

Dog Theft (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit, on behalf of Maurice Golden MSP, the member in charge of the Bill, in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Dog Theft (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 58–EN);
- a Financial Memorandum (SP Bill 58–FM);
- a Policy Memorandum (SP Bill 58–PM);
- statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 58–LC).

3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. This Bill is made up of eight sections. The main policy intention of the Bill is to tackle the problem of dog theft by creating a new statutory offence (section 1).

5. The Bill also provides that where an assistance dog is stolen that this is to be treated as an aggravating factor, meaning that the court records this and takes it into account in sentencing.¹ There is a regulation making power to prescribe additional categories of dogs for the purposes of the definition of "assistance dog" in addition to those dogs defined as such in section 173(1) of the Equality Act 2010.

¹ The Bill applies the definition of "assistance dog" provided under section 173(1) of the Equality Act 2010.

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6. The Bill provides for victims of the statutory offence of dog theft to be able to make a victim statement to the court (section 3).

7. The Bill places a duty on the Scottish Ministers to prepare and publish annual reports on the operation of the Act and a corresponding duty on certain bodies to provide the Scottish Ministers with certain information (section 4). A statutory obligation is also placed on the Scottish Ministers to undertake a review of the Act after five years of operation (section 5).

8. The final provisions (sections 6 to 8) deal with standard provisions about ancillary powers, commencement and the short title.

9. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

Rational for subordinate legislation

10. The Bill contains three delegated powers provisions (two of which are ancillary provisions and commencement provisions), described in more detail below.

11. In considering what should be left to subordinate legislation, the Member has had regard to:

- the need to strike a balance between the importance of ensuring full Parliamentary scrutiny of the core provisions of the Bill and making proper use of Parliamentary time;
- the relatively better position of the Scottish Ministers when compared with an individual Member in making decisions on the best use of public resources to meet objectives;
- the possible requirement to make ancillary provision.

12. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill, and why the selected form of Parliamentary procedure has been considered appropriate.

Delegated powers

Section 2(2)(b): Theft of assistance dogs

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

13. Section 2(1) provides that the offence of dog theft under section 1 will be aggravated if the dog taken or kept is an assistance dog.

14. Section 2(2)(a) provides that the term “assistance dog” is defined for the purposes of this section as having the meaning given to it under section 173(1) of the Equality Act 2010 (that definition itself contains a regulation making power for the Secretary of State to make regulations about the definition of an “assistance dog”).

15. Section 2(2)(b) provides the Scottish Ministers with a regulation making power to add to the categories “assistance dog” for the purposes of the theft of one being treated as an aggravating factor under the offence introduced by this Bill.

Reason for taking power

16. The Member considers that this power is necessary to allow the Scottish Ministers the flexibility to add to the categories of assistance dogs in the future, theft of which may benefit from being treated as an aggravating factor. Assistance dogs are normally trained by charities, and the purpose of this power is to ensure that additional categories can be added timeously if the need arises.

17. This power may, for example, be used to prescribe dogs trained to assist people with a certain disability and particular needs. It is for this reason that the power enables the Scottish Ministers to prescribe a dog of a “category” as this will provide the scope to make provision for such specific cases. In any event, regulations made under this power would only be for the purposes of the definition of “assistance dog” under this section of the Bill.

Procedure

18. Section 2(6) provides that regulations made under section 2(2)(b) are subject to the negative procedure.

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19. It is considered that the negative procedure will provide an appropriate level of parliamentary scrutiny for regulations adding to the categories of assistance dogs given that such regulations will not amend primary legislation. Use of the affirmative procedure would also be an inappropriate use of parliamentary time relative to the impact of such regulations. The negative procedure will therefore allow for flexibility for adjustments to take place whilst providing scrutiny by the Scottish Parliament.

Section 6: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if modifying primary legislation; otherwise negative

Provision

20. This section provides that the Scottish Ministers may make regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purpose of, in connection with or for giving full effect to the Bill. Such regulations may modify primary legislation (including the Act for this Bill), and they may make different provision for different purposes.

Reason for taking power

21. The Bill may give rise to a need for further provision to make sure that this new offence can operate effectively in practice. This enabling power is sought to provide flexibility to quickly and effectively make any necessary change that might be needed.

Procedure

22. Section 6(4) provides that regulations made in exercise of this power are subject to the affirmative procedure if those regulations add to, replace or omit any part of the text of an Act. Otherwise, such regulations will be subject to the negative procedure under section 6(3). This formulation is standard in connection with ancillary powers and is considered to provide an appropriate level of parliamentary scrutiny, recognising the particular interest the Parliament has in provisions which modify primary legislation.

Section 7: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

23. Section 7(1) provides that this section, section 6 (Ancillary provision) and section 8 (Short title) come into force on the day after Royal Assent.

24. Section 7(2) provides that the other remaining provisions are to come into force on such day as the Scottish Ministers may by regulations appoint.

25. Commencement regulations may include transitional, transitory or saving provision, and they may make different provision for different purposes.

Reason for taking power

26. Allowing the Scottish Ministers to commence the remaining provisions by commencement regulations will ensure that measures are in place to implement the provisions of the Bill, and that stakeholders, such as Police Scotland and the Crown Office and Procurator Fiscal Service have sufficient time to prepare for the operation of the new offence and the data reporting obligations. The Member therefore considers that the Scottish Ministers are best placed to determine when the remaining provisions of the Bill should be commenced.

Procedure

27. As is usual for commencement regulations, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies. Commencement regulations bring into force provisions, the substance of which have already been considered by the Parliament during the passage of the Bill. Any regulations under this section will be laid before the Parliament as soon as practicable after being made (and in any event before the legislation is due to come into force).

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