

Licensing Committee Report  
Report of the Licensing Team Leader  
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Date: 29 May 2019

## Licensing Policy for Activities Involving Animals

### Executive Summary

On 1 October 2018 changes to the way in which animal boarding establishments, dog breeding establishments, pet shops and riding establishments are licensed were introduced and the Council commenced responsibility for the licensing of the keeping of animals for exhibition.

This report seeks to inform the Committee of the result of the 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 following public consultation.

### Reasons for Recommendation:

To improve the regulation of the licensing of activities involving animals in the Borough by recommending the adoption of a Policy covering animal licensing.

### 1. Purpose of Report

- 1.1 The report informs the Committee of the results of the public consultation on the proposed introduction of a Council Policy concerning the Licensing of Activities Involving Animals in the Borough.
- 1.2 It asks the Committee to approve the new Animal Licensing Policy in Appendix I.

### 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 In addition to the licences issued by Guildford, Surrey County Council were responsible for registering any performing animals based within the county.
- 3.3 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.
- 3.4 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 last 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 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 4.9).
- 4.3 As stated in paragraph 3.3 previous arrangements included locally set conditions. The Regulations specify conditions for each animal activity which must be included in each licence issued.
- 4.4 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.
- 4.5 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**

- 4.6 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.

- 4.7 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.
- 4.8 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.
- 4.9 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.
- 4.10 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.
- 4.11 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.
- 4.12 Operators of businesses will be able to appeal their risk rating, or request a reassessment if they have made improvements.

### **Suitable Applicants**

- 4.13 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.

- 4.14 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.
- 4.15 The draft policy sets out that upon application the Council:-
- Will require the applicant to provide a basic disclosure (DBS) certificate; 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 On 28 November 2018, the Licensing Committee approved a draft Animal Licensing Policy for public consultation.
- 5.3 Following the Committee's approval Officers followed our consultation standards by carrying out a public consultation over a 12 week period between 21 December 2018 to 15 March 2019 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 Seven (7) responses were received to the consultation. Three (3) responses were from organisations representing the interests of animal welfare (RSPCA, PDSA and Dogs Trust). Four responses were from establishments which hold Animal Activities licences with the Council (Greenways Stables, Five Acres Cattery, Five Acres Kennels and Stringers Farm). The full consultation responses are included as Appendix II.
- 5.5 Of the four responses to the Policy from licence holders, three amounted to general disagreements with the legislation, standard conditions and cost of fees. As the legislation and conditions are set by Defra and implemented by the Council, these comments have not been considered further. Similarly the Council operates a time recording system and has set fees in line with guidance to ensure cost recovery and comments as to the level of fees have also not been considered.
- 5.6 Comments received about the proposed policy, with comment from Officers are summarised as follows:

Comment from	Comment	Response
PDSA	Paragraph 5.6 Also add in those related to fraud, smuggling, tax evasion, domestic violence offences or any offences relating to abuse of a minor. Re domestic violence and abuse of a minor, we work as part of the Links Group	These offences would be included in the 'dishonesty' category. Offences involving a minor have been added for clarity. These offences would be included in the 'violence; category.
	Paragraph 8.3 Also add that a new applicant will automatically be considered as high risk. See paragraph 11 in Defra's Procedural guidance notes for local authorities.	As this is already part of the guidance there is no need to repeat this in the Policy.
	Paragraph 11.5 Disqualified from keeping animals? Is it as per point 18.6 below?	Yes.
	Paragraph 13.4 For consistency should 'operator' be replaced with 'license holder' throughout this document? Or each term defined if they are different?	The policy applies to new applicants as well as licence holders, so 'operator' would encompass both.
	Paragraph 14.2 And there is no impact on the welfare of any animal in their charge ??	The process of transfer is laid out in guidance.
Greenway s Stables	As part of our Pony Club approval and work with local schools, both members of staff at the stables have DBS certificates already. To have to provide another one for the purpose of licensing within 3	It is important that a recent DBS is provided so as to ensure the information is up to date. The draft has been updated so that a recent DBS

	<p>months of the date of application seems quite costly and timely to do. If establishments do not have them already then I completely agree they should be done but for those of us who have paid for DBS checks within the last year, to do another one seems unfair (as I assume the cost will be at our own expense)</p>	<p>is required for all new applications, and that the DBS can be up to 3 years old for renewal applications, as such 'high risk' businesses whose licence lasts one year do not have to incur the cost of applying for a new DBS every year. This is in line with other licensing regimes such as taxis and street trading where a 'new' DBS is required every 3 years.</p>
	<p>I am unclear as to how you decide on who is appropriate/ qualified to be an "Inspector"- surely they should be industry experts (as the appointed vets are), not just someone with the right piece of paper?</p>	<p>The qualification requirement for inspectors is laid out in legislation.</p>
	<p>When will the new inspection procedure actually come into effect? I am assuming if there's no meeting until May, then this won't be until at least 2020. In the meantime, does an inspection remain the same as it has been up until now?</p>	<p>The new inspection procedure has been in effect since 1 October 2018.</p>
<p>RSPCA</p>	<p>Overall, the policy is excellent: strong, concise and user friendly for both those applying for licenses and staff using the policy. From an animal welfare/protection perspective there's nothing missing. The only suggestion I would make would be to include your processes for investigating and acting on complaints from the public in it more explicitly, perhaps in the latter sections on enforcement.</p>	<p>A section has been added to include the investigation of complaints.</p>
	<p>Once the policy is agreed and in force, I would strongly encourage you to apply for one of our PawPrints Awards (which recognise local authorities who are delivering best practice in animal welfare provision). The policy as it is currently drafted would certainly be eligible for recognition in our licensing category. There's more about the awards online <a href="#">here</a>, though of course the criteria for licensing will be reviewed quite significantly this year to reflect the new</p>	<p>This will be considered.</p>

	realities of the 2018 Regulations.	
Dogs Trust	Policy should define animals as 'vertebrates other than man' and not 'fellow creatures'.	Comment noted.
	The Animal Welfare Act does not unify all animal legislation, as there is other legislation.	Comment Noted. The Council's powers of licensing derive from the Animal Welfare Act.
	Applicants should be over 16 and be able to demonstrate adequate knowledge and be able to provide for the welfare of animals in their care.	The policy sets out that applications should have sufficient knowledge/experience.
	Any person with a conviction involving danger or suffering to animals, irrespective of the species, should not be granted a licence under any circumstances.	This has been updated for clarity.
	The criteria should apply to persons residing at an address of a person with convictions.	Although this is a laudable aim, the legislation only considers applicants/licence holders with convictions, not any persons resident with them. The policy proposes that a check may be conducted with the Police where other relevant information may be disclosed.
	Persons with convictions for domestic violence should not be licensed.	This offence would be included in the 'violence' category.
	Licence holders should be given a longer window between notification that their licence is due for renewal and submission of their application 10 weeks before expiry.	The time period is suggested in the guidance, and it is up to responsible operators to ensure they submit their applications in good time.
	Establishments should be clear on works required to raise standards.	This is part of the inspection and scoring process already.
	The Council should ensure there is a contingency plan in place to ensure the welfare of animals in cases where licences are suspended/revoked.	The policy's aims are to ensure animal welfare and the Council will work with other stakeholders such as the RSPCA in such cases.
	Dogs trust supports annual or more frequent inspections of businesses.	Whilst this is laudable, the inspection frequency is based upon licence duration, with one inspection mid licence. If however there are valid concerns then more frequent visits may be conducted as necessary.
The costs of re-inspection should be borne by the licensee.	This is set out in the fees.	
If premises are re-rated, this should not	Comment noted. Businesses	



	affect the licence duration.	who have improved should be allowed to be benefit from any difference to licence duration.
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## 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 approval of an Animal Welfare Licensing Policy. The Regulations and 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.
- 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 are 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, payable by successful applicants which covers ongoing enforcement and compliance requirements.
- 7.4 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.
- 8.5 The adoption of a licensing policy will assist the Council to carry out its functions under the Regulations in a fair and transparent way.

## **9. Human Resource Implications**

- 9.1 The Council has dealt with 47 applications under the new licensing regulations since 1 October 2018. Previously, this number was 25. The number of investigations into unlicensed activities has also increased with the expanding requirements, further increasing the demand on Officer time.
- 9.2 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. Summary of Options**

- 10.1 The Licensing Committee approved a draft Animal Licensing Policy for public consultation on 28 November 2018. The Committee is asked to consider the results of the public consultation and adopt the Policy presented for approval.
- 10.2 There are three options available after considering the results of the public consultation and the information in this report:
1. Approve the Policy as set out in Appendix 1; or
  2. Approve a modified policy; or
  3. Not to approve a Policy.

## 11. Conclusion

- 11.1 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.
- 11.2 The new regulations expand the animal licensing regime to offer greater protection to animals being looked after, displayed or sold by third parties.
- 11.3 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.
- 11.4 A Policy concerning the new Licensing Arrangements has been drafted which seeks to ensure the suitability of applicants and licence holders.
- 11.5 The policy has been consulted upon and is presented with some minor amendments for approval. Appendix III shows highlighted tracked changes to the draft version of the Policy.
- 11.6 The Committee is asked to approve the policy in Appendix I following public consultation.

## 12. Background Papers

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

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

## 13. Appendices

Appendix 1: Animal Welfare Licensing Policy for Approval

Appendix 2: Consultation responses received

Appendix 3: Policy for approval showing tracked changes to draft consulted upon

## 14. Consultation

<b>Service</b>	<b>Sign off date</b>
Regulatory Service Manager	<i>24 April 2019</i>
Finance / 151 Officer	<i>26 April 2019</i>
Legal / Governance	<i>09 April 2019</i>

HR	<i>05 April 2019</i>
Equalities	<i>05 April 2019</i>
Lead Councillor	<i>26 April 2019</i>
CMT	<i>23 April 2019</i>
Committee Services	<i>10 April 2019</i>