

POLICY NOTE

THE PROHIBITED PROCEDURES ON PROTECTED ANIMALS (EXEMPTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2017

S.S.I. 2017/226

The above instrument is made in exercise of the powers conferred by sections 20(5)(b) and 51(2)(b) of the Animal Health and Welfare (Scotland) Act 2006. It is subject to affirmative procedure.

Background

Section 20 of the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) provides that it is an offence to carry out a prohibited procedure on a protected animal. A prohibited procedure is a procedure which involves interference with the sensitive tissues or bone structure of the animal. However section 20 does not apply: (a) in relation to a procedure which is carried out for the purpose of medical treatment of the animal; (b) in relation to a procedure which is carried out for a purpose, in such manner as, and in accordance with such conditions as, the Scottish Ministers may by regulations specify; or (c) in such circumstances as the Scottish Ministers may by regulations specify.

The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 (“the principal Regulations”) specify procedures which are not carried out for the purpose of medical treatment and which are procedures to which section 20 does not apply. Schedule 9 of the principal Regulations sets out exempt procedures in relation to dogs. Currently, docking of dogs is not an exempt procedure.

Policy Objectives

The objective of the proposed legislation is to amend the principal Regulations in order to exempt from the application of section 20 the docking of the type of dog known as spaniel (of any breed or combination of breeds of spaniel) and the type of dog known as hunt point retrieve (of any breed or combination of breeds of hunt point retrieve) of five days old or less, where the purpose of the procedure is animal welfare and where certain conditions are met. This is in order to help secure the welfare of working dogs of spaniel and hunt point retrieve breeds bred in Scotland.

Docking is defined as the amputation of one or more coccygeal vertebrae of the tail of an animal.

Surgical docking is defined as any method of docking that involves cutting or tearing tissue but not crushing tissue using a rubber ring or other device or using a hot iron – this is relevant to its use in sheep where the use of a rubber ring or hot iron by farmers or farm workers is permitted but surgical docking is only permitted by a veterinary surgeon. For the purposes of this exemption, as docking of dogs may only be performed by a veterinary surgeon, it is not necessary to specify the precise method.

According to research by the University of Glasgow published in 2014¹, spaniels and hunt point retrieve types involved in lawful shooting activities are at an increased risk of tail injury which can be reduced by removing the end third of their tails as puppies. The proposed exemption is restricted to these types of dogs as there is insufficient evidence of a significant reduction in risk of tail injury for other types of working dogs.

There are four conditions that must be met for the exemption to apply. Firstly, the procedure must be carried out by a veterinary surgeon. Under the Veterinary Surgeons Act 1966, medical treatment and minor surgery (not involving entry into a body cavity) to any animal may, in certain circumstances, be carried out by a veterinary nurse or student veterinary nurse. The instrument provides that the exemption from section 20 will not apply unless the procedure is carried out by a veterinary surgeon.

Secondly, not more than the end third in length of the tail may be removed. The reason for this condition is that the research referred to above found no benefit in terms of reducing risk of injury in shortening the tail by more than one third.

Thirdly, the veterinary surgeon who is to carry out the docking must be satisfied that there has been presented by the dog's owner (or another person the veterinary surgeon reasonably believes to be representing the owner) evidence showing that the dog is likely to be used in connection with the lawful shooting of animals². The reason for this condition is that the research referred to above suggested that docking at a young age decreases the risk of potentially more serious injuries incurred in participation in lawful shooting activities later in life. Evidence is therefore required that the dog is likely to be used in such activities. The instrument does not prescribe the type of evidence required. Guidance will be issued on the types of evidence that may suffice, following discussion with the Royal College of Veterinary Surgeons, which regulates the veterinary profession.

Fourthly, the procedure must be certified by the veterinary surgeon. The certificate must certify that the veterinary surgeon is satisfied that the evidence referred to above has been produced; certify that the dog is five days old or less according to the date of birth given by the owner (or other person reasonably believed to be representing the owner); and state a number of factual matters about the dog. This is to enable the identification of dogs which have been lawfully docked in accordance with the exemption.

Microchip identification is required for dogs over the age of eight weeks by the Microchipping of Dogs (Scotland) Regulations 2016. There is no requirement for a microchip to be implanted at the time of docking. However, veterinarians may choose to carry out both procedures at the same time.

Consultation

To comply with the requirements of section 20(6) of the 2006 Act, those considered to have an interest in the matter have been consulted.

¹ <http://veterinaryrecord.bmj.com/content/early/2014/03/27/vr.102041> and <http://veterinaryrecord.bmj.com/content/early/2014/03/27/vr.102042>

² Under section 16(1) of the 2006 Act, "animal" means a vertebrate other than man. Accordingly, birds are included.

The Scottish Government ran a full 12-week public consultation between 10 February and 3 May 2016. The proposals for consultation were limited to the possible exemption from the ban on tail docking for a limited number of working dogs – namely spaniels and hunt point retrievers – in line with the research findings by the University of Glasgow published in 2014. The consultation document was sent to a comprehensive range of animal welfare stakeholders and was uploaded to the Scottish Government Citizen Space portal.

The consultation received a total of 906 responses, 873 of which were from individuals. The 33 organisations that responded included a number were key stakeholders from the animal welfare sector (e.g. SSPCA, Dogs Trust, Onekind) and the field sports sector (e.g. Scottish Association for Country Sports, Scottish Gamekeepers Association, Scottish Countryside Alliance). The British Veterinary Association also submitted a response. Published responses and independent analysis of the consultation can be viewed on the Scottish Government website³.

Of the total responses 92% favoured permitting docking and 52% considered docking should be restricted to the end third of the tail. In excess of 70% of respondents were involved in field sports in some way and generally in favour of docking, with a minority of these suggesting the removal of more than one third of the tail.

Those responses from organisations showed the field sports sector supporting docking and the animal welfare sector supporting a continued ban. The field sports sector contended that docking the end third of a tail would decrease the number of tail injuries in later life; only momentary pain would be felt; relaxing the ban would support Scottish breeders; and standardising the UK approach would be of benefit. However, the animal welfare sector contended that docking can cause unnecessary, occasionally chronic, pain; the response rate to the research from the University of Glasgow was too low to provide reliable data; docking affects one of a dog's main communication tools; and that field sports, by their very nature, can put dogs at risk of injury.

In addition, the certification required when docking is to be carried out by a vet has been discussed with the Royal College of Veterinary Surgeons. There has also been correspondence with national shooting and conservation bodies on a potential requirement to microchip at the time of docking. This instrument does not place such a requirement; although the option to carry out both procedures at the same time remains at the discretion of the vet and breeder.

Scottish Government Conclusion

We note the concerns that were raised relating to animal welfare. However, we consider that the potential welfare benefits associated with decreasing the incidence of tail injuries to working dogs of spaniel and hunt point retrieve types justifies a relaxation of the ban, so that individual veterinary surgeons in Scotland can use their professional judgement about whether to dock these types of dog.

³ <https://consult.scotland.gov.uk/animal-welfare/proposal-to-permit-tail-docking/>

Impact Assessments

No equality impact has been undertaken as this instrument does not affect the needs of people with 'protected characteristic' (race, sex, disability, age, sexual orientation, gender reassignment and religion or belief). The aim of the policy is to promote dog welfare by reducing the risk of serious tail injury in later life to Spaniels and Hunt Point Retrievers by permitting the shortening of their tails as puppies where a vet has been presented with evidence that they are likely to be used as a working dog in connection with the lawful shooting of animals. It will affect all those in Scotland who breed or keep dogs of the above types for the purposes of work in connection with the lawful shooting of animals. The protected characteristics outlined will have no impact on the achievement of the desired outcomes.

Financial Effects

A Business and Regulatory Impact Assessment has been completed and is attached. The instrument will result in a modest additional cost to breeders of the above dogs - estimated at £31 per dog. This cost will be welcomed by breeders of the above dogs as it will enable them to compete more evenly with breeders in the other UK administrations who can legally dock the tails of the affected working breeds.

There will be minimal, if any, additional cost to enforcement agencies. The instrument relaxes a ban on a procedure already enforced and no additional sanctions are proposed.

Animal Health and Welfare Division
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