

THE ANIMAL WELFARE (SENTIENCE) BILL

Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Animal Welfare (Sentience) Bill (“the Bill”). The Bill was introduced in the House of Lords on 13th May 2021. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Government has made clear its commitment to raising animal welfare standards, and to ensuring animals will not lose any recognitions or protections now that the UK has left the EU. The Government is legislating to ensure that animal sentience is explicitly recognised in domestic law and that Ministers are accountable to Parliament for major policy decisions that impact on the welfare of animals.

3. The Bill provides for a new committee, to be known as the Animal Sentience Committee, to issue an opinion on whether the Government, in formulating and implementing a particular policy, 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. Where the Committee issues any such report, the relevant minister will be required to lay the Government’s response to the report before Parliament within three months of the date of publication of the report.

4. For the purposes of the Bill “animal” is defined as all non-human vertebrates, but the Bill includes a delegated power for the Secretary of State to amend this definition in order to extend it, for example, to particular species of invertebrates, such as cephalopods and decapod crustaceans.

C. DELEGATED POWERS

Clause 5(2) Interpretation

Power conferred on: the Secretary of State

Power exercised by: Regulations by statutory instrument

Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

5. The provisions of the Bill are to apply all “animals” in all settings, both kept animals and animals in the wild. Current scientific evidence suggests that not all animals are sentient, but there is broad agreement that all vertebrates are sentient, at least insofar that they are able to experience pain and distress.

6. The evidence as to the sentience of invertebrate animals is more mixed. Invertebrates tend to lack the anatomic features, such as a central nervous system and certain brain structures, which historically have been deemed associated with sentience. UK and international animal welfare legislation has tended to exclude or afford fewer protections to invertebrates, based on the assumption invertebrates have reduced or no capacity to suffer.

7. However, recent research has challenged this assumption. Some individual invertebrate species have displayed characteristics and behaviours which could indicate sentience.

Justification for taking the power

8. With research ongoing, it is possible that substantive evidence of the sentience of some types of invertebrate may be found in the future. For example, there is presently some uncertainty amongst the scientific community as to the sentience of the classes of invertebrate cephalopods (large molluscs such as an octopus or squid) and decapod crustaceans (e.g. crayfish, crabs, lobsters, prawns and shrimp). It makes sense to futureproof this Bill by including a power to extend the scope of this Bill, as specified by clause 5(1) to species such as these, should substantive evidence of the sentience emerge.

9. The power will enable the Secretary of State to extend the definition, as appropriate, in the light of new evidence. This power is similar to powers in section 1 of the Animal Welfare Act 2006 (the 2006 Act) and section 1 of the Animal (Scientific Procedures) Act 1986 (the 1986 Act) which allow the meaning of “animal” to be extended to include invertebrates. Taking a similar power in the Bill to those in the 2006 and 1986 Acts will ensure a consistent approach across relevant legislation, should this be required.

10. The delegated power is limited because it could not be used to exclude any vertebrates from the definition of “animal” or reverse an extension of the definition to a specific class of invertebrates.

Justification for the procedure

10. The Department believes that the affirmative procedure provides an appropriate level of parliamentary scrutiny. This is compatible with the procedure applied to the above-mentioned delegated power in the 2006 Act to make regulations to extend the definition of animal to invertebrates.

11. We note that a similar power under section 1(3) of the 1986 Act may extend the definition of a “protected animal” to include invertebrates (other than cephalopods which are already covered by that definition) using the negative procedure, but that is for the purpose of a licensing regime relating to the use of certain animals in scientific research. The extension of the definition in the Bill will have a wider application than the 1986 Act. The Department therefore believes the use of the affirmative procedure is appropriate and strikes the right balance.

Clause 5(2): Extent, commencement and short title

Power conferred on: the Secretary of State

Power exercised by: Regulations by statutory instrument

Parliamentary Procedure: No procedure

12. Consistent with common practice, commencement regulations under this clause are not subject to any parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time.

Department for Environment, Food and Rural Affairs

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