



Proposed Pet Shop (Licensing) (Scotland) Bill

A proposal for a Bill to improve animal welfare by enhancing local authority pet shop licensing powers and updating the licensing system, including in relation to licence conditions, fees and inspections.

Consultation by

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Foreword by Jeremy Balfour MSP

With animal welfare being a fully devolved issue, the Scottish Parliament has a real opportunity to improve the lives of pets and pet owners across Scotland. Current legislation governing the sale of pets is vastly outdated and is failing to protect animals or pet owners.

There are just under 200 licensed pet shops in Scotland selling a variety of species and the maximum licensed by any one local authority is 18.

It has been estimated that there are around 57 million pets in the UK.¹ In Scotland, 20% of households keep one or more dogs and 15% keep one or more cats.² While we do not have accurate data on the number of other species kept, we do know that animals like reptiles, birds and small mammals are kept or sold in their thousands in Scotland. In recent years, the pet market has increasingly diversified with high street pet shops selling a varied and diverse range of species, from hamsters to boa constrictors³.

Every pet bought from a pet shop, no matter the species, is important to the purchaser; it is the latest addition to their family. That purchaser wants their animal to have had the best start to life and be in good health at the point of sale.

While many of the animals sold as pets today may not be as traditional as a dog or cat and may not appear as vulnerable, they have important welfare needs that must be met. It is vital that Scottish legislation ensures that no pet suffers or has its welfare compromised and that, in situations where issues arise, the relevant authority is fully equipped to respond.

It is this Parliament's responsibility to ensure our system is sufficiently robust to protect animal welfare and enable the public to buy with confidence, safe in the knowledge that the pet shop they are buying from is a reputable, licensed establishment which has been subject to a stringent licensing process.

Licensed pet shops need a strong legislative framework to work within to ensure they are all able to come up to a high standard. Local authority officers responsible for issuing a pet shop licence must be given the necessary tools to empower them to effectively carry out their duties.

The Act that currently regulates the sale of animals as pets is no longer fit for purpose. The aim of the proposed Bill is to ensure clarity and consistency for pet shops across Scotland. It is not the intention to hamper the trade but purely to ensure that pet shops operating in Scotland are licensed and inspected in a full and thorough manner and that they are meeting the welfare needs of the animals they are selling.

I welcome views from all stakeholders on this proposed Member's Bill and hope we can work together to develop legislation that will be effective in protecting animal welfare.

Jeremy R. Balfour

¹ <http://www.pfma.org.uk/pet-population-2016>

² <http://www.pfma.org.uk/regional-pet-population-2016>

³ https://www.onekind.scot/wp-content/uploads/Scotlands_exotic_pets_low_res.pdf

HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at Jeremy Balfour MSP, Room M3.13, Scottish Parliament, Edinburgh, EH99 1SP. Tel: 0131 348 5961. Email: Jeremy.Balfour.msp@parliament.scot.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

1. Aim of the proposed bill

The aim of the proposed bill is to reform the current law regulating pet shops in Scotland to set out a stronger licensing framework.

Research has shown that the current Act, the Pet Animals Act 1951, is outdated, leading to issues with enforcement and interpretation and it appears that the legislation is being inconsistently applied.^{4,5}

This proposal addresses measures that fall to the local authority in their role as the pet shop licensing authority and seeks to ensure that all local authorities maintain a high standard of inspection and enforcement.

Key weaknesses of the current regime under the Pet Animals Act 1951 are that:

- It provides no guidance on how to set licence fees. A range of different approaches are taken, with no certainty that they are covering the costs of a rigorous application and inspection regime.
- When issuing a licence a local authority must have regard to a number of specific welfare needs, but licensing officers are not required to have any animal welfare specific training and there is only very general statutory guidance for the imposition of licence conditions.
- Local authorities are given the power to inspect licensed premises, but given no instruction on how to deal effectively with non-compliance.
- A local authority can refuse a licence on application, but cannot revoke one once in place. Currently the only option is to initiate criminal proceedings, which can then lead to a licence being cancelled.

A more robust framework would provide local authorities with clarity in relation to their duties and a more consistent approach would allow for comparisons to be drawn across Scotland. It would also put them in a position to take a more preventative approach, empowering them to take action before a serious welfare concern arises.

2. Context and background

The Pet Animals Act 1951 currently regulates the sale of pets in Scotland. Under this Act, local authorities are required to issue licences for pet shops as well as other animal establishments with the aim of regulating the sale of animals. There are believed to be just under 200 licensed pet shops in Scotland.⁶ This is a relatively small number in relation to other licensable activities

⁴ <https://www.bluecross.org.uk/sites/default/files/downloads/Unpicking%20the%20Knots%20report.pdf>

⁵ <http://www.ornamentalfish.org/wp-content/uploads/Pet-Shop-Licensing-Report-2016.pdf>

⁶ <https://www.bluecross.org.uk/sites/default/files/downloads/Unpicking%20the%20Knots%20report.pdf>

such as pubs (4,900)⁷ and taxis (over 10,000)⁸. On average, each local authority in Scotland licenses six pet shops.

Departments responsible for pet shop licensing may differ between local authorities. Depending on the structure and resources of the local authority, responsibility for dealing with applications and inspections of premises licensed under the Pet Animals Act 1951 may be designated to Environmental Health, Licensing teams or equivalents. While designated inspectors may range from Animal Welfare Officers to Food Safety Officers, research conducted on pet shop licensing in the UK shows that licensing duties for pet shops are most often carried out by Environmental Health Officers or Licensing Officers.⁹ Veterinary surgeons can also be authorised by local authorities to inspect premises.

a. Current legal framework

[Pet Animals Act 1951](#)

Under the Pet Animals Act 1951, it is an offence to keep a pet shop without a licence issued by the local authority. This covers "...the carrying on at premises of any nature (including a private dwelling) of a business selling animals as a pet" in England, Scotland and Wales. Local authorities are responsible for enforcing the legislation.

Under the 1951 Act local authorities can attach conditions to a licence, inspect the licensed premises at all reasonable times and may refuse a licence if standards are unsatisfactory. The Act enables local authorities to authorise any of its officers or any veterinary surgeon or practitioner to carry out inspections of premises that have been granted licences. Licences relate to the year in which they were granted or to the following calendar year.

Additional guidance

The Model Conditions for Pet Vending Licensing from 2013¹⁰, drafted in conjunction with the animal welfare sector, set out basic minimum standards considered necessary to ensure the health, safety and welfare of animals in pet shops. They consist of a set of general conditions and then specific sets of conditions with regard to dogs, cats, rabbits and guinea pigs, other small mammals, ferrets, birds, reptiles and amphibians and fish. The current guidance is non-statutory.

[The Animal Health and Welfare \(Scotland\) Act 2006 \(AHWA\)](#)

The AHWA is the principal piece of legislation covering animal welfare in Scotland. The Act makes it an offence to cause unnecessary suffering to an animal or to act in other harmful ways (mutilation, cruel operations, poisoning or involvement in animal fighting). The Act also requires

⁷ Scottish Beer and Pub Association <http://www.scottishbeerandpub.com/facts-figures/pubs-in-scotland/>

⁸ Scottish Transport Statistics No 35: 2016 Edition. p42
<https://www.transport.gov.scot/media/33814/sct01171871341.pdf>

⁹ <http://www.ornamentalfish.org/wp-content/uploads/Pet-Shop-Licensing-Report-2016.pdf>

¹⁰ <http://www.cieh.org/WorkArea/showcontent.aspx?id=47606>

the person responsible for an animal to meet its basic needs; and failure to do so, or to be responsible for mistreating an animal, can result in a prosecution. Under the AHWA powers exist for secondary legislation and codes of practice to be made to promote the welfare of animals.

The AHWA gives the Scottish Ministers the power to appoint or authorise inspectors in the context of any particular provision of the Act. It also gives local authorities the power to appoint an inspector for the purpose of any particular provision of the Act.

Section 24(3) of the Act is also the basis for the ‘five welfare needs’, defining an animal’s needs as – its need for a suitable environment, its need for a suitable diet, its need to be able to exhibit normal behaviour patterns, any need it has to be housed with, or apart from, other animals, and its need to be protected from suffering, injury and disease.

There has been little reform to pet licensing legislation in Scotland in recent years. However, there are examples of other Scottish legislative frameworks that provide more stringent parameters for local authorities and establishments to work within. For example:

Zoo Licensing Act 1981 ([ZLA](#))¹¹ & Zoo Licensing Act 1981 Amendment (Scotland) Regulations 2003¹²

The ZLA requires the licensing and inspection of zoos in Great Britain by local authorities. S.10 of the ZLA states that local authorities must carry out periodical inspections. Inspectors are provided with a standardised zoo inspection form which is available on the Scottish Government’s website.¹³ Additional guidance is also provided including information on the different types of inspection, who should be present during an inspection and on the setting of fees and other charges.

The ZLA also allows for inspectors to specify certain licensing conditions to be attached to a licence with a deadline by which these conditions must be met. Authorities can issue directions to zoo licence holders requiring them to comply with licence conditions, specifying steps to be taken within a period specified.

b. Changes to legislation in other parts of the UK

Following a consultation in 2016, the UK Government Department for Environment, Food and Rural Affairs (DEFRA) announced in February 2017 it would be making changes to the licensing system for all animal establishments in England.¹⁴ Draft secondary legislation was laid before the UK Parliament on 8 February 2018 to give effect to this.¹⁵ Whilst not yet in force, under these new draft Regulations, pet shops would be subject to an inspection prior to obtaining a licence, which could then be issued for a period of one, two or three years on the basis of an

¹¹ <http://www.legislation.gov.uk/ukpga/1981/37/contents>

¹² <http://www.legislation.gov.uk/ssi/2003/174/contents/made>

¹³ <http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/AnimalWelfare/zoo/Authorities>

¹⁴ [The Review of Animal Licensing Establishments in England: Next Steps, DEFRA, February 2017](#)

¹⁵ [DRAFT Statutory Instrument, The Animal Welfare \(Licensing of Activities Involving Animals\) \(England\) Regulations 2018](#)

assessment of the likely risk of breaking any licence conditions. Local authorities would be obliged to attach a set of general licence conditions, as well as a set of specific conditions relevant to pet animal sales, as set out in the legislation. An enforcement procedure defines the steps to be taken to address non-compliance with licence conditions and the protection of animal welfare, which could end in the revocation of a licence.

In terms of specific conditions for selling animals as pets, this includes:

- the keeping of a register for all animals and groups of fish with specific detail required for each;
- the obligation to provide prospective owners with information on the appropriate care of the animal they are buying;
- the prohibition of the sale of puppies, cats, ferrets or rabbits under 8 weeks.

Whilst there are positive changes afoot in England there is the opportunity for Scotland to go further and really address the issues around enforcement which haven't been addressed as part of the review in England.

At the same time, DEFRA has launched a call for evidence on a ban on commercial third party sales of puppies and kittens in England.¹⁶ Third party sellers are defined as licensed pet sellers who are not also licensed pet breeders. They are sometimes seen as a conduit for illegally bred puppies, often originating from puppy farms abroad, as licensed dog breeders in the UK can only sell dogs to licensed pet shops or licensed Scottish rearing establishments.¹⁷ An outright ban would effectively mean that pet shops, pet dealers and other licensed sellers of puppies and kittens would not be able to sell these pets unless they had bred them themselves.

Licensing for selling puppies in Scotland and England currently falls under the Pet Animals Act 1951, and in Scotland is also covered by the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009. The latter introduced a licensing regime specifically for those dealing in young dogs and cats (under 84 weeks old). So whilst there is a licensing regime in place in Scotland for dealers who do not run a pet shop but who sell puppies, there seems to be no corresponding regime in place in England.

The DEFRA consultation explains that those calling for a complete ban on third party sales of puppies and kittens state that the animals have higher risk of serious health and behaviour problems due to additional travel from place of birth to sale, change in environment and surroundings, and often premature separation from the animal's mother.

The consultation also asks respondents to consider a number of potential implications such a ban may have. For example, whether the subsequent gap in supply of puppies would be filled by responsible licensed breeders or whether there would be risk of an increase in unlicensed/illegal sellers as a result. It also questions whether such a ban would put some businesses at risk, if they are no longer able to stock and sell puppies and kittens. Another

¹⁶ Defra [Call for Evidence: A ban on commercial third party sales of puppies and kittens in England](#). 8 February 2018

¹⁷ [Breeding and Sale of Dogs \(Welfare\) Act 1999](#)

potential implication is that third party sellers could set themselves up in the guise of a rehoming or rescue centre to circumvent any new legislation. Rehoming centres are not currently regulated, and animal welfare organisations are calling for this to happen.¹⁸ In Scotland, the Scottish Government has recently consulted on the introduction of a registration and licensing regime for animal sanctuaries and rehoming activities.¹⁹

3. Key elements of the proposed Bill

a. Licence fees

Licence fees are set by each local authority. In terms of setting the fee, the Pet Animals Act 1951 states simply that every local authority may grant a licence to a person “on payment of such fee as may be determined by the local authority”²⁰

Currently, licence fees vary significantly across local authorities in Scotland and there are a number of different approaches taken. Some charge one fee for an initial application and a slightly lower sum for a renewal. Others charge the same fee regardless of whether it is an initial or renewal application. Some charge a flat fee. Others charge a flat fee and state that additional charges may be incurred to cover the costs of a veterinary inspection if required.

Of the 26 pet shop annual licence fee rates that were easy to find on Scottish council websites²¹, the lowest, is £23, with no mention of a separate charge to cover vets fees. The next lowest is £55.65, with six councils charging between this fee and £80. Of those, two charge vets fees separately. Nine councils charge between £81 and £100, one of which charges vets fees separately; seven charge between £101 and £200, with four of those charging vets fees separately. Two charge more than £200, with one at £248, and the highest at £380. Both of these charge vets fees separately.

The lowest and highest of these fees are both set by city councils and it is difficult to understand why there would be such a large difference

Low licence fees would suggest that the cost of implementing a licence is not being fully recovered. Effective cost recovery is key to ensuring that local authorities prioritise the effective enforcement of the legislation. Fees should be sufficient to cover the costs of a well-functioning licensing regime. They should not however be a vehicle for additional revenue. Fees should therefore be set at a level that makes the licensing regime cost-neutral.

The 1951 Pet Animals Act merely allows local authorities to charge fees, but doesn't require them to be set at cost-recovery levels. Some guidance does exist for public bodies, and whilst

¹⁸<https://www.dogstrust.org.uk/news-events/news/dogs-trust-welcomes-scottish-governments-commitment-to-regulate-animal-sanctuaries-and-rehoming-activities>

¹⁹ Consultation ran from 11.12.17 to 04.03.18 <https://consult.gov.scot/animal-welfare/animal-sanctuaries-and-rehoming-activities/>

²⁰ [S1.2 Pet Animals Act 1951](#)

²¹ Websites accessed in January/February 2018.

not always applying directly to local authorities, does provide good practice.²² There are also examples of other existing licensing regimes in Scotland that provide more explicit guidance.²³ Furthermore, the new draft legislation for licensing animal establishments in England is also proposing more explicit guidance on fee setting.²⁴

The main concern here is to ensure that fees are adequately covering the costs of a rigorous licensing regime that protects the welfare of animals sold in our pet shops. Given the wide range of approaches taken in Scotland currently, I believe there is a case for more explicit guidance in the legislation, in keeping with the approach taken in other more recent legislation.

When setting the fee, local authorities should seek to recover the cost of administering and enforcing the licensing regime. This would include the cost of inspections, the administration of application forms, training for local authority officers, as well as any support costs such as veterinary inspections as required.

In recovering these costs, fees can be set based on an overall assessment of likely costs for the year for the premises in their area, including inspection costs. Under this model, all pet shops pay the same fee.

Alternatively veterinary inspection costs, where required, can be charged separately to a set fee.

Another model is to differentiate fees according to specific criteria. Some local authorities in the UK have adopted a scale to set the licence fee to take into account the different types of premises and the different levels of risk. For example, varying the licence fee for premises based on the square footage of the shop, the number of species (or types of animal) sold or the number of animals for sale. This is another way to reflect a differentiation in costs. Given the principle of overall cost recovery, if applied correctly there should be little or no difference to the local authority. The main difference is to the pet shops themselves.

Tamworth Borough Council²⁵ is one of the local authorities in the UK who tier their licence fees to take into account the size of the premises:

Up to 250m ²	£166.75
251 to 500m ²	£227.31
501 to 1000m ²	£291.71
Over 1000m ²	£363.77

The proposed bill would:

²² For example, the Scottish Government has a [“Scottish Public Finance Manual”](#).

²³ For example, the Civic Government (Scotland) Act 1982 as the basis for a number of licensing systems has fee setting guidance in [Schedule 1, Paragraph 16](#)

²⁴ [DRAFT Statutory Instrument, The Animal Welfare \(Licensing of Activities Involving Animals\) \(England\) Regulations 2018](#)

²⁵ https://www.tamworth.gov.uk/sites/default/files/licensing_docs/Fees%20from%20Jan%201st%202017.pdf

- Set out the principle of cost-recovery as a basis for local authorities to charge licence fees to ensure that the total fee income for the year matches the anticipated expenditure during the year.
- State that the costs recovered should take into account, for example, processing applications, inspections, staff training and/or paying for external vets/inspectors and enforcement visits.
- Require local authorities to have regard to Scottish Government guidance in determining a scale of fees.
- Introduce a regular review of the licence fee to ensure it continues to meet the cost of administering and enforcing the licence.

b. Licence conditions and inspection guidance

The Pet Animals Act 1951 does not dictate how often an inspection must be carried out and does not require an inspection of the premises prior to a licence being issued. Research has shown that 10% of local authorities in the UK fail to carry out an annual inspection.²⁶ There is no standardised approach to pet shops inspections and the quality of inspection forms vary significantly between local authorities.

It is important, when an inspection takes place, that it is thorough and covers sufficiently some key criteria related to the premises and number of animals and variety of species being sold. Section 1(3) of the Act includes provision for the local authority to attach conditions to the licence in order to ensure that the basic provisions such as the five welfare needs are being met.

Inspection reports received by [Blue Cross](#) under the Freedom of Information (Scotland) Act 2002 from 11 of the 32 local authorities in Scotland highlight how varied the inspection report can be. Although they do not necessarily provide a comprehensive overview of the situation, they do illustrate the variety of approaches taken. Reports range from inspection forms between one and ten pages in length, to emails or letters confirming the renewal of the licence or the application. Whilst length is not necessarily a sign of quality it is impossible to provide adequate detail about the standard of welfare on a very short form or in an email or letter confirming renewal.

To mitigate the impact of staff changing at local authorities it is essential that detailed records are kept so that new licensing officers are aware of the history of a premises and any issues that have arisen over the time it has been licensed.

One local authority officer had printed the 2013 pet vending guidance and had ticked next to the conditions where the pet shop had complied providing no detail of what was discussed during the inspection or giving any indication of any problems that had arisen.²⁷ Even where a pet shop is meeting all the conditions it is important that full and thorough notes are kept to ensure a level of consistency and traceability for example if problems arise in the future.

²⁶ <http://www.ornamentalfish.org/wp-content/uploads/Pet-Shop-Licensing-Report-2016.pdf>

²⁷ Information provided by Blue Cross

Other investigations have also found inadequate conditions in licensed pet shops. Research by animal charity OneKind during 2013 and 2014 reports numerous dead and dying fish in stores and reptiles being inappropriately housed compromising their welfare.²⁸ In 2015, 21 investigations were made by local authorities in Scotland due to public complaints or concern about animal welfare issues following an inspection.²⁹

Whilst there will clearly also be good practice to point to, for the sake of consistency between local authority areas and greater assurance of modern animal welfare standards, a more systematic and standardised approach is needed, both to setting out clear licensing conditions and to guidance for inspections.

The Chartered Institute of Environmental Health (CIEH) issued the Model Conditions for Pet Vending Licensing in 2013 which sets out model standards for pet shop licence conditions and recommendations for basic minimum standards necessary to ensure the health, safety and welfare of animals in pet shops.³⁰ This is the most up-to-date animal welfare and husbandry guidance currently available and builds upon previous guidance. The Conditions were drafted by a working group which included stakeholders from charities, veterinary organisations and trade bodies.

However, the conditions are not a statutory requirement and therefore do not have to be enforced. A survey in 2016 found that only 51% of licensing officers in the UK used this guidance to base their pet shop licence conditions on. Others reported using a variety of other guidelines and guidance documents.³¹ Although the figures do not give a full picture of what Scottish local authority officers currently use, I believe there is a case for developing updated guidance, drawing on existing good practice, that would then be the basis for all local authority pet shop licence conditions in Scotland.

Science and behavioural information relating to animal welfare is a continually evolving field and therefore guidance must take into account these developments and provision should be made for it to be reviewed regularly.

The new draft secondary legislation currently being considered in England³² sets out in legislation (not just in guidance) basic minimum general licence conditions covering some administrative issues (e.g. records, staffing, emergencies) as well as detail under the five headings of

- Suitable environment
- Suitable diet
- Monitoring of behaviour and training
- Animal handling and interactions

²⁸ <https://onekindplanet.org/uploads/publications/pet-origins-report-web.pdf>

²⁹ Blue Cross Freedom of Information request.

³⁰ [Model Conditions for Pet Vending Licensing, 2013, Chartered Institute of Environmental Health.](#)

³¹ <http://www.ornamentalfish.org/wp-content/uploads/Pet-Shop-Licensing-Report-2016.pdf>

³² [Draft Statutory Instrument, the Animal Welfare \(Licensing of Activities Involving Animals\) \(England\) Regulations 2018](#)

- Protection from pain, suffering injury and disease.

It also details a set of licence conditions specific to selling animals as pets under the headings:

- Records and advertisements
- Prospective sales: pet care and advice
- Suitable accommodation
- Purchase and sale of animals
- Protection from pain, suffering and disease

As part of a process of updating the legislation to better reflect modern good practice in animal welfare, I believe more explicit licence conditions are needed for our pet shops.

Given current developments in England to consider the ban of third party sales of puppies and kittens, I would also like to take the opportunity of this consultation, to seek your views on something similar in Scotland. It is important to stress that the proposal of an outright ban is not yet UK Government policy. The DEFRA consultation is a very open call for evidence. And it rightly asks for input on the potential implications of such a ban.

As mentioned, there is already a licensing regime in Scotland covering dealing in young cats and dogs and the Scottish Government has recently consulted on licensing animal sanctuaries and rehoming activities.

For this reason I would welcome your views on whether we should ban the sale of puppies and kittens in pet shops in Scotland. This could possibly be done within mandatory licensing conditions for pet shops.

A requirement for pet shops to provide advice to customers on how to look after their pet is also likely to result in better welfare for pets sold during the course of their lives.

The proposed bill would:

- Set out a transparent system of inspections, licence conditions and enforcement.
- Provide for standardised guidance for local authorities to follow for inspections and inspection forms, to be based on good practice and the five welfare needs, and developed with input from experts.
- Place an obligation on pet shops to provide advice to those buying pets on how to look after their pets.

In addition, the Bill may:

- Prohibit the sale of puppies and kittens by pet shops.

c. Issuing and revoking licences

A pet shop licence is issued for a calendar year, at the end of which it expires.

A risk-based assessment within the licensing regime could enable local authorities to issue licences for more than one year for establishments that they have deemed are at low risk of non-compliance with licence conditions. This could allow for a proportionate approach, enabling local authorities to target resources where most needed. In the context of its review of legislation in England, DEFRA announced its intention to develop a standard risk-based framework that is to be nationally agreed and then used by all local authorities, on the basis of which they could issue licences for more than one year.³³ The draft secondary legislation laid before the UK Parliament on 8 February 2018³⁴ proposes a licence regime for all activities involving animals that enables local authorities to issue or renew licences for one, two or three years. This would be based on an assessment of three factors:

- The risk of an operator breaching any licence conditions;
- The impact on animal welfare of any such breaches; and
- Whether the operator is already meeting higher standards of animal welfare than are required by the licence conditions.

In addition to this, the regulations state that local authorities should have regard to any guidance as may be issued by the Secretary of State.

The recent Scottish Government consultation on Licensing of Animal Sanctuaries and Rehoming Activities is also considering whether licences should be flexible and whether they could be awarded, on a risk-based assessment, for a period of up to 3 years.³⁵

Currently local authorities in Scotland do not have the power to revoke a pet shop licence. The only recourse that exists under the Act is that once an offence has been committed, the sheriff court can (depending on the offence) fine or imprison the offender, cancel the offender's licence or disqualify the offender from holding a licence for a particular period. This is an all or nothing approach – through the courts - and is rather a blunt tool. It can also only be used once an offence has been committed.

Ensuring the proper running of our pet shops and respect for the welfare of the animals they sell merits a more preventive approach, one that seeks to address potential issues before they actually endanger animals, that contributes to better overall practice in our pet shops, and also gives the owners of pet shops a fair and reasonable opportunity to redress shortcomings and improve conditions in their premises. Such an approach would empower local authorities to take a number of intermediate steps, to highlight concerns or shortcomings, with clear indication for the pet shop owner of what needs to change and by when. This should leave the power for local authorities to revoke a licence as a last resort.

Courts should only need to be involved in the most severe cases, with the remainder falling under the normal regulatory control of local councils.

³³ [The Review of Animal Licensing Establishments in England](#) Next Steps, DEFRA, February 2017

³⁴ [Draft Statutory Instrument, the Animal Welfare \(Licensing of Activities Involving Animals\) \(England\) Regulations 2018](#)

³⁵ [Registration and Licensing of Animal Sanctuaries and Rehoming Activities in Scotland](#), Scottish Government consultation, ran 11 December 2017 to 4 March 2018.

This proposal is an opportunity to strengthen the overall framework, whilst allowing local authorities the scope to implement in a way suited to their context and needs.

The current penalty for operating a pet shop without a licence, or breaching the conditions of the licence is a fine not exceeding level 2 on the standard scale (up to £500), and/or imprisonment for up to three months. The penalty for obstructing or hindering an inspection is a fine not exceeding level 2 on the standard scale. In either case, the court may also cancel the offender's licence. The proposed Bill will not create any new criminal offences. However there is a case for reviewing the fine level, in keeping with other more recent legislation regulating the licensing of establishments dealing with animal activities.

Table 1: Current standard fine scale under the Criminal Procedure (Scotland) Act 1995

Level on the scale	Amount of fine
1	£200
2	£500
3	£1000
4	£2500
5	£5000

Table 2: Overview of sanctions under existing animal establishment legislation

Legislation	Sanction
Pet Animals Act 1951 Offence under the Act (other than obstruction of inspection – fine only)	Fine not exceeding level 2 Imprisonment for term not exceeding 3 months
Animal Boarding Establishments Act 1963 Offence under the Act (other than obstruction of inspection – fine only)	Fine not exceeding level 2 Imprisonment for term not exceeding 3 months
Breeding of Dogs Act 1973 A person guilty under any provision (other than obstruction of inspection – fine only, level 3)	Fine not exceeding level 4 on standard scale Imprisonment for term not exceeding 3 months
Breeding and Sale of Dogs (Welfare) Act 1999 An offence under section 8 (Sale of dogs)	Fine not exceeding level 4 on standard scale Imprisonment for term not exceeding 3 months
Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 Any offence under Regulations	Fine not exceeding level 4 on standard scale Imprisonment for term not exceeding 3 months
Zoo Licensing Act 1981	Fine not exceeding level 3 or 4 – depending on the offence (s.19)

The proposed bill would:

- Provide for the development of a risk-based assessment for the issuing of licences.
- Empower local authorities to take a number of steps to address concerns in pet shops, based on a graduated system of enforcement, with the aim of tackling issues before animals suffer.
- Empower local authorities to revoke a pet shop licence as a last resort, in the event that the licence holder has not taken action to address concerns previously raised within timeframe set.
- Increase the maximum fine level for failing to comply with the legislation governing pet shop licences

d. Local authority expertise and available resources for pet shop licensing

The role of licensing animal establishments is a complex one as it often requires specific knowledge on the welfare of a range of species, as well as a sound understanding of the relevant legislation.

Currently, under the 1951 Act, a local authority can authorise one of its officers or a vet to inspect premises. The role of a local authority licensing officer more generally in this context is to inspect licensed premises, and monitor compliance with licensing requirements. According to a survey of licensing officers in the UK, 36% stated they had received no training on animal welfare. Of those that did receive some training, 26% said it only amounted to a one-day course.³⁶ Separate UK wide research carried out in 2014 points to instances where some officers have shown a basic lack of animal-related knowledge including identifying tortoises (which are reptiles) as amphibians or fish. At times, these inaccuracies were found on copies of the official pet shop licence schedule.³⁷

It would be important to ensure that any local authority officer involved in pet shop inspections has undergone the appropriate training. At the same time it could be helpful for local authorities to have the possibility to contract out the inspection work to qualified third parties. I would also see a benefit in local authorities being able to share expertise, in terms of them being able to contract their animal licensing and animal welfare services to other local authorities.

In general, it is hoped that the bill would help facilitate the sharing of expertise on animal welfare issues and encourage improved collaboration between those dealing with licensing in our local authorities.

The proposed bill would;

³⁶ <https://www.bluecross.org.uk/sites/default/files/downloads/Unpicking%20the%20Knots%20report.pdf>

³⁷ Wade, A & Draper, C (2016). Wild Animals as Pets: The case for a review of the Pet Animals Act 1951. Journal of Animal Welfare Law

- Require local authorities to ensure inspections are carried out by individuals with the appropriate expertise in animal welfare, including with relation to exotic species.
- Require any local authority licensing officers involved in pet shop inspections to undergo training through a certified accreditation course, and biennial refresher courses on animal welfare
- Enable local authorities to authorise third parties, in addition to their own officers and veterinary surgeons, to carry out inspections on their behalf, provided that they have the appropriate expertise required. This could include other local authority animal licensing and animal welfare services.

4. Implications of the Bill

a. Impact on local authorities

The aim of the proposed Bill is ultimately to assist local authorities in their statutory role of licensing pet shops.

There will be a more explicit framework for setting fees and reviewing them regularly. This would be based on recovering costs related to processing applications and carrying out the necessary inspections.

Local authorities will be required to use a standardised approach to licence conditions, inspections and reports and be provided with guidance that will enable them to carry out a full and thorough inspection based on the welfare needs of the animals. This will ensure that local authority officers have the means to effectively enforce the legislation. Greater consistency across inspection reports and during physical inspections will also ensure that any turnover of staff will have a reduced impact, as licence applications and renewals will be clearly documented with up-to-date records.

They will be empowered to take action to address non-compliance and will be able to revoke a licence as a last resort (following due process) in the event that a licence holder has failed to comply with directions set by the local authority within a specified timeframe.

The proposed Bill will ensure that all local authorities maintain a high standard of inspection and enforcement.

Creating a new and more flexible and responsive licensing regime which imposes high standards on pet-shops could reduce the number of cases which result in criminal proceedings. Providing a clearer and more consistent licensing framework will help local authorities to step in at an earlier stage which will hopefully prevent further action from being taken.

b. Impact on pet shop businesses

The proposed Bill would provide greater clarity and structure to pet shop licence holders. It would set out a clearer protocol for pet shops that must make improvements to keep their licence and will encourage better standards of welfare.

There may be an increase in pet shop licence fees for some, depending on the approach introduced. At the same time, some could see a reduction. However a more transparent system that is based on cost-recovery will help ensure value for money in the sense that shop owners will know that the fees reflect the work carried out to maintain the system and provide a meaningful guarantee of high welfare standards.

They will be required to apply for a licence prior to opening. This should include a full list of the animal categories that they intend to sell from the premises. If they add new categories they must inform the local authority before they stock them.

c. Impact on pet shop animals

The Bill will have a positive impact on the welfare of pets being sold in pet shops across Scotland. A more stringent inspection regime and more assistance for local authorities in terms of statutory guidance will mean that welfare concerns are picked up sooner and fewer animals are left to suffer in poor conditions. A requirement for pet shops to provide mandatory advice to the consumers is also likely to result in better welfare for pets sold during the course of their lives.

d. Impact on members of the public

The Bill would have a positive impact on members of the public as it provides greater clarity on the role of the local authority. The aim of the Bill is to improve the quality of pet shop licensing which, because it will lead to better standards of animal welfare, will also provide greater assurances to those buying pets from pet shops that they will be taking home an animal that has been well cared for and that is less likely to have health issues.

e. Impact on Scottish Government

The Bill would improve consistency across local authorities, making it easier for the Scottish Government to get an accurate national picture and make informed policy decisions.

f. Potential financial impact

The changes to the system of licensing of pet shops in Scotland proposed above are designed to improve and build upon previous legislation that has been in place for 66 years. Improving the licensing framework will not only better protect the welfare of pets being sold but also ensure that Scottish pet owners can make purchases in a safe environment. Buying a healthy pet will minimise any costs incurred by a new owner in the early weeks following their purchase, and mitigate the longer term behavioural or health problems that can result from neglect or ill-treatment.

The proposed Bill will ensure local authorities make changes to the way they licence pet shops in their area. Although there may be some initial costs e.g. additional training of local authority

officers, having a more streamlined and consistent approach would save money long term. A regular review of licence fees should also help ensure the real costs are covered.

The proposed Bill is unlikely to have significant financial implications for pet shops. Licence fees may increase for some licence holders, but others may also see a decrease.

g. Implications for sustainable development

The outcome of an initial sustainable development impact assessment suggests that the proposed Bill would have an overall positive impact on sustainable development. It will help ensure better welfare standards for animals sold by pet shops. As animal welfare is closely linked to human wellbeing, this will likely have a positive effect on general wellbeing. By providing more explicit guidelines and a more standardised approach to be followed, pet shops will have a clearer framework within which to operate, which brings benefits in terms of fairness, sound business practices, and more systematic follow up and monitoring. Clearer steps to follow in terms of enforcement will give local authorities more options to deal more effectively with non-compliance and could bring the benefits of more efficient decision-making and more effective local government action, and reduce the need for criminal proceedings. A risk-based approach to issuing licences could enable local authorities to reward good practice and issue longer licences to premises at low risk of breaching licence conditions, allowing local authorities to target their own resources more efficiently. Similarly, enabling local authorities to use third parties to carry out inspections, including animal welfare officers from other local authorities, could also enable them to better use their own resources and may encourage greater cooperation between local authorities.

h. Implications for equalities

There have been no particular positive/negative impacts of the proposal identified on any of the protected groups (under the Equality Act 2010) at this stage.

5. QUESTIONS

Part 1 - ABOUT YOU

1. Are you responding as:

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

Please give a reason why you have requested anonymity or asked for your response not to be published:

4. Please provide your name or the name of your organisation.

This will not be published if you have asked for the response to be anonymous or “not for publication”. Otherwise this is how your name/name of your organisation will be published.

Name:

Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

Part 2 - YOUR VIEWS ON THE PROPOSAL

Aim and approach

1. Which of the following best describes your view of the proposal to strengthen the licensing regime for pet shops in Scotland?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. Could the aims of the Bill be better delivered in another way (rather than by the means of a Bill in the Scottish Parliament)?

- Yes
- No
- Unsure

Please explain the reasons for your response.

3. Under the proposal, pet shop licence fees would be based on a recovery of the costs incurred by local authorities in processing applications and inspecting premises to ensure animal welfare standards are maintained. In your view, which of the following should local authorities do?

- (a) Charge all pet shops the same licence fee
- (b) Charge all pet shops the same basic licence fee, but charge the costs of inspections separately to each pet shop.
- (c) Differentiate licence fees for pet shops according to other criteria (e.g. shop surface area).

Please give reasons for your answer. If you have selected option (c) please indicate which criteria you think should be used.

4. Which of the following best expresses your view of developing statutory licence conditions, building on the current Model conditions for pet vending, that would apply to all pet shops in Scotland?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

5. **Which of the following best describes your view of banning the sale of puppies and kittens in pet shops?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

6. **Which of the following best describes your view of pet shop licence applications listing all animal categories they intend to sell, with owners under an obligation to inform the local authority before stocking any new categories?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

7. Which of the following best describes your view of mandatory inspections for all pet shops before an initial licence is granted?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

8. Which of the following best describes your view of all local authorities using a standardised approach to conducting and reporting on inspections of pet shops?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal. Is there any reason why a standardised approach would not be appropriate?

9. Which of the following best describes your view of local authorities using a risk-based assessment and issuing longer-term licences to pet shops that demonstrate a low risk to animal welfare?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

10. Which of the following best describes your view of enabling local authorities to contract other qualified professionals (in addition to their own officers and vets) to carry out and report on pet shop inspections, including qualified officers from other local authorities?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

11. Which of the following best describes your view of enabling local authorities to take steps to address non-compliance with licence conditions , giving licensees the opportunity to make improvements before any further action is taken, with the power to revoke a licence as a last resort?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, and any detail you think relevant, including what appropriate intermediate steps could be.

12. Which of the following best describes your view of increasing the maximum fine for failing to comply with the legislation, in line with more recent animal welfare legislation?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

13. Which of the following best describes your view of placing an obligation on pet shop owners to provide advice to people buying pets?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your answer, including any advantages or disadvantages of the proposal.

Financial implications

14. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Local authorities

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) Pet shop owners

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Individuals (including pet owners)

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(d) Animal welfare organisations

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

15. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

- Yes
- No
- Unsure

Please explain the reasons for your response.

Equalities

16. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

Sustainability

17. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

18. Do you have any other comments or suggestions on the proposal?

6. HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:
<http://www.smartsurvey.co.uk/s/LicensingOfPetShops/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Jeremy.Balfour.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Jeremy Balfour MSP
Room M3.13
Scottish Parliament

Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 5961.

Deadline for responses

All responses should be received no later than **18 June 2018**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website www.jeremybalfour.org.uk. Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspubliknowledge.info.

Privacy Notice

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data (including sensitive or special categories of personal data) that is included as part of your response (i.e. in your answers to consultation questions), and will also include your name and your contact details provided with the response (but separately from your answers to consultation questions).

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (the SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR), the Data Protection Act 1998 (the DPA) and any Acts that replace the Data Protection Act 1998. Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

“Not for publication” responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of “not for publication” responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing “not for publication” status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with (but not as part of) your response will not be published, but may be used by either the MSP’s office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included as part of your response (e.g. in your answers to consultation questions), the MSP’s office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses will not be published are subject to the Parliament’s legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is “not for publication” or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member’s Bill (including personal data and sensitive or special category

personal data) may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on SmartSurvey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your data (i.e. your response to the consultation and the personal data provided with it) will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then that response (but not the personal data provided with it) may be downloaded from Smart Survey to SPCB servers and retained until the end of the session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was "not for publication"), together with your name (unless you requested anonymity), but not the other personal data provided with it, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest. The task is the support of Members seeking to introduce Members' Bills to the Parliament.

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below,

although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection, storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so.

Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 22 March 2018.

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance

The Scottish Parliament

Edinburgh

EH99 1SP

Telephone: 0131 348 6913 (Text Relay calls welcome)

Textphone: 0800 092 7100

Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113