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Dear Finlay Carson MSP

As the Minister with responsibility for the Dog Theft (Scotland) Bill, I am writing to you to provide the Scottish Government's initial views on the Bill, as introduced by Maurice Golden MSP.

I am also copying this letter to the Finance and Public Administration Committee.

The Scottish Government recognises the well-intentioned nature of the Bill as introduced, and we welcome the Committee's call for evidence and will engage fully with the Committee's consideration of the Bill.

However we do have some queries in relation to understanding the full policy approach as laid out in the Bill. At this stage we will be taking a neutral position on the Bill as stage 1 scrutiny proceeds.

Our full written response is attached.

Yours sincerely,



SIOBHIAN BROWN

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MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE RURAL AFFAIRS AND ISLANDS COMMITTEE AND THE FINANCE AND PUBLIC ADMINISTRATION COMMITTEE

Introduction

1. This memorandum has been prepared by the Scottish Government to assist the Rural Affairs and Islands Committee in their consideration of The Dog Theft (Scotland) Bill ("the Bill") introduced by Maurice Golden MSP on 17 February 2025
2. We wish to be consistent in our memoranda to both committees, therefore both policy and financial considerations are outlined below.

Background

3. The key elements of the Bill, as introduced, are that it:
 - Seeks to make dog theft a specific statutory offence with penalties of up to five years in prison and/or an unlimited fine.
 - Provides for certain defences which a person can use when charged with the offence of dog theft to show that they had lawful authority or a reasonable excuse for taking or keeping the dog. There are three defences available under the Bill which can be raised where relevant. They are:
 - lawful authority to take or keep the dog;
 - reasonable excuse to take or keep the dog;
 - finding or taking possession of stray, lost or abandoned dogs.
 - Makes the theft of an assistance dog an 'aggravated' offence. As a result, the court is required to consider whether a sentence given should be enhanced to reflect the significance of taking an assistance dog.
 - Would allow people who are victims of dog theft to give a victim impact statement to the court.
 - Produces a duty on the Scottish Government to collect certain data on dog theft and to publish and lay before the Parliament an annual report which includes that data.
 - Produces a duty on Scottish Ministers to review how the Act is working after five years.

Consultation

4. On 21 October 2022, Mr Golden lodged a draft proposal for a Member's Bill to: "create a new statutory offence to tackle the problem of dog theft and other situations where a dog is taken or kept without lawful authority, that would take account of considerations such as the feelings of dogs and dog welfare; and improve data recording to better inform detection and prevention efforts"
5. A consultation document accompanied the draft proposal. The consultation ran from 22 October 2022 to 16 January 2023.

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6. Mr Golden's consultation asserted that the current common law (theft and robbery) is not appropriate for the theft of pet dogs because it does not allow for the court to consider the welfare of the dog or the owner when sentencing.
7. The consultation suggested the sentient nature of the dog is the most important factor when it is stolen which far outweighs the financial value of the dog and the nature of the offence and the sentence for a conviction should reflect this.
8. The consultation suggested that a new offence is necessary to alter the fundamental reason for punishing the abduction of a dog, as it is the harm caused to the dog and by extension the owner that should be the primary concern in addition to any financial impact, not simply the financial impact of loss of an object (i.e. the dog).
9. The consultation focused on a new offence relating to dogs for reasons of 'practicality' rather than an indication that dog theft was a more important issue than other forms of theft of animals and pets.
10. In respect of how the court approaches sentencing in relevant dog theft cases, the consultation analysis prepared by the Non-Government Bills Unit highlighted the Law Society response to the consultation:

'In its response it highlighted that the consultation offers no evidence that the courts in Scotland currently treat dog theft purely in terms of the monetary value of the dog:

"The Scottish Sentencing Council's Sentencing Process Guideline requires sentencers to consider and assess the seriousness of the offence as the first step in the process. Seriousness is judged against the criteria of culpability and harm. The greater the culpability or harm then the more serious the offence. In assessing culpability, the court will look at issues such as whether the crime was premeditated or planned. In assessing harm, the court will consider the impact on any victim or victims, in this case the dog's owners. Paragraph 14 of the Sentencing Process Guideline states that harm is to be interpreted broadly and includes offences where harm is caused to an individual or to property. Therefore, in the specific case of crimes where the 'property' involved is a live animal, the court may legitimately consider the impact on the dog's health and wellbeing as well as the distress caused to the owner"¹.

11. The consultation paper indicated that a further justification for a new offence is to improve data collection. Mr Golden asserted that there is a lack of accurate data on dog theft and creation of a new offence would change this as the police would be required to record dog theft as a standalone crime separate from generic theft or robbery. This, Mr Golden argued, *'will provide more accurate data to inform future efforts by the police and policy makers to tackle dog abduction.'*

¹ [final-version-dog-abduction-summary.pdf \(parliament.scot\)](#)

12. Mr Golden also took the view publication of accurate data would allow the public to assess the effectiveness of enforcement of such crimes more easily.

13. Mr Golden's consultation stated he had not come to a view on exactly the terms in which his Bill will be drafted but suggested a proposed Bill will make no change to existing common law offences or alter the definition of what constitutes dogs as pets and dogs as working animals.

14. The consultation suggested that creating a new specific offence that runs alongside the existing common law offences will not dilute the available punishment. Instead, Mr Golden asserted setting what he considers to be a more realistic maximum penalty would have an improved deterrence value given his view of an increased likelihood of a new lower maximum penalty being used in practice.

15. In total, 237 responses were received to the consultation. The responses can be categorised as follows:

- 202 (85%) were members of the public,
- 10 (4%) were professionals with relevant experience,
- 7 (3%) were politicians, and
- 3 (1%) were academics.
- Twelve (5%) were from third sector bodies,
- Two (1%) were representative organisations, and
- One was a public body.

16. The Scottish Government notes that the vast majority of responses to the consultation were supportive of the draft proposal. With 93% fully supportive, and 4% partially supportive.

17. The Scottish Government notes the strong support for the Bill that was expressed during the consultation phase, particularly from those groups representing dog welfare and dog owner interests. Those who indicated support for the Bill during the consultation included the Dogs Trust, Scottish SPCA and the Kennel Club.

18. However, it is also acknowledged that the vast majority of respondents were offering views as non-legal experts, and it is instructive that the Law Society offered sceptical and specific feedback challenging a number of the assertions the consultation made.

The Scottish Government's Position

19. The theft of a dog is clearly an emotive issue. The Scottish Government recognises the well-intentioned nature of the Bill as introduced, and we welcome the committee's call for evidence and will engage fully with the committee's consideration of the Bill.

20. Whilst the Scottish Government recognises the well-intentioned nature of the Bill, the Scottish Government acknowledges the views that the Bill has received from the Law Society.

21. The Scottish Government considers that there are questions which the committee may wish to consider. These are similar to many of the questions the committee has posed to Mr Golden following the introduction of the Bill. These are outlined below:

a. Section 1 – offence of dog theft:

- i. Reasons for believing that there is a low level of prosecutions under the common law for dog theft as compared to incidents of dog theft that occur, and why a specific statutory offence would lead to more prosecutions.
- ii. Further information about instances where it would be more appropriate to prosecute under the common law offence,.
- iii. Rationale for specifying that instances of a dog theft following a relationship breakdown should be treated differently from all other instances of a dog theft.
- iv. Reasoning for providing for a defence given that, if a person had “lawful authority” to take or keep a dog, it could not have taken or kept a dog from the person with lawful control of it.
- v. Further information about a definition of “lawful authority” and “reasonable excuse” to inform consideration of this proposed defence
- vi. Section 1(4) is a defence that the person who took or kept the dog did so because they believed it was a stray, that they “took all reasonable steps” to comply with the Environmental Protection Act 1990 (Delivery of stray dogs to police or local authority officer) and did not keep the dog for more than 96 hours. Understanding why the time period is 96 hours, rather than any other time period.
- vii. The 1990 Act provides that a local authority officer, where the person who takes the stray dog wishes to keep it and the officer having complied with any statutory procedure, shall “allow the finder to remove the dog”. Further information on what is intended in section 1(4)(c) and how it relates to the 1990 Act.
- viii. Section 1(6) provides that the dog theft offence would be punishable by up to five years in prison overall (up to 12 months on summary conviction; up to five years on indictment) and/or the maximum fine level available to the court the person is tried in. Further information about why these maximum penalties would provide a more “proportionate punishment” than those already available for the common law offence of theft and make a statutory offence a stronger deterrent than the current common law offence where penalties all the way to life imprisonment exist.

b. Section 2 - Theft of assistance dogs.

- i. Understanding more about relevant engagement with assistance dogs charities and organisations to inform this proposal.
- ii. Evidence to support the position that emotional impact on victims is not sufficiently considered during sentencing under current law.

c. Section 3 - Victim statements.

- i. This section proposes that dog theft becomes a prescribed offence and that any court the case is heard in is deemed to be a prescribed court. Noting that victim impact statements are not currently available in any summary court case, further information on why this would be an

appropriate approach including how it fits into existing approaches on use of such statements.

d. **Section 4 - Annual reports by Scottish Ministers.**

- i. Further information as to the reasoning for setting out the list of information the annual reports should contain – and which would require regulations under the affirmative procedure to change – on the face of the Bill.

e. **Section 5 - Review of operation of the Act.**

- i. Understanding the reasoning for setting out the information which must be considered in the review and included in the report.
- ii. Further information on potential use of regulations under the affirmative procedure to change this list.
- iii. The review includes provision that the report must set out whether the Scottish Ministers consider whether there should be a statutory offence for the theft of any other animal kept as a pet. Further information as to the reasons for including this provision in the Bill.
- iv. The policy memorandum indicates the statutory offence is required to recognise the emotional distress associated with dog theft. What are the reasons for not providing the same criteria on the face of the Bill for the Scottish Ministers to have regard to when considering the requirement to consider whether the statutory offence should be extended to other pets.

f. **General questions**

- i. Further information on how the Bill addresses the dog welfare aspects of the final bill proposal.
- ii. Information on research which evaluates the success of the UK 2024 Act.
- iii. Given the lack of data relating to the use of the common law offence in Scotland, and the limited amount of evidence from the operation of the UK 2024 Act, further information on why this Bill is needed as opposed to building up an evidence base before progressing with it.

Financial consideration

22. The financial memorandum for the Bill indicates that there will be a cost to Police Scotland arising from the likely increase in the number of cases of dog theft that may be recorded as a result of the provisions of the Bill.

23. This is estimated by Mr Golden at between 140 and 240 additional cases per annum.

24. In terms of court costs, it is noted that Mr Golden assumes that the Bill may lead to 8 to 15 new cases being prosecuted in the courts in each year.

25. A further factor to consider is the suggested cost to the Scottish Prison Service arising from the provisions of the Bill. As noted above, the Financial Memorandum assumes that 8 to 15 additional cases will be prosecuted in the courts in each year, of which 1 to 3 additional cases will be prosecuted under solemn procedure.

Purpose and extent of the Bill

26. It is noted that the Bill looks to replicate some of the powers contained in the Westminster 'Pet Abduction Act 2024', which covers England, Wales and Northern Ireland. That Act introduced new criminal offences in relation to the taking or detaining of a dog from the lawful control of any person; and also the taking of a cat from the lawful control of any person. That Act also introduced an enabling power to apply or replicate the offences through secondary legislation to other species of animal commonly kept as pets, when certain conditions are met.

Conclusion

27. As noted above the Scottish Government recognises the well-intentioned nature of the Bill as introduced, and we welcome the committee's call for evidence and will engage fully with the committee's consideration of the Bill.

28. However we do have some queries in relation to understanding the full policy approach as laid out in the Bill. At this stage we will be taking a neutral position on the Bill as stage 1 scrutiny proceeds.