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**TITLE: CHANGES TO ANIMAL WELFARE LICENSING**

**COMMITTEE: LICENSING COMMITTEE**

**DATE: 12 SEPTEMBER 2018**

**AUTHOR: SENIOR LICENSING OFFICER**

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1.0 PURPOSE OF REPORT

- 1.1 To inform Members of the forthcoming changes to the way in which animal boarding establishments, dog breeding establishments, pet shops and riding establishments are licensed.
- 1.2 To inform Members of the commencement of responsibility for the licensing of “the keeping or training of animals for exhibition”.
- 1.3 To ask Members to approve amendments to the existing Animal Licensing Policy to reflect the legal changes created by the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
- 1.4 To ask Members to approve amendments to the existing fee structure for animal welfare licensing to reflect the legal changes.
- 1.5 To ask Members to give delegated authority to the Monitoring Officer to make the necessary amendments to the Council’s Constitution to reflect the legal changes from 1<sup>st</sup> October 2018.

2.0 RECOMMENDATION(S)

- 2.1 That Members approve the proposed fee structure contained in **Table 3** to take effect from 1 October 2018.
- 2.2 That Members approve the draft version of the Animal Licensing Policy at **Appendix 1** to take effect from 1 October 2018.
- 2.3 That Members give delegated authority to the Monitoring Officer to make the necessary amendments to the Council’s Constitution (the Licensing Committee and Licensing Sub-Committee’s terms of reference and Officer Delegation table) to reflect the legal changes from the 1 October 2018 (**Appendix 2**).

3.0 BACKGROUND

- 3.1. The Council is at present 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 currently 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** (wild animals kept for exhibition to members of the public)\*
- **Dangerous wild animal licences** (certain types of wild animals kept for personal use)\*

\* Zoo licences and Dangerous wild animal licences are not affected by the new regulations coming into effect on 1 October 2018, and will not be discussed further.

3.2 The current number of licences issued by the Council are as follows:

**Table 1**

Licence Type	Number	Expiry
Kennels and catteries	14	31 December annually
Home boarding of dogs	10	31 December annually
Doggy day care	2	31 December annually
Pet shop	5	31 December annually
Riding establishment	5	12 months from grant
Dog breeding	12	12 months from grant

3.3. In addition to the licences issued by the Council, Cambs County Council Trading Standards are currently responsible for registering any performing animals based within the county. Trading Standards have advised Officers that they have four registered performing animal licence holders in our district.

3.4. Currently there are numerous pieces of legislation and secondary legislation that regulate the six licence types set out in paragraph 3.1. These are listed below:

- Animal Boarding Establishments Act 1963
- Breeding of Dogs Act 1973 and 1991
- Breeding and Sale of Dogs (Welfare) Act 1999
- Sale of Dogs (Identification Tag) Regulations 1999
- Breeding of Dogs (Licensing Records) Regulations 1999
- Dangerous Wild Animals Act 1976

- vii) Pet Animals Act 1951 and Pet Animals Act 1951 (Amendment) Act 1983
- viii) Riding Establishments Act 1964 and 1970
- ix) Zoo Licensing Act 1981
- x) Performing Animals (Regulation) Act 1925
- xi) Animal Welfare Act 2006

3.5 In addition to the legislation above, the Council approved an Animal Welfare Licensing Policy in 2016 which contains specific conditions based around model conditions issued by the Chartered Institute of Environmental Health (CIEH), and the now historic Local Authorities Coordinators of Regulatory Services (LACORS). Although based around the model conditions, the Council was permitted to tailor the policy and conditions to suit their local circumstances.

3.6 Inspections are conducted annually by an officer or, where legally required, a veterinary surgeon, and subject to a satisfactory inspection, the licence is renewed for a further twelve months.

3.7 The Animal Welfare Act 2006 allowed the Department for the Environment, Food and Rural Affairs (DEFRA) to pass regulations that could repeal or amend any of the primary licensing Acts or create new forms of licences. In April 2018 DEFRA exercised this power and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 ("2018 Regulation") were passed by Government. This new law will take effect on 1 October 2018. The following pieces of legislation have been repealed or amended by the 2018 Regulation, so as to no longer have effect in England:

- i) Animal Boarding Establishments Act 1963
- ii) Breeding of Dogs Act 1973 and 1991
- iii) Breeding and Sale of Dogs (Welfare) Act 1999
- iv) Pet Animals Act 1951 and Pet Animals Act 1951 (Amendment) Act 1983
- v) Riding Establishments Act 1964 and 1970
- vi) Performing Animals (Regulation) Act 1925

3.8 All current licence holders were invited to a meeting on 3 August 2018 at the Council so Officers could give them a presentation of the new rules, and answer any queries they had.

#### 4.0 SUMMARY

4.1 The 2018 Regulation introduced the following:

- i) All activities to be covered by one licence, where more than one activity occurs on a premises, such as dog boarding and breeding.
- ii) Up to three year licence durations, and the 31 December fixed renewal date has been removed where previously present.
- iii) Council discretion to set conditions has been removed. All conditions are now statutory.

- iv) Performing animal licensing has been transferred to District Councils from County Councils.
- v) Statutory guidance for each specific licensable activity has been introduced, as well as statutory procedural guidance that officers must have regard to.
- vi) New definitions of what is, and what isn't a licensable activity.
- vii) A new star rating scheme (based on standards of welfare and risk).
- viii) The right for Councils to suspend, vary or revoke licences.
- ix) Obligatory training for all inspecting officers.

4.2 Items i) to v) above are self-explanatory, but the following paragraphs give a brief overview of the items listed as vi) to ix) above.

#### 4.2.1 Definitions of licensable activities

##### 4.2.1.1 Pet Shop

- 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

##### 4.2.1.2 Animal Boarding

- 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 by:
  - i) Providing boarding for cats;
  - ii) Providing boarding in kennels for dogs;
  - iii) Providing home boarding for dogs;
  - iv) Providing day care for dogs.

##### 4.2.1.3 Riding Establishment

- Hiring out horses in the course of a business for either riding, instruction in riding, or both.

##### 4.2.1.4 Dog Breeding

- Breeding three or more litters of puppies in any 12-month period; or breeding dogs and advertising a business of selling dogs.

##### 4.2.1.5 Performing Animal

- 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.

## 4.2.2 Star rating scheme

- 4.2.2.1 The star rating is worked out by assessing the welfare standards and the risk level of the premises in question. Where a premises has more than one activity, the lowest star rating is the one set for the whole establishment.
- 4.2.2.2 The number of compulsory inspections is determined by the star rating.
- 4.2.2.3 Establishments with less than 3 years trading history are classed as high risk and are not entitled to receive more than 4 stars.
- 4.2.2.4 Each piece of specific activity guidance has standards and higher standards, and the higher standards are split into compulsory and optional. In order to be considered as meeting the higher standards, a licence holder must meet all of the compulsory higher standards and a set number (50%) of the optional higher standards.
- 4.2.2.5 Ratings are assessed:
- at the point of initial or renewal inspection, or
  - at any other point in time, if requested by the licence holder, or
  - following an unannounced or additional inspection.
- 4.2.2.6 The licence holder has a right of appeal to the Licensing Authority, but ultimately if they do not agree with the rating they can seek a judicial review.
- 4.2.2.7 The rating must be displayed on the licence, and the licence must be clearly and prominently displayed on the premises.
- 4.2.2.8 **Table 2** on the following page explains the link between rating and licence duration.

**Table 2**

Scoring Matrix		Welfare Standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low Risk	<b>1 Star</b>  1yr licence  Min 1 unannounced visit within 12 month period	<b>3 Star</b>  2yr licence  Min 1 unannounced visit within 24 month period	<b>5 Star</b>  3yr licence  Min 1 unannounced visit within 36 month period
	Higher Risk	<b>1 Star</b>  1yr licence  Min 1 unannounced visit within 12 month period	<b>2 Star</b>  1yr licence  Min 1 unannounced visit within 12 month period	<b>4 Star</b>  2yr licence  Min 1 unannounced visit within 24 month period

#### 4.2.3 Suspension, Variation and Revocation

4.2.3.1 The new rules allow the Council to suspend, vary or revoke a licence. There is a right of appeal to the First Tier Tribunal over any such decision made. Full reasons must be given, but the decision can be made by Officers, subject to the Council’s scheme of delegation permitting this.

#### 4.2.4 Officer training

4.2.4.1 A new requirement has been introduced for all inspecting officers to be suitably qualified. This is defined as:

- a) Any person holding a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulation which oversees the training and assessment of persons in inspecting and licensing animal activities businesses, confirming the passing of an independent examination. A person is only considered to be qualified to inspect a particular type of activity if their certificate applies to that activity, or;
- b) Any person holding a formal veterinary qualification, as recognised by the Royal College of Veterinary Surgeons (“RCVS”), together with a relevant RCVS continuing professional development record, or
- c) Until October 2021, any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses.

4.2.4.2 The Council's Licensing Officer and Senior Licensing Officer are able to fulfil the requirements of c) above, but it will be necessary for at least one officer to be trained to the standard required by a) above before October 2021. Early indications suggest a minimum cost of £1,000 is expected for such a qualification.

#### 4.3 Fees

4.3.1 The ability for licences to last up to three years, and the fact that the duration of a licence is assessed at the point of initial inspection (which is only commenced after an application is submitted), means that our current fee structure will no longer be fit for purpose from 1 October 2018.

4.3.2 The 2018 regulation states:

(1) A local authority may charge such fees as it considers necessary for:

- (a) the consideration of an application for the grant, renewal or variation of a licence including any inspection relating to that consideration, and for the grant, renewal or variation,
- (b) 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 in sub-paragraph (a) including any inspection relating to that consideration,
- (c) the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator, and
- (d) the reasonable anticipated costs of compliance with regulation 29.

(2) The fee charged for the consideration of an application for the grant, renewal or variation of a licence and for any inspection relating to that consideration must not exceed the reasonable costs of that consideration and related inspection.

4.3.3 It is envisaged that administering this new law will take more time, and therefore more resource consuming than the current system. However, it is impossible at this point in time to predict the exact level of this extra demand. The one definite is that it will not lower the amount of resources required, even with some licences no longer requiring compulsory annual inspections.

4.3.4 **Table 3** on the following page is based around the cost recovery fees currently charged. These fees have then been adjusted to take into account the impact of the need for fewer inspections and renewals to those licence holders who are assessed as being 3, 4 or 5 star establishments. The fees for multiple year licences have a nominal budget inflationary adjustment of 2% per annum built in to the maintenance fee columns.

- 4.3.5 The proposed fees also reflect the ability for licence holders to request re-inspections for re-rating or variation purposes. This has been separated from the overall licence fee in order to ensure that the cost of these optional inspections is carried by the premises requesting them, and not the trade as a whole.
- 4.3.6 Where licensable animal activities are taking place under a primary authority partnership such as that set up between The Pet Industry Federation and The City of London Corporation, it is possible for a franchise holder to obtain a licence to arrange boarding for dogs and/or cats, but 'hosts' they use may not have to. For example, a licence can be held at a premises to home board dogs but no dogs are boarded there, instead 'hosts' at different locations board dogs on behalf of the licence holder and the owner of the dog. In such circumstances, it is necessary to reflect the fact that these hosts will need to be inspected either by the home authority or the authority where the host is based to ensure suitability.

For this reason, "boarding arrangers" will be charged based on the number of hosts they have upon initial application, and the licence holder will be required to pay the variation fee per additional host they use. Where the new host is located outside of the East Cambridgeshire District Council area, the fee payable would be home authority's published inspection fee, as this is the fee the Council itself would be charged to have the inspection carried out.



4.3.6 The following table sets out a fees proposal that reflects the legal changes mentioned above:

**Table 3**

Licensable Activity		Application fee	Initial rating or re-rating inspection fee	Maintenance fee			Variation of a licence requiring a re-inspection	Copy of licence, change of details not requiring an inspection
				1 yr	2 yr	3 yrs		
Boarding of animals	Up to 10 animals	£48.00	£72	£218	£440	£666	£72	£10.50
	11 to 30 animals		£96				£96	
	31 to 60 animals		£120				£120	
	61 to 99 animals		£144				£144	
	100+ animals		£168				£168	
Dog Breeding	N/A		£24 + VET fee				£24 + VET fee	
Hiring of Horses	N/A		£24 + VET fee	£24 + VET fee				
Selling Animals as Pets	N/A		£120	£120				
Exhibiting Animals	N/A		£72	N/A	N/A	£666	£72	

Where an animal welfare establishment conducts more than one licensable activity on the same site, only one application fee will be payable, however, the total fee chargeable will be calculated by adding the combined charges of the activity with the highest fee to 50% of the applicable maintenance fee for the additional activities.

Example 1: An establishment with boarding for 50 dogs & 10 cats, where they also breed dogs in a 5 star rated premises the total fee will be: £1,191.00 (£48 + £120 + £24 + £666 + £333) in total for a three year licence + the legally required VET inspection fee for the breeding part of the business which will be paid directly to the veterinary surgeon.

Example 2: A boarding arranger rated at 4 stars, who uses five host premises all with a capacity less than 10 animals in the ECDC area will be required to pay: £848.00 (£48 + (5 x £72) + £440) in total for a two year licence. Where a host is located outside the ECDC area, the inspection fee will be the home authority's published inspection fee.

## 5.0 IMPLICATIONS

- 5.1 Implementing the new law is compulsory, but it is likely that some licence holders may not meet the minimum standards required from day one.
- 5.2 The new star rating scheme determines the length of licence for all but performing animal licensing, which in turn determines the number of inspections that need to be undertaken. The current fee takes into account the time taken to conduct one annual inspection, as well as the administration time to process the application, and a relevant portion of the general running costs of the service for a fixed period (12 months in most cases). As the new rules allow licences to last for longer periods of time, our fee structure will need amending, as explained in paragraph 4.3 of this report.
- 5.3 Where the Council considers that the new conditions and/or guidance notes are not adequate, or are unclear, it is not possible to amend them. Officers believe there are a number of conditions that are unclear, and have asked DEFRA for clarification.

## 6.0 FINANCIAL IMPLICATIONS

- 6.1 The legal changes have had to have an impact on the fees set by the Licensing Authority, as in some cases an annual inspection will not be required, and no annual renewal process will be required. Therefore, it would be unlawful to charge for such items. Overall, it is expected that despite some individual licence holders requiring fewer inspections and renewals, administering the new rules is going to take more resource than that currently used, although it is impossible to say by exactly how much. The fees in paragraph 4.3 have been adjusted to reflect the new law based on current information. Depending upon how resource intense administering the new law turns out to be, the maintenance part of the fee may need to be adjusted up or down in future years.
- 6.2 Depending on the number of operators attaining 3, 4 or 5 stars, the total income from animal welfare licensing will decrease between a total of £1,000 and £6,000 over the first three year period.
- 6.3 There is no option to have a one, two or three year licence (as the star rating determines the length of the licence). This means that existing licence holders deemed to be 3, 4, or 5 star establishments will be required to pay a larger upfront sum than in previous years. Although these licences will ultimately be cheaper, finding this larger sum of money upfront may be problematic for some.

## 7.0 CONCLUSION

- 7.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 is the single biggest amalgamation of multiple licence types since the Licensing Act 2003. It has replaced six key pieces of controlling legislation, and has introduced a number of new procedural changes including,

statutory conditions, formal officer training, a star rating scheme, and multi-year licences.

7.2 In order to fulfil the Council's statutory duties under the new law, it is essential that:

- i) the existing policy is amended to reflect the new rules;
- ii) the fee structure is amended to reflect the new rules;
- iii) the Council's Constitution is amended to reflect the change of legislation, and to ensure that the Licensing Committee and Licensing Sub-Committee terms of reference are accurate, and the Officer scheme of delegation is amended to enable efficient administration of the new rules.

7.3 It is not clear what the true impact of this new law will be on the Licensing Authority's resources, and whether the existing resources we have available to us will be sufficient to absorb the expected work levels. Officers will analyse this as the new law settles into place, and report back to Members at a future meeting.

7.4 It is also unfortunately the case that very poor information has been provided by DEFRA, and despite contacting representatives of DEFRA to seek clarification on key parts of the new legislation, no firm answers have been received. Due to this it is entirely possible that certain parts of the policy, and fee structure may have to be amended at some point in the near future.

7.4 An Equality Impact Assessment (EIA) has not been completed for this report item, as the recommendations are due to legislative changes.

## 8.0 APPENDICES

8.1 Appendix 1            Animal Welfare Policy

8.2 Appendix 2            Amended terms of reference and officer delegation amend

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**Background Documents****Location****Contact Officer**

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

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Animal Welfare Act 2006

Procedural guidance for animal activity licensing 2018