POLICY NOTE

THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (SCOTLAND) REGULATIONS 2021

SSI 2021/84

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 26(1), 27(1) and (5)(a) and 51(2) of the Animal Health and Welfare Act 2006 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Purpose of instrument: This instrument prohibits certain activities involving animals from being carried on without a licence and establishes a licensing regime for those activities. The activities that will require a licence are concerned with pet selling, operating certain animal welfare establishments (including rehoming centres and animal sanctuaries), engaging in other animal rehoming activities and dog, cat and rabbit breeding. The instrument also includes provision to end the third party sale of young dogs and cats by pet sellers, an activity that has increasingly become linked to low-welfare breeders.

Policy objectives

Some of the key objectives of the instrument are:

- to replace existing and out-dated licensing legislation relating to pet selling and dog breeding with a more modern and flexible licensing regime;
- to extend licensing to a wider range of activities involving animals than currently found in existing legislation, namely activities concerned with operating certain animal welfare establishments (including rehoming centres and sanctuaries), engaging in other rehoming activities and cat and rabbit breeding in order to protect and ensure animal welfare;
- to introduce greater transparency and accountability;
- to require licence holders to include their name and licence number on any website operated in respect of the licensable activity;
- to require local authorities to publish a register of licence holders for each licensable activity so that the public can check to confirm that they are sourcing an animal from a licensed operator;
- to provide significantly more flexibility to local authorities in respect to how licences are administered;
- to allow local authorities to set out on the licence the maximum number of breeding females that may be kept on the licensed premises thereby ensuring that the number is appropriate for the size of the premises and the staff numbers;
- to introduce measures to make unlicensed breeding and selling more difficult by, for example, requiring any ad for the sale of a pet to include the licence holder's licence number and the name of the authority that issued the licence;
- to obligate those selling animals to provide buyers with relevant guidance and information on the care of their new pet;
- to prevent the third party sale of young cats and dogs as pets under 6 months old.

Dog breeding

Whilst licensing controls already exist for dog breeders, the legislation is outdated and no longer fit for purpose. The existing legislation is also inflexible in respect to the duration and administration of licences by local authorities and imposes only basic conditions to protect animal welfare.

Despite existing legislation, and the ongoing work of enforcement agencies and animal welfare organisations, serious welfare concerns still exist in respect to puppy breeding. Demand for puppies continues to increase and with reputable, licensed breeders unable to meet this demand there has been an alarming increase in low-welfare breeders (including so-called "puppy farmers") who care little for the welfare of the animals for which they are responsible, with monetary gain being their only concern. The instrument will require anyone breeding 3 or more litters of puppies in any 12-month period to be licensed by the licensing authority and to comply with various licence conditions.

Cat and rabbit breeders

The breeding of cats and rabbits is currently an unregulated activity. The instrument will require anyone breeding 3 or more litters of kittens in a 12 month period to be licensed by the local authority for the activity of cat breeding. Anyone breeding 6 or more litters of kits in any 12-month period will need to be licensed by the local authority for the activity of rabbit breeding. Like all other activities, various licence conditions must be attached to such a licence. While this will be a significant change for the cat and rabbit breeding sector, the Scottish Government considers that it is long overdue, as there is currently no oversight of these activities. The instrument will bring transparency and accountability to the cat and rabbit breeding sectors and ensure that anyone breeding cats and rabbits must achieve and operate to high standards of animal welfare.

Pet sales

Current legislation covering pet sales dates back to 1951. It is completely outdated and no longer fit for purpose. Most licensed sales of puppies and kittens today are direct from the breeder to the purchaser. A small number of high street independent pet shops continue to operate, and there are a few larger operators such as Pets at Home, but these days they tend to focus more on the supply of fish, certain reptiles, guinea pigs, rabbits, pet housing, equipment and pet food. As far as we know there are now no pet shops in Scotland that sell puppies or kittens.

Aside from direct breeder to purchaser sales, much of the selling of puppies and kittens that occurs these days is done online through advertising sites such as Gumtree and Pets4Homes. This move from the high street to online advertising necessitates a step change in how this activity is regulated, particularly given that a growing percentage of this online trade involves illegal breeders and puppy dealers.

The instrument will also revoke the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 ("the 2009 Regulations"). The 2009 Regulations require dealers in kittens and puppies under 84 days old to hold a licence. The 2009 Regulations will no longer be necessary if this instrument comes into force as much of the activity that required a licence under the 2009 regulations will no longer be permissible, namely the third party sale of young dogs and cats as pets.

Animal welfare establishments and rehoming activities

Whilst most animal welfare establishments (sanctuaries and rehoming centres) and rehoming activities are run/undertaken by persons who have the best interests of the animals at heart, there are concerns that:

- such activities may be undertaken by individuals not suitably qualified and/or knowledgeable about the animals in their care;
- animal welfare may be compromised if animals are being kept on unsuitable premises and/or in poor conditions;
- some individuals involved in rehoming activities, a currently unregulated activity, may in fact be operating as pet retailers, circumventing the need for them to be licensed as such under the Pet Animals Act 1951;
- there is a risk that animals imported legally or illegally for rehoming could be carrying disease not normally found in the UK.

There is also an identified need to bring some transparency and accountability to these activities. Making these activities subject to a licensing and inspection regime will deliver this and ensure that where animal welfare issues arise those responsible can be held accountable and/or given advice and support to address any such issues.

The instrument requires any person operating an animal welfare establishment (AWE), i.e. an animal sanctuary or rehoming centre, to be licensed by the local authority. Licence holders must maintain a register of all the animals in their care and ensure that any advertisement for rehoming of an animal includes the licence number and the name of the authority that issued the licence. Advertisements for certain species of animal must also include, where appropriate, a picture of the animal to be rehomed. Operators of AWEs must ensure that any prospective keepers are provided with advice and information on how best to care for the animal.

As well as introducing licensing for AWEs, the instrument requires persons rehoming animals that are not kept in an AWE to be licensed if they supply 5 or more animals for rehoming in any 12-month period. This captures individuals and charities that “rescue” animals (predominantly dogs) within or outwith Scotland for the purposes of supplying them as pets in Scotland. The licence conditions relevant to this activity include a requirement that licence holders accept the return of any animal that they have supplied if notified, within 10 days of the supply, of the intention for the animal to be returned (for example where the animal is unsuitable due to behavioural or other problems).

Consultation

In accordance with the requirements of section 26(5) and 27(9) of the Animal Health and Welfare (Scotland) Act 2006 the Scottish Ministers have consulted such persons appearing to them to represent relevant interests and such other persons as they consider appropriate regarding the development of these regulations. Detail on the consultation that has been undertaken is set out below along with links to the relevant consultation papers and summary reports.

Dog, cat and rabbit breeders

The Scottish Government consulted on its proposals for dog, cat and rabbit breeders from 7th September 2018 to 30th November 2018. The consultation ran for 12-weeks. The

consultation paper can be found here: https://consult.gov.scot/animal-welfare/pet-breeding-activities/user_uploads/250237_sct0818243792-001_breeding_p2.pdf.

The consultation summary report can be found here: https://consult.gov.scot/animal-welfare/pet-breeding-activities/results/summaryreportoflicensingdogcatrabbitbreedingactivitiesscotland.pdf

Animal sanctuaries and animal rehoming

The Scottish Government consulted on its proposals for the licensing of animal sanctuaries and animal rehoming activities from 11 December 2017 to 4 March 2018. The consultation ran for 12 weeks. The consultation paper can be found here: https://consult.gov.scot/animal-welfare/animal-sanctuaries-and-rehoming-activities/user_uploads/00528776.pdf

The consultation summary report can be found here: https://consult.gov.scot/animal-welfare/animal-sanctuaries-and-rehoming-activities/results/summaryreportregistrationandlicensingofanimalsanctuariesandrehomingactivitiesinscotland9may2018.pdf.

Pet sellers

As discussed above in the background section, Jeremy Balfour MSP undertook a consultation on pet shop licensing in Scotland in March 2018. Mr Balfour's consultation paper can be found here: http://www.parliament.scot/S5MembersBills/20180323_Final_Consultation_-_Pet_Shop_Licensing.pdf

A summary report on Mr Balfour's consultation can be found here: https://www.parliament.scot/S5MembersBills/20181024_Consultation_summary_Pet_Shops_FINAL.pdf.

On 23 November 2018 the Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, issued the following indication which confirmed that the Scottish Government would give full effect to Mr Balfour's pet shop proposals as part of wider licensing legislation to be introduced. That indication can be found here: https://www.parliament.scot/S5MembersBills/Scottish_Government_indication_web_-_J_Balfour.pdf

All affected businesses and welfare organisations in Scotland had the opportunity to express their views during the Scottish Government's formal consultations in 2018. As regards the pet selling provisions, all businesses and welfare organisations had the opportunity to respond to the consultation delivered by Mr Balfour in 2018. In addition, the Scottish Government has maintained regular engagement with a number of key animal welfare organisations and affected businesses or representative bodies throughout the development of the new licensing regulations.

In October 2020, an advanced draft of the licensing regulations was shared with a number of key business and animal welfare stakeholders for consideration and comment. The draft was also shared with Scottish local authorities. The stakeholders consulted on the draft instrument included organisations representing dog breeders, cat breeders and the aquatic and wider pet trade. Meetings were also held with a number of these stakeholders, including the Scottish SPCA, Kennel Club, Cats Protection and Pets at Home. In doing so, the Scottish Government consulted with such persons appearing to it to represent relevant interests and such other

persons as it considered appropriate in relation to the pet selling proposals. Where practicable and appropriate to do so the draft regulations were amended to reflect stakeholder feedback.

Impact assessments

A Business and Regulatory Impact Assessment was prepared to inform the introduction of these regulations and was laid along with the draft instrument.

As required by article 36(4) of the General Data Protection Regulation, the Scottish Government consulted with the Information Commissioner's Office on the elements of the regulations that relate to personal information.

No equality impact assessment has been undertaken as this instrument does not affect the needs of people with 'protected characteristics' (race, sex, disability, age, sexual orientation, gender reassignment and religion or belief).

A policy Data Protection Impact Assessment is also in the process of being drafted.

Financial effects

The financial effects associated with this instrument are as discussed in the Business and Regulatory Impact Assessment. The Scottish Government considers however that the cost to those that need to be licensed is justified by the overall benefits that will accrue from the introduction of the new licensing provisions. The key cost will be that of obtaining a licence and renewing that licence when required. It should be noted that one element of the additional flexibility delivered by this instrument is that it allows licences to be granted for up to three years duration. Current legislation covering dog breeders and pet sellers only permits licences to be issued for one year, so under this instrument the cost of becoming licensed may be reduced for those that can demonstrate high animal welfare standards and a history of compliance.

Given that the instrument extends the requirement to be licensed to currently unregulated activities, there will be a requirement on licensing authorities to consider a higher number of applications and to either inspect, or arrange inspection of, premises associated with any application. There will also be a need for licensing authorities to undertake inspections as part of their role as the enforcement body. Licenses will also need renewing periodically. While there will clearly be a cost associated with granting and renewing licences, the instrument makes provision for the licensing authority to charge a reasonable fee for these services and accordingly the cost to the licensing authorities should be minimal.

Post-implementation review

Given that the Scottish Government has ongoing engagement with key stakeholders and local authorities on wider animal welfare work, it is likely that we will receive regular feedback on any aspects of the regulations that are causing difficulties, not achieving their policy objectives or are proving difficult to enforce. Any such feedback will be reviewed by the Scottish Government and where issues are identified we will seek to address them where practicable and appropriate.

Animal Health & Welfare
Directorate for Agriculture & Rural Economy
The Scottish Government
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