

EXECUTIVE NOTE

THE LICENSING OF ANIMAL DEALERS (YOUNG CATS AND YOUNG DOGS) (SCOTLAND) REGULATIONS 2009 SSI/2009/141

The above draft instrument, which is subject to the affirmative resolution procedure, will, if approved, be made in exercise of the powers conferred by sections 26(1), (2) and (3), 27(1), (3) to (8) and 51(2) of the Animal Health and Welfare (Scotland) Act 2006 (the Act) which allow Scottish Ministers to introduce regulations for the purpose of securing the welfare of animals.

This amended instrument, which must be laid in draft before and approved by the Scottish Parliament, replaces the one which was laid on 5 June 2008 and subsequently withdrawn in order to consider how to respond to the comments made by the Subordinate Legislation and Rural and Environment Committees.

Policy Objectives

The purpose of this instrument is to address and regulate serious animal welfare issues concerning the sale of puppies and kittens in Scotland. There is a high demand for pedigree puppies and kittens in Scotland but, currently, there are many problems with the trade.

Dealers are selling very young animals in Scotland many of which are not robust enough to survive because they have been housed in poor conditions. Mixing of litters also heightens the risk of infection and parasitic infestation and creates a breeding ground for disease. Other serious health and behavioural problems are also common but by the time these come to light the animals have usually been sold to the public, many of these sales taking place illegally on the street or at car boot sales. Complaints regarding such animals sold by dealers have been made to the Scottish Society for the Prevention of Cruelty to Animals by members of the public. Consequently, there is a need for regulation in this trade.

Scope of the Regulations

The Regulations will require those who sell young cats or young dogs under 84 days of age in Scotland to obtain a licence from a local authority. Pet dealers who do not live in Scotland will be able to obtain a licence from the City of Edinburgh Council. A licence will last for a maximum of 3 years.

Some people will be able to sell a young cat or young dog without a licence. In particular, a licence is not needed where no more than 2 young dogs or 2 young cats or 1 of each are sold in a 12 month period; for people selling the offspring of their pet; for people who hold a pet shop licence; and for people who hold a Dog Breeders' Licence.

It will be an offence to sell a young cat or young dog under 8 weeks of age, and to transport such an animal unless accompanied by its mother.

The licence conditions will require each animal to be given a unique identification number; a written record detailing the items listed in the schedule to the Regulations must accompany each animal; the animal must be examined by a veterinary surgeon within 24 hours of being

acquired by the dealer; and the animals must be kept separate from other animals for a period of not less than 10 days before they can be sold.

In the interests of clarity, and to address the comments of the Subordinate Legislation and Rural and Environment Committees, changes have been made to the draft laid on 5 June 2008. In particular, the following changes have been made:

- the offence provisions have been redrafted to include a maximum penalty in each case and the offence of making a false statement is no longer qualified by a defence of “reasonable excuse”;
- the provisions for persons whose premises are outwith Scotland are now clearly drafted to explain that no inspection is carried out on premises outwith Scotland;
- the powers of the sheriff when determining an appeal have been redrafted in similar terms to other instruments dealing with licences and allows the sheriff to reverse or modify any determination of the licensing authority within certain circumstances; and
- the enforcement powers of the Scottish Ministers have been amended to give them powers to appoint inspectors rather than simply having a duty to enforce.

Failure to comply with the Regulations is an offence and if convicted a person would be liable to a fine of up to £2,500 (level 4 of the standard scale) and/or up to 3 months imprisonment.

Consultation

Many organisations were consulted during the preparation of this Instrument in accordance with the requirements of sections 26(5) and 27(9) of the Act. Organisations included the Pet Care Trust, pet retail stores, the Scottish Society for the Prevention of Cruelty to Animals, Advocates for Animals, Animal Concern, the Scottish Branch of the British Veterinary Association and local authorities. Without exception all respondents supported the regulation of this trade.

Financial Effects

This instrument will have no financial effects on the Scottish Government and local authorities will be able to recoup costs by charging a fee for licences. There will be financial implications for animal dealers but these will be comparable to other, similarly regulated businesses, and are proportionate to the improvements in animal welfare delivered by these Regulations.

A Regulatory Impact Assessment has been prepared for this instrument is attached.

Scottish Government / Rural Directorate
January 2009

**THE ANIMAL HEALTH AND WELFARE (SCOTLAND)
ACT 2006**

**THE LICENSING OF ANIMAL DEALERS (YOUNG CATS
AND YOUNG DOGS) (SCOTLAND) REGULATIONS 2009**

Regulatory Impact Assessment

**Scottish Government
January 2009**

REGULATORY IMPACT ASSESSMENT (RIA)

1. Title of proposal

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

2. Purpose and intended effect

- **Objectives**

These Regulations, made under sections 26 and 27 of the Animal Health and Welfare (Scotland) Act 2006, will introduce a licensing scheme for dealers who are selling young dogs and young cats less than 84 days in Scotland. The aim is to improve the conditions under which such animals are sold and considerably improve their welfare. In essence, it will regulate the trade through a licensing system operated by the local authorities.

- **Background**

The welfare provisions of the Animal Health and Welfare (Scotland) Act 2006 (the Act) modernise and bring together in one statute some 20 Acts relating to the welfare of captive and domestic animals in Scotland. They will protect from cruelty and secure 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. They revise the legislation for non-farmed animals dealing with the welfare needs of the late nineteenth century which was in urgent need of revision.

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. Regulations can be made under Section 27 of the Act to prohibit the carrying on, without a licence (or a registration), an activity involving animals for which a person is responsible. These Regulations must be for the purpose of securing the welfare of animals.

- **Rationale for Government intervention**

There is a good deal of evidence which shows that there are problems with the trade of selling young dogs and young cats in Scotland. Dealers can acquire their stock from premises which do not have to be regulated or licensed for a relatively low cost and then sell it at a much higher price. The exact extent of the trade is not known but is thought to be highly profitable. However, the trade is not always carried on under acceptable animal welfare conditions. For example, animals may be collected from different locations and mixed together before they arrive at the dealer's premises. Many have been found to be in a poor condition, or diseased, but with symptoms only manifesting themselves after the animals have been sold by the dealer.

There have also been concerns raised about the age at which animals are sold, some are as young as 6 weeks.

The existing legislation does not cover dealers, though it covers people who breed and sell dogs (The Breeding of Dogs Acts 1973 and 1991, The Breeding and Sale of Dogs (Welfare) Act 1999). The Pet Animals Act (1951) applies to cats and dogs sold in pet shops. Consequently, due to the gaps in legislative provision there is considerable demand for this trade to be regulated. This is evident in the responses to the consultations which have helped develop policy for the Animal Health and Welfare (Scotland) Act 2006, held in 2004 and 2005, and in the support for Christine Grahame's Transportation and Sale of Puppies (Scotland) Bill.

3. Consultation

- **Within Government**

Consultation at official level has been ongoing throughout the drafting of the Instrument. In particular, this has been with the Office of the Solicitor to the Scottish Executive (OSSE), the State Veterinary Service (SVS), Justice Department and the Crown Office.

- **Public consultation**

A number of consultations have already taken place which have discussed the proposals outlined in the draft Regulations. A full 12 week consultation was undertaken on proposals which assisted in drafting legislation which formed the basis of the Animal Health and Welfare (Scotland) Act 2006. The consultation paper, 'Proposals to Revise Existing Animal Welfare Legislation', issued on 31 March 2004, sought comments on the trade in young companion or pet animals. This consultation was widely distributed and 2,100 copies of the document were sent to a wide range of organisations and individuals. Some 13 consultation meetings were also held during the consultation period. A total of 325 written responses were received, including 99 responses specifically making comments on the proposals on the sale of young companion or pet animals. The responses to this consultation were published on 28 February 2005 on the Scottish Government website and were also issued to responders of the consultation. These can be viewed at:

<http://www.scotland.gov.uk/Publications/2005/05/1683736/37373>.

The scope of these proposals were discussed in a further consultation paper, "Draft Animal Health and Welfare (Scotland) Bill Consultation", issued on 16 May 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. Four 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 responses can be viewed at:

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

4. Options

The two options are:

- **Option 1:** Do nothing – do not licence animal dealers under Section 27 of the Animal Health and Welfare (Scotland) Act 2006.
- **Option 2:** Licence animal dealers under Section 27 of the Animal Health and Welfare (Scotland) Act 2006 to considerably improve the welfare conditions of young cats and young dogs passing through the hands of dealers.

5. Costs and Benefits

- **Sectors and groups affected**

The Regulations will affect people (“dealers”) who are involved in selling young dogs and young cats under the age of 84 days in Scotland. The breeding and sale of dogs by breeders is already governed by a range of legislation such as The Breeding of Dogs Act 1973.

- **Benefits**

- **Option 1:** No benefits. The unregulated trade of dealing in young dogs and young cats will continue and this, in turn, will continue to adversely affect the welfare of these animals. The unregulated trade will also continue to have a perceived impact on the dog breeding and selling community which is regulated by existing legislation and by Kennel Club standards. These sectors believe that the dealers are negatively impacting on the reputation of their business.
- **Option 2:** This option will bring a number of benefits -
 - i. It will allow the trade in dogs and cats under 84 days of age to be undertaken only by licensed dealers who must fulfil the conditions under which they are licensed.
 - ii. It will improve the health and welfare of young dogs and young cats under 84 days of age which are sold by dealers.
 - iii. It will ensure that these animals are allowed to rest after they have been acquired by a dealer and that they are identified by a unique number assigned to them.

- iv. The veterinary examination for each animal will establish if they are healthy and fit to be sold.
- v. The higher standard of health and welfare will result in fewer veterinary costs for subsequent owners or keepers.
- vi. It will ensure that dealers are easily identifiable by prospective purchasers and by local authorities.
- vii. Through the licensing system, local authorities will be able to monitor the trade in young dogs and young cats by dealers.
- viii. The Regulations will enable local authorities to more easily bring prosecutions against dealers who are selling animals in unacceptable ways, or who have failed to ensure their welfare.
- ix. The use of a record will provide comprehensive details on the history, traceability, welfare and health of the animal which will confirm that the dealer has complied with the Regulations and assist in the prevention of fraud.

- **Costs**

- **Option 1**

- **Costs to animal dealers**

There will be no additional costs to animal dealers.

- **Costs to competent authorities**

There will continue to be costs faced by the competent authorities in dealing with those who illegally sell young dogs and young cats.

- **Costs to purchasers of animals**

Problems for purchasers of animals associated with the welfare of young dogs and young cats which are sold by dealers, will continue. Some purchasers will still be faced with the prospect of having to provide a range of veterinary treatment for their newly purchased animals and others will still be out-of-pocket when animals die and dealers cannot be traced.

- **Option 2**

- **Costs to animal dealers**

There will be a range of costs to be met by animal dealers which will vary according to the facilities they have and whether or not these have to be upgraded to the standard required in the licence conditions. The standards for premises will be based on the standards of existing licensed dog breeding establishments, so there will be no increased accommodation costs for dealers who already have such premises. However, there will be higher costs for dealers who do not have premises and who wish to provide their own. The costs of providing premises will be the largest initial set-up cost for dealers.

Dealers will have to pay a fee for their licence. Also the cost of the physical examination of new stock by a veterinary surgeon and the cost of keeping animals for 10 days. The estimated costs to a dealer would be:

| ACTIVITIES TO BE UNDERTAKEN | COST PER DEALER |
|---|---|
| SET UP COSTS | |
| Licence cost (licenses normally run for a period of three years). | £200 - £800 |
| Cost of providing premises which can be used for keeping animals separate | Costs will depend on whether dealers use their own premises or premises which are already licensed. |
| ONGOING COSTS | |
| Veterinary examination | £50 per litter. |
| Accommodation on premises for 10 days | £40 per litter of dogs for accommodation (up to 12 puppies) |

- **Costs to the competent authorities**

- It is not expected that there will be any additional costs placed on the Scottish Government.
- Local authorities will incur a number of costs chiefly associated with licensing and inspection but these will be recouped by the licence fee.
- In addition, since the regulations will create a new framework for the licensing of dealers, it will also place new duties on local authorities. This will be the inspection of premises before they are licensed, issuing of the licences and enforcement of the Regulations. It is not expected that these duties will add a significant burden to existing work, especially as it is believed there are only a small number of dealers operating throughout the country.

- The Regulations will introduce new offences. It is not known how many cases will be brought forward for prosecution. However, it is believed that the number will be small.
 - It is probable that the Regulations will mean increased costs for the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA) since more animals may be seized which would result in increased costs for transportation, accommodation and veterinary services. However, it is recognised that these costs would be incurred for the betterment of animal welfare.
- **Costs to purchasers of animals**

The young dogs and young cats sold by dealers will have higher welfare standards so will be in better condition. There will also be fewer instances of diseases to be treated by veterinary surgeons once these animals have been sold so purchasers will generally have lower veterinary costs. This is very relevant since some purchasers have had to pay for extensive health care after they bought an animal, or had to make provision to euthanize it which also means a loss of the purchase price. The costs of treating an animal for a range of diseases can be high. Some treatments take months and some conditions can require treatment throughout the animal's life. Under the licensing system, the animals should be healthy.

6. Small firms impact test

The Regulations will only directly impact on dealers who trade in young cats and young dogs. During the consultations in 2004 and 2005, a wide range of small businesses, small business organisations and other business organisations were consulted. These included a number of businesses that would be directly affected by proposals to amend existing legislation on the sale of young companion or pet animals. None of the responders considered that the proposals would have a disproportionate impact on small businesses.

7. Test run of business forms

The Regulations will not require the completion of any formal business forms.

8. Competition assessment

These Regulations will only directly affect animal dealers. They will ensure that dealers operate to consistent, satisfactory animal welfare standards which will be comparable to the standards already being adhered to by existing licensed dog breeding establishments in Scotland. This will raise the general welfare standards in the industry and will place legitimate businesses on a more equal footing for competition purposes. The set-up costs resulting from these Regulations will be the same for new and for existing dealers.

9. Enforcement, sanctions and monitoring

As with existing Acts, Regulations and Orders relating to animal welfare, the Regulations will be enforced by local authorities and the police who will have powers to inspect regulated activities. There will be criminal sanctions and offences. The effectiveness of these Regulations will be monitored by the local authorities who will bring any problems or issues to the attention of the Scottish Government.

10. Implementation and delivery plan

The Regulations are subject to the affirmative resolution procedure so will need to be approved by Parliament. Once the Regulations are in force dealers will be allowed, 2 months to comply with the new requirements.

11. Post-implementation review

As the proposals will be implemented through secondary legislation, there will be an opportunity to review, and if necessary, update the legislation. It is proposed to review the regulations 5 years after they come into force. This review will be undertaken by the Scottish Government.

12. Summary and recommendation

Based on the analysis outlined above and the analysis of the responses to the consultation the Scottish Government recommends implementing option 2.

13. Declaration and publication

I have read the Regulatory Impact Assessment and am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed

Date.....

Richard Lochhead
Cabinet Secretary for the Environment and Rural Affairs