

## **Consultation on the review of animal establishments licensing in England** **Response submitted by Pup Aid, Canine Action UK, C.A.R.I.A.D., Law for Paws**

### **Overview**

Our coalition of organisations campaign for higher standards of welfare for breeding dogs in general and in particular for the prohibition of puppy sales via licensed third party outlets (pet shops). This is the simplest and most effective means of ensuring transparency, accountability and thus responsibility for commercial dog breeders. To this end we function as campaigners, researchers and investigators and in these roles have amassed extensive knowledge and evidence of licensed breeding and pet shop establishments. Our response is supported by an Annex of additional evidence (not for publication).

**PupAid.org** is a non-profit organisation actively campaigning against puppy farming, as well as promoting responsible breeding and rescue pets. PupAid.org was founded in 2010 by media vet, animal welfare campaigner, and current Daily Mirror/RSPCA Vet of the Year Marc Abraham (Marc the Vet) BVM&S MRCVS. PupAid.org focuses on raising public awareness of puppy farming, and the correct way to choose a dog i.e. always see puppy interacting with its mum or adopt from rescue, via its busy social media channels and blogs, TV and radio interviews/appearances, as well as organising its annual celebrity-judged fun dog show in Primrose Hill, London. Vet Marc Abraham (PupAid.org) attends Westminster on a weekly basis lobbying MPs, and is also responsible for collecting over 110,000 signatures on a Government e-petition calling for the 'Banning of puppies and kittens sold without their mums', which was successful in winning a 3-hour debate in the Main Chamber of the House of Commons in September 2014. PupAid.org has great public support for its #wheresmum message, including political (cross-party) backing, and celebrity endorsement including Ricky Gervais, Brian May, Peter Egan, and many more.

**Julia Carr BSc (Hons), Canine Action UK**, investigative researcher and campaigner on issues surrounding the commercial puppy trade. Author of *Licensed Third Party Puppy Vending in Great Britain* (March 2016) and *Evidence supporting the case for prohibiting the sale of dogs through licensed pet shops* (2014).

**C.A.R.I.A.D.** (Care And Respect Includes All Dogs) is a non-profit volunteer organisation based in Wales. Since 2010 we have been investigating the puppy trade which includes puppy farmers, rogue breeders and puppy dealers and working with members of the public who have bought sick or dead puppies. We forensically piece together the networks sellers use, the origins of where puppies have actually been born, and the conditions the breeding dogs from those establishments are kept in. We provide our evidence and hard data to local authorities, the RSPCA, Trading Standards, the police and internet websites to assist in their own investigations. C.A.R.I.A.D. has an excellent working relationship with the Welsh Government and provided assistance during their Breeding of Dogs (Wales) consultation – particularly with the contents of accompanying guidance notes on enrichment and socialisation plans to assist the work of local authority licensing inspectors. We meet with the Welsh Government regularly to update them on the impact the new regulations are having on the ground. C.A.R.I.A.D. are members of APGAW and we were instrumental in the formation of a puppy farming steering group headed by Claire Horton

(BDCH/ADCH/AHWBE) a group on which there are representatives from the RSPCA, Dogs Trust, Battersea Dogs and Cats Home, The PDSA, The Blue Cross, The Kennel Club, The BVA, Pup Aid and Canine Action UK.

**Law for Paws** is a non-profit organisation founded by three legal professionals who each have an interest in animal welfare and want to use their skills, knowledge and experience to help make a difference for the benefit of animals. The organisation is run by volunteers and consists of a Solicitor-Advocate, a Solicitor and a Paralegal, with over 30 years of experience of criminal prosecutions on a variety of cases. We are advocates for animals and want to use our professional knowledge and advocacy experience to help make a difference by raising awareness of animal welfare issues, educating the public and campaigning for changes in legislation. Law for Paws was formed after one of the founders adopted a blind ex-puppy farm stud dog and was astonished to learn that here in the UK, there is such a thing as licensed puppy farms and that the "battery farming" of dogs is legal. It is our mission to provide a voice to the voiceless.

## **Introduction**

In the overview to this consultation, DEFRA set out the aims of animal establishment licensing, its objectives in reviewing the current practices and the problems it has identified with existing regulation. For clarity, we have listed these below:

### **Aims of licensing**

- Licensing – aim of maintaining good standards of animal welfare
- Expectation that animal welfare standards will be robustly enforced

### **Objectives**

- A system which is adaptable to the changing types of animal-related businesses
- A system which is adaptable to new standards of good practice in animal welfare
- Flexibility of licensing/inspection schedule
- Improving effectiveness of existing regulation
- Lifting regulatory burdens on business to support growth
- Relieve the administrative burden on local authorities
- Simplify the application and inspection process for businesses
- Maintain and improve existing animal welfare standards through modernising current animal licensing system
- Repeal existing primary legislation in favour of a single establishment licence, as secondary legislation under the Animal Welfare Act 2006

### **Problems**

- Administratively complex/complex and burdensome
- Involves duplication (e.g. Forcing some businesses with multiple functions to have as many as three separate licences)
- Does not allow for diversification (i.e. internet)

- Does not reflect current and up to date knowledge on companion animal welfare

We believe that this consultation is fundamentally flawed in the premise that animal welfare and public protection should not demand detailed regulation, irrespective of whether it is felt to be 'burdensome' to local authorities and businesses. Securing the protection of animals, the public and the environment is a fundamental duty of local authorities and should not be compromised in favour of maximising efficiency. The consequences of reducing administration may well prove more burdensome and harmful in the long term.

This consultation is about the structure of the regulatory system. There is a real danger that if such proposed changes are going to be made, this will introduce negative changes which are detrimental to animal welfare.

In the year 2000 the Farm Animal Welfare Council reminded ministers that, in legislating to promote high standards of welfare, 'stronger law is only part of the equation as without effective enforcement any system of control will inevitably fail.' We believe that securing legislative change is never to be regarded as an end itself; if it is to fulfil its purpose, it must be implemented in a robust and consistent manner.

We strongly agree with Mike Radford from The School of Law, University of Aberdeen, in his book ***“Animal Welfare Law in Britain, Regulation and Responsibility”***:

*“The process of enforcement encompasses much more than simply hauling alleged offenders before the courts. First legislation should be certain as to its object, application and consequences. To this end, its provisions are required to be unambiguous, equitable and practicable.*

*Secondly, it is essential in the context of animal protection that the nature of the legal responsibility which every measure imposes is appropriate for its subject matter and its purpose. In particular such responsibility should extend to all those whose conduct may have an impact on the welfare or treatment of the relevant animals.*

*Thirdly and most importantly, those charged with enforcement have to be provided with the necessary authority, powers and resources to enable them to ensure that the law is complied with. It is also important that they should be able to demonstrate a relevant degree of training, knowledge and independence.*

*Fourthly, the legislation must provide sufficient and appropriate sanctions. These will include the imposition of a punishment, such as a fine or imprisonment, but it is crucial that measures are available which provide protection for the animals involved. Hence the importance of judicial powers. However, of equal significance are administrative measures, such as improvement notices, or licensing powers. Fifthly statutory enforcement agencies should be adequately resourced to allow them properly to execute their responsibilities.*

*The regulatory framework intended to protect animals fails satisfactorily to meet any of the foregoing criteria.*

*The major contributions of campaigners and animal welfare charities to animal protection should not be allowed to provide the statutory agencies with an excuse for abdicating their responsibilities in this regard.*

*Finally, such statutory enforcement agencies should be publically accountable for the way in which they perform their functions. Enforcement should therefore be open and transparent.*

*We believe that there should be an annual publication of statistics for all agencies concerned in animal welfare as this would give a clear picture of national and regional levels of enforcement and more importantly would be an exercise in accountability. The information would provide the public with an insight into how the law intended to protect animals is working in practice, and how effectively it is being enforced.*

*Only by gaining access to such information can the public judge whether statutory bodies responsible for animal welfare are adequately carrying out their duties, and they can, together with politicians and policy makers, come to an informed view of whether further legislative reform is necessary.*

*Of course, all statutory enforcement agencies are indirectly accountable to the public in the sense that ministers will provide information (assuming it is available) about their activities to MPs in replying to parliamentary questions; local authorities are also answerable to their local electorates both collectively and through individual councillors. Whilst this is welcomed, it is no substitute for the routine provision of material directly to the public, from which they can give an accurate impression of these agencies' performance.*

*Statutory responsibility for implementing and enforcing animal protection legislation falls to a number of different agencies, which vary considerably in the nature of their functions and mode of operation. For example, for the police, animal law forms only a very small part of their general duty to enforce the criminal law and investigate the commission of offences. It is, however local authorities which have the most extensive statutory responsibilities for enforcing animal protection legislation. Thus, it is they who are charged with registering those who train or exhibit animals; administering the licensing of pet shops, animal boarding establishments, riding establishments, dog breeding establishments, dangerous wild animals kept in captivity, and Zoos; as well as being responsible for enforcing the legislation appertaining to markets and transport. Yet no objective and informed assessment has been made on how effectively they carry out these duties.*

*This raises an important issue. In the same way that those to whom animal protection legislation is addressed are required to meet the obligations imposed upon them, so too are other agencies charged with its enforcement. Not only does inadequate enforcement on the part of the public body undermine the purpose of the legislation, it also damages public confidence in the law's ability to ensure proper protection for animals in accordance with the will of Parliament. It is therefore essential that those whom statute charges with responsibility for enforcement are accountable for the way*

*in which they carry out their duties and exercise their powers, and are seen to be independent of those whose activities they oversee.”*

The Animal Welfare Act 2006 was introduced on 27 March 2007, the Act was mainly a consolidation Act but also provided new statutory responsibilities on any person who is responsible for keeping animals to provide for the care and welfare of those animals. The Act provides the local authority animal health officers with powers to enforce the Act. These are discretionary powers and not statutory on the local authority, therefore there is no duty to enforce the Act and this is a cause of great concern to us. The proposals under this consultation, which result in significant changes to the licensing system to place it under the control of this legislation, would necessitate a change in status.

This in itself would have significant implications as the Animal Welfare Act demands considerably more in terms of meeting the needs of animals. Certain activities (including large scale, low welfare dog breeding establishments and third party puppy vending) therefore cannot possibly be considered lawful under the Act.

**Question 1: To what extent do you agree or disagree with the proposal to introduce a single Animal Establishment Licence? Please provide any comments or evidence to support your answer.**

**Answer:**

**We completely disagree** with this proposal on the basis it is unnecessary, unworkable and potentially would create more confusion. There is no evidence to indicate that it would bring any significant benefits, either in terms of ensuring animal welfare or reducing administration, for the following reasons:

- We believe the reasons given by DEFRA for introducing a single licence, i.e. that the administration is burdensome for local authorities, are based on inaccurate assumptions:
  - We have conducted extensive research into dog breeding and pet shop licences (which permit the sale of puppies) and found that whilst one establishment may currently have multiple licences for different activities, (e.g. dog breeding, pet shop and animal boarding) inspections are almost always consolidated into a single visit.
  - Licences generally last for one calendar year but we have many examples of licences which have an annual renewal date that preserves the date of application.
  - Inspections are not invariably carried out at the end of the year. A four-month period between November and February (inclusive) appears to be when many inspections are carried out but again, we have examples of mid-year inspection renewal visits, preserving the anniversary of the licence.
  - Furthermore, securing the protection of animals, the public and the environment is a fundamental duty of local authorities and should not be compromised in favour of maximising efficiency. The consequences of

reducing administration may well prove more burdensome and harmful in the long term.

- Where local authorities have been able to provide inspection reports for premises (for example, we found that 20% of pet shops licenced to sell puppies have no written records of inspection visits), the process does not always appear to cover the specific criteria relevant to the separate licences. For example, different record keeping is required for each activity:
  - As DEFRA recognises that each individual activity must continue to have specific standards, separate inspection forms must be completed. For example, the accommodation requirements for holding animals in a pet shop (intended for short term occupancy) will be very different from permanent housing for adult breeding dogs and bitches.
  - Distinction between activities is essential to ensure that licensing inspectors can judge fairly, appropriately and with animal welfare in mind whether an establishment is fit for licensing and operation in each instance.
  - Appropriate training and independently assessed levels of expertise are essential for those in the position of regulating animal establishments. This must be addressed as a priority. Currently inspections may be carried out by those with very little knowledge of general animal welfare. In fact, our research indicates that in some cases, inspectors do not appear well versed in the requirements of the legislation they are meant to be upholding.
  
- We believe DEFRA has not provided sufficient detail on how a Single Animal Establishment licence would work in practice. For instance, the following has not yet been addressed:
  - Will separate applications be required for different activities or will a single licence permit any of the activities without additional applications?
  - It must be clear to local authorities and the public which activity or activities have been sanctioned. For example, dog breeding and boarding of animals must be separately identifiable, as both activities regularly occur together and transparency of regulatory control is crucial.
  - Different activities may present different levels of risk. For example, Riding Establishments and Boarding Establishments may be lower risk due to the level of public scrutiny, while dog breeding (especially large scale establishments) and pet shops (especially those not on retail premises) present a very high welfare risk. The only common area across all these activities is that they relate in some form to keeping domestic animals – however the purposes, processes and risk areas vary considerably and it is essential that this is reflected in the regulatory process.
  - Furthermore, the lack of sufficiently detailed records being kept and the culture of secrecy means that it is virtually impossible to hold the Home Secretary to account for the way in which he applies his policy in relation to licensing, or to gain any insight into the way conditions attached to the licences are enforced. In other words, the effectiveness of the scheme has to be largely based on trust.

- How will enforcement measures be implemented? Would a breach/offence in one area have implications for other aspects of a multi-function establishment?

We also would make the point that there is little or no evidence to demonstrate that the licensing system is effective in achieving the stated aims – maintaining and enforcing good standards of animal welfare. Our research has shown there is currently a tremendous variation throughout the licence system in terms of administration, inspection processes and enforcement action. Regulation is therefore dependent upon individuals' subjective assessments and decisions and this is completely unacceptable. As stated above we believe that:

*“There should be an annual publication of statistics for all agencies concerned in animal welfare as this which would give a clear picture of national and regional levels of enforcement and more importantly would be an exercise in accountability, the information would provide the public with an insight into how the law intended to protect animals is working in practice, and how effectively it is being enforced.*

*Only by gaining access to such information can the public judge whether statutory bodies responsible for animal welfare are adequately carrying out their duties, and they can, together with politicians and policy makers, come to an informed view of whether further legislative reform is necessary.”*

Currently in terms of protecting animal welfare, licensing is unfit for purpose but this is somewhat understandable given the current economic climate and the fact that local authorities are responsible for this. Between 2009/10 – 2014/15 they have had to cut spending in the face of 19.9% falls in their main sources of revenue. (One of the service areas that saw the largest cuts to net spending was regulation and safety, which was cut by at least 30%).

We would prefer a system where the emphasis is on transparency and motivating individuals to strive towards the highest standards. Local authorities should be provided with sufficient funding and resources, education and training in order for them to carry out all of their duties and functions properly in this area. More focus should be on enforcement and equipping local authorities with the knowledge, skills and resources. Animal welfare should take priority over commercial constraints.

**Question 2: To what extent do you agree or disagree with the proposal to promote or require use of the Model Conditions by local authorities, for activities where they have been agreed? Please provide any comments or evidence to support your answer.**

**Answer:**

**We agree in principle** that inspections against the most recent version of Model Licence Conditions should be mandatory. Our recent research revealed that about two thirds of local authorities that licence pet shops to sell puppies are not inspecting premises against the 2013 Model Conditions for Pet Vending Licensing, including those licensing some of the largest puppy vendors in the UK. There has been more than sufficient lead-in time for these

conditions to be adopted by all local authorities and given the very high risk posed by the activity, it is extremely concerning that some local authorities continue to use older versions. A similar but broader analysis of the licensed pet trade by OATA in 2014 found that fewer than 28% of local authorities were using the 2013 Model Conditions so it would seem that the uptake has been very slow indeed. The use of Model Conditions to change behaviour will have the greatest chance of success where a desire already exists to be compliant. In this case they will act more as guidance to steer businesses in the correct direction.

**However, we completely disagree** that Model Conditions are an effective means of protecting animal welfare, for the following reasons:

- Where there are strong incentives for non-compliance (e.g. financial), enforcement will be key to securing appropriate practices:
  - We have considerable evidence to demonstrate that where breaches of conditions (for both pet shops and breeding establishments) have occurred, either no action is taken or advisory guidance is issued. In some cases, breaches of licence conditions and offences under Primary Legislation have been repeatedly noted on inspections with no penalties imposed.
  - We also have evidence to show that even where the 2013 Model Conditions or even more rigorous criteria are being used, they have been insufficient to prevent serious problems from occurring – resulting in multiple complaints.
  - The degree of enforcement that would be necessary to ensure compliance in these situations is neither practical nor viable.
  - There is currently no consistency or transparency in enforcement procedures. Model Conditions must include a clear system of proportionate penalties and sanctions (e.g. as for driving offences). These should be consistently applied for breaches of licence conditions and multiple, repeated or severe breaches must result in suspension or removal of the licence, as well as a possible conviction.
  - Written procedures must be in place to secure the welfare of animals if a licence is suspended or revoked.
  - Local authorities must be open and transparent if deciding against seeking a prosecution for high category offences. There should be a requirement for them to provide justification if they chose not to pursue a prosecution. There should be accountability and a right of review of any decision not to prosecute for any offence. As with the Crown Prosecution Service decisions, there is a victim's right to review if they decide not to prosecute or to drop a case. There should be a similar right to review for local authorities that could be exercised by animal welfare campaigners/charities.
  - A change is required so that local authorities do not have to apply to a magistrate's court to revoke a licence during its term. This will incentivise and enable a more rapid and flexible enforcement process.
  - Information relating to inspections, any breaches of licence conditions and subsequent penalties must be in the public domain to ensure transparency and confidence in the system. Our research found that a culture of secrecy and protectionism often surrounded animal establishment licensing, which is somewhat surprising given that The Freedom of Information Act 2000 was

introduced to provide a statutory right of access to information held by public authorities.

- There must be a clear and transparent system for the recording of complaints against businesses and protocols for remedial action. Our research has revealed that where diseases such as parvo virus have been reported, the usual outcome was an inspection of the premises by the licensing officer (not always accompanied by a veterinary surgeon) and a visual assessment of the health of puppies on sale. Physical examinations of puppies do not seem to take place and no laboratory testing to confirm the presence or absence of disease was ever reported.
- The concept of 'minimum legal requirements' is incompatible with motivating businesses to achieve high standards of animal welfare:
  - DEFRA's emphasis on current scientific and technical evidence driving best practice is at odds with the concept of basic minimum requirements.
  - Conditions should be dictated solely by animal welfare science and not constrained by limitations of the industry. The highest welfare standards must be the benchmark, based upon scientific evidence. For this reason it is essential that conditions are drawn up by impartial experts and are not subject to industry bias.
  - Licensed dog breeding establishments must be required to produce dogs with the best possible chance of being fit for function as family companions, consistent with current scientific evidence relevant to health and behaviour. There is no justification for compromising welfare.

### **The sale of puppies through licensed pet shops**

DEFRA's consultation follows the historical assumption that animal welfare needs can always be met, but in certain situations, it is impossible to protect animal welfare with regulation – no matter how stringent. One such situation is the sale of puppies via third parties – i.e. licensed pet shops. (Our research reveals that only 38% of pet shops licensed to sell puppies are retail premises – the majority are granted to non-retail premises including dog breeding establishments and domestic dwellings). Scientific studies have shown that selling puppies from premises other than where they were born has an inherently negative impact on their health and welfare. This has consequences for owners and society, as well as for the animals.

- It is essential that licensed pet shops are prohibited from selling dogs (puppies) as the process is incompatible with scientific knowledge and best practice – as already recognised by the Department – purchasers should see puppies with their mother in place where they were born. Animal welfare science supports short supply chains, i.e. that breeders must sell their puppies directly to the final owner.
  - Allowing puppies to acclimatise to the new premises before they are sold is necessary, but exposes them to the risk of disease for longer and delays rehoming further into the critical socialisation period.
  - Puppies removed from their mothers before weaning is completed have underdeveloped immune systems. They are often sold to the public infected

with Parvovirus, Campylobacter, Giardia and Kennel Cough. Some of these conditions present a risk to human health.

- The prevalence of in-breeding and lack of health testing also makes them prone to hereditary conditions that cost their new owners thousands of pounds in veterinary treatment, and can result in them suffering life-limiting conditions.
  - Lack of socialisation in the crucial development stage also leads to dogs that are harder to train and the risk of behavioural issues such as fear aggression which affects the wider society. Poor health and behavioural issues also result in dogs being relinquished to the rescue system, and possible euthanasia, by owners who are unable to cope.
- As commercially imported puppies can only legally be sold through licenced pet shops, preventing this method of selling would ensure that all puppies sold in the UK have been bred to UK welfare standards as there would be no lawful outlet for puppies bred abroad. This would also give consumers a far greater level of protection and confidence in the 'puppy industry'.

We are of the opinion that:

- The onus must be on businesses to prove that they are able to meet the highest welfare needs of animals in their care prior to licences being granted.
- If activities are sanctioned by licensing, practical and transparent enforcement protocols must be in place to ensure compliance.
- The licence system should not support activities where scientific evidence demonstrates that the welfare needs of animals cannot be met.

**Question 3: To what extent do you agree or disagree with the proposal to prohibit the sale of puppies below the age of eight weeks? Please provide any comments or evidence to support your answer.**

**Answer:**

We **completely agree** with this proposal, **but** the sale of dogs to licenced pet shops must also be prohibited as current evidence on animal welfare (see Annex) shows that irrespective of a puppy's age, the selling of puppies through a licensed Pet Shop will have a detrimental impact on their health and well-being.

**Question 4: To what extent do you agree or disagree with the proposal to make clear that the statutory licensing threshold for dog breeders is set at three or more litters per year? Please provide any comments or evidence to support your answer.**

**Answer:**

We **completely disagree** with this proposal, for the following reasons:

- The purpose of lowering the threshold appears to be suggested for economic reasons (to identify potential businesses presumably for taxation). Licensing is not a proportionate measure for identifying commercial activities.
- The aim of licensing is to “maintain good standards of animal welfare”. There is insufficient evidence to indicate that animal welfare is compromised in smaller establishments to the degree that regulatory control is required.
- We (and other organisations) have considerable evidence to indicate that licensing is ineffective at maintaining good standards of animal welfare. Reasons for this include:
  - Inadequate enforcement
  - Inadequate standards
  - Subjective interpretation
  - Strong financial incentives for non-compliance
  - Inconsistent application
  - Lack of transparency or accountability
- Until the licensing system is effective and at such point as deemed necessary for welfare reasons, the threshold should not be lowered and resources should be focussed on existing areas of high risk. It is crucial that areas presenting the highest risk are tackled as a priority.
- Licensing, especially if done on cost recovery basis, could impose additional costs and intrusive inspections onto small scale breeders – acting either as a deterrent for breeding more than two litters or as an incentive to escalate production to a commercial scale to justify licensing costs/intrusion. This could result in fewer puppies being bred in small scale/domestic situations and an increasing commercialisation of dog breeding. This outcome is inconsistent with good practice, detrimental to the welfare of dogs and therefore wholly undesirable.
- The statement ‘anyone in the business of breeding and selling dogs’ is both vague and impossible to monitor. Clear guidance must be issued to indicate when full licensing and inspection is required.
- Our evidence indicates that licensing does not result in transparency. If ‘businesses’ need to be identified, for this purpose, a registration scheme would be far more effective for currently exempt breeders.

We have evidence to demonstrate that lowering the threshold for dog breeding establishments in Wales has failed to identify a greater number of potentially commercial operations. We recently sent Freedom of Information requests to Welsh local authorities to examine the effectiveness of the Animal Welfare (Breeding of Dogs) (Wales) Regulations. The 500 new breeders which were claimed would fall under the new Welsh dog breeding regulations have not materialised. A study of Ceredigion and Carmarthenshire licensed breeders has shown that the licensing numbers have in fact, reduced.

Carmarthenshire County Council estimated that the new regulations introduced in April 2015 would require them to licence an additional 400+ breeders in that one county alone. However, at the time of introducing the Animal Welfare (Breeding of Dogs) (Wales) Regulations, the Welsh Government also dramatically cut Local Authority budgets leaving them with insufficient resources to monitor and enforce licensing requirements. As a result, breeders who should by law now require licences or licence renewals have not voluntarily come forward and declared their status.

## Pet sales

We are extremely concerned about several of the assumptions that DEFRA is making within this area, although not included in the consultation.

- *“The commercial importation of dogs, cats and ferrets from another EU Member State is already subject to strict conditions, including microchipping, vaccination, deworming, and an accompanying pet passport and health certificate.”* These conditions are primarily administrative and there is minimal provision to protect the welfare of commercially imported animals. In particular there is considerable concern for the welfare of commercially imported puppies for the following reasons:
  - There is good evidence to show that enforcement of even these vital and important conditions is inadequate, permitting puppies to be illegally imported into the UK and sold to members of the public. This presents considerable risk to public health (the threat of rabies is only one aspect) and the indigenous pet (and wildlife populations). This has been regularly raised as an issue of concern by a number of different organisations, however DEFRA consistently fails to acknowledge that it is a problem that **MUST** be addressed as a matter of urgency.
  - Enforcement of the import conditions will always be problematic due to limited resources. As long as commercially imported puppies have a legal point of sale, enforcement will be reliant upon carriers’ administration checks. Even were these to be done correctly, there remains the often incorrect assumption that the puppies are destined for a legitimate outlet.
  - The commercial importation of young puppies is inherently detrimental to their short and long term welfare, even if all the conditions of importation are strictly adhered to. We are extremely disappointed that an assumption prevails that puppies can ever be ‘properly’ imported into the UK on a commercial basis, despite the wealth of scientific evidence to demonstrate otherwise. In particular the transportation of young animals under highly stressful conditions will inevitably give rise to health and behavioural issues. Additionally, the critical socialisation period for dogs ends at around sixteen weeks. This has significant negative implications for imported puppies who are at a high risk of developing behavioural problems as a result of minimal appropriate habituation during this time.
- The basic assumption that the commercial importation of young puppies is appropriate, is therefore fundamentally flawed.

We are also concerned that DEFRA is considering changing the remit of the Pet Animals Act 1951, which as stated is already “sufficiently wide to include the sale of pets on-line”. Section 7 (Interpretation) 1a and 1b of The Pet Animals Act 1951 is very clear *‘as references to the carrying on at premises of any nature (including a private dwelling) of a business of selling animals as pets, and as including references to the keeping of animals in any such premises as aforesaid with a view to their being sold in the course of such a business, whether by the keeper thereof or by any other person’.* With this in mind, clarification would be required on whether all commercial pet sales e.g. sales made by breeders, would fall under any new legislation brought in to replace the Pet Animals Act 1951. Changing the interpretation of a

key piece of legislation in itself is an issue for consultation and we are extremely concerned about potential adjustments, for the following reasons:

- “*All domestic commercial pet sales should be licensed*” – how would this apply in practice? Currently commercial breeders are exempt (technically only breeders of pedigree animals but the spirit of the law would suggest that its intention is to exempt all commercial breeders and this is how it is applied in practice.) Would breeders still be exempt from pet shop licensing? If this exemption is removed it would blur the lines of different activities which would be immensely harmful, in terms of animal welfare, effective enforcement and consumer protection.
- Would any new interpretation potentially include the activities of re-homing charities? There should be clear and functional discrimination between welfare based activities for public interest (as defined by the Charity Commission) and commercial dealing, where purpose is to make profit from the activity of buying and selling animals.
- In particular we are very concerned about unintended consequences arising from any potential extension to Pet Shop regulation, as this clearly covers commercial dealing at present from a fixed premises and any widening of scope will only serve to increase confusion. We are of the opinion that commercial pet dealing (buying animals on a wholesale basis to sell for a profit) should be further restricted due to the risks it represents both to animal welfare and consumers. Identifying ‘non-retail’ businesses for taxation purposes would become almost impossible if the scope of pet shop regulation is extended.
- It should be noted under the basic Law of Contract, ‘on-line pet sales’ are not in themselves sales, they are “invitations to treat” / forms of advertising. The sale itself therefore falls under either the Pet Animals Act 1951 (or subsequent new legislation), or existing breeding legislation. There is essentially no requirement to encompass on-line pet sales.

*“Local authorities already have the power to apply conditions to individual pet shop licences (for example, restricting the species that can be sold).”* Local authorities only have the power to restrict the sale of particular species if the licence conditions are not met. The Pet Animals Act 1951 states that local authorities have *“discretion to withhold a licence on other grounds”*, which potentially could include ethical objections to activities deemed harmful to animal welfare. However in practice, local authorities have advised us that restricting the sale of certain species other than on the basis of failure to meet licence conditions, would not stand up to legal challenge, as the practice is not prohibited in law.

Furthermore, coupled with a backdrop of budget cuts and complete lack of resources, local authorities are not exercising this discretion and are not confident enough of their legal success to oppose the granting of a licence based on scientific welfare grounds. To our knowledge there has never been a test case and anecdotal evidence from local authority employees responsible for this area inform us that it is easier for them to grant a licence than it is to not grant a licence. Currently if they do not grant a licence, they are extremely likely to be appealed to the local Magistrates court or legally challenged by way of Judicial Review by the applicant. However due to the lack of requirement for Local authorities to be open and transparent about the granting of license decisions and as there is no legal duty for them to

justify their decision and be accountable for it, there is virtually no legal consequence or legal challenge to them, when they grant a licence.

We believe this should not be the case and more stringent mechanisms for the local authorities' accountability and robust enforcement need to be urgently introduced.

**Question 5: To what extent do you agree or disagree with the proposal to legally require pet sales to provide written information when selling animals? Please provide any comments or evidence to support your answer.**

**Answer:**

**This proposal is insufficiently defined to formulate an opinion.** However we are concerned about this proposal for the following reasons:

- Written information would only be beneficial if it is based upon solid scientific evidence and audited by a panel of independent experts to ensure accuracy. This in itself could present considerable issues.
  - There is no legal requirement for the keeper of a licensed pet shop to maintain a level of continuous professional development – or indeed for those selling pet animals to obtain formal qualifications.
  - Since 1992, the standard model licence conditions have included a requirement that for all new applications, at least one member of staff must have a recognised qualification, such as the City and Guilds Pet Store Management Certificate. Our research into the sale of puppies via licensed pet shops has found that even where this requirement is clearly stated in the conditions, inspectors have deemed this to be unnecessary on the basis that only one species was being sold.
  - Many licence holders claim that they are experienced but this does not necessarily equate to competence, as poor practice may have been followed for many years. If vendors are not obliged to maintain a level of continuous professional development they may not be familiar with current accepted practices in animal welfare. While we feel this is a particular issue with vendors selling dogs, we would make the point that it is applicable to all engaged in the trade of pet animals.
  - Pet vendors and dog breeders frequently claim that they are experienced but this does not by default indicate expertise. It is possible to do an activity incorrectly for many years using outdated methodology.
- The term 'pet sales' is poorly defined. Is this proposal intended to cover pet shops, commercial vendors including breeders or any person selling a pet animal?
- Written information, even if good quality, will do very little to negate problems arising through poor welfare associated with method of sale nor irresponsible ownership.

**Question 6: What other proportionate measures could address concerns around the care of exotic animals?**

**Answer:**

**This is not within our area of expertise to provide a response.** The issues around the welfare and care of exotic animals warrants an entire consultation and lengthy investigation all of its very own and should not be relegated to a footnote in this consultation. However, we are supportive of the concept that it must not be assumed that the needs of all animals can be met when under the control of man (Section 1, Animal Welfare Act 2006).

**Question 7: To what extent do you agree or disagree with the proposal to allow licences to be issued for a fixed term, set at any point in the year? Please provide any comments or evidence to support your answer.**

**Answer:**

Our research into pet shop and dog breeding licensing has found that in many cases, licences already run from any calendar month for a twelve-month period, they do not automatically run January to December. Likewise inspections may be done at any time at the discretion of the local authority concerned. We therefore **do not have any objections** to this administrative proposal. However we are surprised that it merits inclusion in the consultation where areas of far greater concern have been excluded.

**Question 8: To what extent do you agree or disagree with the proposal to increase the maximum length of a licence that local authorities may issue to up to three years? Please provide any comments or evidence to support your answer.**

**Answer:**

**We completely disagree** with this proposal, for the following reasons:

- DEFRA is inclined towards a “*greater risk-based assessment used in inspection and enforcement*”. However, the proposals appear to be aimed only at reducing the degree of inspection and enforcement. We feel that the emphasis should instead be towards using risk based assessments to increase inspection and enforcement.
- The assessment of risk is key and we are concerned that low risk may be solely interpreted on the basis of compliance. The nature of certain activities means that they are inherently high risk and should be inspected at least annually. For example, pet shops, irrespective of species sold or perceived compliance should be regarded as high risk.
- The act of licensing an establishment confers an endorsement that it is operating to accepted measures of good practice. This may alter over time (for example due to illness or infirmity of the licensee) and we do not believe that extending the duration between inspections, even where there is a history of conformity would confer the degree of protection that is expected and necessary.
- Granting local authorities discretion allows for subjective interpretation. This would make for an inconsistent approach between local authorities which is wholly undesirable both from animal and public protection perspectives.

- Compliance based risk assessment is only as good as the parameters compliance is assessed against. If the parameters are insufficiently demanding they may not accurately represent the risk posed to animal welfare or consumers.
- In what circumstances would the parameters change? E.g. following complaints? There would need also to be clear procedures (not just guidance) to increase inspections, irrespective of the licence.

**Question 9: To what extent do you agree or disagree with the proposal to allow licence holders to transfer licences to new owners of the same premises, subject to notification of and approval by the local authority? Please provide any comments or evidence to support your answer.**

**Answer:**

**We completely disagree** with this proposal, for the following reasons:

- New owners must be assessed to establish whether they are fit and proper persons to run an establishment centred around animals.
- It is essential that all premises involving animals are reassessed and inspected following a change in ownership.
- Knowledge and understanding of legislation and welfare requirements is essential for any owner of an animal establishment and it must not be assumed that a new owner would naturally meet the same level of knowledge and understanding as the previous owner.
- This proposal would introduce the potential for clear misuse/abuse which would be to the detriment of the welfare of the animals. For example, a current licensee could have their licence revoked by the local authority but immediately prior to this occurring, they could transfer the ownership of their business to their spouse or a family member or even a member of staff. The business could then continue trading as before, which would result in the revocation of the licence having absolutely no consequence whatsoever.

**Question 10: To what extent do you agree or disagree with the proposal to require licence holders to notify local authorities of major changes, such as a change of premises or scale of activities? Please provide any comments or evidence to support your answer.**

**Answer:**

**We agree** with this proposal, on the basis of the following provisions:

- It goes without saying that licence holders should notify local authorities in advance of making changes that affect the terms on which the licence has been issued.
- There must be clear and strict enforcement protocols for incidents of non-notification/late notification.

- There must be a clear regime of sanctions and penalties and it must be mandatory for local authorities to impose these where licence holders have not provided notification.
- 'Major changes' must be clearly defined and not left open to interpretation. Any change which alters the terms and conditions on which the licence has been granted must be regarded as a major change.
- Approval of any changes must be based upon full and proper reassessment and not granted by tacit consent. We are extremely concerned that some local authorities are potentially granting pet shop licences on the basis of tacit consent and our research has found that many breaches of licence conditions (for example exceeding the permitted number of breeding bitches) is either overlooked or effectively 'rewarded' by increasing the permission.

**Question 11: To what extent do you agree or disagree with the proposal to maintain the registration requirement for performing animals? Please provide any comments or evidence to support your answer.**

**Answer:**

This is not within our area of expertise, but we believe that performing animals are deserving of protection and would be supportive of appropriate measures to enable this.

**Question 12: To what extent do you agree or disagree with the proposed changes to the registration system for performing animals? Please provide any comments or evidence to support your answer.**

**Answer:**

This is not within our area of expertise, but we believe that performing animals are deserving of protection and would be supportive of appropriate measures to enable this.

**Question 13: To what extent do you agree or disagree with these proposals on powers of entry? Please provide any comments or evidence to support your answer.**

**Answer:**

**We disagree** with this proposal, for the following reasons (we have referenced implications for dog breeding and pet shop establishments as these are our particular areas of expertise):

- This specific proposal has nothing to do with maintaining animal welfare standards. It is all about cutting red tape and saving money.
- The proposal does not mean they will "achieve the same high standards as before while curtailing the risk of excessive and disruptive intervention" which was the aim of the Powers of Entry Review.
- There has been no new focus on enforcement (as stated in the review) in this particular area and therefore the result of introducing this proposal is that the local

authority would effectively have its Powers of Entry curtailed and this will be detrimental for animal welfare.

- Licensed animal establishments (particularly dog breeding and pet shops) operate from domestic dwellings. Our research found that 63% of pet shop licenses permitting the sale of puppies are granted to premises that bear no resemblance to a retail shop. This means that consumers - and regulators - are not easily able to identify third party vendors or discriminate between those holding licenses and those operating illegally. It also means that the public scrutiny element of pet vending, (which acts as an additional layer of protection over licensing) is largely absent.
- The current provisions set out in Section 2: *“Power to enter premises which is licensed under the 1973 Act to inspect the premises and any animals or anything in order to determine whether an offence has been or is being committed against the 1973 Act. Entry must be a reasonable time, only local authority officers and veterinary surgeons and practitioners may enter and force may not be used”* are necessary and proportionate.
- The current provisions adequately balance the rights of the individual with the power of entry that a local authority has access to the powers they need to ensure they maintain animal welfare.
- This power is used by local authorities to ensure that dog breeders comply with the provisions of the 1973 Act. It is important that animal welfare standards are adhered to in dog breeding and that poor treatment which amounts to an offence in breeding establishments is detected. As with the 1963 Act, entry utilising this power will be made in three instances; when the licence is first granted; when the licence is renewed; and when there has been a complaint.
- There has been no such focus on enforcement in this area (animal welfare) and so it seems that the DEFRA are seeking to only introduce half of what the Powers of Entry Review was about. This will be to the detriment of animal welfare.
- The current position that *“Entry must be a reasonable time, only local authority officers and veterinary surgeons and practitioners may enter and force may not be used”* adequately addresses the rights of the individual. There is absolutely no need to restrict the power used by local authorities any further.
- The proposal for safeguards to the powers of entry, by adding the requirement to obtain a warrant, if entry is not gained by consent, effectively will “tip off” the breeder/seller and give them an opportunity to dispose of any evidence prior to the warrant being obtained and access being gained.
- Given that “evidence” in this regard is likely to be puppies and breeding dogs, it would be to the detriment of their welfare if the breeder/seller was to dispose of them and could result in the dogs and puppies being killed.
- The safeguard proposal to limit a maximum of four persons using any power of entry is unnecessary and too restrictive upon the local authority. Again this would be to the detriment of the welfare of the animals. Some licensed breeders will have considerably in excess of 100 adult dogs on the premises (and large numbers of puppies of varying ages) and limiting the power of entry to only four people when there are this many dogs would be absurd if the dogs needed to be removed in an emergency. It would not be practical or feasible to have only four people involved in the process.

- The powers of entry here relate to the detection of crime and if it was a police investigation as opposed to a local authority one, there would never be any restriction on the number of police officers being permitted to enter. Just because in this situation it is a local authority prosecution, as opposed to a Police/CPS prosecution, this should not mean that the local authorities powers of entry are limited or curtailed to anything less than one the police would have.
- A criminal offence is a criminal offence regardless of who is the prosecuting authority and given that access is being gained in these circumstance, for the prevention or detection of crime, there is no need for DEFRA to add a safeguarding proposal on the power of entry here.
- The current criminal law legislation and case law already provides safeguards. In that; although a search of a premises has been held to be an interference with article 8 of the Human Rights Act (see *Funke v. France* (1993) 16 EHRR 297; *Chappell v. UK* (1990) 12 E.H.R.R.1) and it is necessary for there to be a justification for the infringement provided. The prevention of crime or the protection of others would form the required justification.
- As already stated the current position of “only local authority officers and veterinary surgeons and practitioners” are sufficient and adequate in so far as powers of entry. Anything less than this would be inadequate and to the detriment of the welfare of the dogs.
- The safeguard proposal that notice should be given regarding the application for a warrant is again to the detriment to the welfare of the dogs.
- Furthermore, any notice given regarding the application for a warrant would in itself defeat the object of the entry. This makes the whole safeguard proposal a contradiction in terms.
- When the police exercise their powers of entry using a warrant, they do not “tip off” the person beforehand by advising them that they are making an application to obtain a warrant. This is for the obvious reason that evidence would be disposed of and the criminal investigation hampered which would therefore prevent the lawful detection of crime.
- The RSPCA have no power of entry; they can apply for a warrant but it is the police that have the power of entry when the warrant is executed.
- Local authorities rather than the police are responsible for the investigation or detection of the offences that fall under this legislation. This begs the question as to why DEFRA would seek to introduce a safeguarding proposal that will effectively limit, restrict or hamper any criminal investigation? It does not make any sense.
- We urge DEFRA to reconsider this proposal. Criminal investigations and enforcement in these circumstances lies with the local authorities. The powers of the local authority are already significantly less than the powers of the police for a criminal investigation, yet one would expect them to be the same given the fact that the local authority is responsible for the criminal investigation and enforcement of offences under the Act. The powers of the local authority must not be reduced further, in order to cut red tape and save money at the expense of animal welfare.

**For the full background and examination of the implications of this proposal, please see Annex.**

**Question 14: To what extent do you agree or disagree with the proposal to allow an exemption from licensing requirements for businesses affiliated to a body accredited by UKAS? Please provide any comments or evidence to support your answer.**

**Answer:**

**We completely disagree** with this proposal, for the following reasons:

- The role of UKAS is to “*assess organisations that provide certification, testing, inspection and calibration services.*” UKAS only serves to accredit the processes used by organisations – not the inspection criteria itself.
- UKAS accreditation will be available to any industry body or organisation.
- Exemption for local authority licensing would mean that local authorities have no power to inspect or enforce conditions, especially as they have no statutory obligation to enforce the Animal Welfare Act.
- Self-regulation for high risk activities (and all live animal related businesses are potentially high risk due to the conflict between welfare and commercial interest) is insufficient to ensure a high standard of animal welfare.
- This will result in inconsistent regulation of animal welfare through a multi-faceted system where each organisation priorities criteria subject to individual bias.
- Internal inspections lack transparency and accountability. Currently the Freedom of Information Act 2000 enables public access to the regulatory processes of local authorities. The same access is unlikely to be granted to private sector organisation records, which would be catastrophic as these organisations could not be held accountable. The loss of transparency of inspection schemes would be disastrous in terms of protecting animal welfare.
- Some of the proposals included in this consultation (e.g. lowering the licensing threshold) would become irrelevant if certain businesses were exempt from local authority regulation.
- Driving up standards across the industry would be impossible.
- It is already very difficult to achieve measureable success in public education campaigns relating to animal welfare, due to the varied and often conflicting messages of different stakeholder groups. Providing clear, unambiguous guidance would be impossible if regulation was devolved to a variety of organisations, each with their own bias.

**Question 15: Do you think sector-led UKAS-accredited certification schemes could improve animal welfare in unlicensed areas? If so, what would work best and how could this process be encouraged?**

**Answer:**

We would suggest that before considering the validity and effectiveness of alternative schemes, a thorough risk assessment of these currently exempt activities is required to determine if significant improvements in animal welfare standards are necessary. The outcome of such a review would determine which, if any measures would be the most effective in achieving and maintaining high standards of welfare. These must be targeted

and specific to the activity in question and the degree of risk posed. We do not feel that it is appropriate to make arbitrary decisions simply based upon DEFRA's concerns that regulation would be burdensome. If particular unlicensed activities or businesses are found to present a sufficiently high risk, appropriate forms of regulation must be implemented irrespective of the 'burden' this may impose. It is imperative that protecting animal welfare and the public is prioritised over any potential impact that regulatory controls may have on such activities.

With particular regards to UKAS accredited certification schemes, we would raise the same concerns as our response to Q14. For all inspection schemes, transparency, accountability and consistency are vital.

Supportive evidence attachments:

- Full Q13 response
- FOI Report summary
- Ceredigion report
- Kennel Club figures
- Scientific papers
- Reference to OATA report