

**Constitutional and Legislative Affairs Committee Draft Report**  
**CLA(4)–19–14**

**CLA416 – The Animal Welfare (Identification of Dogs) (Wales) Regulations**  
**2014**

These Regulations provide for the compulsory identification of dogs by microchipping, and, for the registration of the microchip and the identity of the keeper of the dog on a database.

**Procedure:** Affirmative

**Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

**Merits Scrutiny**

Under Standing Order 21.3 the Assembly is invited to pay special attention to this instrument:–

**1. SO 21.3 (iv) that it gives rise to issues of public policy likely to be of interest to the Assembly).**

These Regulations provide for the identification of all dogs in Wales through the implantation of a microchip. Puppies born after the legislation has commenced will be required to be microchipped before they are 56 days old, or transferred to a new keeper whichever is the sooner. Dogs which change keepers after the Regulations come into force will be required to be microchipped. Save for some limited exceptions all dogs in Wales will be required to be microchipped no later than 1 March 2015.

**2. SO 21.3 (v) that it imperfectly achieves its policy objectives**

2.1 The Explanatory Memorandum (Page 3) states that the purpose of the Regulations is “to allow the permanent identification of dogs through the implantation and subsequent registration of a microchip (a read only passive radio frequency identification device), to increase traceability of dogs and provide a deterrent against irresponsible ownership. This is an integral part of a wider policy on raising standards of welfare for dogs”.

2.2 It goes on to state (Page 14) that:–

Increasing the traceability of breeders and owners is expected to result in a number of animal welfare benefits:

- improved traceability of dog owners may act as a deterrent to irresponsible dog ownership and may assist enforcement authorities in the prosecution of cruel and irresponsible owners;
- in cases where welfare or medical problems arise which indicate that the source of the problem was improper breeding practices or a poor breeding environment etc., it will be possible to identify the breeder and take the necessary action to ensure there is no future reoccurrence;
- a good record of dog ownership will enable veterinarians to contact owners about health schemes.

2.3 There are some concerns that the legislation as drafted will not achieve the policy objectives of traceability and animal welfare benefits outlined above for a number of reasons.

### **Microchip Standards**

2.4 There is no requirement for the chip to reach a particular standard and therefore traceability cannot be ensured.

2.5 Northern Ireland is the only country within the United Kingdom thus far to introduce compulsory microchipping for all dogs. The Dog (Licensing and Identification) Regulations (Northern Ireland) 2012 provide that the microchip used must meet either ISO Standard 11784:1996 or Annex A to ISO Standard 11785:1996 of the International Standard for Microchips.

2.6 The UK Government intends to bring forward The Microchipping of Dogs (England) Regulations 2014 which require microchips to meet either ISO standards 11784:1996 or 11785:1996 (apart from Annex A).

2.7 Microchipping of certain dogs in Wales is already required by The Docking of Working Dogs Tails (Wales) Regulations 2007. The regulations require the microchips used to reach either ISO standard 11785 or Annex A to ISO Standard 11785.

2.8 Whilst the pet travel scheme which requires the microchipping of dogs which are taken abroad doesn't specify what type of microchip is used, the UK Government's guidance states as follows:–

Transport companies in the EU can read microchips that meet International Organization for Standardization (ISO) standards ISO 11784 and ISO 11785 when you check in for your journey.

You must bring your own microchip reader when you travel if your pet's microchip doesn't meet ISO standards.

2.9 This would appear to suggest that within the EU there may be difficulty in reading chips that don't meet either of the ISO standards. It is not clear from the Explanatory Memorandum what microchips the Local Authority scanners are able to read.

2.10 At Page 4 of the Explanatory Memorandum, the Welsh Government state that

The Regulations cover the basic requirements to introduce compulsory microchipping in Wales. Officials are working with counterparts in Defra on the development of Industry Standards for microchips and databases, as well as a compulsory training course for implanters. **Once this work has been completed, the Animal Welfare (Identification of Dogs) (Wales) Regulations 2014 will be amended to include these additional requirements.** (my emphasis)

2.11 It is not known when the UK Government will lay The Microchipping of Dogs (England) Regulations 2014. The requirement to microchip will not however come into force until April 2016.

2.12 It is therefore conceivable that the majority of dogs in Wales will have already been microchipped before the work has been completed. If as a result of the work undertaken, the Welsh Government wish to apply a particular industry standard, it is not clear how this will affect those animals that have already been microchipped.

### **Enforcement provisions**

2.13 Regulation 10 provides that it is an offence punishable by a fine of up to £500 if an owner fails to have their dog microchipped in accordance with the Regulations.

2.14 Whilst the Regulations provide that the Local Authority for an area will enforce them, no power is given to officers to take any action leading up to the prosecution of the keeper. There is for example, no power to take an animal or scan an animal.

2.15 Within the Explanatory Memorandum (Page 8) the Welsh Government states that–

Local Authorities intend to take a reactive rather than a proactive approach to enforcing these Regulations. As such it is expected that enforcement will be restricted to irresponsible owners whose dogs have been allowed to cause a problem such as fouling, being out of control or stray, cruelty cases or cases of unlicensed breeding.

2.16 It also states (Page 11) that –

Under the Animal Welfare Act 2006 (the ‘parent’ Act), enforcers will have the power to issue improvement notices before having to take any legal action, reducing the potential impact on the judicial system.

2.17 An improvement notice under Section 10 of the AWA 2006 can only be served if an inspector is of the opinion that a person is failing to ensure that the needs of an animal for which he is responsible are met.

2.18 Such a power would not enable a notice to be served on an owner for failing to microchip unless there were also some other welfare concerns. It would not assist in the case of dogs fouling for example. In such an example, where the dog has an owner and there are no welfare concerns, there would in any event be no power for a Local Authority to scan the dog in the first place, which would be a pre-requisite of issuing any improvement notice for failure to microchip.

2.19 If Local Authorities are only be able to scan an animal which comes into their custody or where an owner consents, it is difficult to see how the Regulations will increase microchipping and as a result of the same traceability.

### **Database requirements**

2.20 At Page 10 of the Explanatory Memorandum, the Welsh Government state that the Regulations require that a database record certain information. In addition, at page 17 reference is also made to their being specific requirements set out for database operators in the legislation.

2.21 The Explanatory Memorandum is incorrect in this respect. The Regulations do not impose any requirements on database operators to comply with certain standards.

2.22 Rather they require the dog's owner to "reasonably believe" that the database operator complies with the requirements in regulation 9.

2.23 The difficulty with this approach, is that because database operators are not regulated, the Welsh Government has no way of requiring database operators to meet the requirements in regulation 9 if they do not wish to, or to provide owners with the information they will need to satisfy themselves that the database meets the requirements. Neither is there a duty on the person carrying out the microchipping to provide the information.

2.24 It is difficult therefore to see how dog owners are to satisfy themselves that the database operator is complying with the standards required of them.

2.25 This poses even greater difficulties for subsequent owners of microchipped dogs. Whilst the original keeper may be satisfied as to the requirements, by information voluntarily provided by the person who does the microchipping, without a requirement for some documentation beyond the name of the operator under regulation 4 (2) (a), the new keeper has no way of being satisfied as to the matters in regulation 9 without contacting the database operator before acquiring the dog.

2.26 Within the 'Competition Assessment' of the Explanatory Memorandum (page 16) the Welsh Government state:–

“The market is dominated by four large database operators with an unknown quantity of smaller organisations”

2.27 The issue was also considered within DEFRA s Impact Assessment (March 2012) on microchipping of dogs.

In that they state:–

There are currently 4 databases registering microchips in England. Moving to a form of compulsory micro chipping will increase demand for microchips therefore creating market opportunities for new market entrants. This increased demand may lead to further databases being established. It is anticipated that, to ensure minimum standards of service are met and to avoid any unscrupulous operators setting up business, all databases, existing and new, will need to meet minimum standards. Whilst databases are not currently formally approved, the risk is that without minimum standards providers may set up cut price systems that do not offer a satisfactory level of service and as a result situations needing an urgent response are not resolved. To achieve this, service and data protection standards will need to be agreed, which might include meeting standards already set out in Part 2 of The Welfare of Racing Greyhounds Regulations 2010, or else the databases should achieve compliance with ISO standards. Of the databases operating in England only Petlog is currently ISO certified, so it is likely therefore that other existing databases may incur costs associated with meeting the standards established by any Defra approval scheme if after consultation it is decided to insist on all databases being ISO compliant (also see paragraph 54 )

2.28 Whilst it seems unlikely, a Court could find dog owners guilty of the offence of failing to register on a database which complies with regulation 9, where there was no way they could comply with the requirement, because for

example all the database operators decide not to provide the information. Imposing the burden on the keeper to check the standards of the database does not appear to be an appropriate mechanism for securing databases reach certain standards and therefore provide traceability.

### **Legal Advisers**

Constitutional and Legislative Affairs Committee

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**Government response to follow**