

POLICY NOTE

THE MICROCHIPPING OF DOGS (SCOTLAND) REGULATIONS 2016

SSI 2016/xxx

The above instrument was made 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⁽¹⁾ and all other powers enabling them to do so. The instrument is subject to affirmative procedure. The Scottish Government withdrew an earlier version of the instrument laid on 18 November 2015 as minor drafting changes which were intended to be made were inadvertently not included in the draft at the point of laying.

Policy Objectives

The objective of the proposed legislation is to help secure the welfare of dogs in Scotland.

Background

The Scottish Government has long recommended microchipping as best practice in the identification of dogs, including in our 'Code of Practice for the Welfare of Dogs', published in 2010. Where associated details are registered on a database and kept up-to-date we recognise the invaluable role microchipping can play in re-uniting lost or stolen dogs with their keepers. Compulsory microchipping has also been the subject of a long campaign by dog welfare charities such as the Dogs Trust and The Kennel Club, who view it as a crucial tool in the enforcement of animal welfare legislation.

Northern Ireland made microchipping mandatory for all dogs from 1st April 2012 and England and Wales more recently brought in legislation to do so from 6th April 2016. On 4th March 2015 Mr Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment, announced that Scotland will be taking forward mandatory microchipping in Scotland and will aim to do so in line with the timetables of England and Wales, i.e. by April 2016. Bringing in this legislation in Scotland would ensure consistency on dog identification within the UK.

Re-unification

In the attached Business and Regulatory Impact Assessment (BRIA) it is estimated that there are over 8000 stray dogs per year in Scotland. It is also estimated that while over 60% of dogs in the UK are microchipped, only around 10% of strays picked up are re-united with their owners through microchips. The Scottish Government considers that the number of dogs reunited with keepers could be significantly increased by ensuring that all dogs are microchipped and all keepers and dogs are registered on a database and details kept up to date. This is the prime purpose of the draft legislation presented.

The proposed legislation also requires standardised types of microchips, standardised information to be kept on the database, appropriate access to the data held; and systems for cross-referring between different microchip databases. These requirements will also aid re-

(1) 2006 asp 11.

unification by simplifying checking for microchips, making it easier to find details associated with any microchip, and ensuring that the appropriate persons can access those details

All these factors will act to ensure that the re-unification of lost or stolen dogs with their keepers proceeds in as speedy and efficient manner as possible, eliminating the need for dogs to spend time in strange kennels in many instances and minimising it in others. While of obvious benefit to the lost/stolen dog concerned, this also benefits those less fortunate dogs whose keepers have abandoned them or abused them, since dealing with simple strays quickly would free up much needed space in animal shelters for other dogs.

Wider dog welfare enforcement

The Scottish Government considers that there are also wider ranging potential benefits to dog welfare from mandatory microchipping, beyond improving re-unification. For example, it could help identify the keepers of dogs involved in animal welfare incidents or dog attacks, helping to encourage more responsible dog ownership. It could help to deter opportunistic dog theft by making it harder to sell such stolen dogs on. It could help to trace those breeding or dealing significant numbers of dogs illegally without a licence, or those breeding dogs irresponsibly, for example in the case of genetic defects that affect welfare.

Under the Data Protection Act 1998, which relates to information about living persons, personal data may only be obtained for one or more specified and lawful purposes, and cannot be used for any other purposes. One key objective of the instrument present is therefore to make clear that its purpose includes the use of retained data for the prevention or detection of crime relating to the welfare of dogs and it requires database operators to provide a person with enforcement functions relating to the welfare of dogs such retained data as is necessary for this purpose (8(1)(i)).

Investigations into organised thefts, for example of pedigree dogs or for bait for dog fighting, and investigations into illegal breeding or dealing may require evidence dating over a significant length of time. This instrument therefore also sets a minimum retention period of 30 years (8(1)(b)) to ensure access to data is available and consistent between database operators.

Consultation

To comply with the requirements of Section 26(5) of the Animal Health and Welfare (Scotland) Act 2006, those considered to have an interest in the matter have been consulted. Those consulted and by what method are outlined in detail in the attached Business and Regulator Impact Assessment; these are summarised here, along with the outcome of that consultation.

Formal consultation

The consultation “Promoting responsible dog ownership in Scotland: microchipping and other measures” ran from 27th December 2013 to 31st March 2014. It was publically available on the Scottish Government website and was issued directly to a wide range of organisations with a potential interest. There were 2,378 responses: 112 organisational responses, and 1,530 from individuals, most of which are assumed to be dog keepers.

The report of the analysis of the results was published on the 31st October 2014 (<http://www.gov.scot/Resource/0046/00462055.pdf>). There was significant support for the introduction of mandatory microchipping for all dogs (83%) with a number of potential benefits being highlighted – these are outlined in the attached BRIA. A number of potential challenges surrounding enforcement and data quality were also highlighted, which were addressed in subsequent discussions with key stakeholders.

Microchip database operators

Database operators provided general comment on the developing legislation. Key areas included:

Access to the data for re-uniting - Comments relating to persons requiring access were taken on board at 8(1)(g) and (h) and 11(2). These ensure that veterinary surgeons are, and any other persons, including those from animal shelters, may be by Scottish Ministers or Local Authorities, authorised to access certain data for the purpose of re-uniting dogs with keepers.

Data retention – The Data Protection Act 1998 requires that personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes. As noted previously, for the purposes of the prevention or detection of crime relating to the welfare of dogs a minimum retention time of 30 years is considered appropriate and necessary. However, the data may remain useful to database operators for longer than that for the verification of data that will ultimately be used for the purposes of re-unification. For example, some dogs that are recorded as dead are subsequently found to be alive, and sometimes a microchip number entered incorrectly can correspond to a deceased dog. It is only by maintaining old records that such data entry error can be flagged up automatically by the system and rectified. Bearing this in mind, no maximum retention period has been set, but database operators must publish their policy on data retention and destruction (8(1)(c)). This will be made clear to those registering details, along with the reasons why.

Additional requirement on database operators - They were also specifically consulted on proposals for additional requirements on database operators beyond those applied in England and Wales, namely those requiring them to:

- retain historical data (8(1)(b));
- provide a person with appropriate enforcement functions with data required for the prevention or detection of crime relating to the welfare of dogs (8(1)(i));
- have a system for ensuring that, so far as practicable, on recording a change to the name and address of the keeper, the former keeper of the dog is aware or made aware of the fact a change is taking place (8(1)(q));
- to hold information related to the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009 (as laid out in 7(f)).

The first three additional obligations were welcomed as being activities already undertaken by existing database operators that should also be undertaken by any new service suppliers entering the market, though the need for a generic approach to the third was highlighted in view of the varying systems already in place. The last addition will require a change to existing databases, and a 12-month lead in time was agreed upon.

Enforcement agencies

The Convention of Scottish Local Authorities(COSLA) and National Dog Warden Association Scotland provided general comment on the developing legislation and, in particular, advice on powers required for effective enforcement of the proposed Regulations. This included specifically requesting the inclusion of powers to issue fixed penalty notices; however, the Animal Health and Welfare (Scotland) Act 2006 does not provide for fixed penalty notices. It is intended to look at this further in due course as fixed penalty notices would appear to be a useful enforcement tool in an increasing number of areas.

Others

British Veterinary Association (BVA, implanters), the Microchip Trade Association (MTA, manufacturers), and Scottish SPCA (animal welfare charity); Avid (database operator), Defra and the Welsh Government –provided general comment on the developing legislation, including highlighting any technical errors in the draft text, providing advice on developments and policy rationale in other parts of Great Britain, and discussing factors regarding the rules for implanter training

Implanter training - In 2014 Lantra Awards was asked by Defra and the Welsh Government to develop a qualification for microchip implantation that meets EU requirements on pet travel and the obligation in England and Wales for mandatory microchipping of all dogs. The result was the Level 3 Award in Performing Microchip Implantation in Animals (QCF), which was subsequently accredited in Scotland by the Scottish Qualifications Authority in December 2014. For the purposes of these microchipping regulations, and given that many of the agencies that undertake microchipping are animal welfare charities, it is not intended that implanters be required to undertake the accredited Lantra Level 3 Award as this might impact unnecessarily and adversely on animal welfare charities with limited funds. However, it is intended to put in place, by administrative methods, a set of specific criteria that implantation courses are required to meet in order to be considered for approval by Scottish Ministers. The criteria will be based on the framework developed by Lantra, and the objective will be to ensure the competence of any persons trained in a pragmatic and cost-effective manner.

Impact Assessments

No equality impact has been undertaken as this instrument does not affect the needs of people with 'protected characteristics' (race, sex, disability, age, sexual orientation, gender reassignment and religion or belief). The aim of the policy is to improve dog welfare through more efficient re-uniting of stray dogs with their keepers and improved traceability of the keepers of dogs involved in dog welfare offences . It will affect all those in Scotland who keep a dog; those that implant microchips in dogs, and those that hold databases to store related information in. 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 a modest additional cost to an individual dog keeper (£10-30 for microchipping, with possible fees of £10-16 for registering and updating details on a

database); this is minimal relative to the lifetime cost of keeping a dog (estimated at £16,000 to £31,000). There will be minimal additional cost to enforcement agencies as enforcement will be targeted at irresponsible keepers whose dogs have been involved in other offences; these are likely to be mitigated by the savings in kennelling costs and the revenue from any fines issued by the Courts for offences under the Regulations.

Effect of the Regulations

These Regulations require the mandatory microchipping of dogs in Scotland and the recording of information about every dog and its keeper on a database complying with a specified set of conditions. They set a technical standard for the type of microchip that must be used for the purposes of microchipping a dog under these Regulations. They also set out rules about who may implant a microchip of any kind in a dog in Scotland.

- **Microchip implanters** - Regulation 3 sets out who may implant microchips of any kind. Any other person who implants a dog with a microchip commits an offence under regulation 13(4).
- **Microchip type** - Regulation 4 sets out the technical standard that microchips must meet if used for the purposes of the Regulations, as 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). It is an offence under regulation 13(4) for an implanter to hold out that a microchip is compliant with these standards where the implanter knows or could reasonably be expected to know that the microchip is not a compliant microchip.
- **Adverse reaction, migration or failure of a 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.
- **Obligation to microchip** - 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. If a person brings a dog into Scotland then they must have it microchipped within 30 days of bringing it to Scotland. The keeper of a dog must notify any change to the details recorded on the database to the database operator. If a keeper becomes aware of a failure of a microchip in their dog, the keeper must have the dog re-microchipped.
- **Details to be notified** - 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.
- **Conditions to be met by database operator** - Regulation 8 lists the conditions a database operator must comply with. Failure to comply with the conditions listed in regulation 8 is a criminal offence under regulation 13(1)(a).

- **Scottish Ministers' powers** - Regulation 9 gives the Scottish Ministers the power to require database operators to provide information to show they are 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 not complying with its regulation 8 obligations the Scottish Ministers may issue a notice requiring the operator to cease holding itself out compliant and may require the data to be passed to the Scottish Ministers or to another database operator who does comply.
- **Transfer to new keeper** - Regulation 10 requires that when a dog is transferred to a new keeper the new keeper must notify their details to the database. It also requires that before a dog may be transferred it must have been microchipped and the current keeper's details be correct.
- **Authorised person's powers** - Regulation 12 gives authorised persons the power to take possession of a dog to check if it has been microchipped, that the microchip is working; 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).
- **Offences and penalties** - Regulation 13 sets out the offences under these Regulations and the maximum fines payable.
- **Appeals** - Regulation 14 sets out the rules for appeals to a sheriff against various notices issued under the Regulations.