Draft Regulations laid before the Scottish Parliament under section 51(3) of the Animal Health and Welfare (Scotland) Act 2006 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

ANIMALS

ANIMAL WELFARE

The Microchipping of Dogs (Scotland) Regulations 2016

Made - - - - 2016

Coming into force in accordance with regulation 1(2)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 26(1), (2) and (3) and 51(2) of the Animal Health and Welfare (Scotland) Act 2006(**a**) and all other powers enabling them to do so.

In accordance with section 26(5) of that Act, the Scottish Ministers have consulted with such persons appearing to them to represent relevant interests and such other persons as the Scottish Ministers consider appropriate.

In accordance with section 51(3) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament(**b**).

Citation and commencement

1.—(1) These Regulations may be cited as the Microchipping of Dogs (Scotland) Regulations 2016.

(2) These Regulations come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"adverse reaction" means any unnecessary pain, suffering or pathology on the part of a dog which is caused, or appears to be caused, by a microchip implanted in the dog;

"authorised person" has the meaning given by regulation 11;

"breeder" means the keeper of a bitch which whelps, whether or not the keeper is carrying on business as a breeder of dogs;

(**a**) 2006 asp 11.
(**b**) Section 51(3) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

"compliant microchip" means a microchip which meets the requirements set out in regulation 4;

"database operator" means a database operator—

(a) which holds itself out as meeting the conditions in regulation 8; and

(b) on which the Scottish Ministers have not served a notice under regulation 9(2)(a);

"failure of a microchip" means failure to transmit the number encoded in the microchip when scanned by an appropriate transceiver;

"implanter" means, subject to regulation 3(6), any of the individuals listed in regulation 3(5);

"keeper" means—

(a) in relation to an assistance dog (within the meaning of section 173(1) of the Equality Act 2010(**a**))—

(i) until the dog ceases working as an assistance dog, the body responsible for it; and

(ii) after the dog has ceased working as an assistance dog, the person with whom it normally resides;

(b) in relation to a new born puppy, the keeper of the bitch that gave birth to it; and

(c) in relation to any other dog, the person with whom it normally resides;

"microchip" means a read-only passive radio frequency identification device;

"microchipped" means microchipped in accordance with regulation 6;

"migration" means the movement of a microchip in a dog from its implantation site;

"retained data" means data which a database operator must record by virtue of regulation 8(1)(a);

"student of veterinary surgery" has the same meaning as given by paragraph 3 of the Schedule to the Veterinary Surgeons (Practice by Students) Regulations Order of Council 1981(**b**);

"unique number" means the unique number referred to in regulation 4(a); and

"veterinary nurse" and "student veterinary nurse" have the same meanings as given by paragraphs 6 and 7 of Part 1 of Schedule 3 to the Veterinary Surgeons Act 1966(**c**) respectively.

Implanter requirements as regards implanting any microchip

3.—(1) No individual other than an implanter may implant a microchip of any kind in a dog.

(2) An implanter must not hold out to the keeper of a dog that a microchip is a compliant microchip where the implanter knows, or could reasonably be expected to know, that the microchip is not a compliant microchip.

(3) Where it appears to the Scottish Ministers, on the basis of information provided to them, that an implanter mentioned in paragraph (5)(c) or (d) is not competent to implant microchips in dogs to a satisfactory standard, the Scottish Ministers may serve a notice on that individual prohibiting that individual from implanting microchips in dogs—

(a) until the individual has received further training on a course approved by the Scottish Ministers; or

(b) permanently.

(4) A notice served under paragraph (3) must set out the reasons why an individual is not considered to be competent to implant microchips in dogs.

(**a**) 2010 c.15.

(**b**) S.I. 1981/988, amended by S.I. 1995/2397.

(**c**) 1966 c.36; paragraph 6 was inserted by S.I. 1991/1412, substituted by S.I. 2002/1479 and amended by S.I. 2008/1824; paragraph 7 was inserted by S.I. 2002/1479.

(5) Subject to paragraph (6), "implanter" means any of the following individuals—

(a) a veterinary surgeon, or a veterinary nurse acting under the direction of a veterinary surgeon;

(b) a student of veterinary surgery or a student veterinary nurse and in either case acting under the direction of a veterinary surgeon;

(c) an individual who has been satisfactorily assessed on a training course on implanting microchips in dogs approved by the Scottish Ministers; or

(d) an individual who, before the day on which these Regulations come into force, received training on implantation which included practical experience of implanting a microchip.

(6) An individual prohibited from implanting microchips in dogs by virtue of paragraph (3) is not an "implanter" for so long as the individual is so prohibited.

Compliant microchip

4. A compliant microchip means a microchip which meets the following requirements—

(a) it must have a unique number which includes the manufacturer's code;

(b) it must be compliant with ISO standard 11784:1996 (radio frequency identification of animals – code structure) of the International Standards Organisation's standards for microchips(**a**);

(c) it must be compliant with ISO standard 11785:1996 (radio frequency identification of animals – technical concept) of the International Standards Organisation's standards for microchips apart from Annex A; and

(d) it must respond to a transceiver which operates at 134.2 kilohertz and conforms with the FDXB protocol set out in ISO standards 11784:1996 and 11785:1996.

Adverse reaction, migration and failure of a compliant microchip

5. An individual who identifies any of the following in respect of a compliant microchip implanted in a dog must report it to the Scottish Ministers within 21 days beginning with the day of so identifying—

(a) an adverse reaction;

(b) a migration; or

(c) a failure of a microchip.

Obligation to microchip

6.—(1) Subject to paragraphs (2) and (3), from 6th April 2016 every keeper of a dog which is older than 8 weeks must ensure that it is microchipped.

(2) Paragraphs (1) and (4) do not apply for as long as a veterinary surgeon certifies that a dog should not be microchipped for reasons of the dog's health.

(3) A certificate issued under paragraph (2) must state the period for which the dog will be unfit to be microchipped.

(4) From 6th April 2016, a keeper who brings a dog into Scotland must ensure that the dog is microchipped within 30 days of the date on which it is brought into Scotland.

(5) Subject to paragraph (6), a dog is microchipped where—

(a) a compliant microchip has been implanted in the dog; and

(**a**) ISO Central Secretariat, International Organization for Standardization (ISO), 1 rue de Varembé, Case postale 56, CH-1211, Genève 20, Switzerland.

(b) the details set out in regulation 7 are recorded on a database by a database operator meeting the conditions set out in regulation 8.

(6) Before 6th April 2017, the details to be recorded on a database by virtue of paragraph (5)(b) do not include those set out in regulation 7(f).

(7) From 6th April 2016, every keeper of a dog which has been implanted with a compliant microchip must notify any change to the details that are to be recorded on the database by virtue of paragraph (5)(b) to the database operator of that database.

(8) Where the keeper of a dog to whom paragraph (1) applies becomes aware of the failure of a microchip, the keeper must have the dog implanted with a compliant microchip.

Details to be recorded on databases

7. The details to be recorded on a database are—

(a) the full name and address of the keeper of the dog;

(b) the contact telephone number (if any) of the keeper of the dog;

(c) the e-mail address (if any) of the keeper of the dog;

(d) where applicable, the fact that the keeper of the dog is also a breeder;

(e) where applicable, the fact that the keeper of the dog is a person who holds a breeding licence granted under section 1(2) of the Breeding of Dogs Act 1973(**a**) and, if so—

(i) the name of the local authority which issued the breeder's licence; and

(ii) the breeder's licence number or code (if any);

(f) where applicable, the fact that the keeper of the dog is licensed by a local authority under the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009(**b**) and, if so—

(i) the number of the animal dealing licence (if any); and

(ii) the name of the local authority which issued the animal dealing licence;

(g) the sex of the dog;

(h) the breed of the dog, or a description if it is a cross-breed;

(i) the colour of the dog;

(j) the most accurate estimate of the dog's date of birth which the keeper of the dog is capable of giving;

(k) the unique number of the compliant microchip implanted in the dog; and

(l) where applicable, the name or identification number given to the dog.

Conditions to be met by a database operator

8.—(1) A database operator must—

(a) record on its database—

(i) details notified to it by keepers of dogs by virtue of regulations 6 and 10(1); and

(ii) data provided to it by virtue of regulation 9(2)(b);

(b) in relation to a dog, retain the data which it must record by virtue of sub-paragraph (a) in relation to that dog for a period of 30 years from the date of birth, or estimated date of birth, of that dog;

(c) in relation to retained data, publish its policy on data retention and destruction;

(d) have sufficient database capacity to store retained data and do so securely;

(**a**) 1973 c.60.
(**b**) S.S.I. 2009/141.

(e) have a system whereby retained data can be readily retrieved;

(f) back up retained data at a secure off-site facility once every 24 hours;

(g) provide an authorised person with such retained data as is necessary for the performance of the following functions—

(i) re-uniting a dog with its keeper; and

(ii) the enforcement of these Regulations;

(h) provide a veterinary surgeon with such retained data as is necessary for the purpose of re-uniting a dog with its keeper;

(i) provide a person with enforcement functions relating to the welfare of dogs conferred by virtue of any enactment with such retained data as is necessary for the prevention or detection of crime relating to the welfare of dogs;

(j) provide the current keeper with such retained data requested by the current keeper to the extent that it relates to the current keeper and its dog (not including details on any previous keeper);

(k) provide a previous keeper with such retained data requested by that keeper to the extent that it relates to that keeper (not including details on any other keeper);

(l) have a system for identifying—

(i) an authorised person;

(ii) a person mentioned in sub-paragraph (h) or (i);

(iii) the current keeper of a dog; and

(iv) any previous keeper of a dog,

when such person makes an inquiry about retained data;

(m) have a system for answering telephone requests for retained data at all times;

(n) have a system for answering on-line requests for retained data at all reasonable times;

(o) have a system for redirecting telephone queries relating to dogs whose retained data is recorded on other databases which comply with sub-paragraph (s) to the database operators of those other databases;

(p) have a system for automatically redirecting on-line requests relating to dogs whose retained data is recorded on other databases which comply with sub-paragraph (s) to the database operators of those other databases;

(q) have a system for ensuring that, so far as practicable, on recording a change to the keeper of the dog, the former keeper is aware or made aware of the fact a change is taking place;

(r) maintain sufficient records to demonstrate to the Scottish Ministers that the database operator is complying with the requirements of this regulation;

(s) make available to other database operators such information as is necessary to allow other database operators to determine which compliant microchip unique numbers relate to dogs whose details are recorded on the database operator's database; and

(t) have a system for responding directly to the inquirer of any query received by virtue of sub-paragraph (o) or (p).

(2) In this regulation "on-line request" means a request submitted to a database operator on-line in the manner provided for by the database operator's website.

Powers of the Scottish Ministers

9.—(1) The Scottish Ministers may serve a notice on a database operator requiring it to provide—

(a) any information necessary to demonstrate that it is meeting the conditions in regulation 8; or

(b) such statistical information as is extractable from the database as they request.

(2) Where the Scottish Ministers are satisfied that a person holding itself out as meeting the conditions in regulation 8 does not meet any one of the conditions in regulation 8, the Scottish Ministers may serve a notice requiring that person to—

(a) cease holding itself out as meeting the conditions in regulation 8; and

(b) provide the Scottish Ministers or another database operator with an electronic copy of all of its retained data.

(3) A notice served under paragraph (1) or (2) must state the date on which it takes effect, which date may not be less than 21 days after the day on which it is served.

Change of keeper

10.—(1) From 6th April 2016, where a dog is transferred to a new keeper, the new keeper must, unless the previous keeper has already done so, notify their full name, address and contact telephone number (if any) and any change in the dog's name to the database operator of the database on which the dog's details are recorded by virtue of regulation 6(5)(b).

(2) Subject to paragraph (3), from 6th April 2016, no keeper may transfer a dog to a new keeper until—

(a) it has been microchipped; and

(b) the details that are to be recorded on the database by virtue of regulation 6(5)(b) so far as relating to the keeper of the dog are correct.

(3) Paragraph (2) does not apply where on the date of transfer a certificate issued under regulation 6(2) certifies that the dog should not be microchipped for reasons of the dog's health.

Authorised person

11.—(1) Subject to paragraph (2), the following persons are "authorised persons" for the purposes of these Regulations—

(a) any person authorised in writing by the Scottish Ministers;

(b) any person authorised in writing by a local authority in respect of its area; and

(c) a constable.

(2) A person authorised under paragraph (1)(a) or (b) is only authorised for the purposes of these Regulations to the extent of the purposes mentioned in the authorisation.

Powers of an authorised person

12.—(1) From 6th April 2016, on producing (if required to do so) the written authorisation mentioned in regulation 11(1)(a) or (b) or other official identity document in the case of a constable, an authorised person may—

(a) take possession of a dog for as long as reasonably required without the consent of the keeper of the dog for any of the following purposes—

(i) to check if a compliant microchip has been implanted in the dog;

(ii) to check if a compliant microchip transmits the number encoded in it when scanned by an appropriate transceiver; and

(iii) to arrange for a compliant microchip to be implanted in the dog in accordance with sub-paragraph (c)(i);

(b) serve on the keeper of a dog a notice requiring the keeper to—

(i) where the dog has not been microchipped, have the dog microchipped;

(ii) where there has been a failure of a compliant microchip implanted in the dog to transmit the number encoded in it when scanned by an appropriate transceiver, have the dog implanted with a compliant microchip; or

(iii) where there has been a failure to comply with regulation 6(7), comply with regulation 6(7),

within 21 days beginning with the day on which the notice is served; and

(c) where the keeper of a dog has failed to comply with a notice served under sub-paragraph (b), without the consent of the keeper—

(i) arrange for the dog to be microchipped;

(ii) notify the database operator of the database on which the dog's details are recorded by virtue of regulation 6(5)(b) the correct details set out in regulation 7; or

(iii) recover from the keeper the cost of doing so.

(2) An authorised person may enter any premises except domestic premises at all reasonable times, on producing (if required to do so) evidence of that person's authority, for the purpose of ascertaining whether these Regulations are being, or have been, complied with.

(3) If a sheriff or justice of the peace is satisfied by evidence on oath laid by any authorised person that there are reasonable grounds for suspecting that an offence against these Regulations has been or is being committed at any domestic premises, the sheriff or justice may issue a warrant authorising any authorised person to enter those premises, by reasonable force if need be, and inspect them and any animals or any thing found there.

(4) An authorised person entering any premises by virtue of paragraph (2) or (3) may–

(a) inspect and copy any records (in whatever form they are held) kept under these Regulations, or remove such records to enable them to be copied;

(b) inspect and check the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records;

(c) for that purpose, require any person having charge of, or otherwise concerned with, the operation of the computer, apparatus or material to afford the authorised person such assistance as the authorised person may reasonably require (including providing the authorised person with any necessary passwords);

(d) where a record is kept by means of a computer, require the record to be produced in a form in which it may be taken away;

(e) examine, or require the examination of, any dog or any other animal kept on the premises; and

(f) take on to the premises such persons to give the authorised person such assistance and such equipment as the authorised person considers necessary.

(5) A warrant issued under paragraph (3)—

(a) may authorise persons to accompany the person who is executing the warrant; and

(b) continues in force for the period of one month commencing with the date of issue.

(6) The power of entry conferred by a warrant issued under paragraph (3) may be exercised at all reasonable times and any person entering the premises in exercise of that power must–

(a) produce the warrant if so required; and

(b) comply with such precautions (if any) as the sheriff or justice of the peace may specify to prevent the spread among animals of infectious or contagious diseases.

(7) If an authorised person enters any unoccupied premises, the authorised person must leave them as effectively secured against entry as the authorised person found them.

Offences

13.—(1) It is an offence for a database operator to—

(a) fail to comply with regulation 8; or

(b) fail to comply with a notice served on it under regulation 9(1).

(2) It is an offence for a person mentioned in regulation 9(2) to fail to comply with a notice served on that person under regulation 9(2).

(3) It is an offence for an individual to fail to comply with regulation 5 without reasonable excuse.

(4) It is an offence for an individual to fail to comply with regulation 3(1) or (2).

(5) It is an offence for a keeper of a dog to—

(a) notify to a database operator any of the details set out in regulation 7 knowing them to be false in a material particular;

(b) recklessly notify to a database operator any of the details set out in regulation 7 which are false in a material particular;

(c) fail to comply with regulation 10(2);

(d) intentionally obstruct an authorised person in the exercise of their powers conferred by regulation 12; or

(e) fail to comply with a notice served under regulation 12(1)(b).

(6) An offence under paragraph (1), (2), or (4) is punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

(7) An offence under paragraph (3) or (5) is punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

Appeals

14.—(1) An individual may appeal to the sheriff against a notice served on that individual under regulation 3(3).

(2) A database operator may appeal to the sheriff against a notice served on it under regulation 9(1).

(3) A person mentioned in regulation 9(2) may appeal to the sheriff against a notice served on that person under regulation 9(2).

(4) The Scottish Ministers may be a party to an appeal under this regulation.

(5) Where an appeal is made under this regulation, the effect of the notice being appealed is suspended pending determination or withdrawal of the appeal.

(6) An appeal under this regulation must be lodged with the sheriff clerk within the period of 21 days beginning with the day on which the notice being appealed was served.

(7) On good cause being shown, the sheriff may hear an appeal under this regulation notwithstanding that it was not lodged within the period mentioned in paragraph (6).

(8) For the purposes of an appeal under this regulation, the sheriff may–

(a) require the Scottish Ministers to give reasons for the notice and they must comply with such requirement;

(b) hear evidence by or on behalf of any party to the appeal; or

(c) consider any evidence or other information relevant to the appeal (whether or not available when the notice was given).

(9) The sheriff may uphold an appeal under this regulation only if the sheriff considers that the Scottish Ministers, in serving the notice—

(a) erred in law;

(b) based the decision to serve the notice on any incorrect material fact;

(c) acted contrary to natural justice; or

(d) exercised the relevant authority's discretion in an unreasonable manner.

(10) On upholding an appeal under this regulation, the sheriff may—

(a) remit the matter with the reasons for such decision to the Scottish Ministers for reconsideration of their decision to serve the notice;

(b) vary the notice; or

(c) quash the notice.

(11) On remitting a matter to the Scottish Ministers for reconsideration of their notice, the sheriff may—

(a) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including these Regulations); and

(b) specify a date by which the Scottish Ministers are to reconsider the notice.

(12) The sheriff may include in the decision on an appeal under this regulation such order as to the expenses of the appeal as the sheriff thinks proper.

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the compulsory microchipping of dogs in Scotland and the recording of information about every dog and its keeper on a database. They set a technical standard for the type of microchip which must be used for the purposes of microchipping a dog under these Regulations. In addition, the Regulations also make wider provision about who may implant a microchip of any kind in a dog in Scotland.

Regulation 3 sets out the persons who may implant microchips of any kind. Any other person who implants a dog with a microchip commits an offence under regulation 13(4).

Regulation 4 sets out the technical standard which microchips must meet if they are to be used for the purposes of the Regulations. These are referred to as compliant microchips. It is an offence under regulation 13(4) for an implanter to hold out that a microchip is a compliant microchip where the implanter knows or could reasonably be expected to know that the microchip is not a compliant microchip.

Regulation 5 requires anyone who identifies an adverse reaction, migration or failure in a microchip to notify the Scottish Ministers. Failure to report without reasonable excuse is an offence under regulation 13(3). Regulations 3 to 5 come into force the day after the day on which the Regulations are made.

Regulation 6 requires that from 6th April 2016 every keeper of a dog has its dog microchipped. Microchipped means having the dog both implanted with a compliant microchip and the details set out in regulation 7 being recorded by a database operator. Where a veterinary surgeon certifies that the dog should not be microchipped due to the dog's health then the obligation does not apply for the period specified in the certificate. Regulation 6(4) provides that if a person brings a dog into Scotland then they must have it microchipped within 30 days of bringing it to Scotland. Regulation 6(7) requires the keeper of a dog to notify any change to the details recorded on the database. Regulation 6(8) provides that if a keeper becomes aware of a failure of a microchip in their dog, the keeper must have the dog re-microchipped.

Regulation 7 sets out the information to be notified to a database operator by the keeper of a dog who has had the dog implanted with a compliant microchip. Offences are provided in regulation 13(5)(a) and (b) in respect of false notifications.

Regulation 8 lists the conditions with which a person holding itself out as a database operator must comply. If a database operator holds itself out as complying with this regulation then it will be a database operator for the purposes of the Regulations and thereby bound to comply with the conditions. Failure to comply with the conditions listed in regulation 8 is a criminal offence by virtue of regulation 13(1)(a).

Regulation 9 gives the Scottish Ministers the power to require database operators to provide information to show the operator is complying with its obligations under regulation 8. It also permits the Scottish Ministers to be given statistical information from a database. Where a database operator is no longer complying with its regulation 8 obligations then the Scottish Ministers may issue a notice requiring the operator to cease holding itself out as regulation 8 compliant and may require the data to be passed to the Scottish Ministers or to another database operator who does comply. Notices may not come into effect before the period for appealing against them has expired.

Regulation 10 provides that when a dog is transferred to a new keeper the new keeper must notify their details to the database. It also provides that before a dog may be transferred it must have been microchipped and the current keeper's details be correct.

Regulation 12 gives authorised persons the power to take possession of a dog for the purposes of checking if it has been microchipped, that the microchip is working and so it can be implanted; and if not, to serve a notice on a keeper to require them to rectify the situation within 21 days. If a keeper fails to comply with a notice within 21 days, the authorised person may take possession of

the dog without the keeper's consent to arrange for the dog to be microchipped and may recover the cost of doing so from the keeper. Failure to comply with a notice or intentional obstruction of a person exercising their powers under regulation 12 is an offence under regulation 13(5)(d) and (e).

Regulation 13 sets out the offences provided by these Regulations and the maximum fines payable.

Regulation 14 provides for appeals to a sheriff against various notices issued under the Regulations. Notices are suspended pending determination or withdrawal of the appeal.

A draft of these Regulations was notified on 24 July 2015 to the European Commission in accordance with the Technical Standards Directive (Directive 98/34/EC as amended by Directive 98/48/EC).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published on the Scottish Government website (http://www.gov.scot).

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