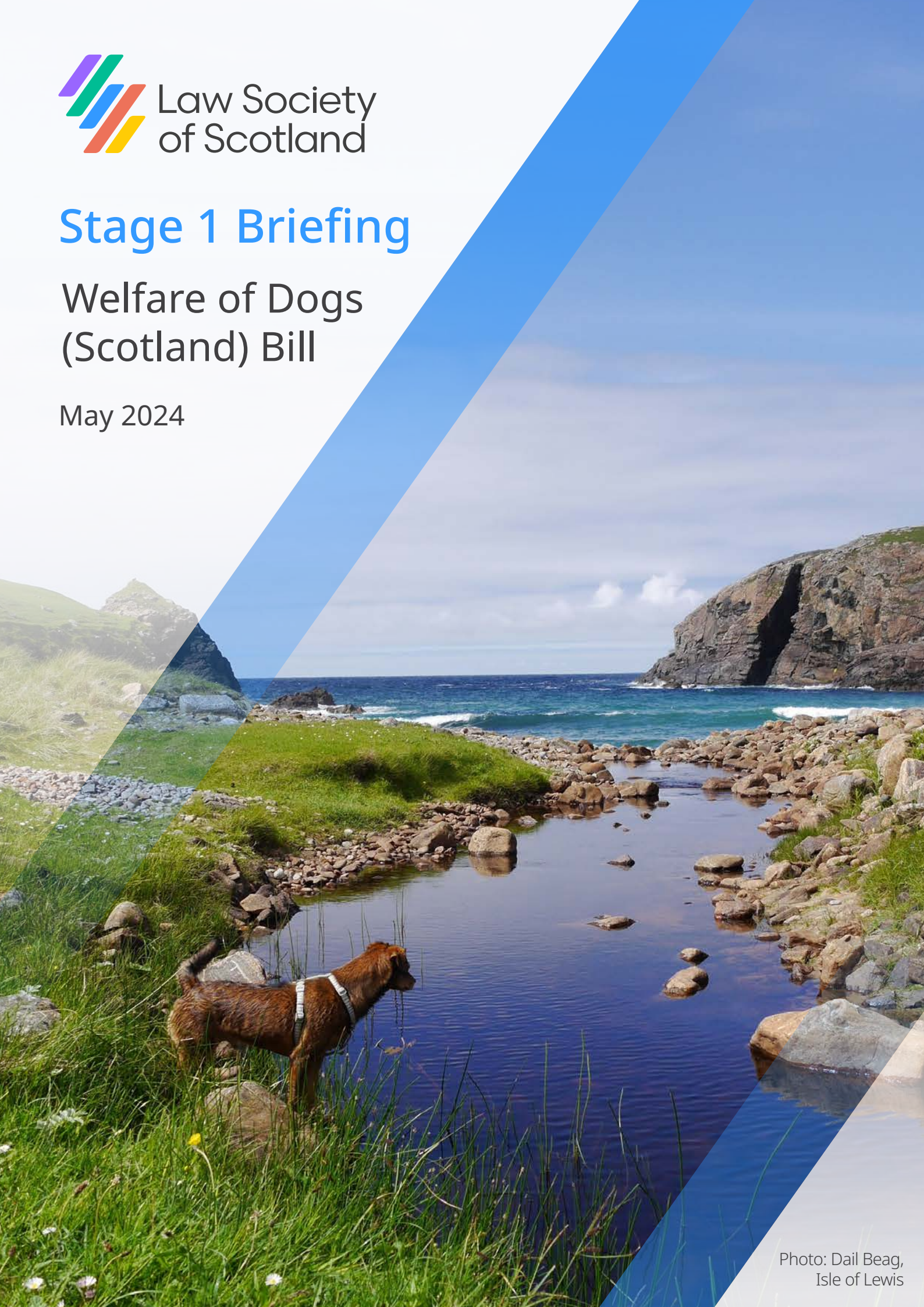


Stage 1 Briefing

Welfare of Dogs (Scotland) Bill

May 2024



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Welfare of Dogs (Scotland) Bill¹ (the **Bill**) is a Member's Bill, introduced to the Scottish Parliament by Christine Grahame MSP on 20 June 2023.

We previously submitted written evidence in August 2023,² and then provided oral evidence in September 2023,³ to the Rural Affairs and Islands Committee of the Scottish Parliament as part of its Stage 1 consideration of the Bill.

The Rural Affairs and Islands Committee's Stage 1 Report on the Bill (the **Stage 1 Report**)⁴ was published on 5 March 2024.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 7 May 2024.

General remarks

We are supportive from a legal policy perspective greater protection and attempts to increase animal welfare standards in Scotland. The policy rationale underpinning the Bill is “to improve the health and wellbeing of dogs throughout their lives”. The Bill looks to achieve this “by establishing a more responsible and informed approach to acquiring and owning a dog” and “by making provision for the regulation of the selling or transferring of puppies from unlicensed litters”.⁵

We have detailed below aspects that we consider would merit further consideration or amendment to improve the clarity of the Bill and better achieve its intended aims.

In respect of the provisions at Part 1 of the Bill, we would highlight in particular that the proposed code of practice does not have any enforcement mechanisms or consequences for breach in and of itself, which could present challenges in ensuring compliance.

We also note the prescriptive nature of the Bill in setting out what is to be included in the proposed code of practice. As drafted, the inclusion of certain provisions (for

¹ [Welfare of Dogs \(Scotland\) Bill](#)

² Accessible [here](#)

³ More information can be found [here](#).

⁴ [Stage 1 Report](#)

⁵ [Policy Memorandum](#), paragraph 3



example the questions in section 2(2)) limits the flexibility of future changes to the code compared to these being provided for in secondary legislation or guidance.

We have included comments on Part 2 of the Bill below – whilst also noting the Scottish Government’s position that this should be removed from the Bill at Stage 2, which the Rural Affairs and Islands Committee agreed with in its Stage 1 Report.⁶

Comments on sections of the Bill

Part 1 (Promotion of Good Practice)

Part 1 requires the Scottish Ministers to make a code of practice, setting out good practice in the buying, selling, and giving away of puppies and dogs.

Section 1

Section 1 requires the Scottish Ministers to make and publish a code of practice (the **code**) setting out good practice that both a person considering acquiring a dog and the person who is selling or giving away a dog should follow.

Whilst the content of the code is generally prescriptive due to the requirement for it give effect to the provisions of sections 2-4 of Bill, it can include provision on “any other matter the Scottish Ministers consider appropriate”. We note the broad nature of this wording.

We note section (1)(3) of the Bill which requires Scottish Ministers to consult such persons as they consider appropriate before making the code; and subsequently on the revision of the code (section 5(3)). We highlight the importance of undertaking a robust consultation process to capture the views of interested parties.

We note the existing code of practice for the welfare of dogs, made under the Animal Health and Welfare (Scotland) Act 2006, which came into force in 2010. We consider that care should be taken to ensure that there is no overlap or contradiction between the existing code of practice and that envisaged under the Bill.

Section 2

Section 2 sets out a list of questions “that a prospective acquirer of a dog of any age should ask themselves before acquiring a dog”.

The questions listed at sections 2(2)(a)-(f) relate to valid and important considerations people intending to own a dog ought to have, particularly with a view to ensuring the welfare of the animal.

We consider, however, that such questions and accompanying examples are more appropriately included within statutory guidance or codes of practice, rather than

⁶ See paragraphs 105-150 of the Stage 1 Report, in particular paragraphs 127, 136, and 150.



being included within primary legislation. We highlight paragraphs 71 and 75 of the Stage 1 Report, which refers to our comments on these points.

The inclusion of such wording in the Bill also limits the flexibility of future changes to the code compared to this being provided for in secondary legislation or guidance.

As drafted, this could also be seen as an inconsistent approach compared with analogous regimes – for example, section 37 of the Animal Health and Welfare (Scotland) Act 2006 (which contains the power to introduce the existing code of practice), and the proposed code of ethics provided for at section 2 of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

We further note the potential interaction between the questions and other related animal welfare legislation, including that in relation to banned and dangerous breeds. We note that the implicit requirements for breed understanding and a commitment to training are not specifically mentioned at section 2; also reflective of why there is merit in the code being open to consultation and able to be revised from time to time in an appropriate manner.

This section (and sections 3 and 4) use the term “transfer” of a dog. Elsewhere in the Bill this is referred to in relation to the dog as “giving” or “given” away, for example section 1(1)(b), section 12(1). We note that there are two ways to transfer ownership of a dog in this context, being by gift or sale. We consider that there may be scope to rephrase the term “transfer” to one more aligned with public understanding (for example gift or rehoming).

If it is intended that the term “transfer” is used to capture both the sale and gift of the animal, we consider that a definition clarifying this could be included at section 12(1). We also note that the definition of “selling” at section 12(1) includes “exchanging and bartering”, which may lead to unforeseen and undesirable consequences through engaging in such practices in respect of the sale of dogs.

Section 3

Section 3 sets out the required content of the code in relation to the sale or transfer of puppies.

The requirement in section 3(4) places the responsibility on the prospective acquirer to “become familiar” and “take all reasonable steps to establish...”. We consider that there is also a role for the prospective supplier to provide confirmation of these points.

We consider that the wording in section 3(4)(a) – “in which the activity of supplying a dog aged less than 12 months would require” – could be more clearly expressed.

More generally, public awareness of the statutory provisions referred to in section 3(4)(a) is essential and we therefore welcome the provisions of sections 7 and 11. We would recommend that the language used to express these requirements in the code is as user friendly and easy to understand as possible.



We further consider that thought should be given to how these provisions impact specific stakeholders – for example, circumstances where the supplier is a charity, and the puppies are a welfare case – to ensure that the requirements are not unduly onerous and are workable in practice.

Section 4

Section 4 makes provision requiring the prospective acquirer to complete and sign a certificate before acquiring a dog of any age.

We consider that a number of these points (e.g. section 4(4)(b)(i)) would be more appropriately verified by the prospective supplier, particularly as they are also required to sign the certificate.

We welcome paragraph 87 of the Stage 1 Report, which agrees with our suggestion that section 4(4)(b) should 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.

In relation to section 4(2), we suggest the following amendments:

- (1) In page 3, line 3, leave out <is to> and insert <must>; and
- (2) In page 3, line 5, leave out <are then to> and insert <must>.

We note section 4(5)(b) and would welcome greater information in Bill as to the scope or nature of the situations envisaged.

Section 5

Section 5 makes provides for how the code can be revised from time to time.

We note section 5(6) and stress that the up-to-date code must be published and made available to the public – regardless of whether the changes from the previous code “materially alter the effect of the code of practice”.

We therefore consider that section 5(6) should be removed from the Bill.

Section 6

Section 6 sets out the status of the code of practice in law.

We highlight that the code does not have any enforcement mechanisms or consequences for breach in and of itself. Ultimately this may lead to challenges ensuring compliance with the code and could be seen as a missed opportunity to provide for enforcement against unregulated supply.

We note the provisions of sections 6(2)(a) and (b) and highlight the lack of clarity which the use of the phrase “tending to” creates. We also note the uncertainty over the legal effect and meaning of the term “negative liability” in section 6(2)(b).

We suggest that there should be greater clarity and certainty about the consequences of failing to comply with the code.



We express concern at section 6(3), particularly given that it appears the code applies at the point of purchase or transfer of the dog. Some of the offences listed, including the statutory offences in Part 2 of the Animal Health and Welfare (Scotland) Act 2006, could be committed years after taking ownership of the dog and are not factually linked to the requirements of the code.

Section 7

Section 7 makes provision for Scottish Ministers to ensure public awareness of the code and requirements.

It is important that there is clarity and certainty in the law in order that individuals and businesses can guide their conduct appropriately. Any changes to the policy and legislative framework on this matter would require an appropriate awareness-raising campaign so as to make individuals and businesses aware of the revised requirements.

We therefore welcome the provisions that Scottish Ministers must take reasonable steps to ensure public awareness and understanding of the code.

Part 2 (Regulation)

Part 2 relates to the power for Scottish Ministers to make regulations to set up a register of unlicensed litters.

Section 8

Section 8 provides the Scottish Ministers with various powers to make regulations in relation to prohibiting the sale, giving away, or advertising of a puppy aged under 12 months. A separate power is provided in section 10 to make regulations to secure compliance with such regulations and create relevant offences.

We note the need for any registration regime to have sufficient provisions to ensure compliance, although express concern that both the detail of the registration regime and the compliance provisions are unclear from the Bill and will be contained in secondary legislation.

We also express a need for a degree of flexibility with any registration regime to account for unintended circumstances, for example unintended pregnancies of dogs in non-breeder circumstances. Similarly, care should be taken to ensure any proposed scheme is not unduly onerous, such as on charity operators in this area.

As the key factor underpinning the proposals is improving animal welfare, we would highlight that consideration should be given to avoiding unintended practical consequences in this context, e.g. the concern that such requirements may lead to litters being destroyed or bitches harmed in attempts to end unintended pregnancies; or that untrained or unsocialised one year old dogs will enter the “market”, noting related behaviour issues and risk of increased welfare cases.



We also stress that, given the intention to improve animal welfare standards, consideration should also be given to ensuring that the welfare of puppies who are not registered by their owners as intended by the proposals.

Section 9

Section 9 allows the Scottish Ministers to make regulations for such further incidental, supplementary, consequential, transitional transitory or saving provision.

We have no specific comments to make.

Section 10

Section 10 allows for Scottish Ministers to make provision via regulations in order to ensure compliance with any regulations made under section 8 of the Bill.

Please refer to our comments above in relation to section 8.

Section 11

Section 11 requires the Scottish Ministers to take steps to ensure that the public are aware of the circumstances in which a dog breeding licence is required and (if established) the circumstances in which an unlicensed litter of puppies should be registered.

As above, we consider that any changes to the policy and legislative framework on this matter would merit an appropriate awareness-raising campaign, so this requirement is welcomed.

Part 3 (General)

Part 3 consists of general provisions, including interpretation and commencement provisions.

Section 12

Please refer to our comments above in relation to section 2.

Sections 13-14

We have no specific comments.

For further information, please contact:

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