

16 October 2018

Planning and Licensing Committee

Changes to Animal Welfare Licensing

Report of: *Paul Adams – Joint Licensing Manager*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 The Council is currently the Licencing Authority for dog breeding establishments, animal boarding establishments, riding establishments, pet shops and the registration of performing animals. Each of these areas of licensing are subject to separate Legislation.
- 1.2 The Animal Welfare Act 2006 provides the Secretary of State, by The Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018 the power to repeal the existing licensing laws and introduces an updated licensing system in England for five activities involving animals, namely:
 - Selling animals as pets;
 - Providing for or arranging for the provision of boarding for cats or dogs;
 - Hiring out horses;
 - Dog Breeding; and
 - Keeping or training animals for exhibition.
- 1.3 The Animal Welfare (Licensing of Activities Involving Animals) Regulations come into force on 1st October 2018 and requires the Council to have in place procedures (together with fees and charges) for the new licensing system.
- 1.4 The Planning & Licensing Committee are requested to consider a report and make recommendations to Full Council with respect to the forthcoming changes to animal licensing. In particular Members are requested to consider the fees and charges associated with the new regime, the scheme of delegation and the determination of the appeals procedures with respect to a risk rating.

2. Recommendation(s)

2.1 That the Planning and Licensing Committee Recommends to Full Council:

2.1.1 To set the fees and charges with respect to The Animal welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 as set out in table 1 of **Appendix A** for the period from 1st October 2018.

2.1.2 To approve the procedure for determining an appeal against a risk rating following the inspection/renewal of an operator as set out in **Appendix C**.

2.2 To note the scheme of delegation as set out in table 2 of **Appendix B**.

3. Introduction and Background

3.1 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:

- **Animal boarding establishment licences** (dogs and cats in purpose built kennels, catteries, home boarders, dog 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). Livery stables are excluded.
- **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)
- **Dangerous wild animal licences** (any person keeping any dangerous wild animal)

3.2 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.

3.3 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.

- 3.4 To understand the significance of animal welfare licensing within the Brentwood borough, so far in 2018/19, the Council have issued 21 licences detailed as follows:
 - 12 animal boarding establishment licences
 - 0 dog breeding establishment licence
 - 4 pet shop licences
 - 5 Riding establishment licences
- 3.5 The current licensing system has developed on a piecemeal basis over many decades, is now considered outdated and difficult to keep up with changing types of animal-related businesses, and to new standards of good practice in animal welfare.
- 3.6 The current system is also considered to be complex and burdensome for both Local Authorities and business, as an 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 Local Authorities in administering and issuing the bulk of licences at the least productive time of the year.
- 3.7 Businesses applying for animal welfare licences (excluding dog breeding establishment licences) part-way through the year are currently disadvantaged by the length of the initial licence which will expire at the end of the calendar year, additionally businesses with multiple functions (i.e. dog breeding and animal boarding) are currently required to hold more than 1 licence.
- 3.8 There are also specific concerns about certain types of activity that are not currently robustly enforced. As an example with the explosion of the use of the internet, the online sale of pets has increased dramatically. As these types of business do not fall clearly within the definition of a pet shop, the current licensing system is not being consistently enforced for such businesses by Local Authorities. There are also concerns around underground dog breeders who breed dogs in poor welfare conditions for profit and the interpretation of exemption afforded in current legislation.
- 3.9 There is currently significant differences in the interpretation of Legislation between Local Authorities and the standards applied through conditions attached to a licence and the methodology of inspection. As an example there is inconsistency between Authorities licensing dog boarders with

some Local Authorities choosing to licence home boarding overnight but not during the day. Another example includes some local authorities adopting standard model conditions whereas as other local authorities will adopt locally agreed standards.

- 3.10 Many business under the existing legislative regime consistently achieve high welfare standards and good performance and invest in meeting these standards which are sometimes accredited through the UK Accreditation Service's (UKAS). This earned recognition is not currently recognised within the current licensing system which means it could be argued there is currently no incentive in meeting higher animal welfare standards.
- 3.11 These differences in interpretation lead to an inconsistent approach which is both confusing to Local Authorities, business, and the wider public and more concerning could raise questions regards the inconsistent levels of animal welfare standards applied.
- 3.12 The Government, in response to these concerns, undertook a review of animal welfare licensing in England, which resulted in The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

4. Issue, Options and Analysis of Options

- 4.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 will come into force from 1st October 2018 and defines the activities that will require a Licence 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 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, or both.
- 4.2 Essex County Council Trading Standards are currently responsible for the registration of performing animals. The registration process will cease once the Regulations come into force and the Council will undertake the

function of licensing for the keeping or training animals for exhibition. The County and District Councils are working together to ensure a smooth transition with respect to this activity from 1st October 2018.

- 4.3 The key changes introduced will require that all businesses undertaking the activities set out in paragraph 4.1 above to meet the same up-to-date, minimum welfare standards. Businesses will have to be licensed by the relevant Local Authority and will have to meet these minimum standards to hold and retain a licence.
- 4.4 Procedural Guidance has been issued by the Department of Environment Food and Rural Affairs (DEFRA) which local authorities are required to have regard to when licensing an animal activity. The Procedural Guidance is also recommended to existing and prospective licence holders.
- 4.5 Earned recognition will now be incorporated into the licensing system and the Council will be able to issue a licence between 1 to 3 years with longer licences going to high performing low risk businesses. Risk rating is discussed in further detail in paragraph 4.9. Businesses that apply will have less of a regulatory burden including reduced fees associated with applying for a licence. This change should also incentivise businesses to perform at a higher level which in turn will drive up animal welfare standards.
- 4.6 The Council will now be in a position to issue a licence at any point in the year which will help spread out the work load.
- 4.7 Any licences issued under the existing licensing regimes not expired from the 1st October 2018 will continue to be in force for the duration of the terms of the licence under the relevant Act.
- 4.8 Any registration of a person under the Performing Animals (Regulation) Act 1925 will continue in force, for six months from 1st October 2018.

4.9 Risk rating

- 4.9.1 The concept of risk and the assessment thereof 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, either 1 - 3 years issued and the star rating either 1 - 5 stars to award.
- 4.9.2 Businesses will be rated following an inspection that takes place prior to grant/renewal of the licence or a requested re-inspection. Businesses may also be rated following an unannounced or additional inspection.

- 4.9.3 The risk rating will be derived in accordance with the risk scoring model as provided in the Procedural guidance notes for local authorities issued under the Regulations.
- 4.9.4 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 lower standard achieved from all the activities assessed.
- 4.9.5 Businesses will be advised in writing of the rating received and the reasons for the issue of that rating and the measures the business can take to achieve the higher standard or a list of the minimum standards the business is failing to meet.
- 4.9.6 The business will also receive a copy of the risk management table showing the scores under each point and details of the appeals process including the deadline for submission of an appeal. In the event that a business disagrees with the risk rating awarded, they can appeal to the Council.

4.10 Risk rating appeals

- 4.10.1 The procedure for accepting an appeal is set out within **Appendix C** to the report and works on the principal that a business has the right to question a star rating awarded to a business following an inspection, whatever that inspection may be.
- 4.10.2 The system is designed to be fair, open, and transparent and follows the broad principles of the regulators code in accordance with S.23 of the legislative and Regulatory Reform Act 2006.
- 4.10.3 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.
- 4.10.4 Licences which must be displayed to the public as part of the Licensing process will indicate the businesses risk rating.
- 4.10.5 Statutory guidance issued by the Secretary of State encourages the Council to publish a business's risk rating on the Council's website

4.11 Fees

- 4.11.1 This section of the report explains the process of setting fees with respect to licences issued under the terms of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

4.11.2 Regulation 13 of the Regulations sets out what the Council may charge such fees as it considers necessary for:

- The consideration of an application for the grant, renewal, or variation of a licence including any inspection relating to that consideration.
- The reasonable anticipated costs of consideration of a licence holder's compliance.
- The reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator.
- The reasonable anticipated costs of compliance of providing information to the Secretary of State through the Department of the Environment, Food, and Rural Affairs (DEFRA) on an annual basis.

4.11.3 Any fees charged must not exceed the reasonable costs of that consideration and related inspection.

4.11.4 When setting the fees, the Council must have regard to the EU Services Directive, incorporated into UK law as the Provision of Services Regulations 2009.

4.11.5 DEFRA will be making available fee setting guidance (Animal Welfare Licence Fees - A Practical Guide to Fee Setting). At the time of writing this report only a draft version was available and considered.

4.11.6 The Council also had regard to a number of sources of guidance. This included "Open for business: Local Government Association (LGA) guidance on locally set licence fees which sets out the steps that must be taken to set fair and reasonable fees. The Council also had regard to Department for Business, Energy & Industrial Strategy (BEIS) guidance for Business on the Provision of Services Regulations. The Regulators code applicable to all regulatory functions applies when setting fees and refers to 'reasonable anticipated costs'. The Council finally had regard to guidance to the Regulations with respect to the fees through the 'Procedural guidance notes for local authorities'.

4.11.7 Table 1 to **Appendix A** of the report sets out the proposed fee schedule which will be in force from 1st October 2018. Licences will be issued for a period of 1, 2, or 3 years.

4.11.8 The fees will be split into 2 distinct parts;

- Application fee
- Grant fee

4.11.9 The application fee will be charged at the point an application is made and reflects all the costs of processing. This includes the cost of administration, inspection, and determination.

4.11.10 The grant fee can be paid up front with the application fee, but if not will be requested separately once the application process is complete but must be paid before a licence can be issued. 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.

4.11.11 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 forwarded on to the applicant and must be settled before a Licence can be issued.

4.11.12 The cost of varying a licence or reevaluating a business's star rating with respect to a licence or transfer of a Licence are set within the fee schedule. The cost reflects the additional work required to make a change to an issued licence.

4.12 Scheme of delegation

4.13 Table 2 of **Appendix B** sets out the scheme of delegation with respect to the Animal welfare licensing function.

4.14 Officer delegations

4.14.1 The function of the Grant or renewal of a licence to carry on a licensable activity will be delegated to officers via the Chief Operating Officer with responsibility for the licensing function.

4.14.2 The function of transferring a licence in the event of the death of a licence holder will be delegated to officers via the Chief Operating Officer with responsibility for the licensing function.

4.14.3 The function of the suspension, variation or revocation of a licence will be delegated to officers via the Chief Operating Officer with responsibility for the licensing function.

4.14.4 The function of the service of a Notice under the Regulations will be delegated to officers via the Chief Operating Officer with responsibility for the licensing function.

4.14.5 The function of appointing Inspectors under S.51 of the Animal Welfare Act 2006 and Regulation 4 of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 will be delegated to

officers via the Chief Operating Officer with responsibility for the licensing function.

4.15 Committee delegation

4.15.1 The function of the receipt of representations against the suspension, variation or revocation of a licence will be delegated to a subcommittee of the Planning and Licensing Committee. In accordance with the requirements of the Regulations

4.16 Council delegation

4.16.1 The setting of fees and charges with respect to animal welfare licensing will be delegated to Council.

5. Reasons for Recommendation

5.1 To inform the Committee of forthcoming changes to the way in which dog breeding establishments, animal boarding establishments, Riding establishments and pet shops are licensed and the commencement of responsibility for the licensing of the keeping of animals for exhibition. To ensure that the Council has the appropriate arrangements in place to discharge the licensing function.

5.2 Changes to Policy must be approved by Full Council.

6. Consultation

6.1 There has been no consultation in relation to the matters contained in this report due to the short implication time scale. Consultation on the fees will take place after review after the first year.

7. References to Corporate Plan

7.1 None

8. Implications

Financial Implications

**Name & Title: Jacqueline Van Mellaerts; Interim Chief Finance Officer
Tel & Email 01277 312829/
jacqueline.vanmellaerts@brentwood.gov.uk**

8.1 The guidance states that the cost of operating the licensing system should be cost neutral to the council. finance have reviewed the calculations and methodology and is satisfied that this has been met.

8.2 The fees and charges are set out in **Appendix A** and have been revised in line with The Animal Welfare (Licensing of Activities Involving Animals)

(England) Regulations 2018 which comes into force from 1st October 2018.

Legal Implications

Name/Title: Daniel Toohey, Head of Legal Services and Monitoring Officer

Tel/Email: 01277 312860 /daniel.toohey@brentwood.gov.uk

- 8.3 By virtue of Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the licensing of Animals, including the setting of fees is a Council function.

Regulation 13 of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 provides that an application for a licence must be accompanied by a fee set by the Council.

In setting a fee, the Council must have regard to any guidance issued by the Secretary of State. Specific guidance to the Regulations on setting the fees was published in July 2018.

The Council must also be mindful of the principles of the EU Services Directive (Directive 2006/123/EC of The European Parliament and of the Council of 12th December 2006 on services in the internal market) which states “a Licence fee can only be used to pay for the cost associated with the licensing process”.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.4 None

9. **Background Papers** (include their location and identify whether any are exempt or protected by copyright)

- 9.1 None

10. Appendices to this report

- Appendix A –Licence fees
- Appendix B – Scheme of delegation
- Appendix C - Procedure for the appeal of a risk rating score

Report Author Contact Details:

Name: Paul Adams, Joint Licensing Manager
Telephone: 01277 312503
E-mail: paul.adams@brentwood.gov.uk