

Report on the Legislative Consent Memorandum for the Animal Welfare (Kept Animals) Bill

October 2021

Introduction

1. The Welsh Government laid a Legislative Consent Memorandum (LCM) (PDF 153KB) on the Bill before the Senedd on 22 June 2021. The Business Committee referred the LCM to the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee, with a reporting deadline of 14 October 2021. (PDF 41.6KB)

Background

2. The Animal Welfare (Kept Animals) Bill was introduced in the House of Commons on 8 June 2021. The long title to the Bill notes that it is a Bill “to make provision about the welfare of certain kept animals that are in, imported into, or exported from Great Britain”.

Overview of the Bill

3. The LCM says that the stated policy objective for the Bill is to make provisions to deliver a number of reforms relating to the welfare of kept animals including farm animals, companion animals and kept wild animals. The Bill is in four parts: Part 1 relates to primates; Part 2 relates to dogs attacking or worrying livestock; Part 3 contains other provisions about kept animals. This includes provisions relating: to export of live animals, including for slaughter; powers to amend, or revoking of retained EU legislation on animal welfare; limits on non-commercial movement of pets; powers relating to importation of certain dogs, cats and ferrets; and zoos. Part 4 is a General part.

4. Part 1 of the Bill - Clauses 1-25 - relates to matters including the keeping, selling and breeding of primates, and applies to England only, therefore no clauses in Part 1 require the Senedd’s consent. The Welsh Government and UK Government agree that is the case.



5. The LCM states that consent is sought for a number of Clauses in Parts 2, 3 and 4 of the Bill. Greater detail of the provisions are set out in the LCM - below is a summary of those for which consent is sought.

Provisions for which consent is sought

Part 2 - Dogs attacking or worrying livestock

6. Consent is sought for **Clauses 26 - 41** of Part 2. These Clauses include provisions for a person to be guilty of an offence if a dog they own *"attacks or worries livestock on any agricultural land or a road, path or verge thereof,"* except in certain cases set out in sub-sections of Clause 26, such as where livestock are trespassing on a dog owner's land, or stray onto a road or path. Clause 27 relates to seizure and detention of dogs in relation to the offence, Clause 28 relates to the collection of samples and impressions (evidence of an offence), Clause 29 contains provisions for warrants authorising entry and search.

7. Clause 30 provides for the making of control orders on conviction under Clause 26, and Clause 31 for a destruction order where the court is satisfied there is a risk of a further offence in future. Clause 32 provides for disqualification upon conviction under section 26 or breach of control order, preventing those offenders from owning and/or keeping dogs, and Clause 33 provides for seizure and disposal of dogs in relation to disqualification orders. Clause 34 relates to the rights of a person to apply for termination of a disqualification order. Clauses 35 and 36 make further provision on conditions surrounding destruction orders, appeal of such orders and offences for non-compliance,

8. Clause 37 relates to Crown Application - how Part 2 binds the Crown, and Clause 38 relates to regulations made under the Bill. Clause 39 relates to definitions of "worrying livestock", dogs being "at large", "relevant livestock" and the Secretary of State being able to amend that definition. Clause 40 also relates to interpretation of terms used in the Bill. Clause 41 would repeal the Dogs (Protection of Livestock) Act 1953 in England and Wales.

9. Welsh Government states that **consent is required for Clauses 26-36, and Clause 41**, because these Clauses all make provision with regard to devolved matters *"insofar as it applies to Wales, notably animal welfare and agriculture."* This is because the Welsh Government have applied the "purpose test" as required by Standing Order 29.1(i), i.e. does the provision have a devolved purpose (in this case the protection of livestock).

10. The UK Government's view is that these Clauses relate to dangerous dogs (under the antisocial behaviour heading in Schedule 7A of GoWA), which are reserved matters. On Page 24 of the Explanatory Notes to the Bill it states:

"...the subject matter of the Bill is also devolved to Senedd Cymru except in relation to the provisions dealing with dogs acting dangerously which are reserved in accordance with Schedule 7A to the Government of Wales Act 2006".

11. Welsh Government also states that **Clauses 37-40 require consent** as they make provision *"with regard to provisions in the Bill that are considered to be devolved."*

Part 3 - Other provisions about kept animals

Export of livestock

12. Clause 42 provides for the prohibition of export of "relevant livestock" for slaughter and offences related to that. Clause 43 relates to the making of regulations for enforcement and what those regulations may cover.

Animal welfare and retained direct EU legislation

13. Clause 44 amends section 12 of the 2006 Act (regulations to promote welfare) to enable the Secretary of State and the Welsh Ministers to amend or revoke retained direct EU legislation in regulations made under that section.

Importation of dogs, cats and ferrets

14. Clause 45 amends Regulation (EU) No 576/2013 in retained direct EU law and associated UK regulations to limit the number of dogs, cats and ferrets that may be moved into Great Britain on a non-commercial basis. It reduces the number that can be transported in a motor vehicle to 5, and the number of pets accompanying a person travelling by other means from 5 to 3. Clause 46 provides powers to make regulations relating to prohibition or restriction of import of *"relevant animals that are below a prescribed age, have been mutilated (e.g. a dog with a docked tail or cropped ears) or is heavily pregnant."* Further subsections provide for what may be included in the regulations, such as offences, penalties, powers of entry and record-keeping.

15. With regard to Clause 46, the UK Government's Delegated Powers Memorandum states as follows (see paragraph 47, at page 11):

"Using a power, rather than including provisions on the face of the Bill, will also enable the UK to meet its WTO obligations. The Department anticipates that some or all of the measures that are likely to be introduced under this power to address the kind of low-welfare imports currently entering Great Britain will amount to technical regulations for the purposes of the WTO Agreement on Technical Barriers to Trade. Where a WTO member is

proposing to adopt technical regulations, which may have a significant effect on trade, it is obliged to consult other WTO members on the proposed technical regulations. The power will allow for appropriate consultation with other WTO members to take place before any such technical regulations are adopted. The power will also allow for the introduction of similar measures for cats and ferrets in the future if low-welfare trade in these species escalates or evidence of welfare concerns is produced by stakeholders and regulators."

16. The LCM does not address this matter, to explain whether or not the Welsh Government is supportive of this approach, or to explain if it is seeking any amendments to the Clause.

Zoos

17. Clause 47 and Schedule 5 set out amendments to the Zoo Licensing Act 1981, including relating to standards applying in different kinds of zoos, who can carry out inspections and penalties under the Act.

General

18. Clause 48 defines "appropriate national authority" and "enactment" for the purposes of that Part. Clause 49 sets out how the power to make regulations must be exercised, i.e. under subsection (2) it must be by statutory instrument (SI), and subsection (6) states that the SI cannot be made without laying a draft before the Senedd.

19. Welsh Government states that consent is required for clauses 42-49 and Schedule 5, which make provision for devolved matters, namely animal welfare, and additionally for some of the clauses (e.g. clauses 42 and 43), agriculture. The Committee notes that UK Government has not included clause 46 in the table annexed to the Explanatory Notes for the Bill, so it is unclear whether it considers that Senedd consent is required for this clause.

20. However, The UK Government does state that the Senedd's consent is required for clauses 42-45, clauses 47-49, and Schedule 5. The omission of clause 46 appears to be a typographical error: Clause 44 is mentioned twice in the table.

Concurrent plus powers

21. . The LCM notes that Clause 48 specifies that the "appropriate national authority" for Wales for the purpose of part 3 regulations is (1) Welsh Ministers or (2) Secretary of State acting with Welsh Ministers' consent. It states: *"This creates concurrent functions and will, as drafted, impact upon the Senedd's powers to make legislation in this area in the future due to the fact that Minister of the Crown consent will be required to remove the Secretary of State's concurrent*

function. This situation has arisen in relation to other UK legislation. A carve out will be needed from the relevant restrictions in Schedule 7B of GoWA."

Part 4 - General

22. Clause 50 provides for the Secretary of State to make regulations that are consequential on provisions within the Bill - requiring those making changes to primary legislation or retained direct principal EU legislation to be made under the affirmative procedure, and under negative procedure in other cases. Clause 51 deals with commencement, Clause 52 with extent and Clause 53 with the short title. Welsh Government and UK Government agree that Senedd consent is required for Clauses 50-53 of the Bill.

Reasons for making these provisions for Wales in a UK Bill

23. The LCM states that animal welfare is a priority for Welsh Government, and that "it is considered appropriate to deal with these provisions in this UK Bill for reasons of timing and coherence, essential in relation to enforcement on cross borders and border controls."

24. Welsh Government is "*generally supportive of the Bill as drafted*" while noting outstanding issues still to be discussed. It says the provisions align with its policy objectives on animal welfare and will "*ensure closer alignment of policy and implementation, especially in relation to cross border issues relating to enforcement*", as the Bill provides Wales with the same animal welfare provisions as England and Scotland, at the same time. It points to the benefit of a 'joined up approach with other administrations.'

25. The LCM does note that Part 1 relating to primates does not apply to Wales but that it is content for the provisions to be extended "*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.*"

26. The Committee notes that Welsh Government has said it requires amendments to Part 2 and Part 4 of the Bill to reflect devolved powers.

Committee view

27. There has been limited time available for the Committee to consider and report on the LCM - the Senedd was in recess 19 July - 12 September and the Committee has only had two scheduled meetings since the LCM was published. It has therefore not been possible to look in great detail at the proposals or schedule oral evidence from stakeholders.

28. However the Committee notes opposing views expressed by Welsh stakeholders about certain aspects of the Bill. With regard to Part 2 of the Bill - worrying of livestock - it is aware of concerns raised by the farming community about an increase in dog attacks on farm animals and the financial and emotional impact on farmers. It notes support for measures to strengthen police powers in the Bill, put forward in a Ten Minute Rule Motion from Ynys Môn MP Virginia Crosbie on 20 July 2021.

29. With regard to Part 3 - export of live animals - diverse views from farming unions, breeders and animal welfare groups were received in response to the UK Parliament Environment, Food and Rural Affairs Committee inquiry into 'moving animals across borders' in May/June. This inquiry followed the joint consultation by the Department for Environment, Food and Rural Affairs and Welsh Government on improvement to animal welfare in transport, which closed in February 2021.

30. The Committee has noted the reasons given by Welsh Government for making these provisions for Wales in a UK Bill, including the benefits of a consistent approach to animal welfare measures across the administrations. It has found no reason to object to the Senedd agreeing the Legislative Consent Motion associated with the LCM.