



Reference: P-04-445

Response to Alun Davies's letter to William Powell, Chair, Petitions Committee

1.

I am very encouraged by the Minister's response that there will be a review of the Animal Welfare (Electronic Collars) 2010 legislation in Summer 2014 that "will inform any policy decisions that result in a change to the legislation".

It is apparent from my meetings with some Assembly Members including the then Minister for Rural Affairs Elin Jones (who signed this legislation) that there is a complete lack of understanding of how the fencing system works; none of them has ever personally visited a garden or field with invisible fence system to see how it operates.

This was very apparent from the Draft Legislation of 2009 - copy enclosed (which was abandoned at the last minute in 2010 in favour of a blanket ban for dog training collars and invisible fencing collars to make it easier for officials to police the law. It cannot be that cats & dogs must die on the roads to make it easier for officials to do their job !)

It states that " *a person may attach an electronic device to a cat or a dog if –*

- a) Any electric shock to the animal is caused by virtue of the animal's proximity to a boundary marked by a physical barrier;*
- b) The physical barrier is clearly visible to the animal*
- c) The boundary marked by the physical barrier is entirely outdoors and*
- d) The device is attached to the animal for a period of no more than 2 months from the date on which it was first attached"*

During training, flags are put around a chosen boundary in a garden and the collar emits audible warning alerts when the cat or dog is within 8 feet from this boundary. Pets are taken on a lead towards the boundary by the owner but pulled back quickly when the alerts start and the pet is praised and fussed. It can take less than an hour before the pet understands that the alerts represent a sign of danger of a static charge or correction (not a live electric shock as with a livestock fence) and they do not proceed any further.

This correction mimics the 'nip' given by an adult animal in the wild to its young and recognised by domestic pets.

The training procedure is gradual and reinforced with the pet on a lead taken to the training flags in brief sessions during this reinforcement period until the flags are alternatively removed over a period of up to 4 weeks until the owner can see the pet's progress and then the animal is free to roam in the garden.



Also, the collars are only attached to the cat or dog when it is outside in the garden and removed in the evening. The manufacturer's instructions clearly state that the collars should only be worn for a maximum of 12 hours and this is easily achieved.

This is a set training protocol by the American Kennel club used throughout the USA and also in England, Scotland and Ireland.

It is baffling why the RSPCA is not in favour of the invisible fencing system. It would free up the Charity's resources for real cases of genuine cruelty and neglect which are so graphically shown on their website.

There are many thousands of cats and dogs abandoned by owners every year which are housed by the RSPCA and other animal welfare charities. Yet bizarrely, the RSPCA refuses to re-house a rescue animal in a home that is near a road. This is the first question I was asked when I rang my local RSPCA 3 years ago to adopt cats. Who doesn't live near a road, for heaven's sake? Perhaps the RSPCA cannot see the 'clear blue water' difference between dog training collars activated by a human hand and the invisible fencing collars governed by the animal's own behaviour.

Or maybe there are commercial reasons for it.

2.

No-one across the UK has ever been prosecuted under the Animal Welfare Act of 2006 for using an electronic collar on a cat or a dog since it was introduced 7 years ago.

This Act is the gold standard for legislation for protection of animals from cruelty

I sincerely hope this reassures the Minister that these invisible fences are only a force for good and demonstrated by the fact that that no other country in the UK has followed Wales over the past 3 years in implementing a ban.

Monima O'Connor  
Petitioner.

13<sup>th</sup> November 2013

*Draft Regulations laid before the National Assembly for Wales under section 12 of the Animal Welfare Act 2006 (and paragraph 34 of Schedule 11 of the Government of Wales Act 2006), for approval by a resolution of the Assembly*

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W E L S H   S T A T U T O R Y   I N S T R U M E N T S

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**2008 No. (W.)**

**ANIMALS, WALES**

**ANIMAL WELFARE**

**The Animal Welfare (Electronic Devices) (Wales) Regulations  
2009**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under section 12 of the Animal Welfare Act 2006 (c.45). By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (2006 c.32), this section confers powers on the Welsh Ministers to make such provision as they think fit for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals.

Regulation 2 defines “electronic device”.

Regulation 3 provides for offences in relation to the use of an electronic device on a dog or a cat.

Regulations 4 and 5 provide for defences in cases where an electronic device is used on a dog or a cat.

Regulation 6 provides for penalties for the offences established in regulation 3.

Regulations 7 to 16 provide post-conviction powers, including powers relating to: deprivation (regulation 8); disqualification (regulation 9); seizure of animals (regulations 10 and 11); destruction in the interests of the animal (regulation 12); forfeiture of equipment used in offences (regulation 13); appeals (regulation 14); termination of disqualification (regulation 15); and reimbursement of expenses (regulations 16 and 17).

Regulation 17 provides powers of entry and search, by treating an offence under the Regulations as a relevant offence for the purposes of section 24 of the Animal Welfare Act 2006.

A regulatory appraisal has been prepared. Copies may be obtained from the Office of the Chief Veterinary Officer, the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

**2008 No. (W.)**

**ANIMALS, WALES**

**ANIMAL WELFARE**

**The Animal Welfare (Electronic Devices) (Wales) Regulations  
2009**

*Made* 2009

*Coming into force* 2009

The Welsh Ministers, in exercise of the powers conferred on them by section 12 of the Animal Welfare Act 2006 (1), and having consulted such persons as they consider appropriate, make the following Regulations—

A draft of these Regulations was laid before the National Assembly for Wales under section 12 of the Animal Welfare Act 2006 and has been approved by a resolution of the National Assembly for Wales.

**Title, commencement and application**

1. The title of these Regulations is the Animal Welfare (Electronic Devices) (Wales) Regulations 2009; they apply in relation to Wales and come into force on the day after they are made.

**Interpretation**

2. In these Regulations—

“the Act” means the Animal Welfare Act 2006;

“electronic device” means a device or instrument of a type which is capable of causing an electric shock to an animal;

“electric shock” means stimulation of nerves or contraction of muscles caused by a flow of electric current through the body.

**Prohibition on use of electronic devices**

3.—(1) A person commits an offence if he or she—

- (a) attaches an electronic device to a dog or a cat;

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(1) 2006 c.45. By virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32) the functions of the National Assembly for Wales are exercisable by the Welsh Ministers.

- (b) causes an electronic device to be attached to a dog or a cat; or
  - (c) is responsible for a dog or a cat to which an electronic device is attached.
- (2) Nothing in these Regulations prohibits the insertion and reading of a microchip for the purpose of identifying a cat or a dog, where that is done in accordance with good practice.

### **Defences**

4. It is a defence for a person accused of an offence under regulation 3 to show that the electronic device—

- (a) was not capable of causing an electric shock to the animal;
- (b) was attached by or under the direction of a veterinary surgeon; or
- (c) was attached in accordance with regulation 5.

### **Fencing systems**

5.—(1) A person may attach an electronic device to a cat or a dog if—

- (a) any electric shock to the animal is caused or to be caused by virtue of the animal's proximity to a boundary marked by a physical barrier;
- (b) the physical barrier is clearly visible to the animal;
- (c) the boundary marked by the physical barrier is entirely outdoors; and
- (d) the device is attached to the animal for a period of no more than 2 months from the date on which it was first attached.

(2) In this regulation, "outdoors" means outside of, or not covered by, any building or permanent structure.

### **Penalties**

6.—(1) A person convicted of an offence under these Regulations is liable, on summary conviction, to—

- (a) imprisonment for a term not exceeding 51 weeks, or
- (b) a fine not exceeding level 5 on the standard scale,

or to both.

### **Deprivation**

7.—(1) If a person convicted of an offence under regulation 3 is the owner of an animal in relation to which the offence was committed, the court by or before which he or she is convicted may, instead of or in addition to dealing with that person in any other way, make an order depriving him or her of ownership of the animal and for its disposal.

(2) Where the owner of an animal is convicted of an offence under regulation 8(9), because ownership of the animal is in breach of a disqualification under regulation 8(2), the court by or before which that person is convicted may, instead of or in addition to dealing with him or her in any other way, make an order depriving him or her of ownership of the animal and for its disposal.

(3) Where the animal in respect of which an order under paragraph (1) or (2) is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal.

(4) Where a court makes an order under paragraph (1) or (2), it may—

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;

- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
  - (c) give directions with respect to the carrying out of the order;
  - (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
  - (e) order the offender to reimburse the expenses of carrying out the order.
- (5) Directions under paragraph (4)(c) may—
- (a) specify the manner in which an animal is to be disposed of, or
  - (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under paragraph (4)(a).
- (6) Where a court decides not to make an order under paragraph (1) or (2) in relation to an offender, it must give its reasons for the decision in open court and cause them to be entered in the register of its proceedings.
- (7) Paragraph (6) does not apply where the court makes an order under regulation 8(1) in relation to the offender.
- (8) In this regulation, references to disposing of an animal include destroying it.

### **Disqualification**

**8.**—(1) Where a person is convicted of an offence under regulation 3, the court by or before which he or she is convicted may, instead of or in addition to dealing with that person in any other way, make an order disqualifying him or her under any one or more of paragraphs (2) to (4) for such period as it thinks fit.

- (2) Disqualification under this paragraph disqualifies a person—
- (a) from owning animals,
  - (b) from keeping animals,
  - (c) from participating in the keeping of animals, and
  - (d) from being party to an arrangement under which he or she is entitled to control or influence the way in which animals are kept.
- (3) Disqualification under this paragraph disqualifies a person from dealing in animals.
- (4) Disqualification under this paragraph disqualifies a person—
- (a) from transporting animals, and
  - (b) from arranging for the transport of animals.
- (5) Disqualification under paragraph (2), (3) or (4) may be imposed in relation to animals generally, or in relation to animals of one or more kinds.
- (6) The court by which an order under paragraph (1) is made may specify a period during which the offender may not make an application under regulation 14(1) for termination of the order.
- (7) The court by which an order under paragraph (1) is made may—
- (a) suspend the operation of the order pending an appeal, or
  - (b) where it appears to the court that the offender owns or keeps an animal to which the order applies, suspend the operation of the order, and of any order made under regulation 10 in connection with the disqualification, for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal.
- (8) Where a court decides not to make an order under paragraph (1) in relation to an offender, it must give its reasons for the decision in open court and cause them to be entered in the register of its proceedings.

- (9) A person who breaches a disqualification imposed by an order under paragraph (1) commits an offence.

### **Seizure of animals in connection with disqualification**

**9.—**(1) Where—

- (a) a court makes an order under regulation 8(1), and
- (b) it appears to the court that the person to whom the order applies owns or keeps any animal contrary to the disqualification imposed by the order,

it may order that all animals that that person owns or keeps contrary to the disqualification be taken into possession.

- (2) Where a person is convicted of an offence under regulation 8(9) because of owning or keeping an animal in breach of disqualification under regulation 8(2), the court by or before which he or she is convicted may order that all animals that that person owns or keeps in breach of the disqualification be taken into possession.
- (3) An order under paragraph (1) or (2), so far as relating to any animal owned by the person subject to disqualification, has effect as an order for the disposal of the animal.
- (4) Any animal taken into possession in pursuance of an order under paragraph (1) or (2) that is not owned by the person subject to disqualification is to be dealt with in such manner as the appropriate court may order.
- (5) A court may not make an order for disposal under subsection (4) unless—
  - (a) it has given the owner of the animal an opportunity to be heard, or
  - (b) it is satisfied that it is not reasonably practicable to communicate with the owner.
- (6) Where a court makes an order under subsection (4) for the disposal of an animal, the owner may—
  - (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;
  - (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.
- (7) In subsection (4), the reference to the appropriate court is to—
  - (a) the court which made the order under subsection (1) or (2), or
  - (b) in the case of an order made by a magistrates' court, to a magistrates' court for the same local justice area as that court.
- (8) In this section, references to disposing of an animal include destroying it.

### **Seizure of animals: supplementary**

**10.—**(1) The court by which an order under regulation 9 is made may—

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order.

(2) Directions under paragraph (1)(c) may—

- (a) specify the manner in which an animal is to be disposed of, or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (1)(a).
- (3) In determining how to exercise its powers under regulation 9 and this regulation, the court must have regard, amongst other things, to—
  - (a) the desirability of protecting the value of any animal to which the order applies, and
  - (b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse.
- (4) In determining how to exercise a power delegated under subsection (2)(b), a person must have regard, amongst other things, to the things mentioned in subsection (3)(a) and (b).
- (5) If the owner of an animal ordered to be disposed of under regulation 9 is subject to a liability by virtue of paragraph (1)(e), any amount to which he or she is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

### **Destruction in the interests of the animal**

**11.**—(1) The court by or before which a person is convicted of an offence under regulation 3 may order the destruction of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by a veterinary surgeon, that it is appropriate to do so in the interests of the animal.

- (2) A court may not make an order under subsection (1) unless—
  - (a) it has given the owner of the animal an opportunity to be heard, or
  - (b) it is satisfied that it is not reasonably practicable to communicate with the owner.
- (3) Where a court makes an order under subsection (1), it may—
  - (a) appoint a person to carry out, or arrange for the carrying out of, the order;
  - (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
  - (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
  - (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
  - (e) order the offender or another person to reimburse the expenses of carrying out the order.
- (4) Where a court makes an order under subsection (1), each of the offender and, if different, the owner of the animal may appeal against the order to the Crown Court;
- (5) Subsection (4) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed.

### **Forfeiture of equipment used in offences**

**12.**—(1) Where a person is convicted of an offence under regulation 3, the court by or before which he or she is convicted may order any electronic device which is shown to the satisfaction of the court to relate to the offence, to be—

- (a) forfeited, and
- (b) destroyed or dealt with in such manner as may be specified in the order.



- (2) The court may not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless he or she has been given an opportunity to show cause why the order should not be made.

### **Orders: Appeals**

**13.**—(1) Nothing may be done under an order under regulation 8, 10 or 11 with respect to an animal or an order under regulation 12 unless—

- (a) the period for giving notice of appeal against the order has expired,
- (b) the period for giving notice of appeal against the conviction on which the order was made has expired, and
- (c) if the order or conviction is the subject of an appeal, the appeal has been determined or withdrawn.

(2) Subsection (1) does not apply to an order under regulation 11(1) if the order is the subject of a direction under subsection (5) of that section.

(3) Where the effect of an order is suspended under paragraph (1)—

- (a) no requirement imposed or directions given in connection with the order have effect, but
- (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(4) Directions under paragraph (3)(b) may, in particular—

- (a) authorise the animal to be taken into possession;
- (b) authorise the removal of the animal to a place of safety;
- (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
- (d) appoint a person to carry out, or arrange for the carrying out, of the directions;
- (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
- (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
- (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

(5) Any expenses a person is directed to pay under paragraph (4)(g) are recoverable summarily as a civil debt.

(6) Where the effect of an order under regulation 8 is suspended under paragraph (1) the person to whom the order relates may not sell or part with any animal to which the order applies.

(7) Failure to comply with paragraph (6) is an offence.

### **Termination of disqualification**

**14.**—(1) A person who is disqualified by virtue of an order under regulation 9 may apply to the appropriate court for the termination of the order.

(2) No application under paragraph (1) may be made—

- (a) before the end of the period of one year beginning with the date on which the order is made,

- (b) where a previous application under that paragraph has been made in relation to the same order, before the end of the period of one year beginning with the date on which the previous application was determined, or
  - (c) before the end of any period specified under regulation 9(6) or paragraph (5) below in relation to the order.
- (3) On an application under paragraph (1), the court may—
- (a) terminate the disqualification,
  - (b) vary the disqualification so as to make it less onerous, or
  - (c) refuse the application.
- (4) When determining an application under paragraph (1), the court must have regard to the character of the applicant, his or her conduct since the imposition of the disqualification and any other circumstances of the case.
- (5) Where the court refuses an application under paragraph (1), it may specify a period during which the applicant may not make a further application under that subsection in relation to the order concerned.
- (6) The court may order an applicant under paragraph (1) to pay all or part of the costs of the application.
- (7) In paragraph (1), the reference to the appropriate court is to—
- (a) the court which made the order under regulation 9, or
  - (b) in the case of an order made by a magistrates' court, to a magistrates' court acting for the same local justice area as that court.

#### **Orders made on conviction for reimbursement of expenses**

**15.** Where an order is made under regulation 8(4)(e), 11(1)(e) or 12(3)(e), the expenses that are required by the order to be reimbursed are not to be regarded for the purposes of the Magistrates' Courts Act 1980(2) as a sum adjudged to be paid by a summary conviction, but are to be recoverable summarily as a civil debt.

#### **Orders for reimbursement of expenses: right of appeal for non-offenders**

- 16.**—(1) Where a court makes an order to which this regulation applies, the person against whom the order is made may appeal against the order to the Crown Court;
- (2) This regulation applies to an order under regulation 11(1)(e) against a person other than the person subject to disqualification.

#### **Entry and search**

**17.** An offence under these Regulations is to be treated as a relevant offence for the purposes of section 24 of the Act.

*Name*

Minister for Rural Affairs, one of the Welsh Ministers

[Date]

