

Rural Affairs, Islands and Natural Environment Committee

11th Meeting, 2021 (Session 6), Wednesday 17 November 2021

Legislative consent memorandum – UK Animal Welfare (Kept Animals) Bill

Introduction

1. This paper supports the Committee’s consideration of the legislative consent memorandum (LCM) for the UK [Animal Welfare \(Kept Animals\) Bill](#). The Bill was introduced in the House of Commons on 8 June 2021.

What is a legislative consent memorandum?

2. The UK Parliament does not normally legislate on matters devolved to the Scottish Parliament without its consent (previously referred to as the Sewel Convention). Where it does seek to legislate in devolved competence, the Scottish Government is required under Standing Orders to lodge a legislative consent memorandum which explains how the Bill will affect Scotland and how, for example, the Bill may—
 - change the law on a “devolved matter” (an area of policy which the UK Parliament has devolved to the Scottish Parliament); or
 - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
3. [Chapter 9B of the Parliament’s Standing Orders](#) sets out the rules and procedures for seeking legislative consent.
4. The Animal Welfare (Kept Animals) Bill falls under Rule 9B.1.1 of the Standing Orders, as it will impact on areas devolved to the Scottish Parliament and on the executive competence of the Scottish Ministers.

Does the Scottish Parliament have to give legislative consent?

5. It is up to the Scottish Ministers to decide whether to recommend the Scottish Parliament consent to the UK Parliament legislating on matters that fall within the legislative competence of the Scottish Parliament.
6. Where the Scottish Government recommends that legislative consent be given, a motion, known as a legislative consent motion, will be taken in the Chamber.

7. If, however, the Scottish Government does not recommend consent be given, a motion is not laid, although a debate on the LCM may be scheduled in the Chamber.
8. In relation to the Animal Welfare (Kept Animals) Bill, the Scottish Government has noted in its LCM that it does intend to lodge a legislative consent motion for the Bill and has provided a draft motion at paragraph 30 of the LCM.
9. The UK Supreme Court decided in 2017 that the Scottish Parliament does not have a “legally enforceable veto”. This means that, if the Scottish Parliament votes against a legislative consent motion, it can still become the law.

What is the role of committees when scrutinising an LCM?

10. Like other legislation that passes through the Parliament, an LCM is considered by both the Delegated Powers and Legislative Reform (DPLR) Committee and a lead committee.
11. The [LCM](#) for the Animal Welfare (Kept Animals) Bill was lodged by the Scottish Government on 22 June 2021, and the Rural Affairs, Islands and Natural Environment Committee was designated the lead committee by the Parliamentary Bureau.
12. It is the role of the lead committee to consider the LCM and report its views to the Scottish Parliament. The report usually includes a recommendation the Parliament should agree, or not, with the motion but it does not need to if the Committee does not come to a view.
13. As part of its consideration, it is usual to take evidence from the responsible Scottish Minister for the LCM, and in the case of this Bill, the Committee will hear from Mairi Gougeon, Cabinet Secretary for Rural Affairs and Islands. A SPICe briefing paper has been provided to support this evidence session (paper 2).
14. For any views expressed by the Scottish Parliament to be considered during the passage of the Bill in the UK Parliament, the lead committee must conclude its considerations before the last amending stage (report stage in the second house). It is best practice, however, for the lead committee to report ahead of the last amending stage in the first house, where possible.
15. The Animal Welfare (Kept Animals) Bill will begin its consideration at [Committee stage](#) in the first house on 16 November, so this Committee will be reporting before the last amending stage in the first house.

What is the purpose of the Animal Welfare (Kept Animals) Bill?

16. The main purpose of the [Bill](#) is to deliver a number of reforms relating to kept animals, including farm animals, companion animals and kept wild animals. Paragraphs 3 to 13 set out the provisions which relate to Scotland—
17. Clause 42 of the Bill makes it an offence to export relevant livestock (cattle, sheep, pigs, goats and equines) from Great Britain for slaughter.
18. Clause 43 gives UK Ministers (with the consent of Scottish Ministers) or Scottish Ministers the power to make regulations in connection with the enforcement of clause 42.
19. Clause 44(2) is a more technical provision and amends Scottish Ministers' existing power 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.
20. Clause 45 amends retained EU law to limit the number of dogs, cats and ferrets that may be moved into Great Britain on a non-commercial basis. The number of dogs, cats and ferrets that may be moved into Great Britain in a motor vehicle will be limited to five animals. 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) will be reduced from five to three. This provision seeks to address the issue of illegal puppy imports.
21. Clause 46 gives UK Ministers (with the consent of Scottish Ministers) or Scottish Ministers the power to make regulations about the importation of relevant animals (dogs, cats or ferrets) into Great Britain for the purpose of promoting animal welfare.
22. Clause 47 introduces a number of amendments to the Zoo Licensing Act 1981. In particular, the Bill 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 extends an existing power in relation to standards in zoos to include standards for conservation.
23. In the conclusion of its LCM, the Scottish Government states that allowing the UK Government to introduce legislation extending to Scotland in this Bill would 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.
24. Further information is provided in the SPICe briefing (paper 2).

Committee consideration

25. The Committee asked members of the Scottish Animal Welfare Commission for their view on the UK Bill when commission members gave evidence on 10 November. This will be forwarded to members on receipt.
26. Members will note that two of the regulation making powers – clause 43 (enforcement of clause 42) and clause 46 (animal welfare) – could be exercised by UK Ministers (with the consent of Scottish Ministers) or Scottish Ministers.
27. As a result of EU exit, there has been an increase in the amount of UK legislation – either primary legislation such as this Bill or secondary legislation such as some of the UK SIs considered by the Committee – which extends to the UK Government powers to make regulations (subordinate legislation) in the Scottish Parliament’s legislative competence. These are sometimes known as ‘shared powers’.
28. When considering legislative consent on this UK Bill, therefore, the Committee will want to satisfy itself that it is content that these powers to make regulations should be exercised by UK Ministers (with the consent of Scottish Ministers), as well as Scottish Ministers.
29. The Committee will note there is an agreement between the Scottish Government and Scottish Parliament that, where Scottish Ministers agree to powers in devolved competence being exercised by UK Ministers, the Scottish Parliament will be notified and have an opportunity to consider. This is the protocol which requires committees to consider UK SI notifications within 28 days.

Consideration by the Delegated Powers and Law Reform Committee

30. The role of the DPLR Committee in relation to an LCM is to consider and report on the provisions in the UK Bill that gives Scottish Ministers the powers to make subordinate legislation.
31. The DPLRC considered the LCM for the Animal Welfare (Kept Animals) Bill on the [26 October 2021](#) and was content with the delegated powers provisions.

For decision

32. The Committee is invited to –
 - **take evidence from the Cabinet Secretary and Scottish Government officials on the legislative consent memorandum (agenda item 1); and**
 - **delegate authority to the Convener to sign off the Committee’s report to the Parliament on the LCM.**