



Law Society
of Scotland

Consultation Response

Registration and Licensing of Animal Sanctuaries and Rehoming Activities in Scotland

5 March 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 Scottish Government consultation: Registration and Licensing of Animal Sanctuaries and Rehoming Activities in Scotland. The sub-committee has the following comments to put forward for consideration.

General

The consultation proposes that legislation is introduced to create a modern system of registration and licensing of animal sanctuaries and rehoming activities. Animal sanctuaries and rehoming activities are not currently regulated. As part of the Programme for Government 2017-2018, there was a commitment to implementing a package of measures to improve animal welfare of which this consultation involving the registration and licensing of animal sanctuaries and rehoming activities forms a part.

We would agree that the introduction of a registration and licensing system is a sensible development as there does seem to be a gap in legislation. We are though unaware of the number, extent or nature of any specific problems that currently arise in the absence of such registration or licensing legislation. The consultation does indicate that there appear to be occasions where animal welfare is not being sufficiently protected or where such activities are '*operating commercially in the guise of a charity.*' If such practices are widespread that would justify the introduction of appropriate legislation. There is always a benefit in introducing legislation to set out clearly what is/is not required and to ensure consistent standards across Scotland.

Tackling therefore the common issues of registration, licensing and rehoming together does seem to be a sensible approach. If all these activities are not licensed, we suspect that back street puppy / kitten sales or rehoming arrangements might be developed that avoid the intended benefits of this proposed legislation. These would include the tightening up of dog breeding legislation and the proposed ban on third party puppy/ kitten sales.

We are concerned that any system of registration/licensing which is introduced must be done in a way which does not adversely impact on the current existence of animal sanctuaries or rehoming centres. We are aware that many of these are run on a volunteer basis providing an invaluable service in respect of animal welfare. The need to comply with legislation must not impose a disproportionate burden on their administrative procedures, finances or resources. There must be a balance achieved while accepting the need for registration and licensing.

Threshold for Registration: In discussing the introduction of registration and licensing of premises (through legislation), consideration is being given to exempting smaller organisations, defined by the number of animals which they keep, to avoid unnecessary administrative and financial costs. Larger organisations with multiple premises would therefore be subject to some form of licensing process.

That largely depends upon what is decided that the trigger for licensing or registration is to be.

It does seem that if it is to be by size, each premises or address requires to be licensed as opposed to one collective operator's licence for the organisation itself, irrespective of the number of premises. There may well be simplicity in that approach as each separate premises or address that falls within the requisite definition would itself be subject to inspection. Otherwise if there is provision for an umbrella organisation to obtain a collective license we can see all sort of technical problems where these multiple premises fall under different local authorities' responsibilities.

There are differing views about what might comprise any threshold for registration.

There may be agreement in principle with the suggested definitions of the threshold for exemption from registration or licensing procedures as outlined in the consultation. That would reflect our views outlined above about finding the correct balance. We would be concerned that may render the legislation unnecessarily complicated. There may be somewhat arbitrary numbers imposed which could arise if each species of animal has a different qualifying number.

Though we do not have the figures for the number of organisations to whom the legislation would potentially apply, most should, we imagine, involve cats and dogs where the same concerns about animal welfare requiring the introduction of registration or licensing procedures would be equally relevant no matter the number of animals that are kept by the organisation or at the premises.

We do also have some concerns that if there is a minimum threshold set that the organisations might deliberately avoid the regulations or licensing provisions by deliberately having more addresses or premises with the numbers below any statutorily-imposed requirements.

For that reason, all organisations regardless of size of the premises should be brought into a licensing scheme. Again, when considering any possible exemptions, where registration is required for a nursery, this is required irrespective of the number of children. The principles to consider are perhaps the same about the benefits of registration. Animals should be no different. That would avoid small based operations where there was a 'chain' of smaller unregistered rescue or rehoming facilities which because of their size are not registered.

We consider that a system of registration or inspections are important as we would suggest that the licensing of breeders (dogs) arrangements which are already in place do receive criticism for not being thorough enough. That of course has to be balanced against the costs which we have already indicated should be kept as low as possible. One solution might be to have a sliding scale of different fee levels for different types of organisations or animals. That would achieve the purpose to ensure that all premises were registered.

Disqualification: We agree too that anyone who has been convicted or disqualified from activities relating to the provision of acceptable animal welfare should not be registered or licensed to care for animals under any proposed new licensing/registration legislation. What these exemptions are to comprise will need to be set out carefully within the legislation. If that does not provide a wide enough basis for refusing to register or license any person, there would also be the possibility of adopting the 'fit and proper person test'¹ which can provide a broader basis by which to consider the registration or licensing of such an individual.

Inspection: As far as the inspection process is concerned, we would agree that the remit for inspections should be extended to include not just local authorities but also expert independent bodies such as Scottish SPCA. This would however be subject to the caveat that if the organisation such as the Scottish SPCA is applying for a licence, then it should be another independent organisation or the local authority which would be required to undertake the inspection to avoid any conflicts of interest arising.

Enforcement: Careful consideration needs to be given to exactly who will be able to enforce the legislation when the licensing/registration regime is put into place if it is intended that any enforcement of the regime is to lie with others as well as the relevant local authority. Local authorities do have measures and resources in place to cover the inspection of animal boarding establishments which are of course currently subject to a licensing regime. There is no reason not to assume that any registration or licensing regime should not be operated by the local authority. If powers are to be extended, then the powers to inspect etc² would require to be extended too to include those that are entitled to enforce. Similarly, there will be a need to consider what any breach of the registration/licensing legislation will involve. Should there be criminal or civil sanctions or both?

Costs: As far as the costs of the registration or licensing procedures are concerned, there would have to be some form of fee to cover the inspection costs. This would need to be paid by the applicant. That should cover the cost of the inspection process in its entirety and therefore should cover both the administrative process and also the cost of the actual inspection. To ensure transparency, consistency and fairness, we would suggest that setting such fees centrally (and by the Scottish Government) would be the best method. These could be set after discussions have taken place with the proposed independent inspectors and local authorities to gauge what the likely costs are to involve. It must be stressed that it is

¹ Air Weapons and Licensing (Scotland) Act 2015

² Animal Health Act 1981

important that these costs should be 'affordable' by the requisite organisations. Otherwise, organisations may be put off from undertaking such activities which is not the purpose of introducing registration or licensing.

Licenses: We do not understand what is being proposed with regard to licences lasting more or less than one year being issued on the basis of a welfare risk assessment. This sounds complex as it then raises issues about how and when the welfare 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 independent inspections of the premises to assess their suitability and compliance with licensing and registration procedures.

List of premises: It would also make sense for a national list of licensed premises to be kept. This should be publicly accessible, free of charge. This would encourage people requiring animals to utilise such establishments that are correctly licensed and registered and would therefore presumably further the welfare of animals in Scotland.

Enforcement: Enforcement agencies should be able to suspend, vary or revoke registrations and licences or issue improvement notices for minor irregularities. That would be subject to there being an appropriate and independent appeal hearing or mechanism available in respect of any allegations being made by the local authorities which could result in a suspension/revocation of the licence so that the matter might be fully reviewed. That may well be the relevant local authority licensing regulatory committee who would provide an independent judgement on the facts as presented to them.

As far as the adoption of welfare standards are concerned, these are best informed by those directly knowledgeable and responsible for setting such standards

We trust this is helpful for your purposes. Please let us know if you have any questions.



For further information, please contact:

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