

**Number: WG44124**

Welsh Government

Consultation – summary of response

Draft statutory guidance for the Licencing Regime and Pet Sales under the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021

December 2021

**Overview** This document provides a summary of response to the consultation on the draft statutory guidance for the Licencing Regime and Pet Sales under the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021.

**Action Required** This document is for information only.

**Further Information and related documents** Large print, Braille and alternative language versions of this document are available on request.

The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021 can be found at:

[The Animal Welfare \(Licensing of Activities Involving Animals\) \(Wales\) Regulations 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

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**Additional Copies** This summary of response and copies of the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

**Also available in Welsh at:**

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## **Consultation Exercise**

### **1.1 Background Information**

Local Authorities are required by law to issue licences for specific animal-related activities, with the aim of ensuring high standards of animal welfare. To help achieve this there is a requirement for licencing systems for pet shops.

The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021, alongside the statutory guidance, have replaced Section 1 of the Pet Animals Act 1951 and will assist Local Authorities in granting licences subject to compliance with a set of standards. The Regulations will enable Local Authorities to inspect the premises, allow an appeals process to the courts in case of refusal or onerous conditions, and provide that operating without a licence is an offence. They also set out a number of disqualifications that are relevant to the Local Authority when assessing licence applications (such as a conviction for animal cruelty), and permit a Local Authority to recover the costs for inspection, processing, and enforcement expenditure through a licence fee.

The Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations were debated and approved in the Senedd on the 23 March 2021 and came in to force on the 10 September 2021.

To support these regulations, statutory guidance has been developed for Local Authorities to assist them with the licencing regime and pet sales aspects.

### **1.2 Consultation Process**

The Welsh Government undertook a formal consultation on the draft statutory guidance for the Licencing Regime and Pet Sales under the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021 between 20 August and 1 October 2021.

Online versions of the formal consultation document, draft statutory guidance and response form were provided in English and Welsh on the Welsh Government website. The link to the consultation was emailed to Local Authorities, as well as a range of other stakeholders.

Respondents were able to submit their views and comments on paper, by email or online, and in Welsh or English.

A working group was formed before the consultation to address issues previously raised. The working group comprised two main stakeholder organisations; the Animal Welfare Network Wales and the Companion Animal Welfare Group Wales. Along with the team leading the Local Authority Enforcement Project (which covers the whole of Wales and with responsibilities for training for enforcement officers), these stakeholders were also provided with a confidential draft of the documents for comment. This approach allowed early engagement before the consultation and

provided invaluable advice and specialist knowledge from the Third Sector, enabling officials to amend the documents with suggestions before going live with the consultation. This is common practice in policy development and provides for a more refined draft to be published for consultation.

## **2. Responses to the Consultation**

A total of 62 responses were received to the consultation. Four questions were asked in the consultation document and responses to each are summarised below. What follows is intended as a summary of the responses. It does not aim to capture in detail every point raised by respondents.

Not all questions were answered by all respondents and some gave a general response to the consultation rather than answering specific questions. Where this was the case, responses have been included under the most appropriate question heading.

### **Question 1 - Do you think, as drafted, the business test provides enough advice to Local Authority officials? If not, do you have any alternative suggested wording?**

There were a total of 62 responses to this question. Within this number, 20 responses received were identical responses originating from a single template reply, and a further 6 responses were identical responses originating from a single, but different template reply.

14 individual responses agreed the draft business test does provide enough advice to Local Authorities.

Dr Ed Hayes from the Kennel Club *“welcome the wording included with regard to the business test .....We believe that this guidance makes it clear that it is only those who are genuinely in the business of selling animals as pets that would require a licence.”*

This is echoed by Battersea Dogs Home who believe *“The Business Test as currently drafted provides substantial indication to Local Authorities of the types of businesses these Regulations relate to, and which businesses will and will not require a licence.”*

The group of 6 standard responses were received from Local Authorities and expressed concerns relating to areas of discretion within the business test:

*“The business test has proven to be problematic in England and the “element of judgment” has caused difficulty due to inconsistent interpretation and application. The out of scope criteria adds further complication to the business test and it could be argued that it undermines and opens it up to exploitation.”*

This group of responses also raised concerns that

*“The definition of “non-commercial animal welfare establishment “is open for exploitation by some less credible organisations and multiple examples spring to mind. The business test has not been a success in England and the Local Authorities are suggesting a simpler registration/licensing system as is suggested by the dog breeding project.”*

**In response**, through collaborative working with the stakeholder working group before the live consultation, we believe we were able to build upon guidance which had been published in England and develop our guidance to provide greater clarity to assist Local Authorities and sellers.

The business test has been drafted to reflect our intended scope for the Regulations prior to them being agreed in the Senedd. This is echoed within the Local Authority response, which stated:

*“In the Welsh Government’s response to the Legislation, Justice and Constitution Committee’s Merit Scrutiny point 2, the Welsh Government was clear that while “some small scale breeders who were not required to hold a licence previously will be required to do so under these regulations”, and that “it is not the intention that all small breeders will be required to do so”. The Government also made similar statements in response to Written Questions: “it is not intended that a person who has an accidental litter or who decides on occasion to sell a puppy will need a licence.”*

The group of 20 standard responses expressed opposition to the draft business test stating:

*“The welfare needs of dogs are the same regardless of whether they are bred for commercial gain or as a hobby, and there is no justification why the dogs of hobby breeders are not given the same legal protection as those which fall under the business test.”*

And that:

*The overarching flaw in the legislation is the ‘scope’ which focusses on ‘profit/revenue’ as opposed to the welfare needs of all breeding dogs.*

**Question 2 - Do you think, as drafted, the definition of a Rehoming Centre (Pet Sales guidance document, page 9) will ensure these premises will be able to continue rehoming puppies and kittens which have not been bred on the premises? If not, do you have any alternative suggested wording?**

A total of 62 responses to the question, of which 22 supported the drafted definition of a Rehoming Centre to ensure these premises will be able to continue rehoming puppies and kittens which have not been bred on the premises.

There were 8 responses received which were non applicable as they respondent believed they could not comment on this subject.

There was support for this drafted definition from some of the large Rehoming centres in Wales. Blue Cross stated it was *“pleased to see the Welsh Government have taken on board our suggestions around clearly defining an exemption for rescue and rehoming organisations. Blue Cross is content with the wording suggested.”*

The RSPCA agreed that *“From RSPCA Cymru's perspective and rehoming activities, we believe this definition makes it clear that rescue or rehoming centres such as those we operate in Newport and Bryn-Y-Maen are not subject to the pet selling licensing scheme introduced via LAIA - and nor are RSPCA branch centres, such as the Llys Nini Animal Centre in Penlleger. We therefore feel the guidance, and our discussions with the local government sector, make clear that establishments such as these can continue rehoming puppies and kittens not bred on the premises.”*

The response within the group of 20 standard submissions stated:

*“The welfare needs of dogs and puppies are the same whether they are with a breeder or a Rehoming Centre, and there is no justifiable reason why Rehoming Centres should be excluded from the conditions of licensing, including housing dimensions. It is the proposed ‘conditions’ which are ‘not fit for purpose’.”*

**In response:** these Regulations have been introduced as a first step towards ensuring the welfare of puppies and kittens in Wales is improved significantly by being sold only by breeders directly to the new owner. The Regulations also provide a potential future opportunity and mechanism to encompass other animal welfare establishments, such as rehoming centres, as set out in our Animal Welfare Plan for Wales 2021-26.

### **Question 3 - Do you think the species specific conditions in the guidelines are sufficiently comprehensive to ensure the welfare of these animals?**

A total of 62 responses to the question were received, of which 16 agreed the specific conditions in the guidelines were sufficiently comprehensive to ensure the welfare of these animals. There were 5 responses which were non-applicable.

Battersea stated *“As a dog and cat welfare organisation only, Battersea has limited our comments to Parts C and D. The species specific conditions within the draft guidance provide a high level of detail for the care of the licensable species. This not only gives clear guidance to Local Authorities, but also provides licensees with a clear indication of the standards expected of them and what they will be licensed against.”*

The 6 standard responses from Local Authorities disagreed due to issues surrounding the application of Higher Standards criteria. **Response:** continuing dialogue with Local Authority representatives will seek to alleviate concerns in this area.

The group of 20 standard responses expressed disagreement.

#### **Question 4 - Do you have any further comments or suggested amendments?**

A total of 62 responses specifically replied to this question.

Some positive comments were received from Battersea, who stated,

*“Battersea, along with other animal welfare organisations, has minimal comments or suggested amendments to the draft guidance, due to pre-consultation input directly to the Welsh Government. Through this co-productive work through AWW and CAWW, the majority of our initial concerns with the guidance were addressed and in Battersea’s view the guidance documents were improved to the benefit of animal welfare. Battersea would welcome continuing to work in this way of co-production with the Welsh Government.”*

Other key themes in responses included:

- The need for additional resources for Local Authorities to enforce the regulations;
- The need for training to be provided for Local Authority enforcement;
- The introduction of a registration scheme for all breeders;
- Concerns over hobby breeders falling into scope of the business test;
- The issue of kennel sizes;
- Concerns over the clarity of the Regulations in relation to individual keepers producing less than three litters per year, but making a profit. In particular, whether the activities of such breeders should naturally fall within the Animal Welfare (Breeding of Dogs) (Wales) 2014 Regulations;
- The application of Higher Standards as described within the guidance document;
- Perceived failures of the proposed Application and Suspension/Revocation processes for licences within the 2021 Regulations;
- Fitness to breed considerations.

There was also some concern relating to the absence of detailed specialist information regarding birds, reptiles and fish. For this reason, and after dialogue with a Welsh Government Veterinary Advisor, some additions were included in the guidance in these areas.

### **3. Next Steps**

The Welsh Government values all responses received in relation to the consultation. Whilst this report does not seek to provide a response to each issue raised, all concerns have been carefully considered when formulating both the final version of the statutory guidance and support for implementation moving forward.



It is noted that the approach taken to co-develop the draft guidance with key stakeholder groups was seen as valuable and constructive by these groups.

Our approach has been not to over-complicate the guidance by referring to everything which *may* be done, as it could give the impression that anything that is not listed is not permissible within the boundaries of the duties. This more permissive and less prescriptive approach was welcomed by a number of respondents, and reflects an approach agreed with local government partners at the outset of the co-development of the guidance.

There were also some points raised through the consultation which we are unable to respond to through the guidance. The guidance is intended to facilitate the implementation of the Animal Welfare (Licensing of Activities Involving Animals) (Wales) Regulations 2021 and it cannot include any duties that were not included in the legislation.

The final statutory guidance was published in October 2021 and Local Authorities will be required to have regard to the guidance. We are committed to continuing to work with Local Authorities and other stakeholders following the publication of the guidance to ensure the successful implementation of the Regulations.

## **Annex A – Organisations who responded to the Consultation**

British Veterinary Association (BVA)

Blue Cross

Battersea Dogs Home

Ceredigion County Council

Companion Animal Sector Council (CASC)

The Dogs Trust

The Kennel Club

Neath Port Talbot Council

Ornamental Aquatic Trade Association (OATA)

The People's Dispensary for Sick Animals (PDSA)

Reptile and Exotic Pet Trade Association (REPTA)

Rhondda Cynon Taf Council

Royal Society for the Prevention of Cruelty to Animals (RSPCA)

Swansea Council

University of Lincoln

Welsh Association of Licensed Dog Breeders (Honesty in Dog Policy)