

# Response to the Defra consultation on enforcement of animal health and welfare offences

## Who we are

1. BVA is the national representative body for the veterinary profession in the United Kingdom and has over 19,000 members. Our primary aim is to represent, support and champion the interests of the veterinary profession in this country, and we therefore take a keen interest in all issues affecting the profession, including animal health and welfare, public health, regulatory issues and employment matters.
2. We welcome the opportunity to respond to this consultation on enforcement of animal health and welfare offences.

## Summary of our position

3. BVA is not directly involved in bringing enforcement action against breaches of animal welfare legislation although some of our members are. We are therefore not in a position to assess the effectiveness of the different enforcement options available in ensuring compliance with the regulatory regime. However, we are mindful that adequate enforcement tools are essential to successful protection of animal health and welfare which is a key concern to our members. We consider that a range of options commensurate with addressing the severity of breaches, as well as taking into account recurrence and motive is necessary to provide adequate deterrents. We have therefore aimed to provide a principles-based assessment of the proposals in this consultation.
4. Like any regulatory regime, the effectiveness of the legislative framework aimed at preventing abuse of all animals, whether farmed, companion, or wild, and protecting their welfare is highly dependent on the resources made available to the various bodies with enforcement powers. We are aware that enforcement activities can vary significantly between regions and enforcement bodies, depending on funding available. On this basis, we would urge for better resourcing to be made available in all areas, to allow for faster, more effective and consistent enforcement activities.

## Animal welfare related offences

### **Q4. Should penalty notices be an available enforcement tool to deal with current and potential promotion of animal welfare related offences?**

**Answer: No, only some**

5. Penalty notices can play a role in the early stages of investigations into animal welfare abuse. However, it is important that they are used in the way they are intended, “as a proportionate deterrent, to provide early redirection towards behaviour that is in line with our laws”, and do not become the go-to or light touch option in cases where more severe or repeat abuse of animals is suspected but adequate resources to investigate further are not freely available.
6. We are currently working on proposals for more far-reaching regulation of canine breeding and as part of this work we are aware that financial gain can be a significant

driver in animal abuse and cruelty crimes. This should therefore be reflected in the type of punishment that is chosen to ensure that it acts as a significant and effective deterrent. The activities carried out by establishments offering canine breeding services (often referred to as canine fertility clinics) have the potential to be in breach of section 9 of the Animal Welfare Act 2006, when reasonable steps have not been taken to ensure the needs of an animal have been met, and in particular the need to be protected from pain, suffering, injury and disease<sup>1</sup>.

7. We would therefore have concerns over the use of penalty notices in cases where the crime has the potential to result in significant financial gain. This is exacerbated by the discount option for early payment of the fine. We would suggest that usage of this option should be closely monitored to establish whether it is appropriate in cases where the crime has resulted, or has the potential to result, in financial gain.

### **Animal licensing related offences**

#### **Q5. Should penalty notices be an available enforcement tool to deal with current and potential animal licensing related offences?**

**Answer: No, only some**

8. As BVA is not actively involved in bringing enforcement action in cases of breaches of licensing conditions, we are unable to comment on the individual scenarios set out in the consultation paper. Breaches of licensing conditions have the potential to cause significant harm and impede animal health and welfare and we would have concerns about the use of penalty notices as a more lenient enforcement option in cases where there has been a deliberate failure to obtain a licence especially where this has resulted in significant financial gain. More severe unlicensed breeding of dogs free from inspection and controls, has the potential to cause significant harm to the animals involved and their offspring. The current regulatory regime has left loopholes which allow breeders to circumvent the licensing requirement as has recently been highlighted in a BBC Panorama investigation<sup>2</sup>. However, the ongoing review of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 will hopefully result in extended requirements to obtain licences and it is important that any new licensing requirements are supported by a robust range of deterrents and an effective and timely enforcement regime.

### **Animal Identification related offences**

#### **Q6. Should penalty notices be an available enforcement tool to deal with current and potential pet identification related offences?**

**Answer: No, none**

9. We currently do not support the introduction of penalties for pet owners who fail to keep their pets' records updated, due to concerns regarding the ease of updating the records, and the cost and viability of an enforcement regime for such a requirement.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2006/45/section/9>

<sup>2</sup> 'Dogs, Dealers and Organised Crime' (2023). Available at:

<https://www.bbc.co.uk/iplayer/episode/m001hjbw/panorama-dogs-dealers-and-organised-crime>

The introduction of penalties should therefore only be considered once those issues have been appropriately addressed.

10. Any obligations and penalties for pet keepers would have to be backed up by an enforcement regime which would likely be disproportionately costly. We would also stress that, should such a regime be introduced, vets should not be given any enforcement responsibilities as part of it. Such responsibilities would have the potential to seriously undermine the vet-owner relationship. This crucial relationship is based on trust and confidentiality and if compromised, could act as a disincentive to accessing veterinary advice and care, ultimately impeding the profession's primary responsibility to protect animal health and welfare.
11. The proliferation of databases has also made it more challenging for owners to keep track of the database their pet is registered with. We therefore do not believe that the necessary supervisory and enforcement regime for databases is currently in place to introduce a legal requirement for pet owners to keep their records updated. BVA would support a requirement for databases to highlight the benefits of keeping your details updated on their websites. Posters for display in veterinary practices and other relevant locations like pet shops, could also be produced to highlight the benefits.

#### **Q7. Should penalty notices be an available enforcement tool to deal with current and potential livestock identification related offences?**

**Answer: Yes**

12. We are supportive of the use of penalty notices in livestock identification related offences in general. However, it is important to consider the potential impact on public health resulting from non-compliance with livestock identification regulations and whether penalty notices provide an effective deterrent or whether prosecution is the more appropriate enforcement measure. We rely on livestock being identifiable in order to control disease outbreaks swiftly and effectively. It can have very serious repercussions if livestock is not identifiable during a major disease outbreak and result in a significantly increased threat to public health and safety. An example of such an incident would be the 2001 Foot and Mouth Disease outbreak where there were significant delays in action being taken<sup>3</sup>.

#### **Q8. Should penalty notices be an available enforcement tool to deal with current and potential equine identification related offences?**

**Answer: Yes**

13. We support the use of penalty notices for equine identification related offences, once the Equine Identification legislation in England is updated. The Central Equine Database (CED) already enables horse owners to update their details via a single database. However, until the new legislation is implemented enforcement of breaches of equine identification requirements could prove challenging in practice. There are

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<sup>3</sup> There was no legal requirement for individual identification of sheep: <https://www.nao.org.uk/wp-content/uploads/2002/06/0102939.pdf>. The lack of identification and traceability of infected animals was also highlighted as a problem in containing the disease in a report by the European Parliament: [https://www.europarl.europa.eu/doceo/document/A-5-2002-0405\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-5-2002-0405_EN.html)

often many people with responsibility for a horse, in addition to the owner and the keeper (part owner, loaner, rider, trainer, groom etc). The definition of keeper is not clear and there may be an intersection between the keeper and other roles.

14. Additionally, we would strongly oppose any suggestion that vets should be expected to enforce the rules on horse identification. This would break down trust and client confidentiality, and also has the potential to increase suffering if non-compliant owners are reluctant to call in the vet, because they fear penalties for inadequate paperwork.

### **Animal health related offences**

#### **Q9. Should penalty notices be an available enforcement tool to deal with current and potential animal health related offences?**

**Answer: No, only some**

15. We have concerns that the maximum level of fines available under the proposed regime will be less than the potential maximum deductions from farm support payments under the cross-compliance system. We consider the possible penalties to be an early measure to influence behaviour rather than an adequate long-term corrective measure for non-compliance. As set out in our response to question 7, continued or repeat non-compliance could have serious implications for the protection of public health and safety. It is important that enforcement action addresses repeat non-compliance effectively for example in cases where livestock keepers habitually avoid inspections eg for a series of individually minor welfare concerns. Over time this could lead to significant problems building up. The use of penalty notices as an enforcement option should therefore be limited by the number of instances as well as the number of single offences ie in cases where there have been a multitude of less serious offences the cumulative effect should be taken into account when deciding on the most appropriate enforcement measure.

#### **Q10. Should penalty notices be an available enforcement tool to deal with current and potential import of live animals, POAO and ABP related offences?**

**Answer: Unsure**

16. We refer to our answers to questions 7 and 9.

### **Part 2 - Receiving a penalty notice**

**Q11. To what extent do you agree or disagree with the following statement: Where an individual has already been issued advice and guidance, an improvement notice or similar and they have failed to comply, it would be reasonable to escalate enforcement action of which, a penalty notice could be a suitable next step.**

**Answer: Unsure**

17. Subject to concerns we have set out in other sections of the consultation response we agree with the proposal.

**Q12. To what extent do you agree or disagree that an individual should be allowed to receive a maximum number of penalty notices for committing the same or similar offence within a three-year period (similar to speeding) before an alternate enforcement action is taken?**

**Answer: Unsure**

18. We refer to our answer to question 9.

### **Part 3 – Penalty notice amount**

**Q13: Guidance could be given on additional matters that could be taken into account when deciding an amount to be specified in the penalty notice. We have identified examples which could be considered.**

19. We broadly agree with the proposed options. Due to our lack of direct involvement with bringing enforcement action against breaches of animal welfare legislation, we are not in a position to attach weighting to the different options proposed. We would also refer to our answer to questions 7 and 9 regarding the level of fines available for penalty notices and the potential financial impact of deductions of farm support payments.
20. Additionally, the inability of an offender to pay should not result in lack of enforcement action and suitable alternative enforcement action has to be available.