

EXECUTIVE NOTE

The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 SSI/2007/256

Powers

1. The above Regulations are made in exercise of powers conferred by section 20(5)(b) and (c) of the Animal Health and Welfare (Scotland) Act 2006 (hereafter referred to as “the Act”) which allows Scottish Ministers to specify procedures which will not be covered by section 20 of this Act.

Parliamentary Procedure

2. This Regulation is a draft affirmative instrument and must be laid before and approved by Parliament.

Policy Objectives

3. The purpose of section 20(1) and (2) of the Act is to make it an offence to carry out, cause to be carried out or to knowingly allow to be carried out a prohibited procedure on a protected animal or to fail to attempt to prevent a prohibited procedure from being carried out on a protected animal. A procedure is prohibited where it involves the interference with the sensitive tissues or bone structure of an animal (section 20(4)), unless it is carried out for medical purposes (section 20(5)(a)) or is exempted from the general prohibition by Regulations made under section 20(5)(b) or (c). Certain procedures have been exempted in order to allow most existing farm animal husbandry practices to continue. These procedures are necessary to identify animals; for the welfare benefit of the individual animal, flock or herd; or to ensure handler safety. It was not seen as necessary to allow the tail shortening or docking of working dogs, as the strength of evidence produced by those who supported tail docking/shortening was insufficient. The veterinary professional bodies were not convinced that an exemption for working dogs was necessary.

The Regulations

4. These Regulations specify exempted procedures to which section 20 will not apply, as long as those procedures are carried out for a specified purpose and the procedure is done in accordance with specified conditions and good practice (see regulation 3).

5. Schedules 1 to 12 list those procedures which are to be exempted in relation to particular types of animals. These schedules also specify the purposes for which the procedures may be carried out and any conditions which apply to such procedures.

6. Schedule 13 lists legislation which is revoked by these Regulations.

7. The restrictions on the performance of acts of veterinary surgery, as laid out in the Veterinary Surgeons Act 1966 and related provisions are unaffected by these Regulations.

8. The provisions on the performance of operations on animals without the use of anaesthetics in the Protection of Animals (Anaesthetics) Act 1954, the Protection of Animals (Anaesthetics) Act 1964 and related instruments are not affected by these Regulations.

Consultation

9. A consultation paper and draft Regulation were issued to more than 2900 interested parties on 16 October 2006. The consultation period ran until 5 January 2007 and just over 160 responses were received. Although the consultation detailed more than 30 procedures to which may be carried out on protected animals, ranging from livestock to companion animals, it was the issue of not allowing an exemption for the tail shortening or docking of working dogs which brought the greatest number of comments.

Financial Effects

10. A Regulatory Impact Assessment has been prepared and has been placed in the Scottish Parliament Information Centre.

Scottish Executive Environment and Rural Affairs Department

February 2007

Regulatory Impact Assessment: Consultation on procedures to be exempted under the Animal Health and Welfare (Scotland) Act 2006

Introduction

1. This Regulatory Impact Assessment aims to provide information on the options considered in relation to The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007, made under section 20(5) of the Animal Health and Welfare (Scotland) Act 2006. These regulations specify procedures which are exempted from the offences under section 20(1) and (2) of the Animal Health and Welfare (Scotland) Act 2006.

Title of proposal

2. This draft Scottish Statutory Instrument (SSI) has the title: The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007.

Purpose and intended effect

Objectives

3. The Animal Health and Welfare (Scotland) Act 2006 received Royal Assent on 11 July 2006 and came into force on 6 October 2006.

4. The welfare provisions modernise and bring together in one statute some 16 Acts relating to the welfare of captive and domestic animals in Scotland. The Act protects from cruelty and promotes the welfare of vertebrate animals which are commonly domesticated in the British Islands, or are under the control of man whether on a permanent or temporary basis, or not living in a wild state.

5. The Act is largely an enabling measure. It sets out the broad fundamental principles of animal welfare and allows specific provisions to be made in secondary legislation. This approach allows its provisions to be kept up to date and in line with developments in animal welfare and the sciences. This will enable the provision to be easily revised, amended, and kept up to date. Further, it will also allow the Scottish Executive to respond to changes more quickly than it has been able to do in the past.

6. This set of regulations, made under section 20(5) of the Act, allows a range of procedures which involve interference with the sensitive tissues or bone structure of an animal to be permitted, as these would otherwise be prohibited under section 20(1) and (2) of the Act.

7. The SSI is subject to the draft affirmative procedure in the Scottish Parliament. This means that it must be approved by a motion of the Scottish Parliament before it can come into force.

8. We anticipate that the SSI will come into force in April 2007.

Devolution

9. The Regulations apply to Scotland only. England and Wales are making separate, parallel legislation.

Background

10. The Scottish Ministers can make regulations under section 20(5) of the Animal Health and Welfare (Scotland) Act 2006 to allow exemptions to be made to the general prohibition on procedures which involve the interference with the sensitive tissue or the bone structure of an animal unless it is for medical reasons. The provisions in the regulations will allow current practices, many of which are regulated in existing Acts, Orders and Regulations, to continue to be permitted.

Rationale for government intervention

11. Section 20(1) and (2) of the Animal Health and Welfare (Scotland) Act 2006 would prohibit a range of procedures, which are referred to as “mutilations”, from being undertaken. We do not want to ban a number of procedures which are currently permitted as this would create severe welfare problems in these animals.

12. We therefore want a range of practices to continue. In order that they can be permitted, the Scottish Executive is required to make regulations which stipulate the procedures which are permitted and the purposes for which the procedure may be carried out; the omission of a procedure from the Regulations, unless it is undertaken for the purpose of medical treatment of an animal, means that it cannot be undertaken. The permitted procedures and purposes are set out in the Regulations.

13. In stipulating these exemptions, we recognise that a number of them should also be conducted only in a certain manner, or in certain circumstances. Such additional conditions are noted in the Regulations.

Consultation

Within Government

14. Consultation at official level was ongoing throughout the drafting of the SSI and RIA. In particular, this has been with the State Veterinary Service (SVS) and the Department for Environment, Food and Rural Affairs (Defra) which is introducing its own regulations under the Animal Welfare Act 2006.

Public consultation

15. A number of consultations have already taken place which have discussed aspects outlined in the draft Regulations. A full 12 week consultation was undertaken on earlier proposals relating to the tail docking of dogs in a consultation paper, ‘Proposals to Revise Existing Animal Welfare Legislation’, issued on 31 March 2004. The subject of tail docking of dogs was discussed in the Scottish Parliament at considerable length.

16. The scope of section 20 of the Draft Animal Health and Welfare (Scotland) Bill was discussed in a further consultation paper, 'Draft Animal Health and Welfare (Scotland) Bill Consultation' issued on 16 May 2005. This consultation period extended until 4 July 2005. A total of 2,245 copies of the consultation document were issued and distributed during the consultation period. A total of 116 responses were received. A total of 4 consultation meetings were held during the consultation period. Responses to this consultation were publicised and distributed on 14 September 2005, using the same methods that had been used for the earlier consultation. The document can be viewed at:

<http://www.scotland.gov.uk/Publications/2005/09/14155410/54128>.

17. A further 12 week consultation on "Procedures to be Exempted under Section 20(5) of the Animal Health and Welfare (Scotland) Act 2006: The Prohibited Procedures (Exemptions) (Scotland) Regulations 2007", issued on 16 October 2006. This considered a variety of farmed animal husbandry procedures, but did not propose an exemption for the shortening or docking of working dogs' tails. More than 160 responses were received from a wide selection of individuals and organisations representing the farming industry, animal welfare, countryside sports, veterinary surgeons and dog societies.

18. In addition to these, an "example" of the Regulations which showed the type of proposals that could be introduced under the then Animal Health and Welfare (Scotland) Bill, was issued to the Environment and Rural Development Committee and the Subordinate Legislation Committee of the Scottish Parliament in March 2006. This was issued to potential consultees for information. They were informed that a formal consultation would take place later in 2006.

Options

The two options are:

19. **Option 1:** Not to make exemptions to the prohibition on procedures which interfere with the sensitive tissues or bone structure of an animal under section 20 of the Animal Health and Welfare (Scotland) Act 2006.

20. **Option 2:** Make exemptions under section 20(5) of the Animal Health and Welfare (Scotland) Act 2006 in the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 which will enable a range of procedures to be undertaken for welfare related purposes.

Sectors and groups affected

21. The Regulations will affect a range of sectors which are involved with animals. These will primarily be individuals and businesses that own, manage and keep animals, especially livestock and companion animals. The Regulations will mainly affect livestock farmers, especially those that raise bovine animals, pigs, sheep, goats and deer.

Analysis of costs and benefits

Benefits

22. **Option 1:** No benefits. This would prohibit many practices that are currently undertaken for animal welfare related reasons in livestock and companion animals. This would have a detrimental impact on many aspects of their welfare, especially in the areas of reproduction, identification, and management. It would be undesirable to ban practices which are currently permitted and where there is evidence that they are necessary to ensure or promote welfare for specific species of animals. There would be much criticism if these practices were to be prohibited. It would be difficult, and in some cases impossible, to ensure the welfare of specific species, especially where these procedures are used after alternative methods have been tried and have not been found to remedy a welfare problem. Furthermore, there would be significant economic consequences if these practices were prohibited.

23. **Option 2:** This option will bring a number of benefits. These are:

- It will ensure that specified existing practices which involve the interference with the sensitive tissues or bone structure of an animal can continue to take place where appropriate.
- It will help to ensure that animal welfare standards are maintained. This will apply to individual animals subject to a procedure and others with which they come into contact.
- Where necessary, it will ensure that animal keepers can continue to comply with EU regulations on animal identification and animal traceability.
- In certain cases it will help to enhance handler safety.
- It will ensure that appropriate restrictions are placed on the purpose for which a mutilation can be carried out, the manner in which it is undertaken and the conditions in which the procedure must be conducted.
- It will make the regulations on mutilations easier to understand. In turn, this will make it easier for businesses to comply with them. It will also make it easier for enforcement organisations to enforce their provisions.

Costs

Option 1

Costs to businesses

24. **Option 1:** There will be an increase in animal welfare problems among a wide range of animals, especially livestock. This will result in poorer animal welfare. There will also be higher costs of veterinary care. Businesses will find it impossible to comply with a range of EU regulations relating to animal identification, as well as other regulations which require that an animal should be marked. Businesses which deal with animals that have the potential to injure their handlers would have to find alternative means to safeguard their workers. Businesses which control the reproduction of animals would have to find alternative ways of doing this, which could involve keeping animals in separate premises.

Costs to competent authorities

25. As a wide range of current practices would no longer be practised, and as they are found necessary, it is likely that they would continue to be undertaken. This would mean that there would be increased costs faced by the competent authorities. There would also be an increase in the number of court cases initiated.

Option 2:

Costs to businesses

26. There will be no change in costs to businesses or individuals who are undertaking all the procedures. Therefore, the implications of the Regulations are cost neutral.

27. However a ban on the tail docking of dogs will have a range of financial impacts. These will primarily affect veterinary surgeons and dog breeders.

28. The impact of the policy will have an effect on the income of veterinary surgeons who currently undertake this practice for non-therapeutic reasons. Precise figures for these numbers of veterinary surgeons are not available. It is thought that vets who carry out this practice attract clients from other practices, increasing their income. We believe that a significant number of vets do not undertake this procedure, and will therefore receive no income from undertaking this practice. There will therefore be no change in their level of income from a ban on tail docking.

29. It is known that vets who undertake this procedure will typically charge about £50 per litter. If a veterinary practice were to dock a litter of puppies each day, then the income to the practice would be £1,000 a month or £12,000 per year. If the number of puppies that are docked is reduced by 5,000 per year, and a litter has an average of 5 puppies, then the total vet fees would be reduced by £50,000.

30. It is estimated that 7,000 dogs are registered each year by Scottish breeders from traditionally docked breeds. In future, all of these dogs will be undocked.

31. The proposals will affect breeders of dogs. It has been claimed that an undocked puppy of a traditionally docked breed would be worth less than a docked puppy. If this were true, and assuming the value of each dog was reduced by £50, then the annual loss to Scottish dog breeders would be in the region of £250,000. However, any drop in value would be temporary as the supply of docked puppies would reduce as the ban was enforced.

Costs to the competent authorities

32. As the Regulations are allowing for a range of procedures to continue to be undertaken, the Regulations will be cost neutral to the Scottish Executive and to the authorities that will enforce the SSI, i.e. local authorities and the State Veterinary Service.

Consultation with small businesses

33. During the two earlier consultations in 2004 and 2005, a wide range of small businesses, small business organisations and business organisations were consulted. These included a number of businesses that would be directly affected by the proposals. These and other responders did not consider that the proposals would have a disproportionate impact on small businesses.

34. All of these organisations and businesses have been consulted with the specific proposals in the consultation paper (the example Regulations were also sent to them in March 2006).

Test run of business forms

35. There are no statutory business forms introduced by these Regulations.

Competition assessment

36. The Scottish Executive does not consider that the proposals will raise any competition issues. The exemptions made under section 20(5) will not place undue additional burdens on businesses. It is not considered that the markets will be affected by the new Regulations. We are not aware of any firms which have either 10%, 20% or 50% market share. It is not considered that the costs of the Regulations will affect some firms substantially more than others. It is not considered that the Regulations will affect the market structure, changing the number or size of firms. None of the proposals will place higher set-up or ongoing costs for new or potential firms than existing ones. This sector is not characterised by rapid technological change and this will not impact on the way procedures are undertaken. It is not considered that the Regulations will restrict the ability of firms to choose the price, quality, range or location of their products.

37. The Regulations will ensure that mutilations will only be undertaken where the Scottish Ministers have specified that they are permitted in the Regulations. The use of certain mutilations can be justified on the grounds of promoting and ensuring animal welfare.

38. We do not believe that the proposals for the exemptions under section 20(5) of the Animal Health and Welfare (Scotland) Act 2006 will disproportionately affect any key group.

Enforcement sanctions and monitoring

39. As with existing Acts, Regulations and Orders, the new Regulations will continue to be enforced by local authorities, the State Veterinary Service and the police.

40. Local authorities and the SVS will continue to have powers to inspect activities which are subject to regulation.

41. As with existing legislation on mutilations and animal welfare, there are criminal sanctions for offences.

Post-implementation review

42. There will be an opportunity to review, and if necessary, update the legislation. It is proposed to review the Regulations five years after they come into force. This review will be undertaken by SEERAD.