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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 141**

**The Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009**

**Citation and commencement**

1. These Regulations may be cited as the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 and come into force on the day after the day on which they are made.

**Interpretation**

2.—(1) In these Regulations—

“animal dealing licence” means a licence granted under these Regulations;

“inspector” means a person appointed as an inspector by the Scottish Ministers or a local authority for the purposes of these Regulations;

“licence holder” means a person who is the holder of an animal dealing licence;

“licensing authority” means a local authority;

“local authority” means the council constituted under section 2 (constitution of councils) of the Local Government etc. (Scotland) Act 1994(1) for the area in which an applicant or licence holder has their premises in Scotland, or, where the applicant or licence holder does not have premises in Scotland, the City of Edinburgh Council;

“purchaser” means a person to whom a licence holder sells a young cat or young dog;

“sell” means to sell or dispose of and “sells”, “sale” or “sold” are to be construed accordingly;

“veterinary surgeon” means a person who is registered in the register of veterinary surgeons or the supplementary veterinary register provided for under sections 2 and 8 of the Veterinary Surgeons Act 1966(2);

“young cat” means a cat which is less than 84 days old; and

“young dog” means a dog which is less than 84 days old.

(2) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication as defined in the Electronic Communications Act 2000(3) which has been recorded and is consequently capable of reproduction.

(3) An electronic communication may only be sent by the Scottish Ministers to a person if that person has consented in writing to the use of that method of communication and transmission is to an e mail address provided by the recipient.

(4) An electronic communication shall be taken to be received on the day after the day of its transmission.

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(1) 1994 c. 39; as amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232.

(2) 1966 c. 36. Section 2 was amended by S.I.2003/2919, Schedule, paragraph 1.

(3) 2000 c. 7. The definition of “electronic communication” was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

**Persons who are required to hold an animal dealing licence**

3.—(1) It is prohibited for a person to carry on, without the authority of an animal dealing licence, an activity which—

- (a) involves a young cat or young dog for which the person is responsible; and
- (b) involves—
  - (i) acquiring and keeping with a view to sale; or
  - (ii) selling,
 any such young cat or young dog.

(2) Paragraph (1) applies only in relation to the carrying on of an activity on or after 30th April 2009.

(3) But paragraph (1) does not apply—

- (a) to a person who holds a breeding licence granted under section 1(2) of the Breeding of Dogs Act 1973(4);
- (b) to a person who holds a pet shop licence granted under section 1(2) of the Pet Animals Act 1951(5);
- (c) in relation to the sale by a person of a young cat or young dog kept at an animal sanctuary, animal rehabilitation centre or an animal re-homing centre;
- (d) in relation to the sale by a person of the progeny of a cat or dog kept by that person as a pet; or
- (e) to a person who sells no more than 2 young cats or 2 young dogs or one of each such type of animal in any 12 month period.

(4) It is an offence for a person, without lawful authority or excuse—

- (a) to act in breach of paragraph (1); or
- (b) to contravene any condition of an animal dealing licence,

and such a person will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

**Applications for animal dealing licences**

4.—(1) Subject to paragraph (2), the licensing authority must consider an application for an animal dealing licence where—

- (a) the application is made to the authority in writing; and
- (b) the required fee has been paid.

(2) The licensing authority must not grant an application from an applicant who is for the time being subject to an order for disqualification under—

- (a) section 5(3) of the Pet Animals Act 1951 (offences and disqualifications)(6);
- (b) section 1(1) of the Protection of Animals (Amendment) Act 1954 (power to disqualify persons convicted of cruelty to animals)(7);

(4) 1973 c. 60. Section 1(2) was amended by the Civic Government (Scotland) Act 1982 (c. 45), Schedule 3, paragraph 3(a), the Protection of Animals (Amendment) Act 1988 (c. 29), section 3(2) and (3) and the Breeding and Sale of Dogs (Welfare) Act 1999 (c. 11), section 10 and 11(2).

(5) 1951 c. 35. Section 1 was amended by S.S.I. 2006/536, Schedule 1, paragraph 3.

(6) 1951 c. 35.

(7) 1954 c. 40; amended by the Animal Welfare Act 2006 (c. 45), Schedule 4.

- (c) section 3(3) of the Animal Boarding Establishments Act 1963 (offences and disqualifications)(8);
- (d) section 3(3)(b) or (c) of the Breeding of Dogs Act 1973 (offences and disqualifications)(9);
- (e) section 28F(1) and (2) of the Animal Health Act 1981 (deliberate infection: disqualification orders)(10);
- (f) section 34(1) and (2), (3) or (4) of the Animal Welfare Act 2006 (disqualification)(11);
- (g) section 40(1) and (2) of the Animal Health and Welfare (Scotland) Act 2006 (disqualification orders); or
- (h) regulation 21(2).

### **Imposition of fee**

5. The licensing authority must impose a reasonable fee equivalent to the amount of costs and expenses incurred in processing an application for an animal dealing licence or renewal of an animal dealing licence.

### **Consideration of applications for animal dealing licences**

6.—(1) When considering whether to grant, renew, vary or refuse an animal dealing licence, but without prejudice to its discretion to refuse an animal dealing licence on other grounds, the licensing authority must in particular have regard to the need for securing that—

- (a) a young cat or young dog is at all times kept in accommodation suitable as respects construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness;
- (b) a young cat or young dog is at all times adequately supplied with suitable food, drink and bedding material, adequately exercised and visited at suitable intervals;
- (c) all reasonable precautions are taken to prevent and control the spread among such young cats and young dogs of infectious or contagious diseases; and
- (d) appropriate steps are taken for the protection of a young cat or young dog in the case of fire or other emergency.

(2) The licensing authority must, before reaching a decision as to whether or not to grant, renew, vary or refuse an animal dealing licence, consider a report made to the authority by an inspector, unless—

- (a) the applicant does not have premises in Scotland on the date the application is received, in which case no report will be required as no inspection will be carried out; or
- (b) paragraph (5) applies.

(3) The report referred to in paragraph (2) must be made following an inspection by an inspector carried out after the application for the animal dealing licence has been received.

(4) The inspection referred to in paragraph (3) means the inspection of any such places, equipment and documents as the inspector thinks necessary for the purpose of enabling the licensing authority to satisfy itself on the matters referred to in paragraph (1).

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(8) 1963 c. 43; amended by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 9, the Animal Welfare Act 2006 (c. 45), Schedule 3, paragraph 5 and S.S.I. 2006/536.

(9) 1973 c. 60; amended by the Breeding and Sale of Dogs (Welfare) Act 1999 (c. 11), section 5.

(10) 1981 c. 22. Section 28F was inserted by the Animal Health and Welfare (Scotland) Act 2006 (asp 11), section 10.

(11) 2006 c. 45; section 40 of that Act extends its provisions to Scotland.

(5) In the case of an application for a renewal of an animal dealing licence, the licensing authority may, for the purposes of paragraph (2), rely upon a report based on an inspection made in respect of that licence within a period of one year before the date of the application for renewal.

### **Grant or renewal of animal dealing licences**

7.—(1) The licensing authority may grant or renew an animal dealing licence which must be in writing and must state—

- (a) the name and home or business address of the licence holder or applicant;
- (b) the address of the premises where the animals must be kept during the period referred to in regulation 15(1);
- (c) the number of the animal dealing licence;
- (d) the date of commencement of the animal dealing licence and of its expiry, which will be no later than 3 years from the date of its commencement; and
- (e) the conditions subject to which the animal dealing licence has been granted.

(2) The licensing authority must determine an application for an animal dealing licence, or a renewal or variation of such a licence, within 3 months of the date on which the application is received.

(3) Where the licensing authority has received an application for the renewal of an animal dealing licence before the expiry date of that licence, then that licence will be regarded as continuing in force, for a maximum period of 3 months or until such time as a decision is issued on that application by the licensing authority, if earlier.

### **Conditions of an animal dealing licence**

8.—(1) The licensing authority must when granting or renewing an animal dealing licence specify the maximum number of young cats and young dogs that may be kept by the licence holder at any one time (the “maximum permitted number of animals”).

(2) An animal dealing licence must include the specified conditions.

(3) The specified conditions are that—

- (a) the licence holder must not, without reasonable excuse, keep a cat or dog which is less than 8 weeks of age at any time unless that cat or dog is accompanied by its mother;
- (b) the licence holder must not keep more than the maximum permitted number of animals;
- (c) the licence holder must ensure that all young cats and young dogs acquired by the licence holder—
  - (i) receive a physical examination by a veterinary surgeon in the 24 hour period immediately after they are acquired by the holder;
  - (ii) have a unique number assigned to each of them for the purpose of identifying the animals individually; and
  - (iii) are accompanied by a written record containing information as to the matters contained in the Schedule so far as applicable;
- (d) the licence holder must ensure that any disease or parasitic infection of a young cat or young dog is treated within 24 hours of identification, whether after the physical examination by a veterinary surgeon or otherwise;
- (e) the licence holder must retain for no less than 3 years from the date of sale of a young cat or young dog a copy of the written record referred to in subparagraph (c)(iii);

- (f) the licence holder must ensure that the licensing authority is permitted to inspect at any reasonable time any place or equipment used in, or in connection with, the acquisition, sale, transport or keeping of animals to which the licence relates and any documents held by or on behalf of the licence holder relating to such animals;
  - (g) the licence holder must accede to any reasonable request for information from the licensing authority relating to the undertaking by the licence holder of any activities referred to in sub-paragraph (c);
  - (h) the licence holder must provide the number of the animal dealing licence which that person holds and the name and telephone number of the licensing authority in any advertisement or information issued by or on behalf of the licence holder; and
  - (i) the licence holder must, prior to delivery of a young cat or young dog to a purchaser, exhibit the animal dealing licence (or a copy) to the purchaser.
- (4) An animal dealing licence may be subject to such further conditions as the licensing authority considers necessary for the purposes of securing the welfare of animals for which the animal licence holder is responsible.

#### **Revocation, suspension or variation of animal dealing licences**

- 9.—(1) The licensing authority may at any time—
- (a) revoke, suspend or vary an animal dealing licence;
  - (b) vary the maximum permitted number of animals;
  - (c) revoke, suspend or vary a condition of an animal dealing licence, other than any of the specified conditions referred to in regulation 8(3).
- (2) The powers referred to in paragraph (1) may be exercised—
- (a) on application by the licence holder;
  - (b) on a contravention of a condition of an animal dealing licence;
  - (c) on a contravention of these Regulations;
  - (d) if any information supplied by the licence holder is false; or
  - (e) if doing so is necessary in order to protect the welfare of any animal.
- (3) Where any of the powers referred to in paragraph (1) is exercised—
- (a) the licensing authority must notify the licence holder in writing of the revocation, suspension, or variation; and
  - (b) the licence holder must, if required by the licensing authority, return his or her licence to the authority within 21 days of receipt of such a notice.
- (4) If the licensing authority vary an animal dealing licence, it must re-issue the licence as varied.

#### **Death of licence holder**

10.—(1) In the event of the death of the licence holder the animal dealing licence will be deemed to have been granted to the licence holder's personal representatives upon their application, as long as none of the personal representatives is subject to an order for disqualification under any of the provisions set out in regulation 4(2)(a) to (h), and will remain in force for a period of 3 months beginning with the date of death.

(2) A licensing authority may, on the application of those personal representatives, extend the period of 3 months referred to in paragraph (1) if the licensing authority is satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make extension undesirable.

### **Exercise of functions by inspectors**

11. A licensing authority may appoint in writing an inspector (whether or not an officer of the authority) to exercise the powers conferred on an inspector by these Regulations.

### **The register of animal dealing licences and provision of information**

12.—(1) The licensing authority must keep, in such form as it considers appropriate, a register of animal dealing licences which must include the name and home or business address of the licence holder, the address of the premises where the period referred to in regulation 15(1) will take place and the number of the licence.

(2) The licensing authority must make the register available for public inspection without charge during reasonable office hours and must allow copies of the register to be taken.

### **Review of a decision by the licensing authority**

13.—(1) A licence holder or applicant may apply in writing to the licensing authority for a review of a decision.

(2) An application for review—

- (a) must be made within 21 days after the date that notice of a decision is received by the licence holder or applicant; and
- (b) may include any written explanation that the licence holder or applicant considers appropriate.

(3) A decision which is the subject of an application for review shall, unless the licensing authority direct otherwise in writing, have effect until the date of determination of that application.

(4) The application for review shall be determined by the licensing authority, in accordance with paragraphs (5) to (10).

(5) The licensing authority shall appoint a person to carry out the functions in paragraph (8) (“the appointed person”).

(6) The licensing authority shall inform the licence holder or applicant in writing—

- (a) of the name and address of the appointed person;
- (b) of the role of that person; and
- (c) that the licence holder or applicant may give a written explanation (or further explanation) to that person.

(7) Any written explanation referred to in paragraph (6) shall be given to the appointed person within 14 days after the date of intimation to the licence holder or applicant under that paragraph.

(8) The appointed person shall—

- (a) examine the merits of the decision;
- (b) consider any written explanation given by the licence holder or applicant;
- (c) report to the licensing authority following that examination; and
- (d) include in that report such recommendation (if any) for determination of the application as the appointed person shall think fit.

(9) The licensing authority shall consider the report of, and any recommendation by, the appointed person.

(10) The licensing authority shall inform the licence holder or applicant in writing of the result of the determination of the review.

(11) In this regulation “decision” means the—

- (a) determination of an application for an animal dealing licence or for renewal or variation of such a licence;
- (b) decision to attach a condition to a licence; or
- (c) decision to revoke, suspend or vary a licence.

### **Appeals**

**14.**—(1) An applicant or licence holder may appeal to the sheriff against a determination of a review by the licensing authority under regulation 13.

(2) The licensing authority may be a party to an appeal under this regulation.

(3) An appeal under this regulation shall be made by way of summary application and shall be lodged with the sheriff clerk within the period of 28 days from the day on which the determination was made.

(4) On good cause being shown, the sheriff may hear an appeal under this regulation notwithstanding that it was not lodged within the time mentioned in paragraph (3) above.

(5) For the purposes of an appeal under this regulation, the sheriff may require the licensing authority to give reasons for that decision, and the licensing authority shall comply with such a requirement.

(6) The sheriff may uphold an appeal under this regulation only if the sheriff considers that the licensing authority, in arriving at their determination—

- (a) erred in law;
- (b) based their determination on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

(7) In considering an appeal under this regulation, the sheriff may hear evidence by or on behalf of any party to the appeal.

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

- (a) remit the case with the reasons for such decision to the licensing authority for reconsideration of their determination; or
- (b) reverse or modify the determination of the authority.

(9) On remitting a case under paragraph (8)(a) above, the sheriff may—

- (a) specify a date by which the reconsideration by the authority must take place;
- (b) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including these Regulations).

(10) 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.

(11) The decision of the sheriff is final.

### **Separation of young cats and young dogs**

**15.**—(1) A licence holder who acquires a young cat or young dog which is to be sold must keep the animal separately from any other animal kept by him or her for a period of not less than 10 days from the date of acquisition of the young cat or young dog.

(2) A licence holder must keep a young cat or young dog referred to in paragraph (1) at the premises specified in the animal dealing licence.

(3) A young cat or young dog acquired at the same time from the same source as another such animal may be kept with that animal during the period referred to in paragraph (1).

(4) If any other animal or animals join in the same part of the premises the young cat or young dog during the the period referred to in paragraph (1) a new 10 day period of separation from other animals must be commenced from the date the animals are joined together.

(5) A young cat or young dog must be examined by a veterinary surgeon during the first 24 hours of the period referred to in paragraph (1), and a licence holder must—

- (a) provide such care and treatment for the animal as is reasonably required by the veterinary surgeon; and
- (b) keep the animal until such time as the animal is fit to be sold.

(6) It is an offence for a person, without lawful authority or excuse, to contravene or fail to comply with any provision of this regulation, and such a person will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

### **Transport of young cats and young dogs**

**16.—**(1) A licence holder must transport a young cat or a young dog directly from the premises specified in the animal dealing licence to its purchaser in Scotland.

(2) It is an offence for a person, without lawful authority or excuse, to contravene or fail to comply with any provision of this regulation, and such a person will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

### **Powers of inspectors**

**17.—**(1) Any inspector may, on producing evidence of that inspector's authority, if so required, enter any premises except domestic premises at all reasonable times and inspect such premises and any animals found there for the purposes of preparing a report.

(2) An inspector may enter any premises except domestic premises at all reasonable times, on producing, if requested, evidence of that inspector's authority, for the purpose of ascertaining whether these Regulations or any animal dealing licence are being, or have been, complied with and, in particular, may—

- (a) inspect and copy any records (in whatever form they are held) kept under these Regulations or any animal dealing licence, 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 inspector such assistance as the inspector may reasonably require (including providing the inspector 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 young cat or young dog or any other animal kept on the premises; and
- (f) take on to the premises such persons to give the inspector such assistance and such equipment as the inspector considers necessary.



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

(4) A warrant issued under paragraph (3) above—

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

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

(5) The power of entry conferred by the warrant may be exercised at all reasonable times and any person entering the premises in exercise of that power shall—

(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.

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

### **Obstruction**

**18.** If any person intentionally obstructs an inspector (or a person assisting an inspector in accordance with regulation 17(2)(f)) in the exercise of the powers conferred by regulation 17 that person is guilty of an offence and will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

### **Offence of making a false statement**

**19.** It is prohibited for a person for the purposes of obtaining or holding an animal dealing licence—

(a) to make a statement to the licensing authority (or someone acting on its behalf) knowing it to be false in a material particular; or

(b) recklessly to make a statement to the licensing authority (or someone acting on its behalf) which is false in a material particular,

and breach of such prohibition is an offence and will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

### **Offences by bodies corporate**

**20.—(1)** Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

that director, manager, secretary or officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1)—

(a) “director” in relation to a body corporate managed by its members, means a member of the body corporate; and

- (b) “body corporate” includes a Scottish partnership, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

### **Disqualifications**

**21.**—(1) Where a person is convicted of an offence under—

- (a) these Regulations;
- (b) section 28C (deliberate infection: Scotland) or 28F(16) (deliberate infection: disqualification orders) of the Animal Health Act 1981<sup>(12)</sup>; or
- (c) sections 19 (unnecessary suffering), 20 (mutilation), 21 (cruel operations), 22 (administration of poisons etc.), 23 (animal fights), 24 (ensuring welfare of animals), 25(7) (care notices), 29 (abandonment) or 40(11) (disqualification orders) of the Animal Health and Welfare (Scotland) Act 2006<sup>(13)</sup>,

the court by which that person is convicted may revoke any animal dealing licence held by that person.

(2) Where a person is convicted of an offence under these Regulations, the court by which that person is convicted may disqualify that person from holding an animal dealing licence for such period as the court thinks fit.

(3) A court which has revoked an animal dealing licence under paragraph (1), may, if it thinks fit, suspend the operation of the order—

- (a) for such period as it considers necessary for enabling arrangements to be made in relation to any animals kept or owned by the licence holder in the course of their business; or
- (b) pending an appeal.

(4) A court which has ordered a person’s disqualification under paragraph (2) may, if it thinks fit, suspend the operation of the order pending an appeal.

### **Termination or variation of disqualification**

**22.**—(1) A person who has been disqualified under regulation 21(2) may request the court which made the disqualification to terminate or vary that disqualification.

(2) An application under paragraph (1) may not be made—

- (a) before the expiry of the period of one year beginning with the date on which the disqualification was made;
- (b) where there has been a previous application under that paragraph in relation to the same disqualification, before the expiry of one year beginning with the date on which the previous application was determined; or
- (c) within any period specified under paragraph (5).

(3) On an application under paragraph (1), the court may—

- (a) refuse the application;
- (b) terminate the disqualification; or
- (c) vary the disqualification so as to relax any period of disqualification imposed by it.

(4) In considering the application, the court must have particular regard to—

- (a) the nature of the offence in relation to which the disqualification was made;
- (b) the character of the applicant; and

<sup>(12)</sup> 1981 c. 22. Sections 28C and 28F were inserted by the [Animal Health and Welfare \(Scotland\) Act 2006 \(asp 11\)](#), section 10.  
<sup>(13)</sup> 2006 asp 11.

(c) the applicant's conduct since the disqualification.

(5) Where the court refuses an application made under paragraph (1), the court may specify a period in excess of one year during which the applicant may not make a further application under paragraph (1).

### **Enforcement**

**23.**—(1) These Regulations are enforced by the local authority.

(2) The Scottish Ministers may direct, in relation to cases of a particular description or any particular case, that the Scottish Ministers will enforce these Regulations instead.

St Andrew's House,  
Edinburgh  
30th March 2009

*RICHARD LOCHHEAD*  
A member of the Scottish Executive