



Law Society
of Scotland

Consultation Response

Welfare of Dogs (Scotland) Bill: Call for Views

11 August 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Rural Affairs sub-committee welcomes the opportunity to consider and respond to the call for views by the Rural Affairs and Islands Committee on the Welfare of Dogs (Scotland) Bill (the “**Bill**”). The sub-committee has the following comments to put forward for consideration.

1. Do you agree there is a need for additional regulation to support a responsible and informed approach to acquiring and owning a dog?

We welcome from a legal policy perspective greater protection and attempts to increase animal welfare standards in Scotland. We would highlight, however, that we have some concerns about the drafting of the Bill and whether it meets its intended objectives.

2. Do you agree with the section 1 proposals to require Scottish Ministers to make a code of practice?

We note that whilst the content of the code of practice (the “**code**”) is prescribed to some extent due to the requirement for it give effect to the provisions of sections 2-4 of Bill, it can include provision on “any other matter the Scottish Ministers consider appropriate”. We note the broad nature of this wording and would welcome greater clarity on what could be included within the code.

We note section (1)(3) of the Bill which requires Scottish Ministers to consult such persons as they consider appropriate before making the code; and subsequently on the revision of the code (section 5(3)). We would welcome greater detail on who is intended to be consulted and would highlight the importance of undertaking a robust consultation process to capture the views of interested parties.

3. How would the proposed code of practice work alongside the existing code of practice for the welfare of dogs, made under the Animal Health and Welfare (Scotland) Act 2006 and which came into force in 2010?

Care would need to be taken to ensure that there is no overlap or contradiction between the existing code of practice for the welfare of dogs made under the Animal Health and Welfare (Scotland) Act 2006 and the code envisaged under the Bill.

4. Do you agree with the section 2 proposals about the content of the code relating to the sale or transfer of a dog of any age?

We note that the questions listed at sections 2(2)(a)-(f) relate to valid and important considerations people intending to own a dog ought to have, particularly with a view to ensuring the welfare of the animal.

We consider, however, that such questions and accompanying examples are more appropriately included within statutory guidance or codes of practice, rather than such wording being included within primary legislation. This could be seen as an inconsistent approach compared with analogous regimes, for example section 37 of the Animal Health and Welfare (Scotland) Act 2006, and the proposed code of ethics provided for at section 2 of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. More generally, the inclusion of such wording in the Bill may limit the flexibility of future changes to the code compared to this being provided for in secondary legislation or guidance.

We note that this section (and sections 3 and 4) use the term “transfer” of a dog. Elsewhere in the Bill this is referred to in relation to the dog as “giving” or “given” away, for example section 1(1)(b), section 12(1). We note that there are two ways to transfer ownership of a dog in this context, being by gift or sale. We consider that there may be scope to rephrase the term “transfer” to one more aligned with public understanding (for example gift or rehoming).

If it is intended that the term “transfer” is used to capture both the sale and gift of the animal, we consider that a definition clarifying this could be included at section 12(1). We also note that the definition of “selling” at section 12(1) includes “exchanging and bartering”, which may lead to unforeseen and undesirable consequences through engaging in such practices in respect of the sale of dogs.

5. Do you agree with the section 3 proposals about the content of the code relating to the sale or transfer of a young dog by the first owner?

We note that the requirement in section 3(4) places the responsibility on the prospective acquirer to “become familiar” and “take all reasonable steps to establish...”. We consider that there is also a role for the prospective supplier to provide confirmation of these points.

We consider that the wording in section 3(4)(a) – “in which the activity of supplying a dog aged less than 12 months would require” – could be more clearly expressed.

More generally, public awareness of the statutory provisions referred to in section 3(4)(a) is essential and we therefore welcome the provisions of section 11. In any event, we would recommend that the language used to express these requirements in the code is as user friendly and easy to understand as possible.

6. Do you agree with the section 4 proposals about the content of the code requiring a certificate?

We consider that a number of these points (e.g. section 4(4)(b)(i)) would be more appropriately verified by the prospective supplier, particularly as they are also required to sign the certificate.

In relation to section 4(2), we suggest the following amendments:

- (1) In page 3, line 3, leave out <is to> and insert <must>; and
- (2) In page 3, line 5, leave out <are then to> and insert <must>.

We note section 4(5)(b) and would welcome greater information in Bill as to the scope or nature of the situations envisaged.

7. Do you agree with the section 5 proposals relating to the revision of the code of practice?

We note the provisions of section 5(6) and stress that the up-to-date code must be published and made available to the public – regardless of whether the changes from the previous code “materially alter the effect of the code of practice”. We therefore consider that section 5(6) should be removed from the Bill.

8. Do you agree with the section 6 proposals relating to the effect of the code?

We note that the code does not have any enforcement mechanisms or consequences for breach in and of itself. Ultimately this may lead to challenges ensuring compliance with the code.

We note the provisions of sections 6(2)(a) and (b) and highlight the lack of clarity which the use of the phrase “tending to” creates. We also note the uncertainty over the legal effect and meaning of the term “negative liability” in section 6(2)(b). We suggest that there should be greater clarity and certainty about the consequences of failing to comply with the code.

We express concern at section 6(3), particularly given that it appears the code applies at the point of purchase or transfer of the dog. Some of the offences listed, including the statutory offences in Part 2 of the Animal Health and Welfare (Scotland) Act 2006, could be committed years after taking ownership of the dog and are not factually linked to the requirements of the code.

9. Do you agree with the section 7 proposal relating to a public awareness raising campaign for the code of practice and the projected costs for this set out in the financial memorandum?

It is important that there is clarity and certainty in the law in order that individuals and businesses can guide their conduct appropriately. Any changes to the policy and legislative framework on this matter would require an appropriate awareness-raising campaign so as to make individuals and businesses aware of the revised requirements.

We therefore welcome the provision of section 7 of the Bill that Scottish Ministers must take reasonable steps to ensure public awareness and understanding of the code of practice.

We do not have any comments in respect of the financial memorandum.

10. Do you agree with the section 8 power for Scottish Ministers to make regulations to establish a register of litters?

We note that section 8 provides the Scottish Ministers with various powers to make regulations. A separate power is provided in section 10 to make regulations to secure compliance with such regulations and create relevant offences.

We note the need for any registration regime to have sufficient provisions to ensure compliance, although express concern that both the detail of the registration regime and the compliance provisions are unclear from the Bill and will be contained in secondary legislation.

We also express a need for a degree of flexibility with any registration regime to account for unintended circumstances, for example unintended pregnancies of dogs in non-breeder circumstances. As the key factor underpinning the proposals is improving animal welfare, we would highlight that consideration should be given to avoiding unintended consequences of the registration proposals in this context, e.g. the concern that such requirements may lead to litters being destroyed or bitches harmed in attempts to end unintended pregnancies. We also stress that, given the intention to improve animal welfare standards, consideration should also be given to ensuring that the welfare of puppies who are not registered by their owners as intended by the proposals.

11. Do you agree with the proposal that local authorities enforce a register of litters and the projected costs for this set out in the financial memorandum?

We have no comments to make.

12. Do you agree with the section 10 power for Scottish Ministers to make regulations to secure compliance with a register of litters?

See our comments in response to question 10.

13. Do you agree with the section 11 proposal relating to a public awareness raising campaign for a register of litters and the projected costs for this set out in the financial memorandum?

As noted at question 9, any changes to the policy and legislative framework on this matter would require an appropriate awareness-raising campaign so as to make individuals and businesses aware of the revised requirements. We therefore welcome the provisions of section 11.

We do not have any comments in relation to the financial memorandum.

For further information, please contact:

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