

Welfare of Dogs (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 74-EN), a Financial Memorandum (SP Bill 74-FM), a Policy
Memorandum (SP Bill 74-PM) and statements on legislative competence (SP Bill 74-LC).**

Welfare of Dogs (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision requiring the making of regulations under section 27 of the Animal Health and Welfare (Scotland) Act 2006 licensing the activity of dog breeding; to make provision as to registration of litters of puppies born other than as part of the licensed activity if puppies are to be sold or given away; to make provision as to a code of practice in relation to acquisition of dogs as pets; and for connected purposes.

PART 1

DOG BREEDING

Licensing of activity of dog breeding

1 Duty to make licensing regulations

- (1) The Scottish Ministers must make regulations under section 27(1) and (5)(a) of the 2006 Act (which confer power to make regulations licensing activities involving animals) to provide that the activity of dog breeding is a licensed activity.
- (2) The first regulations made in pursuance of subsection (1) must come into force no later than 6 months after Royal Assent.
- (3) Section 27(9) of the 2006 Act (which requires consultation on regulations made under section 27) does not apply to regulations made in pursuance of this section so far as they make provision required by this Part.
- (4) The references in this Part to “licensing regulations” are to regulations made in pursuance of this section.

2 Scope of licensed activity

- (1) Licensing regulations must define the activity of dog breeding so that it includes keeping a breeding establishment for dogs at premises.
- (2) Licensing regulations must include provision to the effect that—
 - (a) a person is to be treated as keeping a breeding establishment for dogs at premises if the person carries on at those premises a business of breeding dogs for sale (whether by the person or anyone else), and

(b) where—

(i) a person (“P”) keeps a bitch (“B”) at any premises at any time during any period of 12 months, and

(ii) B gives birth to a litter of puppies at any time during that period,

P is, subject to subsection (5), to be treated as keeping a breeding establishment for dogs at those premises throughout the period if a total of 2 or more other litters is born during the period to bitches falling within subsection (4).

(3) Paragraphs (a) and (b) of subsection (2) are not to be taken to limit the meaning of each other.

(4) The bitches falling within this subsection are—

(a) B and any other bitches kept by P at the premises at any time during the period,

(b) any bitches kept by any relative of P at the premises at any such time,

(c) any bitches kept by P elsewhere at any such time,

(d) any bitches kept (anywhere) by any person at any such time under a breeding arrangement made with P.

(5) P is not to be treated as described in subsection (2)(b) if P shows that none of the puppies born to bitches falling within paragraph (a), (b) or (d) of subsection (4) was in fact sold or given away during the period (whether by P or any other person).

(6) Subsection (1) is subject to any exemptions or qualifications for activities carried out for particular purposes or in particular circumstances which the Scottish Ministers consider it appropriate to include in licensing regulations.

(7) In this section—

“breeding arrangement” means a contract or other arrangement under which P agrees that another person may keep a bitch of P’s on terms that, should the bitch give birth, the other person is—

(a) to provide P with either—

(i) one or more of the puppies, or

(ii) the whole or part of the proceeds of selling them, or

(b) to give the puppies away on P’s behalf,

“premises” has the same meaning as in Part 2 of the 2006 Act,

“relative” means P’s parent or grandparent, child or grandchild, sibling, aunt or uncle or niece or nephew or someone P lives with as a couple.

3 Requirement to include licence number in advertising

(1) Licensing regulations must include provision to the effect that—

(a) each licence issued under the regulations is given a unique reference number, and

(b) it is an offence, punishable on summary conviction by a fine not exceeding level 2 on the standard scale, for a licence-holder to—

(i) advertise a dog falling within subsection (2), or

(ii) permit another person to advertise a dog falling within subsection (2),

if the licence-holder fails, without reasonable excuse, to ensure that the communication includes the unique reference number given to the licence.

(2) A dog falls within this subsection if—

- (a) it is aged less than such age as is provided for in the regulations, and
- (b) it was born as part of activity carried out under authority of the licence.

PART 2

UNLICENSED LITTERS

Introductory

4 Scope of Part

(1) This Part applies in relation to litters of puppies which are not born as part of activity carried out under authority of a licence granted under regulations made in pursuance of section 1.

(2) A litter to which this Part applies is referred to in this Part as “an unlicensed litter”.

5 Meaning of key expressions

(1) This section explains what is meant by certain expressions used in this Part.

(2) The “register” means the register established under section 7.

(3) The “register operator” means—

- (a) the Scottish Ministers, or
- (b) where arrangements made under section 7 are that the register is to be established and operated by another person, that person.

(4) A person is the “first owner” of a litter of puppies if the person owns the litter at the time of its birth.

(5) A litter of puppies is “registered in accordance with this Part” if—

- (a) an entry exists in the register in relation to the litter, and
- (b) the entry is open.

(6) An entry in the register is “open” if it is not marked as closed in accordance with section 13 or 14.

Selling etc. from an unregistered litter

6 Offence

(1) The first owner of an unlicensed litter of puppies commits an offence if—

- (a) the litter is not registered in accordance with this Part, and
- (b) without reasonable excuse, the first owner—
 - (i) sells or gives away, or advertises, a member of the litter which is aged less than 12 months, or
 - (ii) permits another person to sell or to give away, or advertise, on the first owner’s behalf, a member of the litter which is aged less than 12 months.

- (2) But an offence under subsection (1) is committed only if the first owner is, at the time, resident in Scotland.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 5 (4) In proceedings for an offence under subsection (1), the matters of—
 - (a) the accused being the first owner of the litter,
 - (b) the litter being an unlicensed litter, and
 - (c) the accused being, at the relevant time, resident in Scotland,
 are to be taken as established according to the stating of the matter in the charge of the
 10 offence in the complaint, unless challenged as provided for in subsection (5).
- (5) A matter is challenged by—
 - (a) preliminary objection before the plea is recorded, or
 - (b) later objection as the court allows in special circumstances.

Establishment of register

7 Register of unlicensed litters

- (1) The Scottish Ministers must make arrangements for the establishment and operation of a register for the purposes of this Part.
- (2) The register, which is to be in electronic form, must be operational no later than 6 months after Royal Assent.
- 20 (3) Arrangements which may be made under subsection (1) include arrangements for the register to be established and operated by another person.
- (4) The Scottish Ministers must publish information about any such arrangements.
- (5) Subsection (4) does not apply so far as the arrangements concern payments to be made by the Scottish Ministers to the other person.

Registration

8 Creation of entry in register

- (1) Where the first owner of an unlicensed litter of puppies who intends to sell or give away any of the members of the litter—
 - (a) provides the registration information, and
 - 30 (b) pays any fee which the Scottish Ministers may by regulations specify,
 an entry is to be created in the register in relation to the litter.
- (2) The registration information is—
 - (a) the name and address of the first owner of the litter of puppies,
 - (b) the date on which the litter was born,
 - 35 (c) the total number of puppies which were born alive,
 - (d) how many of those puppies were male and how many were female,
 - (e) the breed, or combination of breeds, of the puppies,

- (f) in relation to each puppy, the microchipping information, and
 - (g) such other information as the Scottish Ministers may by regulations specify.
- (3) The microchipping information in relation to a puppy is—
 - (a) whether or not the puppy is implanted with a microchip, and
 - (b) if it is so implanted, the unique number of the microchip.
- (4) The registration information is to be provided in such form, and by such means, as the register operator may determine.
- (5) An entry in the register is to specify—
 - (a) the registration information, and
 - (b) a registration number (to be known as the “litter registration number”).
- (6) An entry in the register is to be laid out in such a way as the register operator may determine.
- (7) A person commits an offence if the person provides as registration information something which the person knows is false in a material particular.
- (8) A person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

9 Information to be provided following registration

- (1) As soon as reasonably practicable after an entry is created in the register in relation to a litter, the first owner of the litter is to be provided with—
 - (a) a copy of the entry,
 - (b) a copy of the code of practice made under section 20(1) as it has effect for the time being,
 - (c) a copy of any code of practice made under section 37(1) of the 2006 Act in effect for the time being which appears to the register operator to relate to the welfare of dogs,
 - (d) a written statement of the effect of this Part, and
 - (e) such other documents containing advice or guidance in relation to the care of puppies that the register operator considers might be helpful.
- (2) The documents are to be provided in such form, and by such means, as the register operator may determine.

Advertisement etc. of puppies

10 Requirement to include litter registration number in advertising

- (1) It is an offence for the first owner of a litter which is registered in accordance with this Part to—
 - (a) advertise a member of the litter which is aged less than 12 months, or
 - (b) permit another person to advertise a member of the litter which is aged less than 12 months,

if the first owner fails, without reasonable excuse, to ensure that the communication includes the litter registration number.

- (2) A person who commits such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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Updating of register

11 Changes in registration information

- (1) The first owner of a litter which is registered in accordance with this Part must give notice to the register operator of any change in—

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- (a) the person's name or address,
- (b) the microchipping information in relation to a puppy (see section 8(3)), or
- (c) any other information specified in the entry in the register, if it is a change of a type specified in regulations made by the Scottish Ministers.

- (2) Such notice must include the litter registration number.

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- (3) On the giving of notice under subsection (1), the entry in the register is to be updated accordingly.

- (4) Notice under subsection (1) is to be given—

- (a) as soon as is reasonably practicable after the date of the change to which it relates, and
- (b) in such form, and by such means, as the register operator may determine.

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- (5) A person commits an offence if the person fails, without reasonable excuse, to comply with subsection (1).

- (6) A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

12 Notification of disposal etc. of members of litter

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- (1) The first owner of a litter which is registered in accordance with this Part must give notice to the register operator if the first owner has sold or given away all of the members of the litter which the first owner intends to sell or give away.

- (2) Such notice must include the following information—

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- (a) the litter registration number,
- (b) the number of the members of the litter which have been sold or given away, and
- (c) the number of members of the litter which have died.

- (3) Notice under subsection (1) is to be given—

- (a) as soon as is reasonably practicable after the state of affairs concerned occurs, and
- (b) in such form, and by such means, as the register operator may determine.

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- (4) A person commits an offence if the person—

- (a) fails, without reasonable excuse, to comply with subsection (1), or
- (b) in complying with subsection (1), provides as information mentioned in subsection (2) something which the person knows is false in a material particular.

- (5) A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

13 Effect of notification under section 12

- (1) On the giving of notice under section 12(1), the entry in the register is to be—
- 5 (a) amended so that it includes the information given in the notice by virtue of subsection (2)(b) and (c) of that section, and
- (b) marked as closed.
- (2) An entry in the register which is marked as closed in accordance with this section is to have that marking removed if—
- 10 (a) the first owner of the litter so requests, and
- (b) the period of 12 months beginning with the date on which the litter was born has not elapsed.
- (3) Such a request must include a declaration that the first owner intends to sell or give away one or more of the members of the litter.
- 15 (4) A request under subsection (2)(a) is to be made in such form, and by such means, as the register operator may determine.

Entries more than 12 months old

14 Closure of entries not already closed

20 An entry in the register which, at the end of the period of 12 months beginning with the date on which the litter was born, is not marked as closed in accordance with section 13 is to be marked as closed.

15 Deletion of old entries

- (1) The Scottish Ministers may by regulations make provision for or in connection with the deletion from the register of old entries.
- 25 (2) For the purposes of subsection (1), an entry is an old entry if the period of 12 months beginning with the date on which the litter was born has elapsed.

Access

16 Public access to register

- (1) The register is to be publicly accessible as described in subsections (2) to (5).
- 30 (2) If—
- (a) a member of the public provides the name of any person, and
- (b) there are any entries in the register specifying that name which are open,
- the member of the public is to be provided with each such entry.
- (3) If—
- 35 (a) a member of the public provides a litter registration number, and
- (b) the entry in the register specifying that number is open,

the member of the public is to be provided with the entry.

- (4) Entries are to be provided under this section free of charge.
- (5) An entry which a member of the public is provided with by virtue of this section is not to show the address specified as the address of the first owner of the litter of puppies.
- 5 (6) The register is not, other than in accordance with subsections (1) to (5), open to public inspection or search.
- (7) An entry provided by virtue of this section is to be provided in such form, and by such means, as the register operator may determine.

17 Authorised access to register information

- 10 (1) The Scottish Ministers may by regulations make provision—
 - (a) allowing access to the register, or
 - (b) as to the provision of information contained in it,
 to particular persons, or persons of particular descriptions, with functions in relation to the welfare of dogs.
- 15 (2) Regulations under subsection (1) may include provision as to the purposes for which a person may use information derived from the register by virtue of subsection (1).
- (3) Information provided by virtue of this section is to be provided in such form, and by such means, as the register operator may determine.

Enforcement

18 Fixed penalty notices

- (1) The Scottish Ministers must make regulations under section 46A(1) of the 2006 Act (which confers power to provide for fixed penalty notices in relation to animal and wildlife offences) to provide that fixed penalty notices may be issued in relation to the offences created by sections 6(1), 10(1), 11(5) and 12(4)(a).
- 25 (2) The first regulations made in pursuance of subsection (1) must come into force no later than 6 months after the later of—
 - (a) Royal Assent, and
 - (b) section 46A of the 2006 Act coming into force.
- 30 (3) The offences created by sections 8(7) and 12(4)(b) may not be specified in or by virtue of regulations under section 46A(1) of the 2006 Act.

19 Enforcement generally

- (1) The Scottish Ministers may by regulations make provision for or in connection with the enforcement of this Part.
- (2) Such regulations may include (among other things)—
 - 35 (a) provision as to who is to enforce provisions of this Part,
 - (b) provision for and in connection with post-conviction orders (whether by reference to sections 39 to 43 of the 2006 Act or otherwise) in relation to an offence under this Part,

(c) provision for enforcement, other than by way of proceedings for an offence or the giving of a fixed penalty notice under the regulations made in pursuance of section 18, of provisions of this Part,

5 (d) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of provisions of this Part,

(e) provision—

(i) that obstructing a person in the exercise of a power conferred by the regulations is an offence,

10 (ii) for penalties as respects the offence.

(3) The provision referred to in subsection (2)(a) includes provision conferring on the Scottish Ministers a power to direct that, in relation to a specified case or cases of a specified description, a duty of enforcement is to be discharged by them instead of the person on whom it would otherwise rest.

15 (4) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale.

PART 3

BUYING AND SELLING ETC.: GOOD PRACTICE

20 **20 Making of code of practice**

(1) The Scottish Ministers must make a code setting out good practice—

(a) for a person to follow where the person is considering acquiring a dog to keep as a pet, and

25 (b) for a person to follow where the person is considering selling or giving away a dog to another person who it appears would keep the dog as a pet.

(2) The code of practice must give effect to the material in the schedule.

(3) Before making the code of practice, the Scottish Ministers must consult such persons as they consider appropriate.

30 (4) The code of practice is to come into effect on a date, specified in it, that is no later than 6 months after Royal Assent.

(5) The Scottish Ministers must publish the code of practice.

(6) The references in sections 21 and 22 to “the code of practice” are to the code of practice made under this section.

21 Revision of code of practice

35 (1) Other than in respect of the material in the schedule, the Scottish Ministers may revise the code of practice as it has effect for the time being.

(2) Before revising the code of practice, the Scottish Ministers must consult such persons as they consider appropriate.

(3) A revised code of practice is to come into effect on such date as is specified in it.

- (4) Whenever the code of practice is revised, the Scottish Ministers must re-publish the code of practice as revised.
- (5) Subsection (4) does not apply if the Scottish Ministers consider that none of the revisions materially alters the effect of the code of practice.

22 Effect of code of practice

- (1) A person's failure to comply with any provision of the code of practice does not of itself render the person liable to proceedings of any sort.
- (2) In any proceedings for a relevant offence—
 - (a) failure to comply with a relevant provision of the code of practice may be relied on as tending to establish liability,
 - (b) compliance with a relevant provision of the code of practice may be relied on as tending to negative liability.
- (3) A “relevant offence” is an offence under—
 - (a) Part 2 of the 2006 Act, or
 - (b) regulations under section 26 or 27 of that Act.
- (4) The references in this section to the code of practice are to it as it has effect at the time of the failure to comply, or the compliance, concerned.

PART 4

GENERAL PROVISIONS

Awareness

23 Public awareness and understanding

The Scottish Ministers must take reasonable steps to ensure public awareness and understanding of the provision made by and under this Act.

Regulations

24 Scope of powers and procedure

- (1) A power to make regulations conferred by this Act includes power to make—
 - (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) different provision for different purposes.
- (2) Before making regulations under this Act, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) Regulations under any of the following provisions are subject to the negative procedure: 8(1)(b) or (2)(g), 11(1)(c), 15(1).
- (4) Any other regulations made under this Act are subject to the affirmative procedure.

Interpretation

25 Interpretation

(1) In this Act—

“the 2006 Act” means the Animal Health and Welfare (Scotland) Act 2006,

“advertise”, in relation to a dog or a litter of puppies means publish a communication indicating that the dog or litter (as the case may be) is for sale or available to be given away,

“microchip” means a read-only passive radio frequency identification device,

“public” means the public at large, or any section of the public or individually selected members of the public,

“publish” means publish, distribute or otherwise make available to the public, in any form or by any means,

“selling” includes exchanging and bartering.

(2) In subsection (1), “communication” does not include unrecorded speech.

(3) Where in this Act another part of speech or grammatical variation of an expression defined in subsection (1) is used, it has a corresponding meaning.

Commencement and short title

26 Commencement

(1) The following provisions come into force on the day after Royal Assent—

Part 1,

in Part 2, sections 4, 5, 7, 18 and 19,

Part 3,

this Part.

(2) The other provisions of this Act come into force at the end of the period of 6 months beginning with the day after Royal Assent.

27 Short title

The short title of this Act is the Welfare of Dogs (Scotland) Act 2020.

SCHEDULE
(introduced by section 20)

CONTENT OF CODE

General

- 5 1 Paragraphs 2 to 4 apply in every case. Paragraphs 5, 6 and 7 also apply in relation to the proposed sale or transfer of a dog aged less than 12 months by the dog's first owner (that is, the person who owned the litter of which the dog is a member at the time the litter was born).

Questions to be asked by prospective acquirer

- 10 2 Anyone considering acquiring a dog should ask themselves the following questions—
- (a) Is the breed of the dog suitable for you and your family (recognising that some breeds require more space, exercise and care than others)?
 - (b) Is the environment in which the dog would be kept suitable to accommodate it? For example: Is there enough space? Is there a quiet area for the dog to rest in?
 - 15 (c) Would the dog fit in with the composition of the household in which it would be kept? For example: Would the household contain other animals or small children? If so, how are they likely to interact with the dog?
 - 20 (d) Would there be suitable arrangements for walking, exercising and playing with the dog regularly? For example: Do the members of the household in which the dog would be kept have enough time and energy to walk, exercise and play with the dog regularly? Is the dog likely to be left unsupervised for large parts of the day, due to other commitments of members of the household?
 - 25 (e) Are the costs of the dog (for example, food, bedding, veterinary treatment, insurance) affordable on an on-going basis?
 - (f) Are you committed to caring for the dog throughout its life (which may be many years)? For example: Are you prepared to and will you be able to groom the dog as may be required? Are you prepared to and will you be able to take the dog to veterinary appointments as may be required?

Proposed sale or transfer of dog of any age

- 30 3 The prospective acquirer (or a person acting on that person's behalf) and the prospective supplier should, as far as is practicable, meet in person before reaching any agreement to transfer or sell the dog from one to the other.
- 4 The prospective supplier should check that the prospective acquirer has considered the questions in paragraph 2 and is able to answer the six main questions in the affirmative.

35 *Proposed sale or transfer by first owner of dog aged less than 12 months*

- 5 A puppy should not be acquired or sold or given away before it is 8 weeks old.
- 6 The prospective acquirer should see the dog with the bitch which gave birth to it (unless this is not practicable).

- 7 The prospective acquirer should check that either—
- (a) the prospective supplier is a licensed breeder and that the litter was born as part of activity carried out under authority of the licence, or
 - (b) the dog is a member of a registered litter.

Welfare of Dogs (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision requiring the making of regulations under section 27 of the Animal Health and Welfare (Scotland) Act 2006 licensing the activity of dog breeding; to make provision as to registration of litters of puppies born other than as part of the licensed activity if puppies are to be sold or given away; to make provision as to a code of practice in relation to acquisition of dogs as pets; and for connected purposes.

Introduced by: Christine Grahame
On: 1 June 2020
Bill type: Member's Bill

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