

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

October 2021



1. Background

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

1. The Animal Welfare (Kept Animals) Bill¹ (the Bill) was introduced in the House of Commons and had its first reading on 8 June 2021. It is a UK Government Bill, sponsored by the Department for Environment, Food and Rural Affairs.
2. The Bill includes provisions to deliver a number of reforms relating to kept animals, including farm animals, companion animals, and kept wild animals.
3. Second reading for the Bill is scheduled to take place on 25 October.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a Legislative Consent Memorandum is required when a relevant UK Bill modifies or falls within the Senedd's legislative competence.
5. On 22 June 2021, the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS (the Minister), laid before the Senedd a Legislative Consent Memorandum² (the Memorandum) in respect of the Bill.
6. The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Economy, Trade and Rural Affairs Committee, should report on the Memorandum by 11 November 2021.³

Provision for which the Senedd's consent is required

7. Paragraphs 13 to 130 of the Memorandum set out the Welsh Government's assessment of the provisions in the Bill which require Senedd consent.
8. In summary, the Welsh Government considers that the Senedd's consent should be sought for clauses 26 to 41, 42 to 49, 50 to 53 of the Bill and to Schedule 5 to the Bill.

¹ [Animal Welfare \(Kept Animals\) Bill, as introduced](#) (Bill 013 2021-22)

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

³ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum for the Animal Welfare \(Kept Animals\) Bill](#), July 2021; Business Committee, [Timetable for consideration of the Legislative Consent Memorandum for the Animal Welfare \(Kept Animals\) Bill](#), October 2021

9. The explanatory notes to the Bill indicate that the UK Government is seeking the Senedd's consent for clauses 42 to 45 and 47 to 53 of the Bill and Schedule 5 to the Bill.⁴ The UK Government is not, however, seeking the Senedd's consent for Part 2 of the Bill which contains clauses 26 to 41.

10. Clauses 43, 44 and 46 of the Bill contain concurrent plus regulation-making powers meaning they may be exercised by the Welsh or UK Ministers in relation to Wales. When exercised by UK Ministers, the consent of the Welsh Ministers must be sought in advance. The powers in clauses 43, 44 and 46 are also Henry VIII powers, as are the powers in clauses 39 and 40 of the Bill. Provision in the Bill requires the affirmative procedure to apply to each of these Henry VIII powers meaning that, should these relevant regulations be made by the Welsh Ministers, the Senedd's approval will be sought before the regulations can be made.

Reasons for making provision for Wales in the Bill

11. Paragraphs 132 to 134 of the Memorandum set out the reasons for making provisions for Wales in the Bill.

12. The Memorandum notes:

"Animal welfare is a priority of the Welsh Government and it is the view of the Welsh Government 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."⁵

13. While being generally supportive of the Bill as drafted, the Memorandum notes that "there remain outstanding issues" which the Welsh Government continues to discuss with the UK Government. These matters include the Welsh Government's:

- wish that Part 1 of the Bill be extended to apply in relation to Wales;
- view that Part 2 of the Bill makes provision with regard to a devolved matter and, accordingly, that Part 2 of the Bill requires consequential amendment;

⁴ The UK Government has not included clause 46 in the table of the Annex to the explanatory notes. However, clause 44 is mentioned twice in the table. As such, it is unclear whether the omission of clause 46 is deliberate or a typographical error.

⁵ Welsh Government, Memorandum, paragraph 132

- view that Part 4 of the Bill requires amendment to provide the Welsh Ministers with powers in relation to Wales that are equivalent to those already given to the Secretary of State.

14. The Memorandum concludes:

*"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. The Bill ensures a comparative working regime across England and Wales, and ensures absolute clarity for enforcement agencies, the Courts and the public, which avoids any misunderstanding in the application of the proposed legislative changes and also provides a timely opportunity to take this forward."*⁶

⁶ Welsh Government, Memorandum, paragraph 137

2. Committee consideration

15. We considered the Memorandum at our meeting on 27 September.⁷

Our view

16. In our consideration of the Memorandum we were mindful, not only of the memoranda for other UK Bills which we have considered to date, but also of our predecessor Committee's examination of legislative consent memoranda for other animal welfare related UK Bills in the Fifth Senedd.

17. This Memorandum is the fifth legislative consent memorandum that we have reported on in a little over a month. While each individual report draws attention to specific issues with each Memorandum and its relevant UK Bill, the volume of Welsh Government legislative consent memoranda and pace at which they are coming forward is unusual to say the least and we are concerned about their significant cumulative effect.⁸

18. At the end of the Fifth Senedd, our predecessor Committee saw a need to raise concerns⁹ with the then Minister for Environment, Energy and Rural Affairs about "the substantial and damaging cumulative impact of a succession of decisions that have been made which have resulted in the UK Parliament and UK Government legislating heavily on devolved matters within [her] portfolio".

19. This letter followed our predecessor Committee's consideration of legislative consent memoranda on the Animal Welfare (Service Animals) Bill¹⁰ and the Animal Welfare (Sentencing) Bill¹¹, during which it expressed disappointment that the previous Welsh Government did not see cause and opportunity for bringing forward its own legislation in a self-stated priority area.

⁷ [Legislation, Justice and Constitution Committee, 27 September 2021](#)

⁸ See Plenary, [Record of Proceedings](#), 5 October 2021, paragraphs 258 and 275

⁹ Fifth Senedd Legislation, Justice and Constitution Committee [Letter to the Minister for Environment, Energy and Rural Affairs](#), 23 March 2021

¹⁰ Fifth Senedd Legislation, Justice and Constitution Committee, [Report on the Welsh Government Legislative Consent Memorandum on the Animal Welfare \(Service Animals\) Bill](#), February 2019

¹¹ Fifth Senedd Legislation, Justice and Constitution Committee, [Report on the Welsh Government Legislative Consent Memorandum on the Animal Welfare \(Sentencing\) Bill](#), March 2021

Conclusion 1. We share the concerns raised by our predecessor Committee, and 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.

20. As currently drafted, the Welsh Government considers that three of the four parts to the Bill make provision in a devolved area. We note that the Welsh Government is seeking amendments to the Bill such that Part 1 of the Bill also be extended to apply in Wales, meaning the Welsh Government is advocating for the entire Bill to make provision in devolved areas.

21. We are concerned with this approach on grounds that, yet again, the Welsh Government is choosing to bypass the Senedd's scrutiny procedures for primary legislation that will become law in Wales. However, we are also concerned with, and disappointed by, the Minister's reasoning for this approach as set out in paragraph 137 of the Memorandum (see paragraph 14). Our predecessor Committee also expressed concerns when similar reasoning was used and it is clear that lessons have not been learned.

Conclusion 2. The Minister's reasoning for her approach as set out in the Memorandum, and in paragraph 137 in particular, could suggest that the Senedd and Welsh Ministers should not hold powers in this area at all. The Minister's reasoning is therefore regrettable.

22. As mentioned above in paragraph 20, we note the Welsh Government's assessment regarding the provisions in the Bill that it considers require the consent of the Senedd. We also acknowledge that there is a difference in opinion between the Welsh and UK Government's on this matter, particularly as regards Part 2 of the Bill.

23. The relevant clauses in the Bill for the purpose of the Memorandum contain concurrent plus powers. As stated in the Memorandum, the concurrent functions 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". The inclusion of concurrent functions in UK Bills and the issues it presents is becoming more frequent. The Memorandum states that a "carve out will be needed from the relevant restrictions in Schedule 7B [to the *Government of Wales Act 2006 (the 2006 Act)*]."

24. The Memorandum contains no further detail about whether the Minister has had discussions with the UK Government about the necessary carve out from the 2006 Act and the status and progress of those discussions. This is disappointing.

25. We are aware that Welsh Government guidance¹² says that new concurrent functions should only be created in very exceptional circumstances and should be removed at the first opportunity.

Recommendation 1. The Minister should, at the earliest opportunity and in advance of the Senedd's debate on the relevant consent motion, provide the Committee with an update on the discussions had with the UK Government about the necessary carve out from the relevant restrictions in Schedule 7B to the *Government of Wales Act 2006*.

26. It has also come to our attention that the powers in clause 46 of the Bill are intended to be used by the UK Government to meet its World Trade Organization (WTO) obligations.¹³ Given that clause 46 is a relevant provision for the purpose of the Memorandum, and as the UK Government's intention to use the clause 46 powers to make regulations for the purposes of the WTO Agreement on Technical Barriers to Trade is significant, we are unclear why this is not mentioned in the Memorandum. Furthermore, it is then unclear to us how much the Minister was aware of the UK Government's proposals, and whether the Minister is supportive of this approach.

Recommendation 2. The Minister should, at the earliest opportunity and in advance of the Senedd's debate on the relevant consent motion,-

- provide the Committee with further detail on the Welsh Government's analysis of clause 46 given the UK Government's intention to use the powers in the clause to make regulations for the purpose of meeting WTO obligations;
- confirm whether the Minister was aware of the UK Government's proposals in this regard and whether the Minister is supportive of this approach.

Conclusion 3. Given that the Welsh Government is seeking substantial amendments to the Bill, we expect the Minister to clarify the position of the ongoing discussions – and lay any required supplementary consent memoranda - in good time ahead of seeking a formal consent decision from the Senedd.

¹² [Letter from the Minister for Climate Change in relation to the Welsh Government Legislative Consent Memorandum on the Environment Bill](#), 6 August 2021

¹³ [Animal Welfare \(Kept Animals\) Bill - Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee](#)
