

Agenda Item	24
Report No	EDI/84/18

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure Committee

Date: 8 November 2018

Report Title: Consultation - Licensing of Dog, Cat and Rabbit Breeding activities in Scotland

Report By: Director of Community Services

1 Purpose/Executive Summary

- 1.1 This report invites Members to approve the Council's response to the Scottish Government's consultation on the licensing of dog, cat and rabbit breeding activities in Scotland.
- 1.2 The Scottish Government's Programme for Government 2017-18 included the commitment to improve licensing for dog, cat and rabbit breeding, dealing and selling so that conditions in breeding units in Scotland can be properly controlled and breeders identified when advertising animals for sale.

2 Recommendation

- 2.1 Members are invited to approve the Council's response to the Scottish Government's consultation on licensing of dog, cat and rabbit breeding activities in Scotland as detailed in **Appendix 1**.

3 Background

- 3.1 The Scottish Government's Programme for Government 2017-18 included the commitment to improve licensing for dog, cat and rabbit breeding, dealing and selling so that conditions in breeding units in Scotland can be properly controlled and breeders identified when advertising animals for sale.
- 3.2 Currently there is legislation to control the breeding of dogs where an operator produces five or more litters in a year. The breeding of cats and rabbits is currently unregulated.
- 3.3 The dealing of young dogs and cats is also currently regulated, but the dealing of young rabbits is currently unregulated.
- 3.4 In Highland, there are currently no licensed dog breeders and no licensed young cats and young dogs animal dealers. There are 7 premises licensed to sell animals as pets (pet shops).
- 3.5 The Government has noted ongoing concerns regarding animal breeding, particularly with puppies, and believes there may be a large number of unlicensed dog breeders who fall under the threshold of five or more litters in a year.
- 3.6 While many may be operating in a good manner there is some concern that the welfare of breeding animals as well as their young can suffer if:
- more animals are kept than the premises have room for;
 - premises are unsanitary, unsafe and/or unsuitable for the animal in question;
 - females are bred too frequently; and
 - offspring are separated from the mother at too young an age.
- 3.7 The Government proposes that the licensing system should include:
- a threshold number of breeding animals determining whether licensing is to be applied;
 - licences should be flexible and may be awarded, on a risk-based assessment, for a period of up to three years;
 - an exemption from inspection requirements for businesses assured by a UKAS accredited body;
 - licences to be issued at any point in the year for a fixed term but can be suspended or revoked at any time; and
 - discourage the breeding of dogs, cats and rabbits with a predisposition for genetic conditions which lead to health problems in later life.
- 3.8 The consultation closes on 30 November 2018.

4 Proposed response

- 4.1 A proposed response is provided in **Appendix 1**.
- 4.2 In summary, the proposed response fully supports the introduction of a licensing regime based on current scientific and technical evidence on animal health and welfare. The response includes a recommendation that the Government also promptly amend other animal related licensing, such as Riding Establishments, to improve enforcement powers and remove unnecessary administrative burden on both the Council and businesses.

5. Implications

- 5.1 Resource – The proposals include provisions that licence fees can be set on a cost recovery basis and that reasonable costs of inspections should be charged to recover costs to inspectors.
- 5.2 Legal – No implications
- 5.3 Community (Equality, Poverty and Rural) – No implications
- 5.4 Climate Change / Carbon Clever – No implications
- 5.5 Risk – No implications
- 5.6 Gaelic – No implications

Designation: Director of Community Services

Date: 8 October 2018

Author: Andy Summers, Head of Environmental and Amenity Services
Alan Yates, Environmental Health Manager

Background Papers: Consultation [document](#)

Proposed response

1. The Scottish Government proposes that dog, cat and rabbit breeding activities should be regulated. Do you agree?
Yes No Don't know
2. Do you agree with the proposal to set the licensing threshold for dog, cat and rabbit breeders at three or more litters a year?
Yes No Don't know

Comments:

The Highland Council notes the proposals have been based on current scientific and technical evidence on animal health and welfare and are happy to support on this basis.

3. Do you have any comments on the thresholds that should apply? Should these be different for the separate species?

Comments:

The Highland Council supports thresholds based on current scientific and technical evidence on animal health and welfare.

The consultation paper also includes provision that '(a) anyone in the business of breeding and selling dogs, cats and rabbits regardless of the numbers involved' could also be covered. And that 'the licensing regime to cover the breeding of dogs, cats and rabbits as pets to other types of transfer or supply, in addition to commercial sale.' The Highland Council supports these proposals.

In regard to dogs, the Council notes the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 covers 'Either or both of the following— (a) breeding three or more litters of puppies in any 12-month period; (b) breeding dogs and advertising a business of selling dogs.' The Highland Council would support the same approach in Scotland.

4. Do you agree with the proposal that a breeding dog, cat or rabbit must not give birth to more than six litters in their lifetime?
Yes No Don't know
5. Do you agree with the proposal that as a condition of licensing, premises should only be allowed a maximum of 20 breeding dogs or cats within one calendar year?
Yes No Don't know

Comments:

The Highland Council supports levels based on current scientific and technical evidence on animal health and welfare. However, it must be noted that our officers involved with dog breeding issues expressed concern that this level appeared high.

6. Do you agree that individuals with unspent convictions for animal welfare offences or other criminal convictions (e.g. fraud) should not be allowed to hold a licence for breeding activities?
Yes No Don't know

Comment: In addition, we suggest this condition should be extended to the spouse of any person with a conviction or any other person resident at the same address. Also a standard licence condition should be that no person with such a conviction should be allowed to be employed in any capacity at a licensed premises.

7. Are there other considerations, apart from criminal convictions, that should be part of a 'fit and proper person' test for those running dog, cat or rabbit breeding activities?

Comment: The Highland Council consider that operators must be able to demonstrate they have appropriate training or experience regarding the type of animals in their application.

8. The Scottish Government proposes that reasonable costs of inspections should be charged to recover costs to inspectors approved by Scottish Ministers or local authorities. Do you agree with that proposal?
Yes No Don't know

9. Should licence fees be set by the authorised inspectors, local authorities or by the Scottish Government? Do you have any comments on what cost is reasonable and what should be included in this? (For example, this might include recovery of administrative costs, or payment for the inspector's time etc).
Authorised inspectors local authorities Scottish Government Don't know

Comments: Licence fees should be set by local authorities to cover reasonable costs attributable to the licensing regime.

10. The Scottish Government considers that licences lasting from one to three years may be issued on the basis of a welfare risk assessment. Do you agree?
Yes No Don't know

Comments: The Highland Council strongly supports this change. It is noted that DEFRA guidance 'The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Procedural guidance notes for local authorities October 2018' contains a welfare risk assessment matrix that could be reviewed when considering a scheme for Scotland.

11. Do you think that a national list of licensed premises and activities should be kept?
Yes No Don't know

Comments: There is no central body set up to handle this information at present and probably more practical for Local Authorities to continue to store information and publish locally on website so information would still be available nationally. There should be a way of alerting local authorities of banned operators in other areas, similar to the existing arrangements via REHIS for prohibited food premises operators.

12. Do you have any comments on who should be able to access information from the list, and if a charge should be made for information?
Yes No Don't know

Comments: Basic information can be provided on website for no charge. Would need to be national agreement on data to be published e.g. limited to name of business and licensing dates, with no address data.

13. The Scottish Government believes that enforcement agencies should be able to suspend, vary or revoke licenses or issue improvement notices for minor irregularities. Do you agree with this proposal?
Yes No Don't know

Comments: The Highland Council strongly supports this change. These are basic powers that should be part of any modern licensing regime.

14. The Scottish Government proposes that new legislation will require compliance with any relevant Scottish Government guidance as one of the licence conditions. Do you agree that this should be a condition of licensing? If you are aware of any other relevant standards please comment.
Yes No Don't know

Comments – The Council supports Scottish guidance being provided by the Scottish Government. It is noted that CIEH previously issued guidance and DEFRA have recently issued guidance on the application of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

15. Do you agree that appropriate fixed penalties should be available for minor non-compliance with the licensing legislation? (These are not currently available for animal welfare offences but may be introduced in future).
Yes No Don't know

Comments: The Highland Council strongly supports this proposal. Fixed penalties are a widely established method of enforcement within Local Authorities that provides a quick, effective way to enforce minor contraventions that avoids unnecessary burdens on the Court system.

16. Do you agree that the Scottish Government should discourage the breeding of dogs, cats and rabbits with a predisposition for specific genetic conditions, which lead to health problems in later life?
Yes No Don't know

Comments: The Council suggests this practice should be prohibited unless carried out by specialist breeders under a specific dispensation.

17. Do you agree that as a condition of licensing, any breeding practices which are likely to cause the offspring suffering in later life should be prohibited?
Yes No Don't know

18. Do you have any comment on any other appropriate measures the Scottish Government could take to discourage harmful breeding practices?
Yes No Don't know

Comments: Given the price that some dogs can be sold for, possible fines need to be an appropriate deterrent. The regulatory levels set for offences, fines and fixed penalty notices should discourage harmful breeding practices.

General comment on the consultation:

The Highland Council welcomes proposals to update and extend legislation applying to breeding of animals. The Council also notes previous consultations on Animal Sanctuary/rehoming Licensing (December 2017) and enhancing pet shop licensing powers (March 2018).

The Council have previously raised concerns with the Scottish Government on the other animal licensing regimes (copied below) and strongly recommends that **any** new legislation on animal licensing contain basic amendments to the other regimes to improve enforcement powers (powers for Council's to suspend and revoke) and remove unnecessary administrative burdens on both the Council and businesses (remove fixed licence period from 1st January to 31st December and allow greater licence periods).

We appreciate the pressures on the legislative programme in Scotland but it is unfortunate that Scotland does not yet have the equivalent of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 despite clear powers for the licensing regimes to be updated being in place since 2006.

Letter to Cabinet Secretary for Environment, Climate Change and Land Reform January 2017

Licensing of animal establishments

The Highland Council administer and enforce licences that cover specific animal-related establishments and activities, with the aim of maintaining good standards of animal welfare. In Highland around 80 businesses a year are licensed. The Council have concerns that the dated legislation lacks enforcement powers and places an unnecessary administrative burden on both the Council and businesses.

We write to request that the legislation be reviewed and amended to improve the current animal licensing system in Scotland.

Background

As you will be aware the Council has a statutory duty to licence businesses that carry out activities covered by the following legislation:-

- *Performing Animals (Regulation) Act 1925*
- *Pet Animals Act 1951*
- *Animal Boarding Establishments Act 1963*
- *Riding Establishments Act 1964*
- *Riding Establishments Act 1970*
- *Breeding of Dogs Act 1973*
- *Dangerous Wild Animals Act 1976*
- *Pet Animals Act 1951 (Amendment) Act 1983*
- *Breeding of Dogs Act 1991*
- *Breeding and Sale of Dogs (Welfare) Act 1999*

Issues with enforcement

A number of the Acts do not contain powers that would be expected in any modern licensing legislation e.g. powers for the Council to suspend or revoke a licence. The following acts do contain powers to revoke but only following a successful prosecution:-

- *Pet Animals Act 1951*
- *Animal Boarding Establishments Act 1963*
- *Riding Establishments Act 1964*
- *Riding Establishments Act 1970*
- *Breeding of Dogs Act 1973*
- *Pet Animals Act 1951 (Amendment) Act 1983*
- *Breeding of Dogs Act 1991*
- *Breeding and Sale of Dogs (Welfare) Act 1999*

This approach does not provide an immediate response and is not seen to be best use of Court time given current pressures on the Crown office. Legislation such as the Civic Government (Scotland) Act 1982 contains well established suspension procedures that provide proportionate powers to the Council.

The Council have had particular problems recently in enforcing the Riding Establishments Acts. There has been Elected Members, MSP and press interest in recent cases.

Issues with the Administrative Burden

A number of the Acts contain a fixed licence period from 1st January to 31st December. Modern licensing regimes such as the Civic Government Act allow greater licence periods e.g. up to 3 years that relieve administrative burdens on both Councils and businesses.

Officers from the Council have raised these concerns with national professional groups, and we understand that Animal Health and Welfare Strategy Group on the 24th November 2016 agreed to make recommendations to the Scottish Government that the licensing regime should be modernised.

Going forward in Scotland

The Animal Health and Welfare (Scotland) Act 2006 contains provisions for Scottish Ministers to bring in appropriate regulations to licence businesses involved with animals and powers to revoke the above acts. To date this has not been taken forward.

The Council would welcome your support in addressing these concerns and bringing in a modern animal licensing system in Scotland.
