



Law Society
of Scotland

Consultation Response

Proposed Pet Shop (Licensing) (Scotland) Bill

18 June 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

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 Proposed Pet Shop (Licensing) Scotland) Bill. The sub-committee has the following comments to put forward for consideration.

General

The proposal for the draft Bill is that it will improve animal welfare by enhancing local authority pet shops' licensing powers and updating the licensing system, including those in relation to licence, conditions, fees and inspections. We fully support that the system of licensing pet shops is '*sufficiently robust to protect animal welfare*' however that should and can be achieved.

We are unaware of the extent of any issues which arise in relation to the licensing of pet shops. However we note that the system in place is based on the Pet Animals Act 1951 (1951 Act) which is legislation that has been in existence for over 60 years. It may not fully reflect current conditions. Pet shops now vary from small outlets to large chain outlets. The range of animals on sale has expanded to cover types which in 1951 would not, ordinarily, have been regarded as pets. The Pet Animals Act 1951 requires any person keeping a pet shop to be licensed by the local authority. Before granting a licence, the local authority must be satisfied that the animals are kept in accommodation that is both suitable and clean; that they are supplied with appropriate food and drink; and are adequately protected from disease and fire. While animal welfare is not forgotten under the 1951 Act, advances in our understanding of animal behaviour and welfare since 1951 means that the Act may no longer be capable of meeting the welfare needs of animals today.

The proposal outlines a number of areas in which the current regime could be improved such as setting of guidance for licence fees, the training of local authority officers involved in licensing, enhanced powers of inspection of premises and the introduction of possible revocation of licences. These all seem eminently sensible proposals.

In our role of protecting the interests of the public, we welcome clarification of the law for all concerned. The proposal does indeed identify the implications of any Bill on a range of interests including local authorities, pet shop businesses and the welfare of pets, and the public. It needs to be established whether there are areas which fall within the scope of the proposal in need of clarification. These might include inconsistencies in practice operations and feeing regimes across local authorities. If so, this review provides a basis to review if and when how such reforms should go forward.

Once it has been ascertained that there should be any changes, we are not aware if all changes would require to be made by primary legislation. They may be a possibility of achieving change by means of secondary regulations and education by way of guidance to the public which does not necessarily need to be statutorily based. There are of course great advantages in consolidated legislation with the legislation modernised, in one place and in simple language. That makes it easy for the public and others involved in finding and understanding the legislation. We are not entirely sure whether there may be a potential overlap with the scope of the recent consultation in relation to the rehoming or rescue centres by the Scottish Government¹.

One possibility that might usefully be built into any proposed primary legislation would be to impose duties on those licensed under the 1951 Act. That would involve putting the current Model Conditions for Pet Vending Licensing 2013 on a statutory footing and consistent with established legal principles, to aim to reflect the values and duties owed to animals under the Animal Health and Welfare (Scotland) Act 2006. That introduced a legal duty of care under section 24 for all pet owners which cover five areas of welfare needs.

- the need for a suitable environment
- the need for a suitable diet
- the need to express normal behaviour
- the need for companionship and to live with, or apart from, other animals
- the need for health and protection from pain, suffering, injury and disease.

During the time spent in a shop environment, animals should benefit from the protection of these duties. These duties could also form the basis for possible grounds of refusal of an application for a licence, renewal or variation. They could also provide potential grounds for suspension or revocation of a licence.

We understand that the UK prides itself on being a nation of animal lovers. According to the British Veterinary Association², only one in three pet owners are familiar with their pet's legal welfare needs. That

¹ <https://consult.gov.scot/animal-welfare/animal-sanctuaries-and-rehoming-activities>

² <https://www.bva.co.uk/news-campaigns-and-policy/newsroom/news-releases/uk-pets-at-risk-as-two-thirds-of-owners-unaware-of-legal-welfare-needs/>

is despite over half of UK households owning a pet. This has prompted a number of leading veterinary organisations to launch a joint campaign to help pet owners to understand better what their pet's five welfare needs are.

Introducing legislation may well assist in addressing this issue. A further possibility which could aim to raise awareness might be for those licenced under the Act to be required to display information about these needs in their premises as a condition of their licence. There are well- established parallels with other areas of licensing, such as liquor, where conditions as to the display of relevant information (such as on under age sales or the need for identification) are now seen as inherent in the licensing framework. Such a condition might be bolstered by the provision of a short information leaflet at the point of sale outlining the welfare needs of the pet that has just been purchased.

We would be concerned that if creating any system of a more robust licensing framework that it should not be done in a way that impacts adversely or imposes a disproportionate burden on those that need to obtain licences. There should not be imposed any onerous administrative or financial processes. As with all licensing regimes, there needs to be a balance struck between the need for regulation and licensing that does not adversely affect the pet-shop owners' ability to run their businesses.

Part 2 – Your Views on the Proposal

Aim and approach

Question 1: Which of the following best describes your view of the proposals to strengthen the licensing regime for pet shops in Scotland?

We refer to our comments above.

There do seem to be factors that the proposal indicates supporting the strengthening of the regime. The 1951 Act provided the framework for licensing in England and Wales, until now when we understand that there are forthcoming changes to their licensing of animal establishments with the introduction of appropriate regulations. These regulations include the introduction of a more rigorous inspection regime as well as the inclusion of additional powers to impose conditions which are a significant part of what this proposal aims to achieve. It does seem important to reflect that while as a result of devolution, Scotland is not bound by practices in England and Wales, there may well be merit in considering the changes there. By establishing the nature of these changes, we can consider if these should be introduced here.

Furthermore, we note that Model Conditions for Pet Vending Licensing from 2013 exist in Scotland which set out basic minimum standards necessary for ensuring the health, safety and welfare of animals in pet

shops. These are advisory rather than capable of being imposed with sanction such as the revocation of a licence. More robust licensing regimes are in place in relation to zoos. Consideration as to the welfare of animals would similarly apply to any type of animal including pet animals.

These all supports a timely review as outlined in the proposal.

Question 2: Could the aims of the Bill be better delivered in another way (rather than by means of a Bill in the Scottish Parliament)?

If it was agreed that the changes being outlined in this proposal were to come into effect, a number of these changes would need to be made by primary legislation. A Bill, for instance, would be required to amend section 1(5) and (6) of the 1951 Act for instance with regard to the length of the licence. Likewise, the introduction of a legal basis for a Model Conditions regime or an adaption of the five welfare needs as outlined above could provide a basis for consideration of grants, suspensions or revocations of licences. This would need primary legislation.

Question 3: Under the proposal, pet shop licences would be based on a recovery of the costs incurred by the local authorities in processing applications and inspecting premises to ensure animal welfare standards are maintained. In your view which of the following should local authorities do?

We would welcome transparency as well as consistency and clarity as to the cost of any licence fee. As far as the costs of the procedures are concerned, there needs to be some form of fee to cover the administrative and inspection costs. There is also the issue of fairness.

We would suggest that there is much merit in setting fees centrally (and by the Scottish Government) and that could provide the best method. These could be set after discussions have taken place with the local authorities to gauge what the likely costs are to involve i.e. if it should include the costs of inspection. It must be stressed that it is important that these costs should be 'affordable' to the pet shops. Otherwise, organisations may be put off from undertaking such activities which is not the purpose of introducing registration or licensing.

Question 4: Which of the following best expresses your view of developing statutory license conditions building on the current Model conditions for pet vending that would apply to all pet shops in Scotland?

We can understand the merit in having standard conditions that apply to pet shops reflecting the up to date welfare practices that can be enforced. For example, it is not known if the Model Conditions adequately

reflect current best practice or whether a model based on the five welfare needs should be considered, but there needs to be a procedure by which such conditions can be amended and varied according to current good practices. There needs to be procedure to make such conditions publicly available so that pet shop owners know what they are. These should also be a matter for consultation with the relevant interested parties.

Whether breach of these conditions should result in civil sanctions such as revocation of a licence or criminal sanctions such as prosecution, could be considered as part of taking this proposal forward. However suspension and revocation of a licence are typical enforcement mechanisms found in other licensing regimes, as is variation. Given the importance of animal welfare it might be thought anomalous if pet shop licences are not also subject to such controls.

Question 5: Which of the following best supports your view of banning the sale of puppies and kittens in pet shops?

We have no comment to make.

Question 6: Which of the following best describes your view of pet shop licence applications listing all animal categories they intend to sell with owners under an obligation to inform the local authority before stocking any new categories?

We can see that this may be complex to achieve by way of statute or regulation. This would be best informed by those who can provide information on the categorisation of animals commonly stocked in a pet shop.

Question 7: Which of the following best describes your view of mandatory inspections for all pet shops before an initial licence is granted?

We can understand why that would be good and sensible practice. As part of the inspection process, there would be a point of reference/contact person which could also be a suitable person/place to disseminate advice or information about best practices. We are aware that similar inspection regimes are in practice in other areas of civic licensing – for example, in relation to the licensing of skin piercing and tattoo parlours. Our understanding is that licensing authorities ask to be satisfied that the premises are fitted out correctly in relation to health and safety and hygiene, prior to a licence being issued. A similar rule applies with some authorities in relation to licensing of sunbed parlours under the public entertainment licensing regime.

Question 8: Which of the following best describes your view of all local authorities using a standardised approach to conducting and reporting on inspections of pet shops?

This seems to be a sensible approach.

Question 9: Which of the following best describes your view of local authorities using a risk based assessment and issuing long term licences to pet shops that demonstrate low risk?

This sounds complex as it then raises issues about how and when the risk assessment is to be made. The legislation should be as simple and clear as possible to ensure that those to whom it applies can understand and either comply or implement it, as appropriate. The most important aspect to stress would be the introduction of inspections of the premises to ensure their suitability and compliance with the appropriate licensing and registration procedures. One possibility might be a system of both announced and unannounced annual inspections with the results of that inspection leading to the provision of advice or guidance or in more serious cases, enforcement. Again there are parallels in other regulated regimes such as in relation to food hygiene standards in restaurants or the inspection regime of the Care Inspectorate as regards care settings.

We are unsure why such licences were to be granted on a yearly basis in 1951. We would refer to those best placed to confirm if granting longer term licences would be both practical and safe.

Question 10: Which of the following best describes your view of enabling local authorities to contract other qualified professionals (in addition to their own officers and vets) to carry out and report on pet shop inspections, including qualified officers from other local authorities?

This seems a sensible approach.

Question 11: Which of the following best describes your view of enabling local authorities to take steps to address non-compliance with licence conditions giving licensees the opportunity to make improvements before any further action is taken, with the power to revoke a licence as a last resort?

This seems a sensible approach.

Question 12: Which of the following best describes your view of increasing the maximum

fine for failing to comply with legislation in line with more recent animal welfare?

We note the current maximum level of fine which can be imposed. No evidence was put forward to suggest that higher fines should have been imposed in relation to any convictions under the 1951 Act. However given the level of fine was set in 1951, this does probably merit review and a possible increase in the maximum level of fine that can be imposed. That does not mean to suggest that any conviction would necessarily attract a higher penalty as any sentence needs to reflect on the facts and circumstances of that case.

Question 13: Which of the following best describes your view of placing an obligation on pet shop owners to provide advice to people buying pets?

This would not in our view be appropriate for statutory legislation. With a more robust legislative process being put in place there may well be a role for pet shop owners to give advice to those buying pets. They should be doing so and in many cases are doing so, supporting the welfare of the animals they are selling. As noted above, one option might be to provide point of sale information in welfare needs.

Financial Implications/Equalities/Sustainability

Questions 14- 17

We have no comment to make in relation to any of these questions.

General

Question 18: Do you have any other comments or suggestions on the proposal?

We have no further comment to make. We trust this is helpful for your purposes. Please let us know if you have any questions.



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