

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partïon.

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Constitutional and Legislative Affairs Committee

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

DEREGULATION BILL: AMENDMENTS IN RELATION TO AGRICULTURAL HOLDINGS ACT 1986, BREEDING OF DOGS Act 1973 AND BREEDING AND SALE OF DOGS (WELFARE) ACT 1999

Legal Advice Note

Introduction

1. The Deregulation Bill ("the Bill") was introduced in the House of Commons on 23 January 2014 and is currently at report stage. It has been resolved that proceedings on the Bill will carry over to the next parliamentary session.
2. Alun Davies, AM, Minister for Natural Resources and Food laid a Legislative Consent Memorandum ("LCM") concerning the Bill on 24 February 2014. The LCM was considered by the Committee on 31 March 2014. The Committee subsequently laid its report on the LCM on 1 May 2014.
3. On 22 April 2014, Alun Davies, AM laid a supplementary LCM which arises because of amendments which have been tabled to the Bill.

Background

4. The UK Government's policy objectives for the Bill are to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer. It includes measures relating to general and specific areas of business covering diverse areas from entertainment to the administration of Justice.

The Legislative Consent Memorandum

5. The supplementary LCM identifies amendments to the Bill which were tabled at the Committee stage of the Bill in the House of Commons, which are within the legislative competence of the National Assembly in relation to which its consent will be sought.

Amendments to the Agricultural Holdings Act 1986 ("the AHA")

6. The AHA applies to agricultural tenancies entered into before 1 September 1995 and to certain tenancies granted after that date. It governs the landlord and tenant relationship, as well as providing security of tenure and succession rights, regulating the terms of the tenancy and providing for compensation for the tenant or landlord in certain circumstances.

7. Currently the AHA provides three methods of resolving disputes between landlords and tenants to include arbitration.

8. The LCM states that arbitration is currently the primary method of dispute resolution and that most disputes under the AHA are compulsorily referable to arbitration.

9. Amendments tabled to the Bill which relate to the AHA, were agreed by the House of Commons Public Bill Committee on 25th March 2014.

10. The amendments would allow the parties to certain disputes under the AHA to refer them for third party determination by a jointly instructed independent expert, rather than by arbitration. The Welsh Government says that this will provide a less formal, cheaper and quicker dispute resolution process.

11. On moving the amendment in Committee, the Solicitor-General, Oliver Heald QC MP stated that determination under the new process could result in savings to the parties of up to £10, 000.00 in each case. He also stated that the reform had been requested by tenant farmers and was strongly supported by the Tenancy Reform Industry Group who are the advisory group representing landlords and tenants of agricultural holdings in England and Wales.

12. The amendments do not include any powers for Welsh Ministers to make subordinate legislation and fall within the Assembly's legislative competence in so far as they relate to the subjects of 'Agriculture' and 'Housing' within Schedule 7 to the Government of Wales Act 2006 ("GOWA").

Amendments to the Breeding of Dogs Act 1973 ("BDA")

13. There is currently a requirement under the BDA for licensed dog breeding establishments to keep written records of their breeding bitches and any litters that they may have.

14. Amendments agreed by the House of Commons Public Bill Committee on 18th March 2014 would remove this requirement.

15. The Welsh Government state that the purpose of the amendment is to reduce the burden on small business, because it will duplicate requirements within the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 ("the dog breeding regulations") which are due to be laid and made before summer recess. In Paragraph 15 of the LCM the Welsh Government state that the regulations will contain appropriate identification mechanisms such as the need to microchip a dog

before it leaves a breeding premises and to keep appropriate records on dog breeding.

Amendments to the Breeding and Sale of Dogs (Welfare) Act 1998 (“BSDWA”)

16. Under the BSDWA it is an offence for the keeper of a licensed breeding establishment to sell to the keeper of a licensed pet shop or licensed Scottish rearing establishment a dog which when delivered is not wearing a collar with an identifying tag or badge. Similarly it is an offence for a pet shop owner to sell on such an animal.

17. Amendments agreed by the House of Commons Public Bill Committee would remove these requirements.

18. At paragraph 14 of the LCM, the Welsh Government confirm that the amendments do not remove the requirement in the Control of Dogs Order 1992 for any dog in a public place to wear a collar with the name and address of its owner either engraved or written on a tag.

19. As with the amendments to the BDA, the Government are of the opinion that the provisions are unnecessary because it is intended that the dog breeding regulations will require dogs to be identified by means of a microchip before they leave a breeding premises in any event.

20. There are no powers for the Welsh Ministers to make subordinate legislation in either the BDA or BSDWA and the amendments fall within the Assembly’s legislative competence in so far as they relate to the subject of ‘Animal Health’ within Schedule 7 to GOWA.

Matters for the Committee

21. Paragraph 19 of the LCM state that the advantages of utilising this Bill rather than Assembly legislation are that the Bill represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. It states *“The proposed amendments are technical and non-contentious. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions to be taken forward at the same time in the same legislative instrument.*

22. It should be noted that the power to commence the Schedules of the Bill which deal with the repeals lies with the Secretary of State. He will therefore determine when these provisions are redundant.

23. In England micro chipping regulations will not come into force until April 2016, before which there will be a general election.

24. The difficulty with the power lying wholly with the Secretary of State is that it is likely because of the proposed timetable that there will still be a period when dog breeders and pet shop owners within Wales will have to comply with the requirements under the new dog breeding regulations, in addition to the requirements under the BDA and BDSWA. There is also a danger that if there is slippage in the Welsh Government’s timetable for the dog breeding regulations and the Secretary of State commences the relevant Schedule of the Bill before the dog breeding regulations are in force in Wales, there would be a lacuna in the law which would allow breeders and pet shop owners to trade in dogs which are not capable of being identified or traced back to particular establishments.

Legal Services

National Assembly for Wales

May 2014