

Minister for Agriculture and Connectivity
Jim Fairlie MSP



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Finlay Carson MSP
Convener of the Rural Affairs and Islands Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email: rural.committee@parliament.scot

09 May 2024

Dear Convener,

I am writing in response to the Rural Affairs and Islands Committee's Stage 1 Report on the Welfare of Dogs (Scotland) Bill. I would like to thank the Committee for its careful and detailed consideration of the Bill.

I am pleased that the Committee agreed with the general principles of the Bill, that it considers the intentions behind the Bill to be important, and that it agrees with the Scottish Government's position to remove part 2 by amendment at Stage 2. I am also committed to collaborate with Christine Grahame MSP as far as possible to improve the other parts of the Bill in line with the Committee's recommendations.

With that in mind, I wish to respond in more detail to some of the specific issues raised by Committee members and to the recommendations made by the Report.

My comments below follow the main recommendations in the Report.

The rationale for further measures relating to the sale or transfer of dogs

25. The Committee notes the broad support from the animal welfare organisations for further measures to encourage a more responsible approach to acquiring a dog and to help address the activities of unscrupulous breeders. Witnesses from these organisations highlighted the growing problem of abandoned dogs and unscrupulous breeding and their view that current legislation, aimed at breeders rather than those acquiring a dog, has not been enforced and has not been effective. Witnesses also highlighted that the existing legislation does not enable traceability of every dog from breeder through to owner. Animal welfare organisations believe the Bill would help address this problem of lack of traceability.

26. The Committee acknowledges, as does Christine Grahame, that this member's bill, in itself, cannot solve all the problems it seeks to address. The Committee does, however, agree that some further measures are needed to focus on the demand for, rather than the supply of, puppies and dogs and which aims to educate buyers to encourage them to acquire a dog in a more responsible way.

Response: There is always more that can be done to ensure that existing legislation concerning dog breeding and sale is enforced robustly and we continue to engage regularly with local authorities and other bodies around this. However, because of the continuing strong demand for puppies in Scotland there will unfortunately always be an incentive for unscrupulous breeders and sellers to operate illegally to supply this highly lucrative market. We therefore agree that it is important to also focus on the demand for puppies and inform and encourage buyers to acquire dogs in a more responsible way.

There is already a significant volume of advice online to educate buyers., Previous Scottish Government public awareness campaigns such as the Buy A Puppy Safely campaign gave advice on how to buy a puppy responsibly and safely and how to recognise the signs of the illegal puppy trade, accompanied by hard-hitting social media messaging [Learn how to buy a puppy safely \(youtube.com\)](#)

Detailed guidance continues to be available from welfare organisations such as the Scottish SPCA, Trading Standards Scotland and Dogs Trust on what to consider when acquiring a dog or puppy and how to acquire one responsibly and safely.

However we agree that further measures would now be desirable as it is important that such awareness campaigns are sustained in the longer term to achieve significant lasting changes in buying behaviour and to take account of new developments or areas of concern.

Requirement on the Scottish Ministers to make a code of practice

34. The Committee agrees that providing and publicising accessible information about good practice for people to follow when acquiring or giving away/selling a dog could be a valuable additional tool to address the irresponsible acquisition of dogs and, through this, unscrupulous breeding.

35. The Committee notes that the Scottish Government already has the power to make a code of practice relating to the sale or transfer of dogs and that the Bill would require them to exercise that power. The Committee notes the Scottish Government's support for the general principles and the proposed code of practice.

Response: The Scottish Government agrees in principle with the proposal for a new code of practice regarding acquiring and supplying a dog. It should be noted however that powers already exist to introduce codes of practice or guidance relating to animal welfare under sections 37 and 38 of the Animal Health and Welfare (Scotland) Act 2006.

Case for creating a standalone code of practice rather than incorporating the proposed code into the existing 2010 welfare of dogs code of practice

45. The majority of the Committee agrees with Christine Grahame that a standalone, concise and accessible code of practice relating to the acquisition of dogs would seem more likely to engage and, therefore, inform prospective dog acquirers than incorporating the proposed code into the existing 36-page 2010 code.

46. The Committee notes, however, that – if the Bill is passed – decisions about the final form of the code would be taken by the Scottish Ministers, following a public consultation. The Committee seeks the Scottish Government’s reassurances that, notwithstanding any additional matters raised in a public consultation which the Scottish Ministers decide should also be included, it will endeavour to make a standalone, concise and accessible code of practice.

47. The Committee also notes the potential for confusion between any standalone code made under this Welfare of Dogs Bill and the existing 2010 code of practice for the welfare of dogs. The Committee recommends that, in the event that the proposed code is made as a standalone code, it should be made clear that this is separate to, and different from, the 2010 code. In addition, and noting the Scottish SPCA’s concerns that two codes may hinder establishing whether a person has knowledge of the proposed code in any animal welfare investigation, the Committee recommends that each code should clearly signpost the other.

48. The Committee notes the Minister’s view that “it is time for a refresh” of the 2010 code. The Committee suggests that a consultation on both a refresh of the 2010 code and the proposed code would provide an opportunity to reflect more broadly on the information about good practice relating to all aspects of dog ownership. This would also enable the Scottish Ministers to ensure the two codes would compliment, rather than contradict, each other.

Response: The Scottish Government would highlight the fact that the current Code of Practice is highly detailed, while still being reasonably accessible and based on solid evidence underpinned by extensive research. The Code is structured around the duty of care placed on the owner or keeper of an animal to meet it’s welfare needs, which are based on the internationally recognised ‘Five Freedoms’ approach.

The ‘Five Freedoms’ are;

- need for a suitable environment
- need for a suitable diet
- need to be able to exhibit normal behaviour patterns
- need to be housed with, or apart from, other animals
- need to be protected from suffering, injury and disease

It is still relevant today despite being published in 2010, however we agree that an update would be useful and it will be timely to consult on this at the same time as consulting on the proposed new code.

The Scottish Government acknowledges the majority of the Committee’s view and the view of the member who introduced the Bill that a new standalone, concise and accessible code of practice specifically relating to the acquisition of dogs should be produced after due consultation. The intention would be for the new code to complement the wider advice on

keeping dogs in the current Code and future iterations of this, with clear signposting between the codes to minimise any potential confusion.

Requirement for code of practice to be made within six months of Royal Assent

50. The Committee agrees with the Minister that the requirement for a code to be made within six months of Royal Assent is impractical and, given the value of a consultation to inform a code, unlikely to result in a well-drafted code which is fit for purpose. The Committee recommends this provision be amended at Stage 2.

Response: The Scottish Government agrees with this recommendation.

It will require more than six months to allow for consultation, development of the code and obtaining views on further wording or recommendations from stakeholders. In addition to the content specified in the Bill, it is expected additional guidance on other matters related to the acquiring of dogs such as the risks associated with imported rescue dogs and extreme conformations due to undesirable breeding practices would be included in the code, following consultation with stakeholders.

Application of code of practice to pets rather than all dogs

56. The Committee recommends the proposed code should apply to all dogs and not just dogs to be kept as a pet. The Committee notes the logic Christine Grahame gave for the Bill not applying to all dogs – that there is not the same need to educate those acquiring a working dog – but is concerned that this provision may unintentionally create a loophole. The Committee does not anticipate that extending the requirement would create a significant burden on those acquiring or selling/giving away a working dog.

57. The Committee notes the Bill does not include a definition of a pet. If the Bill is not amended to apply to all dogs, the Committee recommends the Bill is amended to include a definition of a pet.

Response: The Scottish Government agrees with this recommendation and believes that the inconsistency of ‘some’ dogs rather than ‘all’ dogs would provide a loophole for people not to follow the Code of Practice under the guise the dog was sold as a ‘working dog’.

Parliamentary scrutiny of the code of practice

65. The Committee notes the Delegated Powers and Law Reform Committee’s recommendation that the proposed code of practice should be subject to parliamentary procedure to bring it on a par with the 2010 code. The 2010 code was made under section 37 of the Animal Health and Welfare (Scotland) Act 2006 and must be approved by resolution of the Parliament.

66. The Committee is aware of the Scottish Government’s commitment to replace farmed animal codes of practice, made under section 37 of the 2006 Act, with

guidance, made under section 38 of the 2006 Act. Guidance made under section 38 does not require parliamentary approval. The Committee is not aware whether the Scottish Government's commitment to replace farmed animals codes with guidance will be extended to the 2010 code of practice. The Committee is keen to avoid a situation where the 2010 code is moved to guidance, and no longer requires parliamentary scrutiny, but the Bill is amended and the proposed code of practice does require parliamentary scrutiny.

67. The Committee asks the Scottish Government to confirm – in advance of Stage 2 – if its commitment to replace farmed animal codes of practice will, or is likely to, be extended to the 2010 code.

68. If the Bill is to be amended to require parliamentary scrutiny of the code, the Committee recommends this be done under the negative procedure. The Committee believes the negative procedure would be appropriate given the defined scope of the proposed code.

Response: The Scottish Government's main reason for the commitment to replace farmed animal codes of practice, made under section 37 of the 2006 Act with guidance made under section 38 of the 2006 Act, is to provide a quicker, more practical method for drafting, publishing, and amending good practice information for relevant parties. The provision of up to date, good practice information is important if we are to support owners and keepers in maintaining the welfare of the animals in their care. In the case of dogs and the purchasing of dogs, ensuring that our good practice information is kept up to date is important in keeping up to date with new legislation or growing trends in this area.

Guidance does not have to be approved by Parliament before it is published, amended or revoked, and does not need to be formally consulted on, so the process for producing and revising guidance is much quicker and less resource intensive. Although there is no requirement for formal consultation, in practice we have worked very closely with a wide range of stakeholders in the drafting of our guidance documents so far and would intend to continue this with future guidance documents.

For these reasons the Scottish Government's intention is to replace Codes of Practice for different species with Scottish Government Guidance as the current Codes became outdated over time. This would also apply to the current Code of Practice for the welfare of dogs published in 2010.

However we note the strong preference of the Member in charge of the Bill for a new statutory Code of Practice on acquiring dogs to be considered by Parliament and have standalone obligations in the bill provisions.

Section 2

74. Notwithstanding Christine Grahame's view that "the core content of code will stand the test of time" and should not require future amendment, the Committee believes that it would not be appropriate to include the questions on the face of the Bill. The Committee believes the Scottish Ministers, after public consultation, should

design the content of the proposed code. Accordingly, the Committee recommends that section 2 be amended to remove the questions.

75. The Committee refers to the Law Society of Scotland's evidence which gave examples of how the Bill could give direction to matters that the Scottish Ministers should have regard, whilst retaining the flexibility and discretion to respond to changes in dog ownership and understanding of animal science.

Response: The Scottish Government agrees with the Committee that section 2 be amended to remove the questions, and reiterates its view that specifying in detail in what the code should include as a minimum in this Bill is an unusual and unnecessary use of primary legislation. We would prefer to develop the contents of the code through consultation with stakeholders, with the Bill specifying areas that Scottish Ministers should have regard to.

Section 3

79. The Committee recommends section 3(3) is amended to ensure the provision relating to the requirement to see a dog with its mother is consistent with the 2021 Regulations. The Committee has heard evidence about how some unscrupulous breeders pass a bitch off as a puppy's mother and present what looks like a home environment to a prospective buyer. The Committee recognises that tackling this wider issue is outwith the scope of this Bill.

Response: The Scottish Government agrees with this recommendation.

Views on the requirement to complete a certificate

86. The Committee agrees with the requirement that both the person buying and the person selling/giving away a dog is to sign a certificate confirming they have discussed the matters contained in the code. The Committee believes this should prompt prospective buyers, perhaps at a point in the process where 'the heart may rule the head', to pause and think about the practicalities before taking on the responsibilities of dog ownership.

Response: The Scottish Government agrees with the requirement for a certificate to be part of a new Code of Practice for acquiring dogs

87. The Committee agrees with the Law Society of Scotland's suggestion that section 4(4)(b) be amended to place the responsibility for confirming a dog is at least 8 weeks old with both the buyer and the person who is selling/giving away the dog.

Response: The Scottish Government agrees with the Committee and Law Society of Scotland's suggestion that responsibility for confirming a dog is at least 8 weeks old is placed on both the buyer and seller/donor of the dog. Scottish Government campaigns since 2018 have consistently reinforced to prospective purchasers the importance of seeing a puppy with

its mother and ideally at the breeder or seller's premises as well as verifying the age of the dog.

Views on the enforcement of the requirement to complete a certificate

89. The Committee notes concerns raised by the Law Society of Scotland and some animal welfare organisations around the lack of enforcement provisions for the certificate. The Committee also notes, however, Christine Grahame's objective for the Bill to educate, rather than penalise, those acquiring or selling/giving away a dog and agrees with the advisory status of the certificate.

Response: The Scottish Government notes these concerns. The Bill does not provide for any sanctions or penalties in the event that a person does not comply with sections 2 to 4 of the Bill. The Bill provides, for example, that a certificate "is to be...shown to a police officer or inspector in response to any reasonable request to see it", although there are no penalties for failing to do so. These provisions could therefore not be enforced directly in practice. This is recognised in the Policy Memorandum which states the intention is "to achieve behavioural change, without placing formal legal obligations on the parties involved" and "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." However there is a concern these provisions as currently drafted could be misconstrued as stand-alone legal requirements (although without any penalty for non-compliance) in addition to being part of the code of practice. We would prefer it to be clearer that the requirement for a certificate would be part of the new Code of Practice, rather than a separate requirement, in the wording of the Bill.

Section 6

93. The Committee notes the section 6 provisions replicate the approach taken in section 37(9) of the Animal Health and Welfare (Scotland) Act 2006 and agrees with this approach.

94. As set out earlier in this report, however, the Scottish Government has indicated its intention to replace farmed animal codes of practice, made under section 37 of the 2006 Act, with guidance, made under section 38 of the 2006 Act. Earlier in this report, the Committee asks whether the Scottish Government's commitment to replace farmed animal codes of practice will, or is likely to, be extended to the 2010 code. If the 2010 code is replaced with guidance, the Committee is concerned that different approaches relating to an evidential link guidance would apply. The Committee asks the Scottish Government for its view on this matter.

Response: As stated previously, the Scottish Government's main reason for the commitment to replace farmed animal codes of practice made under section 37 of the 2006 Act, with guidance made under section 38 of the 2006 Act, is to provide a quicker, more practical method for drafting, publishing, and amending good practice information for relevant parties. We would intend to extend this to the 2010 code.

The position regarding the evidential status of Scottish Government Guidance for the welfare of an animal species in the absence of a Code of Practice for the same species has been established in relation to the Guidance on farmed hens, meat chickens and pigs that

has been published in recent years. Presentationally it would not be ideal to have a Code of Practice on acquiring dogs and wider Scottish Government Guidance on keeping dogs, but we do not believe this would cause significant difficulties for enforcement authorities in taking appropriate action where there are contraventions of the Animal Health and Welfare (Scotland) Act 2006 or regulations made under the Act.

Section 7

103. The Committee agrees that a publicity campaign to raise public awareness of the proposed code would be essential in educating the public about unscrupulous breeding. The Committee notes the Minister's view that the costs set out in the financial memorandum would be sufficient.

104. The Committee is also aware, however, of the views expressed by many about the challenges of an awareness campaign to make a sustained and meaningful difference to public behaviour, especially on such an emotive issue as acquiring a puppy when, very often, 'the heart may rule the head'. The Committee expects the Scottish Government to maximise its marketing expertise to ensure any campaign is more effective than previous campaigns.

Response: The Scottish Government agrees that that a renewed publicity campaign to raise awareness of the proposed code would be essential in educating the public about unscrupulous breeding and selling of dogs, the criminality behind the illegal trade and the other serious welfare issues that can arise when acquiring a puppy. The Scottish Government would like to highlight previous campaigns that have been run in this area, which were successful in reaching the target audience at the time.

In 2018-19 the Scottish Government puppy campaign had a budget of £300 000. £225 000 of this was for 'paid for media' and overall development of the campaign and the remaining £75 000 was to cover insight and evaluation. The *Buy A Puppy Safely* campaign aimed to help people source their new puppy responsibly by informing them of the consequences of illegal puppy farming, arming them with knowledge of the warning signs to look out for and directing them to the "buy a puppy safely" website.

This campaign achieved strong success in reaching the target audience, and highlights included:

- 86% claimed to understand the risks of sourcing a puppy from a puppy farmer (target: 84%)
- 88% claimed they would make the right checks on puppies if purchasing a new pet (target: 75%)
- Increased awareness (up to 10 percentage points) amongst the target audience of specific risks of buying from a puppy farm
- 60,159 unique visits to the website during the campaign period, with an average dwell time of 14 minutes
- 20% of all calls to the Scottish SPCA Animal Helpline in 2018 were made during the campaign period; an increase of 138% over the previous period.

In 2019-20 the Scottish Government campaign had a budget of £222 000. £200 000 of this was for "paid for media", campaign development with the remaining £22 000 for insight

gathering and campaign evaluation. This campaign built on the success of the *Buy A Puppy Safely* 2018-19 campaign.

This campaign also achieved strong success, and highlights included:

- 76% claimed to have seen or heard the campaign (target: 67%).
- 92% were aware of the 2 or more signs of an illegally bred puppy highlighted in the campaign (target: 90%).
- 89% of those who've seen or heard the campaign reported to be encouraged to protect themselves from illegal puppy dealers (target: 88%).
- 85% were aware of two or more signs of buying from a puppy farm featured in the campaign (target: 87%).
- 70,000 unique visits to the website during the campaign period with an average dwell time of 7 minutes.
- During the campaign period, calls to the Scottish SPCA hotline were double the levels seen during the 2018 campaign period, and almost double the number in the preceding 8 weeks.

Views on the effectiveness of the proposed register of unlicensed litters

126. The Committee has taken evidence over the course of this inquiry which has illustrated the importance of the traceability of dog ownership, especially as a means to address the activities of unscrupulous breeders. Animal welfare organisations have given their view that, albeit with some amendment, Part 2 of the Bill would help strengthen the mechanisms to deliver better traceability.

127. The Minister set out the reasons why the Scottish Government does not support Part 2 of the Bill. The Committee agrees with the Minister that the provisions set out in the Bill would not deliver better traceability or effectively tackle unscrupulous breeding.

128. The Committee considers that the proposed registration of litters, rather than the registration of dog owners or breeders, would do nothing more than indicate a litter had been registered. At this point, it is not clear whether the register would indicate how many other litters the person selling or giving away a dog has registered in the past. As the Minister set out, the registration of a litter could not provide any reassurances about a dog's welfare or whether it had been bred by a responsible, or unscrupulous, breeder. The Committee shares, therefore, the Scottish Government's concerns that the registration of the litter may confer a false legitimacy to a litter and mislead prospective dog owners. It is also unclear how the proposed register would operate in practice and whether, for example, it would be accessible to the public.

134. The Committee notes the concerns voiced by all witnesses – including Christine Grahame – that local authorities would not be able to meet the costs to implement and enforce the proposed register. In addition, those local authorities who responded to the Committee's call for views questioned whether the actual costs would be higher than those projected in the financial memorandum.

135. The Committee understands that Christine Grahame is content for the Scottish Ministers to introduce a registration scheme when they believe local authorities will be in a position to enforce it. It is not clear, however, when local authorities will be in a position to enforce a registration scheme and what impact a delay would have on unscrupulous breeding in Scotland in the meantime.

136. Taking into consideration, therefore, the concerns around the workability and enforcement costs of the proposed registration scheme, as well as the uncertainty about the length of delay before the registration scheme would be introduced, the Committee does not believe that Part 2 of the Bill is the right approach. The Committee agrees, therefore, with the Scottish Government's view that Part 2 of the Bill should be removed at Stage 2.

Response: The Scottish Government is pleased that the Committee agrees with our view that Part 2 of the Bill should be removed at Stage 2.

The Policy Memorandum recognises the enforcement burden on local authorities and proposes that although they should enforce compliance with any requirement to register, the cost of establishing and maintaining the register could be covered by sellers of puppies through registration fees. It suggests an online register could be established providing breeders a register they can access and update as well as providing the public access to check a breeders licence and where a license is not required check if a seller had registered the litters.

The Scottish Government view is that establishing and maintaining a national register providing online access for thousands of individuals to register their home address and update their information, possibly paying a fee and allowing for public access to check the register while complying with data protection legislation, would be disproportionately costly, impose a disproportionate additional enforcement burden on already stretched local authorities having to deal with reports of non-compliance and would not significantly restrict illegal activities of fraudulent unlicensed breeders and dealers as they would be able to register using false identities they routinely use already. It would not prevent puppies being sourced from unlicensed breeders outside Scotland and would be likely to confuse or provide false reassurance to buyers who would not understand the difference between a simple registration scheme with minimal requirements for sellers, and full licensing for breeders which involves compliance with detailed licence conditions and periodic inspections. For these reasons we did not pursue a national register for unlicensed puppies following previous consultation.

The powers proposed also largely replicate existing powers under section 27 of the Animal Health and Welfare (Scotland) Act 2006 to establish registration schemes, so new primary legislation in this area is not needed to allow us to introduce registration in future if circumstances change. It is not a good use of legislation to legislate twice on the same subject matter.

137. The Committee does, however, recognise the strong concerns voiced by animal welfare organisations about issues with traceability. The Committee believes that, rather than seeking to amend this Bill, traceability of dog ownership would be better enhanced via a different mechanism.

Delegated Powers and Law Reform Committee's consideration of the proposed delegated powers in Part 2 of the Bill

139. The Committee notes the DPLRC's agreement with the delegated powers provisions and proposed affirmative procedure. The Committee agrees that, if Part 2 of the Bill is to proceed, it is also content with the delegated powers provisions and proposed affirmative procedure.

142. Given the Minister's confirmation that the Scottish Government would lodge amendments to remove Part 2 of the Bill, the Committee did not explore the section 11 provisions and costs.

Response: I can confirm that the Scottish Government will seek amendments to remove Part 2 of the Bill.

Christine Grahame's proposals for an alternative to Part 2

147. The Committee notes with interest Christine Grahame's letter to the Scottish Government to explore an alternative approach to that set out in Part 2 to enhance traceability via a single microchip database. The Committee also notes the Minister's "strong support" for this approach, whilst also indicating that this would need to be done on a GB or UK basis with agreement between all administrations.

148. The Committee has not taken any evidence on Christine Grahame's alternative approach and, therefore, is not in a position to comment on its merits of enhancing the traceability of all dogs, especially puppies. The Committee requests an update from the Scottish Government on any further dialogue between UK administrations in advance of Stage 2.

149. As set out earlier in this report, however, the Committee recognises the strong concerns voiced by animal welfare organisations about issues with traceability. If Part 2 of the Bill is removed at Stage 2, and if there is no immediate prospect of progress towards a single microchip database on a GB or UK basis, the Committee calls on the Scottish Government to detail what other measures it is considering to address the issues with traceability.

Response: The Scottish Government shares the concerns of animal welfare organisations about traceability of dogs to their breeders.

Scottish Government officials have continued to have discussions with Defra and Welsh Government counterparts to discuss possible future joint work to improve the operation of microchipping databases in this area.

On 29 March 2024 the UK Government published its response to a consultation on microchipping legislation for cat and dog identification that it ran in 2022. The response can be found at :

<https://www.gov.uk/government/consultations/cat-and-dog-microchipping-consultation/outcome/summary-of-responses-and-government-response#government-response>

We expect to continue discussions on databases operating across GB or the UK and could introduce consistent requirements for a single entry portal for database information and permanently recording information about breeders as well as other improvements outlined in the response.

Conclusion

150. The Committee agrees with the general principles of the Bill. In relation to Part 1, some members support the incorporation of the proposed code into the 2010 code, rather than its introduction as a standalone code. In relation to Part 2, the Committee agrees with the Scottish Government's position that this should be removed by amendment at stage 2.

Response: I welcome the Committee's report and views on the Bill. I have set out my position in the above letter on each of the recommendations that have been made and confirm that I agree with the recommendation to remove Part 2.

I look forward to exploring these issues during the Stage 1 debate. I am confident that we will be able to work together with the Member in Charge of the Bill, and working on suitable amendments at Stage 2.

Finally, I want to thank all the committee members for their careful and thoughtful deliberations on the Bill and its measures to date and look forward to working with you on the next stages in the parliamentary process.

Yours Sincerely



JIM FAIRLIE MSP