



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 27 March 2024

Session 6



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Pàrlamaid na h-Alba

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CRIMINAL JUSTICE COMMITTEE

13th Meeting 2024, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Sharon Dowey (South Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*John Swinney (Perthshire North) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Siobhian Brown (Minister for Victims and Community Safety)

Bob Doris (Glasgow Maryhill and Springburn) (SNP)

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

Jim Wilson (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 27 March 2024

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Dangerous Dogs (Compensation and Exemption Schemes) (Scotland) Order 2024 (SSI 2024/70)

The Convener (Audrey Nicoll): Good morning and welcome to the 13th meeting in 2024 of the Criminal Justice Committee. We have no apologies, and I welcome Christine Grahame MSP to the meeting.

Our first item of business is consideration of a negative instrument. I refer members to paper 1.

I welcome to the meeting Siobhian Brown, the Minister for Victims and Community Safety, and Jim Wilson, licensing team leader, criminal justice division, Scottish Government. I remind everyone that, on 21 February, we discussed the principles of the Scottish Government's approach to XL bully dogs. Today's discussion, therefore, should be on the detail of the compensation and exemption scheme set out in the Scottish statutory instrument that we are considering today.

I invite the minister to make an opening statement.

The Minister for Victims and Community Safety (Siobhian Brown): I welcome the opportunity to give evidence to the committee on this secondary legislation.

As members are aware, the Scottish Government is taking a two-stage approach to new safeguards in relation to XL bully dogs. The order that the committee is considering today is the second of two separate pieces of secondary legislation on XL bullies.

Members will recall that I appeared before the committee on 21 February to give evidence on the first piece of secondary legislation, the Dangerous Dogs (Designated Types) (Scotland) Order 2024. The first stage of the new rules, as set out in that order, came into force on 23 February 2024. XL bully owners must now ensure that their dogs are muzzled and on a lead when in a public place; moreover, the breeding, selling, gifting or exchanging of XL bully dogs is now prohibited. I stress, however, that it remains entirely legal to own an XL bully dog.

The order that we are discussing today establishes the exemption process for owners and rehoming centres wishing to keep dogs and to adhere to the new safeguards beyond 31 July 2024. The order also provides for a compensation scheme for those XL bully owners who, unfortunately, decide not to keep their dogs. In addition, the order ensures that the historic process of tattooing is not required as a means of identifying dogs for which an exemption is sought.

Owners of XL bully type dogs will have from 1 April 2024 to 31 July 2024 to seek a Scottish Government exemption for their dogs. From 1 August 2024, it will be an offence to own a XL bully dog without having, or having applied for, an exemption. Let me be clear: any responsible XL bully owner who wishes to keep their dog can do so, but they must seek an exemption and agree to adhere to the exemption conditions.

As we approach the go-live date of 1 April for the exemption and compensation schemes, I can advise that full details will be published on the Scottish Government and mygov.scot websites on the first day on which applications can be submitted. We will not publish details before then to avoid early applications being made when they would be invalid.

We understand dog owners' concerns about the possible impact of the new controls. I assure the committee that the Scottish Government takes animal welfare seriously and is committed to the highest possible welfare standards. My officials consulted with various stakeholders, including welfare organisations, throughout the development of the new safeguards that are part of signing up to an exemption.

I have also committed to regular monthly engagement with the dog control coalition, whose members include the Scottish Society for the Prevention of Cruelty to Animals, the Dogs Trust and the British Veterinary Association, to ensure that everything is being done to implement the new safeguards in the best way possible. My officials also meet weekly with the dog control coalition and fortnightly with the Convention of Scottish Local Authorities, Police Scotland and local authorities through the Scottish Government-led implementation forum.

I am happy to answer any questions that members might have.

The Convener: We move straight to questions from members.

Sharon Dowe (South Scotland) (Con): I think that the minister has answered my questions in her opening statement, as they were about how people will be granted an exemption certificate. Originally, I had intended to ask the following questions. Will the Scottish Government publish

exemption information soon to maximise the amount of time that dog owners will have to apply for an exemption and consider their next steps? Under what circumstances will the Scottish Government grant a certificate of exemption? What information is required? In your opening statement, you said that anyone who wants to keep their XL bully dog will be able to do so. Is that simply a formality, or will there be people who will not be allowed to keep an XL bully dog? Is it the dog or the person who is being exempted?

Siobhian Brown: Anyone with an XL bully who wants to keep their dog will be able to do so. As I have said previously to the committee, of the 61,000 people who applied in England and Wales, only 200 decided not to keep their dog. The vast majority of responsible XL bully dog owners will want to keep their dog, and someone with an XL bully dog who wants to keep it simply has to apply for an exemption. The scheme will go live on the website on 1 April. The process is very clear. In addition, a video that shows the process will go out on social media. It is very user friendly.

Sharon Dowey: You mentioned responsible dog owners. Are there any circumstances that you can think of in which someone would not be given an exemption?

Siobhian Brown: There are none that I am aware of. Jim, has that happened in England and Wales?

Jim Wilson (Scottish Government): The vast majority of applications that have been made to the Department for Environment, Food and Rural Affairs have been approved with no issues. The challenge that DEFRA officials have had is that relevant information has sometimes not been provided. For example, the absence of confirmation that an insurance policy has been taken out might mean that a certificate of exemption cannot be granted immediately.

I am aware of a number of outstanding applications in England and Wales. As I said in the evidence session on the first Scottish statutory instrument on this matter, a backlog of cases has built up that UK Government officials are still working through. The controls in England and Wales came fully into play on 1 February. That gives a flavour of some of the challenges that the UK Government is experiencing in relation to exemption applications.

As the minister has said, a number of requirements need to be complied with in order to obtain a certificate of exemption. I will quickly run through them, although I should say that this information will be available on Scottish Government channels, too.

The requirements are that the owner must keep the dog at the same address as the certificate

holder, except for a maximum of 30 days; they must provide notification of any change of address, including changes within a 30-day period; they must provide notification of the dog's death; they must maintain suitable third-party insurance for the lifetime of the dog; they must ensure that the dog is muzzled and on a lead when it is in a public place; they must keep the dog in conditions that are sufficiently secure to prevent the dog's escape; and they must provide access to allow reading of the dog's microchip when requested to do so by a police officer or an authorised local authority officer.

We expect that owners will comply with those conditions, but some queries might need to be investigated further if there are any gaps in relation to the requirements. So far, in the vast majority of cases in which exemptions have been issued in England and Wales, application forms have been completed on time and correctly.

Sharon Dowey: Do we know how much the insurance will cost for the dog owners concerned?

Jim Wilson: The information that we will put on the Scottish Government's mygov.scot website points owners towards the Dogs Trust companion club as an option to consider. It charges £25, or £12.50 if the person who is applying is over the age of 60. We are not saying that owners must use the Dogs Trust companion club, as they might already have insurance. They will have the opportunity to consider an insurance policy that is right for them, but we felt that the fairly modest cost of the insurance cover offered by the Dogs Trust was worthy of promotion.

Sharon Dowey: The financial memorandum does not come with any money in it. Who is going to administer the scheme? If there are any issues, will the police investigate or are we going to invest more money in dog warden's?

Siobhian Brown: The Scottish Government will run the exemption scheme. We are in close contact with Police Scotland, local authorities and COSLA—they are considering the potential costs and will get back to us. It is the Scottish Government, not Police Scotland, that will run the scheme.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, minister. This situation stemmed from the UK Government introducing legislation unilaterally, and I am interested to know whether any cross-border issues still have to be ironed out or whether any other concerns have arisen.

Siobhian Brown: Currently there are no such issues in Scotland, because, until 31 July 2024, XL bully owners who move to Scotland from England and Wales can continue to bring their dog with them and seek an exemption under the

Scottish scheme. However, that will change. As the law stands—and if the SSI is not annulled—those owners will not be able to live in Scotland and legally own their XL bully dog from 1 August 2024, when the new safeguards will be fully in place in Scotland.

The position in England and Wales is different, because a safeguards regime has been fully in place since 1 February 2024. Since that date, a person from Scotland—or, indeed, any other country—has no longer been able to take their XL bully to England and Wales, and there is no ability down there to seek an exemption for their XL bully dogs.

Within that context, I wrote on 8 March to the UK Government Minister for Biosecurity, Animal Health and Welfare, Mr Douglas-Miller, to raise the issue of cross-border movement of XL bully dogs within the nation of the United Kingdom. To date, I have not received a response. However, in its engagement with DEFRA officials and representatives of devolved Administrations, the Scottish Government has previously raised the issue of the validity of the exemption certificates when an owner of an XL bully dog, who lives in Scotland, subsequently moves to England or Wales for work or any other reason.

I consider it important to ensure that law-abiding citizens who have complied with all the requirements to legally retain their dogs, as a consequence of the new safeguards that have come into place, are not unduly affected by the exemption regime rules when they wish to move to Scotland or Wales or vice versa. I am keen to work with the UK Government to look at collectively addressing the issue in a consistent and fair way and to avoid a situation where the owner would be required to dispose of their dog or would run the risk of being criminalised for possessing an XL bully dog without an exemption.

It is an on-going matter. When the legislation came in, it had unintended consequences, because it was not thought out, but we are raising the issue with the UK Government and I hope that it will be in contact with us in order to resolve it.

Pauline McNeill (Glasgow) (Lab): Good morning. You have probably answered most of the questions that I had in relation to the exemption—the issue has been well covered. I suppose that the fact that the dog owner can go on holiday for up to 30 days in a 12-month period makes sense.

As you have said, minister, the principle behind the legislation is to prohibit the breeding and selling of XL bully dogs. Is the thinking that, in time, there will be no XL bully dog owners in Scotland?

Siobhian Brown: That is the intention of the legislation.

Pauline McNeill: I will ask a question that was put to you last time, and which I am sure that Christine Grahame asked, too. What you have said might be the principle behind the legislation, but, given the definition, the breeders of XL bully dogs might just breed slightly smaller dogs. Will you have to reconsider how the legislation is framed at that point?

Siobhian Brown: I think that in the first evidence session on these SSIs I said that we are in a position that we never wanted to be in, and I do not want us ever to be in this position again with another breed. As we deal with the XL bully dog situation, I am considering what needs to be done through legislation so that we are not put in this position again. As we know, this is, for the Scottish Government, all about deed, not breed, and we are sticking to that. I know that we are diverging from that approach in this particular case, but that is something that we did not want to do. Moving forward, I do not want to be in a position in six months or a year's time where there is an issue with another breed and we are having to do this again.

09:15

Pauline McNeill: There have been some pretty horrible attacks. With regard to the one that was mentioned at the previous committee meeting, the last time that I checked, the breed of the dog had still not been identified. It might not even be possible to identify the breed. The intention is to capture a breed of dog that is seen to be more prone to attacking and to end its existence, but in some high-profile incidents, we have not established that they involved XL bully dogs. You might well give me the same answer that you have just given, but have you given any thought to that?

Siobhian Brown: Absolutely. Even when we started those conversations with stakeholders back in October last year, it was already one of the main concerns that they highlighted to me in relation to moving forward with the definition. As you know, the phrase used in the press is “XL bully-type dog”, although the UK Government did put a definition of XL bully on its website, which is where people have to go for it. It sets out the height of the dog and the width of the body so that people can determine whether the dog is an XL bully; however, for the normal Joe Blow in the street, that sort of thing would be very difficult to know.

Pauline McNeill: Does that mean that, in some cases, there is just no way of knowing? I do not know whether there are any tests that can be done—forgive my ignorance.

Siobhian Brown: Jim Wilson might know more, but I did hear about a DNA test. I am not sure

whether it is viable for every XL bully owner to do one.

Jim Wilson: I would stress that, ultimately, the exemption process is owner led, so they have to look at the conformation standard that is already published on the Scottish Government website. Through my direct conversations with animal welfare stakeholders, I know that there will be cases in which there might be uncertainty whether a suspected XL bully-type dog is, in fact, that type of dog. Occasionally, but not frequently, a subject matter expert has been brought in to do a one-off assessment, the cost of which would be £250 to £300.

In learning from the approach taken in England and Wales, where there is also an owner-led process, we have adopted a precautionary approach. One of the key characteristics of the conformation standard is the height of the dog—that is, 20 inches, or 51cm, for a male and 19 inches, or 48cm, for a female. If the dog does not meet the minimum height requirement, no assessment is required. In the time that I have spent with local authority dog wardens and police, I have seen a vet undertake an assessment of an alleged pit bull-type dog, where they went through a whole series of checks.

The minister is right that there might be some testing to determine the type. It is not a recognised breed of dog, so we acknowledge that it is challenging.

Pauline McNeill: Thank you very much.

The Convener: In the interests of time, I ask members to confine their questions to the SSI that is being considered today. I know that there are a lot of elements to this issue.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning to the minister and to Jim Wilson.

I have a couple of questions today that come from the Blue Cross briefing. As Pauline McNeill has already raised an issue outlined in the briefing—that is, the definition—I will not ask about that.

One of the two areas that I want to ask about is the veterinary sector. In cases in which there is no application for an exemption, are you confident that there is capacity to perform the neutering? Have you had a think about the impact on vets and their staff if they have to carry out such work on a healthy dog?

Siobhian Brown: The British Veterinary Association is a member of the dog control coalition, which I have met regularly since last October. When we meet, we listen to its concerns. Concerns about capacity or a breaking point have not been raised specifically, but several other

issues have been raised with us, and as we move forward, we will work with the coalition and through the implementation group, too.

Fulton MacGregor: Will it continue to be involved?

Siobhian Brown: Yes, of course.

Fulton MacGregor: That is excellent.

My final question is on a similar theme. What about those who do not seek an exemption but look instead at rehoming options? What indications are you getting about the capacity challenges that kennels face? I have previously mentioned Bedlay Gardens in my constituency, for example. Can any additional support be offered to such organisations?

Siobhian Brown: Unfortunately, people have not been able to rehome since 23 February. The issue of kennelling has been raised with my officials and at meetings that I have attended. As well as the implementation group that has been set up with Police Scotland and local authorities, my officials have set up a kennelling working group so that we can work closely with organisations such as the organisation in your constituency to learn about all the issues and see how we can work together moving forward. They will be able to highlight any issues that they face as we move forward with the legislation.

Russell Findlay (West Scotland) (Con): I have a quick question that relates not specifically to the SSI, but to something that the minister said in her evidence. She said that she believes in deed, not breed; however, the legislation is breed specific. How two opposing opinions can be held at the same time is causing people some confusion. What is your position, minister?

Siobhian Brown: My position is the Scottish Government's position: this is about the deed, not the breed. As Mr Findlay is well aware, we are in this position because legislation was announced last September with no notice to the Scottish Government, and we found ourselves—

Russell Findlay: But what is the problem, if those dogs are not inherently a problem? What problem would there be if they came to Scotland, given that this is not an issue of breed?

Siobhian Brown: I believe that it is up to the owners of dogs to be responsible.

Russell Findlay: So you do not believe in this legislation.

Siobhian Brown: I do believe in this legislation, because we have to move forward. As you highlighted last year, the Scottish Government should be moving forward—

Russell Findlay: We believe in the legislation. We support it, but if you are saying that it is about deed, not breed—*[Interruption.]* I am sorry, but John Swinney is trying to interrupt. I would like to ask the minister a question.

John Swinney (Perthshire North) (SNP): We are supposed to be discussing the order in front of us.

The Convener: Members!

Russell Findlay: John Swinney is not the convener of this committee. That is not his role.

The Convener: If you can finish asking your question, we will move on.

Russell Findlay: My question directly relates to the evidence that the minister has already given, and it is pertinent to why we are sitting here talking about this.

Siobhian Brown: As I have said, in this circumstance, we are deviating from the principle a bit, given the position in which we have found ourselves as a result of the UK Government bringing in rushed legislation. However, moving forward, the Scottish Government will still commit to deed, not breed.

Russell Findlay: That was incoherent, but thank you for trying to answer the question.

The Convener: Minister, I know that you are very well aware that a number of owners of XL bully dogs and others have expressed concern about the legislation and how it will work in practice, and that a particular focus has been on the welfare of animals. It seems to me that the SSIs and how the new policies work out in practice could be considered by the Government in consultation with others after a couple of years. In other words, there could be a post-legislative review of the legislation. Would the Scottish Government be willing to consider that?

Siobhian Brown: Yes. We have found ourselves in a position that we never wanted to be in, and that has been highlighted in what we have gone through over the past couple of months. The issue is very emotive, and I know that there are very polarised opinions on it. I have already reiterated that we do not want to be in this position. Moving forward, we really need to look at the legislation and at reform.

The Convener: That is helpful.

Would Christine Grahame like to come in?

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I am not going to ask a question. Do you wish me to proceed?

The Convener: Does any other member want to speak?

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I have some specific questions, but I do not want to cut across Ms Grahame.

Christine Grahame: That is a dangerous thing to do, but never mind.

Bob Doris: If there is an opportunity, I will ask a question.

The Convener: Just to confirm, Christine Grahame, would you like to ask any questions at this point?

Christine Grahame: No, I am not going to ask questions; I am just going to submit.

The Convener: Bob Doris, would you like to ask anything?

Bob Doris: Thank you. I formally apologise to everyone for being late to the committee because of family circumstances. I also apologise if there is a degree of duplication because I missed something. I hope that there is not.

I want to ask about exemptions. If I have understood it correctly, there are some exemptions in the statutory instrument. If someone passes away, a certificate of exemption can be transferred under certain circumstances, and there is still a rehoming exemption for puppies up to 31 July. Therefore, the Government has conceded that there are certain circumstances in which exemptions can be brought in.

The minister and I had a constructive meeting, even if it was not ultimately fruitful for me. I ask her to put on record why she believes that it is not possible to have an exemption for someone who moves house through no fault of their own to a place that is restrictive as to whether they can have any pet or any dog whatsoever. That is not even specific to XL bullies. That person cannot gift or transfer a certificate of exemption to another individual, which I think is pretty unfair. What is the Government's position on that?

Siobhian Brown: Mr Doris and I have discussed that at length. One of the unintended consequences was to do with what happened if somebody died. That was not covered in the legislation that came into force on 31 January in England and Wales; it came up later and we have been able to pick up on it and include it in our legislation.

As we go through the process, a few things have been highlighted, one of which is the issue that Mr Doris raises. My understanding is that, to legislate for that through the Dangerous Dogs Act 1991, we would need primary legislation, not

secondary legislation. Perhaps Jim Wilson could comment on that.

Jim Wilson: I will reflect on recent discussions that we have had on two issues. One relates to the challenges that could potentially have been faced. I appreciate that Mr Doris provided an example of a concern around housing and what that might mean for XL bully dog owners. We put out targeted communication to a range of social housing organisations and a couple of private housing organisations to stress how the new safeguards will work in practice. Ultimately, we recognise that owners will have to comply with the exemption requirements. If they follow the process, they will be law-abiding and will not be breaking any rules under the 1991 legislation.

So far, in response to the communication that we sent out a few weeks ago, I have not received anything noting concerns from any organisation in relation to housing, but I recognise that, in certain cases, the owners of XL bully dogs might be a bit worried because they are not sure how their tenancy agreement might be impacted. That boils down to the challenges around policies that are being set by housing associations in relation to animals. In some cases, a tenant might not be allowed to have any type of dog, cat or whatever. As I said, we have contacted a number of housing organisations to set out how the new safeguards will work in practice.

On the point about the challenge if somebody becomes seriously unwell for more than a 30-day period, there are no legislative powers available to address that through secondary legislation, so that would require primary legislation. I have raised the issue with the UK Government to get a sense of whether it is a big issue. In a small number of cases, there have been concerns about what it would mean if someone is simply unable to look after a dog.

Again, we need to be mindful that the policy is being developed at rapid pace and there are some unintended consequences that we will have to grapple with. Mr Doris has raised a really good point in relation to housing and the issue of long-term illness.

Bob Doris: Although I wish that we were not in this position, minister, I think that you are confirming that, even if the Scottish Government's policy was to have further exemptions, that would require primary legislation, so it would not be possible using the secondary legislation mechanism anyway.

Siobhian Brown: That is my understanding.

09:30

Bob Doris: I imagine that, if a suitable legislative vehicle was going through the Parliament, there could be a relatively simple bolt-on to that, with provisions allowing exemptions to be reviewed under secondary legislation. If such a vehicle was to come through the Parliament, would the Scottish Government consider adopting that approach?

Siobhian Brown: I think that there is a need for a reform of dog legislation so, yes, everything would be considered.

Bob Doris: Would that be both in the short term and the long term?

Siobhian Brown: Yes, we could look at that.

Bob Doris: Compensation is available to XL bully dog owners, but there is a cut-off or deadline of 30 September, I think. If an XL bully dog owner was not able to look after their dog for any reason after that point but had complied with the legislation and had the exemption form, should they not be entitled to compensation after that date?

Siobhian Brown: At the moment, because the legislation is new, I do not think that that circumstance even applies in England and Wales yet. I do not know whether that has been considered or raised with DEFRA at the working group.

Jim Wilson: I am happy to pick that up with UK Government officials. Our exemption scheme is not open yet, but it will go live on 1 April. The reason for allowing people that window of opportunity, if I can call it that, to consider whether to pursue compensation is to ensure that people have adequate time to make that very difficult decision.

Bob Doris: Theoretically, if someone has their exemption certificate and has to give up their dog in October for whatever reason, through no fault of their own, they would not qualify for compensation as things stand, but the Government is perhaps open minded about reviewing that.

Siobhian Brown: We can definitely look into it.

The Convener: That completes our evidence taking on the SSI. We therefore move to our next item of business, which is to consider a motion to annul the Dangerous Dogs (Compensation and Exemption Schemes) (Scotland) Order 2024. The motion to annul has been lodged in the name of Christine Grahame. As members have had the opportunity to question the Minister for Victims and Community Safety on the instrument, I now invite the committee to dispose of the motion to annul.

I invite Christine Grahame to move motion S6M-12516 in her name and to make some brief additional comments if she wishes.

Christine Grahame: I have been deleting like mad so that I can get in what I want to say.

The minister has been put in an invidious position. Notwithstanding that, it is my duty as a parliamentarian to indicate where I have grave concerns about the quality of the legislation.

It is important to consider the consequences to date of the XL bully-type provisions. In this instance, I am talking about the impact of the compensation and exemption schemes in England and Wales, because we can see what has happened there. According to DEFRA, since the start of the ban on XL bully-type dogs, 55,000 dogs have been registered and there have been 61,000 applications. That gives an idea of the size of the issue. Those numbers are staggering. As a result of some horrendous attacks, although they have been few in number, at least 55,000 dogs will be neutered and muzzled, and some will be put down. Indeed, 300 have been put down to date. Those dogs were not subject to any criminal proceedings and they were healthy. The distress to owners is considerable.

DEFRA has suggested a deregistration scheme. We have heard about issues concerning the definition, as ably described by Pauline McNeill. If a dog is just an inch shorter than the 20 inches for a male XL bully-type dog, it does not comply with the definition. It is the owner who has to do all the work—nobody else. DEFRA is suggesting a deregistration scheme, but it has not said how and when that will actually work. By the time that that is clarified, the dogs concerned will probably be neutered, and they might have been muzzled for months. That shows the clumsiness of the legislation.

The onus is on the owners, who are searching for information online about cane corsos, Rottweilers, German shepherds, Staffordshires and even Jack Russells to work out what they have and whether their dog complies.

Last November, the BVA made it plain to DEFRA that it is

“extremely concerned by Defra’s assertion that there is sufficient veterinary capacity to effectively manage the ban.”

It also stated that

“it is ... vital that additional support is provided for owners to help them type their dog”,

and asked for an

“extension to the ... neutering deadlines”,

which has been granted. There are huge concerns about animal welfare from DEFRA itself, which

compiled the definition—I hope that members have read it, because it goes to many paragraphs.

I thought that I would quote from a dog owner, who said:

“I have lost all of my rights to make appropriate welfare choices for my dog to treat his chronic stress, he has lost his freedoms simply because he’s two inches taller than another dog, and any day of the week the police might knock on my door to arrest me if I choose to meet my dog’s basic welfare needs in a completely safe way. I would be facing six months in prison simply for meeting my dog’s needs without risk to anyone.

I have agreed today with my local police officers, and in consultation and agreement with my vet, that should at any point a warrant be issued to seize my dog, the vet will attend and euthanise the dog rather than allowing him to be seized. He has lost 5kg just having to wear a muzzle for two hours a day—can you imagine his stress levels for 9 months in police kennels? That would simply be a life which was not worth living in terms of his welfare.”

Like tens of thousands of dogs in England and thousands in Scotland, that is a dog that has not been a problem.

At the committee’s meeting on 21 February, when it discussed the earlier order, the minister said that

“selling, gifting and exchanging an XL bully dog will be prohibited and the loophole will be removed.”

I focus on the word “loophole”. If the loophole has been closed, because the Government thought that there would be an invasion of thousands of XL bully-type dogs to Scotland, why are we proceeding with the second phase, given the small number that is causing concern as opposed to the large number that is not—which we estimate in Scotland to be 5,000-plus—and on which draconian restrictions are being put, as well as on their owners?

At that previous meeting, Fulton MacGregor said that he thinks that

“this is very bad legislation from the UK Government ... The experts in this field clearly and consistently tell us that this legislation is bad, has a high risk of not working, is a knee jerk, and is ill thought out”.

The minister said:

“The definition that was determined by DEFRA is that the male has to be 20 inches in height and the female has to be 19 inches. Therefore, an XL bully that was 16 or 17 inches would not have to wear a muzzle and lead.”

That is complete nonsense.

I will be brief, but I think that it is important to put this on the record, because Parliament is not getting to discuss the issue. One point about the Dangerous Dogs Act 1991 is that it does not apply in a private residence, whereas the Control of Dogs (Scotland) Act 2010 does. Many attacks take place in a garden or in a home. Jim Wilson said at the previous meeting that the Dangerous Dogs Act

1991 “has many opponents” and that the Government is

“seriously considering the opportunities to strengthen and enhance the Control of Dogs (Scotland) Act 2010.”

He went on to say:

“in the engagement that we have had with animal welfare stakeholders, they have, quite fairly, raised a number of concerns about the ethical and practical concerns that vets are facing. In certain cases, they are dealing with dogs that they might deem to be perfectly well-behaved, not aggressive and perfectly healthy. I appreciate that the numbers are not huge, but a high number of dogs are nonetheless being euthanised.”—[*Official Report, Criminal Justice Committee*, 21 February 2024; c 3, 11, 23-24.]

If the committee agrees to the order, you will be saying—that is, some of you but not all of you—that it is not good law but you will nevertheless push it through. Dogs that may or may not be XL bully types—an owner has to decide—will be neutered and might be euthanised, and the Government will pay for that. That is just wrong.

Russell Findlay said that he believes

“that legislation is needed, and urgently, because we need to address the risk to public safety. We all agree that we need to address that. Where we disagree is on how we do that. In the past four weeks, Police Scotland officers have had to shoot dead two dogs in the street, both of which—

I underline this point—

“may or may not have been XL bullies”.

He went on:

“I know that there is an issue with definition, but if members look at the Bully Watch UK material, which is widely available, they will see that a lot of it goes some way towards explaining that.”—[*Official Report, Criminal Justice Committee*, 21 February 2024; c 40.]

However, that is the problem. He talked about two dogs, when there are thousands of such dogs in Scotland. He said that those dogs may or may not have been XL bullies, which is a point that Pauline McNeill raised. That is the problem with tackling a breed or a breed type, rather than the actions of the owner who is in control of the dog.

Minister, you had the opportunity not to pursue this second order. The loophole has been closed, so I cannot accept that we should proceed with the order.

I was not going to move my motion, because I know that the committee will agree to the instrument and that it will be pushed through, even though members have reservations. However, as parliamentarians, we have an obligation that I do not think should be taken lightly. We are able to vote on legislation, which is why I will move the motion. I want every committee member who agrees with the instrument to have their name beside what I call absolutely poor legislation that

demonises owners and will lead to misery for many dogs.

I move,

That the Criminal Justice Committee recommends that the Dangerous Dogs (Compensation and Exemption Schemes) (Scotland) Order 2024 (SSI 2024/70) be annulled.

The Convener: Thank you for that comprehensive overview.

Would any other members like to come in?

Russell Findlay: I think that I should come in, because Christine Grahame quoted me directly. It was not clear exactly where the quote ended, but I did not recognise—

Christine Grahame: That was the entire quote. I did not truncate it.

Russell Findlay: There was no obvious “end quote” in the telling of it.

Christine Grahame: I beg your pardon. I will amend that for you.

Russell Findlay: I genuinely did not know where it was—

Christine Grahame: It ends with:

“they will see that a lot of it goes some way towards explaining that”

—close quote.

Russell Findlay: Was that from the previous committee meeting?

Christine Grahame: Yes. It is from the *Official Report*.

Russell Findlay: The transcript that I am looking at differs somewhat, so I wanted to question that.

Christine Grahame: I am sorry, Mr Findlay, but that is from the *Official Report*.

Russell Findlay: I will have to go back to compare and contrast the two things.

Christine Grahame: Please do.

Russell Findlay: My point is that we believe that the legislation is necessary because public safety is paramount. These dogs are maiming and killing people across the UK, including in Scotland, which is why it is so important—

Christine Grahame: Can I respond to that, please, convener?

The Convener: I will bring you back in.

Christine Grahame: Mr Findlay, you say, “these dogs”. Which dogs? Are they XL bully types or not?

Russell Findlay: I mean—

Christine Grahame: You do not know.

Russell Findlay: I am looking to the convener to see whether we are allowed to have a whole debate about the issue, because I suspect that we might not be.

The Convener: We are more or less in debate, so I am happy to invite members to come in, but I would like to avoid having a ping-pong discussion about what is in the *Official Report*. We are here to discuss a specific SSI on exemptions and compensation so, if we can confine our remarks to that, it would be appreciated.

Russell Findlay: With that in mind, I will not pursue the generalities. It is also worth pointing out that the committee has a pressing need to deal with the stage 1 report on the Victims, Witness, and Justice Reform (Scotland) Bill.

Pauline McNeill: Christine Grahame is absolutely right that some of the Parliament's procedures are not satisfactory, and this is one of those. I would have preferred other members to have had a say but, as committee members, we have to take responsibility for the process.

I agree with Russell Findlay that the process has been difficult, because we have had to come to quite a quick conclusion on a widely reported public safety issue. When we began the process, the dogs concerned were XL bully types, but we still do not know whether the dogs in some cases were XL bullies.

Christine Grahame is right to raise those points. I am slightly nervous, but I do not think that the committee has much choice. I think that there is a loophole. I suppose that the minister is saying something that may be proven right in time. There may well be a loophole but, if the founding legislation is not quite what it should be, we are building on something that might be flawed. We cannot know that now, which puts us in an unfortunate and difficult position because we have to make a decision today.

Christine made a point about scrutiny. There are some areas of the Parliament's work that are so substantial that they are not really suitable for SSIs, but we are stuck with a process that was decided some time ago and not by us.

The Convener: Would any other members like to come in briefly?

09:45

Sharon Dowey: I have one final point that is more of a concern than a question. I go back to the exemption certificate, which I have a concern about. I take the point that it is a "deed, not breed" approach. We are talking about whether we have responsible dog owners. I asked whether there are

any circumstances in which someone would not get an exemption. I have a concern about safety: if someone has a criminal record or we do not think that they are capable of looking after a dog, especially that type of dog, why would we grant them an exemption certificate that would allow them to keep that dog?

The exemption certificate seems to be a formality. Dog wardens, police or neighbours may think that a person should not have a dog, as there may be concerns about how that person controls a dog. It seems to me that the current legislation would allow those people to have an exemption certificate and keep their dog.

Siobhian Brown: Ms Dowey raises a valid point. She will know that we have replicated what the UK Government implemented at the end of January. I do not think that there was any provision for, as such, vetting dog owners who apply for exemption certificates. I go back to the point that I keep reiterating: that demonstrates the need for a review of legislation relating to dogs, because there are some irresponsible dog owners who should not be dog owners.

The Convener: If no other member wants to come in, I will go back to the minister to make any further remarks.

Siobhian Brown: I thank Christine Grahame. I know that she is passionate about the issue, which shows how polarised the views are on the intersection between animal welfare and community safety. As I just said to Ms Dowey, that keeps confirming to me that we need to review the legislation relating to dogs. Initially, we will need to look at the Control of Dogs (Scotland) Act 2010, which Christine Grahame introduced in the Parliament. I am keen to work with her and any other member who wishes to be part of that process.

The Convener: I invite Christine Grahame to indicate whether she will press or withdraw the motion.

Christine Grahame: I will definitely press it. I want members to be accountable for their votes.

The Convener: The question is, that motion S6M-12516 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Clark, Katy (West Scotland) (Lab)
 Dowey, Sharon (South Scotland) (Con)
 Findlay, Russell (West Scotland) (Con)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 McNeill, Pauline (Glasgow) (Lab)

Nicoll, Audrey (Aberdeen South and North Kincardine)
(SNP)
Swinney, John (Perthshire North) (SNP)

09:48

Meeting continued in private until 11:54.

The Convener: The result of the division is: For 0, Against 8, Abstentions 0.

Motion disagreed to.

The Convener: That completes our deliberation of the SSI as well as the committee's business in public. I thank members and witnesses for their attendance. We now move into private session.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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