

**REPORT TO:** LICENSING COMMITTEE

**DATE:** 20 NOVEMBER 2018

**TITLE:** ANIMAL WELFARE LICENSING

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**RECOMMENDED that** the Licensing Committee recommends to Full Council that:

- A** The scheme of fees and charges with respect to The Animal welfare (Licensing of Activities Involving Animals) (England) Regulations 2018(attached as Appendix A to the report) be adopted, with the fees and charges to be reviewed annually thereafter as part of the Council's annual fees and charges setting round.
- B** The arrangements for formal decision making (attached as Appendix B to the report) be approved.
- C** The procedure for appeal against a risk rating score of an operator (attached as Appendix C to the report) be approved.

## **BACKGROUND**

1. The following report explains the forthcoming changes to animal welfare licensing in accordance with the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
2. In particular, Members are requested to consider and make recommendations to Council with respect to the following procedural matters:
  - a) Fee setting;
  - b) Scheme of delegation; and
  - c) Risk rating appeals.
3. The Council is currently the Licencing Authority for some animal licensing and is subject to separate legislation. The types of Licence currently issued by the Council are:
  - a) Animal boarding establishment licences – dogs and cats in purpose built kennels, catteries, home boarders, dog day care;

- b) Dog breeding establishment licences – premises used for or in connection with, the commercial breeding of dogs;
  - c) Pet shop licences – any business which keeps animals with a view to selling them as pets;
  - d) Riding establishment licences – premises which keep horses and ponies for hire for riding, or for riding tuition. Livery stables are excluded;
  - e) Zoo licences – displaying wild animals to the public for at least 7 days a year, in any place that's not a circus or pet shop; and
  - f) Dangerous wild animal licences – any person keeping any dangerous wild animal.
4. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 introduces a single licensing system for the selling animals as pets; providing for or arranging for the provision of boarding for cats or dogs, hiring out horses, dog breeding; and the keeping or training animals for exhibition. Zoo and Dangerous Wild Animal licences are not affected by the changes to Legislation and will continue to be covered by their own specific legislation.
5. The fundamental aim of animal licensing is to maintain good standards of animal welfare. It is estimated that nationally animal welfare licensing comprises the fourth largest group of business licences issued by local authorities, after premises, taxi, and gambling licences.
6. To illustrate the significance of animal welfare licensing within Harlow, to date in 2018/19, the Council has issued 10 licences detailed as follows:
- a) Five animal boarding establishment licences;
  - b) Zero dog breeding establishment licences;
  - c) Five pet shop licences; and
  - d) Zero Riding establishment licences.
7. The current licensing system has developed on a piecemeal basis over many decades and given rise to a number of concerns summarised in the following paragraphs.
8. The existing system was considered to be complex and burdensome for both councils and businesses. For example, the majority of animal welfare licences are arbitrarily required to be issued on a calendar basis, which means there is seasonal pressure applied to councils in administering and issuing the bulk of licences at the least productive time of the year.

9. Businesses applying for animal welfare licences (excluding dog breeding establishment licences) partway through the year were disadvantaged by the length of the initial licence which would expire at the end of the calendar year. Additionally, businesses with multiple functions including dog breeding and animal boarding were required to hold more than one licence.
10. There were also specific concerns about certain types of activity that have not previously been clearly within the scope of the law. As an example, with the increase in use of the internet, the online sale of pets has increased dramatically. As these types of business did not fall clearly within the definition of a pet shop, the current licensing system was not being consistently enforced for such businesses. There were also concerns around dog breeders who breed dogs in poor welfare conditions for profit and the interpretation of exemption afforded in current legislation.
11. There have been significant differences in the interpretation of legislation between councils and the standards applied through conditions attached to a licence and the methodology of inspection. Some councils considered it appropriate to licence home boarding overnight but not during the day. Some councils adopted standard model conditions whilst others had locally agreed standards.
12. Many businesses do invest in consistently achieving high welfare standards and are accredited through the UK Accreditation Service (UKAS). There was no concept of earned recognition within previous licensing regimes. It was argued that the regimes lacked any incentive to attain higher animal welfare standards.
13. These differences in interpretation lead to an inconsistent approach which could be confusing to local authorities, business, and the wider public alike and could lead to concerns about inconsistent animal welfare standards.
14. The Government, in response to these issues, undertook a review of animal welfare licensing in England, which resulted in The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, which bring about significant change.

## **ISSUES/PROPOSALS**

15. These Regulations define the activities that will require a licence as follows:
  - a) Selling animals as pets (or with a view to their being later resold as pets) in the course of a business including keeping animals in the course of a business with a view to their being sold or resold.
  - b) Providing or arranging for the provision of accommodation for other people's cats or dogs in the course of a business on any premises where the provision of that accommodation is a purpose of the business.

- c) Hiring out horses in the course of a business for either riding, instruction in riding, or both.
  - d) Breeding three or more litters of puppies in any 12 month period: or breeding dogs and advertising a business of selling dogs.
  - e) Keeping or training animals for exhibition in the course of a business for educational or entertainment purposes, either to any audience attending in person, or by the recording of visual images of them by any form of technology, or both.
16. The County Council trading standards had previously been responsible for the registration of performing animals. The Council will now undertake the function of licensing for the keeping or training of animals for exhibition. The County Council and district councils are working together to ensure a smooth transition with respect to this activity. There are six premises in Harlow that were registered by the Essex Trading Standards team.
  17. The key changes introduced will require that all businesses undertaking the activities set out in paragraph 15 above meet the same up to date, minimum welfare standards. Businesses will have to be licensed by the relevant council and will have to meet these minimum standards to hold and retain a licence.
  18. Procedural guidance has been issued by the Department of the Environment Food and Rural Affairs (DEFRA). The Guidance is also recommended as being helpful to existing and prospective licence holders.
  19. Earned recognition will now be incorporated into the licensing system and the Council will be able to issue a licence of between one to three years' duration, with longer licences being awarded to higher-performing lower-risk businesses. Risk rating is discussed in further detail in paragraph 23 below. Businesses that apply will have less of a regulatory burden including reduced fees associated with applying for a licence. This change is expected to incentivise businesses to perform at a higher level which in turn should drive up animal welfare standards.
  20. The Council will now be in a position to issue a licence at any point in the year which will help spread out the workload.
  21. Any licences issued under the existing licensing regimes will continue to be in force for the duration of the terms of the licence under the relevant Act.
  22. Any registration of a person under the Performing Animals (Regulation) Act 1925 will continue to be in force for six months from 1 October 2018.

### **Risk Rating**

23. The concept of risk assessment is applied to the issue of an animal welfare licence for the first time. With the exception of 'keeping or training animals for exhibition' the Council must undertake a risk assessment which will then be used to determine the length of licence issued, between one and three years,

and the star rating to award, from 1 - 5 stars. 1 and 2 star licence holders will require an annual licence. 3 and 4 star licence holders will be given two year licence and 5 star licence holders will be able to have a three year licence.

24. Businesses will be rated following an inspection that takes place prior to grant or renewal of the licence or a requested re-inspection. Businesses may also be rated following an unannounced or additional inspection.
25. The risk rating will be derived in accordance with the risk scoring model as provided in the procedural guidance notes for councils issued under the Regulations.
26. In the case where a business is assessed for multiple activities, the risk rating will be based on the entire operation and not by each individual activity. The overall risk rating will reflect the lowest standard achieved from all the activities assessed.
27. Businesses will be advised in writing of the rating given, the reasons for the rating, and the measures the business can take to achieve a higher standard or a list of the standards the business is not achieving.
28. The business will also receive a copy of the risk management table showing the scores under each point. In the event that a business disagrees with the risk rating awarded, they may appeal to the Council, and details of the appeals process including the deadline for submission of an appeal will be provided. Copies of licences, which will show the risk rating of the business, must be displayed to the public as a licensing requirement. The procedural guidance issued by DEFRA encourages the Council to publish a business' risk rating on the Council's website.

### **Appeal Against a Risk Rating Score**

29. The procedure for dealing with an appeal is set out in Appendix C to the report and recognises the principle that a business has the right to question a star rating awarded to a business following an inspection, whatever that inspection may be.
30. The system is designed to be fair, open, and transparent and reflects the principles of the Regulators Code in accordance with Section 23 of the Legislative and Regulatory Reform Act 2006.
31. The process is relevant where a business wishes to dispute the star rating awarded as not reflecting the animal welfare standards and risk level of their business at the time of inspection.

### **Scheme of Fees and Charges**

32. The setting of fees and charges is a Full Council function. However, the Licensing Committee may reasonably make recommendations to advise the Council on a licensing issue.

33. Regulation 13 of the Welfare Regulations provides for the Council to charge such fees as it considers necessary for:
  - a) The consideration of an application for the grant, renewal, or variation of a licence including any inspection relating to that consideration.
  - b) The reasonable anticipated costs of consideration of a licence holder's compliance.
  - c) The reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator.
  - d) The reasonable anticipated costs of providing information to the Secretary of State through the DEFRA on an annual basis.
34. Any fees charged must not exceed the reasonable costs of that consideration and related inspection.
35. When setting fees, the Council must have regard to the EU Services Directive, incorporated into UK law as the Provision of Services Regulations 2009.
36. The proposed scheme also has regard to a number of sources of guidance, including:
  - a) "Open for business: Local Government Association (LGA) guidance on locally set licence fees", which sets out the steps to be taken to set fair and reasonable fees.
  - b) Department for Business, Energy and Industrial Strategy (BEIS) Guidance for Business on the Provision of Services Regulations.
  - c) The Regulators Code applicable to all regulatory functions, which applies when setting fees and refers to "reasonable anticipated costs".
  - d) 'Procedural guidance notes for local authorities' DEFRA guidance to the Welfare Regulations which includes guidance on fees setting.
37. Appendix A sets out the proposed fee schedule to be adopted. Licences will be issued for a period of one, two, or three years. It is intended to link the cost of licensing to a Licence holder's star rating. The 1 to 2 star licence holders will be paying more for licensing. 3 and 4 star licence holders paying the same amount as they would have paid under the old licensing scheme, and 5 star licence holders achieving the highest animal welfare standards paying less.
38. The fees will be split into two distinct parts:
  - a) Application fee; and
  - b) Grant fee.

39. The application and grant fee will be charged at the point an application is made and reflects all the costs of processing. The application fee includes the cost of administration, inspection, and determination.
40. The grant fee reflects the costs of managing compliance with a licence, the general enforcement costs of pursuing unlicensed activity during the term of the licence and submission of annual returns to the Secretary of State. The grant fee will be refunded in full if a licence is not issued.
41. Applications with respect to dog breeding and riding schools require the Council to appoint a suitable veterinarian to assist with the determination. The costs of inspection will be payable by the applicant before a licence can be issued.
42. The cost of varying a licence or re-evaluating a business's star rating with respect to a licence or transfer of a licence are set out within the proposed fee schedule. The cost reflects the additional work required to make a change to an issued licence.

### **Scheme of Delegation**

43. To enable the Council to undertake technical and administrative functions under the licensing regime within the necessary timescales, the delegation of functions as set out in Appendix B is proposed.
44. To fulfil some of the functions under the licensing regime, the Council is required to appoint Inspectors who are appropriately qualified to undertake the relevant tasks. The appointment of Inspectors under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 is a matter to be delegated to the Head of Service.
45. It is proposed that the following functions be delegated to the Environment and Licensing Manager, or the Environmental Health Manager in their absence:
  - a) The grant or renewal of a licence to carry on a licensable;
  - b) The transfer of a licence in the event of the death of a licence holder;
  - c) The power of the suspension, variation or revocation of a licence; and
  - d) To receive and consider representations against the suspension, variation or revocation of a licence;
46. It is proposed that the service of notices is delegated to appropriately qualified Environmental Health Officers.
47. The Head of Service will make the necessary arrangements for Officers of the Licensing Team to be duly authorised. Heads of Service have authority to delegate functions allocated to them under the Constitution where they consider it appropriate.

## **IMPLICATIONS**

### **Place (Includes Sustainability)**

As contained in the report.

**Author: Michael Pitt, Environment and Licensing Manager on behalf of Graeme Bloomer, Head of Place**

### **Finance (Includes ICT)**

Subject to the approval of the recommendations and the adoption of the proposed scheme and fees and charges by Full Council, the income generated will be considered as part of the normal annual budget setting process.

**Author: Simon Freeman, Head of Finance**

### **Housing**

None specific.

**Author: Mike Fulcher, Senior Housing Manager on behalf of Andrew Murray, Head of Housing**

### **Community Wellbeing (Includes Equalities and Social Inclusion)**

Robust policy and procedures with regard to animal welfare licencing helps ensure that good standards of animal welfare are maintained.

**Author: Jane Greer, Head of Community Wellbeing**

### **Governance (Includes HR)**

None specific.

**Author: Colleen O'Boyle, Interim Head of Governance**

## **Appendices**

Appendix A – Scheme of Fees and Charges

Appendix B – Formal Decision Making Scheme for Animal Welfare Licensing

Appendix C – Procedure for Appeal Against a Risk Rating Score

## **Background Papers**

None.

## **Glossary of terms/abbreviations used**

BEIS – Department for Business, Energy and Industrial Strategy

DEFRA – Department of the Environment Food and Rural Affairs

LGA – Local Government Association

UKAS – UK Accreditation Service