

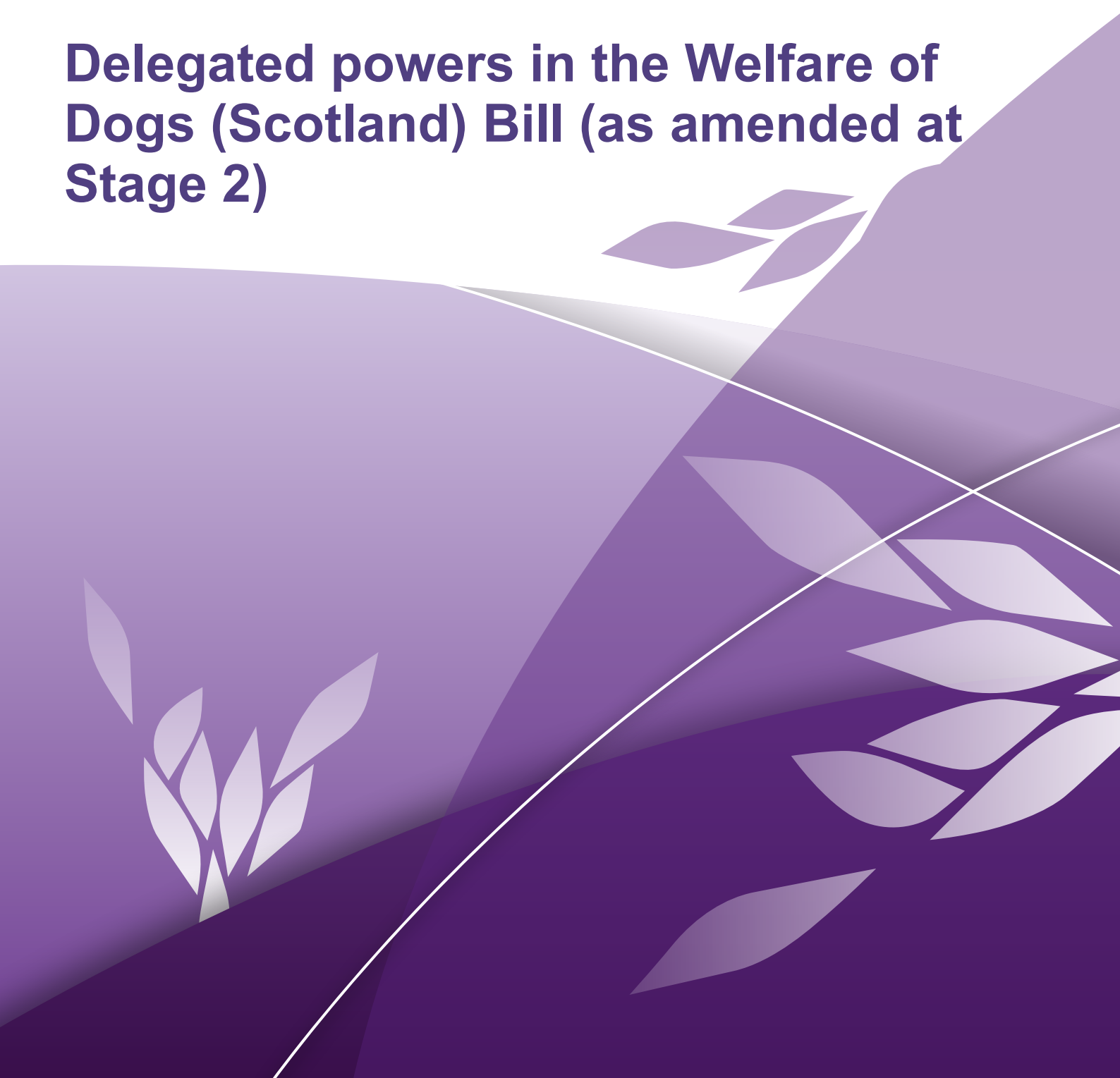


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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Delegated powers in the Welfare of Dogs (Scotland) Bill (as amended at Stage 2)**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

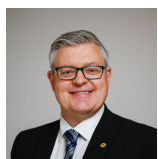


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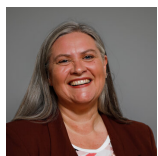
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**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Daniel Johnson**  
Scottish Labour



**Roz McCall**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 3 December 2024, the Committee considered the delegated powers contained in the Welfare of Dogs (Scotland) Bill (“the Bill”) following [amendments made at Stage 2](#).
2. The Committee previously considered the delegated powers in this Bill at Stage 1 and published its [report](#) on 2 November 2023, stating that it was content with 3 of the 4 delegated powers contained in the Bill. In respect of the power to make and revise a code of practice, the Committee considered that the code should be subject to a parliamentary procedure and that this could be either the negative or affirmative procedure. It therefore asked the lead committee, the Rural Affairs and Islands Committee (“the RAIC”) to consider this issue further.
3. Delegated powers in the Bill have since been amended, and therefore the Committee is required to consider the Bill as amended at Stage 2.
4. The 3 delegated powers contained in the Bill at Stage 1, with which the Committee was content, were removed at Stage 2, with the removal of part 2 of the Bill in its entirety. These were Section 8 – the power to require registration of unlicensed litters of puppies; Section 10 – the power to make regulations to secure compliance with regulations made under section 8; and section 9 – the ancillary provision.
5. The amended or new delegated powers in the Bill as amended are listed below.

## Overview of the Bill

6. This Members' Bill was introduced by Christine Grahame MSP (the "Member in Charge") on 20 June 2023.
7. The stated focus of the Bill is to improve the health and wellbeing of dogs throughout their lives, by establishing a more responsible and informed approach to acquiring and owning a dog or a puppy.
8. The amended Bill comprises 9 sections arranged in two parts. Part 1 requires Scottish Ministers to make and publish a code of practice, setting out good practice for a person to follow when they are considering acquiring a dog; and for a person to follow when they are considering transferring a dog to another person.
9. As was previously reported at Stage 1, there already exists a Code of Practice for the Welfare of Dogs which was introduced under the Animal Health and Welfare (Scotland) Act 2006 Act ("the 2006 Act") in 2010 ("the 2010 Code"). The aim of the 2010 Code is to help people to look after their dog properly and deals primarily with the dog's environment, health, exercise and food. The 2010 Code was subject to the affirmative procedure.
10. Part 3 covers general provisions.

# Delegated Powers

11. The amended Bill revises the power to make a code of practice and introduces a new power to modify the date the code comes into effect. The Member in Charge has prepared a [Supplementary Delegated Powers Memorandum \(“SDPM”\)](#) which sets out the powers and provides a brief explanation of what the power allows for, why the power has been taken and why the Parliamentary procedure has been considered appropriate.
12. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.



# Review of powers

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

### Power conferred on: the Scottish Ministers

### Power exercisable by: code of practice

### Parliamentary procedure: none

### Revised or new: revised

### Provision

13. Section 1 requires the Scottish Ministers to make a code setting out good practice that should be followed by anyone considering acquiring a dog, and by anyone transferring a dog to another person.
14. Section 5 provides that the code may be revised. Ministers must consult such persons as they consider appropriate before making the code for the first time, and again before revising it, and the code and any revised code must be published.
15. The making or revising of the code is not subject to any Parliamentary procedure.

### Committee consideration

16. The Member in Charge reiterated in the SDPM that the reason for taking the power to require Scottish Ministers to publish a code of practice is to strengthen a culture of responsible dog acquisition and ownership in Scotland. Further, she explains that a code is an appropriate tool for the specific set of measures in the Bill given the Member's intention to achieve behavioural change, without placing formal legal obligations on the parties involved and without penalising well-intentioned and generally law-abiding citizens.
17. The Member in Charge also considers that a code is an appropriate tool as it allows for flexibility to respond to changes in circumstance and for it to be presented in the most user-friendly and accessible format tailored for its intended use; and ensures that the code remains an up-to-date resource for anyone wishing to acquire a puppy or dog.
18. The Member in Charge further explains in the SDPM that she does not consider that the code requires to be laid before Parliament as substantial elements of the code will have been scrutinised by the Parliament during the passage of the Bill, and that it is not a good use of parliamentary time to also require Parliament to approve the code itself at a later point. She considers that no procedure is required because the scope of the power is already narrowed by provisions on the face of the Bill, which set out the key elements of the code including matters that anyone acquiring a dog should consider for themselves, and the form of a certificate that should be filled out and signed by the acquirer and transferor prior to the transfer of a dog.
19. The Member in Charge acknowledges that Scottish Ministers can add further matters to the code that they consider relevant, but she considers that this is limited

as it has to be tied to the purpose of setting out good practice for people to follow when acquiring or supplying a dog. Also, she considers that further protection is afforded in that consultation is required prior to making as well as revising the code of practice.

20. As noted above, at Stage 1 the Committee considered that the code should be subject to a parliamentary procedure and that this could be either the negative or affirmative procedure, noting that there were arguments to be made in favour of the appropriateness of both procedures. It therefore asked the RAIC to consider this issue further.
21. The RAIC, considered this issue at Stage 1. It noted in its [Stage 1 Report](#) that it was 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.
22. The RAIC was not aware whether the Scottish Government's commitment to replace farmed animals codes with guidance would be extended to the 2010 Code. However, it was keen to avoid a situation where the 2010 Code is moved to guidance, and no longer requires parliamentary scrutiny, but this Bill is amended and the proposed code of practice does require parliamentary scrutiny. The RAIC asked the Scottish Government to confirm if its commitment to replace farmed animal codes of practice will, or is likely to, be extended to the 2010 Code. The RAIC concluded at this stage that if the Bill were to be amended to require parliamentary scrutiny of the code, it recommended this be done under the negative procedure given the defined scope of the proposed code.
23. The Scottish Government [responded](#) stating that the main reason for the commitment to replace farmed animal codes of practice, made under the 2006 Act with guidance, is to provide a quicker, more practical method for drafting, publishing, and amending good practice information for relevant parties. It considers that the provision of up-to-date information is important if it is to support owners and keepers in maintaining the welfare of the animals in their care. In the case of dogs it is important that good practice keeps up with new legislation or growing trends. Further, guidance does not have to be approved by Parliament before it is published, amended or revoked so the process for producing and revising guidance is much quicker and less resource intensive. For these reasons, the Scottish Government's intention is to replace Codes of Practice for different species with guidance as the current codes become outdated over time. This would also apply to the current Code of Practice for the welfare of dogs published in 2010.
24. Subsequently, the Convener of the RAIC tabled an amendment at Stage 2, which would require the code of practice be subject to the affirmative procedure as this would, in his view, "more closely align with the 2006 Act by giving ministers the power to revise the code after consultation and would address the evidential link between failure to follow the code of practice and the potential for an offence to be committed". This amendment was not agreed at Stage 2 and the negative procedure was not tabled as an alternative, at that stage.
25. During the Stage 2 debate the Minister for Agriculture and Connectivity stated that the Scottish Government did not want the code to be subject to a requirement to lay it before Parliament. He reiterated that it has a commitment to replace codes of

practice with guidance as this will provide a quicker, more practical method for drafting, publishing and amending good practice information for the relevant parties. Further, in the case of dogs and the purchasing of dogs, ensuring that information is kept up to date is important in keeping up to date with the new legislation or growing trends in that area.

26. The Committee considers that given:

- the Scottish Government’s further explanation that, for reasons of speed and efficacy, it is its intention to move away from codes of practice in the area of animal welfare, which require to be laid before parliament, to guidance, which is not subject to any parliamentary procedure;
- confirmation that this transition to guidance will apply to the current Code of Practice for the welfare of dogs published in 2010;
- that significant detail of the key elements of the proposed code are on the face of the Bill and have been scrutinised by the Parliament during the passage of the Bill;
- that any additions or revisions are limited to setting out good practice for people to follow when acquiring or supplying a dog;
- that before making the code for the first time, and again before revising it, Ministers must consult such persons as they consider appropriate;

it finds the power to make a code of practice acceptable in principle and is content that it is not subject to any parliamentary procedure, which would bring this in line with other codes as they transition to guidance.

**27. The Committee find the power acceptable in principle and is content that it is not subject to any parliamentary procedure.**

**Section 1(4A) – Power to make regulations to modify the latest date by which the code is to come into effect**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations**

**Parliamentary procedure: negative**

**Revised or new: new**

**Provision**

28. Section 1(4) provides that the code must take effect on a date specified in the code that is no later than 12 months after the Bill receives Royal Assent. Section 1(4A) allows the Scottish Ministers to modify by regulations the date set out in section 1(4) and section 1(4B) provides that those regulations are subject to the negative procedure.

**Committee consideration**

29. The Member in Charge explains in the SDPM that the reason for taking this power is that, although she considers 12 months is a sufficient timescale within which to consult on, develop and publish the code of practice, this provides flexibility in allowing that timescale to be amended in the event of unforeseen circumstances which mean that publication of the code within 12 months of the Bill receiving Royal Assent becomes unachievable. Without this power, any amendment to the timescale could only be achieved by way of primary legislation.
  30. The Member in Charge also explains in the SDPM that she considers that changing the date on which the code is to take effect would be an administrative decision, and that the negative procedure strikes an appropriate balance between use of valuable parliamentary time and the nature of the regulations.
  31. The Committee finds this power acceptable. It considers that there is sufficient detail in section 1(4) and in the SDPM as to how this power is to be exercised, that this power is limited but allows for an element of flexibility and can be updated more easily than by primary legislation. It also agrees that the negative procedure is appropriate given this is an administrative matter.
32. **The Committee find the power acceptable in principle and is content that it is subject to the negative procedure.**

