

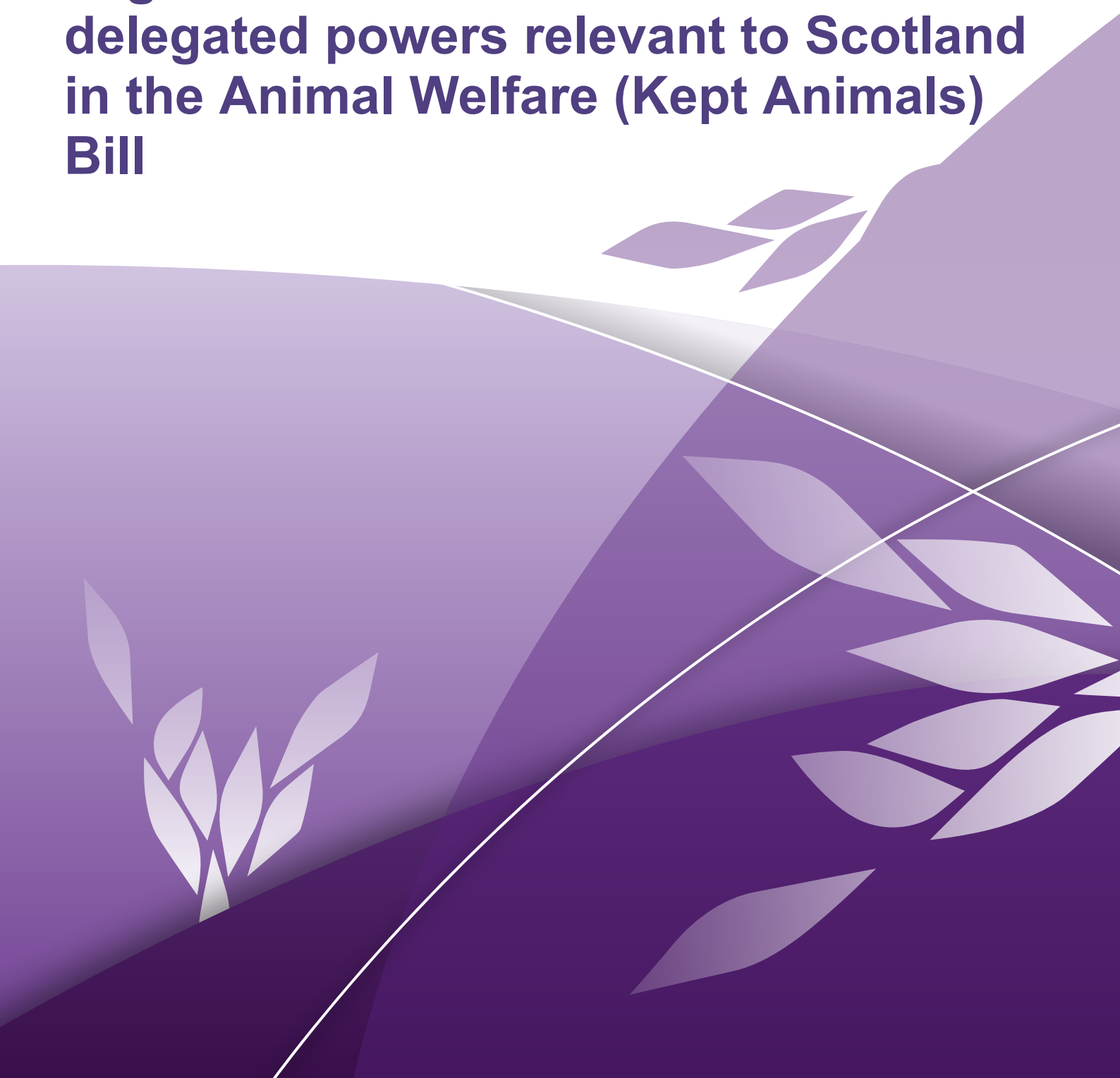


The Scottish Parliament
Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers relevant to Scotland in the Animal Welfare (Kept Animals) Bill



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Contents

Introduction	1
Overview of the Bill	2
Review of powers conferred on Scottish Ministers	3

Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Committee Membership



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Introduction

1. At its meeting on 26 October 2021, the Committee considered the provisions in the UK Government's [Animal Welfare \(Kept Animals\) Bill](#) ("the Bill") that confer powers to make subordinate legislation in areas of devolved competence.
2. The Bill was introduced by the UK Government in the House of Commons on 8 June 2021.
3. A Legislative Consent Memorandum ("the LCM") for the Bill was lodged by the Scottish Government on 8 June 2021.
4. Paragraph 6B of Rule 9B.3 of the Standing Orders provides that where the Bill that is the subject of a legislative consent memorandum contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
5. The lead committee for the LCM is the Rural Affairs, Islands and Natural Environment Committee.

Overview of the Bill

6. 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.
7. The Bill prohibits the export of relevant livestock from Great Britain for slaughter and provides that it will be an offence to contravene this prohibition.
8. In respect of companion animals, the Bill seeks to address the issue of illegal puppy imports by introducing an enabling power to apply restrictions to imports of certain pet animals (dogs, cats and ferrets) on welfare grounds through secondary legislation. The Bill also decreases the number of pets (dogs, cats and ferrets) that can travel in a single non-commercial movement.

Review of powers conferred on Scottish Ministers

9. There is no delegated powers memorandum by the Scottish Government available for the Committee's consideration, which is normal for UK Bills. However, the UK Government has published a [delegated powers memorandum](#) for the Bill, as introduced (the "UK DPM").
10. The UK DPM identifies three provisions in the Bill that confer powers to make delegated legislation.

Clause 43: Power to make provision in connection with the enforcement of section 42

Power conferred on: Scottish Ministers and the Secretary of State with the Scottish Ministers' consent

Power exercisable by: Regulations made by SSI

Parliamentary procedure: Affirmative

Provision

11. Clause 42 provides that relevant livestock must not be exported for slaughter from Great Britain. This includes exporting for fattening for subsequent slaughtering. Clause 43 delegates a power to an appropriate national authority to make regulations about the enforcement of this prohibition.
12. Within devolved competence for Scotland, the "appropriate national authority" is the Scottish Ministers or the Secretary of State acting with the consent of the Scottish Ministers.
13. Regulations made under clause 43 are subject to the affirmative procedure.

Committee consideration

14. The UK DPM states that this power is required to take account of the complex framework created by retained direct EU legislation and other animal welfare legislation, including the application of the Animal Health Act 1981 to enforce retained direct EU legislation on animal welfare and transport in England, Scotland and Wales. The Committee noted the Scottish Government's view in its LCM that 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, and that this will also assist enforcement authorities. The Committee also noted that the LCM states that allowing the UK Parliament to legislate for Scotland in these areas will be the most timely and efficient way to achieve this.
15. The Committee noted that if the approach to set out such enforcement powers for England, Scotland and Wales in one instrument is taken, the Secretary of State

would require the consent of the Scottish Ministers before making those Regulations. The Parliament would therefore have an opportunity at that point to scrutinise the Scottish Government's proposal to consent to the exercise of the power through the process set out in SI Protocol 2.

16. **The Committee finds the power to make provision in connection with the enforcement of section 42 to be acceptable in principle, and is content that it is subject to the affirmative procedure.**
17. **The Committee is also content that if this power is exercised by the Secretary of State with the Scottish Ministers' consent, the Parliament would have an opportunity at that stage to scrutinise Scottish Government's position in relation to who exercises the power and how it is exercised.**

Clause 44(2): Powers to amend or revoke retained direct EU legislation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by SSI

Parliamentary procedure: Affirmative

Provision

18. Clause 44(2) 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. Whilst the UK was a member of the EU, the welfare of live animals on transport was governed by EU law (Council Regulation No 1/2005 on the protection of animals during transport and related operations) which 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. The LCM states that there are no powers available to Scottish Ministers under any other Acts to do this.
19. Regulations made under section 26 of the Animal Health and Welfare (Scotland) Act 2006 as amended by clause 44 are subject to the affirmative procedure.

Committee consideration

20. The Committee noted that when the UK was a Member of the EU the regulation of the protection of animals on transport was harmonised across Member States. Now that the UK is no longer a Member State, the Committee considered it appropriate that the Scottish Ministers' power in section 26 of the Animal Health and Welfare (Scotland) Act 2006 is amended in order that the Scottish Ministers may make regulations to amend retained EU law in order to implement policy changes for the purpose of securing the welfare of animals.

21. **The Committee therefore finds the power conferred on Scottish Ministers in**

section 26 of the Animal Health and Welfare (Scotland) Act 2006, as amended by clause 44(2) of the Bill, to be acceptable in principle, and its content that the power is subject to the affirmative procedure.

Clause 46: Powers to prohibit or restrict importation of certain dogs, cats and ferrets

Power conferred on: Scottish Ministers and the Secretary of State with the Scottish Ministers' consent

Power exercisable by: Regulations made by SSI

Parliamentary procedure: Affirmative

Provision

22. Clause 46 provides that an appropriate national authority may make regulations about the importation of dogs, cats and ferrets into Great Britain for the purpose of promoting the welfare of those imported animals. Such regulations may, in particular, prohibit or restrict the importation of such an animal which is below a specified age, or has been mutilated or is more than a specified number of days pregnant.

Committee consideration

23. The Committee noted that the LCM states: “[i]t 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.”
24. The Committee also noted that the UK DPM explains that the UK Government Department anticipates that some or all of the measures that are likely to be introduced under this power to address the kind of low-welfare imports currently entering Great Britain will amount to technical regulations for the purposes of the WTO Agreement on Technical Barriers to Trade, and that where a WTO is proposing to adopt technical regulations which may have a significant effect on trade, it is obliged to consult other WTO members. The Committee noted that if that approach is taken, the Secretary of State would require the consent of the Scottish Ministers before making those Regulations. The Parliament would have an opportunity at that point to scrutinise the Scottish Government’s position in relation to who exercises the power through the process set out in SI Protocol 2.

- 25. The Committee therefore finds the power conferred on Scottish Ministers in**

Section 26 of the Animal Health and Welfare (Scotland) Act 2006, as amended by Clause 46 of the Bill, to be acceptable in principle, and that the exercise of the power is subject to the affirmative procedure.

26. **The Committee is also content that if the power is exercised by the Secretary of State with the Scottish Ministers' consent, the Parliament would have an opportunity at that stage to scrutinise the Scottish Government's position in relation to who exercises the power and how it is exercised.**

