

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee

Christine's Grahame MSP
Sent by email c/o Non-Government Bills Unit

11 October 2023

Dear Stuart

Welfare of Dogs (Scotland) Bill at Stage 1

Thank you for your letter of 28 September, regarding the Delegated Powers and Law Reform Committee's consideration of the delegated powers in Welfare of Dogs (Scotland) Bill at Stage 1. My response to the Committee's questions is detailed below:

Sections 1 and 5 – Making and revising of code of practice

Power conferred on:	The Scottish Ministers
Power exercisable by:	Code of practice
Parliamentary procedure:	none

The Committee asked:

- 1. to provide more information regarding the decision to take a different approach to parliamentary scrutiny in respect of the code of practice than the one taken in the Animal Health and Welfare Act 2006, whereby section 37(6) of that Act sets out that an animal welfare code requires to be laid before, and approved by resolution of, the Scottish Parliament; and**
- 2. specifically, what “other matters” she envisages the Scottish Ministers could add in time, and why she does not feel it necessary that such an inclusion should be subject to no parliamentary scrutiny.**

Section 37(6) of the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) gives Scottish Ministers the power, after appropriate consultation, and subject to the approval of Parliament, to issue and revise codes which provide practical guidance in relation to the provisions of the animal welfare part of the Act or regulations made under that part.

The provisions of the animal welfare part of the 2006 Act are wide in scope. They apply to a variety of animals and set out the duties owed towards these animals by the man in the street and by the person responsible for them throughout their lifetime. They include a number of offences if those duties are breached, such as causing unnecessary suffering to an animal (section 19) or the welfare offence in section 24 of the 2006 Act. As per section 24, where someone is responsible for an animal, they are required to take such steps as are reasonable in all the circumstances to ensure its needs are met **to the extent required by good practice** (subsection (1)). The Codes' purpose is then to set out important good practice guidance for anyone who is responsible for an animal in fulfilling their legal duty to take reasonable steps to ensure its welfare **throughout the animal's lifetime**. The courts can refer to the relevant Code when making a judgement as to whether an offence has been committed under the welfare provisions of the Act or regulations made under section 26 or 27. Given the wide scope and the importance placed on Codes made

under section 37(6) of the 2006 Act for ensuring that anyone responsible for a protected animal knows how to fulfil their legal duties under the Act, it seems entirely appropriate that they require to be laid before and approved by resolution of the Parliament. This especially, as there are no other means of Codes made under the 2006 Act receiving parliamentary scrutiny (as opposed to the Code to be made under this Bill, as set out below).

The Code under Part 1 of my Bill is much more limited in scope and purpose. As detailed in section 1(1) of the Bill, it is to **set out good practice for anyone considering acquiring or supplying a dog or puppy as a pet**. In scope, its focus is therefore on the **pre-transaction stage**. The Code is intended mainly as a tool for educating the public so that people wishing to acquire a dog or puppy know what questions to ask the supplier and what red flags to look out for. These questions to ask are set out in section 2 of the Bill and require the prospective acquirer of a puppy or dog to ask themselves whether their lifestyle, routines, family and living situation is suited to having and keeping a dog. It requires them to do some research and to then certify that the research was done, and necessary considerations had been had. The provisions that are aimed at raising the public's awareness towards red flags are set out in section 2(3) and 3. The certificate is detailed in section 4. It is also intended as a potential additional element for the courts to consider when making a judgment as to whether an offence has been committed under the welfare provisions of the 2006 Act or regulations made under section 26 or 27 (or part 2 of this Act).

Therefore, I consider that the key elements of the Code are set out in Bill provisions and are therefore already subject to extensive Parliamentary scrutiny. As explained in the delegated powers memorandum, I consider that this core content will stand the test of time (and therefore provision is made that these key provisions cannot be revised out of the Code, section 5(2)).

In response to your question about the type of additions to the Code that I envisage, these could be further elements to what Scottish Ministers consider the acquirer should be aware of prior to transferring ownership of the puppy or dog, and what knowledge should be exchanged between the parties. They may use the Code to signpost existing advice, support or other resources. There are numerous suggestions within the written evidence from key stakeholders received by the lead committee, an example being adding a question about whether the prospective owner would have time to train and socialise the dog they are considering buying. These are the key stakeholders that I would assume the Scottish Government would consult on the terms of the Code as required by my Bill.

Finally, in relation to the lack of an affirmative procedure for the Code, I hope the detail provided in this letter has set out the basis of my thinking in relation to whether parliamentary scrutiny was necessary and a proportionate use of Parliament's time. That said, should your committee or the lead committee consider that, based on the evidence and associated deliberations, further parliamentary scrutiny is required, I would certainly be amenable to that approach. My decision to prescribe no parliamentary procedure was a finely balanced one.

I hope the Committee finds this helpful.

Yours sincerely

Christine Grahame MSP