

The Welsh Government's Legislative Consent Memorandum on the Animal Welfare (Sentencing) Bill

March 2021

1. Background

The UK Government's Animal Welfare (Sentencing) Bill

1. The Animal Welfare (Sentencing) Bill¹ (the Bill) was introduced to the House of Commons and given its first reading on 5 February 2020. It is a UK Government-backed Private Member's Bill, sponsored by Chris Loder MP.²
2. The explanatory notes to the Bill, prepared by the Department for Environment, Food and Rural Affairs, state:

“The Bill increases the maximum penalty for specific offences related to animal welfare in England and Wales. It does so by extending the current maximum penalty, specified under the Animal Welfare Act 2006, of six months and/or an unlimited fine to a penalty of five years and/or an unlimited fine. These offences therefore become triable either way, and may be heard in a magistrates' court or the Crown Court.”³

¹ [Animal Welfare \(Sentencing\) Bill](#) (Bill 14 2019-21), February 2020

² A similar bill, the Animal Welfare (Sentencing and Recognition of Sentience) Bill, was introduced in the UK Parliament in June 2019 but was considered fallen following the prorogation of Parliament on 8 October 2019. That Bill was again introduced on 15 October 2019 but fell following prorogation prior to the December 2019 General Election.

³ Animal Welfare (Sentencing) Bill, [Explanatory Notes](#), February 2020



3. The Bill was considered in a Public Bill Committee of the House of Commons on 3 February 2021 and was reported unamended. The Bill completed its passage through the House of Commons on 12 March and received its first reading in the House of Lords on the same day.

The Welsh Government's Legislative Consent Memorandum

4. In accordance with Standing Orders 29.1 and 29.2, a Legislative Consent Memorandum is required because provisions within the Bill modify or fall within the Senedd's legislative competence.

5. On 17 February 2021, the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS (the Minister), laid before the Senedd a Legislative Consent Memorandum⁴ (LCM) in respect of the Bill.

6. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Rural Affairs Committee should report on the LCM by 25 March 2021.⁵

Provision for which the Senedd's consent is required

7. Paragraphs eight to 14 of the LCM set out the Welsh Government's assessment of which provisions in the Bill require consent, namely clause 1 and clause 2.

8. Annex A of the explanatory notes to the Bill states that the UK Government also considers that a legislative consent motion is required for clauses 1 and 2 of the Bill.⁶

9. Clause 1 of the Bill (Mode of trial and maximum penalty for certain animal welfare offences) amends section 32 of the *Animal Welfare Act 2006* (the 2006 Act) (Post-conviction powers: Imprisonment or fine).

10. The LCM notes that section 32(1) of the 2006 Act provides that particular offences should carry a maximum penalty of 51 weeks imprisonment and/or a level 5 fine.

⁴ Welsh Government, [Legislative Consent Memorandum, Animal Welfare \(Sentencing\) Bill](#), February 2021

⁵ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum on the Animal Welfare \(Sentencing\) Bill](#), February 2021

⁶ Animal Welfare (Sentencing) Bill, Explanatory Notes, Annex A

- 11.** In practice, this is a maximum penalty of six months and an unlimited fine. This is because section 32(5) specifies a maximum penalty of six months for offences committed before the commencement of section 281(5) of the *Criminal Justice Act 2003* (the 2003 Act). To date, section 281 of the 2003 Act has not been commenced.
- 12.** Clause 1 of the Bill changes the maximum penalty available for the following offences only:
- causing unnecessary suffering (section 4, 2006 Act);
 - carrying out a non-exempted mutilation (section 5, 2006 Act);
 - docking the tail of a dog except where permitted (section 6(1) and 6(2), 2006 Act);
 - administering a poison to an animal (section 7, 2006 Act);
 - involvement in an animal fight (section 8, 2006 Act).
- 13.** The existing maximum penalty is retained if the offender is summarily convicted. However, offenders may now receive a higher penalty of up to 5 years imprisonment and/or an unlimited fine if they are convicted on trial by indictment.
- 14.** Magistrates' courts do not have the power to impose penalties greater than six months. Section 154(1) of the 2003 Act was to increase the maximum custodial sentence imposable by a magistrate's court to 12 months. Section 154(1) will be repealed by the *Sentencing Act 2020* (the 2020 Act) but an equivalent provision is contained in paragraph 24(2) of Schedule 22 to the 2020 Act. Section 32(4A) of the 2006 Act, inserted by clause 1 of the Bill, ensures that the appropriate penalties are available to magistrate's courts until the relevant provisions are commenced.
- 15.** Clause 2 (Extent, commencement and short title) provides for the Bill to extend to England and Wales, and for the Bill to come into force two months after Royal Assent. It states that the changes made by the Bill do not apply to offences committed before the Bill comes into force. Clause 2 also specifies the short title of the Bill.
- 16.** Paragraph 15 of the LCM sets out the reasons why, in the Welsh Government's view, making provision for Wales in the Bill is appropriate:

“Animal welfare is a priority of the Welsh Government and it is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill for reasons of timing and coherence. The provisions of the Bill align with the Welsh Government policy objectives regarding the promotion of animal welfare. Taking them forward in this UK Bill will mean that the most serious animal cruelty offences in Wales are punishable at the same level as those in England.”⁷

17. The LCM concludes:

“It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it ensures a comparative sentencing regime across England and Wales, and ensures clarity for enforcement agencies, the Courts and the public.”⁸

2. Committee consideration

18. We considered the LCM at our meeting on 8 March 2021.⁹

Our view

19. We note the Welsh Government's assessment that clauses 1 and 2 of the Bill require the Senedd's consent. We also note the Welsh Government's reasons as to why, in its view, making provision for Wales in the Bill is appropriate.

20. We note that, while the Bill was introduced to the UK Parliament in February 2020, the LCM was not laid until February 2021. In noting this fact, we wish to highlight Standing Order 29.2(i), which states that a member of the Welsh Government must lay an LCM in relation to “any UK Government Bill that is a relevant Bill on its introduction to the first House, normally no later than two weeks after introduction”.¹⁰

⁷ Welsh Government, Legislative Consent Memorandum, Animal Welfare (Sentencing) Bill, paragraph 15

⁸ Welsh Government, Legislative Consent Memorandum, Animal Welfare (Sentencing) Bill, paragraph 17

⁹ Legislation, Justice and Constitution Committee, 8 March 2021

¹⁰ Standing Orders of the Welsh Parliament, November 2020

21. We also wish to highlight comments we made in our report on the Welsh Government's LCM on the Animal Welfare (Service Animals) Bill¹¹ as they are relevant to our consideration of this LCM. In that report, we expressed disappointment that the Welsh Government did not see cause and opportunity for bringing forward its own legislation, particularly as the Minister had stated that animal welfare is a priority of the Welsh Government, a point repeated in paragraph 15 of the LCM.

22. We are therefore concerned at the concluding points made at paragraph 17 of the LCM, which we highlight in paragraph 17 of this report. In our view, the arguments set out in paragraph 17 of the LCM undermine the powers held by the Senedd and the Welsh Ministers. Furthermore, it deprives elected Members of the Senedd the ability to engage with citizens about the legislation and accordingly seek to improve the legislation based on that engagement.

23. It is a matter of concern that the Welsh Government does not feel able to bring forward a short Bill in order to legislate in an area that it sees as a priority. As we said in our report on the LCM on the Animal Welfare (Service Animals) Bill, nations within the UK have already legislated at different speeds on other matters¹² and, on a number of occasions, the Senedd and the Welsh Ministers have led the way in legislating first on both primary and secondary legislation.¹³ We are not persuaded by an argument which appears to be founded on a misconception that each nation of the UK needs to legislate in the same way and at the same time.

24. In our recent report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Environment Bill¹⁴, we noted an important constitutional point, as follows.

25. A Welsh Government Bill that has not been passed at the end of a Senedd falls. However, it would appear that our Standing Orders are silent on what happens to Legislative Consent Memoranda that relate to UK Bills that have not been passed in the UK Parliament before the end of a Senedd.

¹¹ Constitutional and Legislative Affairs Committee, [The Welsh Government's Legislative Consent Memorandum on Animal Welfare \(Service Animals\) Bill](#), February 2019

¹² Constitutional and Legislative Affairs Committee, Report on The Welsh Government's Legislative Consent Memorandum on the Animal Welfare (Service Animals) Bill, February 2019

¹³ For example in relation to organ donation, electric collars and single-use carrier bags.

¹⁴ Legislation, Justice and Constitution Committee, [The Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Environment Bill](#), February 2021

26. We reiterate the view we expressed in that recent report. As a matter of principle, if a new Welsh Government chooses to continue to seek the Senedd's consent for provisions in a UK Bill that has not been passed in the UK Parliament prior to a Senedd general election, we believe the new Welsh Government should lay a new legislative consent memorandum covering all provisions for which consent is being sought. This approach would enable all Members of the Sixth Senedd and relevant committees, once established, to consider the matter of consent afresh and to reach an informed decision based on all relevant information.