

Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date:

7 July 2014

Meeting time:

14.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Gareth Williams

Committee Clerk

029 2089 8008/8019

CLA.Committee@wales.gov.uk

Agenda

1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Affirmative Resolution Instruments

CLA416 – The Animal Welfare (Identification of Dogs) (Wales) Regulations 2014
(Pages 1 – 32)

Affirmative procedure; Date made: Not stated; Date laid: 24 June 2014; Coming into force date: 6 August 2014

CLA(4)–19–14 – Paper 1 – Regulations

CLA(4)–19–14 – Paper 2 – Explanatory Memorandum

CLA(4)–19–14 – Paper 3 – Report

CLA417 – The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 (Pages 33 – 87)

Affirmative procedure; Date made: Not stated; Date laid: 24 June 2014; Coming into force date: 31 December 2014

CLA(4)–19–14 – Paper 4 – Regulations

CLA(4)–19–14 – Paper 5 – Explanatory Memorandum

CLA(4)–19–14 – Paper 6 – Report

3 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

Draft Report on the Inquiry into Disqualification of Membership from the National Assembly for Wales (Pages 88 – 227)

CLA(4)–19–14 – Paper 7 – Draft Report

CLA(4)–19–14 – Paper 8 – 2010 Order

CLA(4)–19–14 – Paper 9 – Extract from the Government of Wales Act 2006

CLA(4)–19–14 – Paper 10 – Table

CLA(4)–19–14 – Paper 11 – Legal Advice Note

Making Laws Inquiry (Pages 228 – 229)

CLA(4)–19–14 – Paper 12 – Discussion with the communication team

Agenda Item 2.1

Draft Regulations laid before the National Assembly for Wales under section 61(2) of the Animal Welfare Act 2006 (and paragraph 34 of Schedule 11 to the Government of Wales Act 2006), for approval by resolution of the Assembly.

DRAFT WELSH STATUTORY INSTRUMENTS

2014 No. (W.)

ANIMALS, WALES

ANIMAL WELFARE

The Animal Welfare (Identification of Dogs) (Wales) Regulations 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the compulsory identification of dogs by microchipping and for the registration of the microchip and the identity of the keeper of the dog on a database.

Regulation 3 requires that any puppy born after these Regulations come into force must be microchipped before it is either 56 days old or transferred to a new keeper, whichever is the sooner.

Regulation 4 requires that if a dog changes keepers after these Regulations come into force the dog must be microchipped and the transferring keeper must update the database upon which the microchip is recorded with the new keeper's contact details.

Regulation 5 requires all adult dogs are microchipped no later than 1 March 2015.

Regulation 6 requires imported dogs are microchipped.

Regulation 7 exempts dogs from the microchipping requirement under these Regulations if their keeper is only visiting Wales for a period not exceeding 30 days.

Regulation 8 creates a procedure under which a veterinary surgeon may certify that a dog is exempt from the requirement to microchip on health grounds.

Regulation 9 sets out what information must be recorded on a database.

Regulation 10 creates offences of failure to comply with regulations 3, 4, 5 and 6.

Regulation 11 provides that the Regulations are to be enforced by the local authority.

Regulation 12 makes consequential amendments to the Docking of Working Dogs' Tails (Wales) Regulations 2007.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Office of the Chief Veterinary Officer, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 61(2) of the Animal Welfare Act 2006 (and paragraph 34 of Schedule 11 to the Government of Wales Act 2006), for approval by resolution of the Assembly.

DRAFT WELSH STATUTORY
INSTRUMENTS

2014 No. (W.)

ANIMALS, WALES

ANIMAL WELFARE

**The Animal Welfare (Identification
of Dogs) (Wales) Regulations 2014**

Made

Coming into force

6 August 2014

The Welsh Ministers, as the appropriate national authority in relation to Wales⁽¹⁾, make the following Regulations in exercise of the powers conferred by section 12 of the Animal Welfare Act 2006⁽²⁾.

In accordance with section 12(6) of that Act, the Welsh Ministers have consulted those persons appearing to them to represent interests with which these Regulations are concerned as they considered appropriate.

In accordance with section 61(2) of that Act⁽³⁾, a draft of this instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

-
- (1) The appropriate national authority is defined in section 62(1) of the Animal Welfare Act 2006. Functions conferred on the National Assembly for Wales are now vested in the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 2006 c.45.
- (3) By virtue of section 162 of, and paragraph 34 of Schedule 11 to, the Government of Wales Act 2006, the reference in section 61(2) to “House of Parliament” includes the National Assembly for Wales.

PART 1

Introduction

Title, application and commencement

- 1.—(1) The title of these Regulations is the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014.
- (2) These Regulations apply in relation to Wales.
- (3) These Regulations come into force on 6 August 2014

Interpretation

2. In these Regulations—

(1) “adult dog” (“*ci llawndwf*”) means a dog which is not less than 6 months old;

“local authority” (“*awdurdod lleol*”) means the county council or a county borough council;

“microchip” (“*microsglodyn*”) means a read only passive radio frequency identification device—

(a) programmed with a unique number that can be read by a scanner; and

(b) registered upon a database which the dog’s keeper reasonably believes meets the requirements of regulation 9;

“microchipped” (“*microsglodynmu*”) means implanted with a microchip beneath the skin;

“puppy” (“*ci bach*”) means a dog which is less than 6 months old;

“veterinary surgeon” (“*milfeddyg*”) means a person registered in the register of veterinary surgeons under section 2 of the Veterinary Surgeons Act 1966.

(2) “keeper” (“*ceidwad*”) means, in relation to any dog other than an assistance dog (within the meaning of section 173(1) of the Equality Act 2010⁽¹⁾), the person with whom the dog normally resides.

In relation to an assistance dog, “keeper” means—

(a) until the dog ceases working as an assistance dog, the body responsible for its training and allocation;

(b) after the dog has ceased working as an assistance dog, the person with whom it normally resides.

(1) 2010 c.15.

Identification of puppies

3.—(1) Where an adult dog gives birth to a puppy after these Regulations come into force, the keeper of that adult dog must ensure that that puppy is microchipped before—

- (a) it is 56 days old; or
- (b) it is transferred to a new keeper, whichever is the sooner.

(2) The keeper of the adult dog must be registered as the first keeper of the puppy on the database on which the microchip is registered in accordance with regulation 9(1)(ii).

Change of Keepership

4.—(1) After these Regulations come into force, before any dog is transferred to a new keeper, the transferring keeper must—

- (a) ensure that dog is microchipped; and
- (b) supply the new keeper's name, address and telephone number (if he or she has one) to the database operator upon which the microchip implanted in the dog is registered.

(2) The transferring keeper must provide the new keeper with—

- (a) the name of the database operator on whose database the details of the dog's microchip are registered; or
- (b) the certificate issued under regulation 8(1).

Identification of Adult Dogs

5. The keeper of any adult dog must ensure that it is microchipped no later than 1 March 2015.

Identification of Imported Dogs

6. A keeper who imports a dog that is not identified in accordance with these Regulations must ensure it is microchipped—

- (a) within 30 days of importing the dog; or
- (b) before transferring the dog to a new keeper whichever is the earlier.

Exemption for non-residents

7. Regulations 3, 4 and 5 do not apply to the keeper of a dog who is visiting Wales for a period not exceeding 30 days.

Veterinary Exemption

8.—(1) Regulations 3, 4, 5 and 6 do not apply, if a veterinary surgeon certifies that microchipping would significantly compromise a dog's health.

(2) A certification under paragraph (1) must be in a form approved by the Welsh Ministers.

(3) A certification under paragraph (1) cannot be issued for longer than 4 weeks.

(4) If the veterinary surgeon considers the risk of the dog's health being significantly compromised is permanent, paragraph (3) does not apply.

Database requirements

9.—(1) A keeper must reasonably believe that the database operator accurately records—

- (i) the unique number of the microchip;
- (ii) the name and address of the keeper;
- (iii) telephone number of the keeper, if he or she has one;
- (iv) the name of the dog;
- (v) the breed of the dog;
- (vi) the colour of the dog;
- (vii) any distinguishing physical features of the dog;
- (viii) the sex of the dog; and
- (ix) the date of birth of the dog.

(2) A keeper must reasonably believe that the database operator—

- (i) updates any reported changes to the information listed in paragraph (1) on the database;
- (ii) records the information listed in paragraph (1) on a secure computerised database; and
- (iii) is able to process telephone or online enquiries for that information at all reasonable times.

Offences

10. It is an offence, punishable by a fine not exceeding level 2 on the standard scale, to—

- (a) fail to comply with regulation 3;
- (b) fail to comply with regulation 4;
- (c) fail to comply with regulation 5; or
- (d) fail to comply with regulation 6.

Enforcement

11. These Regulations are enforced by the local authority.

Amendments to the Docking of Working Dogs' Tails (Wales) Regulations 2007

12.—(1) The Docking of Working Dogs' Tails (Wales) Regulations 2007⁽¹⁾ are amended as follows.

(2) For regulation 5(1) substitute—

“(1) In order to be identified as a subsection (3) dog as required by section 6(8) of the Animal Welfare Act 2006—

- (a) the dog must be microchipped by a veterinary surgeon, or a veterinary nurse acting under the supervision of a veterinary surgeon, in accordance with regulation 3 of the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014; and
- (b) before the dog is 91 days old it must be identified as a certified working dog under section 6(3) of the Animal Welfare Act 2006 by confirming the tail docking as a distinguishing physical feature on the database upon which the dog's microchip is registered under regulation 9(1)(vii) of the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014.”

Minister for Natural Resources and Food, one of the Welsh Ministers

Date

(1) S.I. 2007/1028 (W. 95).

Explanatory Memorandum to the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014.

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014. I am satisfied that the benefits justify the likely costs.

Alun Davies AM
Minister for Natural Resources and Food

DATE: 18 June 2014

1. Description

These Regulations provide for the identification of all dogs in Wales through the implantation of a microchip. Puppies born after the legislation has commenced will be required to be microchipped before they are 56 days old; the purpose of microchipping puppies would be to ensure an audit trail from the premises of its birth to any new owner/keepers. Should welfare or medical problems arise in the future which indicate that the source of the problem was from the place of birth, it would be possible to establish that link and take the necessary action to ensure there is no future reoccurrence.

A person who fails to identify his or her dog as required under the Regulations commits an offence under the Animal Welfare Act 2006 and is liable to a fine not exceeding level 2 on the standard scale.

Under section 30 of the Animal Welfare Act 2006 Local Authorities may prosecute for any offence under the Act.

Compulsory microchipping in Wales is supported by the Police, Veterinarians (Royal College of Veterinary Surgeons and British Veterinary Association) and welfare organisations including the RSPCA, Dogs Trust and Advisory Council on the Welfare of Dogs. It is firmly believed that this measure will have a positive impact on animal welfare and may assist in the control of dangerous and nuisance dogs. The traceability of all dogs back to their owners and ultimately back to the breeders will help to encourage more responsible ownership and breeding as enforcement authorities will find it easier to take remedial action and, where appropriate, prosecutions.

Compulsory microchipping has already been introduced for dogs in France, Denmark, Slovenia, Switzerland, the Netherlands, Spain, Portugal, Canada, Hong Kong, Israel and Japan. In other countries, certain regions or areas have done so, such as Prague in the Czech Republic and several states in Australia. In European countries with compulsory microchipping, there are high levels of compliance with 80-90% of dogs estimated to be microchipped (European Pet Network/The Kennel Club estimates). Further, in Sweden, it is a legal requirement for dogs to be registered and permanently identified from four months of age. Since 2000, identification by microchip is preferred over marking with an ear tattoo. Dogs must be registered with the Swedish Authorities within four weeks of being transferred to a new owner. As a consequence, over 90% of stray dogs are reunited with their owners within 24 hours of being collected by the authorities (Tasker, L (2008) Stray Animal Control Practices (Europe) WSPA/RSPCA International).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None identified.

3. Legislative background

These Regulations will be made under section 12(1) of the Animal Welfare Act 2006. Section 12(1) gave the National Assembly power to make regulations promoting the welfare of animals. Those powers are now vested in the Welsh Ministers by operation of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Section 12(6) of the Act requires that the Welsh Ministers consult with person appearing to them to represent any interest concerned prior to exercising that power

Regulations made under section 12 are subject to approval by the National Assembly for Wales by affirmative resolution procedure.

4. Purpose & intended effect of the legislation

The purpose of the Regulations is to allow the permanent identification of dogs through the implantation and subsequent registration of a microchip (a read only passive radio frequency identification device), to increase traceability of dogs and provide a deterrent against irresponsible ownership. This is an integral part of a wider policy on raising standards of welfare for dogs.

A microchip is a passive device unless stimulated by an appropriate scanner which can receive a radio signal from the microchip indicating its identification code. This code can then be mapped against the data recorded on the microchip database to identify the owner of the dog and therefore ensures accurate traceability.

The merit of being able to identify a dog has long been acknowledged in UK law. Although the dog licence was abolished in 1987, it is still a legal requirement under the Control of Dogs Order 1992 for a dog to wear a collar and tag with the owner's name and address on it whilst in a public place. This method of identification is not permanent; the Dogs Trust Stray Dog Surveys of 2011-13 indicated from responses received that only 4-5% of dogs returned to owners were as a result of collars and tags. However, due to the benefits of the identity of a dog's owner being visible to all where a collar/tag is available, without the need for an electronic scanner, this legislation will not be superseded but complemented by the microchipping legislation.

By requiring this permanent method of identification, more lost dogs will be reunited with their owners more quickly to the benefit of owners and dogs, saving Local Authorities and charities considerable kennelling costs. It will also be easier for those responsible for tackling abuses of dog welfare to bring owners to account and to protect public safety.

It is also important to recognise that this legislation is part of a wider set of controls relating to dogs. Traceability back to owners and, for puppies, dog breeders, will in the longer term lead to dog health improvements. In the case of

breeders, poor breeding conditions can lead to physical and mental health problems; traceability may encourage greater responsibility for a dogs' welfare.

The main policy proposals for the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014, which will come into force on 1st March 2015, include:

- the requirement to microchip puppies before they are 56 days old, and older dogs before 1st March 2015;
- the seller being responsible for the transfer of ownership of a dog on the relevant microchip database, within 7 days of rehoming. For newly microchipped animals, this must be done within 7 days of implantation;
- standardising the details that must be recorded by microchip database providers; and
- creating an offence if a dog that is resident in Wales for more than 30 days per year, and has not been exempted by a veterinary surgeon on significant health grounds, is not microchipped.

The Regulations cover the basic requirements to introduce compulsory microchipping in Wales. Officials are working with counterparts in Defra on the development of Industry Standards for microchips and databases, as well as a compulsory training course for implanters. Once this work has been completed, the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014 will be amended to include these additional requirements in due course.

5. Consultation

A consultation on proposals to introduce regulations requiring the compulsory microchipping of dogs in Wales was launched on 16th May 2012 for a period of 12 weeks. Nine questions were asked, seeking opinion on aspects such as whether the general public thought compulsory microchipping should be introduced; how the requirement would be introduced (e.g. compliance within one year of legislation coming into force, only on transfer etc.); data storage and access; exemptions and cost analysis, among other issues.

120 individual responses (excluding approximately 1,000 campaign letters) were received in total; a summary of the responses can be seen here: <http://wales.gov.uk/consultations/environmentandcountryside/120516microchippingdogs/?status=closed&lang=en>. It was clear from the consultation that the overwhelming majority of respondents (84%) thought compulsory microchipping of dogs should be introduced in Wales. The majority felt that there should be no exemptions other than on health grounds (as assessed by a veterinary health care professional) and that the current information storage on commercial databases was adequate. There were, however, concerns raised about access to information due to animal rights activists and recent attacks on dog breeders.

Discussions have taken place with representatives of the Welsh Local Authorities, Dogs Trust and The Kennel Club to discuss the introduction of compulsory microchipping.

Key issues raised were:

- No single point of contact to find microchip details.
- Databases should be signed up to Europetnet, a group of national and local associations based across Europe who register information about pets that have been uniquely identified with a microchip.
- Exemptions needed for smaller dogs, due to welfare implications.
- Ensuring it is required in law that information is kept up-to-date.
- Where the responsibility to microchip and register as the owner of a dog would lie when it came into a Local Authority kennel or sanctuary.
- Clarifying notes should be embedded in the Regulations.
- Training for dog wardens essential.
- Fixed penalty notices should be included.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

The following assessment offers a view on the likely impact of the Regulations on dog owners/keepers, veterinary surgeries, database operators, enforcers and on animal welfare. In the circumstances and based on the data and evidence available, the Welsh Government believe that the benefits justify the likely costs

Options

Following the analysis of the results of the public consultation in 2012, the options that were agreed for consideration were to do nothing, or to microchip all dogs before an agreed coming into force date, and all puppies born after this date by the time they were 56 days old. The latter allows a definite date upon which complete enforcement activity could commence and allows parallel working with Defra, who are also introducing compulsory microchipping in England.

Option 1: Not introduce legislation but continue to work with Local Authorities and third sector organisations to encourage owners to microchip their dogs on a voluntary basis

This is the 'Do Nothing' option and maintains the current policy position in which the microchipping of dogs is a voluntary procedure, with the decision resting entirely with the dog's owner/keeper.

In Wales, we have already benefitted from the different companion animal welfare organisations working closely together. The Animal Welfare Network Wales, Companion Animal Welfare Enhancement Scheme (CAWES) and its successor the Cross-Sector Companion Animal Welfare (C-SCAW) Forum all helped to foster a strong working link between many organisations.

The Kennel Club together with Dogs Trust and other welfare organisations have provided significant financial support to initiatives aiming to increase the voluntary uptake of microchipping over the years. These initiatives include funding microchips for lower income owners, regional microchip installation, and advertising campaigns. Veterinarians also encourage microchipping.

The Dogs Trust, in common with other re-homing/rescue organisations microchip every dog that arrives at their 17 re-homing centres in the UK that is not already microchipped. All of their centres offer £10 dog microchipping to any owner or free microchipping for owners on means tested benefits.

At the 2010 Welsh Government Microchipping Workshop it was estimated that 30-35% of dogs in the UK were already microchipped. Through campaigns by Local Authorities and third sector organisations, Dogs Trust data suggests that this figure has risen to approximately 58%. However, it is estimated that only 23% of strays received by Local Authorities are microchipped. Given the efforts made already to encourage owners to microchip their dogs, it is firmly believed that the only way to achieve a significant increase in the take-up of

microchipping is for government intervention through the introduction of compulsory microchipping.

Option 2: Microchip all dogs before the coming into force date of 1st March 2015, and all puppies born after this date by the time they are 56 days old.

Puppies born after the legislation came into force would be microchipped by the time they are 56 days old. Older dogs would be microchipped before the date the legislation came into force. This would help relieve the potential burdens on microchipping database operators and possible processing costs and delays. This Option would provide a standard approach to enforcement and would start to have a positive impact on reunification and rehoming before the legislation came into force, easing the burden on Local Authorities and dog rehoming centres.

Costs & Benefits

Costs

Option 1 – Do Nothing

This option maintains the current policy position of microchipping being a voluntary procedure; there are therefore no additional costs associated with this option.

Option 2: Microchip all dogs before the coming into force date of 1st March 2015, and all puppies born after this date by the time they are 56 days old.

Welsh Government

The Welsh Government will be responsible for communicating the change in Regulations to stakeholders and the general public; a budget of approximately £1,000 has been allocated for the Welsh Government's dog welfare communications work.

Local Authorities

This option may result in an increase in the administration and enforcement costs incurred by Local Authorities. However, we understand that Local Authorities intend to take a reactive rather than proactive approach to enforcing these Regulations. As such, it is expected that that enforcement will be restricted to irresponsible owners whose dogs have been allowed to cause a problem such as fouling, being out of control or stray, cruelty cases or cases of unlicensed breeding. The additional cost to Local Authorities for monitoring/enforcing compliance is therefore expected to be minimal.

There will be a cost to Local Authorities to purchase equipment to check dogs for microchips (i.e. a scanner, which is approximately £80); however most Local Authorities should already have this equipment to allow their dog wardens to carry out their functions. A survey of Local Authorities was carried out by the Welsh Government in October 2009: 12 Authorities responded, with all confirming that their dog wardens were issued with microchip scanners.

Dog wardens may also microchip stray dogs prior to reunification or rehoming. If not already qualified, training would cost approximately £174. However, in the 2009 survey mentioned above, all Local Authorities who responded confirmed that they already had officials trained to implant microchips. There are therefore assumed to be no additional costs incurred by Local Authorities to purchase scanners or train staff to microchip dogs.

Dog Owners/Keepers

There will be a one-off cost to some dog owners associated with having their dog microchipped or updating database records prior to the coming into force date of March 1st 2015. This cost will only apply to those owners whose dog is not already microchipped or where the microchip database records are out of date.

The Welsh Government's National Survey for Wales 2009-10 revealed that 61% of Welsh households owned at least one dog, amounting to an approximate 450,000 dogs in Wales. It is estimated by Dogs Trust that 58% of dogs are already microchipped, leaving approximately 189,000 animals to microchip. The average cost charged for the procedure is approximately £10-30; therefore the total one-off cost will range from £1.89 million to £5.67 million (assuming 100% compliance).

Since the Regulations will also require all puppies to be microchipped, the cost to dog owners in future years will relate to ensuring that the microchip database records are up-to-date when they purchase, sell or re-home a puppy or dog. There is an approximate cost of £16 per dog¹ to update the details kept on the microchip database. There is concern that owners/keepers will forget or refuse to update the database, however the Welsh Government will be carrying out a communications strategy, both in parallel to the coming into force of the Regulations and as an annual campaign, to emphasise the importance of the record being accurate. Other organisations are also carrying out work to this effect; for example, the Microchipping Alliance have already been working in partnership with the Communications Workers Union and the Post Office to ensure that this requirement is added to the list of advice given by the Post Office to persons who are moving home.

Financial constraints are not assumed in themselves to be an impediment for dog owners to microchip. Installation of a microchip is a small expense relative to the lifetime expense of a dog which is estimated by the RSPCA at between £16,000 - £31,000 depending on the breed and size of the dog. Furthermore, there are welfare organisations providing a free microchipping service to all dog owners; Dogs Trust in particular currently offer free microchipping to members of the public and have committed to offer this service until the coming into force date. In the 2009 Welsh Government survey to Local Authorities, of the 12 that responded, 75% had also offered financial assistance to dog owners to get their animals microchipped. Welfare organisations already strongly promote microchipping and a majority of vets offer a microchipping service along with organisations such as pet supermarkets and some dog groomers.

Microchipping is also already a requirement for all dogs whose tails are docked under the Docking of Working Dogs' Tails (Wales) Regulations 2007: these Regulations require docked dogs to be microchipped by the time they are 12

¹ All four databases offer a 'lifetime' service for a fee of £15 -18, with a median of £16. This fee covers the registration of the new keeper and any updates to the registered details (such as change of address) for the lifetime of the dog whilst with the keeper (or up to 8 years in one case).

weeks old, to provide a link between the animal and the certificate that was issued as proof that the procedure was carried out legally. These Regulations will amend the Docking Regulations to ensure all puppies are microchipped before they are 56 days old.

Dog Breeders

Licensed dog breeders will be expected to microchip their dogs and puppies prior to rehoming under the requirements of the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014; this legislation is due to come into force in Wales prior to the microchipping Regulations. The cost to dog breeders has been considered in the RIA that accompanied those Regulations.

In addition, the requirement to microchip all puppies before they are 56 days old will impose a cost on small-scale dog breeders that will not require a license under the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 (i.e. those that breed 1 or 2 litters per annum). Assuming an average of 5 puppies per litter, these breeders may have 5-10 puppies to microchip each year at a cost of £50 to £300 per annum (£10-30 per animal). It is expected that this cost would be passed to the eventual owner of the puppy.

Database operators

Demand will increase as new and existing dog owners arrange for their animals to be microchipped. This may cause a temporary human resource issue for database operators, however in a meeting with Welsh Government officials, representatives of the main databases suggested that this would not be significant due to the registrations mainly being carried out electronically. Furthermore, the long lead in time and planned communication campaign should help to ensure a steady flow of registrations and help database providers manage their workloads. In any case, the database providers will receive a fee for all new and updated registrations.

The Regulations require that a database must record a keeper's name, address and contact telephone number for the purposes of identification of the dog and its' owner. All of the existing database providers currently record this information and so there are not assumed to be any additional costs associated with changing databases, forms and/or existing records.

Suitably qualified implanters

No additional costs have been identified for existing implanters as they will already be trained and have the necessary equipment. The Regulations are expected to lead to an increase in the number of owners that have their dog microchipped, however, the implanters will be paid a fee for providing this service. For new implanters, the costs of training and equipment are set out above.

Justice System

As referenced earlier in this report, in European countries with compulsory microchipping in force, there are high levels of compliance with 80-90% of dogs estimated to be microchipped, suggesting that prosecutions would be minimal. Under the Animal Welfare Act 2006 (the 'parent' Act), enforcers will have the power to issue improvement notices before having to take any legal action, reducing the potential impact on the judicial system. In any case, it is likely that any enforcement action will be part of a wider action against an irresponsible dog-owner and actions on just failing to microchip will be very few.

In addition to this legislation, microchipping can also be imposed under the powers within the Antisocial Behaviour, Crime and Policing Act, which can be enforced by Local Authorities and Police.

Benefits

Option 1 – Do Nothing

This option maintains the current policy position of microchipping being a voluntary procedure; there are therefore no additional benefits associated with this option.

Option 2: Microchip all dogs before the coming into force date of 1st March 2015, and all puppies born after this date by the time they are 56 days old.

Welsh Government

Animal welfare is a priority for the Welsh Government. Separately, the compulsory microchipping of dogs in Wales is one aspect of a much wider policy on improving dog welfare. The Regulations tie in with a wider policy promoting responsible dog ownership, providing consistency across the board.

Local Authorities and Rescue Organisations

A microchip will assist in reuniting owners with dogs that have strayed. Dogs may suffer stress whilst accommodated in animal welfare establishments or Local Authority kennels. Reuniting dogs with their owners sooner could significantly reduce the amount of time they spend in such places. In 2010/11 over 126,000 stray dogs were collected by UK Local Authorities. Of these, over half (52%) could not be returned to their owners because they were unidentifiable. For the financial year ending April 2012, 10,230 stray dogs were collected by Welsh Local Authorities. 543 dogs were put to sleep and many others had a lengthy stay in kennels, away from their owner.

Kennelling stray dogs costs Local Authorities, on average, £21 per dog per day (Defra Impact Assessment on Compulsory Microchipping) and almost all such dogs incur seven days of costs. After this time, if a dog is not rehomed, it would normally face euthanasia or transfer to an animal shelter. Euthanasia costs an average of £45 per dog (procedure and disposal of the body) (GfK NOP Social Research 2011 op.cit.). As well as reducing or removing these costs through faster reunification of dogs with their owners, there is also the potential for Local Authorities to make additional revenue, through reunification fees and charging for microchipping services. In addition, there are possible benefits to rescue centres if more dogs are reunited with their owners by the Local Authority rather than being handed into their care.

The Dogs Trust² has previously presented an estimate of the potential annual cost savings associated with compulsory microchipping. The report estimates that the cost-savings associated with having to deal with fewer stray dogs to be between £2.39 million and £2.61 million per annum, this is based on an

² Report on the Cost Impacts of Compulsory Microchipping of Dogs in Wales, November 2011

assumption of 90% compliance with the Regulations. A breakdown of these cost-savings is presented below.

Cost-saving	£ per annum
Reduced local authority kennelling costs for keeping strays statutory 7 days	348,500
Reduced euthanasia costs	19,680
Reduced animal welfare organisation cost for kennelling unreturned dogs	1,900,000
Total cost-savings	2,268,180
Additional income from administration fee from owners of stray dogs*	124,475 - 348,530
Total	2,392,655 – 2,616,710

*This represents a cost to the relevant dog owner.

A number of Local Authorities in England and Wales already require the compulsory microchipping of dogs for tenants in social housing. The Dogs Trust has provided information on a report provided by Housing Hartlepool, which recorded a drop from 76 dog-related complaints to 26 in the space of one year (January 2011 – February 2012) when this initiative was introduced. They also identified a reduction in the issuing of Fixed Penalty Notices for dog fouling for during the same period, from 76 to 47. In addition, the number of stray dogs collected by Hartlepool Borough Council and subsequently returned to their owners rose from 23% to 41.2% (Dog Related Issues Jan 2011- Feb 2012 Report, Housing Hartlepool).

Dog owners

Dog owners will benefit from an increased probability of being reunited with a lost dog and a reduction in the associated distress. There is evidence from abroad which suggests that countries with compulsory/increased microchipping have higher levels of owner identification of strays. In Sweden where microchipping is compulsory, over 90% of stray dogs are reunited with their owners within 24 hours of being collected by the authorities.³ Furthermore, a US research study by Lord et al (2009) found that dogs with microchips were likely to be relocated with their owners; they concluded that ‘the high rate for return of microchipped dogs supported microchipping as a valuable permanent pet identification modality’.⁴

³ Tasker L (2008), Stray Animal Control Practices (Europe), WSPA/RSPCA International

⁴ Lord L K, Ingwersen W, Gray J L, Wintz D J, (2009), Characterization of animals with microchips entering animal shelters, *J Am Vet Med Assoc*, **235(2)**:160-167

Dog welfare

Increasing the traceability of breeders and owners is expected to result in a number of animal welfare benefits:

- improved traceability of dog owners may act as a deterrent to irresponsible dog ownership and may assist enforcement authorities in the prosecution of cruel and irresponsible owners;
- in cases where welfare or medical problems arise which indicate that the source of the problem was improper breeding practices or a poor breeding environment etc., it will be possible to identify the breeder and take the necessary action to ensure there is no future reoccurrence;
- a good record of dog ownership will enable veterinarians to contact owners about health schemes;

Summary of the preferred option

This Regulatory Impact Assessment makes the case for introducing compulsory microchipping for all dogs resident in Wales. Taking into consideration the results of the public consultation and the costs and benefits of each option, it is estimated that “Option 2: Microchip all dogs before the coming into force date of 1st March 2015, and all puppies born after this date by the time they are 56 days old” is the most appropriate way forward.

This option has clear welfare benefits, namely reinforcing an owner’s responsibilities under the Animal Welfare Act 2006. The clear benefit of permanent identification will assist in discovering and evidencing repeat offenders who allow their dogs to stray or cause nuisance. It would also allow vets to contact owners of stray dogs in situations where emergency treatment is required.

The preferred option also generates cost-savings for Local Authorities and animal welfare organisations by reducing the cost associated with dealing with stray dogs. As noted above, this cost-savings has been estimated to be between £2.39 million and £2.62 million per annum.

The greater traceability would assist enforcement officers greatly in situations such as dog theft, animal cruelty or if a puppy sold by a breeder has health problems as a direct result of the conditions in which it was raised. It would also assist in situations where the true ownership of a dog needed to be proven.

Owners and keepers of dogs were notified on 5th March 2014 that compulsory microchipping would come into force on 1st March 2015, allowing a year for them to get their dogs microchipped.

Competition Assessment

A competition filter can be found at Appendix A.

Post implementation review

It would be appropriate to consider starting a review of the legislation three years after the legislation is made and brought into effect.

APPENDIX A

The Competition Assessment

The competition filter test

The competition filter test is set out below, together with points raised.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	Yes
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Questions 1 to 3: the market

The market is dominated by four large database operators with an unknown quantity of smaller organisations. No data is held by the Welsh Government on number of microchip manufacturers, or Suitably Qualified Persons currently offering microchip implantation services

Question 4: substantially different effect on businesses/organisation

No significant costs identified.

Question 5: changes to market structure

As demand grows, more individuals and businesses may choose to train to become implanters, or set up a database, to provide this required service.

Questions 6 and 7: penalising new suppliers

The Regulations will not come into force until 1st March 2015, despite being debated in Plenary on 15th July. This allows sufficient time for keepers to get their dogs microchipped, and for Local Authorities and those involved in the microchipping industry to consider these Regulations further.

Whilst there are specific requirements set out for database operators, these are not thought to be any different to data recorded by current databases.

Question 8: technological change

A no answer is given. Change in technology can take some time to evolve through research and development.

Question 9: restrictions on suppliers

Whilst we do not agree that the proposals will restrict trade in any way, it is possible that introducing a compulsory requirement may cause existing prices to rise.

**Constitutional and Legislative Affairs Committee Draft Report
CLA(4)–19–14**

**CLA416 – The Animal Welfare (Identification of Dogs) (Wales) Regulations
2014**

These Regulations provide for the compulsory identification of dogs by microchipping, and, for the registration of the microchip and the identity of the keeper of the dog on a database.

Procedure: Affirmative

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to this instrument:–

1. SO 21.3 (iv) that it gives rise to issues of public policy likely to be of interest to the Assembly).

These Regulations provide for the identification of all dogs in Wales through the implantation of a microchip. Puppies born after the legislation has commenced will be required to be microchipped before they are 56 days old, or transferred to a new keeper whichever is the sooner. Dogs which change keepers after the Regulations come into force will be required to be microchipped. Save for some limited exceptions all dogs in Wales will be required to be microchipped no later than 1 March 2015.

2. SO 21.3 (v) that it imperfectly achieves its policy objectives

2.1 The Explanatory Memorandum (Page 3) states that the purpose of the Regulations is “to allow the permanent identification of dogs through the implantation and subsequent registration of a microchip (a read only passive radio frequency identification device), to increase traceability of dogs and provide a deterrent against irresponsible ownership. This is an integral part of a wider policy on raising standards of welfare for dogs”.

2.2 It goes on to state (Page 14) that:–

Increasing the traceability of breeders and owners is expected to result in a number of animal welfare benefits:

- improved traceability of dog owners may act as a deterrent to irresponsible dog ownership and may assist enforcement authorities in the prosecution of cruel and irresponsible owners;
- in cases where welfare or medical problems arise which indicate that the source of the problem was improper breeding practices or a poor breeding environment etc., it will be possible to identify the breeder and take the necessary action to ensure there is no future reoccurrence;
- a good record of dog ownership will enable veterinarians to contact owners about health schemes.

2.3 There are some concerns that the legislation as drafted will not achieve the policy objectives of traceability and animal welfare benefits outlined above for a number of reasons.

Microchip Standards

2.4 There is no requirement for the chip to reach a particular standard and therefore traceability cannot be ensured.

2.5 Northern Ireland is the only country within the United Kingdom thus far to introduce compulsory microchipping for all dogs. The Dog (Licensing and Identification) Regulations (Northern Ireland) 2012 provide that the microchip used must meet either ISO Standard 11784:1996 or Annex A to ISO Standard 11785:1996 of the International Standard for Microchips.

2.6 The UK Government intends to bring forward The Microchipping of Dogs (England) Regulations 2014 which require microchips to meet either ISO standards 11784:1996 or 11785:1996 (apart from Annex A).

2.7 Microchipping of certain dogs in Wales is already required by The Docking of Working Dogs Tails (Wales) Regulations 2007. The regulations require the microchips used to reach either ISO standard 11785 or Annex A to ISO Standard 11785.

2.8 Whilst the pet travel scheme which requires the microchipping of dogs which are taken abroad doesn't specify what type of microchip is used, the UK Government's guidance states as follows:-

Transport companies in the EU can read microchips that meet International Organization for Standardization (ISO) standards ISO 11784 and ISO 11785 when you check in for your journey.

You must bring your own microchip reader when you travel if your pet's microchip doesn't meet ISO standards.

2.9 This would appear to suggest that within the EU there may be difficulty in reading chips that don't meet either of the ISO standards. It is not clear from the Explanatory Memorandum what microchips the Local Authority scanners are able to read.

2.10 At Page 4 of the Explanatory Memorandum, the Welsh Government state that

The Regulations cover the basic requirements to introduce compulsory microchipping in Wales. Officials are working with counterparts in Defra on the development of Industry Standards for microchips and databases, as well as a compulsory training course for implanters. **Once this work has been completed, the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014 will be amended to include these additional requirements.** (my emphasis)

2.11 It is not known when the UK Government will lay The Microchipping of Dogs (England) Regulations 2014. The requirement to microchip will not however come into force until April 2016.

2.12 It is therefore conceivable that the majority of dogs in Wales will have already been microchipped before the work has been completed. If as a result of the work undertaken, the Welsh Government wish to apply a particular industry standard, it is not clear how this will affect those animals that have already been microchipped.

Enforcement provisions

2.13 Regulation 10 provides that it is an offence punishable by a fine of up to £500 if an owner fails to have their dog microchipped in accordance with the Regulations.

2.14 Whilst the Regulations provide that the Local Authority for an area will enforce them, no power is given to officers to take any action leading up to the prosecution of the keeper. There is for example, no power to take an animal or scan an animal.

2.15 Within the Explanatory Memorandum (Page 8) the Welsh Government states that–

Local Authorities intend to take a reactive rather than a proactive approach to enforcing these Regulations. As such it is expected that enforcement will be restricted to irresponsible owners whose dogs have been allowed to cause a problem such as fouling, being out of control or stray, cruelty cases or cases of unlicensed breeding.

2.16 It also states (Page 11) that –

Under the Animal Welfare Act 2006 (the ‘parent’ Act), enforcers will have the power to issue improvement notices before having to take any legal action, reducing the potential impact on the judicial system.

2.17 An improvement notice under Section 10 of the AWA 2006 can only be served if an inspector is of the opinion that a person is failing to ensure that the needs of an animal for which he is responsible are met.

2.18 Such a power would not enable a notice to be served on an owner for failing to microchip unless there were also some other welfare concerns. It would not assist in the case of dogs fouling for example. In such an example, where the dog has an owner and there are no welfare concerns, there would in any event be no power for a Local Authority to scan the dog in the first place, which would be a pre-requisite of issuing any improvement notice for failure to microchip.

2.19 If Local Authorities are only be able to scan an animal which comes into their custody or where an owner consents, it is difficult to see how the Regulations will increase microchipping and as a result of the same traceability.

Database requirements

2.20 At Page 10 of the Explanatory Memorandum, the Welsh Government state that the Regulations require that a database record certain information. In addition, at page 17 reference is also made to their being specific requirements set out for database operators in the legislation.

2.21 The Explanatory Memorandum is incorrect in this respect. The Regulations do not impose any requirements on database operators to comply with certain standards.

2.22 Rather they require the dog's owner to "reasonably believe" that the database operator complies with the requirements in regulation 9.

2.23 The difficulty with this approach, is that because database operators are not regulated, the Welsh Government has no way of requiring database operators to meet the requirements in regulation 9 if they do not wish to, or to provide owners with the information they will need to satisfy themselves that the database meets the requirements. Neither is there a duty on the person carrying out the microchipping to provide the information.

2.24 It is difficult therefore to see how dog owners are to satisfy themselves that the database operator is complying with the standards required of them.

2.25 This poses even greater difficulties for subsequent owners of microchipped dogs. Whilst the original keeper may be satisfied as to the requirements, by information voluntarily provided by the person who does the microchipping, without a requirement for some documentation beyond the name of the operator under regulation 4 (2) (a), the new keeper has no way of being satisfied as to the matters in regulation 9 without contacting the database operator before acquiring the dog.

2.26 Within the 'Competition Assessment' of the Explanatory Memorandum (page 16) the Welsh Government state:-

“The market is dominated by four large database operators with an unknown quantity of smaller organisations”

2.27 The issue was also considered within DEFRA s Impact Assessment (March 2012) on microchipping of dogs.

In that they state:-

There are currently 4 databases registering microchips in England. Moving to a form of compulsory micro chipping will increase demand for microchips therefore creating market opportunities for new market entrants. This increased demand may lead to further databases being established. It is anticipated that, to ensure minimum standards of service are met and to avoid any unscrupulous operators setting up business, all databases, existing and new, will need to meet minimum standards. Whilst databases are not currently formally approved, the risk is that without minimum standards providers may set up cut price systems that do not offer a satisfactory level of service and as a result situations needing an urgent response are not resolved. To achieve this, service and data protection standards will need to be agreed, which might include meeting standards already set out in Part 2 of The Welfare of Racing Greyhounds Regulations 2010, or else the databases should achieve compliance with ISO standards. Of the databases operating in England only Petlog is currently ISO certified, so it is likely therefore that other existing databases may incur costs associated with meeting the standards established by any Defra approval scheme if after consultation it is decided to insist on all databases being ISO compliant (also see paragraph 54)

2.28 Whilst it seems unlikely, a Court could find dog owners guilty of the offence of failing to register on a database which complies with regulation 9, where there was no way they could comply with the requirement, because for

example all the database operators decide not to provide the information. Imposing the burden on the keeper to check the standards of the database does not appear to be an appropriate mechanism for securing databases reach certain standards and therefore provide traceability.

Legal Advisers

Constitutional and Legislative Affairs Committee

June 2014

Government response to follow

Agenda Item 2.2

Draft Regulations laid before the National Assembly for Wales under section 61(2) of the Animal Welfare Act 2006 (and paragraph 34 of Schedule 11 to the Government of Wales Act 2006), for approval by resolution of the Assembly.

DRAFT WELSH STATUTORY INSTRUMENTS

2014 No. (W.)

ANIMALS, WALES

ANIMAL WELFARE

The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the licensing of persons involved in the breeding of dogs. Part 2 of the Regulations specifies dog breeding for the purposes of section 13(1) of the Animal Welfare Act 2006 (c.45) (“the Act”). The consequence of this specification is that, subject to qualifying criteria, any person wishing to breed dogs in Wales must obtain a licence from their local authority under these Regulations. This requirement replaces the requirement to obtain a licence under the Breeding of Dogs Act 1973 in Wales.

A person who breeds dogs in Wales without a licence under these Regulations commits an offence under section 13(6) of the Animal Welfare Act 2006 and is liable to imprisonment for a term of up to 6 months or a fine not exceeding level 5 on the standard scale or both. Under section 30 of the Animal Welfare Act 2006 local authorities may prosecute for any offence under the Act.

Part 3 of the Regulations sets out how a person may apply to the local authority for a licence and sets out matters in respect of which a local authority must be satisfied when considering the granting and renewing of a licence. It provides for a local authority to charge fees to cover any reasonable expenses incurred in performing this function and for monitoring compliance with these Regulations. It requires a local authority have regard to guidance issued by the Welsh

Ministers in carrying out their functions under these Regulations.

Part 4 sets out circumstances in which a licence maybe suspended, varied or revoked. Part 5 provides for appeals against licensing decisions by local authorities.

Part 6 provides that a breach of a condition of a licence granted under these Regulations is an offence. It provides powers for inspectors to take samples and enter premises and applies relevant post conviction powers contained in the Act. It provides for local authorities to enforce the Regulations. It provides that licences granted under the Breeding of Dogs Act 1973 continue to have effect as if granted under these Regulations.

Schedule 1 to these Regulations sets out compulsory licence conditions which must be included on each licence granted by a local authority.

Schedule 2 to these Regulations amends the Breeding of Dogs Act 1973 and amends references to it in four Acts consequential upon the repeal of section 1(1) of that Act in relation to Wales.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Welsh Government Cathays Park, Cardiff CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 61(2) of the Animal Welfare Act 2006 (and paragraph 34 of Schedule 11 to the Government of Wales Act 2006), for approval by resolution of the Assembly.

DRAFT WELSH STATUTORY
INSTRUMENTS

2014 No. (W.)

ANIMALS, WALES

ANIMAL WELFARE

**The Animal Welfare (Breeding of
Dogs) (Wales) Regulations 2014**

Made

Coming into force *31 December 2014*

The Welsh Ministers, as the appropriate national authority in relation to Wales⁽¹⁾, make the following Regulations in exercise of the powers conferred by sections 13(2), (7), (8)(e), (10) and Parts 1 and 3 of Schedule 1 to the Animal Welfare Act 2006⁽²⁾.

In accordance with section 13(9) of that Act, the Welsh Ministers have consulted those persons appearing to them to represent interests with which these Regulations are concerned as they considered appropriate.

In accordance with section 61(2) of that Act⁽³⁾, a draft of this instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

-
- (1) The appropriate national authority is defined in section 62(1) of the Animal Welfare Act 2006. Functions conferred on the National Assembly for Wales are now vested in the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 2006 c.45.
- (3) 2006 c.45. By virtue of section 162 of, and paragraph 34 of Schedule 11 to, the Government of Wales Act 2006 (c.32), the reference in section 61(2) to “House of Parliament” includes the National Assembly for Wales.

PART 1

Introduction

Title, application and commencement

1.—(1) The title of these Regulations is the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014.

(2) They apply in relation to Wales and come into force on 31 December 2014.

Repeal of section 1(1) of the Breeding of Dogs Act 1973

2. In section 1 of the Breeding of Dogs Act 1973 (licensing of breeding establishments for dogs), after subsection (1) insert—

“(1A) Subsection (1) does not apply in relation to Wales.”

Interpretation

3. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Animal Welfare Act 2006;

“adult dog” (“*ci llawndwf*”) means a dog which is not less than 6 months old;

“breeding bitch” (“*gast fridio*”) means an un-neutered female dog that is not less than 6 months old;

“draft enhancement and enrichment programme” (“*rhaglen wella a chyfoethogi ddraffi*”) means a document detailing how dogs will have the opportunity to express normal behaviour patterns submitted by the applicant to the local authority under regulation 7;

“draft socialisation programme” (“*rhaglen gymdeithasoli ddraffi*”) means a document detailing how puppies will be introduced to human handling, domestic environments, play and how they will be prepared for separation from the dam submitted by the applicant to the local authority under regulation 7;

“enhancement and enrichment programme” (“*rhaglen wella a chyfoethogi*”) means a document approved in writing by the local authority detailing how dogs will have the opportunity to express normal behaviour patterns;

“full-time attendant” (“*gweinydd llawn-amser*”) means a person who works, either paid or unpaid, at least 37 hours per week on the licence holder’s premises;

“inspector” (“*arolygydd*”) means any person who has written authority from a local authority to act in matters arising under or in relation to the Act or these Regulations;

“licence” (“*trwydded*”) means a licence granted under regulation 8;

“licence conditions” (“*amodau trwydded*”) means those conditions set out in Schedule 1 to these Regulations and any further conditions attached to a licence by the local authority;

“local authority” (“*awdurdod lleol*”) means the county council or a county borough council in whose area the applicant for a licence under regulation 7 carries out the activity of dog breeding;

“microchip” (“*microsglodyn*”) means a read only passive radio frequency identification device programmed with a unique number that can be read by a scanner;

“microchipped” (“*microsglodynnu*”) means implanted with a microchip beneath the skin;

“part-time attendant” (“*gweinydd rhan-amser*”) means a person who works, either paid or unpaid, between 18.5 and 37 hours per week on the licence holder’s premises;

“puppy” (“*ci bach*”) means a dog which is less than 6 months old;

“stud dog” (“*ci gre*”) means an un-neutered male dog which is not less than 6 months old;

“socialisation programme” (“*rhaglen gymdeithasoli*”) means a document approved in writing by the local authority detailing how puppies will be introduced to human handling, domestic environments, play and how they will be prepared for separation from the dam.

PART 2

Requirement to hold a licence

Licensing of dog breeders

4. Dog breeding is a specified activity, for the purposes of section 13(1) of the Act.

Dog breeding: interpretation

5.—(1) A person carries on the activity of dog breeding for the purposes of section 13(1) of the Act if that person keeps on premises 3 or more breeding bitches and—

- (a) breeds on those premises 3 or more litters of puppies in any 12 month period;

- (b) advertises for sale from those premises a puppy or puppies born from 3 or more litters of puppies for sale in any 12 month period;
- (c) supplies from those premises a puppy or puppies born from 3 or more litters of puppies in any 12 month period; or
- (d) advertises a business of breeding or selling puppies from those premises.

(2) For the purposes of paragraph (1) any dog found on premises will be presumed to be kept by the occupier of those premises until the contrary is proved.

(3) For the purposes of paragraph (1)(a) to (c) it is immaterial whether or not the litters of puppies are bred from the breeding bitches referred to in paragraph (1).

(4) This regulation is subject to regulation 6.

Dog breeding: exclusion

6.—(1) A person does not carry on the activity of dog breeding for the purposes of section 13(1) of the Act if the dogs mentioned in regulation 5 are bred—

- (a) for use in regulated procedures, and
- (b) at a place specified in a section 2C licence by virtue of section 2B(2)(b) of the Animals (Scientific Procedures) Act 1986.

(2) In paragraph (1) “regulated procedure” and “section 2C licence” have the meaning given by section 30 of the Animals (Scientific Procedures) Act 1986.

PART 3

Licences

Application for a licence

7.—(1) To apply for a licence under these Regulations an applicant must submit—

- (a) an application in a form and manner approved by the local authority;
- (b) a draft enhancement and enrichment programme;
- (c) a draft socialisation programme;
- (d) details of the anticipated number of adult dogs and puppies to be present on the premises at any one time; and
- (e) such supporting documentation as the authority reasonably requires.

(2) The applicant must pay any appropriate fee in accordance with regulation 12.

Grant or renewal of licences

8.—(1) On receipt of an application complying with regulation 7, a local authority must inspect the applicant's premises and if satisfied—

- (a) that the licence conditions are or will be met;
- (b) with the draft enhancement and enrichment programme;
- (c) with the draft socialisation programme; and
- (d) as to any other matters the local authority considers relevant;

may grant a licence to the applicant.

(2) The local authority must attach to each licence granted—

- (a) the conditions contained in Schedule 1 to these Regulations;
- (b) a condition specifying the maximum number of dogs to be kept under the terms of the licence; and
- (c) a condition specifying a staff to adult dog ratio which must ensure as a minimum staff requirement—
 - (i) 1 full-time attendant per 20 adult dogs kept; or
 - (ii) 1 part-time attendant per 10 adult dogs kept.

(3) Subject to paragraph (2) the local authority may also attach further conditions to a licence as it considers necessary.

(4) The local authority may grant or renew a licence for any period up to 1 year.

Consideration of applications for licences

9.— (1) When considering whether to grant or renew a licence the local authority must be satisfied that—

- (a) dogs are at all times kept in accommodation that is of an appropriate construction and size, with appropriate exercise facilities, temperature, lighting, ventilation and cleanliness;
- (b) appropriate whelping facilities are available;
- (c) dogs are supplied with suitable food, drink and bedding; and
- (d) dogs are supplied with adequate facilities to enable them to exhibit normal behaviour patterns.

(2) 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.

People who may not apply for a licence

10. No person may apply for a licence if they are disqualified under—

- (a) section 33 of the Welfare of Animals Act (Northern Ireland) 2011⁽¹⁾;
- (b) section 34 of the Act;
- (c) section 40(1) and (2) of the Animal Health and Welfare (Scotland) Act 2006⁽²⁾;
- (d) section 33A of the Dogs (Northern Ireland) Order 1983⁽³⁾;
- (e) section 3(3) of the Breeding of Dogs Act 1973⁽⁴⁾ from keeping a breeding establishment;
- (f) section 4(3) of the Riding Establishments Act 1964 from keeping a riding establishment⁽⁵⁾;
- (g) section 3(3) of the Animal Boarding Establishments Act 1963 from keeping a boarding establishment⁽⁶⁾;
- (h) section 1(1) of the Protection of Animals (Amendment) Act 1954 from having custody of an animal⁽⁷⁾;
- (i) section 5(3) of the Pet Animals Act 1951 from keeping a pet shop⁽⁸⁾; or
- (j) section 6(2) of the Dangerous Wild Animals Act 1976 from the ownership of an animal⁽⁹⁾, animal⁽⁹⁾,

and any licence issued to a person so disqualified is invalid.

Death of a licence holder

11.—

(1) If the licence holder dies that licence is deemed to have been granted to the personal representatives of the licence holder so long as none of the personal representatives is subject to an order for disqualification under any of the provisions set out in

-
- (1) 2011 c. 16.
 - (2) 2006 asp 11.
 - (3) 1983/764 (N.I. 8).
 - (4) 1973 c.60 Section 3(3) was amended by section 5(1) of the Breeding and Sale of Dogs (Welfare) Act 1999 (c.11).
 - (5) 1964 c. 70 Section 4(3) was amended by section 64 of, and paragraph 6(2) of Schedule 3 to, the Animal Welfare Act 2006.
 - (6) 1963 c. 43 Section 3(3) was amended by section 64 of, and paragraph 5(2) of Schedule 3 to, the Animal Welfare Act 2006.
 - (7) 1954 c.40. Section 1 was repealed by section 65 of, and Schedule 4 to, the Animal Welfare Act 2006.
 - (8) 1951 c.35 Section 5(3) was amended by section 64 of, and paragraph 3(2) of Schedule 3 to, the Animal Welfare Act 2006.
 - (9) 1976 c.38. Section 6(2) was amended by section 64 of, and paragraph 9 of Schedule 3 to, the Animal Welfare Act 2006.

regulation 10, and remains in force for a period of 3 months beginning with the date of death, but remains subject to the provisions in Part 3.

(2) The personal representatives must notify the local authority which issued the licence that the licence has vested in them within 4 weeks of the death of the licence holder.

(3) Subject to paragraphs (4) and (5), a local authority may, on the application of those personal representatives, extend the period of 3 months referred to in paragraph (1) if the local 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.

(4) Before extending a licence beyond 1 year from the date upon which it was issued, a local authority must inspect the licence holder's premises, and at least once per year thereafter during the period of extension.

(5) No licence may be extended under paragraph (3) beyond 3 years from the date upon which the licence was issued.

Fees

12.—(1) A local authority may charge such fees as it considers necessary—

- (a) for the consideration of an application for a licence; and
- (b) for the grant or renewal of a licence.

(2) The fee charged for consideration of an application for a licence must not exceed the reasonable costs of carrying out that consideration.

(3) The fee charged for granting or renewing a licence must not exceed the sum of the costs of making the grant or renewal and the reasonable anticipated costs of future monitoring of compliance with these Regulations and the licence conditions by the licence holder.

Guidance

13. The local authority must have regard in the carrying out of its functions under these Regulations to such guidance as may be issued by the Welsh Ministers.

PART 4

Suspension, Variation and Revocation of a Licence

Grounds for suspension and variation

14. A local authority may at any time suspend or vary a licence on being satisfied that—

- (a) the matters referred to in regulation 9(1)(a) to (d) are not satisfied;
- (b) the licence conditions are not being complied with;
- (c) there has been a breach of these Regulations;
- (d) information supplied by the licence holder is false; or
- (e) it is necessary to protect the welfare of a dog.

Procedure for suspension and variation

15.—(1) A suspension or licence variation under regulation 14 has effect at the end of the period of 7 days beginning with the date of service of the notice of suspension or notice of variation.

(2) If it is necessary to protect the welfare of a dog the local authority may specify in the notice that the suspension or variation has immediate effect.

(3) A notice of suspension or variation must—

- (a) state the local authority's grounds for suspension or variation;
- (b) state when it comes into effect;
- (c) specify measures that the local authority considers are necessary in order to remedy the grounds; and
- (d) explain the right of the licence holder to make written representations in accordance with paragraph (4) and give the details of the person to whom such representations may be made and the date by which they must be made.

(4) Where the notice does not have immediate effect the licence holder may make written representations against the notice to the local authority within 7 days of the date of service of the notice.

(5) Where representations are made under paragraph (4), the suspension or variation does not have effect until the local authority considers the representations and makes a determination on them in accordance with paragraph (6).

(6) The local authority must make a determination on the representations and notify the licence holder in writing, giving its reasons, within 7 days of receipt of those representations.

(7) If a licence has been suspended for more than 28 days the local authority must—

- (a) reinstate that suspended licence; or
- (b) revoke that suspended licence.

Reinstatement of licence

16.—(1) A local authority must reinstate a suspended licence by way of notice once it is satisfied that the grounds specified in the notice of suspension have been or will be remedied.

(2) Where a licence is reinstated under paragraph (1) the period for which it is issued may be varied but the licence may not be extended beyond 1 year from the date upon which it was reinstated

Grounds for revocation of a licence

17.—(1) The local authority may revoke a licence on being satisfied that—

- (a) the matters referred to in regulation 9(1)(a) to (d) are not satisfied;
- (b) the licence conditions are not being complied with;
- (c) there has been a breach of these Regulations;
- (d) information supplied by the licence holder is false; or
- (e) it is necessary to protect the welfare of a dog.

(2) Where a licence holder is disqualified under any of the enactments listed in regulation 10 their licence is automatically revoked when the time limit for any appeal against that disqualification expires or, if an appeal is made, when that appeal is refused.

Notice of revocation

18. A notice of revocation must—

- (a) state the local authority's grounds for revocation;
- (b) state when it comes into effect; and
- (c) set out the right of appeal to a magistrates' court.

PART 5

Appeals

Right of Appeal

19.—(1) Any person who is aggrieved by the refusal to grant or renew, or the decision to revoke, a licence may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint, and the Magistrates' Courts Act 1980(1) applies to the proceedings.

(3) The period within which an appeal may be brought is 28 days beginning with the day following the date on which the decision is notified.

PART 6

Miscellaneous provisions

Power to take samples

20. An inspector may, for the purposes of ensuring the provisions of these Regulations are being complied with, take saliva or hair samples for DNA testing, from any dog on premises occupied by the licence holder.

Duty to assist in the taking of samples

21. The licence holder must comply with any reasonable request of an inspector in order to facilitate the identification and examination of a dog and the taking of samples in accordance with regulation 20 and, in particular, must arrange the penning of a dog if so requested by an inspector.

Offences

22. It is an offence for a person, without lawful authority or excuse, to contravene any licence condition and a person guilty of such offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or both.

Powers of Entry

23. Breach of a licence condition must be treated as a relevant offence for the purpose of section 23 of the Act (entry and search under warrant in connection with offences).

Post Conviction Powers

24. The relevant post conviction powers contained in sections 34 and 42 of the Act apply in relation to a conviction for an offence of breach of a condition of a licence granted under these Regulations.

(1) 1980. c. 43.

Transitional provisions

25. A licence granted under the Breeding of Dogs Act 1973 will continue to have effect as if it were a licence granted under regulation 5.

Consequential amendments

26. Schedule 2 (consequential amendments) has effect.

Enforcement

27. These Regulations are enforced by the local authority.

Signature

Minister for Natural Resources and Food, one of the
Welsh Ministers

Date

SCHEDULES

SCHEDULE 1

Regulation 8(2)

PART 1

Licence Conditions

Condition 1: Enhancement and Enrichment

1. The licence holder must implement an enhancement and enrichment programme that has been approved by the local authority.

Condition 2: Socialisation

2. The licence holder must implement a socialisation programme that has been approved by the local authority.

Condition 3: Health

3. The licence holder must take all reasonable steps to protect dogs from pain, suffering, injury and disease.

Condition 4: Mating

- 4.** The licence holder must ensure a breeding bitch—
- (a) is not mated until she is 12 months old;
 - (b) does not give birth to more than 1 litter of puppies in a 12 month period; and
 - (c) does not give birth to more than 6 litters of puppies in total.

Condition 5: Change of ownership of a puppy

5. The licence holder must retain ownership and possession of a puppy on the premises until it is at least 56 days old.

Condition 6: Identification of breeding bitches and stud dogs

6.—(1) Unless sub-paragraph (4) applies, the licence holder must ensure all breeding bitches and stud dogs not already microchipped at the time these Regulations come into force are microchipped.

- (2) The licence holder must ensure—
- (a) the unique number of the microchip;
 - (b) the name, address and telephone number of the licence holder;
 - (c) the name of the dog;

- (d) the breed of the dog;
- (e) any distinguishing physical features of the dog;
- (f) the sex of the dog; and
- (g) the date of birth of the dog,

are registered on a database that the licence holder reasonably believes complies with sub-paragraph (3).

(3) The licence holder must reasonably believe that the database operator—

- (a) updates any reported changes to the information listed in sub-paragraph (2) on the database;
- (b) records the information listed in sub-paragraph (2) on a secure computerised database; and
- (c) is able to process telephone or online enquiries for that information at all reasonable times.

(4) Sub-paragraph (1) does not apply if a veterinary surgeon certifies, in a form approved by the Welsh Ministers, that microchipping would significantly compromise a dog's health.

(5) A certification under sub-paragraph (4) cannot be issued for longer than 4 weeks unless the veterinary surgeon consider the risk to the dog's health is permanent.

Condition 7: Identification of puppies

7.—(1) Unless sub-paragraph (4) applies, the licence holder must ensure a puppy is microchipped before the puppy is 56 days old.

(2) Before the puppy leaves the licence holder's premises with a view to changing ownership, or before the puppy is transferred to a new owner, the licence holder must register—

- (a) the unique number of the microchip;
- (b) the licence holder's name, address and telephone number as the first owner of the puppy;
- (c) the name of the puppy;
- (d) the breed of the puppy;
- (e) any distinguishing physical features of the puppy;
- (f) the sex of the puppy; and
- (g) the date of birth of the puppy,

on a database that the licence holder reasonably believes complies with paragraph 6(3).

(3) On transfer of ownership of a puppy, the licence holder must provide the name, address and telephone

number of the puppy's new owner to the database the licence holder used to register the dog's microchip.

(4) Sub-paragraph (1) does not apply, if a veterinary surgeon certifies, in a form approved by the Welsh Ministers, that microchipping would significantly compromise a dog's health.

(5) A certification under sub-paragraph (4) cannot be issued for longer than 4 weeks unless the veterinary surgeon considers the risk to the dog's health is permanent.

Condition 8: Breeding bitch record requirements

8.—(1) The licence holder must maintain a written record in relation to each breeding bitch kept setting out her:

- (a) name;
- (b) date of birth;
- (c) breed;
- (d) physical description including colour and identifying features;
- (e) health status;
- (f) unique microchip number;
- (g) mating details including:
 - (i) name, breed and unique microchip number of the sire; and
 - (ii) the following details in relation to each puppy born—
 - (aa) date of birth;
 - (bb) unique microchip number; and
 - (cc) when ownership is transferred, the new owner's name and address.

(2) When ownership of a breeding bitch is transferred the name, address and telephone number of the new owner must be recorded by the licence holder on the record referred to in sub-paragraph (1) and a copy of the record must be provided to the new owner and a copy retained by the licence holder.

(3) The record referred to in sub-paragraph (1) must be available for inspection and retained by the licence holder for the lifetime of the breeding bitch.

Condition 9: Puppy record requirements

9.—(1) The licence holder must maintain a written record confirming the following details in relation to each puppy:

- (a) sex;
- (b) date of birth;
- (c) breed;
- (d) physical description including colour and identifying features;

- (e) health status;
- (f) unique microchip number;
- (g) name, breed and unique microchip number of the dam; and
- (h) name, breed and unique microchip number of the sire.

(2) When ownership of a puppy is transferred, the name address and telephone number of the new owner must be recorded by the licence holder on the record referred to in sub-paragraph (1) and a copy of the record must be provided to the new owner and a copy retained by the licence holder.

(3) The record referred to in sub-paragraph (1) must be available for inspection by the local authority at any time and retained by the licence holder for 3 years from the date of birth of the puppy.

SCHEDULE 2

Consequential amendments

Regulation 26

Breeding of Dogs Act 1973

1. In section 5 of the Breeding of Dogs Act 1973 (interpretation), in subsection (2), in the definition of “local authority”, omit “and in Wales the council of a county or county borough”.

Local Government (Wales) Act 1994

2. In Schedule 16 of the Local Government (Wales) Act 1994 (other consequential amendments), omit paragraph 42.

Guard Dogs Act 1975

3. In section 3 of the Guard Dogs Act 1975 (guard dog kennel licences), before subsection (6) insert—

“(5B) Where a person is convicted of an offence under section 13(6) of the Animal Welfare Act 2006 arising from the contravention of section 13(1) of that Act in relation to dog breeding in Wales, or of an offence under the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013, subsections (4) and (5) apply as they do to convictions under this Act.”

Dangerous Wild Animals Act 1976

4. At the end of section 6 of the Dangerous Wild Animals Act 1976 (penalties) insert—

“(3B) Where a person is convicted of an offence under section 13(6) of the Animal Welfare Act 2006 arising from the contravention of section 13(1) of that Act in relation to dog breeding in Wales, or of an offence under the Animal Welfare (Breeding of Dogs)(Wales) Regulations 2013, subsections (2) and (3) apply as they do to convictions under this Act”.

Zoo Licensing Act 1981

5. In section 4 of the Zoo Licensing Act 1981 (grant or refusal of licence), in subsection (5), insert at the end—

““section 13(6) of the Animal Welfare Act 2006, so far as the offence arises from the contravention of section 13(1) of that Act in relation to dog breeding in Wales;

the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013.”

Explanatory Memorandum to the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014. I am satisfied that the animal welfare benefits justify the likely costs.

Alun Davies AM
Minister for Natural Resources and Food

DATE: 19 June 2014

1. Description

These Regulations provide for the licensing of persons involved in the breeding of dogs by their local authority. This replaces the requirement to obtain a licence under the Breeding of Dogs Act 1973 (as amended) in Wales.

The Regulations set out how a person may apply to the local authority for a licence and set out matters on which a local authority must be satisfied when considering the granting and renewing of a licence. This includes the local authority's duty to have regard to guidance issued by the Welsh Ministers in carrying out their functions under these Regulations.

The Regulations:

- provide for a local authority to charge fees to cover any reasonable expenses incurred in performing this function and for monitoring compliance with these Regulations;
- set out circumstances in which a licence may be suspended, varied or revoked and provides for appeals against licensing decisions by local authorities. A breach of a condition of a licence granted under these Regulations is an offence;
- provide powers for inspectors to take samples and enter premises and applies relevant post conviction powers contained in the Animal Welfare Act 2006;
- provide for local authorities to enforce the Regulations; and
- provide that licences granted under the Breeding of Dogs Act 1973 continue to have effect as if granted under these Regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations address the comments made by the Constitutional and Legislative Affairs Committee in respect of the draft Regulations laid on 11 June 2013 and subsequently withdrawn 5 July 2013.

3. Legislative background

Section 13 of The Animal Welfare Act 2006 created the power for the National Assembly for Wales to repeal the Breeding of Dogs Act 1973 and replace it with new Regulations in relation to Wales. Those powers are now vested in the Welsh Ministers by operation of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The power to make new Regulations must be exercised for the purpose of promoting the welfare of animals. Section 13 also requires that the Welsh

Ministers consult with persons appearing to them to represent any interests concerned prior to exercising the power.

The Regulations are subject to approval of the National Assembly by affirmative resolution by virtue of section 61 of the Animal Welfare Act 2006 and section 162 of and paragraph 34 of Schedule 11 to the Government of Wales Act 2006.

The Regulations repeal section 1(1) of the Breeding of Dogs Act 1973 and makes consequential amendments to the:

- Local Government (Wales) Act 1994;
- Guard Dogs Act 1975;
- Dangerous Wild Animals Act 1976; and
- Zoo Licensing Act 1981

4. Purpose & intended effect of the legislation

The existing Breeding of Dogs Act 1973 (as amended) was made over 40 years ago and set out the requirements for licensing which are based upon a breeder producing 5 or more litters per annum.

Modern science and changes in animal welfare legislation suggests that higher animal welfare standards are required. Existing dog breeding establishments have come under intense scrutiny in recent years due to the increased number of high profile incidents where puppies were being bred in inappropriate conditions. Television programmes such as *Byd Ar Bedwar*, *The One Show*, *Week In Week Out* and *Rogue Traders* have all investigated alleged unscrupulous breeders across Wales. Campaign groups such as *Puppy Love*, *Puppy Alert*, *CARIAD* and the *Advisory Council on the Welfare Issues of Dog Breeding* have been set up amongst other things, to raise awareness of puppy breeding with the general public and UK Governments. There has also been a strong veterinary input via the *British Veterinary Association* and others to the debate.

Research carried out under the *Companion Animal Welfare Enhancement Scheme (CAWES)*¹ reported that, as of 31st March 2011, there were 251 licensed dog breeding establishments in Wales, along with 149 premises that meet the licensing criteria under the 1973 Act and should be but are not licensed and a further 1587 that do not meet the licensing threshold under the current legislative requirements (further investigation by local authorities on

¹ A Welsh Government funded programme from 2008 to 2011 aimed at establishing a baseline of data on companion animal welfare. It also included research e.g. on dogs, cats, pet shops, equines, developed a schools programme and created third sector/local authority/ Welsh Government forums on animal welfare related topics.

unlicensed premises has either placed them in the exempt category or they have become licenced).

The Animal Welfare Act 2006 came into force in Wales on 27 March 2007 and the proposed Regulations are coming forward under Section 13 of that Act. The overarching policy intent is to improve the welfare standards within establishments and facilities that breed dogs.

The main policy proposals within the new Regulations include:

- tighter licensing criteria;
- the requirement to microchip all dogs on the premises and puppies before they are 56 days old;
- a staff: adult dog ratio which has a minimum staff requirement;
- standardising the minimum age a puppy can leave the breeding premises; and
- the need for breeding establishments to introduce socialisation, and environmental enrichment and enhancement programmes.

In developing the above policy proposals from the Task and Finish Group on Dog Breeding and the responses from consultation, the Welsh Government has striven to find the right balance on introducing appropriate standards to existing and future licensed dog breeders and providing much needed provision to enhance the health and welfare of breeding bitches, stud dogs and their offspring. Another aim was to deter individuals from operating any illegal dog breeding activity and the financial details provided to the Welsh Government following the first consultation have been utilised.

A draft Regulatory Impact Assessment (RIA) formed part of the second and third consultations. The third consultation included a specific request for respondents to provide any robust evidence to support their assertions, including case studies and any relevant financial evidence which the Welsh Government could use to make its final decision. None was forthcoming.

5. Consultation

Details of consultations undertaken are included in the RIA set out in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

This RIA contains a best estimate of the likely costs associated with the Regulations.

In November 2009 a Task and Finish Group was set up to examine the need to update the Breeding of Dogs Act 1973 (as amended) to reflect the “five needs” as identified in the Animal Welfare Act 2006. Since then there has been three public consultations on these Regulatory proposals which have included requests for additional data to inform the RIA. In addition, all local authorities in Wales and a number of animal welfare organisations have been contacted directly to provide information to inform this RIA.

Following this work there still remains a degree of uncertainty in some areas and a number of assumptions have had to be made when developing the cost estimates. Appendix B contains sensitivity analysis testing the impact on costs of altering some of the key assumptions.

Options

Three options have been considered, these are:

- Option 1: Do Nothing.
- Option 2: Licensing of all dog breeders in Wales.
- Option 3: Licensing of all dog breeders in Wales that operate above a determined threshold.

Option 1

This is the ‘Do Nothing’ option and maintains the current policy position in which all dog breeders producing five or more litters per annum are required to obtain a license from their local authority.

Option 2

In this option, Regulations would be introduced that required all dog breeders to be licensed. This would include those breeders with just a single breeding bitch and those owners whose bitch was mated accidentally.

This option was initially considered by the Task and Finish Group on Dog Breeding. However, this will have significant implications for enforcement officials who are already stretched and is not considered to be a proportionate approach to the problem. Whilst this option would perhaps encourage owners who do not wish to be licenced to be more responsible (for example, by neutering their animal(s)), it is not seen as a realistic option due to the difficulties that might be encountered in an enforcement action.

Option 3

Under Option 3, Regulations would be introduced that would require any person or persons who breed dogs, and who operate above a determined threshold to be licensed. This is consistent with the structure of the current legislation, the Breeding of Dogs Act 1973 (as amended), however, the threshold will be reduced from five or more litters per annum to three or more litters per annum. This option also introduces stricter licensing requirements to meet the objective of raising welfare standards.

Costs & benefits

Option 1 – Do Nothing

This option maintains the existing licensing regime and requirements, there are therefore no additional costs associated with this option.

Option 2 - Licensing of all dog breeders in Wales

The Task and Finish Group on Dog Breeding initially considered the viability of introducing Regulations that would make anybody who bred just one litter eligible for licensing. However, this would have massive implications for enforcement officials, and could result in dog owners who have breeding bitches that are mated accidentally, requiring a licence. Whilst it would perhaps encourage owners to be more responsible (for example, by neutering their animal(s)), this was not seen as a realistic option due to the difficulties that might be encountered in licensing and enforcement action.

Option 3 - Licensing of all dog breeders in Wales that operate above a determined threshold.

Welsh Government

There will be an upfront cost to Welsh Government associated with developing and disseminating guidance for local authorities on the new Regulations. The cost of these activities is estimated to be £1000.

This would include communicating the change in Regulations to stakeholders,

Local Authorities

This option is expected to result in an increase in the administration, inspection, monitoring and enforcement costs incurred by local authorities. Since over 65% of the 22 local authorities are already applying the 'Model Licensing Conditions' the additional costs will largely relate to the additional breeders that will need to be licensed in the future (i.e. those producing 3 or 4 litters each year).

Determining the increase in the number of dog breeders that will need to be licensed under the new Regulations is not straightforward. Since the breeders do not currently require a license, local authorities do not collect data on or

monitor the activities of breeders producing 3 or 4 litters each year. The best available data of the number of unlicensed dog breeders in Wales (i.e. those not captured by the existing Regulations) is from the Companion Animal Welfare Enhancement Scheme (CAWES)² and The Kennel Club.

CAWES reported that, as of 31st March 2011, there were 1587 breeders that were exempt from the current legislative requirements.

The Kennel Club (KC) has 168 members in Wales who bred three or four litters in 2013. It is estimated that membership of the Kennel Club stands at 33% of the total UK dog population. Assuming that a broadly equivalent proportion of small scale breeders are members of the Kennel Club suggests that approximately 500 additional breeders may now come within scope of the new regulations. This estimation assumes that no breeders will reduce the number of breeding bitches they own to avoid having to obtain a license.

A local authority report³ states that the average cost for inspecting and licensing a dog breeding establishment in Wales is approximately £130. For the additional 500 breeders that will need to be licensed under this option, this equates to an additional cost of approximately £65,000. The figures presented here are based on each establishment only requiring a single visit, the cost would be increased if an additional visit or subsequent further action was required.

Legislation under the current Breeding of Dogs Act 1973 already allows for a cost neutral approach to be set through the charging of licence fees which are set by individual local authorities. Similarly, under the new Regulations it will be at each local authority's discretion as to how they handle the fee level in complying with the requirements to raise standards. Any increase in the volume of licence applications caused by the tightening of breeding criteria will also result in additional licence application revenue (see below).

Existing Licensed Dog Breeders

The latest data from local authorities shows that there were 247 licensed dog breeders operating in Wales in 2013-14 with 5025 breeding bitches on their premises. The number of licenced premises per LA varies from zero up to 81. The majority of the large scale breeders are in West Wales.

² A Welsh Government funded programme from 2008 to 2011 aimed at establishing a baseline of data on companion animal welfare. It also included research e.g. on dogs, cats, pet shops, equines, developed a schools programme and created third sector/local authority/ Welsh Government forums on animal welfare related topics.

³ Animal Establishment Licensing – Creating a Shared Service, Watts, N. and Amos, T, 2011.

License fees

These breeders will currently be paying a license fee, however, the LA questionnaire responses suggest a split with some LAs expecting license fees to remain the same and some intending to review license fees. The review is part of an ongoing evaluation of charges to and is not directly linked to the new Regulations

Microchipping

Under this option, breeders would be required to microchip their dogs and all puppies before they are 56 days old. The breeders will be able to choose between microchipping their animals themselves or taking the animal to a vet or other suitably trained implanter to have them microchipped. The cost an implanter charges for microchipping varies but it is typically between £10 and £30.

Data gathered from the industry suggests that a high proportion of breeders already microchip their puppies before they are sold. For the purposes of this RIA it is assumed that 50% of breeders currently microchip their puppies. For these breeders, the requirement in the Regulations to microchip puppies presents no additional cost.

Of those licensed breeders that currently microchip puppies, the majority are trained to do the microchipping themselves. Before a breeder will be allowed to microchip puppies, they will be required to undertake a training course, the cost of which is expected to be £174, this includes the cost of the course (£130) and the value of time spent by a breeder on the course (£44⁴). Each breeder will also need to purchase a scanner to enable them to read the information on the microchip at a cost of £80. Despite these up front costs, it is assumed to be more cost effective for large scale breeders to microchip the puppies themselves rather than take them to an implanter.

The additional upfront cost for the assumed 124 (50%) licensed breeders that do not currently microchip their puppies is estimated to be approximately £31,500.

In addition to this upfront cost, there will be an ongoing cost associated with having to purchase and implant the microchips. Enquiries of microchip suppliers suggest the cost of the microchips and registering dogs to implanters is £4-£7.50 per dog depending upon the supplier and size of the order for microchips including the cost of the microchip and registration of the breeders' details. Assuming that each licensed breeder has an average of 20 breeding bitches (the average for licensed breeders in Wales as a whole) and that each bitch has a litter of 5 puppies per annum, the additional cost to each breeder for the microchips is between £400 and £750 per annum. This equates to an

⁴ The Annual Survey of Hours and Earnings, provisional results 2013, code 6131 (animal care and control service) gives £8.45 per hour. This has been increased by 30% to cover non-wage costs of labour (leave, employer NI contributions, etc.). A course will typically last 4 hours.

additional cost of between £49,600 and £93,000 per annum for the 124 licensed breeders that do not currently microchip their puppies.

Minimum staffing requirement

The Regulations will introduce a minimum staffing requirement for dog breeders, set at 1 full-time member of staff for every 20 adult dogs. Data received from local authorities across Wales suggests that there may be 30 licensed dog breeders that do not currently meet this minimum staffing requirement.

How breeders respond to this new requirement is likely to vary from one case to another. Some breeders may opt to reduce the number of adult dogs on their premises, they may enlist the help of an (unpaid) family member or they may recruit an additional employee to enable them to comply with the requirement.

Assuming that each breeder that does not meet the staffing requirement will employ one additional employee in order to comply and that a full-time employee on the National Minimum Wage earns approximately £12,000 per annum, suggests that the cost to the industry could be in the region of £360,000 per annum. For the reasons set out above, the actual cost to the industry may be significantly lower.

'Enhancement and enrichment' and 'Socialisation' programmes

The Regulations include a requirement for breeders to have 'Enhancement and enrichment' and 'Socialisation' programmes in place. This requirement is not expected to impose an additional cost on those breeders that are already operating to a high standard.

The 'Model Licensing Conditions' followed by 63% of the breeders include a requirement for the breeder to have these programmes in place. Local authorities have indicated that approximately 54% of breeders would need to improve their premises to meet this requirement.

Information provided by the Kennel Club suggests that the cost of developing acceptable 'Enhancement and enrichment' and 'socialisation' programmes is approximately £100 per average sized litter. For the 133 (54% of currently licensed breeders) breeders that would need to make these improvements and assuming an average of 20 breeding bitches each having one litter per annum, this equates to an additional cost of £2,000 per annum per breeder or a total of £266,000 per annum. As noted above, it is only those breeders that are not currently operating to high standard that would incur this additional cost.

Existing breeders who will meet the licencing threshold in the new Regulations

As noted above, there is some uncertainty surrounding the number of additional dog breeders that will require a license as a result of the Regulations now

applying to breeders producing three or more litters per annum rather than five or more litters per annum. This is because local authorities are not currently required to collect data from or interact with these smaller breeders. Furthermore, those breeders currently producing three or four litters per annum may opt to cease or reduce their breeding activities in order to avoid the need to be licensed.

It is estimated that an additional 500 dog breeders in Wales will require a license under the new Regulations.

As with the current regulations, there is a risk that only the more responsible dog breeders will apply to be licensed. There will be a clear role for local authorities to ensure that all of the dog breeders that are operating above the specified threshold of breeding 3 or more litters per annum are captured and that it is not just the more responsible dog breeders that will incur the costs associated with these Regulations.

License fees

Data obtained from local authorities shows that the license fees they charge currently range from £80 to £255 for those with several breeding bitches. For these smaller breeders it is assumed that the cost of applying for a license and the license fee will be between £80 and £150 per annum. Based on the estimate of the number of additional breeders that will require a license (500), this suggests a cost to the industry of between £40,000 and £75,000 per annum.

This fee will be paid to the relevant local authority.

Microchipping

As with the currently licensed breeders, it is assumed that 50% of these smaller scale breeders will already be microchipping their puppies and that there will be no additional cost to these breeders. The remaining breeders will have the option of having a vet or other trained implanter to microchip their puppies or undertake training to enable them to microchip the puppies themselves. This decision is less clear cut for smaller breeders than the larger scale breeders and so it is assumed that 50% will undertake the microchipping themselves and 50% will take their puppies to a vet or another trained implanter.

The costs involved are as presented above namely £174 for training, £80 for a scanner and £4-£7.50 per animal where a breeder implants the microchip themselves or £10 - £30 if the breeder takes the animal to a vet or other implanter.

For the 125 breeders that are assumed to microchip their puppies themselves, there is an upfront cost of £31,750 for the training and scanner and a cost of approximately £8,750 - £16,400 per annum for the microchips.

For the 125 breeders that are assumed to take their puppies to a vet or another implanter to be microchipped the cost is approximately £21,900 to £65,600 per annum.

As noted above, Dogs Trust are currently running a microchipping campaign that will microchip all dogs and puppies for free. This would either be at an organised event or through an arrangement with a local vet. Breeders may also be able to pass the additional cost associated with microchipping the puppies on to the customer.

Minimum staffing requirement

The minimum staffing requirement set out in the Regulations is not expected to impact on these smaller breeders who will now come within scope.

Enhancement and enrichment' and 'Socialisation' programmes

The socialisation and enhancement requirements of a license will include activities such as exercise in various environments, introduction of low level noise, a suitable amount of human contact and play with suitable toys. It is likely that many of the small breeders who will now come within scope would already fulfil these requirements and possibly be operating in a home environment; therefore it is not expected to impose an additional cost to this group. Where a breeder has to implement an enhancement or socialisation programme the cost is estimated to be £100 per litter.

Sensitivity analysis is included in Appendix B to test the impact of changing some of the above assumptions.

Wider costs

All of the local authorities in Wales reported that their officer would be accompanied by a veterinary surgeon when they inspected dog breeding premises. By requiring more breeders in Wales to be licensed, this option will increase the burden on vets, however, the vets receive a commensurate fee for this work.

In addition, the increase in the number of breeders requiring a license may result in additional costs being incurred by the UK Justice System in dealing with cases of non-compliance. Evidence provided by local authorities suggests that there have been relatively few instances in which they have had to take enforcement action against dog breeders in recent years and where action has been taken it has tended to be in the form of improvement notices. There has only been one case in which a dog breeder has been taken to court since 2010 and they were unlicensed. The impact of this option on the UK Justice System is therefore expected to be minimal.

Summary of costs

Table 1 presents a summary of the costs identified above. The majority of the costs associated with these Regulations fall on the dog breeding industry itself. The cumulative costs have the potential to have a significant impact on individual businesses, particularly those businesses that need to employ additional staff to meet the minimum staff to adult dog ratio, those breeding lower value dogs and/or those with already marginal profitability. However, there is the potential for the breeders to pass at least some of the additional costs on to their customers (this will need to be balanced against the impact on demand). It is also worth noting that the largest additional costs will be incurred by those businesses that are not currently operating to the highest animal welfare standards.

Table 1. Summary of the estimated costs of the legislation

	2014-15	2015-16	2016-17	2017-18	2018-19
Welsh Government	1,000				
Local Authorities*	65,000	65,000	65,000	65,000	65,000
Existing Dog Breeders					
Microchipping Upfront	31,500				
Microchipping Microchips	49,600 - 93,000	49,600 - 93,000	49,600 - 93,000	49,600 - 93,000	49,600 - 93,000
Minimum Staffing Requirement	360,000	360,000	360,000	360,000	360,000
Enhancement and Socialisation	266,000	266,000	266,000	266,000	266,000
Total	707,100 - 750,500	675,600 - 719,000	675,600 - 719,000	675,600 - 719,000	675,600 - 719,000
Newly licensed breeders					
License Fee**	40,000 - 75,000	40,000 - 75,000	40,000 - 75,000	40,000 - 75,000	40,000 - 75,000
Microchipping Upfront	31,750				
Microchipping Microchips	30,650 - 82,000	30,650 - 82,000	30,650 - 82,000	30,650 - 82,000	30,650 - 82,000
Total	102,400-188,750	70,650 - 157,000	70,650 - 157,000	70,650 - 157,000	70,650 - 157,000
Total	875,500 - 1,005,250	811,250 - 941,000	811,250 - 941,000	811,250 - 941,000	811,250 - 941,000

* local authorities will receive a fee from breeders to cover at least part of this cost.

** This is a fee paid by the dog breeders to the local authorities to cover the cost of administering license applications and inspecting premises.

Benefits

The Breeding of Dogs Act 1973 (as amended) provides basic details on the construction and operation of dog breeding establishments. However there is a lack of clarity on the requirement in the 1973 Act. The new Regulations help to address this issue through the Statutory Guidance. It is important that all breeding establishments ensure they meet the “five needs” as set out in the Animal Welfare Act 2006.

A special project under the CAWES programme “An examination of the licensing of dog breeding establishments in Wales⁵” included the following information:

5

<http://wales.gov.uk/topics/environmentcountryside/ahw/animalwelfare/pets/cawes/specialprojects/?lang=en>

‘Breeda et al (1997) considered that poor and restricted housing conditions, noise and unpredictable social environments were highly likely to create symptoms of chronic stress in dogs. Breeda also observed more subtle behavioural indicators of distress, such as increased vocalisation and increased behaviour associated with fear and appeasement – snout licking, fore-paw lifting and lowered postures. In more severely affected dogs increased salivation, panting and repetitive behaviours were recognised.’

‘The environment external to the whelping pen becomes most significant to the puppy once the puppy’s neural development allows interaction with and adaptation to the environment from about 21 days old (Scott & Fuller 1965). This is probably the single most important time in the dog’s life relative to social interaction (Beaver 2009). It is at this stage that the young puppy becomes capable of seeking non-maternal social interaction and it is most receptive to its environment and capable of learning about it.’

In addition to the animal welfare benefits, CARIAD (Care and Respect Includes All Dogs) – a coalition of dog rescue and welfare organisations in Wales – has identified a number of financial costs associated with poor breeding practices, these include:

- the veterinary costs incurred by the purchasers of puppies for treating medical conditions associated with poor standards at a breeding establishment (such as illnesses and infections);
- the veterinary costs incurred by the purchasers of puppies for treating medical conditions associated with poor practices such as failing to test breeding dogs for genetic conditions and in-breeding;
- the cost to purchasers of behaviourist advice and/or professional training arising from failure to properly socialise puppies or to breed for temperamental soundness;
- the cost to the emergency services and the general public associated with dog attacks. Serpell and Jagoe⁶ identified an association between the failure to properly socialise as a puppy and the likelihood of subsequent aggression by the dog;
- the cost to local authorities and animal welfare organisations of having to house (and in some cases destroy) dogs that have been abandoned or are unwanted due to socialisation problems.

While it is not possible to produce a quantified analysis, it is reasonable to assume that by improving standards at breeding establishments and discouraging improper breeding practices, these costs will be reduced.

⁶ Serpell, J., Jagoe, J.A. Early experience and the development of the dog. In Serpell, J. (Ed.) (1995) *The domestic dog : its evolution, behaviour and interaction with people*. Cambridge : Cambridge University Press. 82-102

Staff:Adult Dog Ratio

The 'Independent Inquiry into Dog Breeding', published by Patrick Bateson in 2010, identified the "*poor socialisation of both bitches and puppies, failure to meet both the bitches' and the puppies' needs for stimulation, play and exercise*" as a major reason for concern, suggesting the need for a suitable staff:dog ratio to be set to ensure licensed breeders dedicated sufficient time to meet the behavioural needs of their animals.

It is considered that a minimum staff to adult dog ratio of 1:20 would meet the animal health and welfare requirement set out in the Animal Welfare Act 2006 and ensure that the socialisation needs of puppies are met. However, the Regulations provide flexibility to enable local authorities to decide whether a higher staff to adult dog ratio is appropriate on particular premises (for example, based on the breed of dog involved, size of premises and potential litter sizes).

Microchipping

Microchipping has clear welfare benefits, namely reinforcing an owner's responsibilities under the Animal Welfare Act 2006. It would allow vets to contact owners of stray dogs in situations where emergency treatment is required.

The greater traceability would assist enforcement officers greatly in situations such as dog theft, animal cruelty or if a puppy sold by a breeder has health problems as a direct result of the conditions in which it was raised. It would also assist in situations where the true ownership of a dog needed to be proven.

There will also be cost savings to local authorities and animal welfare organisations through a reduction in the costs associated with kennelling and in some cases putting to sleep stray dogs. This is considered in further detail in the RIA for the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014.

It is also important to recognise that the changes in the new Regulations are part of a wider set of controls relating to dogs. The Regulatory Impact Assessment for the Draft Control of Dogs Bill went into detail on the consequences of an animal becoming out of control or even dangerously out of control.⁷

That work has now been taken forward by the UK Anti-social Behaviour, Crime and Policing Bill which is due for Royal Assent in 2014 – the implications are the same.

⁷ <http://wales.gov.uk/docs/drah/consultation/121122dangerousdogsriaen.pdf>

Summary of the preferred option

Based on the information set out above the preferred option is to introduce legislation that would require any person or persons who breed dogs, and who operate above a determined threshold to be licensed.

Consultation

The first consultation on the draft Animal Welfare (Breeding of Dogs) (Wales) Regulations 2011 took place over 12 weeks between 21 October 2010 and 13 January 2011. The groups consulted were those that had an interest in the policy area and included:

- Other UK Administrations;
- All Welsh Local Authorities;
- Environment Agency;
- HMRC;
- Animal Health Veterinary Laboratories Agency;
- All member organisations of Animal Welfare Network Wales with a vested interest in the policy area;
- Wales Council for Voluntary Action;
- Representative bodies for veterinarians;
- Federation of Small Businesses;
- Police;
- Pet Industry Unions;
- All licensed breeding establishments in Wales
- Ad hoc members of the public who had written to the Welsh Government about dog breeding and had asked to be kept informed of developments;
- Welfare organisations;
- The Kennel Club;
- Agricultural organisations;
- Countryside Council for Wales;
- Animal Health & Welfare Strategy Steering Group;
- All Party Group for Animal Welfare;
- Hunt Committees; and
- Members of the Task for Finish Review Group on Dog Breeding.

The consultation pack was also available to download from the Welsh Government website.

It was clear that there were a number of key areas of concern:

- Irresponsible breeding in so called “puppy farms” should be brought to an end;
- The welfare of all breeding dogs (stud dogs and bitches) and their offspring is paramount;

- Some of the criteria for being licensed was too narrow;
- There was strong support for microchipping to become compulsory, but there were issues that needed to be clarified.

Discussions have taken place with organisations that expressed an interest in meeting to discuss the concerns they raised during the consultation process. They were split into four groups, namely:

- Welfare campaigners;
- Countryside, working dog and Hunt sector;
- Licensed breeders; and
- Hobby breeders.

We have taken the outputs of the discussions and applied them against the existing proposed Regulations. It was clear that across the board there were a number of areas where we were asked to make changes to the proposed Regulations. Key changes sought were:

- The point at which a person become qualified to be licensed in terms of the number of breeding bitches and the number of litters;
- Anybody advertising or supplying dogs for sale and has more than four breeding bitches should be caught by the licensing regime;
- A specific exemption for hunt packs affiliated to the Council for Hunting Associations and the Masters of Draghounds and Bloodhounds Associations; and
- A tighter definition of 'full time attendant'.

Major change

The inclusion of a staff:adult dog ratio was broadly accepted, however it was agreed that the proposed ratio was changed from 1:20 to a minimum of 1:30 for a second consultation on the basis that local authorities would be able to reduce this ratio if they believed that the licence applicant was unable to meet the standards required.

The second consultation took place in November 2012, with the same groups consulted as above, plus individuals who had expressed an interest in being contacted.

It was clear that the amended staff:dog ratio (1:30 instead of 1:20 for full-time workers, and 1:15 instead of 1:10 for part-time workers) was inappropriate.

Of the 137 consultation responses who answered the specific questions in the consultation, 78% did not agree with the change. Critically the British Veterinary Association (BVA) and the British Small Animal Veterinary Association (BSAVA) updated advice that now reflects our original policy and recommends a ratio of no more than 20 dogs to one full time member of staff (or 10 dogs to one part time staff).

Other welfare experts and in particular the Advisory Council on the Welfare Issues of Dog Breeding (set up following the Bateson Report), calculated that it was impossible for one person to have control of 30 dogs and all their puppies and be able to satisfy reasonably the requirements laid out in the Animal Welfare Act 2006 and indeed the Welsh Government's Code of Practice for the Welfare of Dogs.

An example of time allocation was provided by a number of respondents based on the 1:30 staff:dog ratio. The figures were based on the interpretation of a full-time worker in the Regulations as 'a person who works at least 37 hours per week', split over 7 days a week. It was suggested that this would result in approx 5.5 hours for care each day, an average of approximately 11 minutes per dog per day (assuming continuous effort and totally undivided focus on the dogs).

However, the following was provided, based on conservative estimates reflecting a respondent's personal dog care experience in rescues:

Cleaning of kennel	(say) 15 minutes
Assume 3 dogs in kennel	min. 5 minutes per dog/day
Replacement of bedding material	min.3 minutes per dog/day
<i>(note, most 'volume' breeders use shredded paper or sawdust which would require changing daily)</i>	
Cleaning of individual food and water bowls	min. 2 minutes per dog/day
Food preparation and replacement of water bowls	min. 5 minutes per dog/day
Grooming (for required breeds)	weekly 15 minute grooming session - averaging min. 2 minutes per dog/day

Routine cleaning, feeding and grooming tasks are likely, then, to take a minimum of 17 minutes per dog per day, on the above conservative analysis.

Based on the above examples it suggests that a minimum staff/dog ratio of 1:30 does not allow time even for this to be done in a thorough way.

Minor changes

Some minor changes have been made to the draft Guidance following comments on consultation:

- Adding the following sentence to the requirement for water in section 2.1: *“Where there is more than one dog in a kennel and there are no automatic drinking facilities, it is advisable to provide a number of drinking bowls and checked at least twice daily to ensure adequate access to fresh water at all times”.*
- Adding the following sentence about waste management: *“Licensee should check with Natural Resources Wales for current guidance on the appropriate means of disposal.”*
- The addition of a Schedule containing a template for breeding bitch logbooks.

A third consultation in 2013 was undertaken to clarify the original policy intent, that the minimum staff:dog ratio requirement only applied to adult dogs (defined for this purpose as a dog over 6 months of age).

However, the consultation reinforced the message that the Welsh Government is not overlooking the welfare needs of puppies on licensed breeding premises, and asked a specific question on the critical factors that local authorities should consider when determining the staff to adult dog ratio, for example, facilities on site, breed and average litter size.

The responses to the staff:adult dog ratio question did not provide a clear cut outcome. In many instances the responder’s answers to the two questions, one about ratio the other about the local authority controls, contradicted each other. Many of those who disagreed with the minimum 1:20 proposal also agreed that the local authority should have flexibility and should prescribe a higher staff ratio where necessary.

The dog breeding industry and welfare organisations are at completely different ends of the spectrum regarding this issue and it would be impossible to satisfy both parties. Taking both arguments into account, the intent of these proposed Regulations is to strengthen and raise animal welfare standards in dog breeding premises.

The ratio is provided to act as a starting point for local authorities to determine the most appropriate ratio for individual premises based on critical factors such as breed, litter size, premises and breeding programmes.

It is not suggested that this ratio is used as the ‘norm’ but as a **baseline** or as a “safety net” beyond which dog breeders *cannot* be licensed. It would certainly not be appropriate for a premise that would have 20 whelping bitches at one time, as the RSPCA campaign responses suggested. Indeed part of the statutory guidance is that each premise has to have a veterinary health plan which would clearly lay out the way that they care for each dog and their puppies.

Regulation 9 within the Regulations details that flexible approach. The statutory guidance emphasises that local authorities have the responsibility for ensuring that licensed premises are fit for purpose – as follows:

“Local authority licensing officials should have regard to factors such as the size and type of dogs kept at a dog breeding establishment when deciding the most appropriate conditions to apply. In particular, this relates to accommodation; the dogs’ health, environmental and socialisation needs; and the staff: adult dog ratio.”

The Welsh Government proposes working with local authorities on these particular and other points in the new Regulations and that the current Statutory Guidance is right. Discussion will also be held on setting ratios and establishing a process whereby the staff: adult dog ratio can be reviewed after a full 12 months operation time-line.

The consultation documents and summary of responses can be found at: <http://wales.gov.uk/consultations/?lang=en&status=closed>

Competition Assessment

A competition filter can be found at Appendix A.

Post implementation review

It would be appropriate to consider starting a review of legislation three years after the legislation is made and brought into effect, although consideration of the staff: dog ratio will begin one year after operation.

APPENDIX A

The Competition Assessment

The competition filter test

The competition filter test is set out below, together with points raised

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	Yes
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Questions 1 to 3: the market

No one firm will have at least 10% of the market. At the last Companion Animal Welfare Assessment in March 2011 there were some 251 licensed premises in Wales and 1587 premises which breed animals but which are not under current Regulations eligible to be licensed.

Question 4: substantially different effect on businesses/organisation

All businesses should already be complying with the Animal Welfare Act 2006 and the duty of care. These Regulations provide for the detail to ensure animal

welfare standards are not compromised. We have had no figures supplied to us from the industry on potential infrastructure changes that might be needed, despite three consultations and meeting with them. Some local authorities have been in discussion with licensed breeders for some time on potential changes that might occur.

Question 5: changes to market structure

A yes answer is given but that is by no means a certainty. If these Regulations penalise certain firms it is because the welfare of the animals may have become compromised and investment is needed to ensure an animal's welfare is not compromised. This could result in some businesses ceasing to trade. But a different business strategy might produce far higher returns.

A by-product of these Regulations could also be an increase in activity in the microchipping sector. As demand grows, so more individuals and businesses may choose to train to become implanters to provide this required service.

Questions 6 and 7: penalising new suppliers

There will be an appropriate delay on commencement to allow local authorities and licensed breeders to consider these Regulations further. However, after that commencement, the new standards will be applied at the next licensing for new premises. If a premise is due to be renewed the day following implementation the local authority must issue a licence if they comply. Likewise premises whose licensing is not due, for example, until 9 months time will not be affected until then. New applications should be in a position to comply at the beginning of their licensing cycle regardless of when that is.

Question 8: technological change

A no answer is given. Change of animal welfare standards can take some time to evolve through research and development.

Question 9: restrictions on suppliers

Whilst we do not agree that the proposals will restrict breeders, it is possible that new standards may cause existing prices to rise. The Welsh Association of Licensed Kennels argue that the traceability of puppies to Wales, because of its reputation as 'the puppy farming capital of the UK', may deter potential buyers. However, if positive marketing is undertaken there will be an indication that Welsh breeders will be working to higher standards than are required in other parts of the UK. Responsible licensed breeders in our discussions welcomed this positively.

Appendix B - Sensitivity Analysis

As is mentioned in the main body of the RIA, there are a number of uncertainties in the analysis where assumptions have had to be made in order to provide an estimate of the likely costs of these Regulations. This annex provides some sensitivity analysis around those assumptions.

Local authority costs

The RIA estimates that administering each license application and inspecting breeder's premises will cost an average of £130. This is based on each breeding establishment requiring only a single visit. The cost associated with having to undertake a second inspection is estimated to be £50. On the basis of an additional 500 breeders requiring a license under the new Regulations, the additional cost to local authorities of all breeders requiring a second visit would be £25,000, taking the overall total to £90,000.

Microchipping

i) The RIA assumes that all currently licensed breeders (i.e. 5 or more litters per year) would choose to microchip their puppies themselves rather than pay for an implanter to do it. This assumption is based on a comparison of the relative costs of the two options as shown in the table below. The cost for implanting their own puppies includes the one-off cost of attending a training course (£174) and purchasing a scanner (£80). Having completed the training and purchased a scanner the cost of implanting the puppies in subsequent years would be £254 lower. There are assumed to be an average of 5 puppies per litter.

Comparison of the cost of implanting own puppies v. taking them to an implanter, by size of breeder (£)

		Number of litters per year						
		3	4	5	10	20	50	80
Implanter cost	£10	150	200	250	500	1,000	2,500	4,000
	£20	300	400	500	1,000	2,000	5,000	8,000
	£30	450	600	750	1,500	3,000	7,500	12,000
Cost for implanting own puppies	£4 per chip	314	334	354	454	654	1,254	1,854
	£7.5 per chip	367	404	442	629	1,004	2,129	3,254

ii) The RIA assumes that 50% of the 247 currently licensed breeders already microchip their puppies. The table below shows the impact of altering this assumption. The calculation is based on an average breeder with 20 breeding bitches each having one litter of 5 puppies per year and assumed each breeder will microchip their own puppies.

Additional cost of microchipping puppies with differing assumptions on the percentage of breeders that currently microchip their puppies.

		Percentage of breeders that currently microchip their puppies				
		0%	25%	50%	75%	100%
Training		43,000	32,200	21,500	10,700	-
Scanner		19,800	14,800	10,000	4,900	-
Ongoing cost of microchips	4	98,800	74,100	49,600	24,700	-
	7.5	185,250	138,900	93,000	46,300	-

- iii) There is some uncertainty around the proportion of smaller breeders that currently microchip their puppies and whether they will choose to implant them themselves or take them to an implanter. The RIA assumes that 50% of breeders currently microchip and that 50% will do this themselves. The tables below present the impact of changing these assumptions on the estimated upfront cost (training and scanners) and the ongoing microchip costs. All of the estimates are based on there being 500 additional breeders needing to be licensed.

Additional upfront cost of microchipping puppies with differing assumptions on i) the percentage of breeders that currently microchip their puppies ii) the percentage of breeders that will microchip their own puppies.

			Percentage of breeders that currently microchip their puppies				
			0%	25%	50%	75%	100%
Percentage of breeders that implant their own puppies	0%	Training	0	0	0	0	0
		Scanner	0	0	0	0	0
	25%	Training	21,750	16,300	10,900	5,400	0
		Scanner	10,000	7,500	5,000	2,500	0
	50%	Training	43,500	32,625	21,750	10,900	0
		Scanner	20,000	15,000	10,000	5,000	0
	75%	Training	65,250	48,900	32,600	16,300	0
		Scanner	30,000	22,500	15,000	7,500	0
	100%	Training	87,000	65,250	43,500	21,750	0
		Scanner	40,000	30,000	20,000	10,000	0

Additional cost of microchips with differing assumptions on i) the percentage of breeders that currently microchip their puppies ii) the percentage of breeders that will microchip their own puppies.

			Percentage of breeders that currently microchip their puppies				
			0%	25%	50%	75%	100%
Percentage of breeders that implant their own puppies	0%	Low cost	87,500	65,600	43,750	21,900	0
		High cost	262,500	196,900	131,250	65,600	0
	25%	Low cost	74,400	55,800	37,200	18,600	0
		High cost	213,300	160,000	106,700	53,300	0
	50%	Low cost	61,250	45,900	30,600	15,300	0
		High cost	164,100	123,000	82,000	41,000	0
	75%	Low cost	48,100	36,100	24,100	12,000	0
		High cost	114,800	86,100	57,400	28,700	0
	100%	Low cost	35,000	26,250	17,500	8,750	0
		High cost	65,625	49,200	32,800	16,400	0

Minimum staffing ratios

Local authorities have identified 30 licensed premises that may not meet the 1:20 staff to adult dog ratio. The RIA assumes that each of these premises will need to employ 1 additional member of staff paid a salary of £12,000 per annum. This equates to a total cost of £360,000.

As is mentioned in the RIA, rather than employ an additional member of staff some breeders may choose to reduce the number of dogs on their premises or use a family member (or other unpaid labour) to meet the staffing requirement. It is unclear how breeders will respond to the staffing requirement (it is likely to vary on a case by case basis) but if half of the breeders that do not currently meet the staffing requirement choose not to employ someone then the cost to the industry would be reduced to £180,000.

Number of smaller breeders that will be captured by the extended Regulations

Using data from the Kennel Club, it is assumed that there will be an additional 500 breeders that will need to be licensed as a result of reducing the licensing threshold from 5 litters per year to 3 litters per year. The fee for a license is between £80 - £150 per breeder or £40,000 - £75,000 in total. The cost to local authorities for administering each licence and inspecting each establishment is £130 or £65,000 in total.

Altering the number of additional breeders that will need to be licensed will have a proportionate impact on the total license fee and local authority costs.

Constitutional and Legislative Affairs Committee Report

The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014

The Regulations provide for the licensing of persons involved in the breeding of dogs. Part 2 of the Regulations specifies dog breeding for the purposes of section 13 (1) of the Animal Welfare Act 2006. The consequence of this specification is that, subject to qualifying criteria, any person wishing to breed dogs in Wales must obtain a licence from their local authority under these Regulations. This requirement replaces the requirement to obtain a licence under the Breeding of Dogs Act 1973 in Wales.

Procedure: Affirmative

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to this instrument:-

1. 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

1.1 The existing legislation for dog breeding is the Breeding of Dogs Act 1973 (as amended), the requirements for licensing are based upon a breeder producing 5 or more litters per annum. These Regulations revoke the existing licence regime and impose a new regime. The explanatory

memorandum states that the main policy proposals within the new Regulations include:

- tighter licensing criteria;
- the requirement to microchip all dogs before they are 56 days old;
- a staff:dog ratio which has a minimum staff requirement;
- standardising the minimum age a pup can leave breeding premises;and
- the need for breeding establishments to introduce socialisation, and environmental enrichment and enhancement programmes.

1.2 These Regulations address the comments made by the Committee in respect of the draft Regulations laid on 11 June 2013 and subsequently withdrawn on 5 July 2013. A copy of the Committee's previous report is attached at Annex A.

1.3 These Regulations will come into force on 31 December 2014. In its report CR-LD9788 the Committee considered the timing of amendments to the Deregulation Bill and how this might affect this legislation. A copy of the report is attached at Annex B. In the event that the Secretary of State does not commence the provisions in the Act (once passed) before the end of the year, it will mean that licensed dog breeders in Wales will for example be required to put a collar on a puppy with an identifying tag or badge on it, before selling the puppy to a licensed pet shop, notwithstanding that the puppy will need to be microchipped before sale in accordance with these Regulations.

2. 21.3 (v) – that it imperfectly achieves its policy objectives

2.1 At page 14 of the Explanatory Memorandum, the Welsh Government state that:–

Microchipping has clear welfare benefits, namely reinforcing an owner's responsibilities under the Animal Welfare Act 2006. It would allow vets to contact owners of stray dogs in situations where

emergency treatment is required. The greater traceability would assist enforcement officers greatly in situations such as dog theft, animal cruelty or if a puppy sold by a breeder has health problems as a direct result of the conditions in which it was raised. It would also assist in situations where the true ownership of a dog need to be proven.

2.2 We refer to paragraphs 2.4 – 2.12 and 2.20 – 2.28 of CLA 416 (*The Animal Welfare (Identification of Dogs) (Wales) Regulations*) as the same concerns arise as to the lack of standards for both the microchips and the database operators which could hamper traceability and therefore reduce any welfare benefits.

2.3 Unlike *The Animal Welfare (Identification of Dogs) (Wales) Regulations 2014*, these Regulations do include provisions for enforcement, but not in relation to microchips. Whilst regulation 20 provides that the local authority may take saliva or hair samples for DNA testing, from any dog on premises occupied by the licence holder, for the purposes of ensuring the provisions in the Regulations are being complied with, there is no power to allow local authorities to scan a dog for a microchip. Therefore, there is no mechanism for checking that either adult dogs or puppies are microchipped unless the breeder, or new owner (in the case of a puppy who has left the premises) consents, or there are some welfare concerns.

Legal Advisers

Constitutional and Legislative Affairs Committee

June 2014

Government response to follow

Annex A

Constitutional and Legislative Affairs Committee Report

CLA276 – The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013

The Regulations provide for the licensing of persons involved in the breeding of dogs. Part 2 of the Regulations specifies dog breeding for the purposes of section 13 (1) of the Animal Welfare Act 2006. The consequence of this specification is that, subject to qualifying criteria, any person wishing to breed dogs in Wales must obtain a licence from their local authority under these Regulations. This requirement replaces the requirement to obtain a licence under the Breeding of Dogs Act 1973 in Wales.

Procedure: Affirmative

Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:–

1. Regulation 24 applies a number of relevant post conviction powers which would apply in relation to a conviction for an offence of breach of a condition of a licence . These are disqualification, cancellation of a licence and/or disqualification from holding a licence and seizure of animals. ‘Relevant post conviction power’ is defined in Section 62 of the Animal Welfare Act 2006 and whilst it includes sections 34 (disqualification) and 42 (orders as to licences) it does not include Section 35 (seizure). Section 35 whilst not a ‘relevant post conviction power’ would however be available to a

Court in the event that an Order was made under Section 34 of the Animal Welfare Act 2006 –

23(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements)

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:–

1. The existing legislation for dog breeding is the Breeding of Dogs Act 1973 as amended, the requirements for licensing are based upon a breeder producing 5 or more litters per annum. These Regulations revoke the existing licence regime and impose a new regime. The explanatory memorandum states that the main policy proposals within the new Regulations include:

- tighter licensing criteria;
- the requirement to microchip all dogs before they are 56 days old or leave the breeding premises; whichever is later;
- a staff:dog ratio which has a minimum staff requirement;
- standardising the minimum age a pup can leave breeding premises;and
- the need for breeding establishments to introduce socialisation, and environmental enrichment and enhancement programmes.

21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

1.Regulation 8 (2) provides for a staff–dog ratio of 1 full–time attendant per 20 dogs kept or 1 part–time attendant per 10 dogs kept. ‘Dogs’ are not specifically defined in either the Regulations or the Animal Welfare Act 2006. As puppies, breeding bitches and stud dogs are all referred to as ‘dogs’ in

regulation 3, the requirement in regulation 8 (2) would mean that 1 full-time attendant is responsible for 20 dogs, to include puppies. It appears from the [Minister's Statement](#) on 11th June 2013 that the figure of 20 dogs was to exclude any puppies born to those animals. In addition, The Regulatory Impact Assessment at page 5 of the Explanatory Memorandum costs the proposals on the basis that 1 person is to be responsible for 20 dogs plus their offspring, which is not what the legislation provides.

21.3 (v) – that it imperfectly achieves its policy objectives

2. The existing legislation for dog breeding is the Breeding of Dogs Act 1973 as amended; the requirements for licensing are based upon a breeder producing 5 or more litters per annum. These Regulations revoke the existing licence regime and impose a new regime. The explanatory memorandum states that the main policy proposals within the new Regulations include:

- tighter licensing criteria;
- the requirement to microchip all dogs before they are 56 days old or leave the breeding premises; whichever is later;
- a staff: dog ratio which has a minimum staff requirement;
- standardising the minimum age a pup can leave breeding premises; and
- the need for breeding establishments to introduce socialisation, and environmental enrichment and enhancement programmes.
-

21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Legal Advisers

Constitutional and Legislative Affairs Committee

June 2013

Government response to follow

Annex B

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



National Assembly for Wales

Constitutional and Legislative Affairs Committee

19 June 2014

**Supplementary Legislative Consent Memorandum Report:
Deregulation Bill: Amendments in relation to Agricultural Holdings Act 1986,
Breeding of Dogs Act 1973 and Breeding and Sales of Dogs (Welfare) Act
1999**

Background

1. On 22 April 2014, Alun Davies AM, Minister for Natural Resources and Food laid a supplementary Legislative Consent Memorandum (“LCM”) concerning amendments tabled to the Deregulation Bill (“the Bill”), pursuant to Standing Order 29.2.
2. On 29 April 2014, the Business Committee referred the LCM to the Constitutional and Legislative Affairs Committee for scrutiny, setting a reporting deadline of 19 June 2014.

Deregulation Bill

4. The Bill was introduced in the House of Commons on 23 January 2014 and received its Second Reading on 3 February 2014. It is currently at report stage, having been carried over to the 2014–15 session.

5. The Bill proposes a range of measures in line with the UK Government's aim to reduce burdens on businesses and public authorities. Its scope includes health and safety, employment law, company and insolvency law, the use of land, housing, transport, communications, the environment, Child Trust Funds, entertainment, criminal justice and economic growth.

6. In July 2013, the UK Government published a draft Deregulation Bill, which was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament.

7. We considered an LCM to the Deregulation Bill on 31 March 2014 and stated in our report, laid before the Assembly on 1 May 2014, that we were content.

Provisions for which the Assembly's consent would be required

8. The new provisions in the Bill for which the Assembly's consent would be required are described in detail in paragraphs 5 – 18 of the supplementary LCM.

Consideration

9. We considered the LCM at our meeting on 19 May 2014 and attach at Annexe 1 to this report a paper that formed the basis for our discussion.

10. We note the comments made in the LCM regarding dog legislation, and in particular that the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 are due to be laid and made before the summer recess.

11. On 2 July 2013, we reported on The Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013, inviting the Assembly to pay special attention to the instrument on technical and merits issues. The regulations, subject to

the affirmative procedure, were subsequently withdrawn by the Welsh Government on 5 July 2013 and a written statement issued on the same day, explaining the reason for the decision.

12. In our report of November 2013, *Inquiry into powers granted to Welsh Ministers in UK laws: review of outcomes*, we expressed some concerns about the Welsh Government's suspension of its proposed Control of Dogs (Wales) Bill in favour of exploring the use of a UK Bill to deliver its policy objectives in this area. We were particularly concerned because of the Welsh Government's commitment to make its laws more accessible.

13. In our view, one of the consequences of using the approach set out in the LCM is to give rise to further complexity and uncertainty surrounding certain aspects of dog policy and legislation in Wales.

14. Paragraph 24 of the paper at Annexe 1 to our report articulates concerns we have with amendments to the Deregulation Bill, in particular because of the commencement powers that reside with the Secretary of State. This division of power between Welsh and UK Ministers, combined with ineffective collaboration between administrations here and in Westminster can lead to legislative confusion (as would appear to be the case following the Minister's written statement on 21 May 2014 regarding legislation on the welfare of animals at time of killing). Such confusion is to the detriment of people in Wales affected by the legislation.

15. We would urge the Minister to ensure that the potential pitfalls identified in paragraph 24 of the paper at Annexe 1 to our report do not arise and accordingly, that stakeholders are kept clearly informed of progress on the issues that paragraph 24 covers.

Information contained in the supplementary LCM

16. The supplementary LCM was laid before the Assembly on 22 April 2014. The amendments to the Bill that are the subject of this LCM were tabled on 13 March 2014.

17. The amendments were agreed to in the Bill committee at Westminster on 18 and 25 March 2014. Given that the LCM was laid before the Assembly on 22 April 2014, we consider that it would have been helpful to have clearly stated this fact in the LCM. In addition, it would have been helpful to state who tabled the amendments and the relevant amendment numbers assigned to them to enable their progress to be tracked in House of Commons proceedings.

18. We consider the issues raised in paragraph 17 to be matters of good practice which we would encourage the Welsh Government to follow in future.

Annexe 1

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwyywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partïon.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

Constitutional and Legislative Affairs Committee

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

DEREGULATION BILL: AMENDMENTS IN RELATION TO AGRICULTURAL HOLDINGS ACT 1986, BREEDING OF DOGS Act 1973 AND BREEDING AND SALE OF DOGS (WELFARE) ACT 1999

Legal Advice Note

Introduction

1. The Deregulation Bill (“the Bill”) was introduced in the House of Commons on 23 January 2014 and is currently at report stage. It has been resolved that proceedings on the Bill will carry over to the next parliamentary session.
2. Alun Davies, AM, Minister for Natural Resources and Food laid a Legislative Consent Memorandum (“LCM”) concerning the Bill on 24 February 2014. The LCM was considered by the Committee on 31 March 2014. The Committee subsequently laid its report on the LCM on 1 May 2014.
3. On 22 April 2014, Alun Davies, AM laid a supplementary LCM which arises because of amendments which have been tabled to the Bill.

Background

4. The UK Government’s policy objectives for the Bill are to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer. It includes measures relating to general and specific areas of business covering diverse areas from entertainment to the administration of Justice.

The Legislative Consent Memorandum

5. The supplementary LCM identifies amendments to the Bill which were tabled at the Committee stage of the Bill in the House of Commons, which are within the legislative competence of the National Assembly in relation to which its consent will be sought.

Amendments to the Agricultural Holdings Act 1986 (“the AHA”)

6. The AHA applies to agricultural tenancies entered into before 1 September 1995 and to certain tenancies granted after that date. It governs the landlord and tenant relationship, as well as providing security of tenure and succession rights, regulating the terms of the tenancy and providing for compensation for the tenant or landlord in certain circumstances.
7. Currently the AHA provides three methods of resolving disputes between landlords and tenants to include arbitration.

8. The LCM states that arbitration is currently the primary method of dispute resolution and that most disputes under the AHA are compulsorily referable to arbitration.

9. Amendments tabled to the Bill which relate to the AHA, were agreed by the House of Commons Public Bill Committee on 25th March 2014.

10. The amendments would allow the parties to certain disputes under the AHA to refer them for third party determination by a jointly instructed independent expert, rather than by arbitration. The Welsh Government says that this will provide a less formal, cheaper and quicker dispute resolution process.

11. On moving the amendment in Committee, the Solicitor-General, Oliver Heald QC MP stated that determination under the new process could result in savings to the parties of up to £10, 000.00 in each case. He also stated that the reform had been requested by tenant farmers and was strongly supported by the Tenancy Reform Industry Group who are the advisory group representing landlords and tenants of agricultural holdings in England and Wales.

12. The amendments do not include any powers for Welsh Ministers to make subordinate legislation and fall within the Assembly's legislative competence in so far as they relate to the subjects of 'Agriculture' and 'Housing' within Schedule 7 to the Government of Wales Act 2006 ("GOWA").

Amendments to the Breeding of Dogs Act 1973 (“BDA”)

13. There is currently a requirement under the BDA for licensed dog breeding establishments to keep written records of their breeding bitches and any litters that they may have.

14. Amendments agreed by the House of Commons Public Bill Committee on 18th March 2014 would remove this requirement.

15. The Welsh Government state that the purpose of the amendment is to reduce the burden on small business, because it will duplicate requirements within the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 (“the dog breeding regulations”) which are due to be laid and made before summer recess. In Paragraph 15 of the LCM the Welsh Government state that the regulations will contain appropriate identification mechanisms such as the need to microchip a dog before it leaves a breeding premises and to keep appropriate records on dog breeding.

Amendments to the Breeding and Sale of Dogs (Welfare) Act 1998 (“BSDWA”)

16. Under the BSDWA it is an offence for the keeper of a licensed breeding establishment to sell to the keeper of a licensed pet shop or licensed Scottish rearing establishment a dog which when delivered is not wearing a collar with an identifying tag or badge. Similarly it is an offence for a pet shop owner to sell on such an animal.

17. Amendments agreed by the House of Commons Public Bill Committee would remove these requirements.

18. At paragraph 14 of the LCM, the Welsh Government confirm that the amendments do not remove the requirement in the Control of Dogs Order 1992 for any dog in a public place to wear a collar with the name and address of its owner either engraved or written on a tag.

19. As with the amendments to the BDA, the Government are of the opinion that the provisions are unnecessary because it is intended that the dog breeding regulations will require dogs to be identified by means of a microchip before they leave a breeding premises in any event.

20. There are no powers for the Welsh Ministers to make subordinate legislation in either the BDA or BSDWA and the amendments fall within the

Assembly's legislative competence in so far as they relate to the subject of 'Animal Health' within Schedule 7 to GOWA.

Matters for the Committee

21. Paragraph 19 of the LCM state that the advantages of utilising this Bill rather than Assembly legislation are that the Bill represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. It states *“The proposed amendments are technical and non-contentious. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions to be taken forward at the same time in the same legislative instrument.”*

22. It should be noted that the power to commence the Schedules of the Bill which deal with the repeals lies with the Secretary of State. He will therefore determine when these provisions are redundant.

23. In England micro chipping regulations will not come into force until April 2016, before which there will be a general election.

24. The difficulty with the power lying wholly with the Secretary of State is that it is likely because of the proposed timetable that there will still be a period when dog breeders and pet shop owners within Wales will have to comply with the requirements under the new dog breeding regulations, in addition to the requirements under the BDA and BDSWA. There is also a danger that if there is slippage in the Welsh Government’s timetable for the dog breeding regulations and the Secretary of State commences the relevant Schedule of the Bill before the dog breeding regulations are in force in Wales, there would be a lacuna in the law which would allow breeders and pet shop owners to trade in dogs which are not capable of being identified or traced back to particular establishments.

Legal Services

National Assembly for Wales

May 2014

Agenda Item 3.1

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Document is Restricted

Document is Restricted

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Agenda Item 3.2

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted