EXPLANATORY MEMORANDUM TO

THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (ENGLAND) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 introduce an updated licensing system in England for five activities involving animals: selling animals as pets, providing for or arranging for the provision of boarding for cats or dogs, hiring out horses, dog breeding and keeping or training animals for exhibition. This licensing system will be enforced by local authorities, to ensure, at a minimum, the standards required by this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 This instrument applies only to England, in relation to licensable activities involving animals (see Schedule 1), and extends to England and Wales in relation to certain consequential repeals, revocations and amendments effected by Schedules 9 and 10.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

4. Legislative Context

4.1 Currently, there are four main Acts which govern licensable activities involving companion animals: the Pet Animals Act 1951 (“the 1951 Act”); the Animal Boarding Establishments Act 1963 (“the 1963 Act”); the Riding Establishments Act 1964 (“the 1964 Act”); and the Breeding of Dogs Act 1973 (“the 1973 Act”). There is also the Performing Animals (Regulation) Act 1925 (“the 1925 Act”) which requires individuals who want to exhibit or train any performing animals to register for this purpose under the Act.

4.2 The 1951 Act requires a person keeping a pet shop to have a licence granted by the local authority for the purpose, and sets out the requirements for this licensing system.

4.3 The 1963 Act requires a person running a business of providing accommodation for others people's cats or dogs to have a licence granted by the local authority for the purpose, and sets out the requirements for this licensing system.

4.4 The 1964 Act requires a person keeping a riding establishment to have a licence granted by the local authority for the purpose, and sets out the requirements for this licensing system. A related Act, the Riding Establishments Act 1970, allows a local authority to grant a provisional licence for the same purpose.

4.5 The 1973 Act requires a person running a business of keeping a breeding establishment for dogs to have a licence granted by the local authority for the purpose, and sets out the requirements for this licensing system. Two related Acts, the Breeding of Dogs Act 1991 and the Breeding and Sales of Dogs (Welfare) Act 1999, extend powers of inspection and make further provision in relation to the commercial breeding and sale of dogs. Two instruments made under the 1973 Act and the Breeding and Sale of Dogs (Welfare) Act 1999 respectively make further provision in relation to dog tags or badges and licensing records.

4.6 The 1925 Act requires an individual who wants to exhibit or train any performing animal to register for this purpose with their local authority.

4.7 Section 13(8) of the Animal Welfare Act 2006 ("the 2006 Act") gives the Secretary of State the power to repeal by regulations section 1(1) of each of the five Acts referred to in paragraph 4.1. This has the effect of repealing the requirement to be registered under the 1925 Act, or licensed under one of the other four Acts, to carry out the relevant activity. Paragraph 19 of Schedule 1 to the 2006 Act gives the Secretary of State the power to amend or repeal an enactment where this is consequential on the repeal of the provisions specified in section 13(8). This instrument uses this power to repeal the 1973 Act and the two related Acts, and to revoke the two related instruments, referred to in paragraph 4.5 and to make consequential amendments to the other enactments referred to in paragraphs 4.1-6 as well as other relevant enactments.

4.8 This instrument is being introduced using powers conferred on the Secretary of State by section 13 of the 2006 Act to make regulations to provide for licensing or registration systems for certain activities involving animals. This is the third time these powers have been so used by the Secretary of State. The powers were previously used to introduce the Welfare of Racing Greyhounds Regulations 2010 (S.I. 2010/543) and the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 (S.I. 2012/2932).

4.9 This instrument will cover the licensing system for the following activities: selling animals as pets, providing for or arranging for the provision of boarding for cats or dogs, hiring out horses, dog breeding and keeping or training animals for exhibition.

4.10 By virtue of section 58(1) of the Animal Welfare Act 2006, this instrument does not apply to the breeding of dogs for use in regulated procedures in accordance with a licence granted under section 2C of the Animal (Scientific Procedures) Act 1986.

4.11 This instrument fulfils an undertaking given by the Government to Parliament to introduce secondary legislation under the 2006 Act to update the registration and licensing systems for these activities and bring them in line with modern animal

welfare standards (*Hansard:* Secretary of State for Environment, Food and Rural Affairs 10 January 2006 : Column 168-169). A number of concerns have also been expressed during debates about the perceived failings and weaknesses of the current regime, and the need for an updated system with stricter animal welfare requirements. References to these debates are listed below:

4.11.1 HL Deb 20 November 2013, vol 749, cols 1027-1043

4.11.2 HL Deb 7 June 2016, vol 773, cols 658-659

4.11.3 HC Deb 30 March 2017, vol 624, cols 446-484

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity (Lord Gardiner of Kimble) has made the following statement regarding Human Rights:

"In my view the provisions of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The 2006 Act brought together and updated existing legislation to promote the welfare of vertebrate animals, other than those in the wild. The 2006 Act confers powers on the Secretary of State to introduce secondary legislation to promote the welfare of vertebrate animals in England and includes powers to repeal (or amend) and replace relevant primary and secondary legislation as noted in paragraph 4.7 above. This instrument will promote the welfare of animals involved in the five specified activities: selling animals as pets, providing or arranging for the provision of boarding for cats or dogs, hiring out horses, dog breeding and keeping or training animals for exhibition.

7.2 At present, local authorities are required by law to issue licences and require registration for specific animal-related establishments and activities, with the aim of maintaining good standards of animal welfare. There is a registration requirement for performing animals, and licensing systems for pet shops, dog and cat boarding, riding establishments and dog breeding. Estimates show that there are approximately 2,300 licensed pet shops, 650 licensed dog breeders, 1,800 licensed riding establishments, and 6,300 licensed animal boarding establishments in England. These licences combined comprise the fourth largest group of business licences issued by local authorities, after premises, taxi and gambling licences.

7.3 There is a strong public expectation that animal welfare standards will be robustly enforced by local authorities. However, the existing laws covering the licensing of these activities, set out in paragraph 4.1, are outdated and difficult to adapt to the changing types of animal-related businesses and to new standards of good practice in

animal welfare. Moreover, the current application, inspection and enforcement process is complex and burdensome for both businesses and local authorities. For instance, primary legislation limits licences to a calendar-year framework, arbitrarily focussing inspections at the end of the year, and forcing some businesses with multiple functions to have as many as three separate licences.

7.4 There are also specific concerns about certain types of activity that are not currently robustly enforced. Online sales of pets have increased dramatically over the last decade. As these types of business do not fall clearly within the definition of pet shop, the current licensing system is not being consistently enforced for such businesses by local authorities. There are also concerns around 'backstreet dog breeders' (i.e. small-scale dog breeders who breed dogs in poor welfare conditions for profit), who under current legislation can breed up to four litters per year without requiring a licence.

7.5 Many businesses under the existing legislation consistently achieve high welfare standards and good performance. Some of these businesses are also members of the UK Accreditation Service's ("UKAS") accredited schemes, which can ensure that they meet a higher standard of animal welfare than the current legal minimums. These businesses are currently licensed annually by the relevant local authority, and are charged the same fee as all other establishments. There is a concern that this is overly burdensome for both these high performing businesses and local authorities, and it is suggested that a system of earned recognition could be more efficient, fair and help to promote higher welfare standards.

7.6 Public interest in this area is high. There are regular pieces in the media about dog breeding in particular, raising issues about large commercial breeders and backstreet breeders. In addition, 1,709 responses were received to the Department's public consultation.

7.7 The Government believes that new legislation is needed to establish a licensing system that is up to date with modern practices and modern animal welfare standards.

7.8 This instrument requires that all businesses undertaking these activities meet the same, up-to-date, minimum welfare standards. Businesses will have to be licensed by the relevant local authority and will have to meet these minimum standards to hold and retain a licence. These minimum animal welfare standards are currently outlined in guidance, which is supposed to be used by local authorities when undertaking inspections. However, evidence suggests that less than one third of local authorities use this guidance, which means that these standards are not being enforced. This instrument will make the animal welfare standards outlined in the guidance statutory to ensure that they are applied.

7.9 The instrument will also incorporate "earned recognition" into the licensing system. Local authorities will be able to issue licences of 1, 2 or 3 years, with longer licences going to high performing, low risk businesses. This will result in lower licence fees and fewer inspections for high performing businesses, reducing the burden on them. It will also incentivise other businesses to perform at higher levels which will help to drive up animal welfare standards.

7.10 Local authorities will be able to issues licences at any point in the year, which will help to spread the workload across the year.

7.11 The instrument will include new provisions, such as the prohibition on the sale of puppies below the age of 8 weeks and a requirement for a puppy to be shown with its mother by breeders prior to sale. There will be a requirement for pet sellers to provide

animal care information to new owners with every animal sold. Any purchase of a dog must now be completed in the presence of the purchaser at the premises where the dog has been kept for sale by the licence holder. The licensing threshold for dog breeders will be reduced to three or more litters per year to ensure that anyone breeding dogs commercially, including backyard breeders, requires a licence. This instrument will also explicitly highlight the need for online businesses to be licensed, removing the ambiguity in legislation to date.

7.12 Performing animals will be included in a light touch licensing scheme, in which the licence will be granted for 3 years following a satisfactory inspection. This system will include animals that are being exhibited, but not necessarily performing, to reflect the changes in this industry and the expansion of animal exhibition businesses.

8. Consultation outcome

8.1 A full public consultation on the review of animal establishments licensing in England ran for 12 weeks between 20th December 2015 and the 12th March 2016. This was preceded by informal engagement by the Department with key stakeholders through a series of meetings and a preliminary consultation held during 2015. Stakeholders included: representatives of welfare groups such as the RSPCA, Battersea Dogs and Cats Home, the Dogs Trust and Cats Protection; representatives of the industry; representatives of veterinary associations; and representatives of local authorities.

8.2 A total of 1,709 responses were received to the formal public consultation. Of these responses, 323 were standard campaigning responses from the Kennel Club and the Cats Protection campaigns, or were emails/letters which did not directly address the questions in the consultation.

8.3 Of the remaining 1,386 responses, a large majority supported updating the licensing system. On the specific questions asked, 90% of respondents supported a prohibition on the sale of puppies below the age of 8 weeks; 64% supported reducing the licensing threshold for dog breeders to three or more litters per year (and most of those that disagreed felt that the threshold should be reduced even further); 90% were positive about the proposal to legally require pet sales to provide written information when selling animals; 83% agreed with the proposal to allow licences to be issued for a fixed term, set at any point in the year; and 94% agreed that licence holders should be required to notify local authorities of major changes. 61% of respondents disagreed with the proposal to allow licence holders to transfer licences to new owners of the same premises and this proposal is not being taken forward. While 48% of respondents agree with the suggestion to increase the maximum length of a licence that local authorities may issue to up to three years, it should be noted that 12% responded that they didn't know, and that many who were negative about the proposal commented that it would be acceptable as long as it was supported by a robust risk based system. 72% of respondents felt that there should be a continued requirement for performing animals to register and 56% agreed with the changes proposed to this system. Only 31% of respondents agreed with the proposal to exempt businesses affiliated to a body accredited by UKAS from licensing requirements. This proposal is not being taken forward but, instead, affiliation to a body accredited by UKAS will be considered as part of the risk based system, a model that was proposed and is supported by most of the key stakeholders.

8.4 A full summary of the responses to the public consultation, along with the Government's formal response, has been published on the Government website at:

https://www.gov.uk/government/consultations/animal-welfare-reviewing-animal-establishments-licensing-in-england

8.5 Following the full public consultation discussed at paragraph 8.1 the Secretary of State has continued to work closely with welfare Non-Governmental Organisations, industry, veterinary interests and local authorities. An interim draft of the instrument was circulated to a group of these core stakeholders in September 2017. The comments received were reviewed and taken into account in finalising this instrument.

9. Guidance

9.1 Guidance is being drafted in close collaboration with welfare Non-Governmental Organisations, industry, veterinary interests and local authorities. The guidance will be sent to local authorities and will be available on the Department's website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is fully discussed in the Impact Assessment. The Impact Assessment indicates that the reforms generate aggregate net savings for businesses. This is because the revised licensing scheme is more flexible, more proportionate and more risk-based.

10.2 The impact on the public sector is fully discussed in the Impact Assessment.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 50 people, the instrument will introduce a risk based licensing system. This will allow local authorities to issue longer licences at a lower fee to businesses that are considered to be a lower risk (taking into account factors such as their size, compliance record and animal welfare standards).

12. Monitoring & review

12.1 This instrument will ensure that all businesses involving animal activities in England are covered by the same up-to-date welfare standards. The instrument will be clear on the types of business that are covered by the licensing system, which will improve clarity and consistency of application by local authorities. To improve monitoring in the future, local authorities will be required to submit annual records to the Department of the number and types of licences issued and the average fees they have charged for licences they have granted or renewed.

12.2 This instrument will be subject to internal review in 5 years from the commencement, in April 2023, and the instrument may be amended accordingly.

13. Contact

13.1 Charlotte Carne at the Department for Environment, Food and Rural Affairs Tel: 0208 026 2881 or email: charlotte.carne@defra.gsi.gov.uk can answer any queries regarding the instrument.