

This document relates to the Welfare of Dogs (Scotland) Bill (SP Bill 74) as introduced in the Scottish Parliament on 1 June 2020

Welfare of Dogs (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Welfare of Dogs (Scotland) Bill, introduced in the Scottish Parliament on 1 June 2020. They have been prepared by the Parliament's Non-Government Bills Unit 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);
 - a Policy Memorandum (SP Bill 74–PM).
3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The Bill

4. The aim of the Bill is to improve the overall health and wellbeing of dogs throughout their lives by strengthening the regulation of the activity of

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breeding and selling or transferring puppies; and by establishing a more responsible and informed approach to acquiring and owning a puppy or dog.

5. The Bill:

- places a duty on the Scottish Ministers to make licensing regulations, the effect of which will be to reduce the number of litters that triggers a requirement for a dog breeding licence from five to three (in addition to anyone explicitly running a commercial business of breeding dogs); and to extend the licensing requirement to cover those who give away puppies as well as those who sell them;
- requires the licensing regulations to make it an offence for a licensed dog breeder to advertise a dog without including the licence number in the advertisement;
- places a duty on the Scottish Ministers to make arrangements for the establishment and operation of a Scotland-wide puppy litter register that is searchable by the public and to which authorised persons may be given access;
- requires people who create entries in the register to be provided with relevant information;
- makes it an offence for the first owner of a litter of puppies (if not a licensed breeder), to sell, give away or advertise a member of the litter, or permit another person to do so, without first registering the litter;
- makes it an offence for anyone with a registered litter to advertise a member of the litter without including the litter registration number in the advertisement;
- makes it an offence knowingly to provide false information in a register entry, or to fail to update a register entry when required;
- enables the Scottish Ministers to make regulations in connection with the register, including about a fee for registering, enforcement of the register and the deletion of old entries;
- requires the Scottish Ministers to make regulations providing for a fixed penalty regime in respect of certain offences connected with the register;

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- requires the Scottish Ministers to make a code of practice for people to follow when they are considering acquiring a dog to keep as a pet or considering selling or giving away a dog for someone else to keep as a pet;
- requires the Scottish Ministers to promote public awareness and understanding of the Bill.

6. The Bill consists of 27 sections arranged in four parts, plus one schedule.

7. Part 1 relates to the licensing of the activity of dog breeding; Part 2 relates to unlicensed litters and the establishment and operation of the Scotland-wide puppy litter register; Part 3 relates to good practice in the buying, selling and giving away of puppies and dogs; and Part 4 consists of general provisions.

8. The schedule sets out the essential content of the code of practice required under Part 3.

Commentary on sections

Part 1 – Dog Breeding

9. The licensing of the activity of breeding dogs is currently governed by the Breeding of Dogs Act 1973 (“the 1973 Act”) and the Breeding and Sale of Dogs (Welfare) Act 1999 (“the 1999 Act”). Section 27 of the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) gives the Scottish Ministers the power to make regulations requiring activities involving animals to be licensed on welfare grounds. The 2006 Act also includes provision repealing the 1973 and 1999 Acts, and those repeals are expected to be brought into force by regulations under section 27 making provision that supersedes them.

10. Section 1 of the Bill requires the Scottish Ministers to use their powers under section 27 of the 2006 Act to make licensing regulations for the activity of keeping a breeding establishment for dogs. The first such regulations must be made and brought into force no later than 6 months after the Bill receives Royal Assent. By virtue of section 51 of the 2006 Act, regulations under section 27 of that Act must be laid in draft before the Parliament for approval by resolution.

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11. The 2006 Act normally requires Ministers to consult before making regulations under section 27. Section 1(3) of the Bill dispenses with this requirement in the case of provision included in such regulations to meet the requirements of Part 1 of the Bill. This reflects the fact that the Scottish Government has already consulted on proposals to update the licensing regulations for the keeping of breeding establishments for dogs.

12. The 1973 Act sets out two sets of circumstances in which a person requires a licence to keep a breeding establishment for dogs. The first is where the person carries on, at any premises, the business of breeding dogs for sale. The second is where the person keeps a bitch at any premises, the bitch has a litter of puppies during a 12-month period and (during the same 12-month period) all the bitches kept by the person (or a relative) on those premises, together with any bitches kept elsewhere by the person or kept anywhere by a third party with whom the person has a breeding arrangement, produce four or more other litters. (Broadly speaking, this second set of circumstances amounts to breeding five or more litters of puppies in any 12-month period.) There is an exception in this second case if the person can show that none of the puppies (other than those born to bitches that the person keeps on other premises) was sold during the 12-month period.

13. Section 2 of the Bill sets out the scope of the licensed activity (of dog breeding) that is to be covered by the regulations that section 1 requires to be made.

14. Firstly, under the regulations, a person must be considered as keeping a breeding establishment for dogs at premises (and so requiring a licence) at any premises if they carry on at those premises a business of breeding dogs for sale (subsections (1) and (2)(a)). This matches one of the circumstances in which a licence is already required under the 1973 Act.

15. Secondly, if a person (P) keeps a breeding bitch on premises and the number of litters produced in any 12-month period by that bitch, together with certain other bitches, is three or more, then P is generally to be treated as keeping a breeding establishment for dogs at those premises (subsections (1) and (2)(b)). In this second case, as in the 1973 Act, the bitches whose litters count towards the threshold include those kept by P (at those premises or elsewhere), those kept by certain of P's relatives (at

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those premises) and those kept (anywhere) by a third party with whom P has a breeding arrangement (subsection (4)). Subsection (5) exempts P from the need for a licence if none of the puppies born to the various bitches (other than those kept by P on other premises) is sold or given away during the 12-month period – in other words, if P keeps all of the puppies. This is narrower in scope than the equivalent exemption under the 1973 Act, which applies regardless of whether the puppies are kept or given away (so long as none is sold).

16. Section 2(3) makes clear that the two sets of circumstances need not be mutually exclusive (that is, certain breeders might require a licence by virtue of both paragraphs of subsection (2)).

17. Section 2(6) enables the Scottish Ministers to make other exemptions or qualifications to the requirement to hold a licence for the activity of keeping a breeding establishment for dogs. This would, for example, enable establishments breeding dogs for the purposes of scientific research to be exempted from the licensing requirement.

18. Broadly speaking, the effect of section 2 is that the new licensing regime that Ministers must put in place (in licensing regulations under section 1) must differ from the current regime (under the 1973 Act) in two key respects: firstly, that the threshold of five or more litters in a 12-month period must be reduced to a threshold of three or more; and secondly, that litters bred to be given away as well as sold must be counted towards the threshold.

19. Section 3(1)(a) requires each licence issued to have a unique reference number. Section 3(1)(b) requires the licensing regulations (that Ministers are required, by section 1, to make) to make it an offence for a licence-holder, without reasonable excuse, to advertise a puppy or dog for sale or to give away (or permit another person to do so) without including that unique reference number in the advertisement. This applies only to dogs aged under whatever age-threshold Ministers specify in the licensing regulations, and only to dogs born as part of the licensed activity, so it still permits a licence-holder to advertise without including a licence number if the dogs advertised are older than the threshold age or are unconnected to the licensed activity (e.g. if they are puppies of a family pet, separate from the dogs kept for commercial breeding). The maximum penalty for the offence is to be a fine at level 2 on the standard scale, currently £500.

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Part 2 – Unlicensed litters

20. This Part of the Bill applies to any litter that is not bred by a licensed breeder (that is, a person licensed according to the licensing regulations that section 1 requires Ministers to make) under the authority of the licence. Parts 1 and 2 are therefore complementary, so that every person in Scotland who breeds a litter of puppies and intends either to sell them or give them away will be subject to the requirements of one Part or the other.

21. Section 5(5) defines what it means for a litter to be “registered in accordance with this Part”. This definition is used in the description of the section 6 offence and for the application of the requirements to update the register (as set out in sections 11 and 12 of the Bill). A litter is “registered in accordance with this Part” if there is an entry for it in the register, and the entry is still open – that is, it has not yet been closed in accordance with section 13 or 14 of the Bill. (An entry is closed under section 13 when it is updated to indicate there are no further puppies available for sale or transfer, and under section 14 when 12 months have expired since the birth of the litter.)

22. Section 6 defines the offence of selling, giving away or advertising a member of an unregistered litter. Only the first owner of a litter of puppies who is resident in Scotland can commit the offence. The offence consists in the first owner, without reasonable excuse, selling, giving away or advertising a member of the litter aged less than 12 months (or permitting another person to do so) when the litter has not been registered; it doesn’t consist in the first owner’s failure to register the litter. Accordingly, no offence is committed if a litter isn’t registered and all the puppies from the litter are kept, or if they are only advertised, sold or given away after they are 12 months old.

23. The maximum penalty for the section 6 offence is a fine of level 3 on the standard scale, which is currently £1,000 (but see also section 18).

24. Subsection (4) introduces a presumption for the purposes of prosecuting the section 6 offence. If the prosecution states, when charging a person with the offence, that the person is the first owner, that the litter was unregistered or that the person was (at the time) resident in Scotland, the court is to accept those statements as fact unless that person challenges the presumption and proves otherwise (rather than these being matters that the prosecution requires to prove). Section 6(5) sets out the

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process by which such a challenge may be made; this is by right early on, but requires special permission of the court to be done later.

25. Section 7 requires the Scottish Ministers to set up the puppy litter register as an electronic database and to make it operational no later than 6 months after the Bill receives Royal Assent. To enable this work to start early, this section is one of those brought into force straight away (see section 26). Ministers may delegate the establishment and operation of the register to a third party. If so, they must publish information about the arrangements, but this need not include information about how much the third party is paid.

26. Section 8 sets out how an entry is created in the register. Subsection (1)(b) allows Ministers, by regulations, to impose a fee for registering a litter (and any such regulations are subject to the negative procedure – see section 24(3)). Subsection (2) sets out the specific information that must be provided for each register entry. Under subsection (2)(f), this must include, for each puppy in the litter, “the microchipping information” – which is defined in subsection (3). If, at the time the register entry is created, a particular puppy has not been microchipped, only this fact need be recorded, but if it has been microchipped, the unique number must be included in the register entry. Subsection (2)(g) allows the Scottish Ministers, by regulations (again, subject to the negative procedure – see section 24(3)) to determine additional information that a person must enter in order to register a litter. Under subsection (5), each register entry is to consist of the registration information (as set out in subsection (2)) and a litter registration number. This number will be a unique identifier, and a means by which the litter can be traced back to the first owner.

27. Under section 8(7) it is an offence for a person to provide information, when registering a litter, that the person knows to be false. So, for example, a person who wishes to avoid becoming a licensed breeder might commit this offence by entering a false name in the register when registering a third litter within a 12-month period. Similarly, it would be an offence for the first owner to enter a false address in an attempt to avoid traceability of a puppy back to them. The maximum penalty for this offence is a fine of level 4 on the standard scale, which is currently £2,500.

28. Under section 9, the register operator is to ensure that, each time a person registers a litter, the person is provided with certain information.

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This includes a copy of the entry, which contains the litter registration number, and the code of practice that the Bill requires the Scottish Ministers to make under Part 3 of the Bill. It also includes any code of practice made under the 2006 Act relating to dog welfare, plus information about the effect of this Part of the Bill (for example, pointing out that failing to include the registration number in any advertisement would be a criminal offence – see section 10). The register operator may also include additional information about how to care for young puppies.

29. Under section 10 it is an offence for the first owner of a registered litter, without reasonable excuse, to advertise a member of the litter that is under 12 months old (or to permit someone else to do so) without including the litter registration number in the advertisement. Together with section 3, the effect should be that advertisements for puppies routinely include numbers that prospective purchasers can use to check, in advance, the provenance of the litter. The maximum penalty for the section 10 offence is a fine at level 2 on the standard scale, which is currently £500 (but see also section 18).

30. Section 11 obliges the first owner of a registered litter to update the register entry if certain information provided when the entry was created later changes. This includes the microchipping information – so if the puppies are microchipped after the register entry was created, the first owner would need to update the register entry, including by adding the microchip number of each puppy. It is also possible that Ministers may have added (by regulations under section 8(2)(g)) a further type of information to the list of “registration information” and specified in regulations under section 11(1)(c) that a change to that type of information triggers the section 11 obligation to keep the register updated. Regulations under section 11(1)(c) are subject to the negative procedure (see section 24(3)).

31. The section 11 obligation to update a register entry applies only while the litter is “registered in accordance with this Part”, which (as explained in paragraph 23) means that there are still puppies left to sell or give away and that the litter is less than 12 months old. A person who fails, without reasonable excuse, to comply with the section 11 obligation commits an offence for which the maximum penalty is a fine at level 3 on the standard scale, which is currently £1,000 (but see also section 18). A person who, in

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updating the register entry as required by section 11, knowingly gave false information would commit the offence under section 8(7).

32. Section 12 also obliges the first owner to update the register entry, this time at the point at which the first owner no longer has any puppies from the registered litter to sell or give away. This may be because all have been sold or given away or because the first owner has decided to keep those that remain. It is also possible that one or more may not have survived. This obligation to update, like that under section 11, ceases to apply 12 months after the litter was born. A first owner who fails, without reasonable excuse, to update the register as required by section 12, or who updates it with information known to be false, commits an offence. In either case, the maximum penalty is a fine at level 3 on the standard scale (but, in relation to the first offence, see also section 18).

33. Sections 13 and 14 provide for register entries to be marked as closed, either when the first owner gives notice (under section 12(1)) that no puppies are left to sell or give away or, if that has not happened by the time the litter is 12 months old, at that point. Entries marked as closed are no longer accessible by the public (see section 16).

34. Under section 13(2), a register entry that has been marked as closed under that section may be re-opened in response to a request by a first owner. This would cover a situation where, for example, the first owner initially decided to keep one of the litter, sold the remaining puppies, gave notice under section 12(1) that none were left to sell or give away, and then decided after all to sell or give away the puppy originally kept. This option (of having a closed register entry re-opened) is only available while the litter is under 12 months old. Once the litter reaches that age, the register entry, if not already marked as closed under section 13, is marked as closed under section 14 and cannot then be re-opened.

35. The marking of a register entry as closed does not itself remove the entry from the register. Section 15 allows the Scottish Ministers, by regulations (subject to the negative procedure – see section 24(3)), to make provision for or in connection with the deletion of “old entries” (that is, entries relating to litters more than 12 months old) from the register. Such regulations might (for example) include provision about how long after entries are closed they may or must be deleted, or about circumstances in which information contained in entries may be retained for longer. It will be

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for Ministers, in making such regulations, to ensure they comply with data protection legislation.

36. Section 16 requires certain information in the register to be made available to the public, on request, free of charge. Subsections (2) and (3) define the types of search that a member of the public may carry out on the register: either by inputting the name of a person, and being provided with each open entry in which that person is named as first owner (excluding the first owner's address); or alternatively by inputting a litter registration number and being provided with the corresponding entry (again excluding the first owner's address).

37. Section 17 allows Ministers, by regulations (subject to the affirmative procedure – see section 24(4)), to authorise persons or organisations with functions in relation to the welfare of dogs either to access the register directly, or to be provided with information contained in it. This power could, for example, be used to give relevant local authority officials the ability to search the register in ways that go beyond the access available (under section 16) to members of the public, including to check whether people registering litters on multiple occasions ought, instead, to be licensed. The power might also be used to establish a means by which persons or organisations could apply to the register operator for information from the register, and to require the operator (subject to appropriate safeguards) to provide the information sought. Regulations under section 17 can also set limits on the uses to which those authorised may put the information they obtain from the register.

38. Section 18 of the Bill requires the Scottish Ministers to establish, by regulations under section 46A of the Animal Health and Welfare (Scotland) Act 2006, a fixed-penalty regime for four of the Bill's six offences. It also prevents Ministers using section 46A to apply a fixed-penalty regime to the other two offences created by the Bill (those consisting of knowingly giving false information). Section 46A is to be added to the 2006 Act by the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, which is expected to have become law by the time this Bill is passed. Since it cannot be certain, however, whether section 46A (and hence the power to make these fixed-penalty regulations) will come into force earlier or later than when the Bill receives Royal Assent, subsection (2) requires the fixed-penalty regulations to be in force 6 months after the later of the two events. Regulations under section 46A of the 2006 Act will (by virtue of section 51

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of that Act) require to be laid in draft before the Parliament for approval by resolution.

39. Once the regulations (made under section 46A of the 2006 Act, by virtue of section 18 of the Bill) are in force, they must allow people found to have committed one of the relevant offences to be given a fixed-penalty notice as an alternative to prosecution. Payment of the amount specified in the notice will therefore remove the person's liability to prosecution, thus avoiding the imposition of a fine. It will be for Ministers, in preparing the regulations, to decide on the details of the fixed-penalty regime (such as the amount of the penalty, the period allowed for paying it, and whether a discount is available for early payment).

40. Section 19 provides the Scottish Ministers with the power to make regulations (subject to the affirmative procedure – see section 24(4)) specifying how the provisions related to the register are to be enforced. Subsection (2) provides a non-exhaustive list of what may be included in such regulations. This includes who is to have powers of enforcement (paragraph (a)); what enforcement powers they are to have (in addition to referring people for prosecution or giving them a fixed-penalty notice) (paragraph (c)); what additional powers they are to have, for example, to enter and search premises, or to inspect or seize animals or documents (paragraph (d)); and provision making it a criminal offence to obstruct such a person in the exercise of their powers (paragraph (e)). The regulations may also include (paragraph (b)) provision allowing post-conviction orders to be made – for example, to permit a court that has convicted a person of an offence under Part 2 of the Bill to make an order disqualifying the person from owning or keeping a dog for a specified period of time. Where the regulations made under this section create an offence, the maximum penalty for the offence may be set at level 5 on the standard scale, which is currently £5,000, or at any lower point on that scale.

Part 3 – Buying and selling etc.: good practice

41. Section 20 requires the Scottish Ministers to make and publish a code setting out the good practice that a prospective acquirer of a puppy or dog must follow, and the good practice that a prospective supplier of a puppy or dog must follow. The code must give effect to the material in the schedule to the Bill and must have taken effect by the time (6 months after Royal Assent) when the main provisions of the Bill come into force. The code may be revised from time to time (under section 21). Ministers must

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consult before making the code for the first time, and again before revising it.

42. Section 22 sets out the status of the code of practice in law. Failure by a person to comply with the code will not in itself make a person liable to civil or criminal proceedings. However, if a person is prosecuted for a “relevant offence”, evidence that the person failed to comply with the code may be relied on as tending to establish liability (that is, may be treated as evidence that the person committed the offence). Similarly, evidence that the person complied with the code may be relied on as tending to negative liability (that is, may be treated as evidence that the person did not commit the offence).

43. For the purposes of section 22, “relevant offence” is defined to include offences under Part 2 (animal welfare) of the 2006 Act (which include offences of causing unnecessary suffering, mutilation, cruel operations, administering poisons, organising animal fights and failing to ensure an animal’s welfare). It also includes any offences set out in regulations made under section 26 or 27 of the 2006 Act – namely, regulations to secure the welfare of animals for which a person is responsible, and regulations for the licensing etc. of activities involving animals.

Part 4 – General provisions

44. Section 24(1)(a) enables Ministers, in making regulations under the Bill, to include ancillary provisions of various sorts. This would, for example, enable regulations to make consequential changes to existing enactments, or to make provision that has effect only for a limited period. Subsections (3) and (4) specify the Parliamentary procedure applicable to regulations made under the Bill. The affirmative procedure means that regulations cannot be made until they have been laid in draft before, and approved by resolution of, the Scottish Parliament. The negative procedure means that the regulations must be laid before the Parliament after they are made and are then subject to annulment, by resolution of the Parliament, for 40 days.

45. The definitions in section 25 include those relevant to the requirement to include a breeding licence number, or a litter registration number, in advertising puppies or dogs for sale or to be given away (under sections 3 and 10). The effect is that “advertising” includes any form or method of communication (other than unrecorded speech) that is made available

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either to the public at large or to selected people. As such, it would include (for example) a newspaper advertisement, a notice in a shop window, an online video or a social media post, but would not include an offer made only in conversation (in person or by telephone).

46. Section 26 specifies which provisions of the Bill come into force immediately after Royal Assent and which 6 months later. Those in the former category include non-substantive provisions that do not themselves change the law affecting people breeding, supplying or acquiring dogs. Section 7 is included in the former category so that Ministers can take the steps required to establish the register ahead of when it needs to be in operation (under section 7(2)), which is at the same time as the substantive provisions of Part 2 come into force, 6 months after Royal Assent. Sections 18 and 19 are also included in the former category to enable Ministers to make the regulations (on fixed-penalty notices and enforcement generally) required by those sections earlier than 6 months after Royal Assent, so that the regulations can come into force at the same time as the offence provisions to which they relate.

Schedule – Content of Code

47. The schedule sets out the essential content of the code that Ministers are required to make by section 20 of the Bill.

48. Paragraphs 2-4 of the schedule set out good practice expectations on anyone considering acquiring a dog of any age (the prospective acquirer), and on whoever is considering supplying it, either by sale or transfer (the prospective supplier). The prospective acquirer should ask himself or herself various questions, there should (if practicable) be a meeting between the two (perhaps involving a third party, attending on behalf of the prospective acquirer) and the prospective supplier should check that the prospective acquirer can answer the six main questions in the affirmative.

49. Paragraphs 5-7 relate specifically to dogs aged less than 12 months old that are being sold or transferred for the first time, by the ‘first owner’ of the litter.

50. Paragraph 5 states that a puppy should not be acquired, sold or given away before it is eight weeks old. This is already a legal requirement (under the Breeding and Sale of Dogs (Welfare) Act 1999) in respect of a

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puppy being sold by a licensed breeder (unless it is sold to the keeper of a licensed pet shop or a licensed Scottish rearing establishment).

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