

Draft Regulations laid before the Scottish Parliament under section 51(3) of the Animal Health and Welfare (Scotland) Act 2006 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

ANIMALS

ANIMAL WELFARE

The Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2008

Made - - - - 2008

Coming into force - - 1st November 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 26(1), (2) and (3), 27(1), (3), (4), (5), (6), (7) and (8) of the Animal Health and Welfare (Scotland) Act 2006⁽¹⁾ and all other powers enabling them to do so.

In accordance with sections 26(5) and 27(9) of that Act, they have consulted with such persons appearing to them to represent relevant interests and such other persons as they consider appropriate.

In accordance with section 51(3) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Licensing of Animal Dealers (Young Cats and Dogs) (Scotland) Regulations 2008 and come into force on 1st November 2008.

Interpretation

2.—(1) In these Regulations—

“licence holder” means a person who is the holder of a licence issued under these Regulations;

“licensing authority” means a local authority;

“local authority” means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽²⁾ for the area in which an applicant or licence holder has their premises in Scotland, or, where the applicant or licence holder does not have premises in Scotland, the City of Edinburgh Council; and

(1) 2006 asp 11.

(2) 1994 c. 39.

“veterinary surgeon” means a person who is registered in the register of veterinary surgeons or the supplementary veterinary register provided for under sections 2 and 8 of the Veterinary Surgeons Act 1966⁽³⁾.

(2) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication as defined in the Electronic Communications Act 2000⁽⁴⁾ which has been recorded and is consequently capable of reproduction.

(3) An electronic communication may only be sent to a person if that person has consented in writing to the use of that method of communication and transmission is to an e mail address provided by the recipient.

(4) An electronic communication shall be taken to be received on the day after the day of its transmission.

Persons who are required to hold a licence

3.—(1) No person may sell a cat or dog which is less than 84 days old within 60 days of taking ownership, possession or control of that animal except under the authority of a licence issued under regulation 8.

(2) Paragraph (1) does not apply to—

- (a) any person who sells no more than 2 such animals in any 12 month period; and
- (b) a holder of a licence issued under section 1(2) of the Pet Animals Act 1951⁽⁵⁾.

Animals to be kept separate

4.—(1) Any—

- (a) licence holder;
- (b) holder of a licence for a rearing establishment for dogs issued under section 1(2) of the Breeding of Dogs Act 1973⁽⁶⁾; or
- (c) holder of a licence issued under section 1(2) of the Pet Animals Act 1951,

who takes ownership, possession or control of one or more cats or dogs which are less than 84 days old at the date of taking ownership, possession or control must ensure that animal or those animals are kept separate from all other animals, at the address of the premises on the licence, for a period of not less than 10 days from the date of the animal’s or animals' arrival at the premises.

(2) Paragraph (1) does not apply where the licence holder does not have premises in Scotland and sells the animal or animals described in paragraph (1) to—

- (a) a holder of a licence for a rearing establishment for dogs issued under section 1(2) of the Breeding of Dogs Act 1973;
- (b) holder of a licence issued under section 1(2) of the Pet Animals Act 1951; or
- (c) another licence holder.

(3) Any person who contravenes or fails to comply with any provision of this regulation is guilty of an offence.

(3) 1966 c. 36. Section 2 was amended by S.I.2003/2919.

(4) 2000 c. 7; as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(5) 1951 c. 35. Section 1 was amended by S.S.I. 2006/536, Schedule 1, paragraph 2.

(6) 1973 c. 60; amended by the Breeding and Sale of Dogs (Welfare) Act 1999 (c. 11), sections 1, 2, 3, 10 and the Schedule, S.I. 1999/3321, the Animal Welfare Act 2006 (c. 45), Schedule 3, paragraph 7, S.I. 2006/3407 and S.S.I. 2006/536.

Applications for licences

5.—(1) The licensing authority must consider an application for a licence where—

- (a) the application is made to the authority; and
- (b) the required fee has been paid.

(2) The licensing authority must not consider an application from a person who is for the time being subject to an order for disqualification under—

- (a) section 1(1) of the Protection of Animals (Amendment) Act 1954⁽⁷⁾;
- (b) section 3(3) of the Animal Boarding Establishments Act 1963⁽⁸⁾;
- (c) section 3(3)(b) or (c) of the Breeding of Dogs Act 1973⁽⁹⁾;
- (d) section 5(3) of the Pet Animals Act 1951⁽¹⁰⁾;
- (e) section 28F(1) and (2) of the Animal Health Act 1981⁽¹¹⁾;
- (f) section 34(1), (2), (3) and (4) of the Animal Welfare Act 2006⁽¹²⁾;
- (g) section 40(1) and (2) of the Animal Health and Welfare (Scotland) Act 2006; or
- (h) regulation 17.

Payment of fee

6. The licensing authority must impose a reasonable fee equivalent to the amount of costs and expenses incurred in processing an application for a licence or renewal of a licence.

Consideration of applications for licences

7.—(1) When considering whether to grant or refuse a licence, but, without prejudice to its discretion to refuse a licence on other grounds, the licensing authority must in particular have regard to the need for securing—

- (a) that any cat or dog in the possession, control or ownership of the applicant or licence holder must at all times be kept in accommodation suitable as respects construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness;
- (b) that any such cat or dog must be adequately supplied with suitable food, drink and bedding material, adequately exercised and visited at suitable intervals;
- (c) that all reasonable precautions must be taken to prevent and control the spread among such cats and dogs of infectious or contagious diseases;
- (d) that appropriate steps must be taken for the protection of any such cat or dog in the case of fire or other emergency; and
- (e) that all appropriate steps must be taken to secure that any such cat or dog will be adequately supplied with suitable food, drink and bedding material, and adequately exercised, when being transported by or on behalf of the applicant.

(7) 1954 c. 40; amended by the Animal Welfare Act 2006 (c. 45), Schedule 4.

(8) 1963 c. 43; amended by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 9, the Animal Welfare Act 2006 (c. 45), Schedule 3, paragraph 5 and S.S.I. 2006/536.

(9) 1973 c. 60; amended by the Breeding and Sale of Dogs (Welfare) Act (c.11), sections 4 and 5, the Courts Act 2003 (c. 39), Schedule 8, paragraph 171, the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 9, the Animal Welfare Act 2006 (c. 45), Schedule 3, paragraph 8 and S.S.I. 2006/536.

(10) 1951 c. 35; amended by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 9, the Animal Welfare Act 2006 (c. 45), Schedule 3, paragraph 3 and S.S.I. 2006/536.

(11) 1981 c. 22. Paragraph 28F was inserted by section 10 of the Animal Health and Welfare (Scotland) Act 2006 (asp 11).

(12) 2006 c. 45.

(2) The licensing authority must, before reaching a decision as to whether or not to grant a licence, first consider a report made to the authority by an inspector appointed by it for that purpose under regulation 12.

(3) The report referred to in paragraph (2) must be made following an inspection by the person making the report and such inspection will be carried out after the application for the licence has been received unless regulation 9(3) applies.

(4) The inspection referred to in paragraph (3) means the inspection of any place, equipment or document as the person making the inspection thinks necessary for the purpose of enabling the licensing authority to satisfy itself on the matters referred to in paragraph (1).

(5) In the event of the death of the licence holder the licence will be deemed to have been granted to the licence holder's personal representatives, as long as none of the personal representatives is subject to an order for disqualification under any of the provisions set out in regulation 5(2)(a) to (h), and will remain in force for a period of 3 months beginning with the death and will then expire.

(6) A licensing authority may on the application of those personal representatives extend the period of 3 months referred to in paragraph (5) if the licensing authority is satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make extension undesirable.

Grant of licences

8. The licensing authority may grant a licence which must be in writing and must state—
- (a) the name and home or business address of the licence holder;
 - (b) the address of the premises in Scotland where the animals will be kept (where the licence holder owns, leases or otherwise occupies premises in Scotland);
 - (c) the number of the licence;
 - (d) the date on which the licence commences and the date on which the licence expires which will be no longer than 3 years from the date of its commencement; and
 - (e) the conditions subject to which the licence has been granted.

Renewal of licences granted under regulation 8

9.—(1) A licence holder may apply in writing for a licence to be renewed.

(2) Where the licensing authority has received an application for the renewal of a licence granted under regulation 8 before the expiry date of that licence, then that licence will be regarded as continuing in force until such time as a decision is issued on that application by the licensing authority.

(3) In the case of an application for a renewal of a licence, the licensing authority may, for the purposes of regulation 7(3), rely upon a report based on an inspection made in respect of the licence within a period of one year before the date on which the renewal is to commence.

Conditions

10. The licensing authority must attach the following conditions to all licences—
- (a) the licence holder must not, without reasonable excuse, have a cat or dog which is less than 8 weeks of age in the licence holder's ownership, possession or control at any time unless that cat or dog is accompanied by that animal's mother;
 - (b) the licence holder must not take ownership, possession or control of more than the maximum number of animals permitted by the licensing authority at any one time;

- (c) the licence holder must take reasonable steps to satisfy him or herself that any person to whom the licence holder sells cats or dogs which are less than 84 days old at the date of sale is another licence holder, the holder of a licence for a rearing establishment for dogs issued under section 1(2) of the Breeding of Dogs Act 1973 or a licence issued under section 1(2) of the Pet Animals Act 1951;
- (d) the licence holder must ensure that all cats and dogs sold by the licence holder—
 - (i) have been subject to a physical examination by a veterinary surgeon with a view to the identification and treatment of any disease or parasitic infection in the 24 hour period immediately after the date on which the licence holder takes ownership, possession or control;
 - (ii) have a unique number assigned to each of them for the purpose of identifying the animals individually; and
 - (iii) are accompanied by a written record containing information as to the matters contained in the Schedule;
- (e) the licence holder must retain for no less than 3 years from the date of sale a copy of the written record referred to in paragraph (d)(iii);
- (f) the licence holder must ensure that the licensing authority is permitted to inspect at any reasonable time any place or equipment used in, or in connection with, the taking ownership, possession or control, sale, transport or keeping of animals to which these Regulations relate and any documents held by or on behalf of the licence holder relating to such animals;
- (g) the licence holder must accede to any reasonable request for information from the licensing authority relating to the undertaking of such activities by the licence holder;
- (h) the licence holder must provide the licence number of the licence which that person holds and the name and telephone number of the licensing authority in any advertisement or information issued by or on behalf of the licence holder; and
- (i) the licence holder must, prior to the physical transfer of any cat or dog to the purchaser, exhibit their licence (or a copy of the licence) to the purchaser.

Revocation, suspension or variation of licences

11.—(1) The licensing authority may at any time revoke, suspend or vary a licence granted under regulation 8—

- (a) on application being made to it by the licence holder;
 - (b) if there has been a contravention of any condition attached to the licence or of these Regulations;
 - (c) if any information supplied by the licence holder is false; or
 - (d) if it considers such a revocation, suspension or variation is necessary to ensure animal welfare.
- (2) Where a licence is revoked, suspended or varied—
- (a) the licensing authority must give notice in writing to the licence holder informing the licence holder of the revocation or suspension or, as the case may be, giving details of the variation; and
 - (b) the licence holder must, if so required by the licensing authority, within 21 days of receipt of the notice in sub paragraph (a), return the licence to the licensing authority which must, if the licence is to be varied, re issue the licence to the licence holder in a varied form.

Exercise of functions by inspectors

12.—(1) A licensing authority may appoint in writing any person (whether or not an officer of the authority) (“an inspector”) to inspect any premises in their area in respect of which a licence under regulation 8 has been sought.

(2) Any inspector may, on producing evidence of that person’s authority if so required, enter any premises at all reasonable times and inspect such premises and any animals found there for the purposes of preparing a report.

(3) The licensing authority must, before reaching a decision as to whether or not it will grant a licence under regulation 8, first consider a report made to the authority by an inspector.

(4) The report referred to in paragraph (3) shall be made only following an inspection by the inspector making the report and such inspection will be carried out after the application for the licence has been received.

(5) The inspection referred to in paragraph (4) shall be of any such places, equipment and documents as the inspector thinks necessary for the purpose of enabling the licensing authority to satisfy itself on the matters referred to in regulation 7(1).

(6) Any person who wilfully obstructs or delays any person in the exercise of the inspector’s duties under this regulation is guilty of an offence.

The register of licences and provision of information

13.—(1) The licensing authority must keep, in such form as it considers appropriate, a register of licences which must include the name of the licence holder and address of the premises of each licence holder, and the number of the licence which each licence holder holds.

(2) The licensing authority must make the register available for public inspection without charge during reasonable office hours and must allow copies of the register to be taken.

(3) Without prejudice to paragraph (2), the licensing authority must provide information, without charge, to any person seeking to know whether certain named persons are licence holders but the information which the authority is obliged to provide under this paragraph will be limited to a request in respect of no more than 5 such named persons.

Review

14.—(1) Where a licence holder or applicant is aggrieved by a decision of the licensing authority—

- (a) to refuse an application;
- (b) to revoke, to suspend or to vary a licence granted under regulation 8; or
- (c) as to any condition imposed in a licence granted under regulation 8,

that person may request, in writing, within a period of 21 days of the date when that person receives notice of the decision, the licensing authority to review that decision.

(2) For the purposes of this regulation a failure by a licensing authority to issue a decision on an application (other than an application for a renewal of a licence), or a request for a variation within 3 months of the date on which the application or request was received by the licensing authority, or a request under paragraph (1) is to be treated as a refusal.

(3) In carrying out the review the licensing authority must—

- (a) afford the licence holder or applicant an opportunity of making written representations for consideration by an officer of the licensing authority who has not been involved in the initial decision and who must prepare a report following consideration of those representations;
- (b) supply a copy of the report by that officer to the licence holder or applicant;

- (c) consider the report by that officer before making a decision on the review;
 - (d) give to the licence holder or applicant written notification of the decision on the review and the reasons for that decision; and
 - (e) where the original decision is upheld, give to the licence holder or applicant details of the licence holder's or applicant's right of appeal conferred under regulation 15.
- (4) The making of a request to review a decision of the licensing authority will not have the effect of suspending the decision concerned pending that review.

Appeals

15.—(1) Any person aggrieved with the decision on a review under regulation 14 may appeal on a point of law to—

- (a) the sheriff in the sheriffdom in which the premises, for which a licence was sought or issued under regulation 8, are situated; or
 - (b) the sheriff at Edinburgh Sheriff Court where the person does not reside in Scotland.
- (2) An appeal to the sheriff shall be by way of summary application.

(3) In determining an appeal the sheriff may give any direction with respect to the issue, refusal, revocation, suspension or variation of a licence, or as the case may be, with respect to the conditions subject to which the licence is to be granted as the sheriff thinks proper.

Powers of inspectors

16.—(1) An inspector may enter any premises except domestic premises at all reasonable times, on producing if requested evidence of that person's authority showing that inspector's authority, for the purpose of ascertaining whether these Regulations or any licence issued under them are being, or have been, complied with and, in particular, may—

- (a) inspect and copy any records (in whatever form they are held) kept under these Regulations or any licence issued under them, or remove such records to enable them to be copied;
- (b) 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;
- (c) for this purpose may 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);
- (d) 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;
- (e) examine any cat or dog kept on the premises; and
- (f) take on to the premises such persons to give the inspector such assistance and such equipment as the inspector considers necessary.

(2) If an inspector enters any unoccupied premises, the inspector must leave them as effectively secured against entry as the inspector found them.

Offences and disqualifications

17.—(1) It is an offence for a person to do anything for which a licence is required to be held by that person under these Regulations without a licence or otherwise than in accordance with such a licence or the conditions of such a licence.

- (2) It is prohibited for a person for the purposes of obtaining or holding a licence—

- (a) to make a statement to the licensing authority (or someone acting on its behalf) knowing it to be false in a material particular; or
- (b) recklessly to make a statement to the licensing authority (or someone acting on its behalf) which is false in a material particular.

and breach of such prohibition is an offence.

(3) A person who contravenes or fails to comply with any provision of these Regulations without reasonable excuse is guilty of an offence and will be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months or both.

(4) If any person intentionally obstructs an inspector (or a person assisting an inspector in accordance with regulation 16(1)(d)) in the exercise of the powers conferred by regulation 16 that person is guilty of an offence and will be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months or both.

(5) Where a person is convicted of an offence under—

- (a) these Regulations;
- (b) sections 28C or 28F(16) of the Animal Health Act 1981⁽¹³⁾; or
- (c) sections 19 to 24, 25(7), 29 or 40(11) of the Animal Health and Welfare (Scotland) Act 2006⁽¹⁴⁾,

the court by which that person is convicted may (in addition to or instead of any other penalty or order which may be imposed in relation to that offence) cancel any licence held by that person under these Regulations.

(6) Where a person is convicted of an offence under these Regulations, the court by which that person is convicted may (in addition to or instead of any other penalty which may be imposed in relation to that offence) disqualify that person from applying for a licence under regulation 8 for such period as the court thinks fit.

(7) A court which has ordered the cancellation of a person's licence under paragraph (5), may, if it thinks fit, suspend the operation of the order—

- (a) for such period as it considers necessary for enabling arrangements to be made in relation to any animals kept or owned by the licence holder in the course of their business; or
- (b) pending an appeal.

(8) A court which has ordered a person's disqualification under paragraph (6) may, if it thinks fit, suspend the operation of the order pending an appeal.

(9) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that director, manager, secretary or officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(10) For the purposes of paragraph (9), “director” in relation to a body corporate managed by its members, means a member of the body corporate and “body corporate” includes a partnership in Scotland, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

⁽¹³⁾ 1981 c. 22. Sections 28C and 28F were inserted by section 10 of the [Animal Health and Welfare \(Scotland\) Act 2006](#) (asp 11).

⁽¹⁴⁾ 2006 asp 11.

Termination or variation of disqualification

18.—(1) A person who has been disqualified under regulation 17(6) may request the court which made the disqualification to terminate or vary that disqualification.

(2) An application under paragraph (1) may not be made—

- (a) before the expiry of the period of one year beginning with the date on which the disqualification was made;
- (b) where there has been a previous application under that paragraph in relation to the same disqualification, before the expiry of one year beginning with the date on which the previous application was determined; or
- (c) within any period specified under paragraph (5).

(3) On an application under paragraph (1), the court may—

- (a) refuse the application;
- (b) terminate the disqualification; or
- (c) vary the disqualification so as to relax any period of disqualification imposed by it.

(4) In considering the application, the court must have particular regard to—

- (a) the nature of the offence in relation to which the disqualification was made;
- (b) the character of the applicant; and
- (c) the applicant's conduct since the disqualification.

(5) Where the court refuses an application made under paragraph (1), subject to paragraph (2), the court may specify a period within which the applicant may not make a further application under that paragraph.

Enforcement

19.—(1) These Regulations will be enforced by the local authority.

(2) The Scottish Ministers may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on a local authority under these Regulations shall be discharged by the Scottish Ministers and not by the local authority.

St Andrew's House,
Edinburgh
2008

A member of the Scottish Executive

SCHEDULE

Written record to accompany a cat or dog sold by a licence holder

Information to be completed by licence holder

1. Name and address of the licence holder.
2. Address of premises where animals are to be kept (if different from 1. above).
3. Name of the licensing authority and the licence number.
4. Sex and breed of the animal.
5. Date of birth of the animal.
6. Identification number assigned to the animal in accordance with a licence condition under regulation 10(d)(ii).
7. Date of taking ownership, possession or control of the animal by the licence holder.
8. Name and address of the veterinary surgeon who conducted a physical examination of the animal in accordance with a licence condition under regulation 10(d)(i), and the date on which that examination was carried out.
9. Details of all vaccines and other medicines known to have been administered to the animal prior to sale by the licence holder.
10. Date of sale of the animal by the licence holder.
11. Date of physical transfer of animal from the licence holder to the purchaser (if different from 10. above).
12. Name and address of the person to whom the animal is sold by the licence holder.
13. A statement as to the requirements of regulation 4 (animals to be kept separate) (unless the animal is sold to another licence holder or a holder of a licence for a rearing establishment for dogs issued under section 1(2) of the Breeding of Dogs Act 1973⁽¹⁵⁾ or a licence issued under section 1(2) of the Pet Animals Act 1951⁽¹⁶⁾).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the licensing of persons who sell young cats and dogs. Regulation 3 makes provision for those persons who are required to hold a licence. Regulation 4 requires young animals to be kept separate from other animals for a period of 10 days.

(15) 1973 c. 60; amended by the [Breeding and Sale of Dogs \(Welfare\) Act \(c.11\)](#), sections 4 and 5, the [Courts Act 2003 \(c. 39\)](#), Schedule 8, paragraph 171, the [Criminal Justice Act 2003 \(c. 44\)](#), Schedule 37, Part 9, the [Animal Welfare Act 2006 \(c. 45\)](#), Schedule 3, paragraph 8 and [S.S.I. 2006/536](#).

(16) 1951 c. 35; amended by the [Criminal Justice Act 2003 \(c. 44\)](#), Schedule 37, Part 9, the [Animal Welfare Act 2006 \(c. 45\)](#), Schedule 3, paragraph 3 and [S.S.I. 2006/536](#).

Provisions as to application for a licence and the charging of fees are set out in regulations 5 and 6, respectively. Regulations 7 to 11 make provision as to the consideration of applications, their grant and renewal, conditions, and revocation, suspension and variation of licences.

Regulation 12 provides for a local authority to appoint inspectors to exercise certain powers under the regulations. Provision for the local authority to keep a register of licence holders is contained in regulation 13. Regulation 14 provides for the local authority to review its decisions at the request of an applicant or licence holder. Regulation 15 makes provision as to appeals. Regulation 16 provides for the powers of inspectors. Regulation 17 makes provision as to offences and disqualifications. Regulation 18 provides for termination or variation of disqualification. Enforcement by the local authority is provided for in regulation 19.

A regulatory impact assessment has been prepared in respect of these Regulations and has been placed in the Scottish Parliament Information Centre. A copy can be obtained from the Scottish Government Rural Directorate, Pentland House, Robb's Loan, Edinburgh EH14 1TY.