

SL(5)778 – The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021

Background and Purpose

These Regulations provide for the licensing of persons involved in Wales in selling animals as pets and make it an offence for commercial third parties to sell puppies and kittens under 6 months.

These Regulations specify activities for the purposes of section 13(1) of the Animal Welfare Act 2006 (“the 2006 Act”) and provides for local authorities to be the licensing authorities. As such, subject to qualifying criteria, any person wishing to carry on any of these activities in Wales must obtain a licence from the local authority under these Regulations. These requirements replace the requirements, in Wales, to obtain a licence under the Pet Animals Act 1951.

A person who carries on any of these activities in Wales without a licence will commit an offence under section 13(6) of the 2006 Act and is liable to imprisonment for a term of up to six months, a fine or both. Under section 30 of the 2006 Act, local authorities may prosecute for any offence under the Act.

The Regulations set out how a person may apply to the local authority for a licence and sets out matters in respect of which a local authority must be satisfied when considering the grant or renewal of a licence. The Regulations provide for a local authority to charge fees to cover the costs it incurs in performing this function, considering a licence holder’s compliance with the Regulations, enforcement and administration. The Regulations specify that a local authority must attach certain licence conditions to each licence granted or renewed. Further, a local authority must appoint an inspector when it considers it appropriate, for the purpose of ensuring that the licence conditions are being complied with. The Regulations require a local authority to have regard to guidance issued by the Welsh Ministers in carrying out their functions, and provides powers for inspectors to take samples from animals.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

Regulation 12 of these Regulations allows local authorities to charge fees to cover the costs incurred in performing their licensing functions.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Concerns have been raised regarding the consultation undertaken in relation to the Regulations.

The Head of Public Affairs at The Kennel Club wrote to the Committee on 9 March 2021 to share the Club's concerns about the potential unintended consequences of the Regulations. Their [letter](#) describes the Club's concerns:

"...The Welsh Government did not consult on the introduction of a de facto new licensing threshold for dog breeders in either the 2019 or 2020 consultations, nor has this been taken into account in the legislation's accompanying explanatory memorandum or accompanying regulatory impact assessment. As such, we are highly concerned that the Regulations' implications – in terms of the general puppy buying public, breeders and licensing authorities – will not have been duly considered..."

We considered this letter in our meeting on 15 March 2021. Following the meeting, we wrote to the Minister enclosing a copy of the Club's letter, to draw the Minister's attention to it at the earliest opportunity, ahead of the debate on the Regulations on 23rd March.

Welsh Government response

Merit Scrutiny point 2: Response requested to the following from the Kennel Club;

"...The Welsh Government did not consult on the introduction of a de facto new licensing threshold for dog breeders in either the 2019 or 2020 consultations, nor has this been taken into account in the legislation's accompanying explanatory memorandum or accompanying regulatory impact assessment. As such, we are highly concerned that the Regulations' implications – in terms of the general puppy buying public, breeders and licensing authorities – will not have been duly considered..."



It is not accepted that these regulations introduce a 'de facto new licensing threshold for dog breeders'. These regulations do not affect breeders they relate to the activity of selling animals as pets in the course of a business.

These regulations are of almost identical effect to the Animal Welfare (Licencing of Activities Involving Animals) (England) Regulations 2018 (as amended by the Animal Welfare (Licencing of Activities Involving Animals) (England) (Amendment) Regulations 2019). The only distinction relates to a category of breeder who breeds more than three litters from two bitches in a 12 month period. This category arises as the 2018 regulations at Schedule 1, Part 5, Para 8 excludes breeders from the licence based on the number of litters only whereas the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014, used for exclusion in these regulations, also requires ownership of 3 or more breeding bitches.

Whether a small scale breeder will be required to hold a licence under these regulations will be determined based on the 'in the course of a business' test and in accordance with statutory guidance to Local Authorities which is yet to be drafted and will be the subject of consultation with stakeholders.

It is correct that it is anticipated that some small scale breeders who were not required to hold a licence previously will be required to do so under these regulations much as a small breeder in England would be required to do so. It is not the intention that all small breeders will be required to do so but given the large sums that can be involved even when the number of puppies is small there is an attendant risk that the financial incentives will overcome welfare concerns. These regulations and the guidance will reduce that risk as far as is possible

It is noted that the Kennel Club in their letter to the committee raised concerns about overzealous Local Authorities. This will be accounted for when guidance is produced and as part of the Local Authority training project that will be carried out over the next three years and is designed to ensure consistency in the application of these, as well as the Breeding of Dogs regulations.

The introductions to both the consultations in 2019 and 2020 and the Children In Wales consultation referred to "*optimising welfare standards across the whole industry...*", "*A key aspect of this legislation is to promote responsible breeding and ensure puppies are bred in suitable conditions*" and "*the proposals being considered will entail changing licensing arrangements for the sale of pet animals, including puppies...*". It was not explicit that wider changes were contemplated but it was apparent that this was being considered.

In response to all consultations there were a large number of responses suggesting that the licencing of pet sales more widely than just in respect of third parties was desirable. It was apparent from the responses (as published) that there was wide support for such a step. It would have been remiss of the Welsh Ministers not to react to this.

In respect of the Explanatory Memorandum this makes it clear the changes to licencing arrangements include a ban on commercial third party sales and that there will be alignment with the English 2018 regulations. There is a reference quoted with approval that "*Dogs should only be available from licensed, regulated breeders or approved rehoming organisations.*" It is suggested that "*in Wales, a ban is seen as only one of the steps necessary*



*to improve the welfare of dogs and cats at breeding premises. The combination of new regulations on pet sales and a three year, Welsh Government funded, project tackling barriers to enforcement; enhanced training; better guidance; and improved use of resources within local authorities for improvements to the enforcement and delivery of the existing *The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014* will result in lasting improvements to the welfare standards of puppies bred in Wales.”* It is confirmed that it is not our intent to include licenced breeders in the new regime.

The Regulatory Impact Assessment draws no distinction between licenced and unlicenced breeders. The table at para 7.18 is based on all breeders. As a result the impact on all breeders who also make sales, both licenced and unlicenced, was considered.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2021

