

BUSINESS AND REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL

The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021.

PURPOSE AND INTENDED EFFECT

Background

The Programme for Government 2017-18 committed the Scottish Government to bring forward legislation to strengthen and modernise the existing licensing regime covering dog breeders in Scotland and extend it to also cover cat and rabbit breeding, activities which are currently unregulated in Scotland. The PfG 2017-18 also committed the Scottish Government to bring forward legislation that would require animal sanctuaries and rehoming activities to be licensed and subject to periodic inspection.

In March 2018 Jeremy Balfour MSP consulted on proposals for a Member's Bill that sought to update existing licensing legislation (The Pet Animals Act 1951) applicable to pet shops and other establishments selling pets. Mr Balfour's proposal accorded with the Scottish Government's stated policy ambitions to drive forward improvements in animals welfare and introduce a modern, flexible licensing laws. It was therefore agreed in November 2018 that the Scottish Government would assume direct responsibility for delivering updated legislation for pet sellers in Scotland. The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 (hereinafter referred to as the Licensing Regulations) delivers on these commitments.

The 2019-20 PfG included a commitment to prevent the third party sale of puppies and kittens in the course of a business by anyone other than the breeder of such an animal and it is proposed that this commitment be delivered as part of the new, wider licensing controls on the selling of pets as set out in the Licensing Regulations. The rationale for ending third party sales is discussed below.

The current legislative framework covering the aforementioned activities in Scotland is as follows:

The Animal Health and Welfare (Scotland) Act 2006 (Part 2)

This is the principal piece of legislation covering animal welfare in Scotland.

The Animal Health and Welfare (Scotland) Act 2006 (the "2006 Act") makes it an offence to cause a protected animal unnecessary suffering or to fail to take reasonable steps to ensure the welfare of animals for which a person is responsible

(the duty of care), prohibits the giving of animals as prizes, raises the age at which young people can be sold animals, re-affirms the specific offence of abandonment and strengthens the provisions for offences involving animal fights. It increases the penalties for certain offences and allows an inspector or constable to take possession of an animal which is suffering or likely to suffer. It allows the courts to make orders to deprive a person of possession or ownership of an animal on conviction for certain offences; and to disqualify a person from participating in animal-related activities following conviction for certain offences.

The 2006 Act gives Scottish Ministers the power to make regulations which prohibit the carrying on, without the authority of a licence, of an activity which involves animals for which a person is responsible and is specified in regulations.

The proposals for any regulations under the 2006 Act must be consulted on before they are presented to Parliament for approval.

The Breeding of Dogs Act 1973

This Act requires any person operating a breeding or rearing establishment for dogs to be licensed. A breeding establishment is where a person undertakes the business of breeding dogs for sale. A person is treated as undertaking the business of breeding dogs for sale if that person keeps breeding bitches at premises which give birth to at least 5 litters of pups within a 12 month period. This Act requires premises to be inspected prior to a licence being granted to ensure that certain preconditions will and can be met. The Act allows for a fee to be charged by local authorities for consideration of any application and for any inspection undertaken in support of the application.

Breeding of Dogs Act 1991

This Act provides powers for local authorities, or a veterinary surgeon authorised by the local authority, to enter and inspect premises suspected of operating without a licence under the 1973 Act. It requires a warrant to be obtained prior to such action being taken. It makes it an offence for any person to obstruct an inspector from entering and undertaking any such inspection.

Breeding and Sale of Dogs (Welfare Act) 1999

This Act amended the Breeding of Dogs Act 1973. It introduced new statutory measures to be included as conditions in any licence issued in order to improve the welfare of breeding bitches, enhanced the provisions around cancellation of licences and disqualification of persons convicted for offences under the 1973 Act and introduced a definition for a breeding establishment for dogs. It further introduced a number of additional statutory measures relating to the sale of dogs by breeding and rearing establishments and pet shops.

The Pet Animals Act 1951

This Act currently regulates the sale of pet animals in Scotland. Under this Act local authorities are required to issue licences for pet shops and other establishments meeting the criteria with the aim of regulating the sale of animals. It is an offence under the Act to operate a pet shop without a licence. The 1951 Act allows local authorities to refuse a licence on application, but it cannot revoke one once granted. Under the Act local authorities can attach conditions to a licence and inspect the licensed premises at all reasonable times. Currently licences are granted for one year. The 1951 Act also makes provision for local authorities to charge a fee for the granting of a licence.

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

These Regulations (hereinafter referred to as “the 2009 Regulations”) require animal dealers (those that buy and keep young dogs and cats for onward sale) to be licenced. A licence is not required if a licence is held under the Breeding of Dogs Act 1973 or the Pet Animals Act 1951. The 2009 Regulations make provision for local authorities to charge a fee for consideration of any licence (or renewal) application. They set out a number of conditions that must be set out in any licence granted. They make provision for inspectors to enter and inspect premises and introduce appropriate offence provisions for contravening a licence, obstructing inspectors etc.

OBJECTIVE

The Licensing Regulations introduce in Scotland a modern, flexible and robust licensing regime that will deliver improvements in animal welfare and provide local authorities with considerably more flexibility with respect to licensing, inspection, charging and addressing non-compliance. They replace the licensing regimes currently found in the Breeding of Dogs Act 1973 and the Pet Animals Act 1951. The Licensing Regulations also revoke the 2009 Regulations.

The Licensing Regulations also introduce the requirement to hold a licence for activities that are currently unregulated, namely the operation of animal welfare establishments, engaging in animal rehoming activities and cat and rabbit breeding. The regulations also prevent operators who carry on the activity of selling animals as pets from selling puppies and kittens that they have not themselves bred, an activity that is frequently associated with unlicensed puppy farming and illegal importation for onward selling.

RATIONALE FOR GOVERNMENT INTERVENTION

Dog, cat and rabbit breeding.

Whilst most breeding establishments are run by individuals with the best interests of the animals at heart, there remain concerns that the welfare of breeding animals as well as their young can suffer if:

- More animals are kept than the premises have room for;
- Premises are unsanitary, unsafe and/or unsuitable for the animal in question;
- Females are bred too frequently;
- Offspring are separated from the mother at too young an age and have insufficient “socialisation” with humans.

Presently in Scotland the activities of breeding cats and rabbits are unregulated activities. In this day and age, particularly given the strong public support to see animal welfare protected, the Scottish Government considers this unacceptable. Certain breeds of cats command significant sums of money when sold, and whilst the majority of breeders genuinely care about the welfare of the animals they keep and breed there are other, so called, low welfare breeders for whom monetary gain is their only concern. There is therefore a need to bring much needed transparency and accountability to the activities of cat and rabbit breeding, and requiring breeders to be licensed and subject to periodic inspection will ensure that animal welfare can be protected.

Whilst licensing controls already exist for dog breeders, the legislation is outdated and no longer fit for purpose. The existing legislation is also inflexible in respect to licence duration and imposes only basic conditions to protect animal welfare.

Despite existing legislation, the ongoing work of enforcement agencies and animal welfare organisations, serious welfare concerns still exist, particularly in respect to puppy breeding. Demand for particular breeds continues to increase and with reputable licensed breeders unable to meet this demand there has been an increase in low-welfare breeders who care little for the welfare of the animals for which they are responsible with monetary gain being their only concern.

Pet sellers

Current legislation covering pet sales dates back to 1951. It is completely outdated and no longer fit for purpose. Most legal (licensed) sales of puppies and kittens today are direct from the breeder to the purchaser. A small number of high street independent pet shops continue to operate, and there are a few larger operators such as Pets at Home, but these days they tend to focus more on the supply of fish, certain reptiles, guinea pigs, rabbits, pet housing, equipment and pet food etc. As far as we know there are now no pet shops in Scotland that sell puppies or kittens.

Aside from the direct breeder to purchaser sales, much of the selling of puppies and kittens that does occur is done online through private web sites or more commonly online ad sites such as Gumtree. This move from the high street to online selling

necessitates a step change in how this activity is regulated. Unfortunately, due to the demand for puppies in particular there has been a concerning rise over the past few years in unlicensed puppy farming and dealing, with growing links to wider organised criminal activity due to the low risk of prosecution and potential for significant financial gain.

The case for ending third party sales

It is important to understand that the days of puppies and kittens being sold through 'bricks and mortar' pet shops have all but gone. In Scotland, for example, we are not aware of any licensed pet shops that sell puppies or kittens. A significant and growing number of puppies (and kittens) are now sold by third party sellers or breeders through ad sites like Gumtree or Pets4Homes. Most licensed and reputable breeders however will sell via their own business web site, word of mouth (recommendations), assured breeder schemes like those operated by the Scottish SPCA and the Kennel Club or specific breed clubs.

The sale of puppies through commercial third party dealers both sustains and is dependent upon the existence of "puppy farms", many of which are in Northern Ireland, Ireland or other Eastern European countries where puppies are bred for maximum profit and with minimal regard for animal welfare. Reputable breeders of puppies (and kittens) would never knowingly sell on to a third party as there is such a great demand for pups (and kittens) that established breeders have no need to engage with third party sellers. Reputable, licensed breeders are genuinely interested in the welfare of the animals they produce and will insist on meeting with prospective purchasers in order to ensure that they are suited to dog/cat ownership and understand the obligations (financial and welfare) that come with it.

Whilst some of the puppy farms from which third party dealers source puppies may be licensed (and therefore meet the "legal" requirements in their country), they tend to operate to the minimal acceptable welfare standards. Their business model is to produce the maximum number of pups at the lowest cost (which inevitably compromises welfare) and sell on to whomever for maximum profit. What happens to the pups after the sale is irrelevant to this type of breeder, their motivation is purely financial.

In circumstances such as those set out above, there are significant concerns about the welfare of pups (and increasingly kittens) being sold on to third party sellers. When the pups are sold on they may be going to someone not suitably experienced or even particularly interested in looking after them. In the eyes of the third party they are buying a product to sell on for profit. The pups may be subjected to long periods of isolation and, out of necessity, be subjected to long journeys at an age where they are not ready for such stress. These factors, cumulatively, can lead to both physical

health issues and habituation problems when the pup is finally purchased and taken to its new home.

In Scotland, anyone wishing to sell young cats or dogs under 84 days old is required to be licensed under the 2009 Regulations to do so if they do not hold a licence under the Pet Animals Act 1951 or the Breeding of Dogs Act 1991. Feedback from local authorities across Scotland suggests that no dealers are licensed under the 2009 Regulations. This would suggest that the regulations have not achieved their objective as we know third party selling goes on, but clearly it is being undertaken illegally.

It is worth noting that most of the pups sold these days through third parties do not originate from Scotland. A significant number of pups sold via third parties are being sourced from Ireland, Northern Ireland or are brought in from Eastern Europe. Puppies originating from these sources will be purchased at low cost from low welfare units then brought to Scotland to be sold for maximum profit by the third party to the unsuspecting public. Often, when things go wrong the purchaser of the puppy has no comeback as these mobile third party dealers often become uncontactable once the sale has taken place.

In the case of puppies coming in from Eastern Europe, a widely used tactic is to use falsified paperwork which claims that the puppy is older than it actually is - this is used to get it into the country, then once in Scotland it is sold on for significant profit (they are usually sold via UK ad sites even before the pups are brought in).

The scale and significance of this problem was the driver behind the formation of the Puppy Trade Working Group back in early 2018. This is a UK and RoI multi-agency group which includes amongst its membership key animal welfare organisations, Scottish Government, Defra, HMRC, Irish Revenue and COSLA. Its aim is to disrupt puppy farming and the associated trade. The ongoing work of this group, and the fact that its membership continues to grow, clearly indicates that this unscrupulous trade is becoming more of an issue and its links to wider criminal activity are a growing cause of concern.

In 2019, the Scottish SPCA seized 60 puppies at Cairnryan alone from dealers that had sourced puppies from puppy farms in Ireland. Further seizures continue to be made on the Scottish mainland. Inspectors from the Scottish SPCA launched 78 investigations into reports of puppy farming in October 2020 alone amid growing concerns about the trade. The Society's animal helpline had also fielded 523 calls from people with concerns about puppy farming as of end October 2020.

In recognition of the impact on both animal welfare and the unsuspecting public the Scottish SPCA has set up a dedicated website where any one with concerns about a suspect puppy farmer or dealer can obtain information and advice on how to report

those concerns. You can access the Scottish SPCA web page here:

<https://www.scottishspca.org/our-work/campaigns/say-no-to-puppy-dealers>

In 2018 a Scottish Government media campaign was delivered to raise awareness of the risks of buying puppies online and the tactics used by unscrupulous puppy breeders/dealers.

In 2019 a follow-up campaign was launched and sought to build on the positive impact of the 2018 campaign. It included updated information on the latest tactics adopted by unscrupulous puppy dealers and the dangers of sourcing a puppy through ad sites such as Gumtree (one of the key web sites used by puppy farmers and third party dealers). The campaigns main objective was to educate and raise awareness of this cruel trade. Both campaigns were widely supported by key stakeholder groups and were well received by the general public. A third campaign was run in late 2020 in partnership with the Scottish SPCA in order to ensure that the public remain alert to the dangers of buying from unlicensed puppy dealers. The Scottish Government also has its own dedicated web site devoted to educating the public about puppy farmers and dealers which can be found here:

[https://www.buyapuppysafely.org/.](https://www.buyapuppysafely.org/)

Whilst preventing third party sales of puppies as pets won't end puppy farming, it will be an important step in the right direction and will form part of wider efforts to dramatically reduce the scale of the problem and compel breeders to raise standards.

If the public know that in future they can only source a puppy or kitten from a licensed breeder or an animal welfare establishment (which will soon also be subject to licensing requirements) then it removes any ambiguity around third party sales. Licensed breeders that currently operate to a minimal acceptable standard will need to improve if they are to start dealing directly with the buying public. As animal welfare is such an emotive issue most of the public have little hesitation in reporting what they believe to be poor animal welfare or abuse. Breeders know this, this is why the low welfare and unlicensed breeders frequently deal exclusively with third party sellers.

By requiring prospective buyers of puppies and kittens to deal directly with the breeder at the licensed premises, buyers will be able to assess the environment in which the pups or kittens were born and see it interacting with its siblings and mother. Buyers will, at least to an extent, have some reassurance that should the pup or kitten display behavioural issues shortly after purchase or become ill then they can speak with the breeder and/or return it or possibly receive a contribution towards veterinary bills etc.

Animal Welfare Establishments and Rehoming Activities

Whilst most animal welfare establishments (sanctuaries and rehoming centres) and rehoming activities are run by persons who have the best interests of the animals at heart, there are concerns that:

- Such activities may be undertaken by individuals not suitably qualified and/or knowledgeable about the animals in their care.
- Animal welfare may be compromised if animals are being kept on unsuitable premises and/or in poor conditions.
- Some individuals involved in rehoming activities may in fact be operating as pet retailers, circumventing the need for them to be licensed as such under the Pet Animals Act 1951.
- There's a risk that some animals imported legally or illegally for rehoming could be carrying disease not normally found in the UK.

There is also an identified need to bring some much needed transparency and accountability to these activities. Making these activities subject to a licensing and inspection regime will deliver this and ensure that where animal welfare issues arise those responsible can be held accountable and/or be provided with advice and support to address any such issues.

CONSULTATION

• Within Government

Throughout the development of these regulations the Scottish Government has had regular engagement with Defra. Defra introduced new licensing provisions for dog breeding and pet sales in April 2018 and we have sought to mirror these where it made sense to do so (for consistency) whilst taking on board any lessons learned. Defra colleagues have also expressed interest in bring forward new licensing requirements in England for animal sanctuaries and rehoming activities and so have been keen to follow the development of the Scottish Government's proposals for the licensing of these particular activities. Our engagement with Defra continues.

In October 2020 the views of the Scottish Animal Welfare Commission were also sought on an advanced draft of the licensing regulations. It is expected that the SAWC will continue to input as required throughout 2021 on the development of sector specific guidance.

• Public Consultation

Dog, Cat and Rabbit breeders

The Scottish Government consulted on its proposals for dog, cat and rabbit breeders from 7th September 2018 to 30th November 2018. The consultation ran for 12-weeks.

The consultation paper can be found here: https://consult.gov.scot/animal-welfare/pet-breeding-activities/user_uploads/250237_sct0818243792-001_breeding_p2.pdf.

The consultation summary report can be found here: <https://consult.gov.scot/animal-welfare/pet-breeding-activities/results/summaryreportoflicensingdogcatrabbithbreedingactivitiesscotland.pdf>

Animal Sanctuaries and Rehoming Centres

The Scottish Government consulted on its proposals for the licensing of animal sanctuaries and animal rehoming activities from 11 December 2017 to 4 March 2018. The consultation ran for 12 weeks. The consultation paper can be found here: https://consult.gov.scot/animal-welfare/animal-sanctuaries-and-rehoming-activities/user_uploads/00528776.pdf

The consultation summary report can be found here: <https://consult.gov.scot/animal-welfare/animal-sanctuaries-and-rehoming-activities/results/summaryreportregistrationandlicensingofanimalsanctuariesandrehomeingactivitiesinscotland9may2018.pdf>.

Pet Sellers

As discussed above in the background section, Jeremy Balfour MSP undertook a consultation on pet shop licensing in Scotland in March 2018. Mr Balfour's consultation paper can be found here:

http://www.parliament.scot/S5MembersBills/20180323_Final_Consultation_-_Pet_Shop_Licensing.pdf

A summary report on Mr Balfour's consultation can be found here:

https://www.parliament.scot/S5MembersBills/20181024_Consultation_summary_Pet_Shops_FINAL.pdf.

On 23 November 2018 the Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, issued the following indication which confirmed that the Scottish Government would give full effect to Mr Balfour's pet shop proposals as part of wider licensing legislation to be introduced. That indication can be found here:

https://www.parliament.scot/S5MembersBills/Scottish_Government_indication_web_-_J_Balfour.pdf

- **Business**

All affected businesses and welfare organisations in Scotland had the opportunity to express their views during the Scottish Government's formal consultations in 2018. As regards the pet selling provisions, all businesses and welfare organisations had

the opportunity to respond to the consultation delivered by Mr Balfour in 2018. In addition, the Scottish Government has maintained regular engagement with a number of key animal welfare organisations and affected businesses or representative bodies throughout the development of the new licensing regulations. In October 2020, an advanced draft of the licensing regulations was shared with a number of key business and animal welfare stakeholders for consideration and comment. These stakeholders included organisations representing dog breeders, cat breeders and the aquatic and wider pet trade. Meetings were also held with a number of these stakeholders, including the Scottish SPCA, Kennel Club, Cats Protection and Pets at Home. Where practicable and appropriate to do so the draft regulations were amended to reflect stakeholder feedback.

Engagement with the business sector, Scottish Animal Welfare Commission and animal welfare organisations will continue throughout 2021 in order to inform the development of sector specific guidance prior to the coming into force of the new licensing requirements on 1 September 2021.

- **Local Authorities**

In 2018, all local authorities in Scotland had the opportunity to feed into the formal consultations undertaken by the Scottish Government and, on the pet selling proposals, the consultation undertaken by Mr Balfour. In October 2020, the Scottish Government shared an advanced draft of the licensing regulations with local authorities and the Animal Health and Welfare Strategy Group for consideration and comment. Engagement with the local authorities will continue into 2021 as the Scottish Government develops the guidance required to aid interpretation and enforcement of the new legislative requirements.

PROPOSED REGULATIONS

- *Options and benefits*

In developing its proposals, the Scottish Government considered two options: maintain the status quo (do nothing) or bring forward new legislation to replace existing licensing requirements and extend licensing to currently unregulated activities. Having consulted on our proposals and having considered the views expressed in response to Mr Balfour's consultation, the decision was taken to proceed with the latter option.

The Scottish Government proposals will deliver a robust, modern licensing regime that will bring currently unregulated activities – cat and rabbit breeding, rehoming activities and the operation of animal welfare establishments – under a regulatory framework. The new regulations will significantly enhance accountability and transparency and deliver a number of measures to help address the scourge of unlicensed breeding and selling of puppies and kittens. The regulations will see the

introduction of a licensing system that makes compliance with stringent animal welfare requirements a condition of holding a licence. It will ensure also that prospective purchasers of animals have access to a register of all licence holders so they can check if a person, premises or business is indeed licensed, and it would obligate licence holders to provide relevant information to prospective owners on how best to care for any animal they intend to assume ownership of.

The regulations will also provide local authorities with greater flexibility in terms of how licences are administered. It introduces flexibility to allow licenses to be granted for a period of up to 3 years, potentially delivering cost savings to licence holders that can demonstrate that they operate to high standards of animal welfare and have a good compliance record.

Sectors and groups affected

The new licensing regulations will affect a number of animal related activities. These are summarised briefly below.

Dog, cat and rabbit breeders - the regulations will require anyone who breeds more than 3 litters of puppies or kittens, or 6 litters of kits in any 12-month period to be licensed by the local authority and to comply with the terms of that licence. Dog breeding is already a licensable activity.

Pet sellers – the regulations will require anyone selling animals as pets, or selling animals with the expectation that they will be resold as pets, in the course of a business to be licensed by the local authority and to comply with the conditions of that licence. Pet sellers are already required to be licenced under the Pet Animals Act 1951, so the impact on this sector should be minimal. The new requirements all have the purpose of improving and securing the welfare of animals for which persons are responsible. They will increase accountability, deliver flexibility in terms of how licences are administered and prohibit third party sales of kittens and puppies by operators carrying on the licensable activity of selling animals as pets.

Animal welfare establishments and rehoming activities – the regulations will require anyone operating an animal welfare establishment in Scotland to be licensed by the local authority and to comply with the terms of that licence. The regulations will also require anyone involved in wider animal rehoming activities, e.g. bringing in animals from abroad to be rehomed as pets in Scotland, to be licensed and to comply with the terms of that licence, if they rehome 5 or more animals in any 12-month period.

Costs

Determining the cost of licensing for activities that are currently unregulated is challenging, as the fees to be charged will be set by the licensing authorities across Scotland and, if based on full cost recovery, may vary from application to application.

Additionally, inspections undertaken as part of a new licence application, may necessitate the involvement of a veterinary surgeon, but again any veterinary involvement will be determined by the responsible licensing authority on the basis of applications submitted.

It should be noted that licences may in future be issued for periods of up to 3 years depending on risk assessment, so the inspection costs below may be for a licence covering 1, 2 or 3 years depending on the circumstances.

Dog, cat and rabbit breeders

Currently in Scotland, the mean fee charged for consideration of an application for a dog breeding licence is £172.65. The lowest fee charged by a local authority is £23 and the highest £477. In circumstances where an application for a dog breeding licence warrants an inspection by a veterinary surgeon this cost must be met by the applicant. It is estimated that the hourly rate for a veterinarian would be in the region of £100 - £120. For the purposes of this impact assessment we have used the upper figure of £120. As cat and rabbit breeders are currently unregulated areas we have assumed that the cost of obtaining a breeders licence will be broadly similar to that for breeding dogs. This however is a matter for the individual local authorities to determine.

Based on the mean cost for consideration of an application, where a 1 hour veterinary inspection is required, we estimate that the cost of obtaining a breeders licence will be £292.65. If the veterinary inspection were to take two hours then the cost would rise to £412.65. At the lowest fee level (£23) the cost would reduce to £143 and £263 respectively and at the highest (£477) £597 and £717 respectively.

Where, however, the inspection is undertaken by a suitably qualified local authority inspector, the mean cost of a breeders licence will be £172.65.

Pet sellers –

Currently in Scotland, the mean fee charged for consideration of an application for a pet sellers licence is £158.76. The lowest fee charged by a local authority is £23 and the highest is £411. In circumstances where an application for a pet sellers licence warrants an inspection by a veterinary surgeon this cost must be met by the applicant. It is estimated that the hourly rate for a veterinarian would be in the region of £100 - £120. For the purposes of this impact assessment we have used the upper figure of £120.

Based on the mean cost for the consideration of an application, where a one hour veterinary inspection is required, we estimate that the cost of obtaining a sellers licence will be £278.76. If the veterinary inspection were to take two hours then the

cost would rise to £398.76. At the lowest fee level (£23) the cost would reduce to £143 and £263 respectively and at the highest (£411) £531 and £651 respectively.

Where, however, the inspection is undertaken by a suitably qualified local authority inspector, the mean cost of obtaining a pet sellers licence will be £158.76.

Animal Welfare Establishments and Rehoming activities –

As previously stated, these are unregulated areas and accordingly the costs presented here are estimates based on the fees charged by local authorities for consideration of horse riding establishments, as the fees charged for licensing of these facilities are more comparable than those for pet selling or breeding licences.

We anticipate that any application for a licence to operate an animal welfare establishment (an animal sanctuary or rehoming centre) will necessitate inspection by a veterinarian and this cost will need to be met by the applicant. A veterinary inspection is unlikely to be required as part of any application to undertake other animal rehoming activities, but this will be down to the local authority concerned to determine.

In estimating the cost of becoming licensed we have assumed that the cost of a veterinary inspection will be £120 per hour. Based on the information that was made available to us, we have calculated that the mean fee charged for consideration of an application for a riding establishment licence is currently £242.36. The lowest fee charged is £23 and the highest £670 (excluding vet fees).

Accordingly, based on the mean cost for the consideration of an application, where a one hour veterinary inspection is required, we estimate that the cost of becoming licenced will be £362.36. Should the veterinary inspection take two hours then the cost will increase to £482.36. At the lowest fee level (£23) the cost would be £143 and £263 respectively and at the highest (£670) £790 and £910 respectively.

For other rehoming activities, where either no inspection was undertaken or it is undertaken by a suitably qualified local authority inspector the mean cost would be £242.36.

Local Authorities

Given that the instrument extends the requirement to be licensed to currently unregulated activities there will be a requirement on local authorities to consider a higher number of applications and to either inspect, or arrange inspection of, premises associated with any application. There will also be a need for local authorities to undertake inspections as part of their role as the enforcement body. Licenses will periodically also need renewing. While there will clearly be a cost associated with this, the instrument makes provision for the local authority to charge a reasonable fee to cover the cost of delivering these services and accordingly the cost to the local authorities should be minimal.

SCOTTISH FIRMS IMPACT TEST

- Dog breeders

The true number of dog breeders in Scotland is unknown. Generally only breeders breeding 5 or more litters in any 12-month period are licensed by the local authority. Based on the figures we have to hand, there are some 125 licensed breeders in Scotland that meet the current criteria to be licensed. The new licensing regulations place the threshold for when a licence is required at 3 litters in any 12-month period. This may have the effect of bringing an unknown number of low-volume, currently unlicensed breeders under the licensing regime.

Selecting a threshold of 3 litters within 12 months is widely welcomed and has strong support from the majority of stakeholders, as there are significant concerns that due to the huge demand for puppies these days and the significant sums being charged, there is a risk that the welfare of both the breeding bitches and the puppies produced may be compromised in order to maximise financial gain.

Although the regulations will require some currently unlicensed breeders to become licensed in future, the Scottish Government considers that the overall impact should not be significant. We are also of the opinion that the wider requirements under the legislation that licence holders will need to comply with, are both necessary and proportionate given the significant sums being charged for many puppies. It should be noted that for existing licensed breeders that already operate to high welfare standards these regulations should (potentially) reduce the cost of being licensed, as local authorities will, in future, be able to issue licences for a period of up to 3 years. Current legislation only allows for a licence to be issued for 1 year.

- Cat and rabbit breeders

Cat and rabbit breeding are currently unregulated activities in Scotland and accordingly the number of breeders, both hobby and commercial is essentially unknown. The Governing Council of the Cat Fancy advise that some 273 cat breeders have registered a litter of kittens with them since 2016. While this does not provide an accurate figure for the number of actual cat breeders, it does at least show that there is significant cat breeding activity in Scotland. The actual number of individuals breeding cats and producing kittens for sale is anticipated to be much higher however, as it does not include so-called kitten farms or the back-yard breeders, that breed kittens for sale but have little or no interest in registering them.

The number of active rabbit breeders is even more difficult to determine and is, frankly, unknown, although a quick search on Pets4Homes, FreeAds and Gumtree etc shows that there is clearly a significant number of rabbits and kits being offered for sale at any one time.

The licensing regulations once they come into force will require anyone breeding more than 3 litters of kittens and 6 litters of kits in any 12-month period to be licensed by the local authority and to comply with the conditions of that licence. While this will be a significant change for the cat and rabbit breeding sector, the Scottish Government considers that it is long overdue, as there is currently no oversight of these sectors. The measures that we seek to introduce will not only bring some long overdue transparency and accountability to the cat and rabbit breeding sector, but will also provide confidence to prospective buyers of kittens and kits as they will now be able to check online to confirm that they are dealing with a licensed, high-welfare breeder. The new regulations will also ensure that in future anyone breeding cats and rabbits must achieve and operate to high standards of animal welfare, which, it must be said, many already do.

In summary, it is the view of the Scottish Government that the overall impact to the cat and rabbit breeding sectors should not be significant. Most cat and rabbit breeders are relatively low-volume, high-welfare breeders who genuinely love what they do and put the welfare of their cats and rabbits above everything else. Accordingly, aside from now having to hold a formal licence to breed, assuming they meet the threshold for when licensing becomes a requirement, the overall impact to those breeding cats and rabbits should be minimal as they will already be operating to high welfare standards. The Scottish Government recognises that cat and rabbit breeders will in future need to pay a fee to the local authority in order to become a licensed breeder. Whilst the fee charged is a matter for individual councils, we don't believe that the cost will be overly prohibitive, particularly when the regulations allow for local authorities to issue licences of up to 3 years duration. One key future benefit to breeders that become 'licensed breeders' is that they will be able to use the fact that they are licensed to differentiate themselves from the high-volume kitten farmers or the low-welfare, back-yard breeders whose only incentive is financial.

- *Pet sellers*

The Pet Animals Act 1951 currently regulates pet selling activity in Scotland. Under this Act anyone wishing to sell pets must be licensed by the local authority. The number of traditional pet shops in Scotland has diminished over the years, with a significant percentage of pet sales, particularly sales of puppies and kittens, being either directly from the breeder and/or taking place online. Based on the information we hold there are approximately 200 licensed pet shops in Scotland, although not all of these are in fact shops as we know them, some are pet sellers conducting business either from a domestic premises and selling online or are breeders who also sell animals that they have not themselves bred.

Given that pet selling is already an activity that requires sellers to be licensed, it is the view of the Scottish Government that the introduction of new licensing

regulations should have a minimal impact on this sector. We recognise that the new licensing regulations do obligate sellers to comply with more stringent licence conditions in terms of accountability, traceability, the provision of advice to prospective pet owners and animal welfare standards, but it is widely recognised that the licensing provisions introduced back in 1951 are no longer fit for purpose and do not provide the legislative framework needed to regulate the complex model of pet sales that exists today.

- *Animal Welfare Establishments (animal sanctuaries and rehoming centres)*

The operation of an animal sanctuary or animal rehoming centre is currently unregulated in Scotland and accordingly the true number of premises operating is unknown. There are a number of well-established and well-known charities that operate such facilities in Scotland, including:

- The Scottish SPCA
- The Dogs Trust
- Edinburgh Dog and Cat Home
- Cats Protection
- The Donkey Sanctuary
- Hesselhead Wildlife Rescue Centre

There are of course many others, but the true number and the extent of their activities is unknown. The figures that we do have indicate that there are 25 or so known animal rescue centres and/or active animal rehoming charities/individuals and approximately 4-5 animal sanctuaries. In reality, the number is likely to be higher. Regardless of the actual number, it is self-evident that at any given time there are likely to be a significant number of displaced and/or injured animals that need the care and protection offered by those that operate such facilities.

The Scottish Government fully recognises that the vast majority of animal sanctuaries and rehoming centres are run by charities and/or individuals who have a passion for animals and for animal welfare and only want the best for the animals that are in their care. We further recognise that the very existence of establishments, that can take these animals in and care for them should be regarded as being for the wider public good, particularly so given wider society's wish to protect animals from suffering and improve animal welfare.

Notwithstanding the above, it is the view of the Scottish Government that in this day and age it is no longer acceptable for animal sanctuaries and rehoming centres to continue to operate without there being some form of oversight of their activities. We are firmly of the view that the best way to achieve this is to require charities or individuals operating such facilities to be licensed by the relevant local authority and

subject to periodic inspections to ensure that the welfare needs of all the animals in their care are being met.

We consider that, in addition to assisting the promotion of high standards of welfare in such establishments, the regulation of registered charities would contribute to greater accountability and transparency of organisations that are raising funds from the general public and, in some cases, securing significant financial benefits as a result of their status. Well-run charities would have nothing to fear from this situation, but it would assist in identifying any organisation that was falling below accepted standards. The Scottish Government therefore takes the view that external regulation can make an important contribution in promoting accountability, transparency and public confidence.

We are also concerned about situations where individuals without appropriate training, experience and facilities take in and adopt displaced animals, generally keeping them in their own homes, in circumstances where they cannot be cared for properly. We do not intend for the new regulations to require every individual that takes in an occasional stray or injured animal to be subject to licensing, but where such an individual routinely takes in a significant number of injured or stray animals, then problems can quickly arise. Despite their good intentions or motivation we consider that anyone doing so should be licensed so that where problems do arise local authorities can intervene to provide advice and take appropriate action to prevent any problems from escalating.

In summary, the Scottish Government considers that any perceived negative impact arising from the need to be licensed is more than offset by the need to bring transparency, accountability and oversight to this currently unregulated sector and by the need to ensure that animal welfare is protected and remains the key priority for all those operating such establishments.

- *Rehoming activities*

In the past few years there has been a significant increase in the number of so-called animal rescuers/rehomers “rescuing” displaced dogs from countries outwith the UK and then either bringing them or arranging for them to be delivered to Scotland for rehoming. Many of these individuals or organisations allegedly operate as rescue charities, raising funds directly from the general public or obtaining “donations” from those with whom they eventually rehome an animal.

The Scottish Government is concerned that these individuals are operating without any regulatory oversight and without any accountability to wider society or to those with whom they rehome an animal. Without oversight, their activities potentially risk introducing disease into the UK and there are also risks that they may be rehoming animals, dogs in particular, that have behavioural issues that make them entirely unsuitable for certain households or rehoming more generally. Where animals are rehomed and found to be unsuitable there is currently no legislative framework that

obligates the individual responsible to accept the dog back. We are also concerned that many of the dogs being brought in for rehoming may in fact not be stray or displaced dogs at all, but may come from low-welfare breeding units. Additionally, without some form of regulatory intervention we cannot be assured that those involved in this activity are operating to standards that ensure the welfare of any animals in their temporary care.

In summary, the Scottish Government considers the current situation to be unacceptable. We take the view that any perceived negative impact arising from the need to be licensed is more than offset by the need to bring transparency, accountability and oversight to this currently unregulated sector and by the need to ensure that animal welfare is protected and remains the key priority for anyone engaged in this activity.

COMPETITION ASSESSMENT

Will the measure directly or indirectly limit the number or range of suppliers?

Dog, cat and rabbit breeders

It is the opinion of the Scottish Government that the licensing regulations should not significantly reduce the numbers of puppies, kittens or rabbits being bred for sale to the public. We anticipate that existing licensed dog breeders will continue business as normal, as they are already accustomed to operating under a licence. The fact that licences can now be issued for up to 3 years should also act as an incentive to existing licensed breeders, as this will reduce their operating costs. Given also that many of the low-volume, high welfare breeders that produce only 1 or 2 litters a year are outwith the scope of the regulations, we fully expect that they too will continue to breed as normal. It may be that some breeders who normally produce 3 or 4 litters in any 12-month period may decide that they do not wish to be licenced and cease to breed puppies. We consider however that this is unlikely given the relative low-cost of a breeding licence (often less than the price charged for one pup), particularly when licences can in future be granted for a period of 3 years so long as the breeder can demonstrate high welfare and compliance standards. More generally, as the requirement to be licensed and the conditions of licence applies to all breeders breeding 3 or more litters, no one breeder should be disadvantaged.

Pet sellers

It is the view of the Scottish Government that the new licensing requirements will not impact on the number of pet sellers in Scotland. Anyone or any business selling pets is already required to be licensed under the Pet Animals Act 1951 and we anticipate that existing sellers will continue to be licensed under the new licensing regulations. Pet sellers will in future need to comply with more stringent conditions in respect to recording information about the animals they buy and sell, providing information and advice to prospective purchasers of pets and ensuring the welfare of the animals in

their care, but the new regime also allows for licenses to be issued for up to 3 years which is a potential cost saving to the seller. Overall, we are satisfied that the new measures are long-overdue and necessary to adequately regulate what has become, more or less, an online activity.

One area of selling that will be impacted by the new licensing regulations however is that of dealing in young cats and dogs (third party dealing). The regulations will essentially bring this activity to an end. The rationale for ending this activity is explained in considerable detail above. It should be noted however that in Scotland there are, as far as we know, no third party dealers licensed under the 2009 Regulations to deal in young cats and dogs (most dealing is linked to unlicensed breeding and puppy farming), so the actual impact on the supply of young cats and dogs in Scotland as a consequence of ending licensed third-party dealing will be negligible.

Animal sanctuaries and rehoming centres/activities

It is the view of the Scottish Government that the new licensing regulations are unlikely to impact significantly on the operation of sanctuaries and rehoming centres and accordingly we do not envisage a reduction in the numbers of individuals/charities providing this service. The vast majority of these premises will already operate to a high standard of animal welfare, as their main goal is to care for animals and ensure its needs are met. We do not expect the cost of obtaining a licence to be overly prohibitive and in becoming licensed operator the public that fund these activities can be assured and confident that they are funding a legitimate and officially licensed animal welfare/rehoming charity.

Will the measure limit the ability of suppliers to compete?

It is the view of the Scottish Government that the introduction of new licensing regulations will not impact on the ability of suppliers to compete. The requirement to be licensed will apply equally to all those engaging in any of the activities falling within the scope of the regulations. Accordingly, no one licensed under the regulations should be disadvantaged.

Will the measure limit suppliers' incentives to compete vigorously?

It is the view of the Scottish Government that the introduction of the new licensing regulations will not limit suppliers ability to compete as all other suppliers will also require to be licensed and comply with the conditions of that licence, thus ensuring a level playing field. The only 'unfair' competition comes from the unlicensed, illegal trade and these regulations include a number of measures to tackle this.

Will the measure limit the choices and information available to consumers?

It is the view of the Scottish Government that the introduction of these new licensing regulations will not impact on or limit the choice available to consumers, in this case

buyers of pet animals or persons seeking to rehome an animal. The regulations include a significant number of new measures that will enhance the information available to buyers of pet animals, including provisions that will make it much easier for buyers to check that they are dealing with a breeder or pet seller that is licensed by a local authority. The regulations also obligate licence holders to ensure that buyers or those considering rehoming an animal receive relevant information about any animal they seek to buy or rehome and on how best to care for it in order to ensure its welfare needs are met.

TEST RUN OF BUSINESS FORMS

The introduction of the new licensing regulations will require local authorities to replace existing licence application forms used for dog breeders and pet shops so as to reflect the new licensing regimes for dog breeding and selling animals as pets. New forms will need to be introduced by local authorities for the activities of breeding cats and rabbits and operating animal welfare establishments. Local authorities and the Scottish Ministers will need to introduce forms for the activity of engaging in animal rehoming. The requirement to introduce new application forms should be a simple and low cost, in-house exercise for licensing authorities to undertake.

As all local authorities are already well versed in delivering statutory licensing services, the Scottish Government does not anticipate any issues in the roll-out and subsequent end-user use of application forms. Given however that the Scottish Government routinely engages with local authorities and stakeholder groups to whom the new regulations are particularly relevant we are confident that any issues identified in respect to licence application forms can be readily resolved.

LEGAL AID IMPACT TEST

The regulations require that anyone granted a licence by a local authority to undertake any of the licensable activities must comply with the conditions of that licence. The regulations also make it an offence to undertake any of the activities without a licence from the local authority.

Where a licence holder is found not to be complying with the conditions of a licence, or there has been a breach of the regulations, or it is found that information provided by a licence holder is false or misleading or it is necessary for the purposes of ensuring an animals welfare, a local authority can suspend, vary or revoke a licence.

Any licence holder aggrieved by any decision to revoke, suspend or vary a licence has the right of appeal under the regulations. The holder of a licence has 28 days from the day a notice is served to lodge an appeal to a sheriff.

While the regulations potentially create circumstance where a licence holder aggrieved by the decision of a local authority could consider applying for legal aid in order to contest it, we consider that the likelihood of this happening is extremely low. The vast majority of those that will apply to be licensed under these regulations are likely to fully understand their obligations both in terms of the need to comply with licence conditions and to ensuring the welfare of the animals in their care. Where local authorities do have cause to serve a notice, which is fairly infrequently as most issues are dealt with through dialogue and the provision of advice, experience has shown that licence holders usually act to address any breaches or concerns quickly, rather than allowing matters to escalate or deteriorate.

The Scottish Government considers therefore that the impact of these regulations on the legal aid budget will be negligible.

ENFORCEMENT, SANCTIONS AND MONITORING

Enforcement

The regulations will generally be enforced by the local authority. The Scottish Ministers will have a very limited role in relation to a particular class of operators engaging in the animal rehoming activities (i.e. considering licence applications from persons wishing to rehome animals in Scotland but who don't live or have premises in Scotland).

Inspectors appointed by the Scottish Ministers or local authorities 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 any requirement of the regulations or any licence condition is being, or has been, complied with and, in particular, may—

- (a) inspect the premises,
- (b) inspect and copy any records (in whatever form they are held) kept under these Regulations or any licence condition, or remove such records to enable them to be copied,
- (c) 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,
- (d) 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),
- (e) 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,
- (f) examine, or require the examination of, any animal kept on the premises,

- (g) exercise the power in regulation 6, and
- (h) take on to the premises such persons to give the inspector such assistance and such equipment as the inspector considers necessary.

Domestic premises may be entered and inspected (any animal or anything found there may be inspected) on authority a warrant issued by a sheriff or a justice of the peace.

Sanctions

A person who breaches a licence condition (where this is an offence) is liable, on summary conviction only, to a fine not exceeding level 5 (currently £5000) on the standard scale.

A person who commits any other offence under the regulations is liable to a fine not exceeding £40,000 or to imprisonment for a term not exceeding 12 months (or both). Provision for these maximum penalties is possible because of amendments to the primary legislation under which the licensing regulations will be made, brought about by the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.

The Scottish Government's ongoing work with the Puppy Trade Working Group clearly shows that there is a growing number of individuals involved in unlicensed puppy farming and/or dealing. Much of this unlicensed activity is linked to wider organised crime which considers puppy farming as a lucrative but low-risk activity.

Many of the pups sold by these individuals command significant sums of money, with some particular breeds (pugs, French bulldogs etc) going for anywhere between £2000 - £4000. These pups are more often than not advertised online on sites like Gumtree. When a pup is sold the seller will often agree to meet the unsuspecting buyer in an mutually agreed location, or will deliver the pup to the buyer's house where the cash sale will take place. Increasingly, many of these pups are delivered unvaccinated, in poor health and come with either no or fake paperwork. Once the cash has changed hands the seller usually becomes uncontactable, with the buyer frequently left with a sick and/or underage pup which all too often dies within a week or two or requires expensive veterinary care at the buyers expense.

Given the sums being made by unlicensed operators we consider the penalties outlined above to be entirely proportionate and necessary so as to act as a robust deterrent against such activity.

Monitoring

As the enforcing body, local authorities and the Scottish Ministers will ultimately have responsibility for monitoring compliance with the new licensing regulations. Local authorities and the Scottish Ministers have considerable experience in the delivery

and enforcement of statutory licensing and the Scottish Government is confident that local authorities will have robust systems for monitoring compliance and addressing non-compliance with the new regulations.

IMPLEMENTATION AND DELIVERY PLAN

Implementation

The legislation required to introduce these changes in Scotland will come into force on 1 September 2021.

Delivery Plan

The new licensing requirements introduced by these regulations will be delivered and enforced by local authorities who are already well versed in the delivery of statutory licensing services. Accordingly, no specific delivery plan is considered necessary. It will be for each authority to determine how best to deliver the new licensing requirements in its geographical area.

The regulations include transitional provisions that allow for any licences already granted by a local authority for dog breeding and pet selling to remain in force until their date of expiry.

The Scottish Government will bring forward guidance to support local authorities in the delivery of this new licensing legislation. In developing this we will seek to engage with local authorities to ensure that it covers all aspects of the legislation on which councils need guidance.

In terms of communicating the new licensing requirements to the sectors that will need to comply, we will work with local authorities and our stakeholder network to raise awareness of the new licensing requirements. With input from relevant stakeholders we will prepare and publish sector specific guidance to assist those that will need to be licensed under the regulations to understand their statutory obligations as a licence holder.

POST-IMPLEMENTATION REVIEW

Given that the Scottish Government has ongoing engagement with key stakeholders and local authorities on wider animal welfare work, it is likely that we will receive regular feedback on any aspects of the regulations that are causing difficulties, not achieving their policy objectives or are proving difficult to enforce. Any such feedback will be reviewed by the Scottish Government and where issues are identified we will seek to address them where practicable and appropriate.

SUMMARY AND RECOMMENDATIONS

Having considered all relevant factors, including, in particular, the enhanced animal welfare protections that will arise from the introduction of these regulations we recommend that new licensing regulations covering the activities outlined above be introduced in Scotland. We recognise that this will require individuals and organisations that engage in currently unlicensed activities to be licensed in future and that there is a cost associated with becoming licensed. It is the view of the

Scottish Government however that individuals and organisations that have responsibility for animals need to do so in a manner that is transparent and that we have a system which makes individuals and organisations accountable when things go wrong and animal welfare is compromised. The vast majority of the public today demand to see animal welfare protected and that where animals suffer those responsible be held accountable. The Scottish Government agrees that animal welfare must be protected and we consider the new licensing regulations to be a significant step forward in this respect.

DECLARATION AND PUBLICATION

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Mairi Gougeon

Date: 18th December 2020

Minister's name: Mairi Gougeon MSP

Minister's title: Minister for Rural Affairs and the Natural Environment

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