

Consultation Response Form

Your name: Dominic Whitmee

Organisation (if applicable): **Ornamental Aquatic
Trade Association**

The Ornamental Aquatic Trade Association (OATA) represents more than 850 UK businesses which provide fish-keepers with everything they need to set up and maintain a successful home aquarium or garden pond, including retailers, breeders, importers and manufacturers, many of which are SMEs. We promote high welfare standards in the industry through a wide variety of initiatives, such as our Code of Conduct, customer care sheets and our Primary Authority scheme for pet shops.

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Question 1: Regulation 3 sets out that, for the purposes of determining whether something is a licensable activity, 'licensable activity' means:

- (a) keeping animals in Wales where those animals are being used for exhibition for educational or entertainment purposes,
 - (b) training animals in Wales where those animals are being used for exhibition for educational or entertainment purposes, or
 - (c) exhibiting animals in Wales for educational or entertainment purposes.
- (2) The licensable activity may take place with or without charge.
- (3) Exhibiting animals for the purpose of the licensable activity includes—
- (a) the exhibition of animals to any audience attending in person, and
 - (b) the recording of visual images of the animals by any form of technology that enables the display of such images.

If something is a licensable activity, in order to carry it out, a licence will be needed.

Do you agree with this definition? Please provide reasons for your answer.

Please enter here:

We agree with the definition.

Question 2: Regulation 3(4) lists a number of exempted activities that it is proposed will not be subject to this licensing scheme. The exempted activities will therefore not require a licence. These are:

- (a) “Keeping animals primarily for dairy farming and livestock¹ breeding and keeping,
- (b) Keeping or training animals for military or police purposes,
- (c) Keeping or training animals for sporting purposes,
- (d) Animals displaying learned behaviours which are taught for working purposes,
- (e) Any activity permitted under a licence for a zoo under the Zoo Licensing Act 1981,
- (f) Keeping a pet shop under a licence granted under section 1(1) of the Pet Animals Act 1951,
- (g) Any activity permitted under a licence for a riding establishment under the Riding Establishments Act 1964.”

Do you agree with these exemptions? Can you think of an activity that would fall within the exemptions that you believe should be included within the scope of the licensing scheme? Can you think of an activity that would fall within the current definition of an Animal Exhibit that you believe should be exempted? Please provide evidence to support your comments.

Please enter here:

We are pleased to see that pet shops will not be covered by this licensing regime. They of course have their own inspection and licensing regime. Care needs to be exercised that businesses, charities and individuals do not have to apply for multiple licences which essentially look at the same issue of animal welfare. That is perhaps one good thing about the overall animal activities licence introduced in England that organisations apply for one licence with one inspection (and one fee to pay) which might cover several activities.

Question 3: We are proposing that all Animal Exhibits that meet the licensing criteria should be licensed, irrespective of whether they charge a fee for that Exhibit or not i.e. it could apply to individuals, businesses, charities or other not-for-profit entities. This is considered appropriate as the intention of the Regulations is to ensure that animal welfare standards are met, and this is the case regardless of whether an activity is carried out for profit or not. Do you agree with this approach? Please give reasons for your answer.

Please enter here:

We agree with this approach but with some caution. We would urge that full guidance is given on the setting of licensing fees by local authorities, which need to be proportionate and on a cost recovery basis only. We have seen through our own investigations into pet shop licensing over several years that fees can vary hugely and there is no reason to think this will not also be the case with this type of licensing. There seems no real justification for this wide variance (our recent FOI revealed fees in England varied from £40 to £1,200+). It is also to be welcomed that the licence period will be for three years but this should not be reflected in increased fees to try to cover that three year period, as we have seen in England.

Question 4: The current definition of a licensable activity does not provide an exemption for people who may only exhibit their animals only once or twice a year. If an activity falls within the definition of ‘licensable activity’ then a licence is required. Do you agree with this approach? If not, do you think a threshold should be included, setting out the number of

¹ For the purposes of this regulation, “livestock” includes any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land.

times someone can exhibit animals before requiring a licence? What would be an appropriate threshold? Do you feel this is enforceable? Please give reasons for your answer.

Please enter here:

If you do not include some kind of threshold then you will make it too expensive and bureaucratic for people to share their passion and knowledge about their animals, if they only do this on an occasional basis. Some keepers will take their animals into schools, care homes or country shows very infrequently. If they stop doing this then we believe this actually prevents people learning more about animal welfare, particularly in less commonly kept pets such as reptiles. This seems particularly counter-productive. If people run a business then it is reasonable for them to be expected to be licensed but we would urge some common sense when it comes to individuals who, as private keepers, share their expertise with their animals for a limited number of times a year – say 5 – without the need for them to go through the bureaucratic and expensive need to become licensed.

Question 5: There will be cost implications associated with this licensing scheme in so much as an Animal Exhibit licence will be subject to a fee payable to the relevant local authority by the licence applicant and, for example, an applicant may need to improve their facilities to meet the licence conditions.

Local authorities will also incur costs to manage the licensing scheme. Whilst the licensing fee should compensate for these costs, in some cases ongoing enforcement costs may exceed it.

Costs may also be incurred for the justice system where prosecutions or appeals are taken forward.

We would welcome any evidence of any potential financial impacts, both on Exhibitors and on local authorities, and any other persons or organisations you feel may be affected, which may occur as a result of the proposed licensing scheme. Please give reasons for your answer.

Please enter here:

This fee will be an additional cost to any business. We would also point out that getting ready for these types of inspections will also inevitably create other costs for businesses which are probably poorly understood. Has the Welsh Government done any kind of impact assessment on the likely costs to businesses with the implementation of this new licensing regime?

We recently did an investigation into the introduction of the new licensing regime in England for the sale of animals as pets (the old pet shop licence). Our estimates show that Defra vastly underestimated the time and cost to businesses to get ready for this new regime. Defra's Impact Assessment suggested that businesses would be faced with one-off familiarisation costs of £230K. By our estimate the cost to the reptile sector alone in updating their shops in line with the new guidance was potentially in excess of £3 million. We would therefore urge the Welsh Government not to make the same mistake with the introduction of this new licensing regime. Do not underestimate the cost to businesses – and potentially individuals – that any new regime will bring.

Our concern particularly is that these types of licensing regimes – with the emphasis on paperwork to be checked by inspectors – do not actually improve animal welfare. In fact they detract from it because people spend so much time filling in forms when

they should be spending that time on the animals in their care. What we have found with animal activity licensing in England is that there is far too much more paperwork for businesses to fill in and both businesses and local authorities did not think there has been much increase in animal welfare as a result (see our recent report [here](#)).

Fees also vary hugely and we feel stronger guidance needs to be given to local authorities on how to set their fees in a proportionate way.

Question 6: We would like to know your views on any other effects you anticipate the draft Regulations could have on the Justice System. This includes operators of Animal Exhibits (for example, if they are prosecuted for not being licensed or are prosecuted for breach of a licence condition); local authorities as the enforcement authority; the court system; and any other persons or organisations you feel may be affected.

What effects do you think there would be?

Please enter here:

Taking a business to court should not be the first sanction. There should be a proportionate ‘ladder’ of civil enforcement actions to help ensure a business is compliant with the licensing regime. If there are so many prosecutions that the justice service in Wales is in any way affected there is something very wrong with the licensing system.

Question 7: We feel the licensing scheme presents an opportunity for the Welsh tourist industry, of which Animal Exhibits play an important role. The licensing scheme will ensure that all licensed Animal Exhibits will be meeting the same welfare standards and will prove to visitors that we are a nation of animal lovers and the welfare of exhibited animals is taken seriously. We would like to know your views on the effects that the draft Regulations may have, particularly on rural businesses, people and communities.

What effects do you think there would be?

Please enter here:

If animal exhibits truly play an important part in the tourist industry in Wales then you need to be very careful not to introduce a regime that is so expensive to attain that all it actually does is drive people to stop exhibiting animals. This did happen with pet shops that sell animals in England when the new licensing regime – with an emphasis on paperwork (which ultimately could not be checked by local authorities) – was introduced in October 2018. Our report showed that businesses directly stopped trading or stopped selling animals as pets because the paperwork was too onerous.

Question 8: Schedule 1 of the Regulations contains a list of licence conditions that must be attached to every licence issued for the licensable activity. Are there any conditions that you do not consider appropriate, or alternatively, are there any conditions that you would expect to be included, which aren't? Do the licence conditions provide sufficient flexibility, both from an operational and enforcement point of view? Please provide as many reasons to substantiate your views as possible.

Please enter here:

While we do not think that fish would come under this licensing regime we do feel we should point out that many of these requirements should not apply to fish (eg age, sex which would be difficult to determine). We would therefore ask that 'with the exception of fish' is added to the Schedule.

Question 9: Schedule 2 of the Regulations contains details of persons who may not apply for a licence. This includes persons who have held a licence which has been revoked, or who have been disqualified, under the following legislation:

- Animal Welfare (Licensing of Animal Exhibits) (Wales) Regulations 2020;
- Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014;
- The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012;
- The Welfare of Animals Act (Northern Ireland) 2011;
- The Welfare of Racing Greyhounds Regulations 2010;
- Animal Welfare Act 2006;
- Animal Health and Welfare (Scotland) Act 2006;
- Dangerous Dogs Act 1991;
- Dogs (Northern Ireland) Order 1983;
- Dangerous Wild Animals Act 1976;
- Breeding of Dogs Act 1973;
- Riding Establishments Act 1964;
- Animal Boarding Establishments Act 1963;
- Pet Animals Act 1951;
- Protection of Animals (Amendment) Act 1954;
- Performing Animals (Regulation) Act 1925;
- Protection of Animals Act 1911;
- Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018;
- Zoo Licensing Act 1981.

Do you agree with this approach? Should any other legislation be included? Please give reasons for your answer.

Please enter here:

Question 10: A Guidance document has been drafted to which local authorities must have regard in implementing the Regulations. Do you have any comments on the content of that guidance? Do you consider that additional guidance in connection with any particular provisions of the Regulations would be helpful? Please give reasons for your answer.

Please enter here:

The guidance calls for a lot of written procedures to be kept which realistically ties businesses up in keeping paperwork rather than their animals. And for what reason?

Inspectors will spend their time during an inspection looking at paper rather than the animals. It is baffling as to why anyone thinks this improves animal welfare and certainly our evidence in our FOI on the English licensing regime reinforces this.

Question 11: We are proposing a three-year licence period for all licensable Animal Exhibits. Is this appropriate, or do you consider that there should be the option of providing a licence for a shorter period? Please provide reasons for your answer.

Please enter here:

Three years seems a reasonable approach.

Question 12: In the 2017 consultation, 60% of respondents felt that Animal Exhibits may have a negative impact on the attitudes of children and young people towards animals, for example by perceiving them as play things or commodities. Conversely, many respondents felt Animal Exhibits play a key role in introducing children and young people to animals in a controlled environment and where managed well, could play a positive role in educating children, young people and adults.

In Schedule 1, paragraph 8(9) requires that the licence holder must “where possible, promote public education and awareness, and respectful and responsible attitudes, in relation to the species being exhibited”. We feel this will result in a positive impact on the attitudes of children and young people towards animals, with Animal Exhibitors leading by example to inspire the next generation of animal owners and keepers. Do you agree? Please give reasons for your answer.

Please enter here:

We would wholeheartedly agree with the emphasis on promoting public education and awareness. We feel strongly that educating people to pick the right pet for their lifestyle and care for it properly is the key to happy and healthy pets. These types of animal exhibits can be a great way to do this if done responsibly. In our experience many of those who exhibit their animals, particularly private keepers of more exotic species, do so because they are passionate about their pets and want to pass on that passion and knowledge. It's a great way to actually counter getting pets on 'impulse' because they take the time to explain everything that people need to consider when they take on a pet. However, we would highlight one concern and that is how an inspector would measure this requirement? This could be very subjective and raises the possibility of inspectors who do not approve of certain species being kept as pets stopping people from exhibiting those animals because they do not feel this requirement is being met.

Question 13: There are some instances where an animal may be exhibited for a reason other than for entertainment or education. For example, for ornamental purposes (such as a fish tank in a restaurant) or animals that have been bred for sale (e.g. livestock, birds of prey, equines or other pets). As currently drafted, we would not expect exhibits of this nature to fall within the scope of the licensable activity.

Section 9 of the Animal Welfare Act 2006 places a duty on the person responsible for an animal to ensure its welfare. Not doing this is an offence. In light of this, are there any specific activities that you feel should be included in the Regulations, that aren't protected elsewhere? Please give reasons for your answer.

Please enter here:

We are pleased to see this inclusion. Many places, from GP surgeries and dentists to schools and care homes, benefit from having an aquarium in place which can have a

calming effect. Research has found that aquariums improve behaviour and staff satisfaction in dementia units and an aquarium in a care home dining room can improve residents' appetite. These tanks are often installed by aquarium consultants or retail shops which offer this service, and who do regular maintenance on the tank (and are covered by pet shop licensing).

If animals are not kept well in these types of passive installations there is already legislation in place to tackle this issue. Placing a responsibility on these businesses to get a licence to display fish in an aquarium for instance would be the fastest way to ensure these kinds of things are removed from businesses when there may already be perfectly adequate measures in place (eg a maintenance contract with a specialist firm) that ensures the animals are looked after properly.

Question 14: We would like to know your views on the effects that the draft Regulations may have on people with protected characteristics as defined in the Equality Act 2010². These characteristics are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation. What effects do you think there would be?

Please enter here:

Question 15: We would like to know your views on whether the draft Regulations could offer any opportunities to reverse the decline of biodiversity in Wales, in line with the Wales Nature Recovery Action Plan.³

What effects do you think there would be?

Please enter here:

Question 16: We would like to know your views on the effects that the draft Regulations would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

Please enter here:

² <https://www.legislation.gov.uk/ukpga/2010/15/contents>

³ <https://www.biodiversitywales.org.uk/Nature-Recovery-Action-Plan>

Question 17: Please also explain how you believe the draft Regulations could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language.

Please enter here:

Question 18: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, or have any comments on specific aspects of the draft Regulations or Guidance, use this space to report them. Please provide as much detail as possible.

Please enter here:

The key to a successful inspection and licensing regime is how well it is implemented, and this relies on well-trained inspectors who are competent in what they are inspecting when they visit companies or private keepers who are to be licensed. We notice in the guidance document that the definition of what makes an inspector 'suitably qualified' is rather vague, and seems to point local authorities heavily in the direction of vets or zoo inspectors (usually vets). This would mean additional costs to the person/organisation seeking a licence, which could prove prohibitive.

There is no training programme outlined as mandatory for inspectors to take (as there is for example in England). While we commend the recognition that 'inspectors unfamiliar with individual species are strongly advised to seek appropriate advice, for instance from experienced private keepers or breeders, or appropriately qualified individuals' this does leave interpretation of the guidance wide open to personal views. Inspectors might feel that turning to the RSPCA would be a good idea (which again would incur additional costs to the business). But when it comes to exotic species the RSPCA is not always the most knowledgeable.

No inspection regime should be set up without thought going into the training of those who are to undertake it. If an inspection regime is so difficult to implement that it means outside resources need to be routinely used (with the additional costs this inevitably incurs for businesses) then there is something fundamentally wrong with the inspection and licensing regime.

The Welsh Government needs to think carefully about the outcome of what they are planning and if the unintended consequences would just mean that local authorities outsource licensing to vets, who are not necessarily experienced in the husbandry (everyday keeping) of more exotic species, and the additional cost burdens this will bring to the licensee. It would immediately stop any 'casual' keepers sharing their knowledge and passion for their animals if they only do this occasionally (if any such visit means they automatically need a licence).

The introduction of a new licensing regime for selling animals as pets in England effectively doubled licence fees overnight for businesses and the same is likely to happen here. What could therefore happen is that businesses effectively just stop offering these services (as happened in England).

We note that the animal exhibit guidance is very similar in content to that issued for England in October 2018. We are aware that the Welsh Government is also

considering updating its licensing regime for businesses selling animals as pets. In this respect we would urge considerable caution in following the model designed for England which has resulted in a number of problems as identified in a joint report issued by OATA and REPTA earlier this year [which you can read here](#).

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

We are happy for OATA's response to be public.