

Review of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

Selling animals as pets

Prepared by



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and



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Summary of findings

For many years OATA and REPTA have been calling for pet shop licencing to be reviewed so that there are consistent, coherent and mandatory standards enforced by well-trained and competent inspectors.

Throughout the development of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 and accompanying “Guidance notes for conditions for selling animals as pets”, OATA and REPTA highlighted a number of reservations about its likely effectiveness, its potential burden on businesses selling animals as pets, and whether it would achieve any notable improvements in animal welfare. As will be seen these reservations have turned out to be well founded.

Since the introduction of the regulations and guidance in October 2018 and drawing on information gathered in a Freedom of Information Request issued to 331 English local authorities, surveys of affected businesses and our own observations and conversations with businesses and local authority inspectors, we have been monitoring their effectiveness in the context of Defra’s stated objectives in its Next Steps document (February 2017):

*“The Government is committed to **improving the effectiveness of existing regulation whilst lifting the regulatory burdens on businesses** to support growth, productivity and innovation. These proposals should **relieve the administrative burden on local authorities, simplify the application and inspection process for businesses, as well as maintain and improve existing animal welfare standards** by modernising the current animal licensing system in England.”*

Based on a detailed analysis of the impacts of the new regulations and guidance we have benchmarked our findings against Defra’s Impact Assessment and have sought to assess how successful the implementation of the new regulations and guidance has been in relation to each of the five objectives in the above statement. We have focussed on businesses selling animals as pets.

1. Has the effectiveness of existing legislation been improved?

In its Impact Assessment Defra recognised that the previous licensing regime was convoluted and unnecessarily burdensome for both businesses and local authorities, so correcting this should result in a more transparent and efficient process. It also stated that the updated legislation and guidance should result in a clearer, simpler and more consistent licensing system.

Since the introduction of this new regime, as trade bodies, we have received many hundreds of enquiries seeking advice about how the new licensing system is supposed to work, the powers of local authorities, and the interpretation of a wide range of conditions specified in the guidance documents. It is apparent from these discussions that there is huge variation in the way the guidelines are implemented and interpreted across local authorities in England. There remains to this date enormous uncertainty about the many complex and confusing and, in some cases, inappropriate requirements that are imposed by the guidance.

Aside from the problematic nature of many aspects of the guidance (discussed in the accompanying analysis), we suspect that many of the implementation problems that have arisen are due to the fact that as of 4 February, no local authority inspectors had received the required formal training on the new licensing regime. Many factors appear to account for this: it wasn’t introduced until February this year (2019); many weren’t aware of it; and, inspectors were given 3 years to become competent (unlike businesses which had to be ready at the point of introduction).

OATA's 2016 Freedom of Information (FOI) report into pet shop licensing showed there were an estimated 1776 pet shops in England subject to licensing. Our 2019 FOI analysis shows that English local authorities inspected 1474 commercial businesses selling animals as pets as at 4 February 2019 with 65 yet to complete licensing in their area. At the time of writing (July 2019) there are still businesses that remain uninspected under the new legislation. Whilst we do not yet have a clear picture of the outcomes of this licensing round, our data indicates that local authorities have in the main focussed on those businesses they have traditionally licenced, potentially not capturing the wider range of businesses now in scope. Our analysis indicates that the significant majority of businesses licenced were traditional pet shops despite the regulations now also covering importers, wholesalers, breeders and fish consolidators.

2. Has the regulatory burden on businesses been lifted?

Defra's Impact Assessment assumed for each business, a one-off familiarisation cost of 1 hour, saying this may be an over-estimate. Our analysis considered only businesses selling animals as pets of which 77% of those surveyed felt their workloads had increased, estimating an average increase of 7.7 hours/week. It is likely that one reason this figure is so high is due to the work that was needed to prepare for their first inspection under the new regime which for many required the preparation of standard operating procedures and records (the selling of animals for pets required over 31 such documents). We would anticipate the ongoing workload burden to be smaller. 66% of local authorities thought business workloads had increased significantly.

Nonetheless, this suggests Defra's figure of 1 hour is a significant under-estimate. We estimate that there are about 1700 pet shops in England. Excluding other types of business selling animals as pets and based on the above findings using Defra's hourly rate of £15/hour, we estimate the familiarisation costs for pet shops alone would be nearly £200K. Defra's estimated familiarisation costs for all 15,850 in scope businesses in England was £230.2K.

Defra's Impact Assessment did not recognise the impact of the extensive new record keeping requirements. We do not have good data on the amount of time these are taking but discussions with businesses suggest the additional burden is significant. Assuming an average of 2 hours a week for the basic requirements (which we believe to be a significant under-estimate) the additional workload burden would equate to over £2.5M p.a. for pet shops alone. It should be noted that it is not possible for local authorities to validate most of these written records and there is evidence that local authorities now spend more time checking them than assessing animal welfare.

Inspection times have more than doubled since the introduction of the new requirements, rising from around 60 minutes per inspection in 2017/18 to 150 minutes in 2018/19, an increase of 150%. This has unsurprisingly led to a rise in licence fees, increasing from an average of £125 in 2016 to £282 under the new regime. This suggests an increased cost burden to businesses in excess of £250K p.a.

However, this is not the full picture with wide variations across England, and fees ranging from £49 for a 1-year licence to £1263 for a 3-year licence. Of most concern is that according to our recent FOI, at least 68 local authorities are charging different fees for a 1, 2- or 3-year licence (some of which are over £1K for a 3-year licence) despite this being contrary to good cost recovery principles. Some businesses are also facing increased costs by having to carry the additional burden of high veterinary charges in cases where the local authority does not feel able to undertake inspections due to a lack of training. In one case this was reported as high as £165/hr plus travel and report-writing expenses.

Another factor that has not been accounted for is the impact of the enclosure size and stocking density requirements. Guidance on enclosure sizes, stocking densities and water depths is unclear, inconsistent and for many species incongruous with the delivery of good welfare standards. Meeting these conditions has been very expensive for many businesses (especially for those wishing to achieve a higher star rating) and is quoted as being a leading factor in many ceasing to trade in live animals or not seeking to strive for a higher star rating. The higher standards were developed with minimal reference to current industry standards and some of the requirements for enclosure sizes are not even commercially available. The requirement for inspectors to measure animals introduces an unnecessary health and safety risk.

A survey of pet shops stocking reptiles by REPTA in May 2019 identified that the average cost of meeting the new hardware requirements was between £3-5K depending on the size of the shop. Some businesses reported spending considerably more with one estimating expenditure of £21K. The cost to the reptile sector alone is estimated in excess of £3M.

Defra's Impact Assessment suggests that businesses would be faced with one-off familiarisation costs of £230K but that this would be ameliorated by the possibility of being issued a 2- or 3-year licence, resulting in an overall saving for businesses. However, it is clear from the above that the savings made in receiving a longer licence are often non-existent and where savings are present they are far outweighed by the costs of meeting the new requirements.

Additionally, the higher standards (and associated star rating system) are poorly understood and often misinterpreted by inspectors. We estimate that across all pet shops in England the cost of meeting the higher standards exceeds £350K. Notably many businesses have identified that the cost burden of attaining the higher standards outweighs the savings that can be achieved and that they deliver little in the way of animal welfare benefits.

Overall, there has been a significant and adverse impact on businesses selling animals as pets as a result of the new system, both in terms of cost burden and in terms of delivering high welfare standards.

Since the last licensing round, local authorities have reported 69 businesses having ceased trading altogether, stopped selling live animals or reduced the range of species in which they trade. The reasons given range from the amount of paperwork now involved, the increased costs of meeting the new requirements, to the time involved in meeting the new requirements. It is anticipated that this figure will increase.

This is not only concerning from a commercial perspective but also because it increases the risk that the structure of the market will change with an increase in online or sales from private dwellings which are subject to significantly less scrutiny than traditional high street pet shops. They are also difficult for local authorities to identify as a licensable business, without further resource input for investigation and identification.

3. Has the administrative burden on local authorities been relieved?

In its Impact Assessment Defra only identified the cost burden of familiarisation with the new guidance. They assumed a one-off familiarisation cost of 2 hours, including one hour for the staff member to understand the new guidance, and a further hour to disseminate this information to staff members. They estimated this would result in an overall one-off cost of around £11.4K.

However, the guidance produced totals 337 pages across all documents that local authority inspectors need to familiarise themselves with, not accounting for the need to re-familiarise themselves with revised guidance. Whilst we do not have data on familiarisation times, we are aware of numerous cases of misinterpretation or misunderstanding of the guidance suggesting that many local authorities have yet to become familiar with the new guidance. Defra's 2-hour figure is clearly a massive under-estimate given the complexity of the new guidance and the sheer volume of material inspectors need to understand.

Generally, our findings identified that there has been a notable increase in cost burdens on local authorities. In response to our FOI, 90% of local authorities said the new regime had significantly impacted their workloads with the remainder saying it had a marginal impact. Of these over 60% believed that a significant impact would continue.

We also identified that inspection times have more than doubled since the introduction of the new requirements, rising from around 60 minutes per inspection in 2017/18 to 150 minutes in 2018/19, an increase of 150%. Based on a national average EHO salary of £32,611 p.a. this additional inspection time equates to an extra £25 per business inspected – for the 1474 businesses inspected at the time of our FOI this equates to an additional cost burden on English local authorities of £37K for the inspection alone and not accounting for the associated administrative work or travel time. This figure can be expected to rise notably when all in scope businesses are inspected.

Defra's figures also do not take account of the requirement for local authority inspectors to be trained. There is currently only one inspector training course available to local authorities at a cost of £990 per person. Based on Defra's estimate of 356 local authorities affected by this reform, were just one inspector from each English local authority to take the qualification the total cost burden would exceed £350K on top of the time input required. It is our understanding that inspectors will need further professional development to meet all their needs.

4. Has the licence application and inspection process been simplified?

Defra's Impact Assessment assumed that businesses would continue to spend an estimated 2 hours per year completing a licence application and undergoing an inspection. However, as shown above, because of the complexity of the new guidance and the focus on written records, the time taken to carry out the inspection on a business has increased from 1 hour to 2.5 hours on average, not accounting for the additional increases in the accompanying administrative processes. One local authority has said that their inspection reports had increased from 10 to 60 pages and we are aware of businesses spending 4-5 hours completing the licence application. It also appears that some local authorities are requiring separate applications for different activities (e.g. for selling animals as pets and animal encounters) increasing the time for some businesses to complete the necessary forms and potentially increasing the number of inspections they face.

Defra's assumption was that with the ability to issue 2- or 3-year licences this burden would be reduced overall and result in an annual saving of around £165.7K. As can be seen from above and our fuller analysis, the potential for any savings must be questioned.

It should be noted that whilst a standard form was prepared it has not been consistently adopted across England with some local authorities not using it at all. This may in part be due to poor awareness or could be because it is not consistent with the guidance notes, for example allowing people to apply for licences that don't exist (shows) and not having boxes for some animals (amphibians).

5. Have animal welfare standards been maintained and improved?

A fundamental objective of changing the licensing regime and extending it to all animal activities must be to improve animal welfare.

The responses to our FOI request showed that 32% of local authorities thought there would be a significant increase in animal welfare whereas 67% thought there would be only a marginal or no impact on animal welfare as a result.

Amongst businesses involved in selling animals as pets there is deep concern about the amount of time they now have to spend maintaining written records with little demonstrable benefit for animal welfare and which reduces their time available for catering for the welfare of the animals in their care. A substantial number amongst the business community believe that the new regime will do little to improve animal welfare.

Responses from our business survey indicated that during inspections inspectors spent the majority of their time checking whether businesses were meeting their paperwork requirements, rather than checking the welfare of the animals present or the conditions they were kept in. For example, in only 15% of cases were animal sizes measured and in only 27% of cases were display units measured, compared to 81% checking written procedures and 49% checking the accuracy of records (not that there is any sure-fire way to ensure the validity of written records).

A key component of driving higher welfare standard was the star rating system. However, as described above, many do not consider it to be cost-effective to strive for bureaucratic higher standards that deliver little in the way of animal welfare benefits. This is not helped by the inconsistent approach to applying standards when there are local authorities who are either unable to properly understand them or who make policy judgements that they will not issue higher rating.

There is considerable concern amongst those in business responsible for the welfare of the animals they deal in that the new bureaucratic burdens placed on them will not do anything to improve animal welfare and that, on the contrary, they could reduce standards by diverting efforts away from animal care to form filling. In some cases, the conditions imposed are likely to cause suffering or even death with some animals (see pages 21 to 22 for more information).

Conclusions

Following the introduction of such a complex new regime it should be expected that a bedding-in period would be needed and that over time it might be reasonable to assume businesses and inspectors will become accustomed to it.

However, as demonstrated here and in our more detailed analysis, it is clear that there are substantial flaws to this new system, not least the focus on bureaucracy and administration at the expense of animal care. The substantial focus on paperwork requirements has created significant additional burdens for businesses and local authorities, both administratively and financially, with very little demonstrable benefit to animal welfare.

The regulations and guidance have been subject to widely inconsistent interpretation, partially down to a failure to ensure local authority inspectors were properly trained when they were introduced and because of their inconsistency and complexity in the face of rushed implementation. However, it is most notable that the guidance suffers from a fundamental misunderstanding of the pet trade and the animals in it. This is particularly notable with the conditions for enclosure sizes and stocking

densities which for some species put animal welfare at risk (see section on enclosure sizes pages 21 to 22).

This early review of the new regulations and guidance finds little evidence to suggest that any of the original outcomes sought have been delivered. On the contrary, our findings indicate that burdens on business and local authorities have increased substantially without the corresponding benefits for animal welfare. We have identified very serious concerns that this new regime could, in the longer-term, and if adhered to rigidly, result in serious negative impacts on animal welfare amongst certain species groups.

We offer a number of recommendations in our supporting analysis aimed at improving the guidance notes, key amongst which are:

- From 1 October 2019, all inspections should be undertaken only by persons that have received the required training in the new licensing regime and the use of external veterinary contractors should be fully justified and the additional costs borne entirely by the local authority (Recommendations 4 and 5).
- With business representatives and experienced local authority inspectors, review and wherever possible reduce the requirements for keeping written records, including sales registers (Recommendations 8 and 9).
- With business representatives: review all enclosure size requirements to ensure they are practical, proportionate and fit for purpose; remove all water depth requirements; and, remove any conditions that would require local authority inspectors to handle animals (Recommendations 15, 16 and 17).
- Introduce meaningful and practical assessments that enable local authority inspectors to assess animal welfare (Recommendation 21).
- Review and simplify the star rating system and associated higher standards with a view to removing mandatory and optional higher standards where they are not fit for purpose or provide no additional welfare benefits (Recommendations 22 and 23).
- Ensure a consistent approach to fee setting across all local authorities (Recommendations 11 and 12).

We believe it is essential that Defra undertake a thorough and detailed review of the guidance on selling animals as pets at the earliest opportunity in concert with relevant business representatives and experienced local authority inspectors.