



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 21 February 2024**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**8<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

**DEPUTY CONVENER**

\*Russell Findlay (West Scotland) (Con)

**COMMITTEE MEMBERS**

- \*Katy Clark (West Scotland) (Lab)
- \*Sharon Dowe (South Scotland) (Con)
- \*Fulton MacGregor (Coatbridge and Chryston) (SNP)
- \*Rona Mackay (Strathkelvin and Bearsden) (SNP)
- \*Pauline McNeill (Glasgow) (Lab)
- \*John Swinney (Perthshire North) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

- Siobhian Brown (Minister for Victims and Community Safety)
- Bob Doris (Glasgow Maryhill and Springburn) (SNP)
- Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)
- Jim Wilson (Scottish Government)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Criminal Justice Committee

*Wednesday 21 February 2024*

*[The Convener opened the meeting at 09:01]*

### Decision on Taking Business in Private

**The Convener (Audrey Nicoll):** Good morning, and welcome to the eighth meeting of the Criminal Justice Committee in 2024. We have received no apologies this morning. We are joined by Christine Grahame MSP and Bob Doris MSP. I welcome them to the meeting.

Our first item of business is consideration of whether to take in private item 5, which is consideration of our approach to stage 1 scrutiny of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. Do we agree to take that item in private?

**Members indicated agreement.**

## Subordinate Legislation

### Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31)

09:01

**The Convener:** Our next item of business is consideration of a negative instrument: the Dangerous Dogs (Designated Types) (Scotland) Order 2024. I refer members to paper 1.

I welcome to the meeting Siobhan Brown, the Minister for Victims and Community Safety, and Mr Jim Wilson, licensing team leader at the Scottish Government's criminal justice division. I invite the minister to speak to the Scottish statutory instrument.

**The Minister for Victims and Community Safety (Siobhan Brown):** Good morning, convener and committee. Thank you for the opportunity to provide the committee with information on the safeguards that the Scottish Government is putting in place in relation to XL bully dogs.

The vast majority of dog owners are responsible animal lovers and know that owning a dog brings with it important responsibilities. Although a dog attack remains a rare occurrence, when one occurs, it can have devastating consequences. Such incidents illustrate the importance of responsible dog ownership and effective enforcement by Police Scotland and local authorities of relevant dog control laws.

We have public safety always in mind. As I made clear in my statement to Parliament last month, the decision to introduce the initial new safeguards on XL bully dogs is one that we did not make lightly. We wanted to ensure that we took an evidence-based approach after engagement with relevant stakeholders, which I carried out following the United Kingdom Government's announcement of its legislation.

After that legislation came into force, it became clear that the UK Government could not confirm that an owner of an XL bully dog who lived in England or Wales and was not able to sell or rehome a dog there could not do so in Scotland. Although to rehome such a dog would breach English and Welsh law, the legislation created a loophole that led to some owners bringing dogs to Scotland. Therefore, we moved to take action immediately by introducing the new order.

I am determined that we promote and support responsible ownership, animal welfare and public safety as effectively as possible. Our approach is in two parts. You have the first legislation before you today. Its effect is that, from 23 February,

which is this Friday, selling, gifting and exchanging an XL bully dog will be prohibited and the loophole will be removed. It will remain legal for current owners of XL bully dogs to own such a dog. Owners will have to ensure that their dogs are muzzled and on a lead when in a public place.

Our second phase will be to make it an offence to own an XL bully dog without an exemption from 1 August. Further secondary legislation will shortly be laid that will provide for the detail of the system for owners to apply and pay for an exemption by 31 July. That will allow them to make plans and prepare for the new safeguards.

We will continue to engage with a wide range of stakeholders as we prepare for the implementation of the new safeguards. A new stakeholder forum has therefore been established, which will meet regularly over the next few months.

I am happy to take any questions that the committee may have.

**The Convener:** Thank you very much indeed, minister. We move to questions.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I have not so much a question as a wee statement. First, I thank the minister for her engagement on the issue with me and with those in my constituency. I also thank Kelsey Kiernan, her family and the whole team at Bedlay Gardens Ltd dog care in Chryston in my constituency, including the many experts that they have on site, and people such as Blue Cross that have provided us with briefings on the issue. I will be honest with you: prior to this issue, I did not have a great knowledge of the XL bully situation, but I feel that I now have, because of the information that I have been provided with by constituents and experts.

As the minister knows, I think that this is very bad legislation from the UK Government. Perhaps my Tory colleagues on the committee will say that it is an attempt to make society safer. However, on committees and otherwise in the Parliament, we have always prided ourselves on listening to experts and to those who know the situation. The experts in this field clearly and consistently tell us that this legislation is bad, has a high risk of not working, is a knee jerk, and is ill thought out. The UK Government had a duty to listen to those experts. I might be wrong—I stand to be corrected—but, to me, it feels as though the legislation has been put together by UK Government ministers and officials, not experts.

All that said, I started off by thanking the minister, and I know exactly the path that she has had to take on the legislation. At the end of the day, the UK Government has not legislated for dogs being taken to Scotland or elsewhere, but that has happened. I am aware of press articles

and the like about large numbers of XL bullies being brought into Scotland. Ultimately, therefore, we have been pushed into a corner. I will support the legislation, but I want to make it very clear and put it on record that we have been pushed into this position. I know that the minister did not quite say this, but I want to say it: we have been pushed into this position because the loopholes were not closed.

From what I have heard from the animal welfare organisations that have been in touch, including those in my constituency, I do not think that the legislation will make the situation safer. In fact, it will create a host of other issues up and down the UK, including perhaps animal welfare concerns when people decide not to get a licence, and other issues that members may speak about.

As I said, I do not have a question. I end by again thanking the minister. I know that my constituents feel listened to, through the meeting that we had. I have had feedback from them. They feel that she gets the concerns and that she is listening to them and will find a way through this. I realise and accept that we have no choice but to bring in the legislation at this time.

**Siobhian Brown:** Convener, if I may, I will come back to Mr MacGregor. This was never a constitutional issue—our concern was about good legislation. As you know, the legislation was announced with no consultation with the Scottish Government and with no background to it, so it has been accelerated to where we are today.

One thing that I would like to say to Mr MacGregor is that, initially, the UK Government estimated that there would be 10,000 dogs on the list. At present, the number is nearly 61,000. Out of those 61,000, only 200 owners have chosen not to keep their dogs. Therefore, the majority of dog owners are responsible dog owners, and I am confident and hopeful that that will happen in Scotland as well.

**Sharon Dowe (South Scotland) (Con):** Good morning. The UK Government announced the ban in September, and it came into force in December 2023. Why has it taken the Scottish Government so long to implement what seems in effect to be the same ban?

**Siobhian Brown:** If I may, I will go through the timescale, because it is important that we are clear on how all of this happened.

On 15 September, the UK Government publicly announced that it was going to bring in an XL bully ban in England and Wales. There was no consultation with the Scottish Government. On 15 September, the Prime Minister announced that he had ordered the Department for Environment, Food and Rural Affairs to undertake the work to define and ban XL bully dogs in England and

Wales, because the XL bully dog breed was not recognised by the main British dog associations or by the Kennel Club. DEFRA convened an expert group to specify a legal definition of the XL bully for the purpose of the ban in England and Wales, and that group met for the first time on 21 September 2023. Therefore, the regulations, legislation and detail for the ban were not available in early September, because the detail was just being planned as of 21 September.

On 29 September, I received a letter from the UK Government to advise that it would be putting in a ban in England and Wales, but it gave no timescale or detail.

On 2 October, the dog control coalition organisations—the Royal Society for the Prevention of Cruelty to Animals, the Scottish Society for the Prevention of Cruelty to Animals, the British Veterinary Association, the Kennel Club, Blue Cross, Dogs Trust and Battersea—all withdrew from the Prime Minister's DEFRA group, due to concerns over the rushed legislation.

On 31 October, the UK Government publicly announced the timescale that, by 31 December, people would not be able to give away XL bully dogs and that the dogs would have to be muzzled and on a lead. That was an eight-week period.

On 9 November, I sent a letter to the UK Government to say that we would not be following the same legislation and timescale. I did not say that we would not be following it at all; the concern was about the timescale because, at that stage, we would have had six weeks to get things in place by 31 December.

I had asked the UK Government about the potential loopholes in the legislation and the consequences for Scotland. On 14 December, I finally received a very vague answer from the UK Government. At that stage, we decided to bring in the legislation at pace after Christmas.

**Sharon Dowey:** You mentioned that you had received letters. In a letter, Michael Gove MP warned that Scotland could become a “dumping ground” for XL bullies and raised concerns that it had not yet been possible to secure equivalent protections in Scotland. What engagement did you have with the UK Government? How many meetings and phone calls did you have?

I will go back to a couple of things that you have just said. You mentioned the announcement on 15 September and said that there had been no communication with the Scottish Government. I am under the impression that, on 15 September, when the UK Government made the announcement, UK officials were also in contact with Scottish Government officials.

You also mentioned that 21 September was the first meeting of the working group. Again, I am under the impression that Scottish Government officials were part of that working group and that they helped to come up with the definition and conformation of the dog breed. You said that you have had no communication, but I am under the impression that Scottish Government officials were involved from the day of the announcement and that every letter that you received asked for meetings with the Scottish Government and for you to be involved, because the UK Government wanted it to be a joint approach, so that there would be none of the loopholes that you are talking about.

I am also under the impression that the loopholes have been created because there has been no engagement on the matter with the UK Government from the Scottish Government. It is the lack of legislation in Scotland that has created the loophole. That happened because we did not put the legislation in at the same time.

09:15

**Siobhian Brown:** I will make one point regarding that. I think that the letter from Michael Gove was addressed to the Deputy First Minister. I was copied into it, and it was sent on 13 November. The timescale from September to 31 December was a very short period of time to get legislation in place.

I will bring in Jim Wilson, who has been involved in the discussions with the UK Government from the beginning, because the devolved Administrations have been having discussions with it.

**Jim Wilson (Scottish Government):** Thank you, minister. I appreciate the question from the member. I stress that the first time that we were made aware of the UK Government's decision to bring in the new controls on XL bully dogs was when we saw it on the BBC news website. There was no prior knowledge or heads-up that it was coming down the track.

I stress that we regularly engage with DEFRA officials on a range of dog control policy issues. As you rightly pointed out, we had a presence on the UK Government-led expert group that was designed to try to develop the conformation standard at a rapid pace. I and Andrew Voas from the Scottish Government's animal health and welfare division were observers on that group with a view to trying to provide support to the UK Government on the conformation standard.

I stress that we have had—and we continue to have—weekly engagement at official level with DEFRA officials, and that was to work through the mechanics of how they were planning to develop

the policy in relation to XL bully safeguards. Concerns were raised at official level about the territorial extent of the provisions that were to be brought in through statutory instruments. That is why the minister wrote to Lord Benyon to raise concerns. We felt that there was an issue in that owners would be able to evade the law by simply transporting dogs to Scotland, with no consequence.

I stress that there has been regular engagement with DEFRA officials, and that continues. We meet every Friday to discuss a range of issues in relation to not just XL bully dogs but potential wider reforms around dog control more generally.

**Sharon Dowey:** There have been regular weekly meetings of officials. Minister, how many meetings have you had with the UK Government?

**Siobhian Brown:** I have not had any meetings with the UK Government but, since November, I have had many meetings with stakeholders and weekly meetings with Jim Wilson, who has kept me updated on all progress.

**Sharon Dowey:** Why have you not had any meetings with the UK Government?

**Siobhian Brown:** I just have not. It has not been on the agenda. I have been meeting stakeholders.

**Sharon Dowey:** The subject is obviously really important for a lot of people, especially people who own XL bullies. Did you not think that it would be good for you to have a meeting with UK ministers to ask for the rationale?

**Siobhian Brown:** I felt confident, to be honest. On 14 November, after the announcement and the letter that I received on 9 November, I thought that we would be able to get the legislation in place. To be honest, I did not feel comfortable about getting it in place at speed for 31 December. Also, compared with England and Wales, we in Scotland, uniquely, have dog control notices. Local authorities have powers to insist that dangerous dogs be muzzled and kept on a lead. Jim Wilson updates me weekly on the figures—currently, 1,200 dogs are subject to dog control notices.

In mid-November, I felt confident from engaging with the stakeholders that we already had those safeguards in Scotland, which were not in place in England and Wales; that they would still be in place come 31 December; and that communities were protected from dangerous dogs.

**Sharon Dowey:** You said that six weeks is a tight timescale, but we are being asked to put the order in place in less than four weeks. Do you—

**The Convener:** Ms Dowey, there is a lot of interest in putting questions to the minister. I will come back to you later if we have time.

**Russell Findlay (West Scotland) (Con):** The reason for the controls being brought in is to protect public safety after a spate of horrific attacks, some of which were fatal and some of which involved children. Our thoughts are with all those who have been harmed or lost their lives in those attacks.

We whole-heartedly welcome the Scottish Government finally coming to the right decision. I would like to know—was this a case of spectacularly poor judgment or dithering, or was it simply an opportunity to seek divergence from the rest of the UK?

**Siobhian Brown:** It was none of the things that you suggest. As I said, this has been on-going for several months and I have been engaging significantly with all stakeholders regarding it. It came into place, I think, over the Christmas period, when we saw, largely on social media, instances of XL bully dogs being brought up to Scotland and the UK Government could not confirm whether that would be illegal.

**Russell Findlay:** For weeks if not months, the Scottish Government was warned by the UK Government, politicians in the Scottish Parliament, the media and experts that this was an inevitable consequence of the rest of the UK legislation.

You said in your opening statement that dog attacks are rare, but there have been two XL bully attacks in Scotland in the past month, one of which was just three days ago. In both those attacks, people were harmed, and both were so serious that Police Scotland had to use firearms to kill the animals. Reportedly, both of those dogs came from elsewhere in the UK. Do you therefore regret not acting quicker?

**Siobhian Brown:** First, the incident in East Kilbride on Sunday was very distressing, and my thoughts are with the victims of the dog attack. I thank Police Scotland, which attended the incident and ensured that it was swiftly brought under control. That is a live case and members will appreciate that I cannot discuss any details of the specific incident. In line with standard operating practice, the use of a firearm by an officer will be assessed by the Police Investigation and Review Commissioner.

I understand that the breed of dog in that incident is yet to be confirmed, and that they could not determine the breed of dog in the incident in Hamilton, which Russell Findlay also referred to, either.



One of the challenges for the stakeholders, such as DEFRA and the Kennel Club, has been identifying the breed.

**Russell Findlay:** You and your officials have talked about the system of dog wardens in Scotland, which are controlled by local authorities. In your answer to my colleague Sharon Dowe a moment ago, you mentioned that 1,200 dogs are subject to dog control notices. Do you happen to know how many dog wardens there are in Scotland?

**Siobhian Brown:** Every local authority should have a dog warden.

**Russell Findlay:** But they do not—that is the problem.

**Siobhian Brown:** It is up to local authorities. Every local authority has the obligation to have a dog warden. I know that some local authorities, such as Perth and Kinross—

**Russell Findlay:** It is an exception. We did our own research. We asked all 32 councils, and we have received answers from around half of them. Aberdeenshire, West Dunbartonshire, East Ayrshire, Scottish Borders and Inverclyde all have just one dog warden each. Clackmannanshire has 0.2 dog wardens, which I assume is one dog warden working one day per week. Glasgow, despite its size and population, has one dog warden. Realistically, there is no way on earth—especially in the face of Scottish Government cuts to local authorities—that councils will increase those numbers any time soon, and they are not well placed to deal with the 1,200 dogs that are under control notices.

**Siobhian Brown:** I will share some statistics on dog control notices to give a little bit of context. Fife Council, for example, has 188 dogs under dog control notices; Aberdeen City Council has 56. Local authorities are therefore using dog control notices.

I understand Russell Findlay's point about local authorities, but we have set up an implementation forum. We will be discussing this with local authorities, the Convention of Scottish Local Authorities and Police Scotland to consider any enforcement and operational issues that arise from the legislation. That will help to inform our consideration of any requests for additional funding.

**Russell Findlay:** Sure, but the existing number of dog wardens is already insufficient. Do you not agree?

**Siobhian Brown:** No, I do not agree.

**Russell Findlay:** Is one dog warden all that is needed for the whole of Glasgow?

**Siobhian Brown:** It would be up to each local authority to determine how many dog wardens they need. I am sure that local authorities might politically prioritise having more dog wardens. It is up to each local authority.

**Pauline McNeill (Glasgow) (Lab):** Good morning. Is the purpose of the SSIs that we are considering purely to close the loophole?

I was listening to what Jim Wilson was saying and trying to understand the situation. There has already been discussion with the UK Government about XL bully policy—that is what the DEFRA talks were about. I want to establish exactly why you have introduced the instrument now. Is it simply because, when you were having those discussions, you saw a loophole and you want to close it? Is that right?

**Siobhian Brown:** Yes. We wanted to bring in the legislation at pace due to XL bully dogs being brought up from England and Wales.

**Pauline McNeill:** The working group that Jim Wilson was talking about was to discuss the policy of how to tackle XL bully dogs. Is that right? Have I understood that correctly?

**Jim Wilson:** No. I will separate out those aspects. The engagement with officials at DEFRA was, in the main, to look at the new controls that were to be considered and introduced in England and Wales. Ultimately, we were able to feed in our perspective and views on that. However, separate Scottish Government-led working groups have been established to look at opportunities for reform, including improvements to enhance and strengthen the Control of Dogs (Scotland) Act 2010. There have been engagements to look at the Dangerous Dogs Act 1991. That has involved a separate Scottish Government-led group.

The engagement is not just at ministerial level, and we have had significant engagement with a range of stakeholders.

**Pauline McNeill:** I am just trying to understand the situation. Was Scotland feeding in to the DEFRA expert group on what you already knew was the planned changes to legislation in England in relation to XL bully dogs?

**Jim Wilson:** The expert working group was designed and led by DEFRA and was in place only for a very short time—a few weeks. Its primary focus was to develop a conformation standard. The more—dare I say it?—routine engagements, which happened weekly, were for policy conversations on the new safeguards that were being considered and developed.

**Pauline McNeill:** On XL bully dogs?

**Jim Wilson:** Yes.

**Pauline McNeill:** Did you say that Scotland was doing its own work as well, separate from that?

**Jim Wilson:** Yes. We have completely separate strands of engagement with Scottish stakeholders on dangerous dogs policy as a whole—not just in relation to XL bullies.

**Pauline McNeill:** I am just trying to get my head round this. Is it the case that you knew from that expert working group that England was planning to ban XL bully dogs?

**Jim Wilson:** The expert working group was convened after the Prime Minister made the announcement. We had no advance notification that that was coming down the track.

**Pauline McNeill:** I just wanted to understand the timetable.

Minister, you have confirmed that closing the loophole is the purpose of the instruments.

**Siobhian Brown:** Initially, yes. That is the purpose of the first SSI. A second will be made soon.

**Pauline McNeill:** I want to ask you about that.

Are you concerned about the definition of an XL bully dog? You said that, in the two incidents that we know about, the breed of the dogs cannot be confirmed. In addition, under the provisions, who makes the final decision on whether a dog is an XL bully dog?

**Siobhian Brown:** That concern has been raised with me by all stakeholders. The definition that was determined by DEFRA is that the male has to be 20 inches in height and the female has to be 19 inches. Therefore, an XL bully that was 16 or 17 inches would not have to wear a muzzle and lead. That caused quite a lot of confusion down south when the UK Government's order was implemented, and it advised that anyone who has any doubts should register their dog.

We have also found, through the correspondence that I have received and that Jim Wilson has received, that there is confusion among the general public. We are keen to learn lessons on how we can do things better in our legislation in respect of the issues that have been raised. We have until 31 July. We will put on the Scottish Government website some support and help for people to determine whether they have an XL bully.

I do not know whether Jim Wilson has anything to add.

**Jim Wilson:** I agree that the conformation standard has triggered a lot of concern. I receive many letters from concerned owners who are unsure as to whether their dog is an XL bully type. Ultimately, the conformation standard is for, and

the onus on, owners, when they go through the exemption process. The exemption process will be laid out in a second Scottish statutory instrument, which will explain how owners engage with that process: what they need to do and when they need to do it.

However, this is a move away from normal policy. We will park XL bullies for a second. If a pit-bull type is seized by the police, the owner is arrested, potentially for offences under the Dangerous Dogs Act 1991. If the dog in question does not present a risk to public safety, it would still be possible, on the direction of the court, for the owner to consider going for an exemption, and there could be an assessment, which would be conducted by an expert, to determine whether the dog in question is of a prohibited type. Similar to what the UK Government has done through DEFRA, the process for exemption is owner led during that period. The details will be in the next instrument, but, ultimately, we will have to have a Scottish exemption scheme. The instrument will pave the way for that.

We need to be mindful about doing as much as we can to mitigate any issues and ensure that owners who write to the Scottish Government are pointed towards information on the Government website that supports them through the process.

09:30

**Pauline McNeill:** The purpose of the SSI is to set out the conditions for keeping an XL bully dog. You have mentioned the exemptions, but we will not see the instrument for those until much later in the year. I was a wee bit concerned about the separation of that from the SSI that we are considering today, in that we cannot see yet what the exemptions are. Could you explain the reason for the separation?

**Siobhian Brown:** Jim knows the timescale. It will not be until later in the year.

**Jim Wilson:** I am happy to step in to cover that point.

On the provisions that have been developed, not just for the Scottish statutory instrument that is before the committee today but for the second instrument, I stress that the work is well under way. My team has worked at a rapid pace to develop the draft provisions. Ultimately, ministers must consider draft instruments before they are laid in Parliament.

Regarding the timings, we are aware of the need to act quickly on the exemption process. Rewinding from the designated date when the full regime comes into play, which is 1 August, the exemption process will close on 31 July. We are trying to create a bigger window for owners so that

they have the time to consider what they want to do, such as whether they want to retain their dog and go through an exemption process.

We are also mindful about the significant impact on animal welfare and on rehoming centres. We have had engagements with many stakeholders, including Edinburgh Dog and Cat Home, which has rightly been stressing the clear increase in demand on services. We are considering a provision under the instrument that would give rehoming centres the opportunity to seek an exemption for dogs under their care.

On the timing of the forthcoming Scottish statutory instrument, I can say that it is coming down the track quickly.

**Pauline McNeill:** I understand the pressure that you must be under, but you can perhaps understand my concern. What would be the basis of the exemptions? I do not think that we can separate out today's SSI and the exemptions. What are the exemptions?

**Jim Wilson:** Other conditions are built into the exemption process. One condition is that there must be a requirement for third-party liability insurance. We can tie up the SSI before you with the second SSI. Another condition is that the dogs must be muzzled and on a lead in a public place. Ultimately, there will be a requirement to ensure that any changes of circumstances are notified to the Scottish Government.

We are mindful of what I would call an unintended consequence. An issue that the UK and Scottish Governments are considering is what should happen if, sadly, the owner of an XL bully dog passes away. We need to consider the opportunity, in what are very limited circumstances, for the dog to be transferred to someone else. The details of how we will achieve that policy aim will be contained in the instrument, but the policy is being worked up at rapid pace.

To build on the minister's comments on the need to consider any implementation issues, the implementation group that has been established has representatives from Police Scotland and COSLA, the chair of the National Dog Warden Association and representatives of the Society of Chief Officers of Environmental Health in Scotland, which manages dog warden services in local authorities. The group's conversations will be scheduled on a fortnightly basis, with the opportunity to consider any emerging issues on an urgent basis.

The minister has written to Councillor Chalmers from COSLA to seek a discussion, or open up a conversation, to consider any impact on local authorities. That does not just apply to Police Scotland; we recognise that local authorities may be dealing with increasing levels of calls, if a

member of the public suspects that they have seen an XL bully in public that is not in a muzzle or on a lead. Where do people turn to? Do they phone the police or the local authority? I stress that there is on-going engagement with a range of key stakeholders on those issues.

**Pauline McNeill:** You have answered my question about how you define an XL bully. Some organisations wrote to the committee with concerns, one of which is about puppies that have not reached the fully grown size of their breed. Will you consider how that will be dealt with?

**Siobhian Brown:** I will address that but will first clarify a matter in relation to a previous comment. When the legislation was brought in on 1 February in England and Wales, one unintended consequence was that they did not know what to do with a dog if its owner died, which Jim Wilson just mentioned. We are looking at a timescale that is a little bit longer, so that we can cover all the unintended consequences in the second SSI. The UK Government is now adding such provisions, in hindsight, because its legislation was rushed through.

We are engaging with stakeholders about the issues, including the one that you raised about puppies, so that they can be considered for the future instrument.

**Jim Wilson:** I want to add something to that; I will be brief. In the regular engagements that we have with the dog control coalition—which includes the major animal welfare stakeholders such as the Dogs Trust, the SSPCA, the RSPCA, Battersea Dogs and Cats Home, Blue Cross and others—one of the issues that has been raised with the minister and with me is neutering requirements. It is suggested that it is not wise to get dogs neutered before they reach a certain age, so we are taking into account concerns from animal welfare stakeholders about the neutering process, and we think that we have come up with a proportionate response to tackle those concerns. That will be set out in the instrument that is still to come.

**Katy Clark (West Scotland) (Lab):** Minister, you have clearly been watching what has been happening down south, and it is clear that there have been a number of problems there. The ban on rehoming has had an impact on vets and on people at rehoming centres, who have been put in a position of being obliged to destroy healthy dogs that come into their care after the rehoming deadline. We have also been told that there have been difficulties in establishing muscle training at short notice, and the veterinary sector has said that it lacks sufficient capacity to carry out all the required neutering.

Given all the very practical issues that we have already seen in England and Wales, and that you say that you have already had many meetings with stakeholders in Scotland, do you envisage similar problems in Scotland after the order comes into effect later this week—if we vote in favour of it?

**Siobhian Brown:** I have been engaging with stakeholders, including in Scotland, and I am aware of all those concerns. I envisage, that, hopefully, we will not have the problems that are happening in England and Wales, because we are engaging with stakeholders on the legislation that we are bringing in.

**Jim Wilson:** That is a really good point. We need to think through the consequences of the policy and what it means for stakeholders. We have had, and we continue to have, weekly engagements with the dog control coalition, which also includes representation from the British Veterinary Association. The key thing for—

**Katy Clark:** Is it saying that it can cope with what is about to happen? Given that you have had all those meetings, you must know that, as that is a very basic question, is it not? Are you assured that everything will be okay in Scotland, or do you think that there will be problems?

**Jim Wilson:** I think that there is potential for problems. We have to recognise that there will be a strain on the system when people need to undertake certain conditions if they wish to obtain an exemption certificate.

We have had conversations with DEFRA analysts about the significant number of exemption applications that were submitted—as the minister has already pointed out.

What was interesting about the pressures on the capacities of vets' practices across the UK is that 62 per cent of XL dogs had not been neutered—I think that was the figure—which is quite high. It put strain on services when there was a requirement—during a two and a half month window—for the exemption process for owners in England and Wales.

The exemption process in England and Wales opened up in mid-November—my apologies, but I cannot remember the exact date—and it ran through to 31 January. In Scotland, we want to create a longer timeframe for the exemption process to ease the strain on vets and others.

**Katy Clark:** On the timetable, the order will come into effect on 23 February if it is passed, but, from 1 August, it would be an offence to own an XL bully dog. Will you clarify the timetable for when law-abiding citizens would be guilty of an offence? When would that impact?

**Siobhian Brown:** The second SSI will come into effect on 1 August. We will lay it shortly and it will give all the timescales and details.

I come back to one detail from the engagement that we have had down south that might give you a little bit of confidence, which I mentioned to Mr MacGregor. Out of the 61,000 owners who registered in England and Wales, only 200 decided not to keep their XL bully. The majority of XL bully dog owners are responsible. The high numbers who registered have given me confidence that the pressures on vets will not be as predicted.

**Katy Clark:** The order that has been put in front of us is astonishingly short. Will you confirm exactly what will happen later this week? The safeguards that relate to designated dogs will require XL bully dogs to be kept muzzled and on a lead. Beyond that, is anything happening later this week, or will the other things happen on 1 August?

**Siobhian Brown:** As of 23 February, under the first SSI, if you have an XL bully dog in public, you will need to have it on a lead and it will have to be muzzled. In addition, you will not be allowed to breed an XL bully dog, sell it, abandon it, let it stray or give it away.

**Katy Clark:** If you were to, say, breed or give away an XL bully dog, you could be committing a criminal offence. Is that correct?

**Siobhian Brown:** Yes.

**Katy Clark:** The problem with that is the insufficient clarity about what an XL bully dog is. We are being asked to vote on a very short order. Is there any definition in it? Do you not think that parliamentarians should have a definition before they vote?

**Siobhian Brown:** The definition is on the UK Government website, which we are following.

**Katy Clark:** You are mirroring the definitions down south.

**Siobhian Brown:** Yes. If we did not mirror them, the loophole would be reopened.

**Jim Wilson:** I apologise, convener, but I will come in on the point that Ms Clark raised about penalties. It might be useful to explain that.

**Katy Clark:** I think that you have covered it.

The minister said that the definition is on the UK Government website, but can you refer me to any definitions in relation to younger dogs? That has been a live issue down south.

**Jim Wilson:** It is a live issue down south. We need to be mindful that the approach that the UK Government adopted and ran with through DEFRA

urges a precautionary approach and the Scottish Government is taking a similar approach.

It is very difficult to identify a dog's type when it is a puppy. We recognise that. There might not be any papers that suggest that a person owns an XL bully-type dog. The UK Kennel Club does not have it as a recognised—

**Katy Clark:** I understand that we have to look at a UK website for the definition that will come into effect later this week.

**Siobhian Brown:** It is on the Scottish Government website.

**Katy Clark:** It will be on the Scottish Government website. Will any guidance regarding young dogs be in place later this week so that the owners—citizens—can know what they are supposed to do, or do we have to wait for that?

**Siobhian Brown:** My understanding is that, under the definition on the website, the male has to be 20 inches and the female has to be 19 inches. I would say that a puppy would not reach that.

**John Swinney (Perthshire North) (SNP):** Will you confirm that the first that the Scottish Government knew of a United Kingdom Government proposal for an XL bully dog ban was via the BBC News website on 15 September? Is that correct?

**Siobhian Brown:** Yes.

**Jim Wilson:** Yes.

**John Swinney:** Does the Scottish Government believe that that type of notification is consistent with the intergovernmental frameworks that are supposed to operate between the four Administrations of the United Kingdom?

**Siobhian Brown:** No, I do not believe that the Scottish Government finding that out via BBC News is the right way for the UK Government to treat devolved nations in respect of such decisions.

**John Swinney:** Does that highlight a fundamental lack of respect for the role of the Scottish Government and the legislative responsibilities of the Scottish Parliament?

09:45

**Siobhian Brown:** Yes, in a way. I do not know whether it was totally intentional or the UK Government just disregarded telling the Scottish Government, but it would have been ideal if there had been communication prior to the announcement.

**John Swinney:** I find it very strange that the proposal was announced on 15 September and

the first formal written notification to the Scottish Government advising of a ban was on 29 September. That was 14 days after the proposal appeared on the BBC News website. Is that an indication of respectful behaviour by the United Kingdom Government?

**Siobhian Brown:** I do not believe so. I should also say that we found out on 31 October about the UK Government's publicly announcing the timescale and the detail, but I was not made aware of that formally until a letter was sent on 9 November.

**John Swinney:** I am grateful to the minister for indicating another example of a lack of respect from the United Kingdom Government and a lack of obligation to pursue the intergovernmental arrangements that the Scottish Parliament has been assured are in operation, but which clearly have not in any shape or form been respected on this issue. Is that a fair summary?

**Siobhian Brown:** I would say that that is a fair summary.

**John Swinney:** I can clearly understand from Mr Wilson's contribution that there has been detailed Scottish Government official engagement on many of the questions relating to dog control. After that public announcement and inappropriate intergovernmental communication from the United Kingdom Government, the Scottish Government sought to understand the implications of the legislation for Scotland and determine whether there would be loopholes or whether the existing dog control legislation in Scotland would suffice. Is that a fair summary of what went on between 15 September and 14 December, when I think there was the formal response to the Scottish Government, which gave information that might have allowed it to form an informed view on whether there were loopholes?

**Siobhian Brown:** Yes. You are correct, Mr Swinney. I will bring in Jim Wilson, who has been involved in conversations with the DEFRA group that has been set up.

Ever since this was announced—from day 1—we have been trying to establish the consequences for Scotland of the UK legislation coming into force in England and Wales. I did write again to ask formally. You are correct that we did not get a response until 14 December. It was very unclear and vague.

**Jim Wilson:** I will come in on the back of the minister's comments.

From a policy-making perspective, a key concern is the lack of an evidence base on the risks caused by XL bully dogs in Scotland. Prior to 15 September last year, not one Scottish stakeholder was banging down the door, saying,

“You need to act and introduce safeguards on these dogs.”

I have become slightly obsessed with the weekly statistical information that tells me how many dog control notices have been served and the types of dogs concerned. XL bully dogs have been floating about the top 10; they are number 10 on the list at the moment. On paper, other breeds of dogs are causing more issues for local authority dog wardens as regards their being out of control.

The minister and I met local authority representatives to try to get a sense of how much of an issue XL bully dogs are causing in Scotland. The concerns that we are beginning to see build around them have been triggered by horrific incidents. I absolutely accept that those are horrendous and that, in some cases, tragedies have occurred as a consequence of dogs being dangerously out of control. However, as policy makers, we need to think about the opportunity to make evidence-based decisions. The Scottish Parliament should be proud of the dog control notice regime, but there are opportunities for us to try, once the dust on XL bully dog safeguards has settled, to think about the challenges around responsible dog ownership and to focus on the deed, not the breed.

**John Swinney:** I will pursue you further on that, Mr Wilson. I assume that, in advance of the announcement on 15 September, you regularly and assiduously considered the type of activity that you have just placed on the record, and that officials in the Scottish Government and ministers explored the ideal regime for dog control in Scotland and considered it in dialogue with DEFRA officials.

**Jim Wilson:** Absolutely. We have had conversations with DEFRA officials about my team’s work on the operational effectiveness of the control of dogs legislation. That was subject to scrutiny by the Public Audit and Post-legislative Scrutiny Committee during the previous parliamentary session. We were aware that we needed to respond to the committee’s helpful report, and we responded to a number of the recommendations quickly. We also recognised that DEFRA officials were already looking at some of that—a research report by Middlesex University London looked at a whole host of issues around responsible dog ownership—so those conversations have been in play for many years.

On Mr Swinney’s point about the need to have a holistic look at what we are going to do that will make a difference in reducing the number of incidents, irrespective of breed, those conversations have taken place over many months—in fact, years. We need to think about opportunities for wider reform. That would require primary legislation, but the minister and I

regularly—it feels like weekly at the moment—discuss opportunities for wider reform.

**John Swinney:** My final question is on the Scottish Government’s current position and, in essence, the lack of clarity that arises out of the legislation that has been enacted in England and Wales, which creates a problem in Scotland. Is that a fair representation of the challenge that the Scottish Government faces, given the fact that Mr Wilson has just placed on the record that there has been regular work to ensure that the dog control regime in Scotland is as appropriate and robust as it can be, subject, of course, to further legislative change? Has the necessity of the order coming to the Scottish Government been precipitated by the lack of clarity that the legislation that has been implemented in England and Wales has created?

**Siobhian Brown:** I would say that that is correct. The speed also concerned us, because when the timescale was announced on 31 October, the first stage ran up to 31 December, and owners had until 31 January to register for the exemption. There have been unintended consequences since then. For example, what happens when someone who had an XL bully dog dies? We are dealing with that through the second SSI. The UK Government is now having to deal with that issue, too. Because the legislation was rushed through, we are trying to pick up from where we are now, and we hope to implement the legislation better than it has been implemented in England and Wales.

**John Swinney:** Have further implementation issues arisen in England and Wales as a consequence of the way that the UK Government has handled the matter?

**Siobhian Brown:** Yes, they have.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning. I have listened carefully to the points that have been raised. Given the actions of the UK Government, would not passing the order have much more serious consequences than doing so? We have been pushed into a corner; we have to introduce this, and it is necessary. Does the minister agree?

**Siobhian Brown:** I do. As I have said, we have not taken the decision lightly. The Scottish Government has been put in this position, and it is not the road that we would like to go down. We know that it is about deed, not breed.

In addition, we need to be clear about responsibility. After the UK Government implemented its legislation, there was a horrific incident down in Essex in which a woman was killed. That dog attack happened in a home, as a lot of dog attacks do. Even though we are talking about having dogs on muzzles and leads outside

and bringing in safeguards, because public safety is paramount, we also have to acknowledge the responsibility that comes with dog ownership. We are trying to find a balance in that regard.

**The Convener:** Before I bring in other members, minister, I want to touch on your point about the stakeholder forum. You indicated that, in taking the issue forward, you have had extensive engagement with stakeholders. As we all know, they have raised a specific issue around the timescales for constraints, such as muzzling in particular, to be rolled out and the difficulties that that could cause for owners. Will the stakeholder forum look to address some of the concerns that stakeholders have raised? What is the purpose of the forum as the process moves forward?

**Siobhian Brown:** Absolutely. Before the negative SSI was laid, I had engaged extensively with stakeholders since November. Last week, I met the National Dog Warden Association (Scotland), which represents a variety of stakeholders, and I am due to meet the association every month as we move forward.

I am very keen to continue to engage with stakeholders. The situation might not be ideal for them, but we can learn lessons and see how we can implement the legislation with stakeholders in mind. Stakeholders are also assisting us in preparing the second SSI with regard to neutering, so it is very important that we continue that engagement.

**The Convener:** I open up the session to others. I invite Christine Grahame to come in with any questions that she has.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** I am interested in the committee's questions. We have had to ask questions because the law itself is just a complete mess.

Minister, you talked about a loophole. I have taken on board what you said about the processes that were undertaken with the UK Government. Had there not been issues with so-called "dumping"—I put the term in quote marks because I do not like it—of XL bully-type dogs in Scotland, would you have proceeded to take a good look, as I have asked for frequently, at the Control of Dogs (Scotland) Act 2010, which I authored, to see whether it could be tightened up even more? I refer in particular—I hope that the committee is aware of this—to section 9 of the act, which is entitled "Dangerous or unresponsive dogs". That section applies in the home; as you have rightly said, dog attacks also happen in the home. However, the order that has been made on the basis of the UK Government's legislation will, if it is agreed to today, not apply in the home.

Section 9 of the 2010 act applies where an authorised officer takes the view that issuing a dog control notice would not be suitable. The case would have to go to court to let it decide whether the dog in question may or may not have to be put down or whether some other action should be taken. Section 9 also gives the owner the right of appeal, and it applies to any dog.

If there was any issue in Scotland with bully XLs, would it not have been suitable to use section 9 of the 2010 act, had your position not been that there were concerns about an excess of dogs coming up to Scotland?

**Siobhian Brown:** One of the concerns that we had about the initial announcement of the ban down south was that there was a loophole in that regard. We tried to get certainty on that, and we did not get that until 12 or 14 December—I am sorry; I cannot remember the exact date. That was the reason why we had concerns. When I wrote my letter on 14 November, I felt confident at that stage that, on 31 December, because we have a system of dog control notices through local authorities, which have powers to deal with dangerous dogs locally, we would be in the same position as England and Wales. However, we did not envisage that people would bring XL bully dogs up to Scotland during the Christmas period. Community safety has to be paramount in that regard, which is why this decision has been made.

**Christine Grahame:** I will come to that. First, I should possibly have stated my registered interests. I am a member of the Scottish Society for the Prevention of Cruelty to Animals and a patron of the Edinburgh Dog and Cat Home. Nonetheless, I assure you, minister, that I come to the matter with—I hope—an objective mind.

Which organisations have opposed the provisions that are coming in? Could you list them, minister?

**Siobhian Brown:** In response to one of the initial questions, referring to the UK Government group that was set up—

10:00

**Christine Grahame:** In Scotland, I mean.

**Siobhian Brown:** I will bring in Jim Wilson, as there are so many organisations. Concerns have been raised; the provisions have not formally been opposed.

**Jim Wilson:** On Scottish stakeholders, I will first provide a bit of context around what I am about to say. We held regional engagements in Helensburgh, Dundee and Galashiels with a whole host of interested stakeholders. Those were not just about XL bully dogs; they were about how

local organisations and key stakeholders can work better to—

**Christine Grahame:** No—I am asking specifically about the provisions. I know about those other meetings.

**Jim Wilson:** Yes—I am coming to that. I will give an example. I have had regular conversations with the SSPCA, which does not support or like the policy. It understands why the decision has been made, but it is fair to say that its view probably reflects the views of a number of welfare stakeholders that have a presence in Scotland, mainly through the dog control coalition.

Similar points were made to the UK Government when it was considering the controls to be introduced in England and Wales. Lots of concerns have been raised around any moves on breed-specific legislation, which continues to be very contentious.

A number of Scottish stakeholders have been quite open and very honest in their views on the policy, which they do not like, although they understand that there is an opportunity to work with the Scottish Government to mitigate the impact of any unintended consequences as the safeguards are introduced.

**Christine Grahame:** The order that is before us will enter into the ambit of the Dangerous Dogs Act 1991. What was the view of the organisations concerned on the efficacy of the 1991 act, which already lists named breeds?

**Jim Wilson:** The key thing is that the order contains the first addition to the list of prohibited dogs in more than 30 years, so the decision has certainly not been made lightly. Our challenge comes with the statistical information from Public Health Scotland, which contains information reported by local health boards on how many people have been admitted to accident and emergency departments or hospitals as a consequence of a dog bite. The figures are concerning, and we recognise—

**Christine Grahame:** I asked about the efficacy of the 1991 act.

**Jim Wilson:** It has many opponents. Any suggested reforms to the 1991 act would need to be very carefully considered. I do not think that we are currently in a position of considering any significant, fundamental changes to the policy under the 1991 act. However, we are seriously considering the opportunities to strengthen and enhance the Control of Dogs (Scotland) Act 2010.

**Siobhian Brown:** As Ms Grahame knows, this has not been an easy decision or one that has been made lightly. I do not like to go away from the “deed, not breed” approach, which the Scottish Government supports, but we find ourselves in a

unique position in which we must take this action because of community safety and the loophole that has been created by the legislation. I have met Ms Grahame and, once the legislation before us has gone through, I am keen for us to work together to see how we can reform and strengthen her Control of Dogs (Scotland) Act 2010.

**Christine Grahame:** We are considering some of the consequences of the new law in England now. You mentioned 200 dogs, which were put down. That is, some 200 dogs in England were put down by their owners, and they get money from the Government to do that. What is the BVA's position on that? What are vets' positions on it? Vets do not like putting down healthy dogs.

**Siobhian Brown:** No, they do not—and that is one of the concerns that has been raised during stakeholder engagement. Referring to the 61,000 applications that have been registered and the point that more than 200 owners have decided not to keep their dogs, I do not know, specifically, if they have all been put down. I do not know whether Jim Wilson knows that detail.

**Jim Wilson:** The compensation scheme, which will form part of the second Scottish statutory instrument—

**Christine Grahame:** But, because we are mirroring the law in England, I want to—

**Jim Wilson:** You are quite right to highlight the figures. It is difficult to gauge how many XL bully dogs might come into that particular situation—if we can call it that—whereby, for whatever reason, the dog owners decide that they do not want to apply for an exemption certificate and go down a different path.

In the engagement that we have had with animal welfare stakeholders, they have, quite fairly, raised a number of concerns about the ethical and practical concerns that vets are facing. In certain cases, they are dealing with dogs that they might deem to be perfectly well-behaved, not aggressive and perfectly healthy. I appreciate that the numbers are not huge, but a high number of dogs are nonetheless being euthanised.

In context, in England, there are 61,000 applications for exemption and more than 200 for compensation. I do not know what the numbers will be for Scotland, because there is a large degree of uncertainty around the XL bully population.

On 18 October, the House of Commons Environment, Food and Rural Affairs Committee held a one-off evidence session on XL bully dogs, and the figures quoted revealed that the number of XL bully dogs could be anything between 50,000 and 150,000.



Welfare stakeholders that I have engaged with have offered a range of numbers on what they think that the figure could be, but there is a huge degree of uncertainty about the actual population.

**Christine Grahame:** I will ask a final question, if I may; I hope that I get to make a little submission at the end.

The huge problem is in speaking about an “XL bully-type dog”. I have looked at the conformation paragraphs—there are paragraphs—and you would need a PhD to work out whether your dog was an XL bully type, if you did not know its history.

There is a lot of sensationalism about the issue, and I want to look at it with a cool head, for the sake of everybody. I am appalled at the attacks. However, if the order goes through, and people have to muzzle their dogs and leash them in public places, do you have concerns that members of the public will wrongly identify a dog as an XL bully type and get on to the police or the local authority and make a big stramash in the local community, and then it turns out to be nothing of the kind, or it has to be DNA tested?

**Siobhian Brown:** I have concerns. The issue of the definition of an XL bully has been raised with me since day 1, which is why we want to be very clear as we move forward, especially on the Scottish Government website. The description has to be done in a way that supports people to identify whether they have an XL bully.

Christine Grahame is correct that the issue has been sensationalised in the past couple of months in newspaper articles and on television. Some supposed XL bully dogs would not be identified as such through the height definition. That has caused confusion with the general public, as well.

**Christine Grahame:** Is it not a basic principle of law that it should be clear and understood and not confused?

**Siobhian Brown:** That is what we are trying to do through the Scottish Government website as we move forward with the legislation.

**Christine Grahame:** I will challenge you on that, minister. I am not laying the fault with you, but we are replicating something that is wrong in England. It is bad law there, and it will be bad law here, if it comes into force.

We cannot unravel that, because the kernel of the issue is the question of what an XL bully is, and nobody in this room can actually give a clear and simple definition. That is key to any legislation, but particularly when you are taking away people’s rights and criminalising them and when animals are going to be put down or dumped. However, although there are many XL

bully dogs in Scotland, this is for the few and not the many.

The definition is my huge concern. The law in England is so bad, because the definition is not clear. It is bad law and it cannot, I hope, come into force in Scotland.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** Good morning, minister and Mr Wilson.

I will support the Government’s moves, although not with any great enthusiasm, based on a precautionary approach to legislation. A number of constituents have contacted me to make representations—not only XL bully dog owners but concerned members of the public, so I have seen both sides of the debate.

It is clear that dog and animal welfare groups and expert groups all withdrew from the DEFRA working group that was pursuing a ban in England, due to concerns over the poor quality and rushed nature of the legislation from the UK Government. The UK legislation is clearly far from perfect—in fact, to call it “imperfect” would be a compliment. The Scottish legislation will, therefore, have very similar issues.

It might be that weak legislation is better than no legislation, based on the precautionary principle that I mentioned. However, I have a constituent who has two XL bully-type dogs. They are a responsible owner, I am sure, and through no fault of their own they have to move home. That owner will face a situation in which they will struggle, not because they have an XL bully type dog, but because social landlords do not like taking dogs into tenancies, and nor do some private landlords. Therefore, they might face an invidious choice somewhere down the line as to whether to euthanise their two dogs in order to prioritise a home.

My understanding is that the statutory instrument does not provide an exemption for my constituent, which is concerning. However, there is a further statutory instrument coming down the line, in which exemptions will be looked at again. Is that aspect something that the Scottish Government can and will look at?

**Siobhian Brown:** Stakeholders raised the issue of rehoming centres—you will know about those—and the possibility of allowing those centres an extension so that they can rehome XL bullies. Unfortunately, however, in the circumstances in which we currently find ourselves, if that loophole was opened, it would—again—allow dogs to be brought up to rehoming centres in Scotland to be distributed throughout the country.

We can look at that with the implementation group, but I would have concerns about it. Jim Wilson might want to come in on that.

**Jim Wilson:** I reflected on that issue following the fairly recent engagement that the minister and I undertook with Mr Doris, Mr MacGregor and representatives from Bedlay Gardens. The point was well made during that conversation with regard to the challenges around unintended consequences when it comes to housing. We are aware of the issue, and we raised it at official level with the UK Government and DEFRA officials.

I have seen some supportive messaging on certain council websites in England, suggesting that, as long as owners follow the process and have an exemption certificate, and adhere strictly to the conditions, there will be no impact. Nonetheless, we recognise that we need to work through what the measures would really mean for Scottish owners of XL bully dogs if they have any concerns around housing.

We have been in touch with the Scottish Government on housing policy to ensure that that is a live issue and that we look at ways to mitigate any issues that might arise from the new safeguards that are coming in.

The point has been well made; I recognise that there are knock-on effects on owners as a consequence of the policy, and we are trying to do what we can to mitigate any issues.

**Bob Doris:** I want to push you a bit more, minister, on where flexibility and discretion could be used and whether that could be described as a loophole, because those are two different things. If we define legislation tightly and do it well, it is not a loophole—it is providing appropriate flexibility and discretion.

For example, if somebody has a private tenancy in Scotland—I am talking about Scotland-based examples—and the landlord wishes to take possession of that home to stay in it themselves, and the tenant becomes homeless through no fault of their own, that is all clearly evidence based. That would not be a loophole; a very clear element of flexibility could be shown in that regard.

I know that we cannot legislate for individual cases, but we should at least be looking to legislate along different themes. I do not think that, if we legislated for housing situations that would arise in England, that would in any way create a loophole for people bringing dogs from England to Scotland. I do not understand that.

I want to know a little bit more about how the Government will work with representatives of owners of large dog breeds, such as the experts at Bedlay Gardens, which Mr Wilson mentioned. It was mentioned that the implementation group

includes COSLA, Police Scotland, the National Dog Warden Association and others, but I am not sure that representatives of large dog breed owners were mentioned. I think that, rather than just engaging with them, having them at the table would be a worthwhile endeavour. What does the minister think about that?

10:15

**Siobhian Brown:** I mentioned earlier the unintended consequences of this legislation, such as the issue if someone dies. These things are being considered and, as Jim Wilson outlined, we will consider them. We have the implementation group, and it could be very worthy of consideration to include the group that you mention. I do not know whether Jim wants to give his view on that.

**Jim Wilson:** The intention, which I made clear during the conversation with Bedlay Gardens, is that we will continue to engage. We need to be mindful that there are huge levels of stakeholder interest in the general policy. We are trying to work through any emerging issues, concerns and possible barriers in order to smooth the implementation of the new safeguards, and we need to continue to speak to a very wide range of stakeholder interests.

**Bob Doris:** I have a final question. It is clear that there has been on-going dialogue with DEFRA about wider reform in relation to dog control in Scotland and also about a potential pan-UK approach to that. Have representatives of large dog breed owners been engaged in any of those discussions? When I and Mr MacGregor met Bedlay Gardens, the minister and Mr Wilson, Bedlay Gardens was really up for reform of the system in Scotland. It really wants to engage and be challenged, and it wants to innovate and transform the system in Scotland. Its expertise is surely crucial in taking forward some much-needed reforms.

**Siobhian Brown:** Absolutely. One thing that will move forward after the dust has settled on all this is reform regarding dangerous dogs. I am very keen to work with Jim Fairlie, who is the new minister with responsibility for animal welfare. He has been in his role for only a few days, but I will have a meeting with him as soon as I can to see how we can work together.

You are right. Moving forward, it will be very important that we engage with all stakeholders, including the groups that you mention.

**The Convener:** I am aware of the time, and we have a very full agenda. However, I am also aware that this is a very important issue and that there is significant public interest in it. If members would like to ask any final small supplementary

questions, I will bring them in. Katy Clark will be first, followed by Russell Findlay.

**Katy Clark:** My question relates to the formal status of the DEFRA guidance, which is of course not referred to in the order. As Christine Grahame said, good law is clear law. We can expect that, in the criminal courts, defence agents will dispute whether a particular dog is an XL bully and will argue that it is not. Christine Grahame mentioned DNA testing. Can you confirm what the formal status of the DEFRA guidance is? Is the intention to continue to rely on guidance of that nature once the second SSI comes forward or will something more substantial be put together? How will that be clarified in relation to how the courts will interpret the legislation?

**Siobhian Brown:** We know that stakeholders were not keen on the guidance that the UK Government came up with and they removed themselves from the group. As I stated, the measurement guidance for male and female XL bullies is on the website. We have copied that to the Scottish Government website, but we would like to be—

**Katy Clark:** I am sorry to interrupt, but we are short of time. What is the formal status of the DEFRA guidance? What approach will the courts take? Is this the strongest way to embed provisions in law? Perhaps your official will want to comment on that.

**Jim Wilson:** Ultimately, the guidance will be considered if, for example, it is suggested that someone is in possession of a prohibited type of dog and they disagree and appeal. Once the full regime kicks into play on 1 August, someone who goes through a court process could make a challenge on the basis that they do not think that the dog in question is a prohibited type. Similar to what the UK Government has done, our position will be to rely on the guidance that is being developed.

**Katy Clark:** England is obviously ahead of us. Do you know whether any cases have been taken through as yet?

**Jim Wilson:** I will say one thing on that. There will be cases. We have had to look at what will happen if someone seeks a specialist assessment and it turns out that the dog in question is not a prohibited type. When it comes to the exemption process, what DEFRA needs to do, and what we will consider, is what the deregistration route will be when there has been a legal challenge and the courts have determined—

**Katy Clark:** I am more concerned with the criminal courts and what is or is not an offence. I want strong legislation that is easily interpreted by a court. That is why I ask what the status of the

guidance is. How will a court determine what is or is not an XL bully dog?

**Jim Wilson:** It will have to look at the conformation standard guidance that has been produced.

**Sharon Dowey:** Can you clarify something that you said earlier? Groups such as rehoming centres are concerned that, come Friday, they will need to have dogs put to sleep. However, when you spoke earlier, you said something about rehoming centres being able to seek an exemption for the dogs in their care. Does that mean that, come Friday, rehoming centres will be able to keep the dogs that they have and not put them to sleep?

**Jim Wilson:** Ultimately, decisions on what rehoming centres do with dogs in their care will be up to them, but Scottish Government legal guidance stresses that, come 23 February, owners will be able to retain their dogs. The detail around the exemptions that can be used by rehoming centres will allow them, legally, to consider whether they want to retain the dog and keep it in their care. It is not an automatic requirement to put the dog to sleep. We have stressed that.

We have discussed those issues with the dog control coalition—all the key welfare stakeholders that are interested in the Scottish Government's policy will be on the exemption process. However, as we heard earlier, more than 200 applications for compensation were made in England and Wales as a result of dogs being euthanised.

To separate it out, the first stage of the safeguards is the requirement for owners to ensure that their dogs are muzzled and kept on a lead in a public place, but further detail will come down the track very quickly in the second instrument, which will detail the exemption process and a compensation scheme. The drafting of those regulations is at an advanced stage, so they will be ready sooner rather than later. However, I cannot give a specific date for when they will be laid, because, ultimately, the minister needs to consider them and sign them off.

**Siobhian Brown:** Just to give a little clarity, in the past couple of weeks—I am not sure whether the situation was the consequence of somebody dying and XL bullies having to be rehomed—the SSPCA was trying to rehome four XL bullies before Friday, because it will have to adhere to the legislation on rehoming that comes into force then.

**Sharon Dowey:** I go back to my previous questions. I understand your frustration at hearing about the implementation of the new legislation through the BBC, because, as an MSP, I know that it is frustrating to hear announcements through the BBC rather than through a Scottish Government ministerial statement in the chamber.

All that you did was write a letter to the UK Government on 14 November. Other than that, you have chosen not to engage at all with the UK Government.

**Siobhian Brown:** My officials have engaged weekly, and I have engaged with stakeholders since the announcement.

**Sharon Dowey:** You may have engaged with stakeholders, but you have chosen not to engage at all with ministers in Westminster.

**Siobhian Brown:** It was not that I specifically chose not to meet them. I was being updated every week and, when I found out that the legislation was going to be put in place in England and Wales, I had no detail about it at that stage. I said to Jim Wilson that I wanted to meet all stakeholders to get their view on what was happening in England and Wales. I have lived, breathed and dreamed XL bully dogs since last November. It is not that I did want to meet the UK Government; I was watching exactly what was happening as the measures were implemented down south.

**Sharon Dowey:** I am wondering about the loophole, as it was highlighted that it could have been an issue. If you had engaged with UK ministers, would you have expected the UK Government to legislate for crimes that might be committed in Scotland? I would have thought that that would come under our remit. At the moment it seems that, if somebody rehomes a dog, abandons a dog or does not register a dog, that is an offence in England and Wales. I think the UK Government said that, if somebody then came to Scotland with their dog, those would not be offences in Scotland, so it could not legislate for that. Would you have expected the UK Government to legislate for something in Scotland? Is that not why the UK Government was trying to engage with you, so that you could put something in place here?

**Siobhian Brown:** That was one of our initial concerns when the announcement was made. Jim Wilson was meeting the UK Government weekly and trying to get clarity about that. The UK Government did not come back saying “We can’t legislate in Scotland”, as such. The response in the letter that I received on 14 December 2023, which we had been requesting for months, was unclear and vague. I would not expect the UK Government to legislate for Scotland, but my not meeting UK Government ministers was not intentional for any constitutional reason; it was just because I was looking at the legislation and at what was happening in Scotland, engaging with stakeholders and Jim Wilson weekly to be kept updated.

**Sharon Dowey:** If you were not concerned about the safety concerns when the UK Government was introducing its legislation, what changed between then and now for you now to be implementing legislation here? Do you have figures for how many dogs have been brought into Scotland?

**Siobhian Brown:** No, we do not. As I have said, when the UK legislation was announced on 31 October 2023—and I was formally told about it in mid-November—I was confident that, through the dog control notices that we have in place in local authorities, we would have the same safeguards in place for 31 December that England and Wales had in place. Even when I was engaging with stakeholders down south, they were wishing that they had DCNs in place in England and Wales, as Scotland does. I felt confident with that.

Serious consideration was given to the issue during the Christmas period. We do not have any stats on exactly how many XL bullies were brought up, but we saw material on social media relating to community safety issues. There was also an animal welfare issue, as it would cause anxiety for dogs to be brought up in vans and taken into new households, with no history and not knowing where they were going. We took the considered option to move forward, primarily for community safety but also for the welfare of the XL bully dogs.

**Sharon Dowey:** So, we do not have any figures at all: we do not know if it is 10 dogs, 100 dogs or 1,000 dogs. We do not have anything at all.

**Siobhian Brown:** No—it is all just on social media, and it is very hard to collect data from social media. Jim Wilson might have something to add.

**Jim Wilson:** There is simply no system for recording data on the movement of dogs from England and Wales to Scotland, but we have noticed significant traffic on X and other social media platforms. In some cases, it was indicated that individuals were transporting large numbers of dogs from England to Scotland, but without saying how many. That became a significant concern, especially after the festive break and the milestone date of 31 December for the UK Government’s policy. We saw more and more traffic on social media, and there were press reports about efforts to rehome a number of dogs that were being brought to Scotland.

Returning to the point that Ms Dowey raises, there is no central recording system that would allow me to track the movement of dogs from one country to another.

**The Convener:** I need to move on.

**Russell Findlay:** Minister, you have told us today that there has been a lack of respect towards the Scottish Government. We are perhaps losing sight of what the measures are about, however. They are about preventing children and adults from being maimed and killed by XL bullies. Surely you agree that public protection is paramount rather than constitutional issues or bruised egos within the Scottish Government.

**Siobhian Brown:** Yes. I do not agree with Mr Findlay's perception of how things have come about, but I agree that community safety is paramount. However, we find ourselves with rushed legislation.

10:30

In an ideal world, the UK Government would have got in touch with the Scottish Government to say, "Look—these are our proposals; let's work together", and it would have done the same with Wales and Northern Ireland too, but that is not the way that it happened.

**Russell Findlay:** Sure, but the legislation was in the public domain in mid-September; you could have acted more quickly if you had chosen to do so.

**Siobhian Brown:** We had no detail in mid-September. Even the UK Government did not have the detail then.

**Russell Findlay:** Your officials have working connections with officials at UK level. It sounds like you are making excuses.

**Siobhian Brown:** I am sorry, but it is not an excuse.

**Fulton MacGregor:** I do not think that it is fair to argue that there is a split between people who are legislating for public safety and other people who, like me, have concerns about the legislation. That implies that the latter group does not have concerns about public safety. At the beginning of the meeting, I made the point that the animal organisations—the experts—are saying that they do not believe that the order will make the situation safer.

On the back of Russell Findlay's last line of questioning, I think that we should unite in saying that everybody around this table, and everybody who is involved in the debate, has public safety at heart. We may disagree on the legislation, but nobody on either side should be taking the moral high ground.

My question is quite brief. We are in a general election year, and the Labour Party may form the next UK Government—we do not know. Given the concerns from stakeholders about the legislation, and the fact that it will probably run into difficulties

as we go along, if a new UK Government were to remove the legislation, where would we stand? Is there a possibility that we could be left with this legislation when the UK, at some point in the future, no longer has it in force?

I know that that is a hypothetical, theoretical question, with a lot of moving parts, but it dawned on me during the discussions that I should ask it. It would be ironic if we ended up with the legislation in place here while it is removed elsewhere.

**Siobhian Brown:** It is hypothetical, but it is worth considering as we move forward, when we have a general election coming. Jim Wilson may want to give some background about the court case.

**Jim Wilson:** Absolutely. We are aware that the policy that the UK Government introduced was actually the subject of legal challenge by a campaign group called Don't Ban Me, Licence Me, which pressed for a rethink. When I spoke to DEFRA officials last Friday, they said the issue had been considered by the courts and the policy would not go through a judicial review process, but that the campaign group was going to appeal that decision.

Looking at the matter through a political lens, it is difficult to work out where future policy might be made in relation to dog control or dangerous dogs. There have been discussions at official level on a four-nations basis, including weekly engagement with the UK Government and the DEFRA policy teams. I stress that that engagement is taking place not just between the UK Government and the Scottish Government, but with representatives from the Welsh Government and from Northern Ireland. It is clear, therefore, that there is an opportunity to take a more holistic four-nations approach in thinking about policy development. However, I cannot control the politics of what might play out in the weeks and months ahead.

**The Convener:** The final question comes from Pauline McNeill.

**Pauline McNeill:** Interestingly, the 1991 act is cited as an example in public law of poorly drafted and rushed legislation—I remember that from studying at the University of Strathclyde. I agree with Fulton MacGregor that we are all concerned about public safety, so we need to get it right this time.

Minister, I did not think that you answered Katy Clark's question about what would happen if there was a legal challenge as to whether or not a dog was an XL bully dog. Could a lawyer run circles around that notion, on the basis that the definition is in guidance and not in the law? I have just seen the SSI—it is very sparse, and we have not seen the primary legislation. Can the courts rely on the

website where the guidance is held as a solid foundation for defining what an XL bully dog is?

**Siobhian Brown:** I will pass that question to Jim Wilson, because he will deal with the lawyers and put the SSIs in place.

**Jim Wilson:** We could make a comparison with what has happened in England and Wales as a consequence of the policy there, especially on concerns about the conformation standard. The case that was brought by the campaign group did not legally test the policy, because the courts determined that the application for judicial review had been refused. The campaign group has now pressed for an appeal to be taken against that decision. I do not know how that will play out legally with regards to the group's concerns, but our conformation standard is the same as the one that the DEFRA-led expert group developed.

**Pauline McNeill:** Would we not be in the same position? Would you not expect to see a definition if it is so important to decide which dogs are covered by, or referred to in, the SSI and which are not? Do you see what I mean?

**Jim Wilson:** If we were to have a different conformation standard, that would risk creating confusion if it were to represent a significant move away from what is contained in the UK Government standard. We have heard from organisations such as Bedlay Gardens, which have suggested that the definition in other European jurisdictions is different. We then get into the measurements of the dogs and so on. We must therefore ensure that there is consistency of approach on the conformation standard across the UK.

**Pauline McNeill:** That I fully understand—it makes complete sense—but people in England could be in the same position if there are arguments over the definition. If the guidance is not seen as being legal—because it is just guidance—surely it can be challenged.

**Jim Wilson:** It is guidance, and it has been challenged, but up to this point the legal challenge has been unsuccessful.

**Pauline McNeill:** There is a lot of material in our papers that we will not be able to cover. For example, some people who are concerned about the legislation referred to the 72 per cent of fatal attacks that have taken place in the home. There are concerns about what the changes will mean for people who already have these dogs, such as their requirements for exercise.

I have very little knowledge of what an XL bully dog is—only the information that I have gathered since this became an issue. Have there been discussions about why people are breeding such dogs? Should we be tackling the breeders? To

some extent, I can understand owners' concerns about the lack of evidence or history. An owner's dog might not be an XL bully dog—it could be borderline—but a large dog that is not aggressive. Has tackling breeders been part of the discussion?

**Siobhian Brown:** It has been. We must reiterate that many XL bully owners are responsible; very few are not. The issue of breeding has come up in my conversations with stakeholders and animal welfare organisations. My remit covers dangerous dogs. I am keen to work with Jim Fairlie in the context of animal welfare, which has been a topical subject in the past couple of months and is one that we should examine.

**Pauline McNeill:** Finally, if, for example, someone reports to the police that their next-door neighbour has an XL bully dog that does not comply with the new regulations, does that mean that the police will have powers to examine the dog? Is that the process? I just want to understand what happens.

**Siobhian Brown:** Yes. Yesterday, I had discussions with Police Scotland on that specific issue. In a moment I will bring in Jim Wilson, who was also there. We are moving forward. We have set up the implementation group, which met for the first time yesterday. Police Scotland, local authorities and COSLA are all on board to see how we can implement the regulations. I understand that there are concerns about the police's capacity for going out to see every single dog, so we will also explore how we could work with local authorities on that.

**Jim Wilson:** I will try to be brief. There is a joint protocol between Police Scotland and local authorities, which has existed for a number of years. It is a document that is produced at a fairly high level, but it has non-statutory status. It sets out who does what in the investigation of incidents where a dog is either out of control or dangerously out of control.

At the first meeting of the implementation forum yesterday, we struck an agreement that it would seem like a good opportunity to revisit the joint protocol to set out operational responses if, for example, a member of the public should phone up with concerns about a suspected XL bully dog and wonder where they should turn. We recognise that there has already been significant interest from members of the public, who are either writing to the Scottish Government or at least seeking a route to take if they have public safety concerns about a particular dog.

One challenge will be for us to determine what the demand on police and local authorities might be where dogs have been ditched or abandoned. Again, that is against a backdrop of great

uncertainty about the actual population of XL bully dogs at the moment.

The implementation forum is a good place to tackle such issues, whether they be about kennelling capacity or operational challenge that we might face because of soaring demand through calls from the public. We have the right individuals on that forum. However, we take on board the points raised earlier about the need for wider engagement. This is a complex policy area that has generated many passionate viewpoints from various stakeholders. We continue to engage with members of the public, because we are trying to make information easily accessible for people.

**Pauline McNeill:** Given our earlier discussion about the definition, if someone reports that a particular dog could be an XL bully, the police have the power to examine it. However, for the purposes of the SSI, they will have to examine it against the definition that is contained in the guidance, including the measurements that the minister mentioned, and make a determination as to whether they think that it is an XL bully dog. If they think that it is, they will have to take steps because the owner has not complied. Does that sound right?

**Jim Wilson:** Yes. I know that dog legislation officers in England and Wales had to do upskilling training to give them the tools and the confidence to undertake the assessment of XL bully dogs. We discussed that with Police Scotland yesterday. I stress that the minister will have further engagement with Police Scotland; it will not be just at official level, through the implementation forum. There will be opportunities for the minister to engage with the Convention of Scottish Local Authorities, through Councillor Chalmers, and with senior Police Scotland officials.

**The Convener:** That completes our evidence taking on the SSI.

Our next item of business is consideration of a motion to annul the Dangerous Dogs (Designated Types) (Scotland) Order 2024, which has been lodged in the name of Christine Grahame. Now that the committee has had the opportunity to question the minister on the SSI, I invite members to dispose of the motion to annul.

I ask Christine Grahame to move motion S6M-12106, in her name, and to make any brief additional comments that she wishes to make.

**Christine Grahame:** I should declare an interest as the author of the Control of Dogs (Scotland) Act 2010, which was about public protection and intervening early.

Before I give my reasoning for lodging a motion to annul, I emphasise that, like everyone around the table, I am horrified by dog attacks, on people

or on other animals. That is not in question. However, the proposed legislation is not the answer. The lines of questioning that I have heard from members around the table demonstrate that it is bad law. I say—kindly, I hope—to Sharon Dowey that it is bad law in England and Wales. I am not getting into constitutional debates—I am interested in law.

10:45

If I get passionate about this, it is not passion without purpose—it is passion for this Parliament delivering good legislation. What I have heard from members around the table—maybe not from all, but from many—shows that the order is not good legislation, because at the very centre of it is something that no one can define: an XL bully dog. It is defined in paragraphs—whether that is guidance or not, we do not know—and it is so complicated that it cannot be amended.

If there is one thing that I have learned about bad law, it is that it cannot be amended. I take members back to the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. Unfortunately, I have been here so long that I remember all these things. The 2012 act was bad law from start to finish, and it started out on exactly the same trajectory as this order, as it was brought forward with sensationalism and haste. At least the evidence on it was challenged by the lead committee, which I convened. At the end of the day, that legislation was repealed.

I am looking at all the things in the legislation before us that are wrong, but the big thing is definition. Katy Clark is quite right: law must be clear. It must be clear for individuals, for the courts and for everybody. This order is a boorach—there is nothing clear about it at all.

What is bothering me is that we will almost have public policing as a result. I have listened carefully to find out how many cases have come up in Scotland, but nobody knows. We are looking on social media and in the newspapers. The day that I take evidence for legislation based on social media and newspaper headlines is the day that I pack in caring.

What we have to look at is this. Was there a better way to do it? Yes, there was—the Control of Dogs (Scotland) Act 2010 should have been tightened up ages ago. There may have been other ways to deal with any dogs being brought up to Scotland; I do not know. The minister has not said anything about that, although perhaps she may do. We might have looked to licensing. We do not have a national microchipping database—I have gone on about that for ages. If we had such

a database, we could identify dogs that were not indigenous to Scotland.

Another problem—as if that were not bad enough—concerns the unintended consequences. I know that Fulton MacGregor is very unhappy about the legislation, but he is pinning his hopes—as perhaps Labour committee members are—on the fact that if Labour were to get in at Westminster, it might repeal the England and Wales legislation. In the meantime, however, what will have happened? Dogs will have been put down, others will have been neutered and people will have been persecuted.

The same social media that provides the very flimsy evidence for the number of dogs that are coming up to Scotland will be a hotspot for people reporting others: “Ah’ve seen ma neighbour”—or such and such—“and they’ve got an XL bully dog.”

People do not talk about types—they talk about XL bully dogs. If that is set in stone, they will be reporting neighbours, and what will happen? The police—who, for heaven’s sake, have enough on their plates—will be sent out to measure a dog with a tape measure to see if it complies with the conformation standard that has been invented by DEFRA. If the police then say, “Well, we think it’s an XL bully” in accordance with the standard, the person may say, “Oh, but no—I know my dog’s history. It’s actually a cross between a boxer and a Staffie. I know, because I knew the mother and father of the dog.” There we go—it will go to court. There will be court cases, and I know what the court will say about this legislation and this Parliament—and about this committee, by the way.

I accept, minister, that you have been pushed into a corner, but sometimes when that happens, the thing to do is not simply to throw your hands in the air. I know what the position is, but we need to do something different. In my view, to annul the order would send a message to good people south of the border who know that the legislation is rubbish and that it will be very painful.

At the end of the day, if someone is an unscrupulous breeder or owner—most people are not, but there are a few—they will simply say, “Okay—I’ll breed a dog that can be a fighting status symbol that is not 20 inches”—or 19 inches or whatever—“I’ll make it 18 inches, so it doesn’t comply.” That is what is so stupid about this legislation.

I have been a quarter of a century in this Parliament—people might say that it is a quarter of a century too long. I have endured so much poor legislation, such as the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, from its hasty start to its ignominious finish, and I am watching this one.

That is why I am so angry about it: all of you who are sitting around the table know that this order is not good legislation.

I say to the committee, “My goodness—this is radical stuff.” I say to members that I hope that, if you came in here with your mind made up to rubber stamp the order, and that, despite all the concerns and difficulties that you have mentioned, you will still rubber stamp it in the hope that something can be done later, you do not do so.

I hope that you will annul the instrument, and look at a different way to deal with the number of dogs—we do not know what that number is—that are coming up from England. You can stop dogs being dumped and put down, and stop the persecution of good people who have dogs and who have lived happily with their neighbours for years, and whose neighbours might now say, “Hey, you’ve got an XL bully, hen—ah’m no living next door to you any more.” That is the kind of thing happens when you do stupid things with legislation.

I ask you to annul the instrument, and I ask the committee to come back and consider a better way forward, in the interests—I say to Russell Findlay—of public safety, which is paramount. That should involve legislation that is just, and which does not demonise a breed—we do not know what that breed is—or demonise owners who are good people. That is my position.

I move,

That the Criminal Justice Committee recommends that the Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31) be annulled.

**The Convener:** Thank you. I invite members who would like to make any further remarks to do so. At this point, given that we are moving to a debate, I remind Mr Wilson that he is unable to contribute.

**Russell Findlay:** I will be quick, convener. Christine Grahame addressed me directly, so I felt that it would be rude of me not to reply.

I believe that legislation is needed, and urgently, because we need to address the risk to public safety. We all agree that we need to address that. Where we disagree is on how we do that. In the past four weeks, Police Scotland officers have had to shoot dead two dogs in the street, both of which may or may not have been XL bullies. I know that there is an issue with definition, but if members look at the Bully Watch UK material, which is widely available, they will see that a lot of it goes some way towards explaining that.

I find it disappointing that the Scottish Government did not act more quickly. There has been a lot of to-ing and fro-ing about that today, so I will not reheat that. Having heard everything that



has been said, I think that it is important that we support the measure.

**Fulton MacGregor:** I really appreciate Christine Grahame's input. It was very powerful and I can see the amount of work that she has done in this area.

She also made a comment in relation to me. I clarify that I am not pinning my hopes on a Labour backtrack on the legislation—my question on that was hypothetical. I have every feeling that that might not be top of the priority list for a new Government, if and when the Government changes.

I will not—disappointingly for Christine Grahame, I am sure—vote for the motion to annul. That is because, while I agree almost entirely with what she says, I disagree on one bit. Although the Government has been backed into a corner on the matter, I believe that, at this point in time, the order represents a prudent move to make. I heard the minister's commitment, both in meetings with me and today in committee, that she will work through some of the issues that have come up in order to get to a better place further down the line.

With the UK Government having passed its legislation at such pace, and the fact that—whether or not the instances were recorded, and whether or not they came from social media—people have tried to evade the law in England by bringing XL bullies up to Scotland, we have been put in a very difficult position. On the basis of playing it really safe, and nothing more, I will not vote for the motion to annul and I will support the Government's SSI.

**John Swinney:** As ever, Christine Grahame has made a formidably strong contribution to the debate. I share her aspirations and her anxiety to be assured about public safety. I associate myself entirely with the concerns that she expressed about the impact on individuals as a consequence of attacks, when those take place. I am therefore at one with Christine Grahame and, I think, all members of the committee about the public safety concerns and the importance of acting in that respect.

The minister and Mr Wilson have demonstrated entirely clearly and convincingly to the committee that the Scottish Government is undertaking regular and assiduous work on dog control to ensure that, in Scotland, we have in place the appropriate measures through the dog control notice regime and the legislation that Christine Grahame pioneered through this Parliament. Therefore, the public in Scotland should take from this evidence session a great deal of clarity and assurance about the attention to detail that the Government, its ministers and officials pay to the way that dog control issues are managed.

Unfortunately, the Scottish Government has been put in an entirely impossible situation by the actions of the United Kingdom Government, which embarked, with absolutely no consultation, on an approach that has directly created a loophole that has implications for public safety in Scotland. That is the source of the loophole, the problem and the threat to public safety. If that issue is not addressed by the committee today—this is where, unfortunately, I part company with my dear friend and colleague Christine Grahame—we are in danger of increasing the risk to public safety. The Government's case has been made convincingly in that respect.

Unless the loophole that has been created by the actions of the United Kingdom Government is closed, there is a risk of dogs being transferred to Scotland without proper support, training, assistance or engagement with their owners in an abrupt and distressing fashion. I can only imagine that that runs the risk of increasing the risks to public safety.

Instead of thinking more carefully about the legislation, the United Kingdom Government sent letters to Scottish ministers that created a lack of clarity and, on the basis of some news reports that I now read, highlighted the loophole that it has proudly created. If, instead of writing those absurd and provocative letters, UK Government ministers had ensured that the loophole was not created in the first place in the English legislation, the committee would not be considering the issue today. The arguments that Christine Grahame put forward would then have had more strength around them—although they are very strong arguments. The source of the loophole is the cavalier behaviour of the United Kingdom Government.

Some people might think that that is about constitutional questions but, for me, that gets to the nub of the UK Government's reckless behaviour, which this Parliament is now on the receiving end of. It is an example of shocking disrespect for the powers of this Parliament and a shocking disregard for intergovernmental working. When I again get a lecture in this Parliament from one of my opponents about the fact that there is something wrong with the Scottish Government's engagement with the UK Government, I will cite this case, because it is an example of shocking disrespect for the process of decision making in the United Kingdom and shocking disregard for the intergovernmental frameworks that are supposed to be our protection. For anybody who thinks that all is well with the way that this Parliament relates to the other Parliaments and Governments of the United Kingdom, this is a wake-up call, because it is an example of the actions of a UK Government that creates mayhem

by its actions and does not care about the consequences for the devolved settlement.

Therefore, I am afraid that, reluctantly, I will not be in a position to support Christine Grahame's motion. The Government has been put in an entirely impossible position, and the order that is in front of the committee is an inevitable consequence of that.

11:00

**Pauline McNeill:** I thank Christine Grahame. Please never stop giving your impassioned speeches about the importance of passing good-quality legislation. I really value your contribution, because you have given me food for thought.

As someone who has proudly supported the devolution settlement, which I fought for, I believe in it. However, there have been long periods of failure in intergovernmental activity. I am concerned that the Scottish Government was not formally notified of the UK Government's proposed approach. That is wrong, and it goes against the grain of what I believe in, as someone who supports the devolution settlement. That gives me cause for concern.

On the definition issue, I share Katy Clark's concerns. Given that we do not have a definition enshrined in the legislation and that we lack parameters with regard to what an XL bully dog is, I worry that we will have to return to that question.

As I have said openly, I have limited understanding of the issue, which I have paid attention to and tried to understand only since it appeared in the news. It seems that there are problems with the breed in general, which is why I asked why we are not talking about why breeders are breeding such large dogs that probably need more exercise and need to be under more control than most other dogs. As others have mentioned, we have had some horrific examples of what XL bully dogs have done, although it is not the only breed in relation to which there has been an issue with control and danger to life.

What concerns me when I look at all the various aspects of the issue is the fact that we have a loophole. As the minister said at the beginning, the framework of the English legislation has banned such dogs being taken out of England and Wales. It is an offence to bring such a dog to Scotland, but that can be enforced only if there is parallel legislation. That was my understanding from the beginning, which is why I commented on the situation.

We must make a decision today, so we do not have long to think about the matter. The thing about SSIs is that, even when they are controversial, we have limited time to deal with

them. Although the committee is concerned about the justice issues, there are also animal welfare issues and issues to do with the impact on vets. Those are not for this committee, but as an animal lover who has a large dog—I have a German shepherd—I am interested in and concerned about them, and I hope that ministers will continue to have the relevant conversations with the relevant committee about the animal welfare issues.

For those reasons, given that we have to make a decision and I do not want to abstain, I will vote against the motion to annul.

**Katy Clark:** Today's debate has highlighted the urgent need for the dangerous dogs legislation to be updated. I know that the Scottish Government has done work on that, and I hope that a bill will be introduced sooner rather than later, because dog attacks in Scotland have risen by 80 per cent in the past decade. Even in the past year, dog attacks on postal workers have increased by 15 per cent.

How I will vote today will be determined by the attacks that have taken place recently, some of which have been horrific. I will vote against the motion, not because I think that the statutory instrument that is before us is well drafted or represents the solution, but because I think that it will address some of the problem. I therefore feel that I have no choice other than to support it, for community safety reasons.

I hope that the point that Christine Grahame made so powerfully about the quality of the legislation that we pass is taken on board by the Scottish Parliament, because it is one that is made repeatedly. From what the minister has said, I understand that the provisions have been defined in the way that they have simply to mirror the approach that is being taken down south. I question whether that is the right approach. However, that is what is in the statutory instrument that we have in front of us. We cannot amend it. If we reject it, it will be some time before more proposals come back. On that basis, I feel that I have to support the Scottish Government position today.

**The Convener:** I will come in at this point. I will probably reflect many of the comments that members have made.

I think that we would rather not be having to go through this process today. As other members have done, I commend Christine Grahame for her tenacity and her absolute commitment to animal welfare, and for the articulate and detailed way in which she has set out her position. Like other members, I think that the Scottish Government has been put in an extremely difficult situation. Given the level of engagement that the Scottish

Government has undertaken, if there had been a different option, we would probably have been dealing with that today.

I thank Mr Wilson. Both he and the minister have set out in detail the issues that we are all facing and grappling with. Importantly, they have set out the issues around monitoring and continued engagement going forward, which are vital on this issue. Therefore, like other members, reluctantly, I will not support the motion to annul.

Bob, do you want to comment or are you content?

**Bob Doris:** I was keeping my head down, convener. I was not sure whether I was permitted to comment at this stage, as I am not a member of the committee.

I want to reiterate some of the views that committee members have expressed. First, I commend committee members on their interrogation of the statutory instrument—it has been a worthwhile exercise and is how scrutiny should take place. Christine Grahame will not thank me for this, because she will think that it is patronising—although it is not—but I commend her on her forensic endeavours in relation to the issue. If I was her, I would not be happy with the likely outcome of the vote this morning.

In my contribution earlier, I said that, however we frame it, passing the statutory instrument may make our communities a wee bit safer. It is not where I want to be or where the committee or Parliament want to be, but not to act would be wrong. As I said, passing this legislation is better than not passing any legislation. However, the real task relates to the next statutory instrument—when I may not be so kind to my Government—and to the details in relation to that, as well as to further work. We must have early sight of the Government's thoughts on future work and reform in the area.

Thank you for allowing me to make those points, convener.

**The Convener:** I invite the minister to respond to any of the points that have been made.

**Siobhian Brown:** I will just reiterate that this is not an ideal situation and that the decision has not been taken lightly. Moving forward, I hope that we are never in this position again and, for that to happen, there must be reform in legislation. Under my remit on dangerous dogs, I am willing to work with Mr Fairlie, the new minister with responsibility for animal welfare, on how we can make the necessary reform.

**The Convener:** I invite Christine Grahame to make any further brief final remarks and indicate whether she intends to press or withdraw her motion.

**Christine Grahame:** I am not surprised that the motion to annul is not going to be agreed to. I know that there is unhappiness round the table, and there is a breathing space before the next statutory instrument—the big bad one—comes along, which might allow us to put something else in place. I know that the committee has been under pressure with the threat of dogs being brought up, but there may be a pause during which we can consider not proceeding to the second part. I just lay down that point without notice.

I thank members for their contributions. As I say, my passion is about legislation. I cannae help it—ye cannae take the lawyer out of me, and Katy Clark is in the same boat, as is Pauline McNeill. You cannot help yourself. I appreciate where the committee is, but what has been put on the record today is extremely important. I hope that, when we come to the next statutory instrument, we might be able to do something else. That is all that I will say.

Thank you very much for your tolerance—and I will just add that I like being patronised.

**The Convener:** Are you pressing the motion?

**Christine Grahame:** Oh, I am pressing it—of course I am pressing it.

**The Convener:** The question is, that motion S6M-12106, to annul the Dangerous Dogs (Designated Types) (Scotland) Order 2024, be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### Against

Clark, Katy (West Scotland) (Lab)  
Dowey, Sharon (South Scotland) (Con)  
Findlay, Russell (West Scotland) (Con)  
MacGregor, Fulton (Coatbridge and Chryston) (SNP)  
Mackay, Rona (Strathkelvin and Bearsden) (SNP)  
McNeill, Pauline (Glasgow) (Lab)  
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)  
Swinney, John (Perthshire North) (SNP)

**The Convener:** The result of the division is: For 0, Against 8, Abstentions 0.

*Motion disagreed to.*

**The Convener:** I thank everyone very much. We will have a short suspension.

11:11

*Meeting suspended.*

11:23

*On resuming—*

## **Investigatory Powers (Amendment) Bill**

**The Convener:** Our next item of business is consideration of a legislative consent memorandum for the Investigatory Powers (Amendment) Bill, which is UK Parliament legislation. I refer members to paper 2. I invite any views or comments from members, including on whether the committee wishes to recommend to the Parliament that consent be given to the relevant provisions in the bill.

**Russell Findlay:** I have a quick observation. I am by no means an expert on the entirety of what is proposed, but I suggest that we support it. One element that caught my eye is the creation of a new measure that requires the Investigatory Powers Commissioner to notify those who have been subject to inappropriate surveillance or suchlike by the authorities. That is pertinent given recent cases, which I cannot go into detail about, in which journalists and their alleged or suspected sources were subject to inappropriate techniques by Police Scotland relating to a serious crime. If the bill helps to tighten that up and put an onus on authorities to inform those who have been subject to such wrongful methods, that can only be a good thing.

**The Convener:** Thank you—that is a helpful point.

As there are no other points, are members content to recommend to the Parliament that consent be given to the relevant provisions in the bill?

**Members indicated agreement.**

**The Convener:** That concludes the public part of today's meeting. We will now move into private session.

11:25

*Meeting continued in private until 13:10.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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