Our submission relates solely to animal sentience since this is an area where we have been particularly involved in both EU and UK discussions. We favour retention of the other EU principles (precautionary principle, preventive action, rectification of environmental damage at source, polluter pays) but to avoid overlap with submissions by other NGOs and interested bodies on those topics we have opted to focus on this.

1. How important are the EU principles of:

- Animal sentience.

The Repeal Bill Does Not Incorporate Article 13 TFEU (the Sentient Beings Article) into UK Law

Three types of EU legislation are currently part of UK law on animal welfare: Directives, Regulations and Article 13 of the Treaty on the Functioning of the EU.

Article 13 recognises animals as “sentient beings” and also requires Governments, in formulating and implementing policies on agriculture, fisheries, transport, research and technological development, to pay “full regard to the welfare requirements of animals”. The full text of Article 13 is set out at the end of this section. Directives (such as those on the welfare of pigs and hens) are already part of UK law as they were transposed into UK law when they were made. For example, the Welfare of Farmed Animals Regulation transposes all the EU Directives on farm animal welfare into UK law.

EU Regulations (such as those on the welfare of animals during transport and slaughter) are directly applicable in the Member States. This means that, on its entry into force, an EU Regulation automatically becomes part of the national law of each Member State.

However, it also means that when the UK leaves the EU, Regulations would automatically cease to be part of UK law. The EU (Withdrawal) Bill seeks to prevent this by incorporating EU Regulations into UK law. This is achieved by Clause 3 (1) of the Bill which provides that “Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day”.

Clause 3 (2) explains that “direct EU legislation” means “any EU regulation, EU decision or EU tertiary legislation”. There is no reference to any Treaty provision in Clause 3.

The effect of this is that Article 13 of the Treaty on the Functioning of the EU (TFEU) is not going to be incorporated into UK law by the Repeal Bill as currently drafted. This has raised concerns because British law, under the Animal Welfare Act 2006, does not explicitly recognise the term although it does acknowledge that animals can experience suffering and pain; nor is there any overriding requirement that public
bodies (e.g. Ministers) should pay full regard to the welfare of animals. If, for example, the UK Government were to sign a trade agreement with the United States after Brexit which allowed chicken meat from chickens produced to standards lower than farmers in Scotland maintain, there is no current requirement that Ministers should consider the welfare impact (and compare it with any perceived benefits). Article 13 is the core overarching requirement on animal welfare in EU – and hence at this time in UK – law. We believe that it must be incorporated into UK law.

The Secretary of State, Michael Gove, has published a draft Bill that would enshrine the principle of animal sentience, as reflected in the TFEU, into UK law after Brexit. However this draft Bill, in its current format, only extends to “Ministers of the Crown” and therefore would not apply to Scotland.

Animal welfare is a devolved matter and it is therefore up to the devolved administrations to decide whether to introduce legislation similar to section 1 of the draft Bill. Accordingly, we would urge the Scottish Government to introduce comparable legislation for Scotland that would come into effect on the day Britain leaves the EU to ensure no gaps in the statute book.

The draft Westminster Bill has been criticised for lack of clarity and imprecise replication of the EU equivalent. We should like to encourage the Scottish Government to improve on it in the Scottish version, specifically by:

- Clarifying that “Ministers of the Crown” includes all public authorities and bodies.
- Restoring the word “full” to “full regard” (omitted in the Westminster version for no obvious reason).
- Setting out a mechanism by which Ministers and other bodies could show that they had paid full regard, for example by submitting an appropriate statement on their considerations (where appropriate) to the relevant committee in the Scottish Parliament. This would allow Parliamentary scrutiny of Ministerial thinking without imposing an unreasonable burden on Ministers.

**Full text of Article 13 of the Treaty on the Functioning of the EU:**

“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.”

**2. How and where have these principles had an impact on environmental and animal welfare policy in Scotland?**

Since the principles inform all legislation in the area, they have a pervasive impact on policy-making, and inhibit the development of policy that clearly disregards animal welfare.
3. Views on the appropriateness of retaining/adopting/enshrining these EU principles in law or alternative principles/approaches that could be adopted.

Animal Welfare is a devolved matter and therefore the Scottish Government will need to determine how strongly it feels about respecting animals as sentient beings.

Whilst the Animal Welfare Act protects against the mistreatment of animals by those responsible for them e.g. their owners or carers, it is about the relationship between individuals and animals. It does not cover the same area as Article 13, which is a constraint on government policy (not on individuals). Further, animal sentience is only mentioned in passing in the explanatory notes of this Act, rather than being explicitly stated. And the Act only applies to domesticated animals so, for example, wildlife and lab animals are not covered by the Act.

We would urge the Scottish Government to introduce comparative legislation to that which is enacted in England in order to ensure parity on animal welfare standards, and the consideration that Government must give to these issues, throughout the UK.

4. Views on if and how environmental principles could and should be enshrined in law in Scotland and enforced.

The principal of sentient beings and animal sentience, as set out in Article 13 of the TFEU, should absolutely be incorporated into Scottish law post Brexit. There are a number of options for how the Government could do this, and we do not take a preferred view on these, provided that at least the same level of legislation applies post-Brexit as does now:

- pass a legislative consent motion in the Scottish Parliament that extends the final Animal Sentience Bill to Scottish Ministers;
- ensure that the Animal Sentience Bill is part of a UK wide framework;
- introduce legislation, through the Scottish Parliament, that enshrines Article 13 of the TFEU into Scottish legislation, with the same level of obligation placed on Scottish Ministers and other public bodies in Scotland as those in England.

5. Examples of where key environmental principles have been enshrined in domestic legislation elsewhere.

Article 13 and its predecessor Protocol have produced worthwhile benefits for animal welfare. 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.”

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.

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.

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.

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 Dierenkwekers 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 TFEU Treaty, contained in Part One thereof, setting out the ‘Principles’.”

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”.¹

The definition of “sentient beings” is, as an example, enshrined in French law. Article 515-14 of the ‘Code Civil’ provides that “Les animaux sont des êtres vivants doués de sensibilité”² (Translation: “animals are living beings gifted with sentience”).

¹ http://ec.europa.eu/food/animal/welfare/policy/index_en.htm
² https://www.legifrance.gouv.fr/eli/loi/2015/2/16/2015-177/jo/article_2