

# **WELFARE OF DOGS (SCOTLAND) BILL**

## **[AS AMENDED AT STAGE 2]**

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### **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

#### **INTRODUCTION**

1. This Supplementary Delegated Powers Memorandum has been prepared by Scottish Parliament officials, on behalf of Christine Grahame MSP (the Member who introduced the Bill), in accordance with rule 9.7.9 of the Parliament’s Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Welfare of Dogs (Scotland) Bill (“the Bill”). This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

#### **OUTLINE OF BILL PROVISIONS, AS AMENDED AT STAGE 2**

2. The Bill as amended at Stage 2 is arranged in two Parts and extends to 9 sections:

- Part 1 relates to good practice in the transfer of puppies and dogs. It requires Scottish Ministers to make and publish a code of practice, setting out good practice for a person to follow when they are considering acquiring a dog; and for a person to follow when they are considering transferring a dog to another person. In making the code, the Scottish Ministers must have regard to the key content set out in sections 2 and 3 of the Bill.

The code will also set out the form of a certificate that must be filled in by the prospective acquirer and signed by both the prospective acquirer and supplier prior to the transfer of a dog. Once the transaction is complete the certificate should be kept throughout the ownership of the dog.

Finally, the Scottish Ministers are required to take reasonable steps to ensure public awareness and understanding of the code of practice and its content, and to consult with organisations with an interest in the welfare of dogs before determining what steps to take. The Scottish Ministers must also, in particular, take reasonable steps to ensure awareness and understanding of the code among school pupils.

- Part 3 covers general provisions.

## **PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2**

3. The delegated powers as set out in the original Delegated Powers Memorandum at Section 8(1) with (3)– Power to require registration of unlicensed litters of puppies; Section 10(1) and (3) – Power to make regulations to secure compliance with regulations made under section 8, read with 10(2), and Section 9 (1) – Ancillary Provision were removed at Stage 2.

4. The amended or new delegated powers in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill, and why the selected form of Parliamentary procedure has been considered appropriate.

### **DELEGATED POWERS**

#### **Section 1(1) and 5– Making and revising of code of practice, read with Section 6**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>code of practice</b>
<b>Parliamentary procedure:</b>	<b>none</b>
<b>Revised or new:</b>	<b>revised</b>

#### ***Provision***

5. Section 1(1) requires the Scottish Ministers to make a code setting out good practice that should be followed by anyone considering acquiring a dog, and by anyone transferring a dog to another person. The code is intended to strengthen a culture of responsible dog acquisition and ownership in Scotland.

6. Section 1(2) provides that the code of practice may include provisions giving effect to what is set out in sections 2 and 3 of the Bill and any other matter that the Scottish Ministers consider appropriate, and section 1(2A) provides that it must include provision giving effect to section 4. Section 2 sets out matters that anyone acquiring a dog should consider for themselves. These relate to how the dog would fit into the prospective acquirer’s lifestyle and home environment and their ability to adequately care and provide for the dog throughout its life. Section 3 sets out that, in the case of a transfer by a first owner as far as practicable, the acquirer and the supplier should meet, and the acquirer should see a puppy with its mother. No puppy should be transferred before it is 8 weeks old. It also sets out that anyone acquiring a puppy from a first owner in Scotland should consider the circumstances in which either a dog breeding licence or a registration of the litter would be required. It is intended that the content of the code will clearly and simply advise dog owners about how best to acquire or transfer a dog.

7. Under section 4, the code will set out the form of a certificate that should be filled out and signed by the prospective acquirer prior to the transfer of a dog. Filling out the certificate involves the acquirer considering the matters set out in the code, and whether they have fulfilled the requirements under section 3(3) and (4) if they apply. The prospective supplier should also sign the certificate and both supplier and acquirer must provide their full name and address. Once the transaction is complete the certificate should be kept throughout the ownership of the dog. The Scottish Ministers may add additional content to the certificate, and it is for the Ministers to determine the design and layout of the certificate.

8. The code may be revised from time to time (under section 5). Ministers must consult before making the code for the first time, and again before revising it, and the code and any revised code must be published.

9. Failure to comply with the terms of a code does not, of itself, give rise to proceedings. But compliance or noncompliance may be taken into account in any proceedings for an offence under Part 2 of the Animal Health and Welfare (Scotland) Act 2006, or under regulations made under sections 26 or 27 of that Act.

***Reason for taking power***

10. The provision requires the Scottish Ministers to publish a code of practice to be followed by anyone considering acquiring or supplying a dog or puppy, to strengthen a culture of responsible dog acquisition and ownership in Scotland. A code of practice is an appropriate tool for the specific set of measures in the Bill given the Member's intention to achieve behavioural change, without placing formal legal obligations on the parties involved and without penalising well-intentioned and generally law-abiding citizens.

11. A code is further considered the most appropriate tool as this allows for flexibility for it to be presented in the most user-friendly and accessible format tailored for its intended use. Flexibility is also necessary to respond to any changes in circumstance: adaptations may be required to ensure that the code remains an up-to-date resource for anyone wishing to acquire a puppy or dog.

***Choice of procedure***

12. The making of the code is not subject to any Parliamentary scrutiny (that is, it does not require to be laid before the Parliament, either for approval by resolution or so it can be subject to annulment for a specified period). Section 1(2) provides that the code may include provision giving effect to sections 2 and 3 of the Bill, which set out the key elements of the code. Section 1(2A) provides that the code must give effect to what is set out in section 4 of the Bill. The scope of the power is therefore narrowed to some extent by provisions set out on the face of the Bill. The Scottish Ministers can add further matters to the code that they consider relevant. However, this has to be tied to the purpose of setting out good practice for people to follow when acquiring or supplying a dog. Also, there is a protection there in that consultation is required prior to making as well as revising the code of practice. As the substantial elements of the code will have been scrutinised by the Parliament during the passage of the Bill, it was felt not a good use of valuable parliamentary time to also require Parliament to approve the code itself at a later point. In this respect, the Bill differs from the provisions of the Animal Health and Welfare (Scotland) Act 2006 related to codes of practice, which require that they are to be laid before, and then approved by resolution of the Parliament.

**Section 1(4A) and(4B)– Power to make regulations to modify the latest date by which the code is to come into effect, read with section 1(4)**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>negative</b>
<b>Revised or new:</b>	<b>new</b>

***Provision***

13. Section 1(4) provides that the code must take effect on a date specified in it that is no later than 12 months after the Bill receives Royal Assent. Section 1(4A) allows the Scottish Ministers to modify by regulations the date set out in section 1(4), and section 1(4B) provides that those regulations are subject to negative procedure.

***Reason for taking power***

14. It is considered that 12 months is a sufficient timescale within which to consult on, develop and publish the code of practice. However, the purpose of this power is to provide flexibility in allowing that timescale to be amended in the event of unforeseen circumstances which mean that publication of the code within 12 months of the Bill receiving Royal Assent subsequently becomes unachievable. Without this power, any amendment to the timescale in section 1(4) could only be achieved by way of primary legislation.

***Choice of procedure***

15. The code itself will not be subject to parliamentary scrutiny in that it does not require to be laid before the Parliament. It is considered that changing the date on which the code is to take effect would be an administrative decision, and that the negative procedure strikes an appropriate balance between use of valuable parliamentary time and the nature of the regulations.



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