

REPORT TO: FULL COUNCIL

Date: 26 September 2018

TOPIC: THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (ENGLAND) REGULATIONS 2018

REPORT BY: PUBLIC PROTECTION MANAGER

1 INTRODUCTION

- 1.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 ('The Regulations') are due to come into effect on the 1 October 2018, and provide a series of substantial updates to animal licensing. The Regulations are introduced by way of the Animal Welfare Act 2006. Some sections of this overarching piece of legislation are relevant in terms of the newly introduced amendments, for example in the provision of powers of entry to officers, when undertaking inspections.
- 1.2 The Regulations are an important step forward in modernising and streamlining a number of previous Acts and Regulations. As well as updating the powers of local authorities to ensure high standards of animal welfare, the Regulations also provide robust charging mechanisms to allow local authorities to more effectively recover costs for this work.
- 1.3 The purpose of this report is to seek an update to the Council's Constitution to facilitate the administration and enforcement of licences under this new regime and to seek approval of a new set of fees in time before the majority of licences issued under previous legislation expire on the 31 December 2018.

2 RECOMMENDATIONS

- 2.1 That Full Council note the legislative changes brought into effect by way of the Regulations.
- 2.2 That Full Council amend the Constitution at Part 3 by inserting new paragraphs 5.14 and 5.15 to 'Appointments and Authorisations' under relevant environmental health and housing legislation for the Head of Environmental Health and Housing Services. This will facilitate administration and enforcement in respect of those licences issued under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. The following paragraphs are suggested for inclusion:
 - 2.2.1 'Power under the Animal Welfare Act 2006 to inspect in connection with licences, and to inspect records required to be kept by the holder of a licence.'
 - 2.2.2 'Power under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 for the grant, renewal, variation, suspension, and revocation of licences; to impose licence conditions; and to take samples from any animals on premises occupied by an operator. Power to undertake risk ratings of

premises and allocate star ratings. Power to determine appeals in respect of risk ratings and associated star ratings of premises, and to refer any matter to the Council's Licensing Sub-Committee for determination.'

- 2.3 That Full Council adopt the fees contained in **Appendix One** for animal licensing with effect of 1 October 2018. In doing so, Members should note the substantial increases from those fees imposed under the current regime, that will better enable cost recovery. Members should further note that due to the position with DEFRA only recently having issued its Procedural Guidance Notes for Local Authorities under the new provisions, it has not been feasible given the time constraints to undertake any consultation with the licensed community or members of the public. Given that the figures provided in respect of the necessary tasks required and officer rates with on-costs are fixed, this is not highly relevant. Albeit, that a possible suggestion from the licensed community had consultation been undertaken is that Members consider some level of fee subsidy whilst fees are increased more incrementally over a set period.

3 REASONS FOR RECOMMENDATIONS

- 3.1 If authority is not delegated to the Head of Environmental Health and Housing Services under The Regulations, it will not be possible for staff undertaking roles of administration and enforcement to be in turn adequately delegated, thus posing a legal and reputational risk to the Council.
- 3.2 The fees under the Regulations must be locally set. It is not appropriate to continue to use fees adopted under previous regimes. Moreover, this would be open to challenge due to amendments to the activities requiring a licence, and licence periods etc. Delegated authority to set fees lies with Full Council.
- 3.3 The Regulations are effective from the 1 October 2018 and therefore there can be no delay in setting fees. It is unfortunate that this authority and others have been privy to DEFRA's Procedural Guidance for only a short period, leaving the Full Council meeting scheduled on 26 September the only meeting available in the required time-frame.
- 3.4 It is appropriate to highlight the very substantial increases in fees. This should be tempered by the opportunity for those operators offering the highest standards to gain a three year licence, but nonetheless the increases suggested in order to better gain cost recovery are significant.
- 3.5 Due to the current budgetary pressures on the Council the fee table attached at **Appendix One** is recommended for adoption, however it is only fair to highlight the available position to subsidise fees. Members must consider the viability surrounding this based on the Council's budget and consider the impact on tax payers.

4 REPORT

- 4.1 The changes imposed by way of The Regulations are extensive. Whilst it is not the intention of this report to update Members fully of the changes to the animal welfare regime, it is essential to highlight some main changes in order that Members have an understanding of the breadth of the implications imposed by the legislative changes. As such the following serves as a list of those changes deemed most pertinent to the recommendations featuring in this report.

4.1.2 The new Regulations cover a number of licensable activities which instead of being issued separate licences, can now be issued one multi-activity licence. Licensable activities will include:

- Selling of animals as pets
- Provision of boarding for cats or dogs
- Provision of boarding in kennels for dogs
- Provision of home boarding for dogs
- Providing day care for dogs
- Hiring out horses
- Breeding of dogs
- Keeping or training of animals for exhibition

4.1.3 The Regulations set out to maintain or improve welfare standards.

4.1.4 One generic multi-activity licence may be issued which is not date specific. Previously licences issued were annual, and expired at 31 December each year. Licences can now be issued for one, two or three years.

4.1.5 Greater enforcement options exist, with power for the Council to now revoke and suspend licences. This was previously administered by the Magistrate's Courts.

4.1.6 Keeping or training animals for exhibition is now a licensable activity for which the Council has responsibility, this is currently a registration scheme administered by Devon County Council.

4.1.7 Dog day care now forms a licensable activity.

4.1.8 Wholesale pet supply now forms a licensable activity.

4.1.9 The threshold for dog breeding in terms of the prescribed amount of litters has reduced from five to three in any 12 month period, and a business test is now prescribed. Criteria exist in terms of rules for advertising. They stipulate that the name of the licence holder followed by the number of the licence holder's licence must be clearly and prominently displayed on any website used in respect of the licensable activity.

4.1.10 There are no provisions for licence transfer.

4.1.11 A risk rating scheme is introduced by way of DEFRA's Procedural Guidance which introduces a star rating scheme for operators (excluding keeping or training animals for exhibition) based on standards. This ranges between one and five stars. The star rating scheme then determines a programme of inspections, with one star premises receiving one year licences, with one inspection on application and a minimum of one unannounced inspection within a 12 month period. The highest standard of premises will receive five stars, these premises may be licensed for a period of three years and have a minimum of one unannounced inspection within a 36 month period. Dependent upon the allocations of star ratings the number of premises inspections may increase initially, as those premises receiving one and two stars will have two inspections per annum; officers currently inspect only once. All new applicants may only be issued a licence for one year due to lack of compliance history.

- 4.1.12 Those officers not having at least one year of experience in licensing, and inspecting animal activities businesses are suggested to undertake a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulation in respect of licensable animal activities.
- 4.1.13 Legislation now prescribes that a Council appointed inspector undertakes inspections of premises hiring horses (grant and renewal) and dog breeding (grant) establishments alongside an appointed veterinarian on all inspections. At present officers and veterinarians do not 'double up' in this way. As such there will be an associated increase in the number of inspections of these activities by Council officers.
- 4.2 Regulation 13 allows a local authority to charge such fees as it considers necessary for:
 - 4.2.1 The consideration of an application for the grant, renewal or variation of a licence including any inspection relating to that consideration, and for the grant, renewal or variation.
 - 4.2.2 The reasonable anticipated costs of consideration of a licence holder's compliance with these Regulations and the licence conditions to which the licence holder is subject in circumstances other than those described above including any inspection relating to that consideration.
 - 4.2.3 The reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator.
 - 4.2.4 The reasonable anticipated costs of provision of information to the Secretary of State, in respect of the number of licences in force and fee levels.
- 4.3 Locally set fees are a vital means of ensuring that costs can be recovered by local authorities rather than relying on a subsidy from local tax payers. Businesses that benefit from an Animal Welfare Licence should be asked to pay any reasonable costs incurred by the local authority in providing that licence. However they must also be able to depend on the local authority fees being fair and reasonable.
- 4.4 When setting the fees, local authorities should have regard to the Open for Business: LGA Guidance on Locally Set Licence Fees (**Appendix Two**), and the BEIS Guidance for Business on the Provision of Service Regulations and principles in the Regulators' Code which sets out the steps that must be taken to set fair and reasonable fees. These documents have been considered when formulating those fees recommended for approval.
- 4.5 In December 2009 the Services Directive, Provision of Services Regulations 2009, made in compliance with Directive 2006/123/EC of the European Parliament, was introduced. Article 13(2) of the Directive states that any licence fees which applicants incur under a licensing scheme must be reasonable and proportionate to the cost of the 'authorisation procedures'. This means that councils may not make any profit from charging applicants for licence applications or from regulating individual licensing functions.
- 4.6 Traditionally local authority fees charged for licences have included the costs of processing the application, and the costs of monitoring and enforcing against unlicensed and licensed operators. Until now, application fees have been payable in full at the time of

making an application and unsuccessful applicants have been eligible for a refund of a proportion of the fee paid, subject to the Council's costs of processing the application.

- 4.7 However, in the case of *Hemmings v Westminster City Council* which examined the level of fees for Sex Shop licences in Westminster and what the Council was legally entitled to include when setting the fees, the Supreme Court and the European Court of Justice clarified what local authorities could include when setting licence fees. The courts also concluded that the licence fee was essentially made up of two parts; the first part for the direct costs of processing an application, and the second part for the costs associated with running the licensing function. The latter element included monitoring and enforcement of licensed and unlicensed premises, and this should be reflected in how the fees are charged. The second part of the fee should only be payable if a licence is granted.
- 4.8 The fees must be reasonable and proportionate to cover the cost of processing the procedures and formalities associated with the relevant licensing function, and they must accurately reflect the actual costs incurred by the Council. In view of the *Hemmings* decision the fees attached at **Appendix One** have been calculated in two parts, A and B. Part A is to cover the direct costs associated with processing the application to the point where a decision is made, and if appropriate a licence is issued. This fee would be payable in full on submission of the application, and is non-refundable.
- 4.9 Part B is to cover the ongoing costs associated with running the licensing function, including the supervision and monitoring of licensed premises and the enforcement activity for any unlicensed premises. This fee would only become payable if a licence is granted, and would need to be paid before the licence becomes operational. It is proposed that a condition would be imposed on relevant licences, *'that the licence shall be of no effect and the premises may not operate until the Part B fee has been received by the Council'*.
- 4.10 In calculating and administering the fees consideration must be made to a number of important underlying principles. Namely that:
- 4.10.1 Local authorities should:
- 4.10.1.1 Recover any reasonable costs of administering and enforcing each licence.
 - 4.10.1.2 Charge separately for application processing and enforcement.
 - 4.10.1.3 Continue to seek service improvements to help reduce costs for businesses.
 - 4.10.1.4 Use evidence based data whenever possible as the basis for their fee charges, and retain this information for the purposes of transparency.
 - 4.10.1.5 Ensure that when a surplus or loss is gained that the fees are re-evaluated and if necessary reduced/increased the following year. Fee calculations are based on predicted licence numbers and complaints etc. and therefore factors such as an increase in licensed premises, would mean that pro-rata costs are lower. Similarly there may be service efficiencies or cost savings that would need to be passed on. Losses may occur where there are unexpected levels of enforcement, or appeals and prosecutions through the courts for which costs are awarded, unexpected increases in equipment etc.
 - 4.10.1.6 Clearly communicate with applicants the elements that make up the fee.

4.10.2 Local authorities should not:

- 4.10.2.1 Charge for matters that do not relate directly to that licence, for example Freedom of Information and Data Protection requests.
- 4.10.2.2 Seek to make a profit.
- 4.10.2.3 Charge for prosecution costs that are covered by costs awarded to the authority.
- 4.10.2.4 Use a surplus from one year to subsidise another.
- 4.10.2.5 Allow fees income to be drawn into the Council's general fund.

- 4.11 The main cost associated with the fees calculated is in respect of officer time. Officer time includes direct and indirect costs. Direct costs include wages, pension contributions, National Insurance, etc. On-costs include the reasonable costs of providing heating and lighting in the office, general IT, photocopying, and other administrative services. They include business support such as Customer Services, Legal Services and HR. It is believed that using staff rates with on-costs is the fairest way to recoup these costs. Licence applications that take very little time will pay less and the more complex applications will pay more. Financial Services have advised on hourly rates of staff and these have been used in preparing the calculations.
- 4.12 The fee currently set for animal licences is £71.10. A review of the animal licence fees currently charged has not been undertaken for a considerable period and therefore the Council has been significantly under-recovering fees from this licensed community. The fee charged currently is for an annual licence.
- 4.13 **Appendix One** contains the fees proposed and workings in respect of the fees is contained at **Appendix Three**.
- 4.14 It is proposed that the Part A fee will vary dependent on the licensed activity, with an application for a multi-activity licence on grant, proposed to encompass the highest activity fee only rather than a combination of fees.
- 4.15 The Part B fee for all activities is proposed at a standard rate of £180 regardless of the length of the licence period (one, two or three years), considering the calculation has identified that there is little difference in the likely costs to the authority. This is largely because longer licence periods will be associated with those demonstrating higher standards of animal welfare and increased confidence in management.

5 RESOURCE IMPLICATIONS

- 5.1 Considering that there will be an increased workload associated with the introduction of the new animal licensing regime, there will be inadequate staff resources to sufficiently cover this area of work and other licensing regimes. There are currently only two officers employed in the Licensing Team who are in a position to be able to undertake inspections of animal establishments. As such the intention is to utilise additional income that will be generated from licence fees, to either gain additional resource to undertake animal inspections etc., or that existing staff undertake animal related work and other fee income from alternative licence regimes is used to secure additional resource for those areas, for example hackney carriage/private hire or Licensing Act 2003 enforcement.

6 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?	Key decision?
Article 7.1, Part 2	Delegated	No

7 STATEMENT OF CONFIDENTIALITY

7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

8 BACKGROUND PAPERS

8.1 The following background papers were used in the preparation of this report:

- The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
- DEFRA, The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, Procedural Guidance Notes for Local Authorities, July 2018.
- LGA, Guidance on Locally Set Licence Fees, 2018.
- BEIS Guidance for Business on the Provision of Services Regulations, October 2009.

The background papers are available for inspection and kept by the author of the report.

9 STATEMENT OF INTERNAL ADVICE

9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and officers.

Executive Members: Councillor Jones and Moores (Public Health and Protection)

Author: Katy Nicholls Date: 10/09/2018

APPENDIX ONE**Animal Welfare Licence Fees Effective from 1 October 2018**

Licence Activity (grant and renewal)	Part A initial application fee
Hiring out horses	£247
Breeding of dogs	£235
Keeping or training animals for exhibition	£154
Home boarder of dogs	£189

Notes:

Applications for a multi-activity licence will be processed according to the activity with the highest fee.

Non- home boarder of cats or dogs	£235
Dog day care	£212
Selling animals as pets	£235
Veterinary fee	Part A veterinary fee
Breeding of dogs (grant only, unless in exceptional circumstances)	£200
Hiring out horses (grant and renewal)	£250
Licence period	Part B fee (payable after licence grant only)
One year licence	£180
Two year licence	£180
Three year licence	£180
Variation application including re-rating	Variation fee
With no inspection	£31
With council inspection	£200
With veterinary inspection	£31 plus additional fee according to veterinary invoice

FEES FOR NEW ANIMAL REGIME															
<p>For the purpose of calculating fees the following criteria was applied:</p> <ul style="list-style-type: none"> • Each task involved in the process; • The average amount of time taken to complete each task; and • The job role of the officer completing the task. • The 'On-costs' (Salary of post holder + any additional costs incurred by the employer as a result of employing a person in that position) 															
<p>A Local Authority cannot make a profit from the proceeds raised and therefore the Local Authority will need to engage in a regular review cycle and assess annual revenue against the costs accrued and adjust fees accordingly which may go up or down.</p>															
<p>Predicted number of licenced premises for which divided figures based upon - totals 87</p>															
Dog Breeding 16															
Cat Boarding 6															
Home Boarding 16															
Non Home Boarding 8															
Day care for dogs 6															
Pet sales 8															
Hiring horses 17															
Exhibiting animals 10															
Tasks - PART A	Divide by no. licences	Time (hrs/mins)	Time (decimal)	Job role	Salary inc oncosts	Sub Total	Total inc divided costs	Hiring horses	Breeding grant	Exhibiting animals	Home boarder	Non-Home Boarder	Dog day care	Pet sales	Breeding renewal
Preparation work															
Delegating authority to staff and veterinarians under the regime	87	1 hr	1	PPM	69.59	69.59	0.79	0.79	0.79	0.79	0.79	0.79	0.79	0.79	0.79
Update LALPAC (exclude as query necessity)	87	37 hrs	37	CPSO	52.04	1925.5									
Update standard letters	87	2 hrs	2	SLL	50.67	101.34	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16

Inspection time (home boarder)	NO	30 mins	0.5	LO	46.77	23.38					23.38				
Inspection time (non-home boarder)	NO	90 mins	1.5	LO	46.77	70.15						70.15			
Inspection time (pet sales)	NO	90 mins	1.5	LO	46.77	70.15							70.15		
Inspection time (exhibiting animals)	NO	30 mins	0.5	LO	46.77	23.38				23.38					
Inspection time (breeding renewal)	NO	90 mins	1.5	LO	46.77	70.15									70.15
Inspection time dog day care	NO	60 mins	1	LO	46.77	46.77							46.77		
Inspection time (riding establishment)	NO	150 mins	2.5	LO	46.77	116.92			116.92						
Inspection time (breeding grant)	NO	130 mins	2.3	LO	46.77	93.54			107.5						
Outstanding issues follow up/write up inspection report (EXCLUDE RIDING AND DOG BREEDING GRANT)	NO	45 mins	0.75	LO	46.77	35.07	35.07			35.07	35.07	35.07	35.07	35.07	35.07
Decision surrounding star rating and prepare associated letter EXCLUDE ANIMAL EXHIBITION	NO	45 mins	0.75	LO	46.77	35.07	35.07	35.07	35.07		35.07	35.07	35.07	35.07	35.07
Issue licence	NO	40 mins	0.66	LCO	31.45	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75	20.75
PART A FEE for a licence between 1-3 years									247.61	238.19	154.07	189.14	235.91	212.53	235.91
									Hiring horses	Breeding grant	Exhibiting animals	Home Boarder	Non-Home Boarder	Dog day care	Pet sales
Additional veterinary fees for licence grant breeding and riding establishments															
Veterinary surgeon to visit dog breeder on initial inspection (includes travel) ONLY average cost	NO									200					
Veterinary surgeon to visit horse riding establishment (includes travel) ONLY average cost	NO								250						
									250	200					

								Riding Establis hment	Breedin g						
Tasks - PART B	Divide by no. licences	Time (hrs/mins)	Time (decim al)	Job role	Salary inc oncosts	Sub Total	Total inc divided costs	1 year	2 year	3 year					
Compliance, complaints and ongoing administration costs - licensed premises															
Three month renewal reminder letter	NO	10 mins	0.167	LCO	31.45	5.24	5.24	5.24	5.24	5.24					
Creation of worksheet	NO	10 mins	0.17	LCO	31.45	5.24	5.24	5.24	5.24	5.24					
Estimate 2 complaints per annum with regard licensed premises, 3 hours per complaint (9 hours over three year licence)	YES	9hrs	9	LO	46.77	420.93	4.83	0.8	1.6	2.4					
1 and 2 Star (and all new applicants for which there is no compliance history), 1 year licence - 1 unannounced visit in 12 month period (average 3.5 hours of prep, combined travel, visit and write up), 3 and 4 star rated activity , 2 year licence, 1 unannounced visit in 24 month period, (average 3.5 hours), 5 star rated activity , 3 year licence, 1 unannounced visit in 36 month period (average 3.5 hours)	NO	3 hrs 30 mins	3.5	LO	46.77	163.69	163.95	163.69	163.69	163.69					
Enforcement - unlicensed premises															
Estimate 15 enquiries from unlicensed premises per annum- giving advice, research, writing letters, 30 mins per enquiry (22.5 hours over three years)	YES	22hrs 30 mins	22.5	LO	46.77	1052.3	12.09	2	4	6					
2 inspections of unlicensed premises per annum, average 5 hours per inspection including travel and write up (15 hours over three years)	YES	10 hrs	10	LO	46.77	701.55	8.06	1.35	2.7	4.05					
Prosecutions EXCLUDED - Will recover via costs application to magistrates															
Miscellaneous															
Annual returns to the SOS on the number of licences, and fees granted or received and potentially information surrounding star ratings given (6 hrs over three years)	YES	6 hrs	6	LCO	31.45	188.7	2.16	0.35	0.7	1.05					

Appeals in respect of star ratings and decisions of licensing authority - EXCLUDED	NO														
Specialist equipment - none															
PART B FEE - ALL								178.67	183.17	187.67					
								1 year	2 year	3 year					
Variation applications	Divide by no. licences	Time (hrs/mins)	Time (decimal)	Job role	Salary inc oncosts	Total									
Tasks															
Consideration of application form, including plan etc., process fee	NO	15 mins	0.25	LCO	31.45	7.86									
Record on Lalpac and M3	NO	30 mins	0.5	LCO	31.45	15.72									
Consultation with licensing officer surrounding application	NO	10 mins	0.16	LO	46.77	7.48									
TOTAL						31.06									
Arrange inspection if required	NO	10 mins	0.16	LCO	31.45	5.03									
Inspection by Council Officer including associated travel time when required (average 3.5 hrs)	NO	3hrs 30 mins	3.5	LO	46.77	163.69									
TOTAL						168.72									
Additional fee for veterinary inspection where appropriate															

