

Welfare of Dogs (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Welfare of Dogs (Scotland) Bill, introduced in the Scottish Parliament on 20 June 2023.
2. The following other accompanying documents are published separately:
 - statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 32–LC);
 - a Financial Memorandum (SP Bill 32–FM);
 - a Policy Memorandum (SP Bill 32–PM);
 - a Delegated Powers Memorandum (SP Bill 32–DPM);
3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

The Bill

4. The Bill:
 - requires the Scottish Ministers to make a new code of practice that should be followed by any person who is considering acquiring a dog to keep as a pet, and by any person who is considering selling or giving away a dog to someone else;
 - requires Scottish Ministers to take reasonable steps to ensure public awareness and understanding of the code of practice and its content;
 - includes provision for Scottish Ministers to make regulations which provide for a register of unlicensed litters of puppies to be established;

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- requires Scottish Ministers to take reasonable steps to ensure public awareness and understanding of the licensed breeding regime and, at such a time as it is in place, the register of unlicensed litters.

5. The Bill consists of 14 sections arranged in three Parts. Part 1 requires the Scottish Ministers to make a code of practice, setting out good practice in the buying, selling and giving away of puppies and dogs; Part 2 relates to the power to make regulations to set up a register of unlicensed litters; and Part 3 consists of general provisions.

6. The main animal welfare legislation in Scotland is the Animal Health and Welfare (Scotland) Act 2006. The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 replaced previous legislation covering pet sales and dog breeding. They provide for the licensing of persons who in Scotland carry on activities of breeding dogs, cats or rabbits, selling or rehoming animals as pets or operating animal welfare establishments. The regulations lowered the threshold of the number of litters that trigger the need to become licensed from five to three. The scope was extended beyond the sale of puppies to apply when puppies are sold “or otherwise supplied.”

Commentary on sections

Part 1 – Promotion of good practice

Section 1 – Ministers to make code of practice

7. Section 1 requires the Scottish Ministers to make and publish a code of practice setting out good practice that both a person considering acquiring a dog (“prospective acquirer”) and person who is selling or giving away a dog (“prospective supplier”) should follow. The code must give effect to the material in sections 2 to 4 of the Bill and any other matters that are considered appropriate by the Scottish Ministers. Ministers must consult those they consider appropriate before making the code for the first time. The code must have taken effect within six months of the Bill receiving Royal Assent.

Section 2 - Content of code: in relation to sale or transfer of dog of any age

8. Section 2 sets out a list of questions that a prospective acquirer of a dog of any age should ask themselves before acquiring a dog. These relate to how the dog would fit into the prospective acquirer’s lifestyle and home environment and their ability to adequately care and provide for the dog throughout its life. Under section 2(3), the code should also stipulate that, where practical, the acquirer (or their representative) and the prospective supplier should meet in person before agreeing to the transaction.

9. These questions are referred to in a certificate of compliance with the code, which the prospective acquirer is required to complete (see section 4).

Section 3 - Content of code: in relation to sale or transfer of young dog by first owner

10. Section 3 sets out the required content of the code in relation to the sale or transfer of puppies – that is, a dog under the age of 12 months which has only had one owner (being the prospective supplier). This includes the requirement that only dogs aged over 8 weeks should be sold or transferred and that, where practicable, prior to the sale or transfer, the prospective acquirer should see the puppy with its mother.

11. Under section 3(4), the prospective acquirer should familiarise themselves with the circumstances in which either a breeding licence or registration is required. A licence or registration could be required under regulations made under section 27(1) or (2) of the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”). The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021, which were made under the 2006 Act lowered the threshold of the number of litters that trigger the need for a breeder to attain a licence from five to three. Registration may also be required under Part 2 of this Bill. Essentially an acquirer should check whether the person they are getting a dog from is either a licensed breeder or, at such a time as a register of unlicensed litters is in place, has registered the litter.

Section 4 - Content of code: certificate

12. Section 4 requires the prospective acquirer to complete and sign a certificate before acquiring a dog of any age. The form of the certificate will be set out in the code, and its content is specified in subsection (4).

13. Filling out the certificate involves the acquirer confirming that they have considered the questions set out in section 2(2) and answered them in the affirmative. If applicable, the prospective acquirer should also confirm that they have complied with the requirements in section 3 (3) and 3(4). Where applicable, the acquirer must also seek to ensure the dog is at least 8 weeks old through discussion with the supplier. The prospective supplier should also sign the certificate and both supplier and acquirer must provide their full name and address. Once the transaction is complete the certificate should be kept throughout the ownership of the dog and shown to a police officer or inspector on request. The Scottish Ministers may add additional content to the certificate.

Section 5 – Revision of code

14. The code may be revised from time to time. However, it may not be revised in such a manner that it no longer reflects the content of sections 2 to 4 of the Bill. The Scottish Ministers should consult with those they consider appropriate on the contents of a revised code. A revised code will specify on which day it will come into effect. The revised code must be published by Scottish Ministers except for in instances in which they consider that the revision has not made material changes to the effect of the code.

Section 6 – Effect of code

15. Section 6 sets out the status of the code of practice in law. Failure by a person to comply with the code will not in itself make a person liable to civil or criminal proceedings. However, if a person is prosecuted for a “relevant offence”, evidence that the person failed to comply with the code may be relied on as tending to establish liability (that is, may be treated as evidence that the person committed the offence). Similarly, evidence that the person complied with the code may be relied on as tending to negative liability (that is, may be treated as evidence that the person did not commit the offence).

16. For the purposes of section 6, “relevant offence” is defined to include offences under Part 2 (animal welfare) of the 2006 Act (which include offences of causing unnecessary suffering, mutilation, cruel operations, administering poisons, organising animal fights and failing to ensure an animal’s welfare). It also includes any offences set out in regulations made under section 26 or 27 of the 2006 Act – namely, regulations to secure the welfare of animals for which a person is responsible, and regulations for the licensing etc of activities involving animals. It also includes any offence under Part 2 of this Bill.

Section 7 – Public awareness and understanding of code

17. The Scottish Ministers are required to take reasonable steps to ensure that the public are both aware of, and understand, the contents of the code and the requirements on them under it.

Part 2 – Regulation – Registration of litters

Section 8 – Power to require regulation

18. Section 8 (1) provides for Scottish Ministers to make regulations which would prohibit the sale, giving away or advertising of a puppy aged under 12 months unless the litter is subject to registration at the time. Section 8(2) provides for exceptions from the prohibition where the first owner of the litter holds a relevant breeding licence or is subject to registration in accordance with regulations made under section 27(1) or (2) of the 2006 Act and/or is not a resident of Scotland at the time.

19. Section 8(3) provides for Scottish Ministers to make provision via regulations about the establishment of a register of unlicensed litters of puppies. Section 8(4) provides a non-exhaustive list of what may be included in such regulations. This includes provision for or in connection with the establishment and operation of a register, provision about what steps must occur in order to register including the information that must be provided by the first owner and for the updating of information contained in the register, provision regarding public access to the register and provision allowing Scottish Ministers to apply a fee or other charges in relation to the register.

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20. Section 8(5) enables the Scottish Ministers to delegate to another person the power to arrange the establishment and operation of the register. If so, they must publish information about the arrangements, but this need not include information about how much the third party is paid.

Section 9 – Regulations: Supplementary

21. Section 9 allows the Scottish Ministers to make regulations for such further incidental, supplementary, consequential, transitional transitory or saving provision as they consider necessary or expedient. Before doing so, the Scottish Ministers must consult with such persons as they consider appropriate. Under section 9(3), all regulations under Part 2 are subject to the affirmative procedure. Regulations subject to affirmative procedure cannot be made until they have been laid in draft before, and approved by resolution of, the Scottish Parliament.

Section 10 – Compliance

22. Section 10 allows for Scottish Ministers to make provision via regulations in order to ensure compliance with any regulations made under section 8 of the bill (provision about registration of unlicensed litters of puppies,).

23. Section 10(2) includes a non-exhaustive list of what can be included in such regulations including setting out requirements, prohibitions, means of enforcement including provision that would place certain requirements on the first owner of a litter of puppies or prevent that owner from certain activities, or conferring onto those tasked with enforcement powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of the regulations. Section 10(3) enables the Scottish Ministers to, by way of regulations, make it an offence to breach any of the prohibitions or requirements set out in regulations under section 10(2)(a), and to make it an offence to obstruct a person tasked with enforcement in exercise of a power conferred by 10(2)(e).

24. Section 10(4) sets limitations on the powers to create offences under this section, setting out that that they may only be punishable by summary conviction and setting a maximum penalty and fine.

Section 11 – Public awareness and understanding of relevant regulatory regimes

25. Under section 11 the Scottish Ministers are required to take steps to ensure that the public are aware of the circumstances in which a dog breeding licence is required and if and at such a time as a registration of unlicensed litters is established, the circumstances in which an unlicensed litter of puppies should be registered. It is for the Scottish Ministers to determine how this may be achieved but it may, for example, involve a Scotland-wide publicity campaign.

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Part 3 – General provisions

Section 12 – Interpretation

26. Section 12 sets out definitions of terms used in the Bill.

Section 13 – Commencement

27. Section 13 provides that the Act will come into force on the day after Royal Assent.

Section 14 – Short title

28. The short title of the Act is the Welfare of Dogs (Scotland) Act 2024.

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