

PET ABDUCTION BILL

Memorandum from the Department for Environment Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pet Abduction Bill (“the Bill”). The Bill was introduced in the House of Commons on 6 December 2023 and moved to the House of Lords on 22 April 2024. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Bill introduces new criminal offences in relation to the taking or detaining of a dog from the lawful control of any person; and the taking of a cat from the lawful control of any person. The offence will not apply in relation to persons who previously lived together with the animal in the same household, where certain conditions are met.
3. The Bill includes defences of lawful authority and a reasonable excuse, and an additional specific defence will be available in relation to stray dogs which takes into account the requirements that already apply, in England, in relation to a person finding and taking possession of a stray dog and, in Northern Ireland, to a person finding an unaccompanied dog.
4. Powers in the Bill will enable the Act to be amended to apply or replicate the offences to other species of animal commonly kept as pets.
5. While the theft of a pet is already an offence under the Theft Act 1968 and under the Theft Act (Northern Ireland) 1969, the creation of the abduction offences aims to recognise that pets are not mere items of property but sentient beings, and to support monitoring and reporting of such incidents.
6. The offences will be triable either way, with a maximum term of imprisonment of five years, a fine, or both, on conviction on indictment.

C. DELEGATED POWERS

Clause 3 Abduction of other animals commonly kept as pets

Power conferred on: in relation to England, the Secretary of State and in relation to Northern Ireland, the Department of Agriculture Environment and Rural Affairs in Northern Ireland (DAERA).

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Henry VIII power: Yes

Context and Purpose

7. Clause 3 includes a delegated power for the Act to be amended so that clause 1 (dog abduction) or 2 (cat abduction) can be applied or replicated, with or without modifications, to further species of animal. The power is conferred on the “appropriate national authority”, which is defined in subsection (6) and includes the Secretary of State and the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.
8. Subsection (10) provides that regulations under clause 3 may make different provision for different purposes, as well as consequential, supplementary, incidental, transitional or saving provision. Subsection (11) provides specific authority for regulations making consequential, supplementary, incidental, transitional or saving provision to amend the Magistrates’ Courts (Northern Ireland) Order 1981.
9. Regulations applying or replicating the offences in clause 1 or 2 can provide for the offences to have different exceptions or defences, but subsection (4) ensures that the power does not allow variation of the penalties set out in clause 1(7) or 2(5).
10. The power may only be exercised if:
 - the appropriate national authority considers that animals of that species are commonly kept as pets, and;
 - there is evidence that the number of incidents involving the unlawful taking or detaining of animals of that species is significant or significantly increasing.
11. Before making regulations under this clause, the appropriate national authority must consult such persons as it considers appropriate.

Justification for taking the power

12. Dogs and cats are the most commonly kept pets in the United Kingdom, with around one in four households owning one or more of these animals. The popularity of pets is subject to trends and a change in trend may lead to a change in price and demand which, in turn, may drive a change in cases of unlawful taking.
13. The recommendation for the development of the pet abduction offence by the Pet Theft Taskforce was preceded by a change in demand during COVID-19. The circumstances which might trigger the consideration of inclusion of other species of animals commonly kept as pets could be similarly unpredictable.
14. The Department considers it appropriate for the appropriate national authority to have the power to respond to that dynamically and has therefore included

an enabling power to amend the Act to make provision relating to other species of pet.

15. The power can only be exercised to amend this Act within the parameters set out in clause 3(1) together with 3(4), if the conditions in 3(2) are met. Any decision must be based on evidence. The Department considers that a condition relating to evidence is an appropriate threshold for extending an abduction offence to further species of animal. The delegated power is therefore restricted to ensure that it is not wider than necessary.
16. Enabling modifications to clause 1 or 2 in their application in respect of further species is considered by the Department to be appropriate to recognise that applications to other species may require such modifications, as already reflected in the difference in application to cats and dogs.
17. The power to make consequential, supplementary, incidental, transitional or saving provision and to make different provision for different purposes is a standard provision which will enable the proper functioning of the measures.
18. This delegated power may only be exercised in connection with a regulation-making power under clause 3.

Justification for the procedure

19. The affirmative procedure is considered by the Department to provide the right level of parliamentary scrutiny for this power because it would be used to amend primary legislation and to make provision for a new criminal offence.

Clause 6 Commencement

Power conferred on: in relation to England, the Secretary of State and in relation to Northern Ireland, the Department of Agriculture Environment and Rural Affairs.

Power exercised by: Regulations or order

Parliamentary Procedure: no procedure

Context and Purpose

20. Clause 6(2) confers a power on the Department of Agriculture, Environment and Rural Affairs to commence clauses 1, 2 and 4, in so far as they extend Northern Ireland by order. As specified in subsection (1), so far as they extend to England and Wales, clauses 1 and 2 come into force three months following Royal Assent.
21. Subsections (4) and (5) will enable the Secretary of State and the Department of Agriculture and Rural Affairs to make transitional or saving provision in connection with the coming into force of any provision of the Bill in relation to England, or Northern Ireland, respectively.

Justification for taking the Power

22. Commencement by order enables the provisions to be brought into force in Northern Ireland at the appropriate time.
23. The power to make transition or saving provision is a standard power to ensure the smooth commencement of new legislation. There are several precedents for this power.

Justification for the procedure

24. Consistent with common practice for commencement provisions and as is usual with ancillary powers to make saving or transitional provision in connection with the coming into force of Bill provisions, regulations under this clause are not subject to any parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them.

**Department of Environment, Food and Rural Affairs
April 2024**