



## BRIEFING PAPER

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# Animal Sentience and Brexit

By Elena Ares

The [EU Withdrawal Bill](#) does not include provision to transfer the principle contained in Article 13 of the Lisbon Treaty recognising animals as sentient beings into UK legislation. This has raised concerns amongst animal welfare campaigners as UK law, under the *Animal Welfare Act 2006*, does not explicitly recognise the term although it does acknowledge that animals can experience suffering and pain.

There were several unsuccessful amendments during the *EU Withdrawal Bill* [Committee stage](#) in the Commons, aimed at including the principle in the Bill. The Government did not support this, stating instead that it would consider how it might explicitly reflect the sentience principle in wider UK legislation.

Following the debate the Government made a [statement](#) setting out that “the sentience of animals will continue to be recognised and protections strengthened when we leave the EU”. The Government [announced](#) on 12 December 2017 that it would be introducing legislation to recognise animal sentience and introduce tougher sentencing for animal cruelty offences. At the same time it published a short three clause [draft Bill, explanatory notes and consultation](#). The consultation closed on 31 January 2018. Following scrutiny of the draft Bill the Environment, Food and Rural Affairs Committee [recommended](#) that the Bill be split to allow “the ‘problematic concepts in the existing Clause 1 [on animal sentience] to be better defined”.

## 1. *Lisbon Treaty and animal sentience*

The 1997 Treaty of Amsterdam included a [Protocol on protection and welfare of animals](#) which stated the following:

DESIRING to ensure improved protection and respect for the welfare of animals as sentient beings,

HAVE AGREED UPON the following provision which shall be annexed to the Treaty establishing the European Community,

In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or

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administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.<sup>1</sup>

This principle was incorporated as an article into the [Lisbon Treaty](#), signed in 2007, with a small amendment. Article 13 provides that Member States should pay full regard to the welfare requirement of animals when formulating policies in certain areas “since animals are sentient beings”:

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.<sup>2</sup>

The Lisbon Treaty does not provide any further detail about the scope of the definition of ‘sentient beings’. However, an EU Commission publication on the [Animal Welfare Strategy 2012–2015](#) states that sentience means that animals are “*capable of feeling pleasure and pain*”.

Compassion in World Farming began campaigning about concerns that the recognition of animals as sentient beings may not be transferred to UK legislation after Brexit in early 2017. It [ran a petition](#) on the issue and set out its concerns on its website as follows:

By current European law, animals are recognised as sentient beings, acknowledging their ability to feel pain, suffer and also experience joy. No one who has seen a cow going outside for the first time after a winter indoors, a hen dust bathing, or a pig wallowing in a fresh patch of mud would disagree with that. The law says that as animals are sentient beings, full regard must be given to their welfare when creating new legislation or regulations.

Securing this status for animals was a massive step forward for animal welfare in 1997. It was the biggest campaign Compassion has ever run. The recognition of animals as complex and intelligent creatures has been the cornerstone of European animal welfare legislation since that time, and the basis for so much of the progress we have made together.

So what’s the problem?

The Repeal Bill, which moves all European law into UK law once we leave the EU, has left out this important protection. It is completely absent; both the recognition of animals as sentient beings, and the requirement for governments to pay “full regard” to their welfare.

Once the UK leaves the EU, we cannot be sure that future Governments will still treat animals as sentient beings. Please demand that the clause is brought into UK law.<sup>3</sup>

### 1.1 EU Withdrawal Bill

The [EU Withdrawal Bill](#), once implemented, will repeal the *European Communities Act 1972*. The Repeal Bill provides that directly applicable EU law, as it stands at the moment of the UK’s exit will be converted into domestic law. The *European Union (Withdrawal) Bill* does not specifically refer to Article 13 of the Lisbon Treaty or mention animals as sentient beings.

The Government [Repeal Bill White Paper](#) provided information about how the Repeal Bill will operate; the Library Commons Briefing Papers on [Legislating for Brexit: The Great](#)

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<sup>1</sup> EU Commission, [Treaty Of Amsterdam Amending The Treaty On European Union, The Treaties Establishing The European Communities And Certain Related Acts](#), 1997

<sup>2</sup> EU Commission, [Treaty of Lisbon \(2007/C 306/01\)](#), 2007

<sup>3</sup> CIWF, [UK's animals no longer recognised as sentient beings](#) [website as of 22 November 2017]

[Repeal Bill](#) and the [European Union \(Withdrawal\) Bill](#) provide further information on the Bill.

## 1.2 The Government's position

In response to a [PQ on 20 July 2017](#), when asked to confirm whether “Article 13 of the Lisbon Treaty that categorises animals as sentient beings will be part of the repeal Bill”, Michael Gove Secretary of State for the Department of Environment, Food and Rural Affairs (DEFRA) said:

Absolutely. Before we entered the European Union, we recognised in our own legislation that animals were sentient beings. I am an animal; we are all animals, and therefore I care—[Interruption.] I am predominantly herbivorous, I should add. It is an absolutely vital commitment that we have to ensure that all creation is maintained, enhanced and protected.<sup>4</sup>

On 8 September 2017, [Sustain \(a farm animal welfare charity\) published a news story](#) which referred to a letter from Lord Gardiner to CIWF [stating that](#):

This obligation [recognising animals as sentient beings under article 13] will not be preserved by the EU (Withdrawal Bill), which delivers our promise to end the supremacy of EU law in the UK.<sup>5</sup>

CIWF did welcome aspects of [Michael Gove's speech](#) to the Conservative Party Conference on 2 October 2017, including his acknowledgement of animals as ‘sentient beings’:

Which is why we will bring forward legislation to increase punishments for the most horrific acts of animal cruelty to five year sentences. Animals are sentient beings, they are in our care, they deserve our protection.<sup>6</sup>

Following this there were several articles in the press suggesting that the Government's position may have changed, including [an article](#) in the Independent on 28 October, although this also included the following comment from DEFRA:

Mr Gove's department denied the accusations, insisting he believed animals are sentient beings and that he was considering all options in relation to live exports of animals.<sup>7</sup>

## 1.3 Existing Legislation

There are several [legislative instruments in the UK covering animal welfare](#). Many of these implement EU law, for example, the [Welfare of Farmed Animals \(England\) Regulations 2007](#), and the [Welfare of Animals \(Transport\) \(England\) Order 2006](#), and these will continue to be in force as they are, although it will be possible for the Government to amend these after Brexit.

In addition, [Animal Welfare Act 2006](#), which applies in England and Wales, makes it an offence to cause unnecessary suffering to any animal. ‘Animal’ is defined in [Section 1](#) to include all (non-human) vertebrates and may be extended by regulation to include invertebrates on the basis of scientific evidence that “animals of the kind concerned are capable of experiencing pain or suffering”. While the legislation does not specifically mention the word ‘sentient’, the [Explanatory Notes](#) for Section 1 mention that the Act

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<sup>4</sup> HC Deb [20 July 2017](#) c959

<sup>5</sup> Sustain, [Animal sentience will no longer be recognised: official](#). 8 September 2017

<sup>6</sup> The Spectator, [Michael Gove's Conservative conference speech](#), 2 October 2017

<sup>7</sup> The Independent, [Michael Gove accused of backtracking on pledges to protect animal welfare because of Brexit](#), 28 October 2017

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applies to vertebrate animals as they are “currently the only demonstrably sentient animals”.

[Section 2](#) sets out what is considered a “protected animal” under the Act: “if it is of a kind which is commonly domesticated in the British Islands; it is under the control of man whether on a permanent or temporary basis, or it is not living in a wild state”.

Some campaign groups use a broader definition of sentience. For example [Compassion in World Farming](#) has stated that ‘sentient beings’ means that animals “can feel pain and suffer; learn from experience; make choices; feel joy, fear or misery; and enjoy the company of others”.

Wild mammals are protected from acts of cruelty under the [Wild Mammals \(Protection\) Act 1996](#). This makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering, unless under the exclusions set out in the Act, which include:

- an act of mercy
- killing a the wild mammal which has been injured or taken lawfully while hunting
- doing anything which is authorised by or under any enactment;
- if the act was done by means of any snare, trap, dog, or bird lawfully used for the purpose of killing or taking any wild mammal; or
- the lawful use of any poisonous or noxious substance on any wild mammal.<sup>8</sup>

### Scotland

The [Animal Health and Welfare \(Scotland\) Act 2006](#) is similar to the legislation in England and Wales, in as much as the Act does not explicitly mention animal sentience, although Section 48 states that in the part II of the Act that deals with welfare “references to suffering include physical or mental suffering”. In response to a [written question](#) on 30 November the Scottish Government set out its acceptance of the concept of animal sentience:

Question S5W-12975: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 24/11/2017 R

To ask the Scottish Government whether it will ensure that the principle of animal sentience is reflected in its legislation after the UK leaves the EU.

Answered by Roseanna Cunningham (30/11/2017):

I can assure Parliament the Scottish Government fully accepts the principle of animal sentience and will take all appropriate action to safeguard animal welfare standards. Animal sentience has been recognised in Scottish legislation for over a century, most recently in the Animal Health and Welfare (Scotland) Act 2006.<sup>9</sup>

Scottish animal welfare charity OneKind has [stated](#) that the Scottish Government has set out its willingness to consider formally recognising this in future Scottish legislation.<sup>10</sup>

### Northern Ireland

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<sup>8</sup> [Wild Mammals \(Protection\) Act 1996](#)

<sup>9</sup> Scottish Parliament, [Question S5W-12975](#), 30 November 2017

<sup>10</sup> OneKind, [Animal sentience – why it’s important and where next](#), 23 November 2017

The [Welfare of Animals Act \(Northern Ireland\) 2011](#) includes similar provisions to those in the Animal Welfare Act.

## 1.4 Animal sentience amendments

[Two new clauses and an amendment](#) were tabled that included reference to animal sentience, due for debate during the Committee stages of the Bill. None were successful. A new Clause 30 tabled by Caroline Lucas, Kerry McCarthy, Tom Brake, Liz Saville Roberts, Jim Fitzpatrick stated that:

### **EU Protocol on animal sentience**

Obligations and rights contained within the EU Protocol on animal sentience set out in Article 13 of Title II of the Lisbon Treaty shall be recognised and available in domestic law on and after exit day, and shall be enforced and followed accordingly.”

New Clause 28 tabled that by Kerry McCarthy, Caroline Lucas, Ian Murray, Mike Gapes, Mary Creagh, Mr Ben Bradshaw set out the following environmental principles:

- (a) the need to promote sustainable development in the UK and overseas;
- (b) the need to contribute to preserving, protecting and improving the environment;
- (c) the need to contribute to prudent and rational utilisation of natural resources;

And included that [emphasis added]:

In formulating and implementing agriculture, fisheries, transport, research and technological development and space policies, public authorities shall **pay full regard to the welfare requirements of animals as sentient beings**, while respecting the administrative provisions and customs relating in particular to religious rites, cultural traditions and regional heritage

An amendment to Clause 7 tabled by Jeremy Corbyn, Mr Nicholas Brown, Keir Starmer, Jenny Chapman, Matthew Pennycook and Paul Blomfield:

Clause 7, page 6, line 18, at end insert—

“(g) fail to pay full regard to the welfare requirements of animals as sentient beings.”

In [proposing NC30](#) during the debate Caroline Lucas referred to the UK role in the EU recognition of animal sentience:

By way of background, in 1997—20 years ago—the UK Government, during their presidency of the EU, convinced the then 14 other member states that EU law should explicitly recognise that animals were sentient beings, and not simply agricultural goods like bags of potatoes that could be maltreated with impunity. In other words, it was a recognition that, like us, animals are aware of their surroundings; that they have the capacity to feel pain, hunger, heat and cold; and that they are aware of what is happening to them and of their interaction with other animals, including humans.<sup>11</sup>

And

I simply want to say that the omission in not transferring this bit of EU law into UK law—I understand why it cannot be transferred directly—is something that we could very easily rectify. As I say, I do not expect anyone to find any great controversy in doing so. New clause 30 is simply seeking to make sure that we close that gap. I am not for a moment suggesting that the result of our not closing it would be that we all suddenly went out and started murdering kittens—no one is suggesting such a thing—but I am saying that this is an important protocol. It was important enough for

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<sup>11</sup> HC Deb [15 November 2017](#) c480

the British Government to use all their influence in the EU to have it included in the Lisbon treaty, and we should continue to have it in UK law.<sup>12</sup>

Responding during the debate Dominic Raab, Minister of State for Justice, stated the Government would not support the clause. The Government view was that animals already had protection under UK law under the *Animal Welfare Act 2006*. The Minister did commit to examine how it might be possible to explicitly reflect the sentience principle in wider UK legislation:

The reference to animals as sentient beings is, effectively, a statement of fact in article 13, but even though it is, in effect, declaratory, I can reassure the hon. Member for Brighton, Pavilion (Caroline Lucas) that it is already recognised as a matter of domestic law, primarily in the Animal Welfare Act 2006. If an animal is capable of experiencing pain and suffering, it is sentient and therefore afforded protection under that Act.

We have made it clear that we intend to retain our existing standards of animal welfare once we have left the EU and, indeed, as my right hon. Friend the Secretary of State for Environment, Food and Rural Affairs has made clear, to enhance them. The vehicle of this legislation will convert the existing body of EU animal welfare law into UK law. It will make sure that the same protections are in place in the UK and that laws still function effectively after the UK leaves the EU.

In this country—we should be proud to say this—we have some of the highest animal welfare standards in the world, and we intend to remain a world leader in the future. Leaving the EU will not prevent us from further maintaining such standards; in fact, it will free us in some regards to develop our own gold-standard protections on animal welfare. Animals will continue to be recognised as sentient beings under domestic law, in the way I have described. We will consider how we might explicitly reflect that sentience principle in wider UK legislation.<sup>13</sup>

Following the vote the British Veterinary Association [called](#) for clarity from Government on how the provisions in Article 13 would be enshrined in UK and expressed disappointment at rejection of NC30 by MPs:

It is extremely concerning that a marginal majority of MPs have voted-down this seminal clause. Enshrining animal sentience in UK law would have acknowledged that we consider animals as being capable of feelings such as pain and contentment and, so, deserving of consideration and respect. It is a founding principle of animal welfare science, and for the way that we should treat all animals.<sup>14</sup>

### 1.5 Government Statement

On 23 November the Minister, Michael Gove made a [Written Ministerial Statement](#), setting out the Government's position that "the sentience of animals will continue to be recognised and protections strengthened when we leave the EU"<sup>15</sup> and addressing the criticisms of its position on NC30:

It has been suggested that the vote last week on New Clause 30 of the EU Withdrawal Bill somehow signalled a weakening in the protection of animals - that is wrong. Voting against the amendment was not a vote against the idea that animals are sentient and feel pain - that is a misconception.

Ministers explained on the floor of the house that this Government's policies on animal welfare are driven by our recognition that animals are indeed sentient beings and we are acting energetically to reduce the risk of harm to animals – whether on farms or in the wild. The vote against New Clause 30 was the rejection of a faulty

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<sup>12</sup> *ibid*

<sup>13</sup> HC Deb [15 November 2017](#) c 499

<sup>14</sup> British Veterinary Association, [Rejection of animal sentience from Brexit Bill risks UK short-fall on high animal welfare standards](#), 17 November 2017

<sup>15</sup> DEFRA, [Environment Secretary confirms sentience of animals will continue to be recognised and protections strengthened when we leave the EU](#), 23 November 2017

amendment, which would not have achieved its stated aims of providing appropriate protection for animals.

The Prime Minister has made clear that we will strengthen our animal welfare rules. This government will ensure that any necessary changes required to UK law are made in a rigorous and comprehensive way to ensure animal sentience is recognised after we leave the EU. The Withdrawal Bill is not the right place to address this, however we are considering the right legislative vehicle.<sup>16</sup>

The Minister also highlighted areas where the Government was considering the options for change after Brexit:

EU rules prevent us from restricting or banning the live export of animals for slaughter. EU rules also restrict us from cracking down on puppy smuggling or banning the import of puppies under 6 months. Article 13 has not stopped any of these practices – but leaving the EU gives us the chance to do much better. We hope to say more in these areas next year.<sup>17</sup>

## 1.6 *Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill*

The Government [announced](#) on 12 December 2017 that it would be introducing legislation to recognise animal sentience.<sup>18</sup> At the same time it published a short, three clause, [draft Bill, explanatory notes and consultation](#). The Bill also included tougher sentencing for animal cruelty offences. The Clause 1 on animal sentience stated the following:

### **1 Welfare needs of animals as sentient beings**

(1) Ministers of the Crown must have regard to the welfare needs of animals as sentient beings in formulating and implementing government policy.

(2) In discharging that duty Ministers of the Crown must also have regard to matters affecting the public interest.

(3) In this section “Ministers of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

The [explanatory notes set](#) out the Government view that “as a result there should be no diminution of animal welfare recognitions or protections when the UK leaves the EU”. It also made clear that it was open to changing how the bill was drafted stating “the draft Bill presents one possible formulation which seeks to deliver these objectives, and other possible formulations or approaches may also exist”.<sup>19</sup> The draft Bill appears to go further than the Article 13 in as much as it applies to all government policy rather than certain areas. The [consultation](#) closed on 31 January 2018.

The move was welcomed by animal welfare organisations, including [Compassion for World Farming](#) and the [British Veterinary Association](#).

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<sup>16</sup> DEFRA, [Environment Secretary confirms sentience of animals will continue to be recognised and protections strengthened when we leave the EU](#), 23 November 2017

<sup>17</sup> *ibid*

<sup>18</sup> Defra, [Environment Secretary publishes bill to strengthen animal welfare](#), 12 December 2017

<sup>19</sup> Defra, [Animal Welfare \(Sentencing and Recognition of Sentience\) Draft Bill](#), 12 December 2017

## Environment Food and Rural Affairs Committee Recommendations

The Environment Food and Rural Affairs (EFRA) Committee took evidence on the draft Bill and published its [response to the Government consultation](#) on 31 January 2017.

The Committee called for the Bill's two clauses be split into separate pieces of legislation which would allow the "the 'problematic concepts in the existing Clause 1 to be better defined" The concerns set out in the Committees report where summarised in a press release:

The Report:

Notes that: "[Animals] deserve better than to be treated in a cavalier fashion yet the impression given to us is one of haste. It appears that this draft Bill has been presented to the public - and Parliament - in a far from finished state."

Welcomes the Government's decision to accept a predecessor EFRA's Committee recommendation on the introduction of a 5-year maximum sentence for animal cruelty, but raises concerns that the vagueness of other aspects of the legislation will, "impede and delay the introduction of this measure".

Questions why the Government "has not taken this opportunity to increase sentences for other breaches of animal welfare" as a, "A true "gold standard" in animal welfare will require the introduction of legislation which will increase sentencing across the board."

Recommends that the Government separates Clause one of the draft Bill and "proceed with the Bill as the Animal Welfare (Sentencing) Bill".

Recommends that Government introduces a "separate piece of legislation on animal sentience" which allows the 'problematic concepts in the existing Clause 1 to be better defined".<sup>20</sup>

The concerns raised about Clause 1 during the enquiry where further set in the Committee's report:

29.The main concern raised with us was Clause 1's vagueness and ambiguity; it introduces a degree of legal unpredictability. As drafted, almost any Government policy or announcement (or non-policy and non-announcement) will be open to judicial review to determine whether sufficient, but ill-determined "regard" had been given to the welfare needs of animals. In practice, therefore, swathes of Government policy-making will be thrown on to the courts to adjudicate, with all the consequent problems that would bring.

30.The practical problems of this approach were set out for us by Sir Stephen Laws: since it is not clear to what degree Ministers should "have regard to" animal welfare needs, and not specified how this will be demonstrated, "it makes it impossible in practical terms for Government to make any reasonable prediction on whether its policies and other actions will survive judicial challenge". In a similar vein, Mike Radford told us that

one of the problems here is that it [Clause 1] is so vague that nobody will be sure what it means. The animal welfare organisations will not be sure, and policy makers will not be sure. Therefore, it will ultimately fall to the courts.

The RSPCA similarly worried that:

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<sup>20</sup> EFRA Select Committee, [Animal Welfare \(Sentencing and Recognition of Sentience\) Bill report published](#), 31 January

the key issue is that there has to be a mechanism in place for implementing this in a clear, fair and transparent way, and a mechanism for reporting and accountability under this legislation, because as we all know that was one of the failings of article 13.<sup>21</sup>

Following the publication of the report the British Veterinary Association [called](#) for the Government to ensure animal sentience is enshrined in UK law before it leaves the EU

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<sup>21</sup> EFRA Select Committee, [Pre-Legislative Scrutiny of the draft Animal Welfare \(Sentencing and Recognition of Sentience\) Bill](#), 2<sup>nd</sup> report of Session 2017-19, 31 January 2017

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