

DOG THEFT (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This supplementary Delegated Powers Memorandum has been prepared by Scottish Parliament officials, on behalf of Maurice Golden MSP (the Member who introduced the Bill), in accordance with Rule 9.7.9 of the Parliament’s Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Dog Theft (Scotland) Bill (“the Bill”). This memorandum describes a provision in the Bill conferring a power to make subordinate legislation which was amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

2. The amended delegated power in the Bill is set out below, with a short explanation of what the power allows, why the power has been taken in the Bill, and why the selected form of parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Section 2(2)(b) – Theft of helper dogs

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations made by Scottish statutory instrument
Parliamentary procedure:	negative
Revised or new:	revised

Provision

3. Section 2(1) provides that the offence of dog theft under section 1 is aggravated where the dog taken or kept is a helper dog - a term introduced by amendment at Stage 2.

4. Section 2(2) defines the term “helper dog” for the purposes of section 2. It includes dogs that fall within the statutory definition of an “assistance dog” under section 173(1) of the Equality Act 2010, as well as any other category of dog prescribed by regulations made by the Scottish Ministers.

Reason for taking power

5. The Member considers that the power in section 2(2)(b) is necessary to allow flexibility in defining categories of dogs that should be treated as “helper dogs” for the purposes of the aggravation. Whilst the Equality Act 2010 provides a statutory definition of “assistance dog”, there may be other dogs that perform comparable roles in supporting individuals with disabilities, but which are not covered by that definition. Delegating this power enables the Scottish Ministers to respond to developments in training practices or emerging categories of support dogs without requiring further primary legislation.

Choice of procedure

6. It is considered that the negative procedure will provide an appropriate level of parliamentary scrutiny for regulations prescribing additional categories of dogs as helper dogs given that such regulations will not amend primary legislation. The use of the affirmative procedure would involve an inappropriate use of parliamentary time relative to the impact of such regulations. The negative procedure is considered appropriate because the power is limited to adding additional categories of dogs that are to be treated as helper dogs for the purposes of the aggravation under section 2. This is a narrow and technical matter, and the negative procedure provides sufficient parliamentary oversight while allowing flexibility for timely adjustments to the definition of helper dogs when necessary.

This document relates to the Dog Theft (Scotland) Bill (SP Bill 58A) as amended at Stage 2

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