

Scottish Government Consultation on licensing of activities involving animals

This response is submitted on behalf of Naturewatch Foundation and the UK Centre for Animal Law's (A-LAW) Scottish Steering Committee and its Legal Advisory Group on Extreme Conformation in Dogs (LAGECDogs).

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Canine fertility services

Q1. Do you agree that businesses offering canine fertility services should be made subject to a statutory licensing scheme?

Yes / No / Not sure

Please provide the reasons for your answer.

We welcome the opportunity to submit our views to this consultation and are pleased that the Scottish Government is keen to tackle the dog welfare challenges associated with the emergence of canine fertility services ("CFSs").

We agree that businesses and individuals offering and performing CFSs should be subject to regulatory oversight. However, Naturewatch Foundation has reservations about the appropriateness of using the Animal Activities regime to achieve this. We consider there to be pros and cons to such an approach:

Pros

- **Standards** - uniform standards could be developed and implemented. As the objective of any licensing scheme introduced using powers available under s27 Animal Health and Welfare (Scotland) Act 2006 must be to secure animal welfare, such standards would have to be animal welfare-oriented. This would provide opportunities to restrict or prohibit practices that have the potential to compromise dog welfare. Standards relating to both personnel and premises could be introduced, including making registered veterinary professional involvement a standard licence condition.
- **Accountability** - licensed fertility services would be accountable to their local authority and would need to undergo inspection to obtain and keep their licence to operate. Clients would be able to verify if a premises is licensed or not. Whistleblowers would be able to report concerns to the relevant local authority.
- **Powers of entry** - local authorities would be able to rely on powers to enter and inspect CFSs, including under warrant where there are reasonable grounds for believing an offence contrary to the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 ("LAIAR") has been committed, such as carrying on a licensable activity without the authority of a licence or breaching a licence condition.
- **Penalties** - enforcement action could be taken and penalties could be imposed on CFSs that have committed a relevant offence, such as breaching a licence condition or carrying on the activity of operating a canine fertility service without the authority of a licence. The penalties available under LAIAR are significantly stronger than those currently available for breaches of the Veterinary Surgeons Act 1966 ("VSA"). For example, the maximum penalty for breaching a licence condition under LAIAR is a fine not exceeding level 5 on the standard scale, whilst the maximum penalty for

operating without a licence and/or obstructing an inspector contrary to reg 3 and 22 of LAIAR, respectively, is a fine not exceeding £40,000, or imprisonment for a term not exceeding 12 months, or both. Post-conviction powers are also available under LAIAR, including deprivation orders and disqualification orders. By contrast, the penalty for performing veterinary surgery illegally contrary to s19 VSA is a fine of just £100 on summary conviction or an unspecified fine amount on indictment.

- Time and feasibility - the Scottish Government can itself amend LAIAR, but cannot amend the VSA, as the latter is reserved. Introducing regulation of CFSs via LAIAR will be quicker to achieve than waiting for any UK-wide improvements to the VSA, which could take a number of years.

Cons

- Ethics - concern^{1 2 3} about the proliferation of CFSs is widespread due to much of the sector's apparent links to low-welfare breeding of 'designer' dogs who struggle to mate and whelp without assistance (often due to extreme conformation). It is accepted that the use of reproductive biotechnology to breed from dogs who cannot otherwise reproduce due to innate health⁴ issues is unethical.^{5 6} A question that we must ask ourselves is whether granting CFSs social licence to operate outside of the existing veterinary framework would serve to further legitimise harmful breeding practices? Clearly, anyone involved in the use and performance of canine reproductive biotechnology needs to be capable of exercising sound professional and ethical judgement in the interests of animal welfare, and anyone granted a licence must be capable of demonstrating this.
- Who informs the standards? - animal licensing conditions typically align with "good" industry practice. At present, however, much of the existing canine fertility sector is operating to a low or unknown standard, and there are limited examples of "good practice" to draw upon. For instance, there are no voluntary or private assurance standard schemes for this kind of business to the best of our knowledge. With this in mind, we would suggest that any conditions and standards that underpin a licensing scheme should be developed in conjunction with people with a cross-section of veterinary, animal welfare and high-welfare dog breeding expertise to prevent acceptance of harmful practices that may be considered normal or acceptable by parts of the canine fertility sector.
- Expertise and skill - a number of common canine fertility techniques constitute acts of veterinary surgery, including blood sampling for the purpose of performing progesterone concentration tests, artificial insemination, and diagnosis. Veterinary professionals who specialise in the practice of small animal reproductive veterinary medicine typically undertake postgraduate training on top of their years of general veterinary training. By contrast, we're aware of canine fertility training courses that last a matter of days or even hours. By all accounts, anyone who provides and performs canine

¹ Naturewatch Foundation, 'Breeding Beyond Dogs' Limits? Canine Fertility Clinics in the UK' (October 2022) <<https://naturewatch.org/wp-content/uploads/2022/10/Breeding-beyond-dogs-limits-Canine-Fertility-Clinics-in-the-UK-October-2022.pdf>> accessed 31 August 2023.

² BVA, 'Huge spike in unregulated dog fertility clinics fuelling an 'animal welfare disaster', vets warn' (22 October 2022) <<https://www.bva.co.uk/news-and-blog/news-article/huge-spike-in-unregulated-dog-fertility-clinics-fuelling-an-animal-welfare-disaster-vets-warn/>> accessed 31 August 2023.

³ PDSA, 'PAW PDSA Animal Wellbeing Report 2023' (May 2023) <<https://www.pdsa.org.uk/what-we-do/pdsa-animal-wellbeing-report/paw-report-2023/fertility-clinics-and-licensing-regulations>> accessed 31 August 2023.

⁴ 'Innate health' is a concept that has been developed by Dr Dan O'Neill and members of the UK Brachycephalic Working Group (BWG). It can be used to refer to a dog's capacity to show and experience 'typical' body functions and life processes. For further information, refer to <http://www.ukbwg.org.uk/wp-content/uploads/2022/05/220512-BWG-Innate-health-in-dog-populations.pdf>.

⁵ Welfare in Pet Trade, 'Responsible Dog Breeding Guidelines' (3 November 2020) <https://food.ec.europa.eu/system/files/2020-11/aw_platform_plat-conc_guide_dog-breeding.pdf> accessed 17 August 2022.

⁶ FVE and FECAVA, 'FECAVA, FVE Position Paper on breeding healthy dogs: the effect of selective breeding on the health and welfare of dogs' (June 2018) <https://fve.org/cms/wp-content/uploads/059_Extreme_breeding_Final_adopted.pdf> accessed 17 August 2022.

fertility services needs to have veterinary skills and training. Unless a licensing scheme mandates the involvement of registered veterinary professionals in CFSs, there is a significant risk that such a scheme could underestimate the level of skill and expertise required to provide this type of service, and legitimise the involvement of unqualified personnel in providing veterinary services. This will put dog welfare at risk, and risks undermining and devaluing the veterinary profession.

- Interaction with other regulatory regimes - whilst it is not uncommon for regulatory frameworks to complement one another, care would need to be taken to ensure that any licensing scheme does not cause overlap or confusion in its interaction with other areas of law and policy, such as veterinary law. A challenge at present is regulatory uncertainty and care would need to be taken to avoid exacerbating this. In particular, it would need to be clear whether registered veterinary practice premises that provide canine fertility services would be subject to the licensing scheme.
- Compliance - whilst there is currently no dedicated regulatory framework for CFSs, some of the activities or services typically offered by such businesses are already subject to regulation. Evidence that clinics are not complying with these existing areas of law and policy gives rise to concern that any dedicated regime could be subject to low rates of compliance, too. In other words, there is general concern that a proportion of clinic operators are not motivated to abide by the law in general, so introducing new regulation may have little impact unless businesses are actively pursued to become licensed. In the same vein, for highly profitable businesses or those with links to organised crime, the penalties available under the LAIAR regime may not act as a meaningful deterrent to those operating unlawfully.
- Enforcement - local authority licensing personnel often have high workloads, limited resources and administer multiple regulatory regimes requiring them to have a wide knowledge base. CFSs are niche businesses and it is not realistic to expect people without specialist knowledge of the services they provide to be able to detect potential red flags and welfare issues, especially if the activity is not taking place during inspection (which is possible in the case of mobile businesses). To mitigate this, any licensing scheme will need to be supported by high quality guidance for inspectors and registered and independent veterinarians will need to be involved in the inspection process to aid in the assessment of operators' suitability and compliance.
- Inspection challenges - not all canine fertility services operate from fixed premises or during fixed hours, and most businesses will only have animals on the premises for short periods of time. This runs the risk that on inspection, the activity itself is not witnessed and/or that assessing animal welfare is virtually impossible. To mitigate this, we suggest that there should be limits on the types of services that can be offered outside of fixed premises.
- Unanswered questions - the welfare impact of reproductive biotechnology on dogs is relatively underexplored, particularly in the context of procedures being undertaken by people who don't have any veterinary training. There is also still some outstanding uncertainty about whether certain procedures should be regarded and regulated as acts of veterinary surgery or not. Furthermore, there is a lack of regulated or recognised training for lay persons and it is unclear what qualifications lay persons involved in CFSs could or should undertake to ensure a high standard of training and competence. Until these broader questions have been considered, it may be premature to consider animal activities licensing as a regulatory route, unless a precautionary approach (as we recommend below) is taken.
- Lack of UK-wide consistency - it is not uncommon for canine fertility services to be offered by mobile businesses and some services can be provided via mail-order. A consequence of introducing regulation in Scotland in lieu of a UK-wide approach may simply displace the issue and lead to clinics and clients moving their operations and/or custom to other UK nations.

Conclusion

We recognise that to safeguard dog welfare it is necessary to act quickly to address some of the current enforcement barriers and gaps in existing regulation. We also recognise that much-needed improvements to the VSA are unlikely to be forthcoming soon and that licensing via LAIAR is the most realistic option that the Scottish Government can itself pursue.

With this in mind, and balancing the above pros and cons, we are open to the introduction of a well-drafted licensing scheme under LAIAR that takes a precautionary approach. We consider that this must include standard conditions that personnel involved in the performance of canine fertility services should be qualified veterinary professionals registered with the RCVS.

However, due to the animal welfare risks involved, we do not feel we can support the introduction of any licensing scheme that would permit lay persons to 1. perform canine fertility services that constitute acts of veterinary surgery and/or 2. perform other canine fertility services on animals other than with appropriate training and under the direct supervision of a registered veterinary professional.

As our support for a licensing scheme is qualified, we have not selected 'yes' or 'no' for this answer.

Q2. If you do not support the introduction of statutory licensing, what controls, if any, would you otherwise recommend?

Regardless of whether a licensing scheme for CFSs is introduced, we think there are useful ways that the dog breeding schedule in LAIAR could be amended to help 1. prevent the misuse of canine fertility techniques and 2. better secure the welfare of dogs used for breeding:

1. The dog breeding licensing threshold in LAIAR should be reformed such that all breeding for profit is regulated. We do not support the maintenance of a standalone litter threshold, as this excludes many dogs kept and used for breeding from the protections afforded by LAIAR. Notably, this means that most keepers of male dogs used for breeding do not need to have regard for specific welfare standards. We have observed that many CFSs are benefitting from this loophole and are involved in hiring out stud dogs for mating or semen production. These are often dogs who suffer from extreme conformation and do not appear to be suitable candidates for breeding. We consider it necessary to expand the licensing threshold for the purposes of 1. better securing the welfare of dogs used for breeding generally, and 2. ensuring the proposals in point 2 and 3 below apply sufficiently widely to have impact.
2. A condition should be added to sch 6 para 8 (Protection from suffering, injury and disease) of LAIAR requiring dog breeding licence holders to ensure that artificial insemination is not used to breed from dogs who cannot mate and/or whelp by way of natural methods due to innate health issues. Some European countries have already enshrined principles in their national animal welfare law to help combat overreliance on assisted breeding methods and c-sections.⁷

⁷ For instance, in Austria it is an animal welfare offence to breed from dogs who are unlikely to be able to give birth naturally, contrary to the Austrian Federal Act on the Protection of Animals, s 5 para 2(m). In Sweden, Art 26 of the Animal Protection Ordinance states that "reproduction methods may not be used to compensate for a deficiency in the natural reproduction behaviour of a population." Supporting advice to the Swedish Dog and Cat Regulations (SJVFS 2020:8) chapter 6 also state that a dog should not be used for breeding if 'they lack normally developed genitalia or lack the bodily and reproductive functions normal for the species and that promote natural behaviour', and/or 'the mating combination can be assumed to result in increased risk of birth problems' (translation provided by Dr Emma Brunberg, Animal Welfare Sweden). Finland has also recently announced proposals to prohibit the use of an animal for breeding who is unable to reproduce naturally due to a hereditary characteristic or disease, or whose well-being would likely be significantly harmed by reproduction from 2024.

3. A new condition should be introduced into sch 6 of LAIAR such that no dog breeding licence holder may carry out, or permit another person to carry out, canine artificial insemination on a dog for which they are responsible, unless that person is a registered veterinary surgeon or registered veterinary nurse acting under the supervision of a registered veterinarian.

Together, these reforms would help stop the misuse of canine reproductive biotechnology, tackle extreme conformation, and help secure the welfare of all dogs kept for commercial breeding purposes.

Q3. If you do support the introduction of statutory licensing, which services should be regarded as "canine fertility services" and therefore require a licence?

If a licensing scheme is to be introduced, it should apply to businesses that offer any of the following techniques / services for dogs:

- Artificial insemination (intravaginal and/or transcervical)
- Progesterone testing
- Cytology testing
- Ultrasound scanning
- Stud services
- Semen collection
- Semen analysis
- Semen preparation
- Semen storage, including cryopreservation
- Semen shipping (domestic and international)
- Assisted mating
- Whelping support

These are the services that we have observed are commonly advertised and offered by CFSs. As some CFSs advertise services for cats, we would encourage the inclusion of cats within the scope of any licensing scheme.

Services that constitute acts of veterinary surgery, including any acts of diagnosis, should be performed only by a registered veterinary professional. Other canine fertility services performed to an animal should be performed under the direct supervision of a registered veterinary professional.

Q4. Do you support the proposal that any veterinary surgeon named as being associated with a canine fertility business needs to be present during any inspection undertaken, or arranged by, the licensing authority when the authority so requests?

We consider that any CFS performing canine fertility services on animals should have a registered veterinary surgeon in its employ to operate legitimately, so we would support this proposal. This proposal would also help prevent CFSs using the name and credentials of veterinary professionals fraudulently in order to appear legitimate.

Q5. Do you support the proposal that as part of the licence application process, canine fertility businesses would be required to submit evidence of the health screen testing undertaken for all dogs used by the business, including testing to assess a dog's temperament?

We support the principle behind this proposal, but would caution that health screening is not a panacea and that there are particular shortcomings to schemes that focus on single disorders and rely on breed - rather

than species - as the 'health' benchmark.⁸ We feel that local authority inspectors may not have the knowledge-base to scrutinise the legitimacy and quality of any health testing the applicant proposes undertaking. We would recommend providing guidance for inspectors and would suggest that a more appropriate requirement of the application and renewal process would be asking the applicant to provide evidence of how they will ensure any dog accessing or available via their service has good innate health, welfare and temperament, and is a suitable candidate for breeding. This may include the use of health tests and/or behavioural assessments, as appropriate.

Q6. Should screening also include veterinary certification of health and genetic suitability of all dogs/semen and bitches used for breeding whether or not owned by the business?

We agree that any dog taken to a CFS or available for hire via a CFS should have first been assessed and certified as suitable for breeding by a registered veterinary professional who is independent of the CFS. We agree that dogs used for semen production should also be examined and certified by a registered veterinary professional prior to semen collection, as currently happens prior to the export of canine semen.

It should be the licence holder's responsibility to ensure that any dog accessing or available via their service, and any genetic material used within the business, has documented certification and that they verify the certifying registered veterinary professional's credentials (for instance, by checking the register maintained by the RCVS at findavet.rcvs.org.uk).

Q7. Do you support the proposal that as part of the licence application process, canine fertility businesses would be required to provide information on any stud dogs owned by or intended for use by the business (for example ownership details, microchip number, where kept)?

Whilst we agree with this in principle, we have concerns that any information supplied at the time of application would quickly become out of date. From our observations of the sector, CFSs can advertise male dogs for stud services on their own behalf and on behalf of others, and the dogs advertised often change. We agree that CFSs should be required to demonstrate their due diligence in connection with stud dogs kept, advertised and/or hired out by the business, but do not feel that providing this information just at the point of application will be the most effective way to achieve this. Instead, we would suggest that CFSs be required to maintain records of all male dogs kept and/or used by the business for stud services, and for these records to be available to the licensing authority to view whenever they so request.

Q8. The current licensing framework to which we propose to add canine fertility businesses, allows for licences to be granted for a period of 1 to 3 years, depending on assessed risk. Do you agree with the proposal that canine fertility businesses are instead required to renew their licence annually, due to the higher animal welfare risks associated with such businesses?

Yes - we do not consider a risk-based approach to be appropriate for CFSs and fully support annual licence renewal and inspection owing to the higher animal welfare risks associated with such businesses.

We consider those welfare risks to include:

- Adult male and female dogs may experience physical or psychological trauma, infection, injury and/or pain and distress as a result of poor performance of techniques by people who are not appropriately qualified or competent;

⁸ Dr Dan O'Neill, 'Breeding for health: Why does the current health test system not work?' (13 March 2023) Dog Breeding for the Future, Hurdal Norway.

- Female dogs who could not otherwise reproduce due to poor innate health and welfare may be selected to undergo artificial insemination, placing strain on their bodies during pregnancy and introducing the risk of needing to undergo surgery via caesarean section;
- Male dogs may be selected to provide semen for breeding purposes without adequate consideration of their suitability for breeding;
- Offspring may suffer poor innate health and welfare due to health issues passed down from unhealthy parent dogs who would not have been used for breeding but for the use of assisted techniques to select for increasingly extreme aesthetic traits. This can include life-long and life-limiting conditions that affect mobility, sight, skin, ability to breathe, and ability to communicate and express natural behaviour, amongst others;
- Owners may delay seeking appropriate veterinary care for serious conditions, such as pyometra, due to misdiagnosis of canine pregnancy by people who are not appropriately qualified or competent.

Q9. Are there any further controls or measures that you would like to see introduced as part of a licensing scheme for canine fertility business?

We consider the following conditions of any licensing scheme for CFSs to be essential to secure the welfare of dogs used for breeding:

- Mandatory registered veterinary professional involvement - any CFS must have an appropriate number of registered veterinary professionals in its employ to 1. perform canine fertility services that constitute acts of veterinary surgery and 2. supervise the performance of other canine fertility services to animals by lay persons. We do not consider it to be in the interests of animal welfare for CFSs to operate without registered veterinary professional involvement or with arm's length veterinary involvement. A survey of veterinary professionals that Naturewatch Foundation carried out in 2022 found that most veterinary professionals think that the most commonly offered canine fertility services should only be carried out by registered veterinary surgeons and, in some cases, registered veterinary nurses.⁹
- Clear limits on the services that can be provided by staff who aren't registered veterinary professionals - any lay personnel in a CFS's employ should only be permitted to perform canine fertility services that are contained in a positive list, and that they are trained and competent to perform under registered veterinary professional supervision. No services that constitute acts of veterinary surgery may be included in that list. Any acts of veterinary surgery must be performed by a registered veterinary surgeon or (where permitted) a registered veterinary nurse acting under the supervision of a registered veterinary surgeon. Canine fertility services that are acts of veterinary surgery include acts of diagnosis, blood sampling for the purpose of assessing progesterone concentration, and artificial insemination (both intravaginal and transcervical).
- Future-proof definitions and statutory guidance - unscrupulous dog breeders and dealers are skilled at exploiting legal loopholes for their benefit. For this reason, we think any licensing scheme for CFSs would need to be underpinned by clear definitions and comprehensive statutory guidance. We think it will be particularly important for a definition of 'canine fertility service' to be provided that accounts for the diversity of businesses. The term 'pet fertility service' may be more appropriate as this leaves scope to include services targeted at other companion species as necessary.

⁹ n 1.

- Strict health and welfare protections for dogs and their progeny - licence conditions must stipulate that reproductive biotechnology (including artificial insemination and semen collection / preservation) may only be used to breed from dogs who have good health, welfare and temperament, and would be capable of reproducing via natural methods. Reproductive biotechnology must not be used to breed from dogs with innate health conditions, established behavioural problems, and/or a history of conformation correcting surgery. Dogs who cannot mate and/or whelp by way of natural methods due to innate health issues must not have artificial breeding procedures performed on them. The health and wellbeing of future offspring must be taken into account with safeguards written into a licensing scheme that echo sch 6 para 8(5) LAIAR, such that no male or female dog may be used for breeding or have artificial breeding procedures performed on them if to do so could have a detrimental effect on the health, welfare or temperament of their puppies. A minimum age should also be introduced for male dogs used for stud services to prevent juvenile dogs being used for this purpose.
- Inspection processes - local authorities should have the option to carry out unannounced inspections to increase the chances of inspectors being able to assess animal welfare and witness licensed activities taking place. Local authority inspectors must be accompanied by an independent registered veterinary surgeon during their inspection and re-inspection of any CFS.
- Additional licence conditions - local authorities should have the power to add non-standard conditions to a CFS licence where it is necessary to secure animal welfare.
- Record keeping - businesses must maintain client records on secure and permanent systems. Records should include the date, frequency and justification for services being performed. Records of all dogs kept or used by the business should be maintained. Businesses should make these available upon request to the client and/or the client's veterinarian, as well as the local authority.
- Minimum training and registration requirements - personnel and premises involved in the delivery of acts of veterinary surgery or in the supply, possession, administration or advertisement of veterinary medicines should be appropriately qualified and/or registered in accordance with the requirements of the Veterinary Surgeons Act 1966 and/or Veterinary Medicines Regulations 2013, respectively. Lay personnel involved in the delivery of any permitted canine fertility services on animals must be trained and competent to perform those services under veterinary supervision, and have undertaken a recognised scheme of training or qualification that has been approved by the Scottish Government. The exact level of training and qualification required to perform such services safely and competently should be determined by an advisory panel of people with relevant veterinary and animal welfare expertise.
- Client care and advice requirements - CFSs must provide clients with clear and objective advice about dog breeding, artificial breeding services, and caring for dogs used for breeding and their progeny. CFSs must sign-post clients to seek the advice and services of a registered veterinarian should they enquire about veterinary services that they are not otherwise licensed or qualified to perform.
- Premises requirements - premises must be fit for purpose and personnel should maintain the highest standards of hygiene and biosecurity at all times to mitigate public and animal health risks.¹⁰

¹⁰ In 2021, Public Health England concluded that, "individuals at greatest risk of exposure to B. canis are those with potential contact with B. canis contaminated materials, especially fluids and tissues associated with [canine] breeding and parturition, either in an occupational or domestic setting." Public Health England, 'Human Animal Infection and Risk Surveillance Group: Risk review and statement on the risk Brucella canis presents to the UK human population' (February 2021)

To ensure public and animal health, invasive services and services that involve the handling of animal by-products should be carried out from fixed clinical premises and not from mobile premises or in client's homes. Waste products, including animal by-products (such as canine semen not used for breeding), should be disposed of appropriately and in accordance with all applicable animal health legislation. Premises involved in the handling, use and storage of animal by-products must ensure they are fully compliant and conversant with animal health law, and registered with the relevant statutory authority, where appropriate.

- Fit and proper person guidance - local authorities should be provided with non-exhaustive fit and proper person guidance to support their application of the considerations under reg 6 para 7 LAIAR when determining whether to grant or renew a licence. This should include guidance that persons who have been convicted of offences under the UK's Animal Welfare Acts (and their secondary legislation), Veterinary Surgeons Act 1966 and/or Veterinary Medicines Regulations 2013 may be refused a licence to operate a CFS or have their licence revoked.
- Cost-recovery - local authorities should be empowered to set an appropriate licence and inspection fee to ensure they can fund the administration of a licensing scheme.
- Statutory review – any regulations that introduce a licensing scheme for CFSs must be subject to post-implementation review.

Q10. Are you aware of any examples of how any of the proposals above may impact, either positively or negatively, on those with protected characteristics?

These are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Yes / **No** / Don't know

If yes, please explain your answer.