

EXPLANATORY MEMORANDUM TO
THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS)
(ENGLAND) (AMENDMENT) REGULATIONS 2019

2019 No. 1093

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the 2018 Regulations”) a licence is required in order to sell pets in the course of business in England. This instrument amends the conditions which attach to such a licence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England only.
- 3.3 In the view of the Department, for the purposes of Standing Order No. 83P, the subject-matter of this entire instrument would be within the devolved legislative competences of the Northern Ireland Assembly, the Scottish Parliament or the National Assembly for Wales should they include equivalent provisions in Acts in their respective legislatures.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley, has made the following statement regarding Human Rights:

“In my view the provisions of the Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The 2018 Regulations repealed, insofar as they applied in England, five Acts of Parliament which had previously governed licensable activities involving companion

animals: the Pet Animals Act 1951; the Animal Boarding Establishments Act 1963; the Riding Establishments Act 1964; the Breeding of Dogs Act 1973; and the Performing Animals (Regulations) Act 1925. They replaced them with an updated licensing system for England covering: the selling animals as pets; providing for or arranging for the provision of cats or dogs; hiring out horses; dog breeding; and keeping or training animals for exhibition.

- 6.2 This instrument amends Schedule 3 to the Regulations, which contains the conditions that attach to a licence to sell animals as pets.

7. Policy background

What is being done and why?

- 7.1 Currently, puppies and kittens can either be purchased from a third party seller, directly from a breeder, or they can be sourced from a rescue and rehoming organisation. A commercial third party seller is a licensed pet seller, but not a licenced breeder, and will hold a licence to sell pet animals under the 2018 Regulations. It is an offence to sell pets commercially without a licence.
- 7.2 The 2018 Regulations established a modern licensing system, up to date with the current practices and modern animal welfare standards. The 2018 Regulations received widespread support from the public and stakeholders who welcomed the introduction of minimum welfare standards that all businesses undertaking animal related activities would have to meet.
- 7.3 Schedule 3 of the 2018 Regulation addressed specific conditions for those selling animals as pets. It included new provisions that had not featured in the previous Pet Animals Act 1951. The new provisions included a prohibition on the sale of puppies and kittens below the age of 8 weeks; a requirement for a puppy to be shown with its mother by the breeder prior to sale; and for any purchase of a dog to be completed in the presence of the purchaser at the premises where the dog had been kept for sale by the licence holder.
- 7.4 This instrument will further enhance the protections in the 2018 Regulations by prohibiting the sale of puppies and kittens aged under 6 months, which were not bred by the licence holder. The decision to amend the 2018 Regulations follows a Call for Evidence and a public consultation on this topic, which brought to light stakeholder concern about the welfare of puppies and kittens kept and sold by third parties, and widespread public support for prohibiting such sales.
- 7.5 The Call for Evidence was launched in response to an e-petition, known as “Lucy’s Law”, which called for a ban on the sale of puppies by pet shops and third parties. The e-petition received 148,248 signatures.
- 7.6 Evidence suggests that commercial third party sales are linked to a range of poor welfare practices including the early separation of puppies and kittens from their mothers and littermates, which in turn prevents young animals from expressing natural behaviours and disrupts appropriate socialisation; all of which influences the animal’s long term behaviour. Third party sales also typically require travel from place of birth to place of sale which can induce stress and expose puppies and kittens to an increased risk of disease. There is also an association between third party sales and impulse purchases of puppies and kittens. Such sales are believed to facilitate illegal and low-welfare breeders.

- 7.7 This instrument will address these concerns by prohibiting those who hold a licence to sell pets from selling puppies and kittens aged under 6 months, that they have not bred themselves.
- 7.8 In England there are approximately 63 pet shop licence holders actively selling puppies and 129 licence holders selling kittens. This instrument will result in these sellers either having to breed the puppies or kittens they advertise for sale or ceasing this activity. Consequently the public will be required to acquire new pet puppies and kittens directly from a breeder or a rescue and rehoming organisation. This will further align the 2018 Regulations with the advice of leading animal welfare organisations.
- 7.9 Amendments to Schedule 3 also remove the prohibition on the purchase by licence holders of the animals specified in paragraph 5(1)(d) as it is not considered necessary to regulate both purchase and sale.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 Not applicable to this instrument.

10. Consultation outcome

- 10.1 A Call for Evidence was published in February 2018 inviting evidence on the potential impact of a ban on commercial third party sales of puppies and kittens. The Call for Evidence received just over 300 responses, around 70% of which provided arguments in favour of a ban. Respondents included stakeholders representing welfare groups such as the RSPCA, Battersea Dogs and Cats Home, the Dogs Trust and Cats Protection; representatives of industry; representatives of veterinary associations; and representatives of local authorities. They cited a range of welfare concerns associated with third party sales, including improper socialisation, increased risk of disease and increased risk of long-term behavioural problems.
- 10.2 Following the Call for Evidence, a full public consultation was published which ran for 4 weeks from 22 August 2018 to 19 September 2018. A total of 6,854 responses were received, mostly from individual members of the public, as well as animal welfare organisations, veterinary groups, breeders, sellers and other interested parties.
- 10.3 The overwhelming majority of respondents supported a ban on commercial third party sales of puppies and kittens. On the specific closed questions asked, 96% of respondents agreed with a ban on third party sales of puppies and kittens; 97% believed that a ban would have positive impacts on the welfare of animals; and 90% agreed with the idea of licensing rescue/rehoming centres under the 2018 Regulations.
- 10.4 The consultation asked a number of open questions which allowed respondents to explain their viewpoint. Arguments put forward in favour of a ban included the view that pet shops were unsuitable environments for young animals to be raised in; concern that third party sales supported the practices of low-welfare breeders; and health and welfare issues for puppies and kittens bought and sold in this way. Arguments put forward against the ban included a concern that a ban would not

address the problems associated with unscrupulous breeders, and that it would be difficult to enforce.

- 10.5 A full summary of the responses to the public consultation, along with the Government's formal response, has been published on the Government website at: <https://www.gov.uk/government/consultations/banning-commercial-third-party-sales-of-puppies-and-kittens-in-england>

11. Guidance

- 11.1 The 2018 Regulations are supported by statutory guidance for local authority inspectors. The guidance for the activity of selling pets has been updated and can be accessed here: <https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. Businesses which currently sell puppies or kittens that they have not bred themselves will no longer be able to do so, however, we believe the amendment will only affect a small number of businesses and that this impact is reasonable given the welfare benefits.
- 12.2 There is no, or no significant, impact on the public sector. Under the 2018 Regulations, local authorities can charge fees to cover the cost of reasonable enforcement, including in relation to unlicensed operators. Therefore there will be no new unfunded burdens on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the total cost of the proposal falls below the £5 million de minimis requirement for Impact Assessments. This amendment will only affect a small number of businesses in England.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. This is because the purpose of the instrument is to eliminate the sale of puppies and kittens, aged under six months, by pet shops and dealers. However, it is assumed that small businesses that breed puppies and kittens will benefit from this instrument as they will be required to sell directly to the public, and therefore will be able to charge a higher purchase price.
- 13.3 The final decision on what action to take to assist small businesses was reached on the basis of a Regulatory Triage Assessment which estimated that the annual benefit to breeders would significantly minimise the net cost to business.

14. Monitoring & review

- 14.1 Under the 2018 Regulations, local authorities are required to submit annual records to the Department of the number of licences issued and the average fees they have charged for licences they have granted or renewed. This information will enable monitoring of this instrument on an annual basis.

14.2 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, is subject to an internal review 5 years from the commencement of the original regulations, in April 2023, and this instrument may be amended accordingly.

15. Contact

15.1 Roop Bhinder at Defra (roop.bhinder@defra.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Marc Casale, Deputy Director for Animal Welfare at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Rutley MP, Parliamentary Under-Secretary of State for Food and Animal Welfare at Defra can confirm that this Explanatory Memorandum meets the required standard.