

The Welsh Government's Legislative Consent Memorandum on the Animal Welfare (Livestock Exports) Bill

March 2024



1. Background

The UK Government's Animal Welfare (Livestock Exports) Bill

1. The Animal Welfare (Livestock Exports) Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 4 December 2023. It is sponsored by the Department for Environment, Food and Rural Affairs.

2. The Explanatory Notes to the Bill (as introduced to the Commons) provide the following overview:

*"The Animal Welfare (Livestock Exports) Bill makes provision to prohibit the export of cattle, sheep, goats, pigs and equines for slaughter, including fattening for subsequent slaughter, beginning in or transiting through Great Britain to EU member states and other third countries."*²

3. The long title to the Bill states that it is a Bill to:

"Prohibit the export of certain livestock from Great Britain for slaughter."

4. The Bill completed its passage through the House of Commons on 15 January 2024. First reading in the House of Lords took place on 16 January, and Second reading took place on 21 February. At the time we agreed our report, a date for Committee stage in the House of Lords was scheduled to begin on 11 March 2024.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

6. On 19 December 2023, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.³

¹ [Animal Welfare \(Livestock Exports\) Bill](#), as introduced (Bill 17)

² [Animal Welfare \(Livestock Exports\) Bill. Explanatory Notes](#), December 2023

³ Welsh Government, [Legislative Consent Memorandum](#), December 2023

7. 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 15 March 2024.⁴ This date was subsequently changed to 8 March 2024.⁵

Provision for which the Senedd's consent is required

8. The Welsh Government's assessment is that the following provisions in the Bill require Senedd consent, as set out in paragraphs 11 to 40 of the Memorandum:

- clause 1 (Prohibition of export of livestock for slaughter), except for subsection (6)(b);
- clause 2 (Regulations about enforcement of section 1), except for subsection (4)(b);
- clause 3 (Section 2: supplementary);
- clause 4 (Enforcement regulations: procedure etc), except for subsection (5);
- clause 5 (Connected repeals in relation to horses), except paragraph (b);
- clause 6 (Concurrent functions in Wales); and
- clause 7 (Extent, commencement and short title), except subsections (1)(a), (2)(a), (2)(b), (4) and (5).

9. The Explanatory Notes to the Bill detail the UK Government's assessment of the territorial extent and application in the UK. In the Explanatory Notes, the UK Government states:

*"Apart from clause 6 and clause 5(b), the Bill is within the legislative competence of the Senedd Cymru."*⁶

⁴ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Animal Welfare \(Livestock Exports\) Bill](#), January 2024

⁵ Business Committee, [Revised timetable for consideration: Legislative Consent Memorandum on the Animal Welfare \(Livestock Exports\) Bill](#), February 2024

⁶ Explanatory Notes to the Bill, paragraph 12

10. At paragraph 42 of the Memorandum, the Minister states that the Rt. Hon Mark Spencer MP, Minister of State for Food, Farming and Fisheries, wrote to the Welsh Government confirming the position set out in the Explanatory Notes.

Delegated powers and the creation of concurrent functions

11. Clause 2 of the Bill confers a new regulation-making power on the Welsh Ministers, as follows:

- subsection (1) empowers the appropriate national authority (the Welsh Ministers in Wales) to make regulations to provide for the enforcement of the prohibition on the export of live animals for slaughter (“the enforcement regulations”);
- subsections (2) and (3) provide non-exhaustive lists of what the enforcement regulations may cover, which include powers of entry, seizure or detention, the creation of criminal offences and the imposition of civil sanctions;
- subsection (4) restricts the enforcement regulations conferring a power of entry in relation to a private dwelling without the consent of the occupier or with the use of reasonable force unless the power is exercised under the authority of a warrant;
- subsection (5) clarifies the scope of the power in subsection (4) of clause 3 to make provision for the imposition of civil sanctions in regulations relating to the enforcement of clause 1;
- subsection (6) clarifies the scope of criminal offences that can be created in relation to regulations made under subsection (1).

12. As per clause 4, the enforcement regulations would be subject to the draft affirmative scrutiny procedure in the Senedd.

13. The regulation-making power in clause 2 creates powers that may be exercised in Wales concurrently by both the Secretary of State and the Welsh Ministers.

14. Should the Secretary of State seek to make enforcement regulations using the power in clause 2, the requirements of clause 3 mean that the Welsh Ministers would first have to provide consent.

15. Restrictions in Schedule 7B to the *Government of Wales Act 2006* (the 2006 Act) prevent the Senedd from removing a Minister of the Crown function that is exercised concurrently or jointly with the Welsh Ministers without the consent of the UK Government. Clause 6 disapplies the relevant restrictions in respect of the concurrent powers in the Bill by adding the Bill to the lists of enactments in paragraphs 9(8)(b) and 11(6)(b) of Schedule 7B to the 2006 Act. This will allow the Senedd to alter the concurrent arrangements relating to devolved matters without needing the UK Government's consent.

16. Clause 7 of the Bill also confers a new regulation-making power on the Welsh Ministers to bring into force sections 1 and 5.

The Welsh Government's position, and reasons for making provision for Wales in the Bill

17. In the Memorandum, the Minister states that:

“Animal welfare is a priority of the Welsh Government. Animals should only be transported when necessary and journey durations should be minimised. The export of livestock and equines for slaughter or fattening is unnecessary because they could be slaughtered or fattened domestically.

The Welsh Government and UK Government consulted jointly on improvements to animal welfare in transport. The consultation sought views on proposals to improve the conditions of animal transport more generally, and on the proposal to end the export of livestock and equines from England and Wales for slaughter and fattening (on which there was no exception). The Scottish Government consulted separately on similar proposals. The three Governments have undertaken to work jointly to deliver a ban on live export. A consistent and coherent approach to a ban and enforcement is necessary across Great Britain if a ban is to be effective.

The Welsh Government considers it would be appropriate for this UK Bill to make provision in relation to Wales in line with our principles on UK Bills. The Bill offers a timely opportunity to deliver a discrete policy objective shared across Great Britain. This includes the potential need to ensure enforcement provision across Great Britain, including through concurrent

plus powers which suitably recognise devolution principles. The Welsh Government is supportive of the Bill as drafted.”⁷

18. In conclusion, the Minister states:

In my view it is appropriate for all relevant provisions to be made in this UK Bill. Therefore, I recommend that the Senedd supports the proposals and gives its consent.”⁸

2. Committee consideration

19. We considered the Memorandum at our meeting on 5 February 2024⁹, during which we also noted a briefing on the Bill shared with us by RSPCA Cymru¹⁰.

20. We agreed our report on 4 March 2024¹¹.

Our view

Provisions requiring legislative consent

21. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

22. We note that the UK Government's assessment differs from that of the Welsh Government in respect of clauses 1(6)(b), 2(4)(b), 4(5), 6, 7(1)(a) and (b), 7(4) and 7(5).

23. We agree with the Welsh Government that clause 1 (except for subsection (6)(b)), clause 2 (except for subsection (4)(b)), clause 3, clause 4 (except for subsection (5)), clause 5 (except paragraph (b)), and clause 7 (except subsections (1)(a), (2)(a), (2)(b), (4) and (5)) fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.

24. We also agree with the Welsh Government that consent is required for clause 6 of the Bill as it will modify the legislative competence of the Senedd.

⁷ Memorandum, paragraphs 44 to 46

⁸ Memorandum, paragraph 48

⁹ [Legislation, Justice and Constitution Committee](#), 5 February 2024

¹⁰ [Briefing document from RSPCA Cymru](#)

¹¹ [Legislation, Justice and Constitution Committee](#), 4 March 2024

Conclusion 1. We consider that the provisions of the Bill as set out in the Memorandum fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

Delegated powers and the creation of concurrent functions

25. We note that the Bill, in clauses 2 and 7, creates new regulation-making powers for the Welsh Ministers. We further note that regulations made under clause 2 of the Bill will be subject to the draft affirmative scrutiny procedure.

26. We note that, through clause 6, the negative impact that the creation of a concurrent function would have is being mitigated by disapplying the relevant restrictions in Schedule 7B to the 2006 Act in respect of concurrent functions that would have otherwise applied. This is to be welcomed.

The Welsh Government's approach to legislating

27. In October 2021, we laid before the Senedd our fifth report in this Sixth Senedd on a legislative consent memorandum for a relevant Bill passing through the UK Parliament. That report was on the Welsh Government's Legislative Consent Memorandum for the Animal Welfare (Kept Animals) Bill (the Report on the Kept Animals Bill).¹²

28. In our Report on the Kept Animals Bill we noted that, at the end of the Fifth Senedd, our predecessor Committee saw a need to raise concerns¹³ 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". We highlighted that this letter followed our predecessor Committee's consideration of legislative consent memoranda on the Animal Welfare (Service Animals) Bill¹⁴ and the Animal Welfare (Sentencing) Bill¹⁵, during which it expressed disappointment that the

¹² Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Animal Welfare \(Kept Animals\) Bill](#), October 2021

¹³ Fifth Senedd Legislation, Justice and Constitution Committee, [Letter to the Minister for Environment, Energy and Rural Affairs](#), 23 March 2021

¹⁴ Fifth Senedd Legislation, Justice and Constitution Committee, [Report on the Welsh Government Legislative Consent Memorandum on the Animal Welfare \(Service Animals\) Bill](#), February 2019

¹⁵ Fifth Senedd Legislation, Justice and Constitution Committee, [Report on the Welsh Government Legislative Consent Memorandum on the Animal Welfare \(Sentencing\) Bill](#), March 2021

previous Welsh Government did not see cause and opportunity for bringing forward its own legislation in a self-stated priority area.¹⁶

29. In our Report on the Kept Animals Bill we also said that we were concerned with the approach adopted by the Minister on grounds that, yet again, the Welsh Government was choosing to bypass the Senedd's scrutiny procedures for primary legislation that will become law in Wales. Given that our predecessor Committee had also expressed concerns in the Fifth Senedd we said it appeared clear that lessons have not been learned.¹⁷

30. Conclusion 1 in our Report on the Kept Animals Bill stated:

"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."

Conclusion 2. We stand by comments we made in our Report on the Welsh Government's Legislative Consent Memorandum on the Animal Welfare (Kept Animals) Bill, that the Minister and the Welsh Government is adopting a sub-optimal approach in relying on the UK Government to legislate in a priority policy area for the Welsh Government.

31. The Welsh Government is aware that we believe it would be possible, and certainly more preferable, for the Welsh Government to bring forward legislation to the Senedd in parallel to a Bill for England passing through the UK Parliament, should the intention be for the legislative frameworks across England and Wales to be similarly constructed.

32. This approach would have many benefits:

- democratically elected Members of the Senedd would be able to discharge their roles as legislators in Wales;
- stakeholders in Wales would be able to feed in their views to Senedd Committee consultations, meaning Members of the Senedd would be held accountable to those stakeholders;

¹⁶ Report on the Welsh Government's Legislative Consent Memorandum on the Animal Welfare (Kept Animals) Bill, paragraphs 18 and 19

¹⁷ Report on the Welsh Government's Legislative Consent Memorandum on the Animal Welfare (Kept Animals) Bill, paragraph 21

- the Welsh Government would have to respond to Senedd Committee recommendations meaning they would be held accountable to the Senedd; and
- the Senedd would be able to pass bilingual legislation in this area.

33. On the subject of bilingual legislation, it was drawn to our attention¹⁸ that the current rules on the transport of animals are implemented through devolved legislation, including the Welfare of Animals (Transport) (Wales) Order 2007. As a Wales-made Order, it is a bilingual statutory instrument. This adds to our concern, and makes it more unclear, as to why the Welsh Government is now taking a path which will result in monolingual legislation.

34. The timing of the Bill before the UK Parliament also comes with concerns. Previous animal welfare related Bills have fallen during their passage through the UK Parliament because of parliamentary sessions ending. With a UK General election likely to be called in 2024, it is unclear to us why the Minister is again risking this legislation, given that the Welsh Government has no control over its timetable through the UK Parliament, or the calling of the next UK General election.

¹⁸ Briefing document from RSPCA Cymru