

Welfare of Dogs (Scotland) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Welfare of Dogs (Scotland) Bill introduced in the Scottish Parliament on 1 June 2020. It has been prepared by the Parliament's Non-Government Bills Unit (NGBU) on behalf of Christine Grahame MSP, the member who introduced the Bill.
2. The following other accompanying documents are published separately:
 - statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 74–LC);
 - a Financial Memorandum (SP Bill 74–FM);
 - Explanatory Notes (SP Bill 74–EN).

Policy objectives of the Bill

3. The proposed Bill aims to improve the overall health and wellbeing of dogs throughout their lives by strengthening the regulation of the activity of breeding and selling or transferring dogs; and by establishing a more responsible and informed approach to acquiring and owning a puppy or dog.

Better regulation of dog breeding

4. The Bill will improve the framework within which puppy breeders (licensed and unlicensed) operate. It does this by reducing the maximum number of litters that can be bred in a 12-month period before a dog breeding licence is required. The Bill requires a licence from the third litter

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(instead of the fifth), thereby increasing the number of breeders needing to meet certain standards and undergo inspections. It also restricts the circumstances in which a breeder is exempt (from the need for a licence) so that it applies not just when none of the dogs were sold but only when none were either sold or given away. In other words, it extends the breeding licensing regime to any form of transfer, not only sale.

5. The Bill also requires any other litters, that are not bred as part of a licensed activity in Scotland, to be registered before the puppies are advertised, sold or transferred to another owner. This will mean that a person who owns a bitch that produces a litter which is not covered by a dog breeding licence must register the litter in a Scotland-wide database before advertising, transferring or selling the puppies. To facilitate this, the Bill places a requirement on Scottish Ministers to set up a Scotland-wide puppy litter register.

6. Any advertisement for a puppy will have to include either the breeder's breeding licence number or the litter registration number.

7. The Bill also requires the person registering a litter to provide the microchip numbers for each of the puppies in the litter, either at the point of registration of the litter or subsequently, and before selling/transferring a puppy.

8. These measures should improve overall puppy welfare by improving the traceability of puppies and by making people more accountable for any litters that their dogs may have.

9. The member believes that improving the health and welfare of puppies means addressing both the supply and the demand sides of the trade: tightening the legislation regulating the breeding of dogs to further reduce the room for manoeuvre of those breeding puppies irresponsibly; and helping achieve a shift in social practice with a much greater awareness of how to acquire a puppy responsibly, in a more informed way. The member believes that improving responsible acquisition should make it significantly more difficult for people attempting to circumvent the regimes in place and/or those breeding irresponsibly, to find a market for their puppies.

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More responsible dog ownership

10. The Bill introduces a number of provisions to help ensure more informed and responsible dog ownership, and the basis for a more responsible transaction when someone is acquiring a puppy or dog.

11. The Scotland-wide puppy litter register contributes to this aim. Through the registration process someone registering a new litter will receive information on looking after young pups, a copy of the code of practice (as described below) as well as information on their obligations under the Bill (for example, to include the litter register number in any advertisement). This will raise awareness, among those with a litter to sell or transfer, of their role in helping to ensure the puppies go to an appropriate home.

12. The Bill requires the Scottish Ministers to make a new code of practice that should be followed by a person who is considering acquiring a dog to keep as a pet, and by a person who is considering selling or giving away a dog to someone else. The schedule to the Bill sets out the essential content of the code, including the questions a potential puppy or dog owner should consider for themselves before they take on the animal as a pet. These questions should prompt careful consideration of the main factors related to owning and caring for a puppy responsibly and ensuring its wellbeing throughout its life.

13. The schedule also sets out that a person considering acquiring a puppy in Scotland from its first owner should ensure either that that person is a licensed breeder and that the litter was born as part of the licensed activity, or that the litter has been registered. The prospective owner should, as far as is practicable, meet the person they are acquiring the puppy from and see the puppy with its mother; and a puppy should not be acquired, sold or given away before it reaches the age of eight weeks.

14. These measures are intended to encourage behavioural and attitudinal change, both by encouraging those acquiring a puppy to understand how their choices can help tackle irresponsible and illegal dog breeding, and to consider whether their own situation is suited to taking a particular breed of puppy or dog, or indeed any at all. They should also encourage those selling or transferring puppies or dogs to be aware of how to go about this in a responsible manner.

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Background

Ensuring puppy welfare in a growing market

15. According to a 2019¹ survey, there are approximately 710,000 dogs in Scotland. The figure for 2017 was 550,000.² Although the figures are calculated as an average across three years, they nevertheless point to a considerable recent increase. In 2017 the number of households with a dog was approximately 471,000, and in 2019, this was 559,000.

16. According to scoping research commissioned by the Scottish Government, the estimated value of the puppy trade in Scotland is considerable; conservative estimates put it at around £13 million per year.³

17. The same research characterises the puppy market in the UK as consisting of legally regulated, legally unregulated and illegal and irresponsible breeding and sales.⁴

18. Generally speaking, the current legislation in Scotland (Breeding of Dogs Act 1973⁵ and Breeding and Sale of Dogs (Welfare) Act 1999⁶)

¹ Pet Food Manufacturing Association, Dog Population 2019. Available at <https://www.pfma.org.uk/dog-population-2019>. Accessed on 16 March 2020.

² Pet Food Manufacturing Association, Dog Population Detail 2017. Available at <https://www.pfma.org.uk/dog-population-2017>. Accessed on 16 March 2020.

³ Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government, November 2017, p.42. Available at <https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. Accessed on 16 March 2020

⁴ Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government, November 2017, p.4. Available at <https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. Accessed on 16 March 2020.

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requires anyone who carries on a business of breeding dogs for sale, and anyone who owns or is responsible for bitches that together produce five or more litters in a 12-month period, to have a dog breeding licence. This is licensed dog breeding and would qualify as legally regulated. There is an exception for anyone in the second category who can show that none of the puppies bred has been sold during the period.

19. Anyone who owns or is responsible for bitches that produce fewer than five litters in a 12-month period, and who is not otherwise running a dog breeding business, does not require a dog breeding licence. Many of these breeders form part of what may be characterised as the legal but unregulated market, as they are unlicensed breeders but are not necessarily acting illegally.

20. Some breed for a hobby, producing fewer than five litters a year. Many of these are very responsible and have high regard for the health and welfare concerns of their puppies and dogs. Nevertheless, they can still produce four litters of puppies in a 12-month period, which could be a considerable number of dogs at a given time, without having to undergo any checks or inspections. Others may find themselves accidentally in the category of unlicensed breeder, if they own or are responsible for a bitch that has a litter, without it having been their intention to breed puppies.

21. Finally, there is the category of illegal breeding. This can refer to people claiming to breed fewer than five litters in 12 months, or claiming that they are not running a business of breeding puppies, to avoid the licensing regime. In fact, they may be breeding more litters and/or may be importing dogs from abroad, often using false names and addresses. In Scotland, anyone dealing in puppies bred elsewhere should also have a licence.⁷

⁵ <http://www.legislation.gov.uk/ukpga/1973/60/contents> Accessed on 16 March 2020.

⁶ <http://www.legislation.gov.uk/ukpga/1999/11/contents> Accessed on 16 March 2020.

⁷ The Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009, <http://www.legislation.gov.uk/ssi/2009/141/contents/made>

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22. OneKind reports frequent cases of commercial breeding and dealing being carried out in Scotland without a licence, and that often there is evidence of very poor welfare for the dogs involved.⁸ In such cases, the main motivation is often maximising profit, which happens at the expense of the welfare of the puppies. Very often, people operating on this basis will ignore animal welfare concerns and the needs of young puppies, selling on animals that often turn out to be sick or psychologically damaged. This is devastating for the puppies and can be very distressing for owners, who may find themselves unable to cope with or look after their pets. They can also face higher costs in vets' bills, as the puppies may need special care.

23. Research presented at an Impact of Dog Trade on Canine Welfare⁹ conference in November 2017 organised by the Scottish SPCA and the University of Edinburgh underlined that if a puppy is bought from an irresponsible and/or illegal breeder, it is more likely that:

- The puppy will have been taken from its mother too early;
- The puppy will not have been socialised with people or family life;
- The puppy will not have had required vaccinations or treatments such as worming;
- The buyer may not have had much contact with the seller and may not have seen the puppy's parents or litter-mates;
- The seller will not have offered any support following the purchase of the puppy and is unlikely to be contactable;
- The microchip/registration does not necessarily relate to where the pup was born;
- The puppy will often require veterinary treatment soon after arriving in its new home.

⁸ Scotland's Puppy Profiteers, OneKind, November 2017, p12. Available at <https://www.onekind.scot/resources/scotlands-puppy-profiteers/>. Accessed on 16 March 2020.

⁹ The Impact of the Dog Trade on Canine welfare – The current situation and recommendations for policy and practice, Muldoon, J., Williams, J. & Scottish SPCA (2017). Available at https://www.ed.ac.uk/files/atoms/files/illegal_dog_trade_briefing_paper.pdf . Accessed on 16 March 2020.

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24. Research by the RSPCA¹⁰ estimates that the annual market for puppies in the UK is between 700,000 and 1.9 million. The 2019 PFMA survey that provides a figure of 710,000 for the number of dogs owned in Scotland puts the UK-wide figure at 8,900,000.¹¹ This means that proportionally the Scottish market would be around 8% of the UK market. Based on the RSPCA figures, this would mean an annual market for puppies in Scotland of between 56,000 and 152,000. Research by OneKind¹² shows that there are approximately 100 licensed breeders operating in Scotland.

25. A 2018 Scottish Government document underlines the difficulty in obtaining exact figures for the market for dogs in Scotland, and indicates that, "... there may be a large number of unlicensed dog breeders who fall under the threshold of five or more litters in a 12-month period."¹³

26. The exact make-up of the large number of unlicensed dog breeders is difficult to establish. There is support for reducing the threshold number of litters that can be bred in a year before a person requires a dog breeding licence. Ninety-one percent of those who responded to the member's consultation on the Bill supported reducing the threshold for a breeding licence from five litters to three.¹⁴ This would effectively reduce the number of puppies coming from unlicensed breeding activity, and so from

¹⁰ Sold a Pup? Puppy Trade Report, RSPCA, 2016. Available at <https://view.pagetiger.com/RSPCAPuppyTradeReport>. Accessed on 16 March 2020.

¹¹ Pet Food Manufacturing Association, Dog Population 2019. Available at <https://www.pfma.org.uk/dog-population-2019>. Accessed on 16 March 2020.

¹² Scotland's Puppy Profiteers, OneKind, November 2017. Available at <https://www.onekind.scot/resources/scotlands-puppy-profiteers/>. Accessed on 16 March 2020.

¹³ Licensing of Dog, Cat and Rabbit Breeding Activities in Scotland, Consultation Document, Scottish Government, September 2018, p.5. Available at https://consult.gov.scot/animal-welfare/pet-breeding-activities/user_uploads/250237_sct0818243792-001_breeding_p2.pdf. Accessed on 16 March 2020.

¹⁴ See Summary of Consultation Responses, available at https://www.parliament.scot/S5MembersBills/20190226_Consultation_summary_Resp_Dog_Ownership_FINAL.pdf. Accessed on 16 March 2020.

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unregulated sources. It is expected that extending the breeding licensing regime to cover any transfer or supply, not only sale of puppies, will further reduce the number.

27. Some stakeholders believe that any regulation should go even further, and that the dog breeding licensing threshold should be even lower.¹⁵ This Bill treads the middle ground by bringing more breeders into the breeding licence regime (from the third litter), and by introducing a lighter-touch registration process as a proportionate way to ensure anyone who owns or is responsible for a bitch or bitches that produce up to two litters, and that are not part of licensed breeding activity, is more aware of their responsibilities for the welfare of the puppies and more accountable for them. It should also improve traceability by ensuring that any puppies being sold or transferred by someone resident in Scotland can be traced back to either a licensed breeder or a registered litter.

28. The policy intention is that the puppy litter register should also aid enforcement of the new reduced threshold for dog breeding licences by helping local authorities identify someone registering more than two litters in a 12-month period.

Improving accountability and traceability of puppy provenance

29. As reported, the size of the puppy market in Scotland is considerable, and likely growing, but difficult to quantify clearly. The Scottish Government-commissioned scoping research points to a need for accurate data on the trade.¹⁶

¹⁵ For example, see responses by Blue Cross and The Dogs Trust to the Member's consultation. Available at: https://www.parliament.scot/S5MembersBills/20190226_Consultation_summary_Resp_Dog_Ownership_FINAL.pdf. Accessed on 16 March 2020.

¹⁶ Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government, November 2017, p. 18. Available at <https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. Accessed on 16 March 2020.

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30. The challenge of puppies being sold without proper identification, according to the RSPCA, is that it makes it impossible to trace puppies back to owners or original breeders if they become sick or suffer from other problems.¹⁷ The scoping research commissioned by the Scottish Government and published in 2017 also addressed the issues of traceability of puppies and licensing of puppy breeders, which were reported as being the main focus of discussion during the research when considering domestic legislation.

31. Since April 2016, all dogs in Scotland over the age of eight weeks must be microchipped and no keeper may transfer a dog to a new keeper unless it has been microchipped.¹⁸ Under this system licensed and unlicensed breeders are required to have their puppies microchipped before they are transferred to another keeper. The current penalty for failing to comply is a fine of up to level 2 on the standard scale (i.e. £500). The scoping research suggests that the effectiveness of the regulations is undermined by “... an open market for microchips and microchipping database providers”. It goes on to state that—

“There are several approved microchipping database providers across the UK, which differ from one country to another and which are not required to collate their data with each other ...”¹⁹

32. In evidence to the Public Petitions Committee of the Scottish Parliament, Mark Rafferty (Scottish SPCA) stated—

“... the difficulty in Scotland is that you can buy a microchip off the internet, have it implanted by someone who has got themselves

¹⁷ Sold a Pup? Puppy Trade Report, RSPCA, 2016. Available at <https://view.pagetiger.com/RSPCAPuppyTradeReport>. Accessed on 16 March 2020.

¹⁸ Microchipping of Dogs (Scotland) Regulations 2016. Available at <http://www.legislation.gov.uk/ssi/2016/58/contents/made>. Accessed on 16 March 2020.

¹⁹ Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government, November 2017, p. 53-54. Available at <https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. Accessed on 16 March 2020.

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approved and register the microchip on any one of a number of databases—or you can do a more illicit thing that a lot of people do, which is to microchip the animal but not register it. When such a dog comes through Cairnryan or the ports, it is scanned; if it has a chip, everyone thinks, “It must be legal.” We have too many databases, and they need to be consolidated or restricted, ideally to one ... and we need to look at the amount of organisations where a chip can be registered.”²⁰

33. The Bill seeks to improve the traceability of puppies, firstly by bringing more breeders into the licensing regime and, secondly, by requiring the establishment of a light-touch registration process containing key information about litters born to unlicensed breeders. Together, these measures should make it more difficult for those behaving irresponsibly or illegally to mask the provenance of puppies. The aim is that, as a result, more puppies on the market in Scotland will be traceable back to the breeder. For registered litters, it is anticipated that this will be the case for at least the first 12 months of the puppies’ lives.

34. According to the Scottish Government’s ‘Buy a puppy safely’ campaign website, one in three illegally bred puppies are likely to get sick or die in the first year; and one in five owners of illegally bred pups end up spending between £500 and £1,000 on vets bills before the dog reaches 6 months old. The Dogs Trust website reports that 10% of people reported that their puppy became unwell after purchase and that 20% had unexpected vets bills to pay.²¹ The Bill includes powers that Ministers can use to authorise bodies which have functions in relation to dog-welfare to access the puppy litter register. This should help those investigating such cases, giving them additional tools to check what the provenance of the animal was.

²⁰ Evidence to Public Petitions Committee, Scottish Parliament Official Report, 11 May 2017, Column 13. Available at <http://parliament.scot/parliamentarybusiness/report.aspx?r=10943&mode=pdf>. Accessed on 16 March 2020.

²¹ See <https://www.dogstrust.org.uk/news-events/news/dogs-trust-and-animal-welfare-organisations-unite-to-protect-the-public-from-dodgy-pet-sellers>. Accessed on 16 March 2020.

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35. To further enhance traceability, the owner of the registered litter will also be required to provide the microchip numbers of the puppies in the litter. If already microchipped at the time of registering the litter, they can be inputted at that point. Alternatively, the microchip numbers can be added to the register entry at a later stage. This is to facilitate early advertisement of the puppies (as registration has to take place before any advertisement) in the event that a person wishes to advertise the litter at birth, but before the puppies have been microchipped. In any event, under existing legislation, no keeper may transfer a dog to a new keeper without microchipping it.

36. The member is aware that no system will be watertight. Those seeking to evade the system and deal irresponsibly and/or illegally in puppies will continue to adapt and find creative ways to carry on their trade. Nevertheless, the ambition of the Bill is to reduce the room these individuals have in which to operate and to make life more difficult for them.

37. Furthermore, it is hoped that the Bill will help provide a more complete picture of dog breeding activity in Scotland, with those producing litters visible either as licensed dog breeders or through the puppy litter register.

The importance of more informed acquisition and responsible ownership

38. The member considers that the general public has an important role to play in better understanding how their decisions and actions can impact on irresponsible and illegal breeders on one hand, and also on the long-term health and welfare of the puppies and dogs they are acquiring.

39. Scoping research commissioned by the Scottish Government on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms states—

“... puppy consumers present a critical opportunity for addressing the nature and prevalence of this trade. First time buyers and people acting on impulse or with limited research often inadvertently fuel and engage in the illegal and irresponsible trade. However, even

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conscientious consumers may purchase from unscrupulous traders due to the complex, fluid and grey nature of the market.”²²

40. It goes on to say—

“Finally, consumers, are pivotal in the puppy trade, in particular, responses must work to reduce the size of the market, through reducing consumer demand, enhancing consumer awareness and decreasing opportunities for illegal sellers to engage with consumers.”²³

41. The Special Investigations Unit (SIU) of the Scottish SPCA and the HMRC taskforce for cat and dog breeders describe the illegal trade as organised crime, often linked to tax evasion and other criminal activity.²⁴ The results of a major HMRC taskforce action were reported in May 2019, uncovering the extent of illicit activity in the dog trade. Although covering the UK as a whole, it gives an indication nevertheless of the scale of the problem and the animal welfare issues involved.²⁵

42. The policy assumption is that if prospective owners are more informed about the nature of the trade and the responsibilities that everyone has to tackle it, they will be more circumspect about whom they

²² Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government, November 2017. Available at <https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. p.5. Accessed on 16 March 2020.

²³ Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government, November 2017. Available at <https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. p.8. Accessed on 16 March 2020.

²⁴ The Impact of the Dog Trade on Canine welfare – The current situation and recommendations for policy and practice, Muldoon, J., Williams, J. & Scottish SPCA (2017). Available at https://www.ed.ac.uk/files/atoms/files/illegal_dog_trade_briefing_paper.pdf . Accessed on 16 March 2020.

²⁵ Information available at <https://www.gov.uk/government/news/millions-raised-from-tax-evading-dog-breeders>. Accessed on 16 March 2020.

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acquire a puppy from. A more responsible approach to puppy acquisition will help to stem the supply of puppies from those acting irresponsibly and/or illegally.

43. The code of practice will play an important role as it will set out the practice that should be followed by someone seeking to acquire a puppy or dog, and by someone wishing to sell or give away a puppy or dog. The provision that requires anyone acquiring a puppy to check they are doing so either from a licensed breeder or someone who has registered a litter should help make it more difficult for those acting irresponsibly or illegally to sell their puppies. The same applies to the requirement to see the puppy with its mother and for the potential acquirer and supplier to meet in person.

44. Anyone acquiring a puppy from someone resident in Scotland should check that the puppy is from a licensed breeder (and being sold or transferred as part of the licensed activity), or otherwise that the litter has been registered. Local authorities hold a record of licensed breeders in their areas, and advertisements will require to include the licence number. The new Scotland-wide puppy litter register will enable a prospective dog owner to check that, if it is not from a licensed breeder, the puppy is from a registered litter. If this is not the case, then it should ring an alarm bell. The member's intention is that people will act on this and inform the authorities so that the situation can be checked out. The policy intention is that, as the public becomes more aware of the need to check, it will become increasingly difficult for someone to sell or transfer ownership of a puppy if they are not breeding under the authority of a licence or have not registered their litter.

45. It will continue to be the case that some people living in Scotland will acquire puppies from people resident in other parts of the UK, or indeed abroad. The Bill should help create a culture change more generally that will improve awareness of how to go about acquiring a puppy responsibly, including when acquiring from someone resident outside Scotland.

46. Anyone with a litter of puppies to sell or give away should also be more aware of why doing this responsibly, by registering their litter, will contribute to frustrating the efforts of those acting irresponsibly or even illegally.

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47. By promoting a more responsible approach to acquiring a puppy or dog, and more responsible dog ownership, the Bill will also contribute significantly to improving the long-term health and welfare of puppies and dogs.

48. The Bill should result in more prospective dog owners pausing to consider the long-term implications and commitment involved in taking on a puppy. Experts report the problem of impulse-buying as a risk to puppy welfare. The Scottish Government-commissioned scoping research points to many consumers not being aware or informed enough prior to purchase, which can also account for the large number of puppies later discarded—

“This can be due to the purchasers not understanding the requirements of owning a dog or the issues in the puppy trade, not doing enough research prior to their purchase or purchasing on impulse ... In particular, experts suggested that many consumers do not understand the responsibilities, costs or implications of ownership.”²⁶

49. The member’s intention is that, with the help of a general information campaign on the provisions of the Bill, and with the support of animal welfare organisations, the public will become more aware of their responsibilities and of the long-term implication of dog ownership. Accordingly, this Bill sets out clearly in law, and through a code of practice, the factors they should consider before taking on a dog as a pet. This includes a set of questions that the prospective owner of a puppy or dog should consider carefully before taking a decision. A mechanism that causes them to pause for thought should result in better informed decisions on dog ownership. The breeder or registered litter owner also has a part to play in ensuring that the prospective owner has considered the questions.

50. The aim is to get to a situation where fewer puppies suffer as a result of going to owners who are not in a position to care for them, and where

²⁶ Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government, November 2017, p. 40. Available at <https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. Accessed on 16 March 2020.

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fewer puppies are mistreated or abandoned as a consequence. The process may expose those breeders or registered litter owners who are unable to answer questions adequately or who seem evasive, which should give prospective dog-owners cause for concern. The expectation is that if either party is not satisfied on the basis of the verbal exchange, they would simply walk away.

51. The member is of the view that it should not only be the initial transfer, from the “first owner” (i.e. the breeder or registered litter owner) to the second, that should be subject to the questions set out in the code of practice exchange. Indeed, anyone selling or transferring ownership of a dog, of any age, should behave responsibly by seeking to ensure, as far as is possible, that the person acquiring the dog is aware of the issues they should consider, to help them ascertain their suitability to take the dog on in the long term.

52. The puppy litter registration process ensures that, on registration of a litter, the litter owner receives a copy of the code. This element of the Bill could usefully be supplemented by local authorities adopting a policy of making similar information available to licensed breeders as part of the licensing process. For subsequent transfers that do not involve the first owner, there is no such mechanism for getting relevant information to the person transferring the dog. However, the member believes that with engagement by local authorities, veterinary surgeons and welfare organisations, and with the help of the information campaign that the Bill requires, it will increasingly become known, by the general public, that there is a practice to follow, set out in law, if they wish to sell or transfer ownership of a dog.

53. Evidence shows that high numbers of dogs are rehomed each year.²⁷ The member’s hope is that a more considered and informed approach to acquiring a puppy or dog will help reduce these numbers.

²⁷ By means of illustration, Scottish SPCA Annual Reviews record 1,679 dogs rehomed in 2016, 1,337 in 2017 and 1,336 in 2018. Information available <https://www.scottishspca.org/>. The Edinburgh Dog and Cat Home rehomed 238 dogs in 2016, 230 in 2017 and 269 in 2018. Annual reports

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Existing initiatives and guidance

54. Animal welfare charities and organisations provide a range of information and campaigning resources aimed at ensuring the public can access information about how to look for and acquire a puppy.

55. The ‘How to buy a pet’²⁸ website was launched by a coalition of animal welfare organisations and trade bodies, as a guide to help the public buy a pet responsibly. The Pet Advertising Advisory Group cites recent research on its website pointing to 37% of people doing no research prior to buying a pet. The Puppy Contract²⁹ is also an initiative by a coalition of organisations and is a tool to encourage responsible breeding and buying of puppies.

56. ‘Say no to puppy dealers’ is a campaign run by the Scottish SPCA in partnership with other organisations. Its aim is to inform the public of how they can help tackle irresponsible dog breeding and the illegal puppy trade. Its website states—

“Although it can be hard to walk away from a puppy that looks like it needs your help, you will only be funding the illegal trade by purchasing a puppy and another dog will soon take its place.”³⁰

57. The Scottish Government launched a campaign in November 2018, with the Scottish SPCA, on ‘How to buy a puppy safely’.³¹ Research cited on their campaign material reports that only 24% of Scots buy a puppy from an approved breeder.

58. The Scottish SPCA’s Assured Puppy Breeder Scheme, launched in November 2019 provides a mechanism for responsible breeders to sign up

available at <https://www.edch.org.uk/about-us>. Accessed on 16 March 2020.

²⁸ <https://www.howtobuyapet.org.uk/>. Accessed on 16 March 2020.

²⁹ See <https://puppycontract.org.uk/about-us>. Accessed on 16 March 2020.

³⁰ <https://www.saynotopuppydealers.co.uk/>. Accessed on 16 March 2020.

³¹ <https://www.buyapuppysafely.org/>. Accessed on 16 March 2020.

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to be inspected by the Scottish SPCA, and a space where the public can see available litters.³²

59. Existing initiatives, guidance, websites and campaigns continue to carry out the important role of informing the public and encouraging them to act responsibly when seeking to acquire a puppy. The member's view is that, whilst important, they can only achieve so much. Despite years of having an extremely active animal welfare charity sector, and despite a number of improvements over the years in terms of regulation to protect animal welfare, such as the Animal Health and Welfare (Scotland) Act 2006, significant animal welfare concerns persist, in particular with regards to puppy welfare.

60. When asked, during the consultation process, whether the aims of the proposed Bill could be better delivered in another way, rather than by means of a Bill in the Scottish Parliament, 63% of those that responded believed a Bill was required. Some referred to the need for primary legislation, as guidance and advice had been largely ignored to date; and that primary legislation would provide greater public exposure and better education for such an important change in law.³³

61. As the Scottish Government scoping research points out—
“Other than requiring consumers to ensure the welfare of their puppies after purchase, consumer behaviour is not regulated. Consumer behaviour is key to the irresponsible and illegal nature of the current trade – specifically without capricious and impulsive buyers demanding young ‘fashionable’ dogs, large-scale commercial breeding establishments and illegal trade would not be profitable. Adjustments to consumer demand will directly impact on the nature and scale of supply.”³⁴

³² <https://www.saynotopuppydealers.co.uk/becoming-a-scottish-sPCA-assured-puppy-breeder/>. Accessed on 16 March 2020.

³³ See Summary of Consultation Responses, available at https://www.parliament.scot/S5MembersBills/20190226_Consultation_summary_Resp_Dog_Ownership_FINAL.pdf. Accessed on 16 March 2020.

³⁴ Wyatt, Maher & Biddle, Scoping Research on the Sourcing of Pet Dogs from Illegal Importation and Puppy Farms 2016/17, Scottish Government,

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62. The Bill does not directly impose enforceable legal obligations on consumers, however it does seek to influence their behaviour. The policy intention is to set out clearly, in law, what is expected of someone who is seeking to acquire a puppy, what their responsibilities are, and how they will be held accountable for the welfare of that puppy.

Current legislative framework

Animal welfare, and dog breeding and sale in Scotland

63. The main animal welfare legislation is the Animal Health and Welfare (Scotland) Act 2006 (the “2006 Act”).³⁵ Under this Act, animal owners and keepers have a legal duty of care for animals they are responsible for. The duty of care is based on section 24(3) of the 2006 Act, which sets out an animal’s five “welfare needs”: (a) its need for a suitable environment, (b) its need for a suitable diet, (c) its need to be able to exhibit normal behaviour patterns, (d) any need it has to be housed with, or apart from, other animals, and (e) its need to be protected from suffering, injury and disease. If a person fails to take such steps as are reasonable in the circumstances to ensure the welfare needs of the animal are met, then the person commits an offence.

64. Section 37 of the 2006 Act also provides for the making of Animal Welfare codes by Scottish Ministers. The failure to comply with the provisions of an animal welfare code does not itself render a person liable to proceedings. However, in any proceeding for an offence under Part 2 of the 2006 Act (Animal Welfare), failure to comply with relevant provisions of an animal welfare code may be relied upon as tending to establish liability.

November 2017, p11. Available at:

<https://www.gov.scot/publications/scoping-research-sourcing-pet-dogs-illegal-importation-puppy-farms-2016/pages/16/>. Accessed on 16 March 2020.

³⁵ Animal Health and Welfare (Scotland) Act 2006. Available at:

<http://www.legislation.gov.uk/asp/2006/11/contents>. Accessed on 16 March 2020.

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65. The Breeding of Dogs Act 1973³⁶, as amended by the Breeding and Sale of Dogs (Welfare) Act 1999³⁷, sets out the licensing regime for anyone keeping a breeding establishment for dogs. Section 4A of the 1973 Act defines a breeding establishment for dogs as any premises where the business of breeding dogs for sale is carried on. In addition, if a person keeps a bitch at any premises which produces a litter, and if that bitch plus other bitches kept by that person (or relatives) on those premises or by that person on other premises (including bitches kept by a third party under a breeding arrangement with the person) produce four or more other litters in a 12-month period, the person is treated as carrying on a business of breeding dogs for sale and is required to apply for a licence. This involves, amongst other things, the premises being inspected, a number of conditions being met, a fee being paid, and records being kept. Anyone operating a breeding establishment without being licensed, or failing to comply with the licensing regime, is guilty of an offence. Section 4A(5) provides an exception if the person can show that none of the puppies were sold during that 12-month period.

66. The dealing of young dogs is regulated by the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009.³⁸ Anyone selling young cats or dogs (less than 84 days old) or acquiring a young cat or dog with a view to sale, needs an animal dealing licence. This involves applying for a licence, paying a fee, having the premises inspected and meeting a number of requirements. Not to hold a licence for such activity, or to contravene the conditions of an animal dealing licence, is an offence. The licensing regime for dealing in young cats or dogs does not apply if the young cats or dogs being sold are the offspring of a pet owned by that person. It also does not apply to anyone who sells no more than two young cats or two young dogs (or one of each) in any 12-month period. Under this legislation, a written record is to be completed to accompany each young cat or dog sold by a licence holder. The licence holder must retain the record for at least 3 years from date of sale.

³⁶ <http://www.legislation.gov.uk/ukpga/1973/60/contents>. Accessed on 16 March 2020.

³⁷ <http://www.legislation.gov.uk/ukpga/1999/11/contents>. Accessed on 16 March 2020.

³⁸ <http://www.legislation.gov.uk/ssi/2009/141/contents/made>. Accessed on 16 March 2020.

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67. The 2017/18 Programme for Government set out that the Scottish Government would prepare legislation for a modern system of licensing of dog, cat and rabbit breeding activities. In 2018 the Scottish Government consulted on plans for the registration and licensing of Animal Sanctuaries and Rehoming Activities, and separately on the licensing of dog, cat and rabbit breeding activities. As part of the latter consultation, the Scottish Government included questions on reducing the threshold for a breeding licence from five or more to three or more litters in a 12-month period. The summary of responses to the consultation on dog, cat and rabbit breeding licensing was published in April 2019. As a result of its consultation, the Scottish Government has announced its intention to bring forward new regulations.

Legislation in other parts of the UK

Wales

68. In 2014 changes were made to the law regulating dog breeding in Wales, with the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014.³⁹ The licensing threshold for breeding puppies was reduced to three or more litters (from five or more). The new legislation also extends the scope to cover the supply of puppies, not only sale. It requires breeders to keep a written record of their breeding bitches and to pass it on if the animals are transferred. It also requires them to keep a written puppy record/logbook with specified details that must be passed on if the puppy is transferred.

England

69. The Animal Welfare (Licensing of activities involving animals) (England) Regulations 2018⁴⁰ (and the extensive statutory guidance⁴¹ that accompanies them) reduce the breeding threshold to three or more litters (from five or more), but do not extend the scope to cover the supply of puppies as well as sale. Accordingly, there is an exception for breeding

³⁹ <http://www.legislation.gov.uk/wsi/2014/3266/contents/made>. Accessed on 16 March 2020.

⁴⁰ <http://www.legislation.gov.uk/uksi/2018/486/contents/made>. Accessed on 16 March 2020.

⁴¹ <https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities>. Accessed on 16 March 2020.

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three or more litters of puppies in any 12-month period if the person carrying on the activity provides documentary evidence that none of them have been sold (whether as puppies or as adult dogs). (Schedule 1, Part 5, paragraph 9(c)).

Part 1 – Changes to the system for licensing dog breeding

70. The member proposes three specific changes in relation to the current system for licensing dog breeding.

71. Currently, a breeding licence is required for premises where a person is carrying on the business of breeding dogs for sale. The Bill does not seek to change this. In addition (see paragraph 65 for the full detail) if a person keeps a bitch at any premises and that bitch produces a litter, a licence is required if four or more other litters are produced in a 12-month period by bitches kept by that person (or relatives) on those premises; kept by that person on other premises; or kept by a third party under a breeding arrangement with the person. An exemption exists if the breeder can prove none of the puppies were sold in that period.

72. In this case, the member wishes to reduce the threshold so that the original litter and two further litters would trigger the need for a licence, effectively reducing the maximum number of litters that can be bred without a licence. The member also wishes to limit the exemption, so that a breeder must prove that no puppies were sold or given away in order to be exempt. This effectively extends the regime to any form of transfer, not only sale. Finally, the member wishes to make it a requirement that a breeder include the breeding licence number in any advertisement of puppies for sale or to give away.

73. The context within which the member seeks to bring forward these three changes to the current licensing regime is important. As explained in paragraph 67, the Scottish Government plans to modernise the system of licensing of dog, cat and rabbit breeding activities. It has consulted on a set of proposals and has announced its intention to bring forward new regulations. The member would like to see the three specific policy changes (as described above) reflected in the modernised system planned by the Scottish Government and does not wish to place further requirements on Scottish Ministers in terms of the shape and form of the incoming regulations, beyond that.

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74. The Bill therefore does not seek to pre-empt the approach that the Scottish Government will take to licensing the activity of dog breeding in its future regulations. It uses the existing legislation as its reference point and limits itself to the three specific elements that the member wishes to see carried forward in the new system. By taking the approach that regulations ‘must define the activity of dog breeding so that it includes ...’ (s.2(1)) and ‘include provision to the effect that ...’ (s.2(2)) the Bill also avoids imposing a particular form of words, leaving further flexibility to Scottish Ministers.

Part 2 – Puppy litter register

How registration works

75. Part 2 of the Bill provides for the establishment of a Scotland-wide register of unlicensed litters from which puppies are to be sold or transferred. Each register entry will include details of the person, resident in Scotland, who owns the bitch that has the litter, as well as details related to the litter, including the microchip number for each puppy.

76. Registration of an unlicensed litter is required in order to transfer or sell a puppy or puppies from the litter, or to advertise a puppy for sale or to give away. So, a person who intends to keep the full litter of puppies is not required to register the litter. If they initially intend to keep the litter and then decide to sell or give away a puppy, within a 12-month period following the birth of the litter, then registration would take place at that point. It is the ‘first owner’ of the litter (i.e. the person who owns the litter at the time of its birth) who is responsible for registering the litter.

77. The Bill does not create a legal requirement to register a litter; rather, it makes it an offence for any first owner of an unlicensed litter to sell or transfer, or to advertise, any member of a litter aged less than 12 months unless the litter has been registered. So, the first owner of a dog that is more than 12 months old does not need to register the litter in order to sell or transfer that dog. This might apply where the litter was never registered (e.g. because the first owner has, up to that point, kept all the puppies), or where a register entry was created at an earlier stage but the first owner intended at the time to keep that particular dog, or failed to sell it when it was younger. It is also an offence for a first owner to permit another person to advertise, sell or give away a member of an unregistered litter on their behalf. This is to avoid a situation where a first owner could evade

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liability for the selling of a puppy from an unregistered litter by enlisting the help of another person.

78. The main purpose of the register is the welfare of puppies. Owners will be more accountable for litters produced by a bitch they have responsibility for, and in the event of health issues in the early months or concern over provenance, the register will enable puppies to be traced back to the litter owner. This will be aided by the requirement to include the microchip numbers for each puppy as part of the registration information. The register should also aid in the enforcement of the dog breeding licensing regime by helping identify those breeding more than three litters in a 12-month period. The rationale is therefore different in relation to older dogs (aged more than 12 months). It is also considered unlikely that anyone breeding irresponsibly or illegally, with the intention of maximising profit, would hold on to puppies for as long as 12 months.

79. Registration must take place before the first transfer or sale and, if the litter is to be advertised, then registration needs to take place before the advertisement is published.

80. Each registered litter will have a registration number and this number should be included in any advertisement for the puppies from that litter. Licensed breeders will also be required by the Bill to display their breeding licence number on any advertisement for puppies. The aim of these measures is to aid overall enforcement of this Bill and the legislation setting out the breeding licensing regime. Anyone looking for a puppy through advertisements online or in print will be able to identify very quickly those that do not display either a breeding licence number or a litter registration number – and responsible prospective owners will treat this as a clear warning sign. Where a number is included, it could then be verified either with the relevant local authority (in the case of breeding licence numbers) or by searching the puppy litter register. This will only apply to puppies being sold or transferred by someone resident in Scotland.

81. Registration of a litter should not be an onerous task. The aim is to provide a proportionate, light-touch system, which does not require the same inspections and conditions as a licensing regime. In its joint response to the public consultation on the Bill, the BVA Scottish Branch and BVSA stated—

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“A simple online registration system which automatically generates a registration number on submission of details and alerts a Local Authority to the registration, would support identification and monitoring of breeders and sellers with minimal impact on Local Authority resources.”⁴²

82. The Bill requires the register to be established electronically, so as to facilitate a situation in which most people create their own register entries online, and in which (as a result) the register requires minimal resources to maintain. It should also be possible to register by other means if necessary. Completing the required fields should allow the entry for the litter to be created. The register should also make it relatively easy for the person with a registered litter to update any of the registration information that changes (for example a change of address or to add the microchip details of the puppies, if they were not available when the register entry was created). It is a requirement of the Bill that the registered litter owner updates the register entry in this way during the period in which they still have puppies to transfer or sell, and that they update the register as soon as they have no puppies left to transfer or sell (unless the litter is at least 12 months old, at which point the updating requirements no longer apply). Failure to update the relevant information will be an offence under the Bill. Keeping names and addresses up to date, and including microchip numbers at the appropriate time, is important to the functioning of the register, to ensure anyone buying a puppy can check litter registration and to facilitate traceability if required.

83. When a person registers a litter, in addition to a unique registration number for the litter, they should also receive guidance on how to look after young puppies, on the responsibilities of being a litter owner, and on how to sell or transfer their puppies responsibly. This will include a copy of the code of practice, which will include the set of questions that a prospective owner should consider for themselves before taking on a puppy. To ensure the effective functioning of the register, and that those registering are aware of their responsibilities, they should also receive information about the obligation to include the registration number in any advertisement and

⁴² Available at

https://docs.wixstatic.com/ugd/d17704_3f9f8cf032804cf294f9f5eb1672cab9.pdf. Accessed on 16 March 2020.

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the penalty for not doing so, and on the obligation to update the register entry in certain circumstances and the penalty for not doing so.

84. A prospective owner searching the register will either be able to enter the name of a registered litter owner and see the corresponding registration number; or to enter the registration number and see the name of the registered litter owner. They will also see details related to the litter, including the date of birth of the litter, the number of puppies, their colour and breed (or description if cross-bred), and the microchip numbers (where available). They will not see the address of the registered litter owner. Addresses could be made accessible (through regulations under section 17) to enforcement authorities, but will not be accessible to the general public, by means of a public search of the register. As explained in the section above on traceability, the aim is to ensure that it is easier to connect a puppy to its breeder and the litter it was born into.

Flexibility for Scottish Government in implementing the puppy litter register

85. The Bill aims to set out sufficient detail to ensure the functioning of the register in the way envisaged by the member, whilst leaving considerable latitude to the Scottish Government on how to implement it by regulations.

86. The Parliament has already considered delegation in this area to be appropriate, with the Animal Health and Welfare (Scotland) Act 2006 (s.27) making provision for Scottish Ministers, by regulations, to set up licensing or registration schemes to regulate activities involving animals.

87. Furthermore, the member's intention is to enable, as far as possible, the Scottish Government to take an approach to the operation of the scheme that best complements and strengthens existing and future activities in this area. This should include the possibility of combining the register with other existing or planned initiatives, provided that the provisions of the Bill can be implemented as intended; and the possibility of delegating the operation of the register to another body or organisation, provided it remains a Scotland-wide litter register.

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Fees for registering

88. The member's view is that the Scottish Ministers should have discretion to charge a fee for registration, and the Bill provides them with the power to do so through regulations. The policy intention is that they should have the ability to cover the costs of setting up and running the register, if required, through the charging of a fee. In addition to having the power to specify a fee for registering, they may also provide for different amounts (including zero) to be payable in different circumstances.

89. For example, some consultation responses argued that litters to be given away to rehoming or rescue centres should not need to be registered. The member is of the view that such litters should still be registered, but that ministers might decide to charge a reduced fee, or not charge a fee, in these circumstances. Other such circumstances could be litters born to bitches in a rescue centre, or to those born to working or service dogs.

Enforcement

90. The Bill provides the Scottish Ministers with the powers to set out in regulations measures for the enforcement of provisions in the Bill relating to the register. This includes measures specifying who is to have enforcement powers and what those powers are to consist of. If considered appropriate and necessary, it may also include provisions conferring on specified persons powers of entry, search, inspection and seizure; and provision that obstructing a person in exercising a power conferred by the regulations is an offence.

91. The member envisages that the main enforcement will most likely be carried out by local authorities. They already have responsibility for enforcing the legislation related to the dog breeding licensing regime. Given the interplay between the two schemes – breeding licensing and registration – and the need to ascertain that those breeding more than three litters and require to have a licence are aware of and apply for one, the most practical approach would seem to be for local authorities to have a role in enforcing the Bill's provisions.

92. The Bill leaves the decision on who is to have enforcement powers to the Scottish Ministers, who may choose to give a role to others. To facilitate

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enforcement, the Bill separately provides Ministers with the power to authorise access to the information in the register (see below).

93. As the Bill creates a number of offences, there will also be an enforcement role for the police, the Crown Office and Procurator Fiscal Service (COPFS) and the courts. For some of the offences, the option of using fixed penalty notices will exist (see below). It is expected that, for these offences, the fixed penalty notice option will be used for the large majority of infringements.

Authorised access to register information

94. The Bill gives Scottish Ministers the power to make provisions by regulations to give particular persons or bodies with functions in relation to the welfare of dogs access to the register, or to authorise them to be given information derived from the register. Such regulations may also limit the uses to which the information may be put. This may be necessary to ensure effective enforcement of the Bill, and the expectation is that all local authorities would be given access to the register. The regulation-making powers will enable the Scottish Ministers to take decisions on this, and they may also authorise other bodies or organisations (which have animal-welfare functions) to access the register, or to be provided with information contained in the register, if they consider it is necessary to do so.

Deletion of old entries in the register

95. In operating the puppy litter register, it will be essential that information held for the purpose of the register, and for delivering the policy as set out by this Bill, is handled in a way that is fully compliant with the data protection legislation. The member therefore believes it is essential for the Scottish Ministers to have the power by regulations to set out provisions for deleting old entries in the register. These are entries that have been closed (and so are no longer accessible to the public) but that continue to form part of the register after the 12-month period during which they were needed for the purposes of the Bill.

Fixed penalty notices

96. An underlying feature of the Scotland-wide puppy litter register is that it is a light-touch system, that allows for a proportionate approach to improving the traceability of puppies and encouraging more responsible dog ownership, both from the litter owner and the prospective puppy owner.

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97. Whilst it is not desirable that excessive penalties should apply to someone who unwittingly sells a puppy from an accidental litter, it is nevertheless necessary to have a system that enables a stringent enough penalty for those that are intentionally avoiding regulation and putting animal welfare at risk. Achieving the right balance will be important. Treading this line is a recurring theme with the Bill, which on one hand attempts to encourage more responsible dog ownership, through education, increased accountability and awareness of how a person's behaviour can have an impact on the illegal trade; and on the other seeks to provide a mechanism for reducing the room for manoeuvre of those behaving irresponsibly or illegally.

98. The Bill provides a range of options for those enforcing its provisions. Each of the offences in the Bill carries a maximum fine level on the standard scale. However, it can be time consuming and very costly to prepare and prosecute cases. For this reason, the Bill introduces the option for Fixed Penalty Notices (FPNs) to be used for some of the offences.

99. The Bill requires that Scottish Ministers set out the FPN regime by regulations made under section 46A of the Animal Health and Welfare (Scotland) Act 2006, which enables fixed penalty notice regimes to be put in place to help enforce certain rules that protect animal welfare.⁴³ Section 46A is to be added to the 2006 Act by the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, which, at the time this Memorandum was finalised (May 2020), was at Stage 2 of the Parliament's scrutiny process. It is expected to be passed before this Bill, making it likely that section 46A will be in force before the relevant provisions of the Bill (requiring regulations under section 46A to be made) itself comes into force. The section 46A regulations will be subject to the affirmative procedure.

100. Fixed penalty notices are an important addition to the enforcement options. Without FPNs as an option, there is a risk that many breaches of provisions in the Bill may not be pursued for resource reasons. If this

⁴³ Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, Policy Memorandum, SP Bill 56-PM, p.13.

https://parliament.scot/S5_Bills/Animals%20and%20Wildlife%20Bill/SPBill56PMS052019.pdf Accessed on 16 March 2020.

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occurred, the Bill would lose its deterrent effect and greater levels of non-compliance could result. The member believes the inclusion of an FPN regime will make it easier for local authorities to enforce the Bill's provisions. Depending on the facts and circumstances, local authorities will have the discretion to decide whether action is required and, if it is, whether the use of a fixed penalty notice is the most appropriate mechanism. For repeat and persistent offenders, there will be the option of involving the police, who can then refer cases to the COPFS for consideration of prosecution.

Part 3 – Code of practice

101. Part 3 of the Bill requires the Scottish Ministers to make a code of practice to set out the process that should be followed by anyone considering acquiring a dog or puppy as a pet, and by anyone selling or giving away a puppy or dog to another person, to keep as a pet.

102. The code must give effect to the schedule to the Bill, which sets out those questions that anyone acquiring a puppy or dog of any age should consider for themselves. The person selling or giving away the puppy or dog should check that the prospective acquirer has considered the questions and is able to respond to the six main questions in the affirmative. As far as is practicable, the two parties should meet in person before reaching an agreement to transfer or sell the dog from one to the other. The policy intention is that the set of questions in the code of practice form the basis for a conversation between both parties. The prospective owner may need additional information about the breed, its character and needs in order to consider, in an informed way, whether they are in a position to give the pet adequate care. As part of the litter registration process, litter owners will receive information on how to look after young puppies, as well as the code of practice, setting out how to transfer or sell a puppy responsibly, including the set of questions.

103. The schedule also contains a set of additional requirements that apply to the sale or transfer by the first owner of a puppy or younger dog (up to the age of 12 months). The prospective acquirer should check that the person they are getting such a dog from is either a licensed breeder or has registered the litter. The prospective acquirer is also required, as far as is practicable, to see the young dog with its mother.

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104. Whilst there are provisions in existing legislation to prevent licensed breeders selling puppies under the age of eight weeks, this does not cover the sale or transfer of unlicensed litters. The Bill sets out, as part of the good practice expected by a first owner with a registered litter who is selling or transferring a puppy, that a puppy should not be sold or transferred before it is eight weeks old. Similarly, someone acquiring a puppy should not buy or accept a puppy under the age of eight weeks. This is based on the need to keep a puppy with its mother for a minimum period of time.

105. The aim of the code is to set out a number of requirements on those acquiring and those selling or giving away dogs and puppies, to help achieve behavioural change in favour of more informed and responsible dog ownership. There is no penalty for failing to do any of the things mentioned in the code. But if, further down the line, the person is investigated for a “relevant offence”, evidence that the way they have looked after the dog was incompatible with the code (e.g. by keeping a dog in an unsuitable environment for its size, or by being unable to afford veterinary treatment) could be taken into account. In other words, given the existence of the code, it will be presumed that the dog-owner should have been aware of these factors (e.g. the need to keep the dog in a suitable environment, the likely cost of veterinary treatment) – something that can be used in proceedings to help establish liability for the offence. (For the purposes of the code of practice, the “relevant offences” are the offences created under Part 2 of the 2006 Act or in regulations made under section 26 or 27 of that Act.)

106. This approach was felt to be appropriate and proportionate, 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.

Offences

107. The Bill creates (or provides for the creation of) seven new offences, six of them related to the puppy litter register.

108. It is an offence (under section 8(7)) knowingly to provide false information during the registration process. It is the hope that, as more and more acquirers become aware that they should check that the person supplying the puppy is either doing so as a licensed breeder or has registered the litter, it will be increasingly difficult to sell puppies without

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registering. Those persons who are seeking to abuse the system and do not wish the puppies to be traced back to them may input false names and/or addresses. The Bill therefore makes it an offence to do so. This offence carries a penalty, on summary conviction, of a fine up to level 4 on the standard scale, which is currently £2,500. There is no fixed penalty option for this offence.

109. It is an offence (under section 11(5)) for a person to fail, without reasonable excuse, to give notice of changes in the registration information – for example, if a person’s name or address changes, while there are still puppies left to sell or transfer, or if microchip numbers are allocated to the puppies (in the event that they were not microchipped at the time of registration). In order to ensure that someone acquiring a puppy can correctly use the register to check if a litter is registered, and to provide the traceability aspect of the register, names and addresses and microchip information must be kept up to date at least while the litter register entry is still open and there are still puppies left to sell or transfer. This offence carries a penalty, on summary conviction, of a fine up to level 3 on the standard scale, which is currently £1,000. It will also be an option to serve a fixed penalty notice for this offence.

110. When a person with a registered litter has no puppies left to sell or transfer, because all have either been sold or transferred or are being kept, the person is required to update the litter register entry accordingly (unless the litter is already 12 months old). It is an offence to fail, without reasonable excuse, to update the litter status in the register (under section 12(4)(a)). It is also an offence knowingly to provide false information in updating the register (under section 12(4)(b)). These offences carry a penalty, on summary conviction, of a fine up to level 3 on the standard scale, which is currently £1,000. It will also be an option to serve a fixed penalty notice for the offence of failing to update the register entry, but not for the offence of knowingly providing false information.

111. When advertising (or permitting someone else to advertise) puppies (or dogs aged less than 12 months) for sale or to give away, the first owner of a registered litter must ensure that the litter registration number is included in the advertisement. It is an offence (under section 10(1)) to fail, without a reasonable excuse, to do this. This measure should make it easier both for acquirers, and local authorities and others, to identify those selling or giving away unregistered litters. This offence carries a penalty, on

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summary conviction, of a fine up to level 2 on the standard scale, which is currently £500. It will also be an option to serve a fixed penalty notice for the offence.

112. To complement this measure, the Bill also requires licensing regulations (that are to be made under Part 1 of the Bill) to make it an offence for a licensed breeder not to include the breeding licence number in any advertisement for sale of a puppy/puppies. This offence carries a penalty, on summary conviction, of a fine up to level 2 on the standard scale, which is currently £500. The Scottish Ministers will be able to decide at the point of drafting those regulations whether to provide for a fixed penalty notice for the related offence.

113. If, without reasonable excuse, the first owner of an unlicensed litter of puppies sells or gives away, or advertises for sale or to give away, a member of an unregistered litter (less than 12 months old), that person commits an offence (under section 6(1)). The first owner also commits an offence by permitting another person to do any of the above on the first owner's behalf. This offence carries a penalty, on summary conviction, of a fine up to level 3 on the standard scale, which is currently £1,000. It will also be an option to serve a fixed penalty notice for this offence.

Alternative approaches

Litter threshold for triggering a licence requirement

114. Instead of reducing the licensing threshold from five to three litters, an alternative would have been to leave the threshold for a breeding licence requirement at five litters or more. Consultation responses were very supportive of a reduction in the threshold. The member's view is that a five-litter threshold leaves a significant number of breeders breeding multiple litters in a 12-month period without inspections and with no conditions to meet. Leaving the threshold at five or more litters would also leave Scotland at odds with other parts of the UK, England and Wales having already reduced the threshold from five to three litters.

115. Some responses to the public consultation on the Member's draft proposal for a Bill were in favour of an even lower threshold. This would increase further the volume of people having to apply for a licence and for the associated checks and inspections to be carried out. Whilst agreeing with the overall aim of such an approach, which seeks to secure the

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improved welfare of puppies and their mothers, the Member believes that for those with one or two litters in a 12-month period, a puppy litter register is a more proportionate approach, accompanied by a reduction in the number of litters that can be produced before a breeding licence is required.

Local authority-run puppy litter registers

116. Local authorities are already responsible for the breeding licence regime. There was therefore an argument for also giving local authorities responsibility for the new puppy litter register, given the interplay between the two schemes. In terms of the practical functioning of the register, however, there were advantages to a Scotland-wide approach, enabling local authority access.

117. One of the main aims of the register is to improve the traceability of puppies. It is also designed to aid implementation of the breeding licence requirement by providing the potential for local authorities to identify people breeding more than two litters in a 12-month period. For both, it was felt that it would be more helpful to take a Scotland-wide approach, in order that people moving between local authority areas could still be located, without having to address the issues related to local authorities sharing data with one another. In this way it is hoped that the Scotland-wide approach will also facilitate enforcement.

118. The suggestion to consider a single Scotland-wide register was put forward in consultation responses and on reflection, and in light of the subsequent policy development, it was considered more resource efficient and more effective to have a Scotland-wide approach, rather than 32 separate unconnected databases.

Code of practice rather than statutory obligations

119. The member's aim is to set out in primary legislation the framework for a process that will lead to more responsible acquisition of puppies and dogs. The aims of the approach are set out in the description of the code of practice in paragraphs 101-106. The code will give effect to the schedule to the Bill, which sets out what is expected of a prospective acquirer of a puppy or dog, and what is expected of a prospective supplier.

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120. The consultation on the draft proposal asked whether there should be obligations on each party to ensure that prospective acquirers were aware of the questions they should consider, and that prospective suppliers should check that they had done so. Whilst the member's intention is to have a specific framework set out on the face of the Bill, which goes beyond general guidance on dog welfare, it was felt that framing this as statutory obligations on the parties with penalties for failing to comply could be seen as excessively invasive and difficult to enforce.

121. The Bill provides for compliance (or otherwise) with the code to be relied upon in the event of any subsequent animal welfare-related investigations (as explained in paragraph 105). In other words, the code will set out clearly what is expected of each party, without it being a punishable offence for failing to comply. The member's view is that this is a proportionate approach which, at the same time goes further than existing guidance.

Consultation

122. On 3 May 2018, Christine Grahame MSP lodged a draft proposal for a Member's Bill in the following terms—

“A proposal for a Bill to improve the health and wellbeing of dogs throughout their lives by strengthening the regulation of the activity of breeding, and of selling or transferring puppies, and by establishing a more responsible and informed approach to acquiring and owning a puppy or dog.”

123. The draft proposal was accompanied by a consultation exercise. The consultation period ran from 4 May until 30 July 2018 and 92 responses were received.⁴⁴

124. In general, there was strong support for tightening the regulation of dog breeding and achieving higher levels of responsible dog ownership.

⁴⁴ A summary of responses is available at https://www.parliament.scot/S5MembersBills/20190226_Consultation_summary_Resp_Dog_Ownership_FINAL.pdf. Accessed on 16 March 2020.

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125. Ninety-one percent of respondents supported reducing the threshold for a breeding licence from five to three litters in a 12-month period. There was a consensus that more breeders than is currently the case should be licensed. Whilst there was very strong support for reducing the threshold for licensing from five to three litters, a number of respondents believed it should be reduced further.

126. Eighty-nine percent of respondents were in favour of requiring people to be licensed breeders even if they do not sell their puppies but transfer or give them away. And 82% of respondents were supportive of a temporary registration scheme for those breeding one or two litters and who wish to sell or transfer their puppies. A number of suggestions were put forward on implementation, including the suggestion of setting up one central database.⁴⁵

127. In terms of the measures intending to improve responsible ownership, 90% of respondents supported creating an obligation on prospective owners to consider a set of questions related to their capacity to take on a puppy before doing so. Eighty-six percent agreed that anyone acquiring a puppy from a breeder in Scotland should be obliged to check that the breeder is licensed or registered. The main reasons mentioned were the welfare of the puppies, discouraging back-street breeders, puppy farmers and smugglers, aiding local authorities identify unlicensed breeders.⁴⁶

128. Whilst the proposed measures received majority support overall from those who responded, there are key themes, recurring across the questions, emerging from the responses of both those supporting and opposing. These relate in particular to the potential burden on local authorities and their capacity to cope with what could be a substantial increase in the number of breeders that would be either licensed or

⁴⁵ See for example response by North Lanarkshire Council.
https://e8714014-7926-4a5f-ae06-61e2a7524e92.filesusr.com/ugd/d17704_70583324c68e4921a5bc837a0ea51901.pdf Accessed on 16 March 2020.

⁴⁶ See for example response by Perth and Kinross Council
https://e8714014-7926-4a5f-ae06-61e2a7524e92.filesusr.com/ugd/d17704_a37227a47cf34495949c7a4430371adb.pdf Accessed on 16 March 2020.

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registered; and to the practicalities of implementing some aspects of the proposal and related challenges of monitoring and enforcing the measures.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

129. An Equality Impact Assessment (EQIA) has been carried out and a summary of its findings is provided below.

130. The EQIA did not demonstrate any particular positive or negative impact with regards to any of the protected characteristics.

131. The changes in the breeding licensing threshold, the introduction of the requirement that unlicensed litters be registered prior to sale or transfer, and the establishment of a new code of practice for those acquiring and supplying puppies and dogs will apply equally to everyone, including those with protected characteristics.

132. The Bill requires Scottish Ministers to set up the register electronically but does not prevent the register operator ensuring full accessibility for those who find engagement with online media challenging, including those with a sight impairment, or other disability, as with any other publicly-run process. Similarly, there will be a need to take account of groups that do not have a permanent address, or who only have an address for part of the year, both in terms of how to reach them, to inform them, but also in terms of the registration process (for those with dogs that have litters). Again, this is not unique to this Bill and the same considerations should be taken into account as with other public authority-run processes.

133. The provision in the code of practice advising that anyone acquiring a puppy should meet the supplier and see the dog with the bitch that gave birth to it is qualified in terms of what is practicable, partly to acknowledge that this may not physically be possible for certain individuals.

Human rights

134. The Scotland Act 1998 places a duty on the Scottish Ministers and the Scottish Parliament to act in accordance with the European Convention

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on Human Rights (ECHR). It is the member's view that all of the Bill's provisions are fully compatible with Convention rights. In particular, she considers that if lowering the licence threshold, extending the licensing requirement to all transfers (Part 1) and making the transfer of ownership of litters below the licensing threshold subject to a registration requirement (Part 2) engages Article 1 of Protocol 1 (A1P1 – right to peaceful enjoyment of property) of the ECHR, this can be justified. Similar considerations apply in relation to any possible engagement of Article 8 of ECHR, which protects a person's right to respect for private and family life. The member believes the further regulation of the sale or transfer of dogs for animal welfare purposes to be a legitimate one for legislation in the public interest. She is further of the view that the Bill provisions strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, she believes that the measures adopted through the Bill's provisions are a proportionate tool to help secure the welfare of puppies and dogs and improve the traceability of puppies, that will make people more accountable for their litters and more aware of their responsibilities by providing them with information on how to look after puppies and how to help ensure they go to appropriate homes.

135. It is the member's view is that although, legally, puppies may be defined as 'goods', they are sentient beings. A person who has a bitch has a responsibility, either to ensure it has no litters by having it spayed, or to ensure that any litter is well cared for, and that the puppies go to appropriate homes. The animal welfare benefits of the measures adopted through the Bill's provisions outweigh any possible interference in people's lives. Finally, the member believes that the majority of people will understand the contribution that the register as well as the other measures set out in the Bill will make not only to the welfare of any individual litter of puppies, but to helping tackle the wider issues of irresponsible breeding.

Island communities

136. The Bill should have no significant impacts specific to island communities. Given that the intention is to enable online registration in the vast majority of cases, it should be possible to register a litter from a remote location, provided there is an internet connection. It is in any case expected that the register operator will need to provide offline options for creating and updating a register entry, not just for those living in island or

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remote communities, but for people living anywhere who, for whatever reason, do not have internet access or are incapable of using it.

Local government

137. It is expected that local authorities will have an important role in implementing the provisions of the Bill and, as such, there will be a certain impact on them.

138. Local authorities are responsible for implementing the current dog breeding licensing regime. This Bill will likely result in an increase, in some local authority areas, in the number of breeders that require licences. However, since the administration costs of the regime should be recovered through the cost of licence fees, it is hoped that this will mitigate any significant increase in costs to local government due to the increase in the number of breeders requiring licences.

139. The introduction of the Scotland-wide puppy litter register should aid local authorities in identifying when someone has exceeded the new two-litter limit for a 12-month period and therefore requires a dog breeding licence. It should help provide them with a clearer overview of all those in their local authority area that are producing litters of puppies (whether licensed breeders or registered litter owners). Local authorities will not be responsible for the administration and maintenance of the register, but it is envisaged that they will have access to the information it contains about people with litters in the authority's area. The member believes that there are a number of ways in which the design and operation of the register could facilitate enforcement by local authorities. For example, the software used to manage the online register could automatically notify a local authority whenever a register entry is created with an address in the local authority's area or generate an alert if a name or address appears three or more times in any 12-month period. This could aid local authority officers in identifying potential breaches of the Bill's requirements.

140. The requirement for those selling or transferring puppies to include either a dog breeding licence number or a litter registration number in any advertisement to sell or transfer a puppy should also assist local authorities in identifying those potentially trading illegally.

141. The creation of new offences of selling or transferring a puppy from an unregistered litter, of advertising without including a dog breeding

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licence number or litter registration number, of knowingly providing false information in a register entry and of failing to update details on the register will have implications for local authorities, as they will likely have a role in enforcing the Bill.

142. A basic principle underpinning the Bill is the member's belief that the responsible actions of the public will also help detect those acting irresponsibly and illegally. It is the member of the public seeking to acquire a puppy, but unable to get a valid registration number from the person seeking to sell the puppy, who is likely to approach the local authority to report this.

143. The Bill makes provision for the use of fixed penalty notices in cases where prosecution is considered unnecessary or excessive. This was proposed by some local authorities in response to the consultation on the Member's Bill proposal. Fixed penalty notices are already widely used by local authorities and recognised as a valuable enforcement tool.

Sustainable development

144. The member considers that the Bill can be delivered sustainably as it requires no unsustainable financial or other resource input to implement and maintain, will make a positive social contribution, and has no negative environmental impacts. The member considers that the Bill may improve some of the factors related to sustainable development, such as wellbeing and equity.

145. Although primarily focused on the welfare of dogs, the Bill will also have a positive impact on people. For example, by encouraging more responsible dog breeding, it is hoped that it will help minimise the distress experienced by those owners who have to deal with puppies displaying serious physical and psychological issues due to irresponsible breeding and ill-treatment.

146. The member hopes that the Bill will also make a contribution to fairness and equity. By making it more difficult for those breeding irresponsibly to evade the system, it will be fairer on those responsible breeders currently following their legal obligations and upholding the welfare of their puppies. At the same time, the Bill could potentially have an unfair impact on people that are without a permanent address for all or part of the year. In terms of specific communities that traditionally do not

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have fixed addresses, it will be important to ensure that similar provisions are made as for other governmental/local authority services. However homeless people who have dogs may be adversely affected. It is assumed that they may be much less likely to be aware of any change in the law related to dog ownership responsibilities, and that their ability to register online and potentially to pay a fee for doing so would be extremely limited if not impossible. This is a factor that may need to be considered further by the Scottish Ministers in terms of the detail of the register design.

147. The Bill may contribute to good governance, by increasing the ability of local authorities to have an overview of all those breeding puppies (licensed or registered) which could have positive implications for the protection of the welfare of puppies and dogs. It should help improve informed decision-making as it provides a new means by which prospective owners can become more aware of what they need to consider prior to taking on a dog and how to acquire one responsibly.

148. By encouraging a more responsible and informed approach to acquiring a puppy, the member believes that the Bill should help reduce the supply of puppies coming from irresponsible or illegal breeders and could contribute to reducing criminal activity.

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Welfare of Dogs (Scotland) Bill

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