



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 (Livestock Exports) Bill



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Contents

Introduction	1
Overview of the Bill	2
Delegated Powers	3
Review of relevant powers	4

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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Introduction

1. At its meeting on 30 January 2024, the Committee considered the delegated powers that are exercisable within devolved competence in the [Animal Welfare \(Livestock Exports\) Bill](#) (“the Bill”).
2. The Committee considered the Legislative Consent Memorandum (“LCM”) for the Bill by virtue of Rule 9B.3.6 of the Scottish Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is subject to an LCM 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.
3. The LCM was also considered in terms of the Committee’s wider remit contained in Rule 6.11.1(b) of the Standing Orders which provide that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills “or other proposed legislation”.

Overview of the Bill

4. The Bill was introduced by the UK Government in the House of Commons on 4 December 2023. The Bill moved to the House of Lords on 16 January 2024 and the second reading is due to be scheduled. As the Bill is still progressing through the UK Parliament, it is subject to amendment.
5. The Bill consists of 7 clauses. The provisions of the Bill, except for clause 6, extend and apply to Scotland. The stated purpose of the Bill is 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.
6. The Bill replicates the provisions making it an offence to export relevant livestock for fattening and slaughter that were included in the Animal Welfare (Kept Animals) Bill. However, the Animal Welfare (Kept Animals) Bill was withdrawn by the UK Government in May 2023.
7. The Scottish Government lodged the [LCM for the Bill](#) on 19 December 2023. A number of the provisions relate principally to the devolved matter of animal welfare.
8. The lead committee in respect of the LCM is the Rural Affairs and Islands Committee. The Scottish Government supports the Bill and states in its LCM that the Bill addresses areas of significant public concern for animal welfare which are within the legislative competence of the Scottish Parliament and require primary legislation to be given effect.

Delegated Powers

9. The UK Government has published a [Delegated Powers Memorandum](#) ("the DPM") to accompany the Bill. It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.
10. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government's view on the relevant clauses is set out in the LCM.
11. The delegated powers in devolved areas are contained in clauses 2 and 7. Clause 2 enables the "appropriate national authority" (Secretary of State, Scottish Ministers or Welsh Ministers) to make regulations to provide for the enforcement of the prohibition on the export of live animals for slaughter. Clause 7 enables an appropriate national authority to commence, by way of transitional or savings provisions in regulations, certain provisions in the Bill.

Review of relevant powers

Clause 2 – Regulations about enforcement of clause 1

Power conferred on: the Secretary of State with the consent of the Scottish Ministers, or the Scottish Ministers (where the provision to be made is within the legislative competence of the Scottish Parliament)

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Provision

12. Clause 1 provides that relevant livestock must not be exported for slaughter from Great Britain and makes it an offence to contravene this prohibition. This includes exporting for fattening for subsequent slaughtering. Clause 2 delegates a power to an appropriate national authority to make regulations about the enforcement of this prohibition. Subsections (2) and (3) of clause 2 provide non-exhaustive lists of what these regulations may cover, which include powers of entry, seizure or detention, the creation of criminal offences, and the imposition of monetary penalties or civil sanctions.
13. 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. Clause 3(3) provides that the Secretary of State may only make enforcement regulations containing provisions that could be made by Scottish or Welsh Ministers with their consent.
14. Regulations made under clause 2 are subject to the affirmative procedure.

Committee consideration

15. The UK Government states in its DPM that this power is required to take account of the complex framework contained in assimilated law on the welfare of animals in transport and other animal welfare legislation.
16. The DPM states that it is appropriate to delegate this power as amendments are likely to be detailed and technical in nature and therefore better suited to regulations than primary legislation. It states that the power will enable the UK Government to work with the Scottish and Welsh governments to provide enforcement authorities with a suite of enforcement powers across England, Scotland and Wales, and to set those powers out in a single instrument, if appropriate.
17. The LCM states that consistent changes to legislation across Great Britain will aid the enforcement of import and export requirements by avoiding displacement of trade to circumvent controls in one country via points of entry or exit in another.
18. The LCM explains that allowing the UK Parliament to legislate for Scotland in these areas will be the most timely and efficient way to achieve this.
19. If the approach taken is to set out such enforcement powers in an instrument laid in the UK Parliament and having effect across Great Britain, the Secretary of State

would require the consent of the Scottish Ministers before making those Regulations. The LCM states that “In [that case] 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.” The Parliament would accordingly have an opportunity at that point to scrutinise the Scottish Government’s proposal to consent to that exercise of the power through the process set out in SI Protocol 2.

20. The Committee highlights that it remains the case that the Secretary of State may make regulations within devolved competence. The Committee’s position, as agreed by the Committee in relation to delegated powers in UK Bills exercised in devolved areas is, in general terms, that:

- 1. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.**
- 2. Where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.**
- 3. If such powers contain a requirement for the Scottish Ministers’ consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers’ consent decision.**

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers’ consent, and may suggest matters for the lead committee to consider.

- 4. As a minimum, powers when exercised by UK Ministers in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.**
- 21. The Committee is therefore content with the power conferred on Scottish Ministers in principle and that the exercise of the power is subject to the affirmative procedure.**
- 22. 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 as the process set out in SI Protocol 2 would apply.**

Clause 7 – Power to commence provisions of the Bill, and to make transitional or savings provisions in relation to commencement

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: No procedure

Provision

23. Clause 7(2)(b) provides that sections 1 and 5 come into force on such day as may be appointed by regulations, in relation to Scotland, made by the Scottish Ministers. Subsections (4) to (6) of clause 7 provide powers for the Secretary of State, Scottish Ministers and Welsh Ministers to make transitional or saving provisions in regulations that commence these sections.

Committee consideration

24. According to the LCM, clause 7 is relevant because it is made for a purpose which is within the legislative competence of the Scottish Parliament, namely the prohibition of movement out of Scotland of animals for the purpose of protecting animal welfare.
25. The Scottish Government also states in the LCM that further work is expected to develop transport legislation with the relevant industry sectors and allow them to be brought into force simultaneously throughout Great Britain.
26. The DPM states that consistent with common practice, commencement regulations under this clause are not subject to any parliamentary procedure. It states that commencement by regulations allows for provisions to be brought into force at the appropriate time, with or without transitional or saving provisions.
27. It is standard practice to commence provisions of a Bill by regulations, and to provide for any transitional and savings provisions in connection with commencement to be made in regulations too.
- 28. The Committee is content with the power conferred on the Scottish Ministers in principle and that the regulations under this clause are not subject to any parliamentary procedure.**

