

## 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address the comments made by the Committee in respect of the draft Regulations laid on 11 June 2013 and subsequently withdrawn on 5 July 2013.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 11<sup>th</sup> 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.
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**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 25<sup>th</sup> 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 18<sup>th</sup> 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**