



Law Society
of Scotland

Consultation Response

Licensing of Dog, Cat and Rabbit Breeding Activities in Scotland

30 November 2018



Introduction

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We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Licensing Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: Licensing of Dog, Cat and Rabbit Breeding Activities in Scotland (Consultation). The sub-committee has the following comments to put forward for consideration.

General

It is timely to review the law¹ on the licensing of dogs, cats and rabbit breeding activities as this has not kept pace with recent trends. We support the proposed updating of the relevant legislation.

Research identified by responsible welfare organisations such as the SSPCA and OneKind has indicated that many unlicensed dog breeders producing five or more litters in a twelve-month period outside of the current regulatory threshold² is detrimental to good animal welfare. Given the size of many litters and the sums of money that the sale of young animals can command particularly, where they are "fashionable", so-called "designer" or "hybrid" breed dogs indicates that profit is coming before animal welfare considerations. Animal breeding should no longer be regulated under legislation that was passed in what was a very different welfare and economic environment. We have four general observations to make:

1. England

The UK Government introduced The Animal Welfare (Licensing of Activities Involving Animals) (England)

¹ The relevant legislation is referred to in the Consultation and comprises the Breeding of Dogs Act 1973¹ (1973 Act) and the Breeding and Sale of Dogs (Welfare) Act 1999¹ (1999 Act).

² Page 5 of the Consultation

Regulations 2018³ (“the 2018 Regulations”) which came into effect on 1 October 2018. These modernised the law in England and dealt with abuses arising in this sector. The 2018 Regulations⁴ state that they:

“provide for the licensing of persons involved in England in selling animals as pets, providing or arranging for the provision of boarding for cats or dogs, hiring out horses, breeding dogs”

The Institute of Licensing has indicated in relation to the implementation of the 2018 Regulations that:

“The licensing systems for businesses that work with animals have not been reformed for almost fifty years. The changes in place [from the 2018 Regulations] ... simplify these into one system for local authorities, help consumers to make better informed decisions and will further improve animal welfare”.

Scotland should consider achieving similar objectives for Scotland.

2. Rabbits

The consideration whether the breeding and sale of rabbits as companion animals should now be regulated in the United Kingdom is important. The dealing of young rabbits is currently wholly unregulated. This is not desirable.

Rabbits are perceived to be “cute” but in fact they require experienced owners to provide them a decent life. Given that the sale is often aimed at providing a companion for a child rather than the responsible purchaser, the sale of rabbits is open to these animals being sold into households where their “cuteness” will be given an inappropriate focus to the detriment of their actual welfare needs.

The sale of rabbits command significant sums of money. They are in danger too of being bred by irresponsible breeders and sold to owners who have little idea of what is involved in owning a rabbit such as its accommodation, owner lifestyle or animal welfare needs.

Any licensing system needs to address these aspects.

3. Internet sales

³ <https://www.legislation.gov.uk/ukdsi/2018/9780111165485>

⁴ <https://www.legislation.gov.uk/uksi/2018/486/note/made>

We welcome the scope of the consultation. Additionally, consideration is needed into whether and to what extent the sale of cats, dogs and rabbits via online sites needs a specific legal framework. That would combat some of the worst forms of abuse where sick or welfare compromised animals are sold to unsuspecting and often inexperienced buyers.

The recent report of 2 September 2018 from the Kennel Club indicated one in three puppies bought online becomes sick or will die in their first year.⁵ We would doubt if the welfare standards for kittens or young rabbits are any better.

Reliance by the purchaser on their rights under the Consumer Rights Act 2015 is not likely to achieve the broader aims of animal protection. Moreover, many of these sales have a cross-border element with England and Wales, Northern Ireland and Eire that should not be overlooked.

The Kennel Club⁶ notes online sales of puppies fit with the “instant gratification culture” to which internet sales pander. Common welfare failings and abuses include-

- ability to buy a puppy from a breeder without any requirement to physically view the puppy and the puppy’s parents before purchase
- failure of the buyer to view the breeding environment of the puppy
- failure by the breeder to provide adequate veterinary records to support the puppy’s health and its parents’ and relevant ancestry’s health
- buyers being unaware of the emotional, physical and financial demands that dogs can generate leading to the abandonment of the puppy;
- door to door delivery of the purchased puppy.

This Consultation provides an opportunity to consider tackling online sales by breeders. A robust system of national and/or local licensing conditions backed with relevant record keeping requirements could go a considerable way to tackling these and other abuses.

4. Third Party Commercial Sales

There is currently a divide between those who breed puppies and kittens and those who sell them. This has given rise to concern over so-called “Third Party Commercial Sales”. A buyer can acquire a puppy or a kitten without any contact with the breeder. Sales via the internet fuel this problem although not all third-party sales are undertaken online. Many welfare issues arise from

⁵ <https://www.thekennelclub.org.uk/press-releases/2018/september/puppy-awareness-week-2018/>). Puppy Welfare Crisis: One in three pups bought online gets sick or dies in first year 2 September 2018

⁶ <https://www.thekennelclub.org.uk/press-releases/2018/september/puppy-awareness-week-2018/>). Puppy Welfare Crisis: One in three pups bought online gets sick or dies in first year 2 September 2018

the buyers' ability to acquire puppies and kittens (and we believe young rabbits) where contact with the breeder is minimal or non-existent.

The Consultation does not set out how to prohibit such sales. Its focus is on breeding; it appears implicit that breeding will remain a distinct activity from sale, whether sales are via a pet shop or other dealer in puppies, kittens and young rabbits.

There is a view that only licensed breeders should be allowed to sell animals. "Lucy's Law" in England and Wales has resulted in a proposed ban by the Government for pet shops and dealers in England from selling puppies and kittens.⁷ Commercial sale of puppies or kittens will only be permitted by purchase from a licensed breeder or an animal rehoming centre.

If, as we indicated above, the Scottish legislation does not mirror the 2018 Regulations, we have concerns that differences in practice between the two countries would arise providing a loophole to encourage unscrupulous third-party sellers to base their operations in Scotland. This could give further impetus to intensive dog breeding activity in Scotland.

As well as addressing the questions below, we have suggested a range of additional conditions at the conclusion of the Consultation that might be considered, and which lie outwith the scope of the actual questions.

Consultation Questions

Question 1: The Scottish Government proposes that dog, cat and breeding activities should be regulated. Do you agree?

Yes

Question 2: Do you agree with the proposal to set the licensing threshold for dog, cat and rabbit breeders at three or more litters a year?

Yes

The threshold in the existing dog breeding legislation of five or more litters before a licence is automatically required is too high. What that means is potentially 40 or more puppies could be produced in a year without

⁷ <https://www.bbc.co.uk/news/newsbeat-45271734>

any legal obligations being complied with or the need for inspections. It is difficult to conceive of a breeder producing that number of animals annually and not operating as a business.

Limits also need to be introduced in relation to cats and rabbits as well as dogs. Any limits introduced in Scotland should be informed by reference to recognised good animal husbandry and welfare standards. We cannot provide advice on any appropriate limit beyond agreeing that the limit of five litters is too high.

Even two or three litters may still be too high. A balance needs to be set. We would suggest that factors to consider in deciding on agreeing a balance should include:

- Setting the threshold at one litter would be too low as it could have been a genuine “accident” or “one off.” That does not apply when there is a second litter and thereafter, a third litter. It is difficult to see that as anything other than disguised commercial breeding.
- Introducing a higher limit ensures that those who indiscriminately breed their pet dogs or back street breeders would be subject to inspections and tighter controls. That would go some way towards addressing the animal welfare problems that currently arise.
- A licence should include the breeding of dogs, cats and rabbits as pets as well as other types of transfer or supply, in addition to commercial sale.
- To take animal welfare concerns seriously, the fact whether money changes hands should make no difference. The objectives of the changes being proposed should be about the animals, the conditions in which they are kept and how their complex needs are met in those very formative first few weeks of their lives.
- Current legislation includes an effective exemption from the licensing regime for those who are not commercial breeders, but who have five or more litters in any 12- months, if they can show that they have not sold any puppies. That should be amended.
- Families and other connected persons who have an interest in the breeding of dogs in a common commercial enterprise may each have a breeding dam or bitch as a way of circumventing the five-litter limit currently applying per owner. The unscrupulous can circumvent the current legislative limit by maintaining that there is no commercial relationship between each individual owner. Any new limit that is introduced should address this abuse.

We prefer the Consultation’s approach requiring licensing where three or more litters are produced regardless whether any puppy is sold in the relevant time period to the approach of the 2018 Regulations. There, a licence is only required where there are three litters of puppies in any 12-month period and at least one puppy is sold in that period. Though the Scottish proposal is a stricter, this should prevent the breeding of puppies, kittens and young rabbits which are intended for sale in due course, but where in any 12-month period, no sale takes place.

Such operations are caught by requiring anyone in the business of breeding and selling dogs, cats and rabbits regardless of the numbers involved to have a licence. That would also address the unscrupulous operator situation as highlighted above. Requiring that there should be the sale of at least one animal in the 12-month period could weaken the tackling of this abuse since if there were no sales in the preceding 12-month period, they would escape any licensing requirement.

Licensing considerations could be required in relation to anyone in the business of breeding and selling dogs, cats and rabbits regardless of the numbers involved. This could include a further status of persons “deemed to be so breeding and selling” which would reflect the terminology of the 2018 Regulations. Those breeding one or two litters in a twelve- month period and selling puppies would require a licence if they are deemed to be “breeding dogs and advertising a business of selling dogs”. The intention should not be for hobby breeders to be caught out under this test.

There are some other considerations:

Guidance: The UK Government has produced Guidance in respect of the 2018 Regulations. This Guidance include conditions for breeding dogs and is for local authorities who need to license activities involving animals and the relevant establishments and is used by those who currently have a licence or wish to apply for one. ⁸ Consideration should be given to developing similar Scottish guidance.

Record-keeping: Other licensing regimes involve sales such as second hand dealing licences under the Civic Government (Scotland) Act 1982 (1982 Act) where there is an obligation to maintain records. There should be a similar obligation imposed on breeders to maintain adequate records to help assist in the enforcement and regulation of any new limit that is brought in. Breeding records can often be dis-organised and piecemeal. Requiring records to be properly kept would improve the upholding of animal welfare standards.

Compliance: The Breeding of Dogs (Licensing Records) Regulations 1999⁹ (1999 Regulations) could be reviewed to ascertain to what extent there is already compliance and what additional information might be desirable to record. e.g. any microchip number of the respective animal should be recorded.

Temporary Licences: A greater degree of accountability and traceability needs to be introduced into the system. This could be undertaken by means of introducing a temporary licence system¹⁰. Even if the threshold from five to three litters is reduced, there are still a significant number of puppies being born to unlicensed breeders including those who are “accidental” breeding and breeding with an intention to supply.

Introducing a temporary licence would be proportionate to ensure that the suppliers are accountable, and their puppies are traced back to them by introducing a lighter system of temporary registration with the local authority. This would apply to anyone with a litter from a bitch for which they are responsible and who wishes to transfer ownership of a puppy to someone else. It would apply to all those falling under the threshold of the licensing regime for dog breeders irrespective whether money changes hands.

⁸
<http://www.cfsg.org.uk/The%20Animal%20Welfare%20Licensing%20of%20Activities%20Involvi/b.%20Procedural%20Guidance%20for%20Local%20Authorities.pdf>

⁹ made under section 1(4)(i) of the 1973 Act.

¹⁰ (Temporary licences exist in other licensing contexts such as liquor and under the 1982 Act).

We are aware that a number of animal welfare organisations support some form of registration for those breeding below the threshold for a breeding licence such as:

- **The OneKind Puppy Plan¹¹** suggests that every commercial sale should be subject to licence or registration. They suggest that the threshold for dog breeding licences is set at two litters in a year and anyone selling a single litter to require registration for a temporary licence.
- The Dog's Trust¹² calls for anyone breeding, selling or transferring the ownership of a litter, regardless of any financial transaction or gain, to be registered. They support licenses for anyone breeding more than one litter. If there are issues with passing on a puppy without it being registered from the third litter in a 12- month period, there should be a requirement for a licence so that might address those behaving irresponsibly.

Basic information would be provided through an online form to the local authority giving the name and address of the person with responsibility for the bitch and wishing to transfer or sell the litter, the age of the bitch, the size of the litter and whether any other litters are under the person's control.

The person would pay a minimal fee which should be sufficient for local authorities to recoup any costs incurred in maintaining that database. A separate registration would be needed for each litter. (A registration number would be assigned for each litter and that number would be provided to anyone considering acquiring a puppy. They could check online that the registration number corresponds to the name of the person with whom they are in contact).

The registration would be temporary lasting as long as it takes for the litter to be passed on/sold. The owner would be responsible to inform the local authority when the last of the litter had been sold or passed on.

The local authority would maintain a record of each registration for as long as is reasonable, which could be for 12 months. This should act as a mechanism to help identify anyone registering multiple times in a 12-month period and potentially unaware of the need for a licence or even attempting to avoid the need for a licence.

The imposition of a fixed penalty could be considered for someone that was found not to have registered (e.g.an enquiry made to the local authority by a member of the public who had tried to acquire a puppy from the person). In keeping with current practice and legislation on dog breeding, dealing and microchipping, the name of the owner of the bitch would be included on the puppy's microchip prior to sale/transfer. As more of the public wishing to acquire puppies become aware of their responsibility to check the breeder is licensed or registered, this will provide a check for those transferring puppies without registering. It would become more difficult for them to sell/pass on the puppies.

¹¹ <https://www.onekind.scot/campaigns/stop-the-puppy-profiteers/>

¹² Public Petitions Committee of the Scottish Parliament in August 2017

In conclusion, since the Consultation's aims are to improve traceability, responsible ownership and overall animal welfare, temporary registration would be a crucial link in achieving that.

Question 3: Do you have any comments on the thresholds that should apply? Should they be different for separate species?

Yes

Please see answer to Question 2.

Question 4: Do you agree with the proposal that a breeding dog, cat, or rabbit must not give birth to more than six litters in their lifetime?

Yes

Please see answer to Question 2.

Question 5: Do you agree with the proposal that as a condition of licensing, premises should only be allowed a maximum of 20 breeding dogs or cats within one calendar year?

Yes

We refer to our answer to Question 2. This question relates to intensive breeding. As the consultation refers, this would allow individual attention to be given to animals and proper socialization of offspring as well as minimising the potential for disease spread on the site¹³.

There should be a limit on the number of breeding dogs and cats at one site. This change, once implemented, would go some way to tackling the practice of "puppy farming" or other intensive breeding.

We cannot comment on the actual number of 20; that advice is best provided by those with the relevant welfare expertise. The proposals relate to:

- (i) the numbers of litters being a consideration when granting or renewing a licence
- (ii) being satisfied that such animals should be kept under certain conditions.¹⁴

These appear to have been taken from the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 (Welsh Regulations)¹⁵ Section 7(1) (d) of the Welsh Regulations refers to such applications where these requirements are consistent with the welfare standards. These are similar to those under section 24(3) (a)–(c) of the Animal Health and Welfare (Scotland) Act 2006 (2006 Act)¹⁶ but do not extend (at least not explicitly) to those referred to under subsections (d) and (e) of the Welsh Regulations. These respectively state:

- any need it has to be housed with, or apart from, other animals,
- its need to be protected from suffering, injury and disease.

We would suggest that consideration should be given to inclusion of more which includes:

1. An animal's accommodation to be assessed regarding the concerns which arise under section 24(3)(3)(d) of the 2006 Act. However, the socialisation process of puppies with other dogs should include more so that they can be accommodated to allow them to sleep, eat, drink and play together. There may also be situations where it is desirable for young animals to be kept apart from other animals. Breeders may also breed both cats and dogs or where it is desirable that puppies are kept well apart from adult dogs.
2. As regards section 24(3)(e) of the 2006 Act, there should be a standard which secures protection from suffering, injury and disease. This should extend to include a duty to secure veterinary care.
3. Section 1(4)(c) of the 1973 Act already requires a local authority to consider whether there will be in place reasonable precautions to prevent against and control of the spread of infectious or contagious disease among dogs when considering an application for a dog breeder licence. Specific conditions should be included to secure that.
4. Section 24(3)(e) of the 2006 Act is aimed at wider concerns. Thought should be given to require those that benefit from the commercial sale of puppies, kittens and young rabbits, to be assessed against the extent that they are willing and able to pay for safe accommodation to avoid injury, suffering and disease, but also the extent to which they are willing and able to secure professional veterinary assistance.

¹⁴ (a) at all times kept in accommodation that is of an appropriate construction and size with appropriate exercise facilities, temperature, lighting, ventilation and cleanliness;

(b) provided with appropriate whelping facilities;

(c) supplied with suitable food, drink and bedding; and

(d) supplied with adequate facilities to enable them to exhibit normal behaviour patterns.

¹⁵ <https://www.legislation.gov.uk/wsi/2014/3266/contents/made>

¹⁶ (where criminal sanctions apply for failure)

5. The review of breeding law might cover the extent to which a Scottish Licensing Authority can have regard to standards laid down in the 2006 Act (including the adherence to any relevant Animal Welfare Code issued under section 37 of the 2006 Act) or statutory Animal Welfare Guidance (issued under section 38 of the 2006 Act).

There does seem to be a mismatch between the standards of good practice imposed under the 2006 Act, (particularly section 24) and any Code of Practice and the considerations which a local authority must consider when considering an application for the grant of a dog breeding licence under section 1(4) of the 1973 Act. We refer to the case of *Chancepaxies Animal Welfare v North Kesteven DC*¹⁷ where it examined the extent to which the Code of Practice for the Welfare of Dogs provided practical guidance to dog owners regarding compliance¹⁸.

This involved an application for a dog breeding licence under the 1973 Act. The Court held that there was no obligation to examine each element of the Code as the Code was not designed as a list of pre-requisites for granting dog breeding licences. Local authorities in considering whether to grant a licence could have regard to the 2006 Act and the Code but were not obliged to consider each element of each Code's sections. The existence of discretion to withhold a licence on other grounds could not be converted into a duty to consider detailed provisions of other statutory codes introduced for other purposes. The Code provided practical guidance to dog owners on compliance with section 9 of the 2006 Act. A Scottish Court may follow but would not be bound the decision in that case.

The journey in the life of an animal starts at birth and the first few weeks of life before it is sold to an owner can be crucial in ensuring that it goes to the new home, as happy, socialised and healthy. The standards imposed by the 2006 Act arguably should have the same relevance to animal breeders as they do to their ultimate owners. As part of any test as to whether one is fit and proper to hold a breeding licence, an applicant can demonstrate that they are aware of any relevant Code or Guidance and can give practical examples of how they would meet the terms of such a Code.

Question 6: Do you agree that individuals with unspent convictions for animal welfare offences or other criminal convictions (e.g.) fraud should not be allowed to hold a licence for breeding activities?

Certain convictions should prevent such applicants in being granted a licence. We also refer to our answer to Question 7.

Question 7: Are there other considerations apart from criminal convictions that

¹⁷ decided on 26 July 2017 and reported at [2017] EWHC 1927 (Admin)

¹⁸ (the equivalent of our Scottish Code under section 37 of our Act),

should be part of a fit and proper person test for those running dog, cat and rabbit breeding activities?

Current animal welfare legislation ensures that those who have been disqualified from other activities reliant on the provision of acceptable animal welfare can be neither registered nor licensed to care for animals. We agree that this is an important principle to uphold.

The section 9(2) of the 2016 Regulations includes the following test stating that

“Prior to granting or renewing a licence, in considering whether the licence conditions will be met, a local authority is entitled to take account of the applicant's conduct or any other circumstances that the local authority considers are relevant.”

The words “fit and proper” do not appear. However, Regulation 9(2) is aimed at considering whether because of past or present behaviour or associations or likely future behaviour, an applicant is likely to meet licence conditions. That introduces an explicit conduct test which is similar to a “fit and proper person” test¹⁹.

The introduction of wording similar to Regulation 9(2) would make it clear that conduct is a relevant licensing issue which under the 1973 Act it is not the case.

Regulation 9(1)(a) - (d) reflects the sort of issues found in section 1(4)(a) to (i) of the 1973 Act, but nothing in the 1973 Act raises conduct as a basis for refusal. Introducing a similar Regulation 9(2) is a welcome innovation.

Adherence to conditions should be a factor in assessing fitness. Other matters might be considered such as association with family members or other connected persons who have an offending or disqualification history in relation to animals. However, consistent with other licensing regimes assessments of fitness, this should not be overly prescriptive.

A local authority ought to be able to consider knowledge of Codes of Practice or Statutory Guidance under the 2006 Act as part of a rounded assessment of competence. This should be bolstered of course by knowledge of any Statutory Guidance issued under following these reforms.

We would suggest that (as for example with taxi and private hire licensing under section 13(5) of the 1982 Act), as part of assessment of fitness, a local authority should have power to devise and administer a meaningful test of an applicant for a licence. This would cover relevant matters relating to breeding and animal welfare. This could include testing on knowledge of any Codes or Guidance as other matters considered relevant by the authority.

A fit and proper test should be one of a range of grounds of refusal, suspension or revocation of a licence.

¹⁹ Regulation 9 was introduced under section 13 of the Animal Welfare Act 2006. It replaces (for Wales) the provisions of section 1(4) of the Licensing of Dogs Act 1973 by creating a more detailed licensing regime.

Question 8: The Scottish Government proposes that reasonable costs of inspections should be charged to recover costs to inspectors approved by Scottish Minister or local authorities. Do you agree with that proposal?

Yes.

We note that the fee for making an application for a dog breeding licence is low-only set at £2.00 under section 1(2) of the 1973 Act. This fee is no longer meaningful in the current financial climate. While recognising that high licensing fees can drive activity underground, there should be a fees regime proportionate to the need to secure proper welfare standards.

Given the significant sums of money that puppies can fetch as indicated above, the fees regime should cover the administrative costs of both the application process for a licence and the costs required to undertake ongoing inspection and enforcement. These are issues which should also be highlighted. A proper fees regime should deter poor breeders who are not upholding standards from entering the market. The regime should ensure that the local authority inspection and enforcement is given the resources it needs to include personnel adequately qualified.

Similar proportionate fees must also be applied to those who breed cats and rabbits. This is required for consistency.

Question 9: Should licence fees be set by the authorized inspectors, local authorities or by the Scottish Government? Do you have any comments on what cost is reasonable and what should be included in this?

We refer to our answer to Question 8.

Question 10: The Scottish Government considers that licenses lasting from one to three years may be issued on the basis of a welfare risk assessment. Do you agree?

Yes.

It is proposed to increase the maximum length of a licence that local authorities may issue, at their discretion, from one to three years, subject to a welfare risk assessment. Local authorities should set licence fees on a cost recovery basis. Lower fees are relevant for more compliant licence holders. As highlighted below, a star/ risk rating system might be a useful means by which this approach could be furthered.

Local authorities would continue to have the ability to inspect if welfare concerns arise or there are significant changes in the licensed premises or activities and shall have the power to suspend, vary or revoke licences or issue improvement notices for breaches of licensing conditions.

Allowing licences to start and end at any point in the year will stagger the requirements for work on licence renewals and inspections throughout the year.

Question 11: Do you think that a national list of licensed premises and activities should be kept?

Yes.

We have identified reasons in relation to our earlier answers regarding transparency and requirements of an effective registration system in the interests of promoting good animal husbandry.

Question 12: Do you have any comments on who should be able to access information from the list, and if a charge should be made for information?

Public access is required. Any charges should be proportionate to recover any exceptional time or costs required maintaining such as a list.

Question 13: The Scottish Government believes enforcement agencies should be able to suspend vary or revoke licences or issue improvement notices for minor irregularities. Do you agree with this proposal?

We refer to our earlier answer. If such a system is to be introduced, it needs to be transparent and clearly set out in the relevant legislation.

We recommend that there should be put in place clear grounds of refusal for an application. The exact form needs to be considered. There are no clear grounds for refusal in section 1 of the 1973 Act beyond the disqualification provisions. This is not desirable and is unusual in modern licensing law. They could be modelled to an extent on the grounds in paragraph 5(3) of Schedule 1 of the 1982 Act that considers the fitness of the applicant and any connected persons; such as:

- any disqualification history in relation to any animals either on the part of the applicant or a connected person;
- fitness and suitability and location of the premises;
- the nature and extent of what is proposed, public nuisance and safety.

Adherence to animal welfare issues could either be the basis of a ground of refusal or a factor which would inform (at the very least) issues such as any “fit and proper” person test or suitability of the premises.

They could be extended to cover suspension and revocation of licences as well.

Question 14: The Scottish Government proposes that new legislation will require compliance with any relevant Scottish Government guidance as one of the licence conditions. Do you agree that this should be a condition of licensing? If you are aware of any other relevant standards, please comment?

Yes. We refer to our answers to questions 5 and 8.

Consideration might be given to free standing ground of refusal in addition to the other grounds-based on licensing objectives linked to animal welfare. We consider that the model of licensing objectives found in section 4 of the Licensing (Scotland) Act 2005 sets a precedent for this.

These could embrace both immediate welfare concerns (such as securing what is regarded as an acceptable environment for animals) but also tackling more chronic concerns which may develop over time if not left unchecked (for example a focus on breeding dogs with known health conditions e.g. bulldog types). Inconsistency with these objectives could provide material to support refusal, particularly as with liquor licensing, a local licensing authority has a policy statement in place as to how it considers animal welfare to be best met.

On overprovision might be considered as a possible basis for refusal. There is a view maintained by responsible commentators that there are simply too many dogs being bred leading to an upturn in dogs being abandoned by owners or turned over to rehoming facilities.

Equally, an Animal Welfare Licensing Objective linked to the number of dogs or other animals needing rehoming in the locality of the licensing authority might be an alternative way of reducing the oversupply of animals.

An applicant for a licence should show that they are aware of guidance and demonstrate in advance of an application being granted that they will comply with the guidance. This should help to ensure that only those who have a real commitment to animal welfare become breeders. Their application should properly consider both the practical issues and the cost of ensuring compliance with the guidance. Any guidance must set out clearly what the minimum requirements for compliance are. That will ensure a more consistent and effective approach to licensing and enforcement across both a given local authority and nationally.

Question 15: Do you agree that fixe penalties should be available for minor non-compliance with the licensing legislation?

Yes

Question 16: Do you agree that the Scottish Government should discourage the breeding of dogs, cat, and rabbits with a predisposition for specific genetic conditions which lead to health problem in later life?

Yes

We agree that there has been a growth in demand for pets with particular (where criminal sanctions apply for failure) physical features where such breeding heightens the risk of harmful genetic conditions and can seriously affect the future health and wellbeing of the animal. Consistent with the need for buyers to know what they are perhaps exposing themselves to, such practices can also place further emotional and financial strain on the owner, given the scope for behavioural or health problems.

Detailed guidance needs to be published in consultation with organisations such as the SSPCA, British Veterinary Association and the Kennel Club. A regime built around suitable conditions (and supported by the keeping of full records by the breeder relative to practices, including records of breeding stock) would work as both a deterrent and promotion of general welfare

In addition, if an objective system was also being considered, we see a role for an Animal Welfare Licensing Objective based on the discouraging such breeding practices. Applicants for licences could, for example, must evidence how they would meet this objective as part of their application process.

Question 17: Do you agree that as a condition of licensing any breeding practices which are likely to cause the offspring suffering in later life shall be prohibited?

Yes

Please see our answer to Question 16.

Question 18: Do you have any comment on any other appropriate measures the Scottish Government could take to discourage harmful breeding practices?

We would stress the need for improved guidance and training (including resources) for those responsible for enforcing these regulations. No matter how good any legislation is what is most important is its enforcement. If it is not enforced effectively, then it will not be able to deliver the important improvements to animal health and welfare which are needed and proposed in this Consultation.

Local authorities play a key role and are best placed to licence breeding establishments. As indicated above, any fees regime must go to support the training and resources that need to be able to do this.

Though the Consultation refers to Independent Accreditation, there is no question relating to the proposal to include an exemption from inspection requirements where the breeders are affiliated by UKAS.²⁰ We consider that accredited breeders would still require to be licensed by local authorities. There may then be scope for a reduced frequency of local authority inspections but do not agree that there should be an automatic exemption even if they have been accredited. However, any system of accreditation might also be geared towards securing and reflecting objective welfare standards.

For instance, the system in England and Wales involves a system of “star ratings” and “risk ratings”. We would encourage the adoption of a similar system for Scotland. Ratings could be issued by an accredited body or by the local authority. A local authority could choose to override any ratings provided by an accredited body provided it had a reasonable basis for doing so. That might be where evidence was found during an inspection of deterioration in conditions.

A rating system could be used as a basis for the determination for how long a licence would be issued, the level of fees levied on the breeder and the frequency of inspection. This would assist in:

- rewarding high performing breeding establishments
- provide help to the puppy buying public in identifying good breeders.

Licensed breeders might receive a star rating from one to five stars. Those with a five-star rating will receive a three-year licence, pay a lower fee and will be inspected less frequently. Those with one star would only receive a one-year licence, pay a higher licence fee and will be inspected with greater frequency.

The star rating that is awarded would be based on two factors:

- the welfare standards against which the breeder is operating (i.e. whether the breeder makes use of health tests etc.)
- their risk rating which is based on whether the breeder has a history of meeting these standards.

Breeders operating to higher welfare standards and have a history of maintaining these standards should receive a higher star rating, whilst those who are operating to the minimum standards and have no compliance history should be awarded a two-star rating. A one-star rating will be awarded to breeders who have minor failings. There should be a “risk rating” aimed at examining the compliance history of the breeder, that is whether the breeder is either a low risk or high-risk operator, i.e. whether it should be expected the breeder will maintain their standards for the duration of their licence period. Risk ratings could be used as a guide to how long a licence should be issued for and the fee paid for it.

²⁰ UK's National Accreditation Body (UKAS)

One could devise a scheme whereby to obtain a low risk rating, breeders would need to demonstrate they have been maintaining acceptable standards for a minimum of three years. Factors that would be considered include history in meeting licensing standards, nature of complaints received and how they were dealt with and the quality of record keeping.

Breeders who have not held a dog breeding licence before or have not been members of a UK accredited scheme, such as the Kennel Club Assured Breeder Scheme for a minimum of three years, could be automatically categorised as high risk and would not be able to gain the highest star rating at first and benefit from a three-year licence duration.

Additional Comments

There are a range of other factors where we consider that the Consultation might usefully consider. These are aimed primarily at dogs but on the basis that similar welfare issues might arise in relation to cats/kittens and rabbits, consideration might be given to extending the following to these animals as well:

Staffing

Any breeder should be subject to a condition that there be sufficient, adequately trained staff to ensure the needs of the dogs every day to carry out and meet all the interactions and procedures with dogs, in addition to routine care and management. Those working in breeding establishments have a wide range of duties and tasks to carry out to ensure the welfare needs of the dogs they care for, including but not limited to the routine care and management, cleaning and the provision of food as well as other duties such as showing potential new owners the puppies that are available and explaining the needs of the puppies. This takes time. It is vitally important that sufficient time is spent with each animal, all of whom will have different needs. For example, it is particularly important to ensure the puppies are properly socialised.

Traceability of all dogs back to their breeder

Any breeder should be subject to a condition that there be sufficient, adequately trained staff to ensure the needs of the dogs. To ensure better accountability of dog breeders and dog owners, it is important every dog (including puppies, except those which are very small or underweight) is microchipped by a person trained to do so. This enables traceability of animals if they are lost, or where a puppy is sold inappropriately or is passed on in an unfit condition. This allows the original breeder to be traced. Action may be able to be taken against them.

Prospective Owner Questions

Any breeder should be subject to a condition that any prospective dog/puppy owner would have to consider a list of questions ahead of buying/acquiring the animal. (The questions might be set out as a checklist in a schedule to any Bill). That would prompt consideration of issues that any responsible dog-owner should be asking before committing to the acquisition of a new puppy or dog.

At the point of sale/transfer, as far as is practicable, there should be a face-to-face conversation between the two parties. The breeder (in the case of a puppy), or current keeper of the dog being sold/transferred, should also check that the prospective owner is aware that they should have considered the questions. Based on the exchange, if either party was not satisfied (for example, if the lack of due process makes the acquirer question whether the breeder is responsible, or if the transferor doubts that the acquirer is an appropriate match for the puppy) then the sale/transfer would not take place.

The presumption in law would be that the questions have been considered. This would not prejudice existing standards and obligations on animal welfare as set out by law. Failure to comply with the new provisions might be relied upon in the context of a case being brought against someone under other animal-related legislation.

Selection of healthy breeding stock

Those who breed dogs should prioritise health, welfare and temperament over appearance when choosing which animals to breed, in order to protect the welfare of both the parents and offspring.

To complement the proposed condition on discouragement of the breeding of dogs, cats and rabbits with a predisposition for genetic conditions which lead to health problems in later life, we consider that additional conditions might be considered which would require appropriate health screening tests are carried out and that mating should be avoided if the test results indicate that the parents are likely to carry or have an inherited disease and should not be bred from.

Rights of objection and representation

We would recommend that consistent with other forms of licensable activity such as liquor and civic government licensing that any person should be entitled to object to an application for a breeding licence and that in parallel any person should be entitled to bring an application for suspension or revocation of a licence.

Currently there is no right of objection by third parties although some authorities do, on a pragmatic basis, permit representations and objections to be made. This is not desirable as the lawfulness of such a practice absent a clear statutory basis is unclear.

It would in our view be anomalous to prevent well placed bodies such as the SSPCA, OneKind, the Dogs Trust or Police Scotland to be prevented from bringing their concerns about licence applications as well as existing licences to the licensing authority.

We would recommend this as it can often be members of local communities, whether the general public or vets or animal welfare organisations that may be the first to detect concerns about a breeder and breeding practices.

Someone who purchases an animal who is concerned that the breeder may have sold them an animal whose welfare has been unacceptably compromised should be entitled to bring a complaint relating to that breeder to the Local Authority. That would of course be independent of any rights at common law or under statute that the purchaser may have arising from the sale. This could help tackle some of the abuses relating to internet sales.

The Local Authority should have a discretion as to whether to refer the suspension or revocation complaint to a hearing or to channel matters into an alternate route. It may be for example that the office of Licensing Standards Officer, now familiar from other licensing contexts, could be extended to deal with compliance issues. Working in conjunction with animal welfare experts this could be an appropriate extension of their role. Licensing fees could help support this role.

Advertising licence applications

We recommend that applications for licences be advertised in a public manner. Currently there is no duty on the licensing authority to advertise applications for dog breeding. We consider this to be anomalous.

For further information please contact

Gillian Mawdsley

Policy Executive

Law Society of Scotland

gillianmawdsley@lawscot.org.uk

DD: 01314768206