on what policy is to be preferred in terms of animal welfare, then its independence, expertise and the evidence it can rely on is of the utmost importance. The Committee will be entirely appointed by the Secretary of State, assumably the Defra Secretary. There is no indication in the Bill of who can be appointed, what their qualifications and expertise should be, nor any guarantee that these will be independent individuals. There is nothing to prevent the Committee becoming dominated by animal rights groups or those with agendas that are currently in favour with a particular government or Secretary of State? The Committee would then allow the Government to claim justification for policies, for which sound evidence may be lacking. Much will depend on how the Animal Welfare Sentience Committee works in practice.
 - As the legislation is drafted the Committee is a creature of government, whose members are appointed by the Secretary of State. Given that the Committee's remit covers the entirety of government policy, from formulation to implementation, the Committee will need huge resources. It should be looking, not just at wildlife management and farming practices and the Defra brief, but also policy areas such as planning, trade, and even procurement of medicines for the NHS. There is seemingly no limit. If it is genuinely going to ensure animal welfare is being duly considered it is going to have to be either an enormous committee, or have an enormous staff covering all government departments. A body that has such limited financial independence cannot be really independent.
 - The Committee "may" report, it has no duty to report. As a creature of Defra will it in practice be focussed mostly on areas of policy in Defra? Why does it appear that it is only the Defra Secretary who must respond, when the ASC may be reporting on something relating to another department outside Defra's remit? Will all ministers and departments have to notify the Committee of areas of policy formation, work streams etc. so the Committee can decide what to investigate and report on?
 - Will its remit extend to extra territorial considerations. For example, farming welfare standards in other countries in relation to trade policy or the testing of medicines on animals in relation to policy around the procurement of medicines? What about the sale and manufacture of weapons, or aid policy to countries with low levels of animal welfare?
 - The Committee's lack of independence and its limited powers are clearly designed to prevent it being used against government, but it could also be used by the Government of the day to justify decisions that are not based on principle and evidence but suit an agenda, that is not really about welfare but about political advantage. It could give government a licence for decisions that go far beyond animal welfare.
- 3. Are the proposed requirements on the Government to respond to an Animal Sentience Committee's report sufficient?**

- Without greater clarity as to the scope of the Committee and the recommendations it can and cannot make, it is hard to say what impact these reports may be. Clause 2(3) states the report may also contain recommendations as to the steps the Government should take for the purpose in 2(4). That purpose at 2(4) is “ensuring that, in any further formulation or implementation of the policy, the Government has all due regard to the ways in which the policy might have an adverse effect on the welfare of animals as sentient beings”. In reality a report could be published that suggests that the government has failed to have all due regard to welfare and the committee can recommend how to avoid those failings in the future. The Secretary of State must respond within three months. His response is laid before Parliament and then what happens next? A debate? Can the Minister simply acknowledge the process was flawed and then stand by a decision based on a flawed, possibly unlawful, process?
- If the law creates a duty on ministers and ministers fail to discharge that duty and the Committee agrees, cannot the decision reached based on that flawed process not be subject to judicial review?
- Unless the Bill is clarified then it is unclear whether the Bill does more than create yet another public body to produce reports, although the impact of such reports to be used to create political pressure should not be underestimated, even if formal powers are few. The Government needs to consider carefully what it is creating and the potential consequences.

4. How does the proposed Animal Sentience Committee compare to similar bodies, such as the Scottish Animal Welfare Commission?

- The Alliance is not in a position to comment in detail on the Scottish Animal Welfare Commission, it being just over a year old. We would, however question whether creating yet another Committee, which risks being weaponised, especially against those in the countryside who are largely responsible for the management of animals both domestic and wild, is entirely necessary given we already have the UK Animal Welfare Committee. There needs to be proper consideration as to how the work of the ASC is to relate to the Animal Welfare Committee. The former should, according to the Bill, be concerned with due process, the latter with expert scientific advice on welfare to inform decisions.
- The Scottish Commission was constituted by the Scottish Animal Welfare Commission Regulations 2020. From the Commission’s website we note that the “Animal Welfare Commission (SAWC) will focus on protecting wild and companion animals while also providing scientific and ethical advice to government. The Commission...will specifically look at: how the welfare needs of sentient animals are being met by devolved policy; possible legislative and non-legislative routes to further protect the welfare of sentient animals; the research requirements to provide an evidence base for future policy development”. It is worth noting that commissioners “sit on the Commission in an individual capacity and not as representatives of particular groups or organisations”. This has not prevented a number of commissioners also being employed by other welfare organisations, which must inevitably result in a potential conflict of interest.
- The ASC would seem to have a similar remit to the Scottish Animal Welfare Commission, but also shares its shortcomings in terms of independence of appointments and objectivity. The Scottish Commission also has an explicitly ‘ethical’ role, which does not seem to be the intention behind the ASC. However, it is not clear what safeguards there are to prevent future ASC reports being based on ethical opinion as opposed to objective evidence.

- The ASC like the Commission is open to manipulation and to being used to progress ideological agendas that have no basis in science or evidence but simply opinion and belief. Recognition of sentience results in the need to have regard for welfare such that, for example, livestock should be treated well. The ethical question of whether breeding and killing animals for the pleasure of eating them should not be a consideration. It is a slippery slope one group of people, even parliaments, start imposing their ethical opinions on the population at large.

5. Is the Government correct to limit the scope of the Bill to vertebrate animals?

- The Government's 2018 consultation defined animals as being "an organism endowed with life, sensation and voluntary motion". It is hard to think of any animal that is not covered by that definition. We understand that the Government is looking at extending the legal recognition of sentience to other classes of animal - cephalopods or even decapod crustaceans such as lobsters.
- The issue is not so much which animals are defined as sentient but what that recognition of sentience means in terms of welfare and our relationship with animals. On the basis of the existing evidence we believe it is reasonable for sentience to be recognised for vertebrates and that there should be a mechanism, as there is, to include other types of animal, if the science justifies it.
- The consequence of acknowledging an animal as sentient is that man then has a duty towards that animal. In defining which animals are regarded as sentient the scope, or extent, of any welfare duty is also defined. Even where an animal is recognised as sentient the nature and proximity of the relationship between man and animal will determine the extent of that duty. Where an animal is kept by man, or is under his control, then a duty to ensure welfare arises, as well as the obligation to avoid causing unnecessary suffering. This is already enshrined in the Animal Welfare Act 2006. The situation for animals in the wild must be different, even when recognised as sentient. There cannot reasonably be a duty to ensure welfare as there is for kept animals or those under the control of man, but rather a duty to avoid causing unnecessary suffering such as when wild animals are culled. Therefore, formulating and implementing policy, having all due regard for the welfare of animals as sentient beings, clearly has to take account of the particular circumstances of the animals to whose welfare needs regard is to be given.
- The question must also be asked whether recognition of sentience, which is undefined, creates rights? Some animal rights activists believe that sentience is a basis for animals having rights. This goes far beyond simple welfare in terms of the five freedoms and the avoidance of unnecessary suffering. If sentience becomes about rights then we are on a slippery slope from having due regard to welfare to an animal rights agenda, which would call into question our right to keep animals as pets, for food and in one sense or another any other way in which we exploit them. Sentience must be properly defined and tied to animal welfare and not rights for animals.