

Report on the Supplementary Legislative Consent Memorandum (Memorandum No.2) for the Animal Welfare (Kept Animals) Bill

March 2022

Introduction

1. On 7 January 2022, the Welsh Government laid a [Supplementary Legislative Consent Memorandum](#) (SLCM (Memorandum No.2)) (PDF 253KB) on the Animal Welfare (Kept Animals) Bill. 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”. The Business Committee [agreed](#) (PDF 39.1KB) that the SLCM on the Bill (Memorandum No. 2) would be considered and reported on, to the Senedd, by 3 March 2022. The Committee considered that SLCM (now referred to in this report as “the previous SLCM” having been replaced with a revised version on 3 March) on 3 February 2022. As its next scheduled meeting was 3 March, Members decided to agree a report in correspondence.
2. As noted below, changes were made to Part 1 of the Bill to include the licensing of primates. The SLCM considered on 3 February did not contain adequate detail about the licensing arrangements. Welsh Government subsequently withdrew that SLCM and replaced it with a [new version](#) (referred to in this report as “the replacement SLCM”), which was laid on 3 March and which provides further detail.
3. On 8 March the Business Committee agreed to extend the reporting deadline for the SLCM to 31 March 2022. This Committee did not have time available in its work programme for further scrutiny at its next scheduled meeting before the 31 March reporting deadline (17



March), and has therefore kept to its original decision to report on the SLCM by the deadline, taking account of the additional detail contained in the replacement SLCM.

4. The Committee previously considered the original LCM for this Bill on 30 September 2021 and laid its report on the LCM 8 October 2021. That report provides an overview of the Bill's provisions on introduction. The LCM stated that consent was sought for a number of Clauses in Parts 2, 3 and 4 of the Bill. At that time Part 1 of the Bill - Clauses 1-25 - relating to matters including the keeping, selling and breeding of primates, applied to England only and did not require Senedd consent. The Committee's LCM report noted there were opposing views on certain aspects of the Bill, for example in relation to worrying of livestock and the export of live animals, but the Committee saw no reason to object to Senedd consent.

Changes to the Bill

5. The Bill has now progressed through the House of Commons and reached report stage, with a large number of amendments made at Committee Stage in the Commons. A significant policy change is that Part 1 of the Bill has been amended to extend the ban on keeping primates, except under licence, to Wales. Owners will need to meet certain conditions related to the animals' environment, diet, accommodation and behavioural needs. In Wales these conditions will be set by Welsh Ministers. In the original LCM Welsh Government had indicated it was content for the primate provisions to be extended 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."*

6. RSPCA Cymru estimates that 120 monkeys are currently kept as pets in Wales and welcomes further regulation on the keeping of primates in the Bill. However RSPCA Cymru ultimately believes the needs of primates are "essentially impossible" to fulfil in a domestic environment and has called for the complete end to this practice in Wales. It noted that the welfare conditions of the proposed licence are not contained within the Bill, so there is a lack of clarity on the real impact of this legislation. RSPCA Cymru has told the Committee it wants the Welsh Government to meaningfully consult on the licence conditions, which it says should restrict the private keeping of primates to an absolute minimum. RSPCA Cymru argues that an outright ban on the sale of primates would be preferable and more easily enforceable by local authorities, which it says are already enforcing many new or updated animal-related programmes, and are often struggling for resources.

Provisions for which consent is now sought

- 7.** The Welsh Government's previous SLCM was unclear as to the extent that Part 1 of the Bill, and Schedules 1 to 4 relating to primates, require the Senedd's consent. The previous SLCM (Memorandum No.2) noted the requirement for consent for the amendments being made to Part 1-4 of and Schedules 1-3 to, the Bill. Schedule 4 was not mentioned in the SLCM.
- 8.** The Welsh Government's previous SLCM (Memorandum No.2) stated that a number of amendments to the Bill were *"agreed on 16 and 18 November and a number of these make provision falling within the legislative competence of the Senedd. The 25 November print of the Bill includes the amendments..."*. The Welsh Government provided a link to the UK Parliament Bill page, however, the latest version of the Bill available at the time this Committee considered the previous SLCM (Memorandum No.2) was dated 18 November 2021.
- 9.** An updated set of Explanatory Notes has not yet been published by the Department for Environment, Food and Rural Affairs, therefore it was not possible for Senedd legal advisers to see which provisions in the amended Bill the UK Government now considered to be within Senedd competence.

PART 1 – PRIMATES

- 10.** Part 1 of the Bill, now clauses 1-24 (previously clauses 1-25) includes provisions relating to the keeping, selling and breeding of primates. Schedules 1 to 4 of the Bill also make provision in relation to primates. A summary of the provisions is set out below.
- 11.** **Clause 1** prohibits the keeping of primates without a licence. **Clause 2** states that a holder of a primate licence may keep primates in accordance with the provisions of a primate licence.
- 12.** **Clause 3** obliges the appropriate national authority to make regulations which specifies licensing standards a licence holder must meet for the care and management of primates.
- 13.** **Clause 4** provides that an individual may apply to the local authority for a primate licence, and makes provision about how, and by whom, a licenced may be applied for. **Clause 5** makes provision about the determination of applications for primate licences by the local authority.
- 14.** **Clause 6** provides for the conditions which are to be attached to a primate licence.
- 15.** **Clause 7** provides for the variation of a primate licence (with regard to the number, species and/or premises), and for its surrender.

16. Clause 8 enables an application to be made for the renewal of a primate licence, and the determination of such an application.

17. Clause 9 makes provision in the event that a licence-holder dies. In such circumstances, the licence is deemed to be granted to the licence-holder's personal representatives.

18. Clause 10 provides a power for local authority to inspect licensed premises.

19. Clause 11 enables a local authority to charge fees in respect of licence applications and inspections.

20. Clause 12 provides for specific offences in respect of primate licences, and introduces Schedule 2 (fixed penalty notices).

21. Clause 13 enables a local authority to serve a rectification notice on a holder of a primate licence, who the authority considers is failing to meet any of the licensing standards. Clause 13 also makes it an offence to fail to comply with a rectification notice.

22. Clause 14 provides for the circumstances where a local authority must, or may, revoke a primate licence.

23. Clause 15 enables a local authority to give a direction where a primate is being kept unlawfully, which states that the keeper of the primate is not in contravention of the prohibition of keeping a primate without a licence, during a specified "suspension period".

24. Clause 16 allows a local authority to apply to the magistrates' court for an order that a primate kept illegally by its keeper is to be removed and handed to another person, sold, otherwise disposed of, or put down.

25. Clause 17 makes it an offence to sell, give or otherwise transfer ownership of a primate to someone who isn't licensed or otherwise authorised to keep a primate under other legislation.

26. Clause 18 makes it an offence for a person to take steps to breed from a primate in their care, or keeps primates together in circumstances where they are able to breed, without a relevant licence or authorisation under other relevant legislation.

27. Clause 19 introduces Schedule 4 which confers powers of entry in relation to the offences described in clause 1, 12, 17 and 18.

28. Clause 20 enables the appropriate national authority to issue guidance to local authorities in respect of the exercise of their functions under Part 1 of the Bill.

29. Clause 21 allows the appropriate national authority to require local authorities to provide information of the primates, fees and other information relevant to the discharge of their functions under Part 1.

30. Clause 22 provides a regulation making power for the appropriate national authority to apply Part 1, and therefore the licensing regime, to other kinds of wild animal.

31. Clause 23 provides for the circumstances in which it is considered that a person "keeps" a primate.

32. Clause 24 contains definitions for various terms used in Part 1 of the Bill.

Schedule 1 - Transitional provision relating to primates

33. Schedule 1 provides for a transitional scheme for persons who keep primates as pets before the prohibition on keeping primates without a licence comes into effect.

Schedule 2 – Offences relating to primates: fixed penalty notices

34. Schedule 2 provides for the issuing of fixed penalty notices by local authorities for offences in connection with the keeping of primates under Part 1 of the Bill. In such circumstances, an offender may discharge their liability through payment of a fine.

Schedule 3 – Decisions relating to primates: representations and appeals

35. Schedule 3 sets out the rights of individuals to make representations and appeals in relation to decisions concerning the making of applications, the serving of rectification notices and the withdrawal or variation of licences for the keeping of primates.

Schedule 4 – powers of entry relating to primates

36. Schedule 4 provides powers of entry for local authorities when enforcing the licensing regime for the keeping of primates. It gives inspectors the authority to obtain a warrant permitting entry to any premises where there are reasonable grounds for suspecting an offence under clause 1, 12, 17 or 18 has been committed.

37. Now that the provisions relating to primates also apply in Wales, it is the Committee's view that the Senedd's consent is required for the whole of Part 1 of the Bill (clauses 1-24) and Schedules 1 to 4 of the Bill. These make provision about animal welfare, which is a devolved matter.

38. The Welsh Government's previous SLCM (Memorandum No.2) did not explain the provisions of Part 1 or Schedules 1-4 in any detail, so as to allow readers to understand what the

provisions meant, and what the implications are for Wales. It was also unclear from the SLCM which provisions of Part 1, and Schedules 1-4, the Welsh Government considered required the Senedd's consent pursuant to Standing Order 29. The replacement SLCM (Memorandum No.2) rectifies this by providing more detail.

PART 2 – DOGS ATTACKING OR WORRYING LIVESTOCK

39. Amendments have also been made to Part 2 of the Bill at Committee Stage, as noted in the SLCM. Part 2 of the Bill now contains clauses 25-39 (previously it contained clauses 26-41).

40. The previous clause 38 (regulations under Part 2) has been removed. The current clause 38 (general interpretation), previously clause 40, defines the terms used in Part 2. The amendments add a definition of "enclosed deer", "enclosed wild boar", and make changes to the definition of "livestock".

41. The view of Welsh Government is that these amendments to Part 2 of the Bill require Senedd consent as they make provision with regard to animal welfare and agriculture, as they relate to Wales, both of which are devolved matters.

PART 3: OTHER PROVISIONS ABOUT KEPT ANIMALS

42. Amendments to Part 3 of the Bill also require Senedd consent (this was then clauses 42-29). Part 3 of the Bill as amended, comprises clauses 40-49. The Committee considers that consent is required for clauses 40-42 and 45-49. Consent is not required for clauses 43 and 44 as these relate to England only - the taking of pets in England (clause 43) and Secretary of State powers (clause 44) to amend clause 43 to extend it to other animal species in addition to dogs.

43. **Clause 40** (prohibition of export of livestock for slaughter etc) was previously clause 42, and has been amended to make changes to the definition of "relevant livestock". **Clause 41** (power to make provision in connection with the enforcement of clause 40) was previously clause 43.

44. **Clause 42** (powers to amend or revoke retained EU law) was previously clause 44 and has been amended.

45. **Clause 45** (reduction in limit on non-commercial movement of dogs, cats and ferrets) has been amended and these consequential amendments require the Senedd's consent.

46. **Clause 46** (powers relating to importation of certain dogs, cats and ferrets) has been amended to enable provision for exemptions and permits to be included in regulations made under clause 46(1).

47. Clause 47 (zoos) has not been amended.

48. Clause 48 amends the Animal Welfare Act 2006 so that section 31 of that Act (time limits for prosecutions) applies to offences under regulations made under the Act, as well as to offences under the Act itself. Likewise, the amendments provide that section 51 (inspectors) applies in relation to provisions of regulations made under the Act, as well as in relation to provisions of the Act. Clause 48 requires the Senedd's consent.

49. Clause 49 has been amended so as to create concurrent functions. This clause defines the "appropriate national authority" in relation to Wales as the Welsh Ministers or the Secretary of State acting with the consent of the Welsh Ministers. These amendments require the Senedd's consent.

PART 4 - GENERAL

50. Part 4 now comprises clauses 50-55. Clause 50 (power to make consequential provision) retains its numbering, but clause 51 is now clause 53 (commencement), clause 52 is now clause 54 (extent), and clause 53 is now clause 55 (short title).

51. Two clauses have been added to Part 4, clauses 51 and 52. Clause 51 makes provision in respect of concurrent functions in Wales. This amends Schedule 7B to the Government of Wales Act 2006 and requires the consent of the Senedd pursuant to Standing Order 29.1(ii) because it changes the legislative competence of the Senedd. Clause 52 makes provision in respect of regulations. The Senedd's consent is required for this clause.

52. The Committee considers that clauses 50 and 52-55 of the Bill require Senedd consent as they relate to devolved matters, and Clause 51 requires Senedd consent as it changes the legislative competence of the Senedd.

53. The Welsh Government agrees that consent is needed for the amendments to clauses 50, 52 and 53. However, the replacement SLCM states at paragraph 21 that consent is not needed for clause 51.

Schedule 5 – Zoos

54. Senedd consent is still required for Schedule 5 to the Bill, which relates to zoos.

Delegated powers

55. The following regulation-making powers have been provided to the Welsh Ministers by the amendments at Committee Stage in the House of Commons.

56. **Clause 3** requires the appropriate national authority to make regulations establishing the licensing standards relating to the care and management of primates. It sets out a non-exhaustive list of what the licensing standards may include, such as the types of environment or accommodation for keeping primates and their diet. In addition, the appropriate national authority may make regulations setting out the requirements on licence holders in relation to the microchipping of primates kept under primate licences. The regulations must be made under the affirmative procedure. This clause also provides the appropriate national authority with powers to make regulations setting out the information that must be provided by the holder of a primate licence to the relevant local authority. Regulations that provide for information requirements may be made under the negative procedure. Before making any regulations under this clause, the appropriate national authority must consult such persons as they consider appropriate.

57. **Clause 22** provides a power for the appropriate national authority to amend Part 1 of the Bill to extend, through regulations, the licensing regime to other kept wild animals, with modifications if necessary. Before exercising this power, the appropriate national authority must consult such persons as they consider appropriate.

58. The regulation-making power included in **clause 42** (previously clause 44) has been extended to 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.

59. **Clause 50** of the Bill has been amended to provide the Welsh Ministers with a regulation making power to make provision that is "consequential on any provision of Part 1 or 3 as it applies in relation to Wales" where such provision is within the legislative competence of the Senedd.

60. **Clause 53** enables the Welsh Ministers to commence certain provisions of the Bill by regulations.

61. **Paragraph 1 of Schedule 1** enables regulations to be made by the appropriate national authority to name a date before which a primate must have been kept by a person in order for that person to be eligible to register the primate. The date set out in the regulations will be a date before the prohibition on keeping primates commences into force so that owners of primates can prepare for the introduction of the licensing regime.

62. Regulations made under **paragraph 3 of Schedule 1** may also set the period during which the above owners may make an application to register their primates.

63. Clause 52(9) provides that the Welsh Ministers must follow the affirmative procedure when making a statutory instrument containing:

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

64. Clause 59(10) confirms that any other statutory instrument made by the Welsh Ministers may follow the negative procedure.

Concurrent functions

65. Clause 49 defines "appropriate national authority", in relation to Wales, as the Welsh Ministers or the Secretary of State acting with the consent of the Welsh Ministers. This creates concurrent functions.

66. Clause 51 of the Bill amends Schedule 7B to the Government of Wales Act 2006, to include an exception to the restrictions relating to reserved authorities in respect of the Bill, and an exception to the restrictions relating to Ministers of the Crown. The effect of these changes is that certain restrictions on the Senedd's legislative competence, contained in Schedule 7B, are disapplied in relation to functions conferred by, or under, the Bill. The Welsh Government's previous SLCM (Memorandum No.2) stated that:

"...This provision sets out the 'carve out' which removes the requirement for Minister of the Crown consent for a Senedd Act provision which modifies or removes the Welsh Ministers' function of providing consent to the Secretary of State exercising powers under clause 48 (Clause 51 makes provision in relation to matters which are reserved by virtue of (Paragraph 7 of Schedule 7B to GOWA).

"Welsh Government would ordinarily not wish to see the creation of new concurrent functions. The nature of Clause 43 (Export of livestock) and Clause 46 (Importation of dogs, cats and ferrets) is such that a Great Britain-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."

The Welsh Government's view of the Bill

67. The Welsh Government's previous SLCM (Memorandum No.2) stated its position on the Bill as amended:

"The Welsh Government supports the amendments covered by this LCM, because they extend provisions to Wales, including powers for the Welsh Ministers, which will support the Programme for Government commitments embedded in our five year Animal Welfare Plan for Wales, offering the coherence in terms of enforcement and other matters across England and Wales which is essential given the cross-border nature of this policy area."

68. However Welsh Government went on to state that *"At this stage, however, we are reserving our position on whether the Senedd should ultimately consent to the Bill as a whole"*. This is because it was still pursuing powers for Welsh Ministers in relation to Part 2 (Dogs Attacking or Worrying Livestock) - though noting that the UK Government maintained this part of the Bill is entirely reserved - and for the inclusion of Wales in the new clause on pet thefts.

69. In the replacement SLCM laid on 3 March, Welsh Government concludes the SLCM (paragraphs 36 and 37) by stating that:

"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."

70. The replacement SLCM (Memorandum No.2) also re-asserts the view in paragraph 62 above. However, it goes on to say that:

"At this stage, however, Welsh Government reserves its position on whether the Senedd should deny consent in part as a formal response to inter-Ministerial correspondence is awaited in relation to powers for the Welsh"

Ministers in Part 2 of the Bill (Dogs Attacking or Worrying Livestock), though the UK Government at present maintains this part of the Bill is entirely reserved."

Dogs Attacking or Worrying Livestock

71. The Committee's report on the LCM noted the difference of opinion between Welsh Government and UK Government on powers under Part 2. Welsh Government argued that these clauses make provision with regard to devolved matters "*insofar as it applies to Wales, notably animal welfare and agriculture.*" This is because it has 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). The UK Government's view is that these clauses relate to dangerous dogs (under the antisocial behaviour heading in Schedule 7A of the Government of Wales Act (GoWA), which are reserved matters. Page 24 of the Explanatory Notes to the Bill stated:

"...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".

72. The replacement SLCM (Memorandum No.2) notes that correspondence with the Secretary of State for Environment, Food and Rural Affairs (EFRA) has resulted in the Secretary of State confirming his view that this is a reserved matter (paragraphs 16-20), and that therefore, Welsh Government is minded to recommend to the Senedd that the Legislative Consent Motion is denied in part, in relation to Part 2 of the Bill.

Pet Theft

73. At the time the Committee considered the original SLCM (Memorandum No.2) there was no further information as to when, or if, the pet theft provisions (currently clauses 43 and 44) might be extended to Wales, which would require the Senedd's consent. The replacement SLCM (Memorandum No.2) laid on 3 March does not refer to pet theft provisions.

Timing of the SLCM

74. At paragraph 7 of the previous SLCM (Memorandum No.2), the Welsh Government noted that "it was not possible to lay this LCM within the normal two weeks prescribed in SO29, owing to the volume and complexity of the amendments tabled". The same wording is contained in the newest replacement version of this SLCM that was laid on 3 March.

75. The previous SLCM considered by this Committee on 3 February was dated "10 December 2021" at page 10, but had been laid on 6 January 2022. A previous version, laid on 10 December 2021, had already been withdrawn and replaced as it contained erroneous references to amendments. This report has been updated to take account of the third replacement version of this SLCM (Memorandum No.2), which was laid on 3 March.

Committee view

76. The timing of the laying of the previous SLCM (Memorandum No.2), and errors with the first version, were less than ideal for Committee scrutiny. A lack of clarity over the numbering of clauses in the previous SLCM, relating to different amended versions of the Bill, also hampered the scrutiny process. The fact that the latest version of the Bill published on the Parliament website dated back to 18 November, and that no updated Explanatory Notes had been published, also did not help. We noted that these matters had already been raised with the Minister for Rural Affairs and North Wales, and Trefnydd, in a letter from the Legislation, Justice and Constitution Committee (LJC Committee), with a response requested by 17 February. LJC Committee received a reply from the Minister on 3 March, which noted that a replacement SLCM (Memorandum No.2) had been laid, and enclosed a table setting out the clauses of the Bill as introduced and as amended.

77. The Committee has noted the views of RSPCA Cymru that a complete ban on the keeping of primates in Wales would be preferable, but that it welcomes further regulation for around 120 monkeys it estimates are currently kept as pets here in Wales.

78. The Committee shares RSPCA Cymru's concerns about the current lack of clarity concerning the welfare conditions of the proposed licence, and the real impact of this legislation, and supports the call for Welsh Government to meaningfully consult on licence conditions which will restrict the private keeping of primates to an absolute minimum. It notes RSPCA Cymru's argument (see paragraph 6 above) that an outright ban on the sale of primates would be preferable and more easily enforceable by local authorities, as well as arguments about the burden and resource implications of enforcing new animal welfare licences. The Committee would welcome receiving further information from the Minister on Welsh Government's approach to consulting on licence conditions, and supporting local authorities with implementing the new licensing regime. The Committee would also welcome Welsh Government confirming whether or not it has plans to apply Part 1 of the Act to other wild animals, in accordance with the powers in clause 22.

79. The Committee also notes that the letter sent to LJC Committee on 3 March stated, in relation to Part 2 of the Bill - dogs attacking or worrying livestock - that:

"Defra Ministers have declined my request to amend Part 2 of the Bill to include the Welsh Ministers on the basis that they view the matter as reserved to the UK Parliament. Defra consider that the provisions in Part 2 of the Bill relates to dangerous, or dangerously out of control dogs. The Welsh Government does not support this view.

"Whilst acknowledging "dangerous dogs" is a reserved matter I am still awaiting a response from Defra Minister as to why they consider they cannot confer powers in the Bill in relation to the definition of livestock which is devolved to Wales."

80. The Committee has previously noted the benefits of legislating on a UK-wide basis for a consistent approach to animal welfare, and saw no reason to object to Senedd consent to the LCM for this Bill that was considered on 30 September 2021. It would welcome Members receiving further updates from Welsh Government on the situation regarding Part 2 of the Bill - dogs worrying livestock - and whether or not the pet theft provisions are expected to be extended to Wales.