LEGISLATIVE CONSENT MEMORANDUM

FARRIERS (REGISTRATION) BILL

Background

1. This memorandum has been lodged by Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change and Land Reform, under Rule 9B.3.1(b) of the Parliament’s Standing Orders. The Farriers (Registration) Bill was introduced as a Private Member’s Bill in the House of Commons on 29 June 2016. The Bill can be found at:

http://services.parliament.uk/bills/2016-17/farriersregistration.html

Policy background

2. The purpose of this Bill is to modernise the governance, structure and operation of the Farriers Registration Council (FRC) and its statutory committees, and thereby protect and maintain the public interest.

3. The Bill amends the Farriers (Registration) Act 1975 (FRA), which sets out the statutory responsibilities of the FRC, the regulatory body for the farriery profession in Great Britain. The FRC has responsibilities as set out in the FRA to maintain a register of farriers, to determine who is eligible for registration and to make rules about the form and keeping of the register. The FRC also regulates farriery training. It also undertakes the preliminary investigation of disciplinary cases through its Investigating Committee and determines cases through its Disciplinary Committee.

4. The arrangements for the regulation of farriers, as set out in the FRA, are now out of date and no longer in line with the regulation of other professions. The amendments proposed in the Farriers (Registration) Bill are intended to update the constitution of the FRC and its Investigating and Disciplinary Committees, and to make it easier to make such changes in future.

Reasons for requiring legislative consent

5. The whole Bill makes provision for matters which are within the legislative competence of the Scottish Parliament. It also makes provision to alter the executive competence of the Scottish Ministers. As such, it is a “relevant Bill” under Chapter 9B of the Standing Orders of the Scottish Parliament and consequently one requiring the consent of the Scottish Parliament.

6. The following paragraphs provide the policy intent and background to the changes made in the Bill, and explain why legislative consent is being sought.
Clause 1 – Constitution of Farriers Registration Council and its committees

Policy intent

7. The purpose of this clause and the schedule to the Bill which it introduces is to update the constitution of the FRC and its Investigating and Disciplinary Committees, to make them fit for purpose, bringing them into line with regulation of other professions and alleviating practical difficulties.

Background

8. The arrangements for the regulation of the farriery profession, as set out in the FRA, are now out of date. This clause therefore introduces the schedule which amends the existing schedules 1 (The Farriers Registration Council) and 3 (Constitution of the Disciplinary Committee) and replaces the existing schedule 2 (Constitution of the Investigation Committee) of the FRA to make changes to the constitution of the FRC and its Committees.

9. The main changes are:

   • replacing the current legal prescription requiring both self-employed and employed working-farrier members of Council. This distinction is no longer necessary, representative or valid as 96% of registered farriers are self-employed;
   • altering the membership of the statutory Investigating Committee and Disciplinary Committee. Instead of the committees constituted from members of Council the reverse will apply; membership must not be members of Council. This is to achieve “separation of powers” ensuring that those who set standards for the profession are not the same as those who investigate and adjudicate upon potential breaches of those standards;
   • introducing “fitness to serve” requirements for all members of Council and the statutory committees, as is the practice in other regulatory bodies, as well as defined terms of office; and
   • altering the requirement for appointment of the Chair of the Council to election of the Chair by members of the Council.

Reason for requiring legislative consent

10. The FRA applies across Great Britain. However responsibility for the FRA as it applies to Scotland is within the legislative competence of the Scottish Parliament as its subject matter is the devolved area of animal welfare and regulation of farriers. Making amendments to the FRA as regards the FRC and its Committees is therefore within the legislative competence of the Scottish Parliament.

11. However, the FRC is a GB body, with a constitution which applies across the whole of Great Britain.

12. Accordingly, while Scottish Ministers could change the constitution of the FRC and its committees through primary legislation, the changes could be made for Scotland only. This would result in the FRC having a different constitution for
Scotland than for the rest of GB, which in practice would make little sense, given that the FRC has no separate Scottish elements or committees.

13. There is policy agreement across GB on the changes to be made. It would therefore seem appropriate for these amendments to be taken forward on a GB-wide basis. It is therefore recommended that the Scottish Parliament consents to the UK Parliament legislating for this.

Clause 2 – Power to make further changes to constitution of Council and its committees

Policy intent

14. The purpose of this clause is to make provision that any future amendments to the governance arrangements of the Farriers Registration Council and its committees can be made by secondary legislation.

Background

15. Any change to the FRC and its Committees requires an amendment to the FRA, which at present requires primary legislation. This is inflexible, and makes it difficult to ensure that the FRC and its committees are kept up to date and remain fit for purpose.

16. This clause therefore provides a power to make amendments by secondary legislation to those parts of the FRA which set out the constitutions of the FRC and its committees. The clause provides for this power to be exercised by the Secretary of State, on whom the Bill imposes a duty to consult the FRC and other persons the Secretary of State considers appropriate before making any such changes. This clause also includes a requirement that before making such changes by secondary legislation, the Secretary of State must obtain the consent of the Scottish Ministers and the Welsh Ministers.

Reason for requiring legislative consent

17. As indicated above, the subject matter of the FRA is within the legislative competence of the Scottish Parliament. The requirement for any future change to the constitution of the FRC and its Committees to be made by secondary legislation with the Scottish and Welsh Ministers’ consent also alters the executive competence of the Scottish Ministers. The consent of the Scottish Parliament will therefore be required for these changes. It is recommended that the Scottish Parliament consents to the UK Parliament legislating for this, in order to allow such changes to be made in future by secondary legislation, where the Scottish Ministers have agreed to the proposed changes.

Clause 3 – Extent, commencement and short title

18. This clause sets out the short title of the Bill, provision for its coming into force by way of regulations, and the Bill’s extent. In doing so, it provides that the Bill extends to Scotland. The subject matter of the Bill being within the legislative
competence of the Scottish Parliament, the consent of the Scottish Parliament to this clause is required.

Consultation

19. A GB-wide consultation on the governance, structure and operation of the Farriers Registration Council and its committees was conducted by Defra in 2013, in conjunction with the Scottish and Welsh governments. The consultation, and its responses, were not controversial and there was general agreement on the way forward. The responses to that consultation have been used to develop the final proposals laid out in this Bill.


Financial implications

20. There will be no financial implications for Scotland resulting from this Bill.

Conclusion

21. It is the view of the Scottish Government that it is in the best interests of the Scottish people and good governance that this Bill, which falls within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

Draft Legislative Consent Motion

22. The draft motion, which will be lodged by the Cabinet Secretary for Environment, Climate Change and Land Reform, is:

“That the Parliament agrees that the Farriers (Registration) Bill, introduced in the House of Commons on 29 June 2016, so far as this matter falls within the legislative competence of the Scottish Parliament or alters the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
February 2017