

Licensing Committee Report  
Report of the Licensing Team Leader  
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## **Changes to Licensing Arrangements for Activities Involving Animals**

### **Executive Summary**

To inform the Committee of changes to the way in which animal boarding establishments, dog breeding establishments, pet shops and riding establishments are licensed, and the commencement of responsibility for the licensing of the keeping of animals for exhibition.

It asks the Committee to note the work undertaken to respond to these legislative changes, and asks the Committee to approve public consultation on a draft policy concerning the licensing of Activities Involving Animals.

### **Recommendation to Licensing Committee**

That the Committee approves the draft Animal Welfare Licensing Policy for public consultation, and instructs officers to carry out the consultation over a 12 week period.

### **Reasons for Recommendation:**

To obtain the views of interested parties on the proposed policy and use these views to formulate any changes to the policy.

### **1. Purpose of Report**

- 1.1 The purpose of the Report is to inform the Committee of changes to the way in which animal boarding establishments, dog breeding establishments, pet shops and riding establishments are licensed, and the commencement of responsibility for the licensing of the keeping of animals for exhibition.
- 1.2 It asks the Committee to note the work undertaken to respond to these legislative changes, and asks the Committee to approve public consultation on a draft policy concerning the licensing of Activities Involving Animals.

## 2. Strategic Framework

- 2.1 The changes to the licensing of animals will contribute to our fundamental themes and priorities as follows:

Economy – supporting business, growth and employment

Sustainability – safe borough

## 3. Background

- 3.1 Before 1 October 2018, the Council was responsible for the regulation of a variety of animal-related businesses, as well as the keeping of specified dangerous animals by individuals. The licence types historically issued by the Council are:

- **Animal boarding establishment licences** (for businesses accommodating dogs or cats – e.g. kennels, catteries, home boarders, pet day care)
- **Dog breeding establishment licences** (premises used for, or in connection with, the commercial breeding of dogs)
- **Pet shop licences** (any business which keeps animals with a view to selling them as pets)
- **Riding establishment licences** (premises which keep horses and ponies for hire for riding, or for riding tuition – excluding livery stables)
- **Zoo licences** and **Dangerous Wild Animal** licences are also issued by Guildford, however, these will continue to be covered by their own specific legislation.

- 3.2 The current number of licences issued by Guildford in 2017/18 are as follows:

- 27 x Animal boarding establishment licences (including home boarding and day care)(duration: one calendar year, expiry 31 December each year)
- 5 x Pet shop licences (duration: one calendar year, expiring 31 December each year)
- 10 x Riding establishment licences (duration: one year, expiry on anniversary of grant)
- 2 x Dog Breeding licences duration: one year, expiry on anniversary of grant)

- 3.3 In addition to the licences issued by Guildford, Surrey County Council is currently responsible for registering any performing animals based within the county. There are 4 such licences granted in the Guildford Borough.

- 3.4 Before 1 October 2018, numerous pieces of legislation and secondary legislation regulated the six licence types set out in paragraph 3.1. Also, as adoption of conditions and implementation of processes were left to the discretion of individual licensing authorities, there were a wide variation of requirements as to how to apply for licences and comply with locally set conditions, which, for businesses that

operate in a number of areas, could cause uncertainty and confusion. In addition, all types of licence were standalone, so a business that offers two or more of the licensable activities (for example a pet shop that also offers accommodation for dogs and cats while their owners are away) would have to apply for both a pet shop and animal boarding establishment licence, with the additional expenditure incurred.

- 3.5 The Animal Welfare Act 2006 introduced a new licensing power which enabled nationally set regulations to be made for any animal-related activities specified in those regulations. As a result, The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 were published earlier this year, which will significantly change the way animal related businesses are inspected and licensed. The Regulations came into force on 1 October 2018.

#### **4. Changes**

- 4.1 The Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018 (“the Regulations”) define the animal based activities that require licences as follows:

- 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 so sold or resold.
- 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.
- Hiring out horses in the course of a business for either riding, instruction in riding, or both.
- Breeding three or more litters of puppies in any 12-month period; or breeding dogs and advertising a business of selling dogs.
- 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.

- 4.2 The first significant change is that all four existing types of licence, together with the additional activity of keeping and training animals for exhibition, which is to be brought over from Surrey County Council, will be encompassed by one new ‘Animal Activity licence’. If an applicant is running more than one licensable animal related activity, each activity will be assessed separately and set out in one licence. The length of licence (previously one year in most cases) may be anything between one and three years dependent on the outcome of their inspection, and the type of licence (See paragraph 4.10).

- 4.3 As stated in paragraph 3.4 previous arrangements included locally set conditions. The Regulations specify conditions for each animal activity which must be included in each licence issued.

- 4.4 Existing licences that were issued up to 30 September 2018, will continue on until their stated expiry dates, and will then be renewed under the Regulations.

- 4.5 If the grant of a licence is refused, or the licence is revoked, the operator will be able to appeal to a First Tier Tribunal, which would comprise a panel with specialist knowledge administered by HM Courts and Tribunal Service.
- 4.6 The Regulations comprise a set of general conditions in respect of matters such as record keeping, types and numbers of animals, staffing, maintaining a suitable environment and diet, monitoring behaviour, handling of the animals, protecting the animals from pain, suffering, injury and disease and dealing with emergencies. Each specific animal activity then has its' own set of more detailed conditions, tailored to that particular activity.

### **Inspection Process**

- 4.7 In the past, an inspection of the premises has been carried out by the Council's Dog Warden. The new regime requires a 'qualified inspector' to carry out the inspections, and in the case of the grant of a dog breeding establishment and at grant and renewal of horse riding establishments they must either be or be accompanied by a veterinary surgeon. To qualify to inspect premises, a person must hold a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulations which oversees training and assessment of persons inspecting and licensing certain animal activities businesses, and must have passed an independent exam. Their certificate must apply to the specific type of activities they are inspecting. A qualified veterinary surgeon is also a qualified inspector.
- 4.8 Transitional provisions are in place to enable any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses to carry out the inspections until October 2021. After that time, the above requirements will need to be met.
- 4.9 Under the new arrangements, the inspection process will be much more comprehensive, and built around providing the premises with a 'risk rating'. This process will establish whether the business is 'low risk' or 'higher risk' based on the level to which it meets the standards set out in the regulations and guidance, and will award between one and five stars, thus determining the length of the licence (with the exception of 'Keeping and Training Animals for Exhibition' for which all licences will be issued for 3 years as default). The star rating will be displayed on the licence, and included in the Council's public register.
- 4.10 Businesses established as higher risk will attain between one and four stars. If one or two stars are issued they will be issued a one year licence, and can expect a minimum of one unannounced visit during that period. If four stars are attained, the licence will be issued for two years, and the licence holder can expect one unannounced visit during the two year period.
- 4.11 Lower risk businesses can be issued a licence for any period between one and three years. Licence holders can expect a minimum of one unannounced visit at any time during the period specified on the licence.

- 4.12 The recently published guidance advises that if a business is certified by a UKAS-accredited body to operate animal welfare certification, it should be considered low risk and receive the higher star rating, unless there is evidence of poor animal welfare or non-compliance. Existing businesses that are not certified must be assessed using a risk scoring table – also set out in the guidance – to ascertain their score, and from this, their star rating. New businesses that are not certified will automatically be considered high risk as they have no operational history.
- 4.13 Operators of businesses will be able to appeal their risk rating, or request a reassessment if they have made improvements.

### **Suitable Applicants**

- 4.14 Any individual who carries on a licensable activity will be designated as the operator of the business, and can apply for a licence. providing they:-
- are not disqualified from holding a licence in accordance with Regulation 11 and Schedule 8.
- 4.15 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, the Council has drafted a policy setting out criteria which will ensure that only suitable applicants are granted a licence.
- 4.16 The draft policy sets out that upon application the Council:-
- Will require the applicant to provide a basic disclosure (DBS) certificate issued within 3 months of the date of application; and
  - May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold. This information sharing is possible under Section 17 of the Crime and Disorder Act 1998, which requires that local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent crime and disorder in their area.
- 4.16 An applicant will be granted a licence if the Council is satisfied that the licence conditions will be met. In considering this, the Council will take into account whether the applicant is a fit and proper person to be the operator of the activity. The term 'fit and proper' is not defined in the legislation or guidance. The draft Policy states that the Council will consider a 'fit and proper person' to be an individual who can demonstrate upon application that they have:-
- the right to work in the UK
  - no relevant convictions
  - not been disqualified from holding a licence
  - the knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of animals in their care
  - made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licence activity.

## **5. Consultation**

- 5.1 Officers and the Council's Web and Communications Teams have carried out publicity work to highlight the legislative changes.
- 5.2 As a new policy is being proposed, consultation is critical to ensure any changes are clear and transparent for businesses and the public.
- 5.3 If the Committee approves the proposed policy, we will follow our consultation standards over a 12 week period by:
- Writing to relevant authorities (for example the Police, Defra)
  - Writing to interested parties (for example current licence holders)
  - Publicising the consultation on the Council's website
  - Using social media to inform the public of the consultation and direct them to the website.
- 5.4 We will then analyse the comments, prepare any changes considered appropriate to the policy for final approval and present a further report to the Licensing Committee on 25 March 2019.

## **6. Equality and Diversity Implications**

- 6.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 6.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 6.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of equality duty.
- 6.4 There are no Equality and/or Diversity issues arising from the new Regulations, or consulting on a draft Animal Welfare Licensing Policy. The Regulations and Draft Policy allow an application to be made and assessed against standard criteria, irrespective of any protected characteristics of the applicant.

## **7. Financial Implications**

- 7.1 The duration of the licences granted will depend on a risk rating, with some licences being granted for a longer period than others. Some of our existing licensees may not be suitable for licensing under the new legislation, which could

reduce licence fee revenue – although this in turn would reduce administration and costs incurred by the Council. In addition to this, there may be an increase in the number of licences that are granted as the threshold for requiring a licence will be reduced, and increased enforcement powers could lead to more businesses requiring licensing being identified.

- 7.2 The animal licensing scheme falls within the definition of ‘services’, and is subject to the EU Services Directive, incorporated in to UK law as the Provision of Services Regulations 2009.
- 7.3 The fees can be split into two parts – the application fee, payable at the time of submission to cover the Council’s costs in considering and determining the application, and the licence fee, which covers ongoing enforcement and compliance requirements.
- 7.4 Ahead of the implementation, revised fees were set under delegated Authority to accommodate the changes. The fees for the period 1 October 2018 to 31 March 2019, are set out at Annex 2 of the report.
- 7.5 All fees have been calculated and will be reviewed annually, taking into account the requirements of Regulation 13 with the aim of full cost recovery.

## **8. Legal Implications**

- 8.1 The Regulations and guidance issued by DEFRA under the Regulations, set out the activities which must be licensed, who may apply for a licence and how the Council must determine applications for a licence. The Regulations also set out the conditions which must be applied to any licence granted.
- 8.2 Should the Council refuse to grant or renew a licence, the applicant may appeal to a First-tier Tribunal. This must be done within 28 days of the decision.
- 8.3 Once a licence has been granted, the Council may suspend, vary or revoke the licence if the licence conditions are not complied with, the Regulations have been breached, information supplied is found to be false or misleading or it is necessary to do so to protect the welfare of an animal. There is no right of appeal against a suspension, however the licensee may make written representations to the Council and upon receipt of those representations, the Council must re-consider its decision. A licence may only be suspended for a maximum of 28 days, following which the licence must be reinstated, with or without variation or revoked. When a licence is varied or revoked, the licence holder may appeal to a First-tier Tribunal. This must be done within 28 days of the decision.
- 8.4 The statutory guidance issued by DEFRA requires the Council to provide an appeal process to enable applicants to challenge the initial star rating they are given. The guidance sets out the timescales and the level of officer who should hear the appeal. If a business is still dissatisfied, they can challenge the appeal outcome by way of judicial review. It will also be possible for applicants to pay for a re-inspection following the carrying out of improvements that would lead to a higher star rating.

## **9. Human Resource Implications**

- 9.1 It is estimated that there will be 76 new licensed activities in the Borough during the first year, this number currently stands at 25. The number of investigations into unlicensed activities is predicted to rise with the expanding requirements, further increasing the demand on Officer time.
- 9.2 The Dog Warden post currently conducts the animal licencing inspections, except for the riding establishments, with administrative and managerial support provided within Regulatory Services. In order to respond to the changes and additional workload the Dog Warden post has been moved from Operational Services to Regulatory Services, reporting to the Licensing Team Leader.
- 9.3 Some of the Dog Warden's duties around dog fouling have been redistributed to the JET team, with a planned review of other duties in order to respond to the demand created by the new Animal Licensing activities.
- 9.4 As the Regulations set out specific qualifications which local authority inspectors must hold by 2021, Officers will be required to attend training and obtain the relevant qualification.

## **10. Conclusion**

- 10.1 In October 2018, The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into effect replacing all the existing legislation. The new legislation also significantly expands the type of animal activity that requires licensing and introduces a star rating scheme for licensed animal activity businesses.
- 10.2 The new regulations expand the animal licensing regime to offer greater protection to animals being looked after, displayed or sold by third parties.
- 10.3 Fees for the new animal licences are locally set and can recover all costs but the Local Authority can make no profit. The Council has set fees for the activities which it will be licensing from 1 October 2018.
- 10.4 A Policy concerning the new Licensing Arrangements has been drafted which seeks to ensure the suitability of applicants and licence holders. The Committee is asked to approve the policy for public consultation.

## **11. Background Papers**

[Animal Welfare \(Licensing of Activities Involving Animals\) Regulations 2018](#)

[Procedural Guidance Notes for Local Authorities 2018](#)

## **12. Appendices**

Appendix 1: Draft Animal Welfare Licensing Policy

Appendix 2: Fees and Charges



### 13. Consultation

<b>Service</b>	<b>Sign off date</b>
Regulatory Service Manager	<i>2 November 2018</i>
Finance / 151 Officer	<i>1 October 2018</i>
Legal / Governance	<i>28 September 2018</i>
HR	<i>28 September 2018</i>
Equalities	<i>28 September 2018</i>
Lead Councillor	<i>10 October 2018</i>
CMT	<i>6 November 2018</i>
Committee Services	<i>13 November 2018</i>