

# **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Animal Welfare (Kept Animals) Bill**

April 2022



# 1. Background

## The UK Government's Animal Welfare (Kept Animals) Bill

1. The UK Government's Animal Welfare (Kept Animals) Bill<sup>1</sup> (the Bill) was introduced into the House of Commons and had its first reading on 8 June 2021. The Bill is sponsored by the UK Government Department for Environment, Food and Rural Affairs.

2. Committee Stage in the House of Commons concluded in November 2021. It has been announced that a carry-over motion will be considered on 20 April 2022.

## The Welsh Government's Legislative Consent Memorandum

3. Standing Orders 29.1 and 29.2 provide that a Legislative Consent Memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

4. On 22 June 2021 Lesley Griffiths MS, the Minister for Rural Affairs and North Wales, and Trefnydd (the Minister) laid before the Senedd a Legislative Consent Memorandum<sup>2</sup> (the Memorandum) in respect of the Bill.

5. Paragraphs 13 to 130 of the Memorandum set out the Welsh Government's assessment, at the time, of the provisions in the Bill that it considered required the consent of the Senedd, namely clauses 26 to 53 and Schedule 5.

6. Paragraphs 132 to 137 of the Memorandum set out the Welsh Government's position on the Bill at the time. In the Memorandum, the Minister concluded that:

*"It is the view of the Welsh Government that it is appropriate to use this UK Bill as a vehicle to progress important and high profile animal welfare issues on largely a GB wide basis, particularly where these aims will benefit from a joined up approach with other administrations."<sup>3</sup>*

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<sup>1</sup> [Animal Welfare \(Kept Animals\) Bill](#), as introduced (Bill 13)

<sup>2</sup> Welsh Government, [Legislative Consent Memorandum, Animal Welfare \(Kept Animals\) Bill](#), June 2021

<sup>3</sup> Memorandum, paragraph 137

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## Summary of our first report

7. We reported on the Memorandum on 19 October 2021 (first report).<sup>4</sup>
8. Paragraphs 16 to 26 of our first report set out in detail our consideration of the Memorandum.
9. In our first report, we acknowledged the difference in Welsh and UK Government views about the clauses (and Schedules) of the Bill for which the consent of the Senedd should be sought.
10. We also noted that the relevant clauses in the Bill for the purpose of the Memorandum contain concurrent plus powers.
11. In addition, we discussed, in detail, the Welsh Government's approach to legislating for Wales in this devolved area and our concerns with this approach.
12. In total, our first report included three formal conclusions and two recommendations.
13. The Minister formally responded to our report on the Memorandum on 24 November 2021.<sup>5</sup>

## The Welsh Government's Supplementary Consent Memorandum (Memorandum No. 2)

14. On 7 January 2022, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum<sup>6</sup> (Memorandum No. 2) in respect of amendments made to the Bill on 16 and 18 November 2021 during Committee stage in the House of Commons. Clause (and Schedule) numbering referred to in Memorandum No. 2 relates to the version of the Bill as amended in Committee stage in the House of Commons.<sup>7</sup>

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<sup>4</sup> Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memorandum on the Animal Welfare \(Kept Animals\) Bill](#), October 2021

<sup>5</sup> [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd](#), 24 November 2021

<sup>6</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Animal Welfare \(Kept Animals\) Bill](#), January 2022

<sup>7</sup> [Animal Welfare \(Kept Animals\) Bill](#), as amended in Public Bill Committee (Bill 195)

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**15.** Following our initial consideration of Memorandum No. 2 on 7 February 2022, we wrote to the Minister on 8 February raising concerns with the quality of Memorandum No. 2 and a lack of clarity regarding the information presented within it.<sup>8</sup>

**16.** On 3 March 2022, the Minister laid a revised version of Memorandum No. 2<sup>9</sup> and wrote to us to confirm that the previous version laid on 7 January had been formally withdrawn.<sup>10</sup>

**17.** The Business Committee originally agreed that the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee should report on Memorandum No. 2 by 3 March 2022.<sup>11</sup> Subsequently, the deadline was extended to 17 March 2022<sup>12</sup> and again further to 31 March 2022.<sup>13</sup>

### **Update on the Welsh Government's position and amendments made to the Bill for which consent is sought since the publication of the Memorandum**

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**18.** Paragraphs 14 to 22 and 32 to 37 of Memorandum No. 2 provide an update on the Welsh Government's position since the Memorandum was laid before the Senedd in June 2021.

**19.** Paragraphs 23 to 31 set out the amendments made to the Bill at Commons' Committee Stage for which the Welsh Government considers that the consent of the Senedd is required. The Annex to Memorandum No. 2 sets out the detail of those amendments.

**20.** Amendments have been made to Parts 1 to 4 of, and Schedules 1 to 4 to, the Bill.

### **Changes to Part 1 of the Bill (including Schedules 1 to 4)**

**21.** Part 1 of the Bill, now clauses 1 to 24, relate to primates. Schedules 1 to 4 to the Bill also make provision in relation to primates.

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<sup>8</sup> Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 8 February 2022

<sup>9</sup> Welsh Government, Revised Supplementary Legislative Consent Memorandum (Memorandum No. 2), Animal Welfare (Kept Animals) Bill, March 2022

<sup>10</sup> Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 3 March 2022

<sup>11</sup> Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Animal Welfare (Kept Animals) Bill, January 2022

<sup>12</sup> Business Committee, Revised Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Animal Welfare (Kept Animals) Bill, February 2022

<sup>13</sup> Business Committee, Revised Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Animal Welfare (Kept Animals) Bill, March 2022

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**22.** On introduction to the House of Commons, the provisions in Part 1 of the Bill relating to primates applied to England only. As such, none of the clauses in Part 1 previously required the Senedd's consent.

**23.** In the Memorandum laid before the Senedd in June 2021, the Minister said:

*"As currently drafted Part 1 of the Bill (Primates) does not apply to Wales. The Welsh Government is content that these provisions be extended to apply in relation to Wales on the understanding that the Welsh Ministers are given powers in relation to Wales equivalent to those of the Secretary of State in relation to England."<sup>14</sup>*

**24.** At paragraph 15 of Memorandum No. 2 the Minister states:

*"...Part 1 now applies to Wales in line with Welsh Government's request so that powers conferred on the Welsh Ministers in relation to Wales are equivalent to the Secretary of State's powers in relation to England."*

**25.** On pages 4 to 11 and 14 to 16 of Memorandum No. 2, the Minister sets out the amendments made to Part 1 of, and Schedules 1 to 4 to, the Bill.

**26.** In summary, some of the key amendments made to Part 1 of the Bill (and the accompanying Schedules) mean that the Welsh Ministers will be:

- enabled to bring forward secondary legislation in Wales regarding the prohibition on keeping primates without a licence (clause 1);
- required to make regulations which specify licensing standards for the care and management of primates (clause 3);
- enabled to issue guidance to local authorities in respect of the exercise of their functions under Part 1 of the Bill (clause 20);
- enabled to make regulations to amend Part 1 of the Bill so that it applies to other kinds of wild animal (clause 22).

**27.** In Memorandum No. 2 the Minister states:

*"The inclusion of Wales within the Bill, as published, will enable Welsh Ministers to bring forward a licensing scheme in relation to the keeping of a*

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<sup>14</sup> Memorandum, paragraph 133

*primate in a domestic setting and empower Local Authorities to enforce any new animal welfare legislation in line with the Animal Welfare Act 2006, which is fully devolved to Wales.*

*The inclusion of Wales will also negate any licensing disparity between England and Wales and benefit enforcement along the borders of any new licensing requirements."<sup>15</sup>*

## **Changes to Part 2 of the Bill**

**28.** Part 2 of the Bill, now clauses 25 to 39, relates to dogs attacking or worrying livestock.

**29.** In the Memorandum, the Minister said that the Welsh Government considered that Part 2 of the Bill makes provision with regard to devolved matters and, as such, Part 2 required amendment to reflect this position.<sup>16</sup>

**30.** Previously numbered clause 38 of the Bill (regulations under Part 2) has been removed from the Bill and newly numbered clause 38 (general interpretation, which was previously clause 40) has been amended to add definitions of "enclosed deer" and "enclosed wild boar", while also making changes to the definition of "livestock". The Minister considers that the amendments made to clause 38 make provision with regard to a devolved matter.

**31.** At paragraphs 17 to 20 of Memorandum No. 2 the Minister sets out that her request to the Secretary of State for Environment, Food and Rural Affairs seeking amendments to clauses 37, 38, 50 and 51 to the effect that powers are conferred on the Welsh Ministers in relation to Wales were refused. The Minister states:

*"...the Secretary of State for EFRA responded confirming the view that the provisions in Part 2 relate to a reserved matter in that they fall within the 'dangerous dogs and dog dangerously out of control reservation' (paragraph 44 to Schedule 7A to [the Government of Wales Act 2006] and has not agreed to amend the clauses in the way requested. (...)*

*At this stage, Welsh Government is minded to recommend to the Senedd that the Legislative Consent Motion is denied in part, in relation to Part 2: Dogs Attacking or Worrying Livestock."<sup>17</sup>*

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<sup>15</sup> Memorandum No. 2, paragraph 24, page 4

<sup>16</sup> Memorandum, paragraph 133

<sup>17</sup> Memorandum No. 2, paragraphs 18 and 20

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**32.** In her letter to us on 3 March 2022, the Minister said:

*"...I am still awaiting a response from [the] Defra Ministers as to why they consider they cannot confer powers in the Bill in relation to the definition of livestock which is devolved to Wales."<sup>18</sup>*

### **Changes to Part 3 of the Bill**

**33.** Part 3 of the Bill, now clauses 40 to 49, makes other provisions about kept animals.

**34.** The Minister considers that amendments made to clauses 40, 42, 45, 46, 48 and 49 require the Senedd's consent.

**35.** In summary, some of the key alterations to Part 3 of the Bill are as follows:

- the amendments made to clause 42 will enable regulations under section 12(1) of the *Animal Welfare Act 2006* to amend or revoke instruments made under section 2(2) of the *European Communities Act 1972* (the 1972 Act), and will enable regulations under section 13 of the same 2006 Act to make consequential amendments or revocations of retained direct EU law made under the 1972 Act;
- the amendments made to clause 45 make changes to regulations<sup>19</sup> made by the Welsh Ministers in 2011 regarding the trade in animal and related products and restrict the number of dogs, cats and ferrets that may enter Great Britain in a non-commercial motor vehicle to three;
- the amendments made to clause 46 widen the regulation-making power as originally drafted so that such regulations may contain exemptions and may make provision about permits;
- the amendments made to clause 49 create new concurrent functions.

**36.** As regards the concurrent functions, at paragraphs 21 and 22 of Memorandum No. 2 the Minister states:

*"Under Part 3, Clause 49 of the Bill defines an" appropriate national authority." In the Bill, as introduced, that clause (which was then clause 48) specified that the "appropriate national authority" for Wales for the purpose*

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<sup>18</sup> Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 3 March 2022

<sup>19</sup> [The Trade in Animals and Related Products \(Wales\) Regulations 2011](#)

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*of Part 3 regulations is (1) the Welsh Ministers or (2) the Secretary of State acting with Welsh Ministers consent. This creates concurrent functions. (...)*

*Welsh Government would ordinarily not wish to see the creation of new concurrent functions. The nature of Clause 41 (Export of livestock) and Clause 46 (Importation of dogs, cats and ferrets) is such that a GB-wide approach is likely to be considered appropriate for reasons of consistency and practicality to ensure a uniformed approach to export and import controls at borders. Having an approach that differs for Wales, or any other part of GB, would potentially cause difficulties for animal owners/keepers and enforcement agencies."*

### **Changes to Part 4 of the Bill**

**37.** Part 4 of the Bill, now clauses 50 to 55, makes general provisions.

**38.** The Minister considers that amendments made to clauses 50, 52 and 53 require the Senedd's consent.

**39.** Clause 50 has been amended to provide the Welsh Ministers with a regulation-making power to make provision consequential on any provision in Parts 1 and 3 of the Bill as it applies to Wales, so long as such provision is within the legislative competence of the Senedd.

**40.** In Memorandum No. 2 the Minister states:

*"The amendments to Clause 50 confer concurrent functions on the Welsh Ministers in relation to legislative functions under Part 3 (i.e. Clauses 41 and 46) and provide that devolved authorities' powers are limited by reference to devolved legislative competence.*

*"Appropriate national authority" is defined in Clause 49 as, in relation to Wales, the Welsh Ministers or the Secretary of State acting with the consent of the Welsh Ministers.*

*Consequently, any regulations made under Clauses 41 and 46 would need to be within the legislative competence of the Senedd (which is already the case). The Secretary of State may make regulations with the consent of the*



*Welsh Ministers, providing those regulations are within the devolved competence of the Welsh Ministers.*"<sup>20</sup>

**41.** Clause 52 introduces a new provision for the making of regulations under the Bill, once enacted.

**42.** Clause 52 makes provision for regulations made under the Bill, except for those made under clause 53 (commencement). It specifies the statutory instruments, made by the Welsh Ministers, which need to follow the affirmative resolution procedure (see clause 52(9)). These are regulations made under:

- clause 3(1) or (3)(b),
- clause 22,
- Part 3, other than those made by virtue of clause 46(3)(c), or
- clause 50 that amend, repeal or revoke provision made by primary legislation or retained direct principal EU legislation.

**43.** Clause 52(10) confirms that any other statutory instrument made by the Welsh Ministers containing regulations are to follow the negative procedure.

**44.** In Memorandum No. 2 the Minister states in relation to clause 52:

*It provides that a power to make regulations under the Bill (except for regulations under clause 53: Commencement) also includes a power to make different provision for different purposes, different provision for different areas, consequential, incidental, supplementary, transitional, transitory or saving provision. Under this Clause, where the Welsh Ministers have a power to make regulations under the Act, they are able to exercise the above powers.*

*The amendments also set out the procedure for making regulations and specify that, any regulations made under Clause 3(1) or 3(3), (Licensing standards and other requirements) 22 (power to extend Part 1), Part 3 (Other provisions about Kept Animals) or Clause 50 (power to make consequential provision) that amend, repeal or revoke provision made by primary legislation or retained EU legislation is subject to the Affirmative procedure of*

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<sup>20</sup> Memorandum No. 2, paragraph 27, page 13

*Senedd Cymru. All other regulations under the Bill are made by the negative procedure."*<sup>21</sup>

**45.** Amendments made to clause 53 of the Bill confer on the Welsh Ministers the power to commence Part 1 of the Bill in relation to Wales.

**46.** As referenced above in paragraphs 35 and 36, the amendments made to clause 49 of the Bill create concurrent functions. At paragraph 21 of Memorandum No. 2 the Minister states:

*"Consequently, Welsh Government requested a 'carve out' for the need for Minister of the Crown consent if the Senedd proposed to remove any concurrent powers in a future Senedd Bill. Clause 51 is a new clause which provides the 'carve out' amending Schedule 7B to the Government of Wales Act 2006 so as to dis-apply certain restrictions in that Schedule in relation to functions conferred by or under the Bill. The provisions in Clause 51 relate to matters which are reserved by virtue of (Paragraph 7 of Schedule 7B to GOWA. Therefore, it is the Welsh Government's view that consent is not required in respect of Clause 51."*<sup>22</sup>

## **Update on the Welsh Government's overall position since the publication of the Memorandum**

**47.** At paragraphs 36 and 37 of Memorandum No. 2 the Minister states:

*"Subject to the final outcome of negotiations with the UK Government, the Welsh Government considers it appropriate to use this UK Bill as a vehicle to progress important and high profile animal welfare policies on, largely, a GB wide basis, particularly where these aims will benefit from a joined up approach with other governments on enforcement.*

*The Bill will also provide clarity for the Courts and the public alike and it is a timely opportunity to take these important policy and legislative changes forward."*

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<sup>21</sup> Memorandum No. 2, paragraph 27, pages 13-14

<sup>22</sup> Memorandum No. 2, paragraph 22

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## 2. Committee consideration

48. We considered Memorandum No. 2 at our meeting on 21 March 2022.<sup>23</sup>

49. We agreed our report on 28 March 2022.<sup>24</sup>

50. This report should be read along with our first report.

### Our view

#### General comments

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51. We note the position of the Minister as set out in Memorandum No. 2 with regards to amendments made to the Bill which are relevant to a devolved purpose.

**Conclusion 1.** While we agree with the Minister's assessment and that all clauses and amendments listed in Memorandum No. 2 relate to a devolved purpose, we also believe that the Senedd's consent is required for clause 51 of the Bill.

52. We also note the Minister's reasons for making further provision for Wales in clauses 1 to 24, 38, 40, 42, 45, 46, 48 to 50, 52, and 53, and Schedules 1 to 4, and our views are expressed in more detail in the following paragraphs.

53. In our first report we expressed concerns with the Minister's approach to using a UK Bill to make provision for Wales. In so doing, we drew attention to similar concerns raised by our predecessor committee when it examined legislative consent memoranda for other animal welfare related UK Bills in the Fifth Senedd.

54. At conclusion 1 in our first report we highlighted that we shared the concerns raised by our predecessor committee, and that it is disappointing that the newly formed Welsh Government has continued with a sub-optimal trend of relying on the UK Government and UK Parliament to legislate in this priority policy area. On this matter, our position is unchanged.

55. In our first report we also noted that, on introduction to the UK Parliament, the Welsh Government considered that three of the four parts to the Bill made provision in a devolved

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<sup>23</sup> [Legislation, Justice and Constitution Committee](#), 21 March 2022

<sup>24</sup> [Legislation, Justice and Constitution Committee](#), 28 March 2022

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area, and that the Welsh Government was seeking amendments to the Bill to the effect that the only other remaining part – Part 1 – also be extended to apply in Wales.

**56.** At paragraph 21 and in conclusion 2 of our first report we highlighted our concerns with the Minister's approach to using, so extensively, a UK Bill, particularly as regards the bypassing of the Senedd's scrutiny procedures. We concluded that the Minister's reasoning set out in the Memorandum was regrettable. On this matter, our position is also unchanged.

**57.** At paragraph 4 of Memorandum No. 2, the Minister notes that "it was not possible to lay this LCM within the normal two weeks prescribed in [Standing Order 29], owing to the volume and complexity of the amendments tabled".

**58.** Standing Order 29.2 requires the Welsh Government to lay a legislative consent memorandum normally no later than two weeks after relevant provisions have been proposed in a Bill or by amendment. In this instance it has taken much longer than this.

**Conclusion 2.** The amendments detailed in Memorandum No. 2 were tabled in the House of Commons on 10 November 2021. A version of Memorandum No. 2 suitable for scrutiny was not laid before the Senedd until 3 March 2022. This is not acceptable. It has hampered the ability of Senedd Members to scrutinise the amendments in a timely and meaningful way.

**59.** We will draw our concerns to the attention of the Senedd's Business Committee.

### **Specific comments regarding amendments made to Part 1 of the Bill (and accompanying Schedules)**

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**60.** As highlighted above, we note that yet again the Minister has requested that more provisions in the Bill, namely Part 1 and Schedules 1 to 4, be made applicable to Wales during the amending stages as the Bill progresses through the UK Parliament.

**61.** We do not wish to comment on the policy merits – or otherwise – of the application of Part 1 of the Bill to Wales. However, we must reiterate our concerns with the Minister's approach of using a UK Bill to legislate on a Welsh Government priority policy area.

**62.** This is particularly unsatisfactory as clause 22 provides the Welsh Ministers with an enabling Henry VIII power such that Part 1 of the Bill may be amended by regulations to extend its application to different wild animals without a role for the Senedd in determining whether such an extension in policy is needed .

**Recommendation 1.** The Minister should, at the earliest opportunity and in advance of the Senedd's debate on the relevant consent motion, provide full details of how the regulation-

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making power in clause 22 of the Bill may be used, and whether the Welsh Government is already considering the application of this legislation to other wild animals.

**63.** The powers the Minister has requested in Part 1 of the Bill will provide for a licensing scheme for the keeping of primates in Wales. We acknowledge that the Minister has also succeeded in securing the power to commence the application of Part 1 in Wales. From our experience, seeking to secure such commencement powers is not an objective that has been consistent across the Welsh Ministers as they have chosen to opt in to UK Bills. See, for example, the pursuit of provisions, and amendments to provisions, in the Building Safety Bill.<sup>25</sup>

**64.** However, by securing the ability to commence these provisions in Wales, presumably at a time of the Minister's choosing, the Minister's justification for pursuing these provisions in a UK Bill (to ensure the alignment of enforcement procedures across England and Wales) is lessened. If either of the UK or Welsh Governments commence the Part 1 provisions ahead of the other, one consequence is that there may not be cross-border alignment for some time. In addition, cross-border alignment may not be achieved if the regulation-making powers in Part 1 are exercised differently by the Welsh Ministers and the Secretary of State. We do not make these observations as a criticism. Such outcomes are inevitable when the governments of the UK are entitled to legislate for their respective countries.

**Conclusion 3.** The Minister's justification for pursuing these provisions regarding the keeping of primates in a UK Bill for reasons of ensuring the alignment of enforcement procedures across England and Wales is, in our view, weak. We also consider that the use of a separate Welsh Bill would not be a barrier to cross-border alignment, should that be considered appropriate. The Minister should be more mindful about using cross-border alignment as a justification for pursuing provisions in a UK Government proposed Bill when the provisions in that Bill will themselves permit divergence .

**65.** We note that the extension of the provisions in Part 1 and Schedules 1 to 4 of the Bill also provide the Welsh Ministers with new regulation-making powers, in clauses 3 and 22, and in paragraphs 1 and 3 of Schedule 1.

**66.** We acknowledge that, before making regulations under clause 3 (which set the standards for the care and management of primates to be kept under licences), the Welsh Ministers must consult such persons as the Welsh Ministers consider appropriate.

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<sup>25</sup> [Legislative Consent: Building Safety Bill](#)

**67.** As stated above in paragraph 62, the regulation-making power provided to the Welsh Ministers in clause 22 is very broad. We note that such regulations are to follow the affirmative procedure.

**Conclusion 4.** While we acknowledge that the Welsh Ministers must consult such persons as they consider appropriate before exercising the power in clause 22, this is not an adequate or appropriate substitute for the comprehensive Senedd scrutiny that would take place if such proposals were included in a Welsh Bill.

### **Specific comments regarding amendments made to Part 2 of the Bill**

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**68.** We note the amendments made to clause 38 of the Bill.

**69.** As mentioned earlier in the report in commentary relating to Part 2 of the Bill, we acknowledge that there is a difference in opinion between the Welsh and UK Government's regarding whether Part 2 of the Bill makes provision relating to a devolved matter.

**70.** As highlighted above in conclusion 1, we agree with the assessment of the Welsh Government in this regard.

**71.** The dispute between the Governments is unfortunate, to say the least. We acknowledge that the Minister awaits further information from the UK Government as to its interpretation of why the relevant provisions in Part 2 of the Bill relate to reserved matters. While we hope that positive intergovernmental discussions will now follow and that the matter is resolved soon, we are unclear whether the disagreement has been pursued through the new intergovernmental structures as per the outcome of the Intergovernmental Relations Review.

**Recommendation 2.** The Minister should, in advance of the debate on the relevant legislative consent motion, confirm whether the disagreement as regards Part 2 of the Bill has been raised and discussed within the new intergovernmental structures and, if not, the Minister should confirm:

- how she will raise the matter within the relevant new intergovernmental structures, and
- whether she will raise a dispute through the new intergovernmental dispute resolution process and, if not, why not.

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### Specific comments regarding amendments made to Part 3 of the Bill

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**72.** We note that amendments have been made to clauses 40, 42, 45, 46, and 49 of the Bill.

**73.** Recommendation 2 in our first report asked that the Minister provide us with further detail on the Welsh Government's analysis of clause 46 of the Bill given the UK Government's intention to use the powers in the clause to make regulations for the purpose of meeting WTO obligations. We also asked the Minister to confirm whether she was aware of the UK Government's proposals in this regard and whether she was supportive of this approach.

**74.** In response, the Minister told us that proposals to introduce future measures in regulations will be considered in more detail at that stage. We acknowledge that the Minister has confirmed that an impact assessment, which would include appraisal of any WTO implications, would need to be considered in respect of the detailed proposals and this would be undertaken at a Great Britain level before introducing any restrictions via regulations. We also acknowledge that the Minister has stated that proposals in respect of secondary legislation would be subject to consultation and/or further stakeholder engagement before being introduced.<sup>26</sup>

**75.** We note that clause 48 is a new clause in the Bill which amends the *Animal Welfare Act 2006* to extend provisions about time limits and inspectors to provisions in regulations under that Act, as well as provisions under the Act itself.

**76.** In particular, we note that amendments made to clause 49 create new concurrent functions.

**77.** Our concerns with the creation of new concurrent powers, including both our principled concerns with the Secretary of State having the ability to exercise regulation-making powers in devolved areas as well as the practical impact this on the Welsh Ministers seeking to make regulations in the future, are well known to the Welsh Government. The Welsh Government is also aware that bringing forward its own primary legislation would act as a significant remedy to such issues.

**78.** We acknowledge the Minister's statement that the Welsh Government would ordinarily not wish to see the creation of new concurrent functions. We further acknowledge that, through clause 51, the Minister has secured a further amendment to the Bill so as to dis-apply certain

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<sup>26</sup> Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 24 November 2021

restrictions in Schedule 7B to the 2006 Act in relation to functions conferred by or under the Bill (see next section for more detail).

### **Specific comments regarding amendments made to Part 4 of the Bill**

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**79.** We note that amendments to Part 4 of the Bill detailed in Memorandum No. 2 provide the Welsh Ministers with new regulation-making powers in clauses 50 and 53.

**80.** In particular, we note that clause 50 contains a broad Henry VIII power that may be exercised, by virtue of the amendments, concurrently by the Welsh Ministers and the Secretary of State. Regulations made under clause 50 may amend, repeal or revoke provision made by or under primary legislation or retained direct EU legislation passed or made before the end of the session in which the Bill is passed.

**81.** As we state above in paragraph 77 the Welsh Government is well-aware of our concerns as regards concurrent powers in UK Bills.

**Conclusion 5.** We are unclear as to how the clause 50 powers may be used. This not only heightens our concerns with clause 50 itself, it also further supports the argument that the Welsh Government should have brought forward its own Bill which would have been subject to thorough, line-by-line scrutiny by the Senedd.

**Recommendation 3.** The Minister should, at the earliest opportunity and in advance of the Senedd's debate on the relevant consent motion, provide full details of how the regulation-making powers in clause 50 of the Bill may, and are likely, to be used.

**82.** As regards clause 51 of the Bill, we acknowledge that the Minister has been successful in securing a 'carve out' as regards the need for Minister of the Crown consent in the future in respect of the consenting arrangements in Schedule 7B to the 2006 Act. This is to be welcomed.

**83.** However, as referenced above in conclusion 1, we are unclear why the Minister is of the view that the Senedd's consent is not needed for clause 51 of the Bill.

**Conclusion 6.** Clause 51 amends Schedule 7B to the 2006 Act and modifies the legislative competence of the Senedd. As such we believe that, in accordance with Standing Order 29.1(ii), the Senedd's consent is required for clause 51 of the Bill.

**Recommendation 4.** The consent of the Senedd should be sought for clause 51 of the Bill.

**84.** We note that clause 52 introduces a new provision for the making of regulations under the Bill, once enacted.



**85.** As highlighted above in paragraphs 63 and 64, we acknowledge that the amendments made to clause 53 of the Bill confer on the Welsh Ministers the power to commence Part 1 of the Bill in relation to Wales.

**86.** For the reasons we outline above in paragraphs 63 and 64, we believe the Minister's intentions as to when she plans on commencing Part 1 of the Bill in Wales (should the Bill be enacted) is relevant to the Senedd's consideration as to whether or not it should grant legislative consent.

**Recommendation 5.** The Minister should, at the earliest opportunity and in advance of the Senedd's debate on the relevant consent motion, confirm her intention as regards when Part 1 of the Bill (if it is enacted) will be commenced for Wales, and whether the proposed date is the same date that will be used by the Secretary of State in England.