



ORNAMENTAL AQUATIC TRADE ASSOCIATION LTD

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Animal Welfare (Sentencing and Recognition of Sentience) Draft Bill

The Ornamental Aquatic Trade Association (OATA) represents more than 850 UK businesses which provide fish-keepers with everything they need to set up and maintain a successful home aquarium or garden pond. We promote high welfare standards in the industry through a wide variety of initiatives, such as our Code of Conduct, customer care sheets and our Primary Authority scheme for pet shops.

Our approach is to seek industry standards that acknowledge the welfare needs of fish as sentient beings whether or not there exists evidence to demonstrate it. We believe that if businesses and fish-keepers maintain high welfare standards they should have no concerns about the idea of animal sentience being written into UK law or a strengthening of penalties for those found guilty of animal cruelty.

Summary of OATA's views

- **We consider that the proposals in relation to animal sentience (Clause 1) are ill thought through and poorly addressed by this draft Bill. We do not support Clause 1 as proposed.** We consider it to be so ill defined and vague that it has the potential for too many unintended consequences, opening up the Government to legal challenges on many unrelated and inappropriate policy issues.
- **If the Government considers it necessary to define animal sentience into law we believe it would be more appropriately achieved via an amendment to Section 1.1 of the Animal Welfare Act 2006.** This Act provides an existing and well understood legal framework and would avoid the risks and conflicts potential in the approach proposed by this consultation.
- **We support raising the maximum penalty for animal cruelty (Clause 2) provided that (i) due process is followed, (ii) compliance measures are considered as a first step, and (iii) only statutory regulators are responsible for acting upon and imposing such penalties.**

Defining sentience

The reliance on dictionary definitions in law is wholly unsuitable. Legal processes in the UK require clarity otherwise they risk being opened up to significant abuse and litigation.

Whilst there remains a case to be made whether or not all animals are sentient, it is generally accepted that vertebrate animals (or the large majority) are. The phrase "ability to perceive or feel things" is understandable in this respect. It is however much more difficult to comprehend an animal's ability to feel 'pleasure' for example, and evidence to support this across the full spectrum of animal species is limited at best. It is worth noting that the explanatory notes accompanying the Animal Welfare Act 2006 state that "*The Act will apply only to vertebrate animals, as these are currently the only demonstrably sentient animals*".

A proper evidence-based, legal definition of “sentience” is required.

Defining animal

This draft Bill seems to extend the coverage to all animals, including invertebrates. It is highly debatable however that there is sufficiently robust scientific evidence to demonstrate sentience in all animals, including for example corals and other invertebrates.

The Animal Welfare Act 2006 defines “*animal*” as meaning “*a vertebrate other than man*”. Section 1(3) of the 2006 Act also allows for non-vertebrate animals to be included within the scope of the Act if the scientific evidence justifies it.

Noting the limited evidence of sentience in non-vertebrate animals, we consider that it would be appropriate to **apply the definition of “protected animal” included in Section 2 of the Animal Welfare Act, limiting the definition of animal in the context of sentience to only vertebrate species, whilst retaining the provision to include non-vertebrate animals where scientific evidence is brought forward to justify it.**

Defining welfare needs

Section 9 of the Animal Welfare Act 2006 establishes the five welfare needs of animals and clearly states the duties of people responsible for animals to ensure their welfare needs are met.

These welfare needs are already well understood and are wholly sufficient to meet the aims of the draft Bill. Any changes to them would cause significant confusion for those applying them, and complicate the development of the proposed new Animal Activities Licensing Regulations.

We consider that welfare needs in the context of animal sentience should be defined via a direct cross-reference to the five welfare needs outlined in Section 9 of the Animal Welfare Act 2006.

Policy scope and specifying the level of regard

We have major concerns about the impact of this draft Bill which, as currently presented, will apply to all policy areas for which Government is responsible.

We believe this could provide vexatious groups with *carte blanche* to challenge almost any aspect of government policy, regardless of how appropriate this may be, hampering and even hamstringing the Government’s ability to make sensible, evidence-based decisions. We believe that there exist groups which would take every opportunity to pursue their own policy objectives through the Courts, potentially with adverse implications for animal welfare, for example by reducing councils’ precept and thus affecting their ability to effectively fulfill the more stringent levels of inspection anticipated under the proposed Animals Activities Regulations.

It is notable that during the EFRA select committee’s evidence session Sir Stephen Laws (KCB, QC, former First Parliamentary Council) and Mike Radford (Reader in Law at the University of Aberdeen) both had substantial reservations about the scant wording of Clause 1 of this draft Bill, including Mike Radford’s remark that “the creep of this is limitless” and Sir Stephen’s comments that “if you want to legislate then it is better to do it in a different form”. The scope of the application of any law needs to be clear and precise otherwise it risks opening up Government to legal challenges on many unrelated and inappropriate policy issues.

We believe that incorporating the concept of animal sentience into the Animal Welfare Act 2006 would provide an effective means of clarifying the scope and ensure that clarity is given to Ministers on the level of regard they should have in making decisions.

In conclusion

Our conclusion from the above is that the most sensible and effective way of embedding the concept of animal sentience in law is through an amendment to the Animal Welfare Act 2006, thus capturing all the existing definitions and enabling provisions it contains and ensuring its scope and the appropriate level of regard to be given by Ministers is clear.

In launching this consultation, Secretary of State Michael Gove MP stated that: *“Animals are sentient beings who feel pain and suffering, so we are writing that principle into law and ensuring that we protect their welfare”*. If acknowledging sentience is directly related to protecting animal welfare then we already have a law that does that. Amending this law (the Animal Welfare Act 2006) seems a much simpler, more appropriate and sensible way to achieve this objective.