

LEGISLATIVE CONSENT MEMORANDUM
ANIMAL WELFARE (KEPT ANIMALS) BILL

Background

1. This Memorandum has been lodged by Mairi Gougeon, Cabinet Secretary for Rural Affairs and Islands, under Rule 9.B.3.1(a) of the Parliament's Standing Orders. The Animal Welfare (Kept Animals) Bill was introduced in the House of Commons on 8 June 2021. The Bill, Explanatory Notes and other supporting documents can be found at <https://bills.parliament.uk/bills/2880>.

Content of the Animal Welfare (Kept Animals) Bill

2. The Animal Welfare (Kept Animals) Bill makes provision about the welfare of certain kept animals that are in, imported into, or exported from Great Britain. Part 1 of the Bill extends to England and Wales only and makes provision about the keeping, selling and breeding of primates. Part 2 of the Bill repeals the Dogs (Protection of Livestock) Act 1953 in England and Wales and enacts new provision for an offence where a dog attacks or worries livestock. Part 3 of the Bill (clauses 42 to 49) contains other provisions about kept animals. Powers to make provision consequential on the Bill are contained in Part 4 (general) as are provisions regarding commencement.

Provisions which relate to Scotland

3. Part 3 of the Bill (clauses 42 to 49) and ancillary provisions in Part 4 make provision applying to Scotland for purposes within the legislative competence of the Parliament. The relevant provisions are as follows:

Export of livestock (clauses 42 and 43)

4. **Clause 42: Exports of live animals: prohibition of export for slaughter etc.** Subsection (1) of this clause prohibits the export of relevant livestock from Great Britain for slaughter and subsection (2) makes it an offence to contravene this prohibition. Subsection (3) describes "exports" for the purpose of determining whether a person has contravened the prohibition in subsection (1) and subsection (4) defines "for slaughter", which includes relevant animals being exported for the purpose of being slaughtered or fattened for slaughter. Subsection (5) provides that in Scotland, a person that commits an offence under this clause is liable on summary conviction to imprisonment for up to 3 months, to a fine not exceeding level 5 on the standard scale or both. Subsection (7) defines "relevant livestock" for the purpose of this clause as cattle, sheep, pigs, goats and equines. Subsection (8) repeals sections 40 to 49 of the Animal Health Act 1981 (provision relating to the export of horses) and also makes other amendments to that Act that are consequential to their repeal.

5. **Clause 43: Power to make provision in connection with the enforcement of section 42.** Subsection (1) of this clause empowers the appropriate national authority (in Scotland this is the Scottish Ministers or the Secretary of State acting with the consent of the Scottish Ministers) to make regulations to provide for the enforcement

of the prohibition on the export of live animals for slaughter. Subsections (2) and (3) provide non-exhaustive lists of what these regulations may cover, which include powers of entry, seizure or detention, the creation of criminal offences, the imposition of monetary penalties or civil sanctions and a power to amend or revoke any retained direct EU legislation. Subsections (4) and (5) describe the “civil sanctions” that may be imposed under regulations relating to the enforcement of Clause 42. Subsection (6) clarifies the scope of criminal offences that can be created in relation to regulations made under subsection (1). Subsection (7) further restricts the regulations from including provisions on granting powers of entry without the consent of the occupier or under the authority of a warrant or including provisions that allow for a reasonable use of force without a warrant. Subsection (8) defines “specified” for the purposes of this clause.

Animal welfare and retained direct EU legislation (clause 44)

6. **Clause 44(1)** does not extend to Scotland. **Clause 44(2)** extends to Scotland only. It amends the power of the Scottish Ministers to make regulations for the purposes of securing the welfare of animals in section 26 of the Animal Health and Welfare (Scotland) Act 2006 to include a power to amend or revoke any retained direct EU legislation. This power is related to clause 42. Whilst the UK was a member of the EU, the welfare of live animals on transport was governed by Council Regulation No 1/2005 on the protection of animals during transport and related operations. Council Regulation No 1/2005 has become retained direct EU legislation in England, Wales and Scotland. This power will allow for changes to animal welfare legislation concerning animals during transport or otherwise that require amendments to retained direct EU legislation that may be appropriate in future.

Importation of dogs, cats and ferrets (clauses 45 and 46)

7. **Clause 45: Reduction in limit of non-commercial movement of dogs, cats and ferrets.** The non-commercial movement of dogs, cats and ferrets into Great Britain is regulated by Regulation (EU) No 576/2013, which is part of retained direct EU legislation. This clause amends Regulation (EU) No 576/2013 to limit the number of dogs, cats and ferrets that may be moved into Great Britain on a non-commercial basis. Subsection (2) inserts new paragraph A1 into Article 5 of the above EU regulation to limit the number of dogs, cats and ferrets that may be moved into Great Britain in a motor vehicle to five animals. Subsection (3) amends paragraph 1 of the above EU regulation to limit the number of pets that may accompany a person when travelling by any way other than a motor vehicle (i.e. by air or as a foot passenger by train or ferry) from five to three. Subsections (4) and (5) make changes to the EU regulation consequential to the amendments made by subsections (2) and (3). Subsection (6) inserts a definition of “motor vehicle” into the EU regulations. Subsection (7) makes a consequential amendment to the Trade in Animals and Related Products Regulations 2011 which provide for the enforcement of the EU regulations in England. Subsection (8) makes a consequential amendment to the Trade in Animals and Related Products (Scotland) Regulations 2012 which provide for the enforcement of the EU regulations in Scotland.

8. **Clause 46: Powers relating to importation of certain dogs, cats and ferrets.** Subsection (1) of this clause provides the appropriate national authority with powers to make regulations about the importation of relevant animals (dogs, cats or ferrets) into Great Britain for the purpose of promoting animal welfare. In relation to Scotland the appropriate national authority is the Scottish Ministers, or the Secretary of State acting with the consent of the Scottish Ministers. Subsection (2) provides that the regulations may in particular prohibit or restrict imports of relevant animals that are below a prescribed age, have been mutilated (e.g. a dog with a docked tail or cropped ears) or are heavily pregnant. Subsection (3) allows regulations to include provisions concerning enforcement. Subsection (4) provides that an appropriate national authority (in relation to Scotland, the Scottish Ministers, or the Secretary of State acting with the consent of the Scottish Ministers) may make regulations about unlawfully imported relevant animals that are seized and detained and may make provision transferring ownership of such animals. Subsection (5) provides powers for an appropriate national authority (in relation to Scotland, the Scottish Ministers, or the Secretary of State acting with the consent of the Scottish Ministers) to make regulations to impose monetary penalties for offences under other enactments that concern the welfare or health of imported animals covered by this clause. Subsection (6) provides a non-exhaustive list of provisions that may be included in the regulations, including conferring functions, record keeping, powers of entry and the creation of new criminal offences. Subsection (7) limits the power to create new criminal offences by setting the maximum penalties that may be included in the regulations. Subsection (8) limits powers of entry that may be conferred by the regulations. Subsection (9) allows regulations to amend, repeal or revoke any enactment. Subsection (10) defines “Importation”, “mutilated”, “relevant animal”, “specified” and “unlawfully imported” for the purposes of this clause.

Zoos (clause 47 and schedule 5)

9. The Zoo Licensing Act 1981 regulates establishments that exhibit animals of species that are not normally domesticated in Great Britain for seven or more days in a twelve-month period. These include zoos, safari parks and aquariums. The 1981 Act is enforced through a licensing regime that is administered by local authorities, but with a list of zoo inspectors maintained by Scottish Ministers under section 8 of the 1981 Act. Section 1A of the 1981 Act sets out the conservation activities that zoos must undertake. Under section 5 of the 1981 Act In deciding what conditions to attach to a licence, local authorities have regard to standards specified under section 9 of the 1981 Act. Section 9 provides for the Secretary of State (in Scotland, the Scottish Ministers) to specify standards of modern zoo practice.

10. **Clause 47: Zoos** introduces a schedule of amendments to the Zoo Licensing Act 1981. In particular in relation to Scotland, schedule 5, paragraph 2 amends the definition of a zoo in the 1981 Act to remove the exemption for circuses following the Wild Animals in Travelling Circuses (Scotland) Act 2018 (and similar legislation in England and Wales). Schedule 5, paragraphs 4 to 14 extend the power in section 9 of the 1981 Act to specify standards for zoos to include standards for conservation. The 1981 Act is amended to remove section 1A (and references to section 1A) that specify current conservation requirements. Section 5 of the 1981 is amended to require that all licences issued under the Act include a condition under which the zoo must adhere to the standards produced under section 9 of the 1981 Act. Schedule 5, paragraphs

15 and 16 provide that the list of inspectors may include veterinary inspectors with a specialism in any species of animal that is kept in zoos. Schedule 5, paragraph 18 amends the 1981 Act to increase those penalties in the Act currently set at Level 3 of the standard scale (£1,000) to a Level 4 standard scale fine (£2,500); and increase those penalties in the Act currently set at Level 4 of the standard scale to a Level 5 standard scale fine (£5000 in Scotland).

General (clauses 48 and 49, and Part 4)

11. **Clause 48: Meaning of “appropriate national authority” and “enactment”.** This clause defines “appropriate national authority” and “enactment” for the purposes of this Part. In relation to Scotland this is the Scottish Ministers, or the Secretary of State acting with the consent of the Scottish Ministers. The power for the Secretary of State to act with the consent of Scottish Ministers will allow consistent regulations to be brought into force simultaneously across Great Britain where the policy objectives of UK and Scottish Ministers are aligned and there are no good reasons for having separate Scottish subordinate legislation. In these cases the Scottish Ministers consider that the Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU exit would apply.

12. **Clause 49: Regulations under Part 3.** This clause provides that any regulations made by Scottish Ministers under powers in this Part must be made subject to the affirmative procedure (or equivalent in the UK Parliament where made by the Secretary of State) and may include consequential, incidental, transitional or saving provisions and may include different provisions for different purposes and areas.

13. **Part 4 (General)** makes general provision about consequential provision, commencement and extent.

Reasons for seeking a legislative consent motion

14. The changes proposed in the Bill address matters of significant public concern for animal welfare which are within the legislative competence of the Scottish Parliament and require primary legislation to effect. These are areas where consistent changes to legislation in all GB administrations at the same time will be particularly important and beneficial. Regarding controls on the export or import of animals that otherwise move freely within Great Britain, it is in the best interests of all administrations to avoid any inconsistencies in content or timing of legislation that would allow the unintended consequence of controls in one country being circumvented by using points of entry or exit in another. Regarding zoo licensing there has been a common regime in Great Britain for many years, with shared arrangements for training and appointment of specialist inspectors and joint working through the Zoo Expert Committee on proposed new standards, so it will be beneficial and appropriate to continue this joint approach to modernise the Zoo Licensing Act 1981.

15. Allowing the UK Government to introduce legislation on behalf of all GB administrations on areas that are within the legislative competence of the Scottish Parliament in this particular case will be the most efficient way to ensure that these

changes are introduced as soon as possible and can be brought into force at the same time throughout Great Britain.

Export of livestock

16. Prohibiting and regulating the movement of animals out of Scotland for the purpose of protecting animal welfare is within the legislative competence of the Scottish Parliament. The Scottish Government recently committed to work with other administrations to seek to end the unnecessary long distance transport of animals for fattening or slaughter outside the UK. It will be important to have consistent controls introduced at the same time across Great Britain to avoid potential exporters seeking to change the country the export journey commences or the point of departure to exploit any inconsistencies between administrations. This will also assist enforcement authorities. Allowing the UK Parliament to legislate for Scotland in these areas will be the most timely and efficient way to achieve this.

Animal welfare and retained direct EU legislation

17. Making provision for animal welfare regulations made by the Scottish Ministers under section 26 of the Animal Health and Welfare (Scotland) Act 2006 to amend or revoke retained direct EU legislation is within the legislative competence of the Scottish Parliament. This will be necessary to allow amendments to Council Regulation (EC) No.1/2005 that may be required to implement future controls on long journeys involving the transport of animals for slaughter as well as allowing other amendments to animal welfare legislation concerning animals on farm or at slaughter to be made in future. There are no powers available to Scottish Ministers under any other Acts to do this.

Importation of dogs, cats and ferrets

18. Prohibiting or regulating the movement of animals into Scotland for the purpose of protecting animal welfare or animal health is within the legislative competence of the Scottish Parliament. The importation of puppies involves widespread suffering and illegality in the way animals are bred in poor conditions, fraudulently certified regarding their age and rabies vaccination history, transported and sold to unsuspecting buyers in GB by dealers illegally posing as home breeders. Reducing the number of pet animals that can be imported by individuals and restricting the import of animals under 6 months old or in late pregnancy have been called for by the main welfare organisations. There are also concerns about the growing number of dogs imported with cropped ears and other mutilations that are not legal within the UK. It will be important to have consistent controls introduced at the same time across Great Britain to avoid potential importers seeking to change their point of entry to exploit any inconsistencies between administrations, considering the strong incentives there would be to do this because of the high value of puppies and certain breeds of dogs. This will also greatly assist enforcement of the controls in all parts of Great Britain. This is a particular concern in Scotland for the Scottish SPCA and other authorities who regularly have to deal with illegal imports and welfare cases involving puppies born in the Republic of Ireland or in continental Europe. Allowing the UK Parliament to legislate for all GB administrations in these areas will be the most timely and efficient way to achieve these important changes in the most consistent way.

Zoo licensing

19. The amendments to the Zoo Licensing Act 1981 in so far as they extend to Scotland are within the legislative competence of the Scottish Parliament. The proposed modernisations of the Zoo Licensing Act 1981 are intended to introduce more meaningful requirements for conservation activity and other minor or technical changes. Allowing the UK Parliament to legislate for Scotland in these areas will allow changes to be made to an Act that has applied consistently across Great Britain for many years.

Consultation

20. There have been extensive discussions and recent public consultations in Scotland¹, and in England and Wales², on the Farm Animal Welfare Committee (FAWC) recommendations on animal transport which included recommendations to reduce long distance transport. Further work to develop improved transport legislation following the consultations on the FAWC recommendations is expected to involve more detailed discussion with the relevant industry sectors and other GB administrations. Scottish Ministers made a commitment in March 2021 to work with other administrations to seek to end the unnecessary long distance transport of animals for fattening or slaughter outside the UK and the proposals in the Bill have developed following discussions between officials during the pre-election period.

21. There has been close liaison between Scottish Ministers and officials from all UK administrations with animal welfare groups and enforcement authorities for several years to combat the widespread illegal puppy trade. The measures proposed have been called for by the main animal welfare organisations including the Scottish SPCA, Dog's Trust and British Veterinary Association, as well as the Scottish Animal Welfare Commission. The proposals in the Bill have been developed through discussions between officials. Further discussions are continuing to finalise proposals for the regulations to control the age or state of pregnancy at which dogs can be imported and to prohibit the importation of animals that have been subjected to procedures such as ear cropping that would be illegal in the UK. These proposals are expected to be subject to joint public consultation in the near future.

22. The proposals to improve zoo licensing legislation have been made following discussions involving officials from all GB administrations with the GB Zoo Expert Committee which is responsible for developing the Standards for Modern Zoo Practice and the British and Irish Association of Zoos and Aquaria.

23. The Scottish Government is in principle content with the current proposals in the Bill that relate to areas of legislative competence of the Scottish Parliament. Further

¹ Scottish Government consultation: Farm Animal Welfare Committee's opinion on the welfare of animals during transport, December 2020.
<https://www.gov.scot/publications/consultation-farm-animal-welfare-committees-opinion-welfare-animals-during-transport-scottish-government-response/pages/1/>

² Defra and Welsh Government consultation: Live animal exports: improvements to animal welfare in transport, December 2020.
<https://www.gov.uk/government/consultations/live-animal-exports-improvements-to-animal-welfare-in-transport>

consideration is being given to a small number of possible amendments regarding matters such as the consistency of the proposed penalty for livestock export offences and other minor and technical changes. These are expected to be taken forward as UK government amendments in due course as appropriate.

24. The Scottish Government is not planning to introduce any Bill in this policy area to the Scottish Parliament in the near future

Financial implications

25. There will be minimal financial implications for the Scottish Government in these proposals. There may be some additional costs for enforcement authorities such as local authorities and Border Force in relation to enforcing controls on animal imports in due course.

26. There were few exports of animals from Scotland to countries outside the UK for slaughter or fattening in 2020 and there have been none in 2021 so there will be minimal impact in practice if these exports are prohibited.

27. There are expected to be minimal financial impacts on dog breeders within Scotland if the proposed changes are made. There may be a financial impact on puppy importers and pet breeders in other countries as the changes should reduce demand for puppies from other countries.

28. There is expected to be a minimal financial impact on zoos within Scotland although there may be some changes to the way animal collections are managed as more meaningful conservation requirements are introduced over time.

Conclusion

29. Part 3 of the Animal Welfare (Kept Animals) Bill and ancillary provisions address matters of significant public concern and importance for animal welfare which are within the legislative competence of the Scottish Parliament and require primary legislation to effect. Consistent simultaneous changes to animal welfare legislation in all GB administrations will be particularly beneficial to avoid any differences being exploited by individuals seeking to import or export the animals concerned. Consistent and simultaneous changes to the Zoo Licensing Act 1981 are also appropriate as there are long-established joint arrangements for developing zoo standards across Great Britain. Allowing the UK Government to introduce legislation extending to Scotland in this Bill will be the most efficient way to make these important changes as soon as possible and allow them to be brought into force at the same time throughout Great Britain. This approach is expected to be strongly supported by enforcement authorities, leading animal welfare organisations and other stakeholders.

Draft legislative consent motion

30. The draft motion, which will be lodged by the Cabinet Secretary for Rural Affairs and Islands, is:

“That the Parliament agrees that the relevant provisions of the Animal Welfare (Kept Animals) Bill, introduced in the House of Commons on 8 June 2021, relating to animal welfare, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

SCOTTISH GOVERNMENT

June 2021

This Legislative Consent Memorandum relates to the Animal Welfare (Kept Animals) Bill (UK legislation) and was lodged with the Scottish Parliament on 22 June 2021

ANIMAL WELFARE (KEPT ANIMALS) BILL – LEGISLATIVE CONSENT MEMORANDUM

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.parliament.scot/documents