



The Campaign to End Puppy Farming.

By email

Mr. David Melding A.M.
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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Dear Mr. Melding

C.A.R.I.A.D. is a coalition of 28 dog rescue and welfare organisations across Wales which campaigns for improvements in welfare standards in dog breeding and specifically for the ending of puppy farming. We would be grateful if the Committee would consider a number of concerns we have about the Animal Welfare (Breeding of Dogs) (Wales) Regulations, 2013, as drafted, that we feel have the potential to undermine the achievement of Government policy objectives to ensure adequate protection of dog welfare.

1 Background

1.1 Our experience is that there are a large number of dog breeding establishments in Wales, concentrated in the south-west, with many having poor welfare conditions for dogs kept. Many breeding establishments are of a large size. In Carmarthenshire, for example, the average number of breeding dogs kept in licensed dog-breeding establishments was 39 in 2012. This does not include puppies produced. There are a significant minority of establishments with over 100 breeding dogs kept.

1.2 Conditions found in many dog breeding establishments based on RSPCA inspector reports, local authority official visits, reports of those visiting establishments for purchase and some undercover investigations undertaken and published, frequently include the following :

- permanent kennelling of dogs in barren kennels
- lack of adequate provision of bedding
- failure to ensure adequate protection from heat or cold
- very limited or no exercise of dogs
- failure to socialise puppies
- failure to provide veterinary care
- repetitive breeding from breeding bitches to exhaustion
- disposal of breeding dogs no longer required with these most often unaccounted for
- failure to provide veterinary care

C.A.R.I.A.D.

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1.3 Unfortunately, our experience is that such conditions are frequently found not only in those premises avoiding scrutiny by local authorities i.e. unlicensed premises, but in many premises which are licensed and 'approved'. The process of licensing by local authorities frequently appears to focus almost exclusively on basic structural features of the kennel environment (e.g. materials used etc) and on the carrying out of very basic procedures to prevent disease spread. There appears often to be insufficient attention paid to those conditions that relate to the behavioural and psychological needs of dogs such as adequate opportunity for exercise, variety and stimulation, and interaction with carers. Moreover, there is often only cursory attention to health needs. We have undertaken analyses of license reports produced by some authorities which strongly support this view.

1.4 While many ex-breeding dogs are never accounted for, some find their way into rescue organisations. Most often such dogs exhibit a range of health problems invariably untreated. These include eye infections, ear infections, skin allergies, mammary tumours and others which have been caused by the conditions under which dogs have been kept, and the failure to treat. Scientific evidence attests to these consequences with findings that ex-puppy farm dogs are significantly more likely to have health problems and to display behavioural problems including high anxiety, fearfulness, and passivity.

2 The draft Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013

2.1 We have closely followed the development of the proposed Animal Welfare (Breeding of Dogs) Wales Regulations over recent years and have been hopeful that, when finally implemented, these Regulations would represent a significant step forward for the welfare of dogs and puppies involved in breeding.

2.2 Features of the proposed Regulations that we view as potentially positive and progressive include the following :

- the requirement that licensed breeders supply and implement programmes relating to both 'enhancement and enrichment' of the dogs environment and experience (including exercise provision), and to the proper socialisation of puppies, which is critical to their development.
- the requirement for micro-chipping of breeding dogs and puppies
- the introduction of a minimum staff to dog ratio
- the giving of powers to local authorities to suspend or revoke licenses – where previously this required going to a magistrates court
- the extension of the range of breeders requiring licensing to those with 3 or more breeding bitches
- the inclusion of statutory Guidance

2.3 We note that it is critical that any regulations adopted are properly and consistently enforced. For the Regulations to be successful they must be drafted in such a way that clear conditions may be defined that licensees must meet, and that local authorities are both fully committed and able to apply and enforce. Too often, we have found where there are significant breaches of even the minimal conditions currently required that no action is taken.

3 Concerns raised in relation to our understanding of the Committee's remit

3.1 With respect to the Committee's remit, we have some concerns on 'technical' grounds believing that the form or meaning of some of the draft text needs further explanation (Standing Order 21.2(v)), or is defective (Standing Order 21.2 (vi)). Moreover, we have certain concerns with respect to the 'merits' of the draft text relating particularly to Standing Order 21.3 (v) as aspects of the draft Regulations may, in our view, undermine their ability to achieve the policy objectives stated in the Explanatory Memorandum and expressed elsewhere (e.g. in consultation documents).

4 Matters of concern regarding the Regulations as drafted

A) Removal of local authority power to define license conditions

4.1 Our primary concern, we understand to be a 'merits' concern (re S.O. 21.3(v)). This concern relates to what appears to be an important omission in the draft Regulations text which may undermine the ability of local authorities to specify enforceable license conditions relating to the range of criteria the Regulations require to be fulfilled. This may undermine the potential of the Regulations to achieve meaningful improvements in dog welfare – a core policy intention.

4.2 In the Breeding of Dogs Act, 1973, which the current Regulations are intended to replace, clause 1(4) stated the following,

'In determining whether to grant a licence for the keeping of a breeding establishment for dogs by any person at any premises, a local authority shall in particular (but without prejudice to their discretion to withhold a licence on other grounds) have regard to the need for securing :

- a) that the dogs will at all times be kept in accommodation suitable as respects construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation, and cleanliness;*
- b) that the dogs will be adequately supplied with suitable food, drink and bedding material, adequately exercised and (so far as necessary) visited at suitable intervals;*
- c) that all reasonable precautions will be taken to prevent and control the spread of infectious or contagious diseases;*
- d) that appropriate steps will be taken for the protection of the dogs in case of fire or other emergency;*
- e) that all appropriate steps will be taken to secure that the dogs will be provided with suitable food, drink and bedding material and adequately exercised when being transported to or from the breeding establishment;*

and shall specify such conditions in the licence, if granted by them, as appear to the local authority necessary or expedient in the particular case for securing all the objects specified in paragraphs (a) to (e)' (underlining added)

The underlined text has provided the explicit basis for local authorities to define licence conditions consistent with the core requirements (a to e) that they may then use as the criteria against which applications for licenses are appraised.

4.3 The current draft Regulations include a section, Section 9, which is broadly equivalent to Section 1,4 of the 1973 Act above as follows :

'9. – 1) When considering whether to grant or renew a licence the local authority must be satisfied that –

- a) dogs are at all times kept in accommodation that is of an appropriate construction and size, with appropriate exercise facilities, temperature, lighting, ventilation, and cleanliness;*
- b) appropriate whelping facilities are available*
- c) dogs are supplied with suitable food, drink and bedding*
- d) dogs are supplied with adequate facilities to enable them to exhibit normal behaviour patterns.'*

4.4 However, we wish to draw the attention of the Committee to the fact that no equivalent text or clause is now included in the Regulations to the underlined text above in the 1973 Act. This, we feel, creates an uncertainty or ambiguity as to whether a local authority does have the continued power to define conditions relating to the core requirements specified under Section 9. We note, further, that in the earlier draft Breeding of Dogs (Wales) Regulations 2011 (now superseded), a related clause was included (Section 5,1 e) : *'specify such conditions in the licence as appear to it (the local authority) necessary to ensure the matters set out ,,, are met'*). However, this did not appear in either the subsequent 2012 or 2013 drafts. It is not clear why.

4.5 We are aware that there have been steps taken by a number of authorities in Wales to introduce improved license conditions which are more consistent with a current understanding of what appropriate accommodation, exercise facilities etc should mean and which incorporate Animal Welfare Act criteria (as do the current draft Regulations). These new model conditions, developed initially by Pembrokeshire County Council, are consistent with the extant regulations and have been recommended for adoption by the Welsh Local Government Association (please see attached letter from Mr Steven Thomas, Chief Executive of the WLGA). Much preparatory work has, we understand, been undertaken by Pembrokeshire County Council and others to prepare breeders for their adoption. It would be anticipated that the model licence conditions now being promoted by the WLGA may be readily updated to incorporate the new provisions under the draft Regulations.

4.6 While the sum of the draft text might be interpreted to imply that local authorities continue to be able to define licence conditions relating to the criteria referred to, there appears to us now to be an uncertainty concerning the local authorities powers which could lead to challenge by a breeder e.g. where a license is refused on grounds of breach of license conditions defined by a local authority. Moreover, local authorities could adopt the view they have the legal power only to adopt those licensing conditions included in Schedule 1. This may inhibit development of what appears to be a productive approach by certain local authorities in Wales with respect to the new model licensing conditions. This would be straightforwardly remedied by retention under Section 9,1 of the new Regulations of the 1973 clause (or similar), e.g. *'and shall specify such conditions in the licence, if granted by them, as appear to the local authority necessary or expedient in the particular case for securing all the objects specified in paragraphs (a) to (d).'*

4.7 We would draw attention of the Committee further to Section 8 (2) of the draft Regulations which may contribute to the ambiguity. This states that,

- '2) The local authority must attach to each licence granted –*
- a) the conditions contained in Schedule 1 to these Regulations;*
 - b) a condition specifying the maximum number of dogs to be kept under the terms of the licence*
 - c) a condition specifying a staff to dog ratio which must ensure as a minimum staff requirement –*
 - (i) 1 full-time attendant per 20 dogs kept; or*
 - (ii) 1 part-time attendant per 10 dogs kept.'*

4.8 The conditions under 'Schedule 1' are the compulsory conditions. There is no reference to attachment of any other licence conditions. While Section 8(2) may not preclude attachment of other conditions, with the failure to refer to these explicitly in combination with lack of specific reference to an authority's power to define associated licence conditions, an important ambiguity remains. We recommend that Section 2 be extended to include a fourth possible attachment, e.g. *'d) and any other conditions the local authority may specify'*.

4.9 Finally, on this issue, we note that under 'Interpretation' in Section 3 of the draft Regulations, *'licence conditions'* are defined as follows, *'those conditions set out in Schedule 1 to these Regulations and any further conditions attached to a licence by the local authority'*. This appears to us to predicate the inclusion of a clause empowering authorities to specify conditions relating to criteria under Section 9. The definition is not sufficient for this in itself, however.

B) Ambiguity in conditions determining eligibility for licensing

4.10 It is very important that it is clear who is eligible for licensing under the Regulations. The criteria for this are defined in Part 2, Section 5. We believe a technical matter arises here of a requirement for further explanation to clarify meaning.

4.11 Section 5(1) states that, 'A person carries on the activity of dog breeding for the purposes of Section 13(1) of the Act if that person keeps on premises 3 or more breeding bitches and – ..'. Five conditions a) to e) are then listed. It is unclear from this wording whether one or all of the further conditions need to be met. However, the Explanatory Memorandum is clear (p.6) that 'anybody who owns 3 or more breeding bitches and meets one or more of a list of criteria ...etc' is required to be licensed by the local authority. While the Explanatory Memorandum is unambiguous, the Regulations are not. They need to state clearly that, one or more of the conditions a) to e) is required along with possession of 3 breeding bitches. Otherwise some breeders will argue that all the criteria do not apply to them and that they are therefore not required to be licensed.

C) Requirement for development of the associated statutory Guidance

4.12 Under Section 13 of the draft Regulations there is the requirement that, 'The local authority must have regard in the carrying out of its functions under these Regulations to such guidance as may be issued by the Welsh Ministers'. We note that this is a very important provision from the point of view of properly fulfilling the policy intention of the Regulations.

4.13 A key problem with the extant regulations is that the criteria set have been both limited and poorly defined. Our experience is that ambiguous terms that had the potential to allow for ensuring appropriate minimum standards – e.g. 'suitable accommodation', 'exercising facilities' have often been very conservatively interpreted with, for example, small barren kennels, sheds or even lorry trailers being viewed as acceptable accommodation, while tiny mesh enclosed concrete areas or brief release into a small concrete yard have been taken to represent adequate exercise facilities.

4.14 In 2000, a number of bodies (the RSPCA, the British Veterinary Association, the Chartered Institute of Environmental Health and the Local Government Association) published 'guidance' to support local authority officers in interpretation of the Breeding of Dogs Act, 1973 and subsequent dog breeding regulations. This is often referred to as the 'CIEH Guidance'. The availability of this was communicated to local authorities in a Home Office circular. We have found again and again that this guidance has been ignored. For example, it recommended (at the time) a staff to dog ratio of 1 to 30 (n.b. later veterinary advice supersedes this). We are aware of premises licensed in west Wales where the ratio is 1 to 120. When challenged, the licensing authority replied – 'the guidance is not statutory'.

4.15 That the Guidance associated with the Regulations will be statutory is an important step forwards. However, the Guidance needs to be comprehensive, appropriate and clearly defined. Our view is that work is still needed on this in advance of implementation of the Regulations. In particular, the draft Regulations require that a potential licensee submits a draft 'Enhancement and enrichment programme' and a draft 'Socialisation Programme' and that these be implemented. At the moment, there is almost no guidance that relates to what this might cover. A particular issue requiring clarification is what may be minimally acceptable in each of these areas as specification of this will be essential for local authorities to be able to enforce requirements to implement these programmes.

4.16 We hope that as a 'merits' matter, relating to Standing Order 21.3 (v) – the need to ensure that the Regulations will achieve their policy objectives - and given the critical role of the Statutory Guidance in achieving the policy objectives, that the Committee will consider making the recommendation that the Guidance associated with the Regulations is further developed with clear indications of minimum expectations to which local authorities must have regard in all relevant areas by the proposed implementation date of 1st January 2014.

5 Other matters

5.1 While we understand that these matters are likely to be outside the remit of the Committee, we would like to take the opportunity to alert members to certain further conditions or circumstances that we feel are likely to be necessary to ensure that new Regulations do have a widespread effect on improving breeding dog and puppy welfare in Wales. These are :

- a) that local authorities take advantage of provisions in the draft Regulations under Section 12 to obtain sufficient funds through licensing charges to enable them to properly assess, monitor and enforce licence conditions.
- b) that officers charged with undertaking licensing duties receive full training with respect to the animal welfare matters they are required to evaluate, as well as to the Regulations themselves. Officers will be required to make judgements about such matters as adequacy of conditions and exercise for various dog breeds, appropriate socialisation activities, and facilities and actions that will provide enrichment and stimulation for dogs.
- c) that local authorities make publicly available (e.g. on authority web-sites) details of breeders who have met licensing requirements. This is a reasonable expectation of the public – i.e. as to whether a breeder has met statutory requirements. It is likely to facilitate enforcement - breeders operating without a licence would be more readily identifiable - and may facilitate redress under trading standards regulations where puppies purchased develop later health or behavioural problems.
- d) the setting up of an inspectorate, possibly part-time and funded from licence fees, that can review and report on local authority practice on a regular basis to ensure minimum standards are applied and that there is consistency in approach between authorities.

Thank you and Committee members for your kind attention.

Yours sincerely,

David Grimsell
On behalf of C.A.R.I.A.D.

Attachment – copy of letter from Mr. Steven Thomas, Chief Executive of the WLGA concerning the new model licence conditions recently developed by Pembrokeshire County Council.