OneKind welcomes the Committee’s decision to undertake an inquiry into the EU environmental and animal welfare principles and is pleased to submit the following responses to the questions posed.

1. How important are the EU principles of:

- the precautionary principle
- preventive action
- environmental damage should as a priority be rectified at source
- the polluter should pay
- animal sentience.

The principle that animals are sentient, allied to a requirement to pay full regard to their welfare, is fundamental to the formation of effective policy and legislation to protect animals.

The concept of sentience in animals concerns the capacity to have feelings. There is evidence for sophisticated cognitive concepts and for both positive and negative feelings in a wide range of nonhuman animals\(^1\). Understanding this concept supports the imperative for animal welfare\(^2\), which is defined as the state of the individual in its attempts to cope with its environment\(^3\), to be explicitly considered in policy and legislation across a wide range of issues.

Sentience includes a wide range of emotions and feelings, both negative and positive. Thus, where the matter is under human control, we should aim where possible to prevent animals suffering negative states such as discomfort, distress, hunger, thirst, inability to perform natural behaviours and so on. At the same time, we should promote positive states such as comfort, well-being and satisfaction of natural instincts. Taken together, these could be said to amount to meeting the duty of care to our animals. But where enforcement is concerned, there remains a debate as to where the bar for the duty of care should be set.

---

\(^1\) Adapted from writings of Professor Donald Broom, Emeritus Professor of Animal Welfare at Cambridge University, including Broom, D.M. 2016 *Animal Sentience* 2016.005
http://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1015&context=animsent

\(^2\) Animal welfare is connected with, but is different from, animal health. For example, while animal health may be measured at herd level, animal welfare is only measurable at an individual level.

Currently, a requirement to pay full regard to animal welfare is placed upon the European Union and domestic governments by Article 13 of the Treaty on the Functioning of the European Union (TFEU).

Article 13 is particularly significant because it arose from a public campaign, ultimately backed by the UK Government, for express recognition by the EU that animals should not be treated as just another form of goods, but should have a special status by virtue of their sentience. In particular, the EU’s imperative to remove trade barriers, and create a single EU “internal market” should not be pursued without full regard to the welfare requirements of animals, which should be protected by animal welfare legislation at the EU level. EU Member States agreed to adopt a Protocol to the Treaty of Amsterdam in 1997 which eventually acquired the force of law and was set out in Article 13 of the TFEU.

Article 13 states that:

“In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and 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.”

Given the public outcry generated by the failure (so far) to amend the UK Withdrawal Bill at Westminster to incorporate the provisions of Article 13, we need to be clear that the issue is not whether UK administrations recognise that animals are sentient: they do. The operative element of Article 13, and its significance, lies not in a simple recognition of sentience but in the duty to pay “full regard to the welfare needs of animals.”

In addition to transposing the content of Article 13 into UK and Scottish law, the UK and Scotland can continue to have a positive impact on animal welfare both domestically and globally by ensuring that:

- All other protection measures currently afforded to animals under EU regulations are transposed into UK law
- Public funds, where used, incentivise and reward best practice in animal welfare in the UK, setting the highest standards for our internal markets
- UK and Scottish welfare standards are met in trade deals and overseas investment policies, and, where possible, trade deals support enforcement of animal protection laws

---

4 It has been objected that the derogation for cultural practices allows for unacceptable practices such as bullfighting or foie gras production. However, the UK has no cultural history of these activities, so this derogation would be unlikely to be applicable in the UK.
The UK continues to use its membership of international agreements and treaties, such as the World Organisation for Animal Health, to advocate and resource strategies to improve animal welfare.

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

Article 13 places a legal obligation upon the EU and Member States to pay full regard to animals’ welfare requirements when formulating and implementing policy in the areas listed. CJEU case-law recognises that “the protection of animal welfare is a legitimate objective in the public interest”.

The Article and the predecessor Protocol of 1997 have informed many pieces of EU law on animal welfare, which apply in Scotland, such as the ban on sealskin imports, the ban on imports of dog and cat fur, the ban on cosmetic testing of animals and the ban on conventional battery cages. For example, Regulation (EC) No 1007/2009 on the trade in seal products opens with a reference to Article 13:

“Seals are sentient beings that can experience pain, distress, fear and other forms of suffering.”

A number of Directives on the protection of animals kept for farming purposes are transposed and implemented by regulations such as the Welfare of Farmed Animals (Scotland) Regulations 2010, now made under our domestic legislation, the Animal Health and Welfare (Scotland) Act 2006.

The impact of Article 13 on other policies is unclear. For example, the Common Agricultural Policy has increasingly been used in recent times to incentivise enhanced welfare. However, the CAP is regularly, and justifiably, condemned for leading to increasingly intensive farming, with consequent negative impacts on animal welfare.

With regard to domestic legislation in Scotland, the Scottish Government has stated that the principle of animal sentience is already enshrined in Scottish animal protection legislation. This is true, but only to a limited extent as the principle of sentience is not explicitly expressed or promoted.

The concept of mental suffering has been touched on in Scottish legislation going back at least to the Protection of Animals (Scotland) Act 1912, which made it an offence to “infuriate” or “terrify” an animal. However, there is more to our duty of care to animals, as sentient beings, than simply preventing them being infuriated or terrified. There is no explicit reference to sentience in the Animal Health and Welfare (Scotland) Act 2006, only a mention at section 48 of physical and mental suffering. While there is a passing reference to animal sentience in the explanatory notes for

---

5 Zuchtvieh-Export GmbH v Stadt Kempten, C-424/13, paragraph 35; Viamex Agrar Handel and ZVK, C-37/06 and C58/06, EU:C:2008:18, paragraph 22; Nationale Raad van Dierenkwekers en Liefhebbers and Andibel, C-219/07, EU:C:2008:353, paragraph 27

the Westminster Animal Welfare Act 2006, and in those for the Northern Irish Act, it is not mentioned at all in the explanatory notes for the Scottish Act.

In addition, the Animal Health and Welfare (Scotland) Act 2006 is limited in its scope – it does not cover free-living wild animals, animals used in scientific procedures, or anything done in the normal course of fishing, even though all the animals within these categories are demonstrably sentient. Finally, the duty of care, implying recognition of an animal's mental state is only placed on individuals whereas Article 13 applies to government policy.

OneKind understands that the Scottish Government now intends to try and work with the UK Government on its Animal Welfare (Sentience and Sentencing) Bill⁷, first, rather than legislate in the Scottish Parliament. There are a number of difficulties with the Animal Welfare Bill at present, including definitions of key terms. Section 1 requires Ministers of the Crown (which does not automatically include the Scottish Ministers) to “have regard to the welfare needs of animals”. This is weaker and less clear than Article 13, which requires EU Member States to “pay full regard to the welfare requirements of animals”, and is also undermined by a further requirement in the Bill to have regard to a broadly defined set of “matters affecting the public interest”.

The duty also needs to be placed on public bodies such as Food Standards Scotland, Scottish Natural Heritage, the Forestry Commission and other bodies with responsibility for implementing any area of animal welfare policy. We can understand why consenting to the UK Government Bill would be a pragmatic approach to the partial preservation of the Article 13 principles in Scotland (although this may still yet be resolved by amendments to the UK Withdrawal Bill). However, it remains to be seen whether the Bill will ultimately achieve the desired aim.

3. Views on the appropriateness of retaining/adopting/enshrining these EU principles in law or alternative principles/approaches that could be adopted.

As stated, OneKind believes that it is appropriate to make specific provision for the sentience of animals within Scottish legislation, given that animal welfare is a devolved power. At the same time, the Scottish Government and the Scottish Parliament should build on the opportunity presented by the current debate and become more proactive in promoting, monitoring and improving the way all animals are protected in Scotland. Article 13 mentions policy as well as legislation and other methods could be employed.

At this point, OneKind would hope to see both the Committee and the Scottish Government take a more ambitious approach and examine other mechanisms that can monitor and promote animal welfare beyond the making of legislation. The issue has been raised and is clearly a matter of public concern. Whether pursuant on Brexit or not, the opportunity should be taken, both in terms of legislation and policy. In order that the duty (however it is ultimately formulated) to “pay full regard to the welfare requirements of animals” has a real practical effect, we suggest that the Committee should consider measures beyond straightforward legislation.

We mentioned the CAP in our response to question 2 and it is acknowledged that aspirations for the CAP to improve animal welfare have not been fulfilled. The CAP is regularly, and justifiably, condemned for incentivising increasingly intensive farming, with consequent negative impacts on animal welfare. 80% of current CAP payments are essentially based on the size of the farm, with no additional animal welfare conditions attached, and outweigh the 20% of payments given for environmental benefits. According to the report *Brexit: getting the best deal for animals*, produced by the UK Centre for Animal Law and Wildlife and Countryside Link, and supported by OneKind and 40 other organisations, “very little money has been available for animal welfare payments from any of the four devolved authorities. This payment imbalance has generated high land prices and promoted monoculture agriculture, which can have negative impacts on the environment, animal welfare and landscape.”

Nonetheless, a reformed system of farm support payments could still be beneficial. We advocate a new system of farm support payments that enables and rewards better animal welfare and environmental standards. A report published by the RSPCA this month states that 82% of the UK public support the use of farm subsidies to improve welfare, post-Brexit, and sets out a two-tier proposal for farmers to be paid to invest in higher animal welfare standards while ensuring they are not undercut in any new trade deals.

The transposition of the principles within Article 13 is an important opportunity to adopt a more ambitious approach in Scotland and the UK. We believe that this is justified given the high public interest and the need for reassurance that animal welfare standards will continue to improve after Brexit and not be sacrificed in the pursuit of new trade agreements. Options include:

- **Require animal welfare impact assessments:** Ministers and public bodies should, where they are considering policy changes likely to have a significant impact on animal welfare, carry out an assessment of that impact, identify any risks and how they might be mitigated.

- **Reporting:** The Scottish Ministers should undertake to report regularly to the Scottish Parliament on the state of animal welfare in Scotland.

- **Create of an animal welfare advisory body:** the Scottish Ministers could invoke their powers under section 36 of the Animal Health and Welfare (Scotland) Act 2006 to establish a body to advise on the welfare of animals protected under the Act.

- **Funding for enforcement:** local authorities are designated the primary enforcers of the Animal Health and Welfare (Scotland) Act 2006 but there is no obligation for them to do so and resources can limit their ability to do so.

---


• Animal welfare duty audit: EU law includes mechanisms for auditing how the Article 13 duty is being met in practice by member states, and it would appear appropriate for an equivalent audit mechanism to be proceed for either the UK or Scotland, after Brexit.

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

A useful precedent has been set by the inclusion of amendment 39 in the Continuity Bill at Stage 3. It ensures “that ministers will have regard to the guiding principles on the environment and animal welfare when they use the regulation-making powers under sections 11(1), 12 and 13(1) of the bill. Although all EU legislation that is rolled over through the bill will already have been informed by the principles, as part of the EU’s policy development and decision making, amendment 39 will ensure that we consider the principles when we make regulations to correct deficiencies or to keep pace with EU law, including when ministers exercise the powers to rectify or alter duties or powers of public authorities.”

This is therefore an important acknowledgment of the principle of animal sentience, and the public desire to maintain the Article 13 requirement after the UK leaves the European Union, although, as explained in the statement from the Minister, it will be limited in its scope and application.

OneKind encourages the development of a formula to express the Article 13 requirement consistently in future legislation.

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

Explicit, formal recognition of animal sentience is already found within domestic legislation in a small number of countries outwith the UK. These include:

• France – Law no. 76-629 of 1976 on the protection of nature declares that animals are sentient, although this applies only to animals that are owned; in April 2014, the Civil Code was amended to recognise animals as sentient

• The Netherlands – the Animals Act 2011 formally recognises animal sentience and provides that recognising the intrinsic value of animals means recognising the dignity of animals as sentient beings

• New Zealand – the Animal Welfare Act 1999 was amended in May 2015, specifically to recognise animals as sentient.

A number of countries implicitly apply either the requirement to pay full regard to the welfare of animals, as sentient beings, or a basic recognition of sentience, within their legislation. The UK comes into this category, as do:

• Sweden – the Penal Code refers to animal suffering, and the Animal Welfare Act 1988 and supplementary Animal Welfare Ordinance 1988 refer to both

---

11 Michael Russell MSP, Stage 3 debate 21 March 2018
physical and mental suffering, thus recognising important elements of animal sentience

- Austria – the stated aim of the Animal Welfare Act 2004 is the protection of the life and well-being of animals based on man’s special responsibility for the animal as a fellow creature; while the Civil Code declares that animals are not things

- Romania – Law 205/2004 concerning the protection of animals refers to psychological suffering of animals, as distinct from physical suffering, and requires owners to keep animals in conditions that meet their ethological needs

- Switzerland – the Animal Welfare Act 2005 protects the “dignity” (possibly better translated as “worth”) and welfare of animals; the inherent dignity/worth of the animal has to be respected when dealing with it

- Poland – the Animal Protection Act 1997 states that “The animal as a living creature, capable of suffering, is not a thing”

- Germany – the principles of the German Animal Welfare Act are the protection of the lives and well-being of animals, from the responsibility of humans for animals as fellow creatures, and states that no person may cause an animal pain, suffering or harm without good reason.