

## **ANIMAL WELFARE (SERVICE ANIMALS) BILL**

### **Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee**

#### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Animal Welfare (Service Animals) Bill (“the Bill”). The Bill was published on 8 June 2018. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains why the power has been taken and explains the nature of, and the reason for, the procedure selected.

#### **B. SUMMARY OF THE BILL**

2. The Bill provides for increased protection for service animals by amending section 4 of the Animal Welfare Act 2006 (the “2006 Act”). It addresses public concerns about the application of section 4(3)(c)(ii) of the 2006 Act to attacks on service animals, whereby a defendant accused of causing unnecessary suffering to an animal could claim they were protecting themselves and are justified in using physical force against a service animal, causing it, effectively, necessary suffering.
3. Section 4 of the 2006 Act currently requires a Court to take various factors into account when determining whether suffering caused to an animal can be considered “unnecessary”. One of these statutory considerations, at section 4(3)(c)(ii), is whether the conduct which caused the suffering was for a legitimate purpose, such as, protecting a person, property or another animal.
4. This Bill amends section 4 of the 2006 Act to require a Court to disregard the consideration at section 4(3)(c)(ii) of the 2006 Act when assessing whether suffering was unnecessary in the context of causing suffering to a service animal.
5. Service animals are defined in the Bill by reference to the person who is in control of the animal. The amendment only applies to animals which are under the control of a relevant officer at the time of the conduct which led to the suffering. The definition of relevant officer in the Bill covers a constable (police) or a person who has the powers of a constable and a prison officer or other prison custody officer. The Bill also allows the Secretary of State to amend the list of officers via

regulations subject to the affirmative procedure. However, only a person or officer in the public service of the Crown may be added.

6. The amendment also includes several important safeguards. For the consideration at section 4(3)(c)(ii) of the 2006 Act to be disregarded at the time of any attack the animal in question must be: (i) under the control of a relevant officer; (ii) should be being used by that officer in the course of their duties; and (iii) must be being used in a way that was reasonable in all the circumstances. This addresses a possible concern in relation to a service animal that might act in an unreasonably aggressive manner, or in situations where the relevant officer was off duty. In such cases a person would be able to use the self-defence consideration at section 4(3)(c)(ii) if the animal attacked them unduly, or if the officer in charge of the animal was not on duty at the time of any attack. However, in such circumstances an individual could still be convicted of causing unnecessary harm to the service animal if the Court considered they acted beyond what was reasonable to defend themselves.
7. The amendment to section 4 of the 2006 Act also provides for situations where a relevant officer may be required to use force against their service animal to restrain it or to protect themselves or a member of the public. The amendment provides that the new section 3A will not apply in a section 4 prosecution where the defendant is a relevant officer.

## **C. ANALYSIS OF DELEGATED POWERS BY CLAUSE**

### **Clause 1(2) Harming a Service Animal**

*Power conferred on: Secretary of State*

*Power exercised by: Regulation*

*Parliamentary Procedure: Affirmative*

8. The amendment proposed to section 4 of the 2006 Act includes a delegated power at subsection 3C. This amendment is set out in clause 1(2) of the Bill.
9. This power enables the Secretary of State to amend the new section 4(3B) of the 2006 Act by affirmative resolution. The Secretary of State may use this power to widen the definition of relevant officer, and through this definition widen the types of service animal who will be covered by the amended offence. The Bill currently covers animals used by the police and in prisons. We believe that these animals are presently the most likely to be subject to an attack. However it may be that

other animals used in public service, for example dogs used by the fire service or the military, are also considered to be at increased risk of attack in the future and it may be necessary to widen the definition. In addition, it is possible that animals may be used in public service in new novel ways not currently envisaged by the Bill and that these animals are also felt to be deserving of the enhanced protections given by the amendment to section 4 of the 2006 Act.

10. The delegated power requires the Secretary of State to make any such changes to section 4(3B) of the 2006 Act by affirmative resolution. The Bill ensures this by amending section 61(2) (regulations subject to affirmative resolution procedure) of the 2006 Act to include this new power under section 3C. This amendment is covered by clause 1(3) of the Bill.

**Department for Environment Food and Rural Affairs**

**18 February 2019**