

<b>3 October 2018</b>		<b>ITEM: 5</b>
<b>Licensing Committee</b>		
<b>Changes to Animal Welfare Licensing</b>		
<b>Wards and communities affected:</b> All		<b>Key Decision:</b> Key
<b>Report of:</b> Paul Adams – Joint Licensing Manager		
<b>Accountable Head of Service:</b> Andy Millard – Assistant Director of Planning, Transportation and Public Protection.		
<b>Accountable Director</b> Steve Cox Director of Place.		
<b>This report is:</b> Public		

### **Executive Summary**

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.

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.

The Animal Welfare (Licensing of Activities Involving Animals) Regulations came into force on 1 October 2018 and requires the Council to have in place procedures (together with fees and charges) for the new licensing system.

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.

## 1. Recommendation(s)

### 1.1 That the Licensing Committee Recommends to Full Council:

- a) 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 1 for the period from 1<sup>st</sup> October 2018.
- b) To approve the procedure for determining an appeal against a risk rating following the inspection/renewal of an operator as set out in Appendix 3.

### 1.2 To note the scheme of delegation as set out in table 2 of Appendix 2

## 2. Introduction and Background

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)
- **Performing Animals Registration** ( any person exhibiting or training performing animals)

2.2 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.

2.3 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.

- 2.4 To understand the significance of animal welfare licensing within the Thurrock, so far in 2018/19, the Council have issued 47 licences detailed as follows:
- 36 animal boarding establishment licences
  - 3 dog breeding establishment licence
  - 7 pet shop licences
  - 1 Riding establishment licences
  - 0 Performing Animal Registrations.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 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.
- 2.10 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.

- 2.11 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.
- 2.12 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.

### **3. Issues, Options and Analysis of Options**

- 3.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force from 1 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.
- 3.2 The key changes introduced will require that all businesses undertaking the activities set out in paragraph 3.1 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.
- 3.3 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.
- 3.4 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 3.8. 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.

- 3.5 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.
- 3.6 Any licences issued under the existing licensing regimes not expired from the 1 October 2018 will continue to be in force for the duration of the terms of the licence under the relevant Act.
- 3.7 Any registration of a person under the Performing Animals (Regulation) Act 1925 will continue in force, for six months from 1<sup>st</sup> October 2018.

### **3.8 Risk rating**

- 3.8.1 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.
- 3.8.2 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.
- 3.8.3 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.
- 3.8.4 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.
- 3.8.5 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.
- 3.8.6 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.

### **3.9 Risk rating appeals**

- 3.9.1 The procedure for accepting an appeal is set out within **Appendix 3** 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.
- 3.9.2 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.
- 3.9.3 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.
- 3.9.4 Licences which must be displayed to the public as part of the Licensing process will indicate the businesses risk rating.
- 3.9.5 Statutory guidance issued by the Secretary of State encourages the Council to publish a business's risk rating on the Council's website

### **3.10 Fees**

- 3.10.1 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.
- 3.10.2 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.
- 3.10.3 Any fees charged must not exceed the reasonable costs of that consideration and related inspection.
- 3.10.4 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.

3.10.5 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.

3.10.6 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’.

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

3.10.8 The fees will be split into 2 distinct parts;

- Application fee
- Grant fee

3.10.9 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.

3.10.10 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.

3.10.11 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.

3.10.12 The cost of varying a licence or revaluating 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.

### **3.11 Scheme of delegation**

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

### 3.13 Officer delegations

- 3.13.1 The function of the Grant or renewal of a licence to carry on a licensable activity will be delegated to officers via the Assistant Director with responsibility for the licensing function.
- 3.13.2 The function of transferring a licence in the event of the death of a licence holder will be delegated to officers via the Assistant Director with responsibility for the licensing function.
- 3.13.3 The function of the suspension, variation or revocation of a licence will be delegated to officers via the Assistant Director with responsibility for the licensing function.
- 3.13.4 The function of the service of a Notice under the Regulations will be delegated to officers via the Assistant Director with responsibility for the licensing function.
- 3.13.5 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 Assistant Director with responsibility for the licensing function.

### 3.14 Committee delegation

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

### 3.15 Council delegation

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

## **4. Reasons for Recommendation**

- 4.1 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.
- 4.2 Changes to Policy must be approved by Full Council.

## **5. Consultation (including Overview and Scrutiny, if applicable)**



- 4.1 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.

**6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 None

**7. Implications**

**7.1 Financial**

Implications verified by: **Laura Last**  
**Management Accountant**

The guidance states that the costs of operating the licensing system should be cost neutral to the Council.

**7.2 Legal**

Implications verified by: **Simon Scrowther**  
**Principal Solicitor - Litigation & Employment**

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 12<sup>th</sup> 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”.

**7.3 Diversity and Equality**

Implications verified by: **Becky Price**  
**Team Manager - Community Development and Equalities.**

No negative equality impacts have been identified should the recommendations of this report be agreed by Licensing Committee.

**7.4 Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None

**8. Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None

**9. Appendices to the report**

- Appendix 1 –Licence fees
- Appendix 2 – Scheme of delegation
- Appendix 3 - Procedure for the appeal of a risk rating score

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## Appendix 1 – Fees

Table 1: Proposed fees for the period 1 October 2018 to 31<sup>st</sup> March 2019

Licence Activity	Application Fee	Grant Fee	Additional costs to applicant	Total Fee
Animal Boarding	£280.00	£75.00	N/A	£355.00
Selling animals as pets	£280.00	£75.00	N/A	£355.00
Dog Breeding	£280.00	£75.00	Vets fees for inspection on application	£355.00 (plus vets fees)
Hiring out horses	£280.00	£75.00	Vets fees for inspection on application and throughout licence period	£355.00 (plus vets fees)
Keeping Animals for Exhibition	£280.00	£75.00	N/A	£355.00
Combination of activities	£280 plus £140 per activity	£75.00 per activity	Vets fees where required (as above)	£355.00 plus £215 per activity
Variation to licence/re-evaluation of rating <ul style="list-style-type: none"> <li>Animal Boarding</li> <li>Selling animals as pets</li> <li>Keeping Animals for exhibition</li> </ul>	£85.00	N/A	£137.00 for inspection	£222.00
Variation to licence/re-evaluation of rating <ul style="list-style-type: none"> <li>Dog breeding</li> <li>Hiring out horses</li> </ul>	£85.00	N/A	£137.00 for inspection plus any Vets fees	£222.00 (plus vets fees)
Appeal (all licences)	£137.00 for inspection	N/A	Inspection fee refunded if appeal upheld	£137.00
Variations to reduce the licensable activities or numbers of animals	£85.00	N/A	N/A	£85.00
Transfer of licence	£85.00	N/A	N/A	£85.00

## Appendix 2 – Scheme of delegation

Table 2: Scheme of delegation Animal Welfare Licensing

<b>Matter to be dealt with</b>	<b>Council</b>	<b>Licensing Committee</b>	<b>Licensing Sub Committee</b>	<b>Officers</b>
Grant or renewal of a licence to carry on a licensable activity				Assistant Director
Transfer of a Licence in the event of the death of a licence holder				Assistant Director
Suspension, variation or revocation of a licence				Assistant Director
Receipt of representations against the suspension, variation or revocation of a licence			In all cases	
Appeal of a risk rating score				Joint Licensing Manager or Environmental Health Manager (Food, Health & Safety and Licensing)
Service of a Notice				Assistant Director
Setting of fees and charges	In all cases			
Appointment of suitably qualified inspectors				Assistant Director
Adoption of policy	In all cases			

### **Appendix 3 – Procedure for the appeal of a risk rating score**

- 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.
- This process will not be relevant in the case where a business has made improvements following a risk rating awarded at an inspection. In this case the business should request a re-inspection. (See re-inspection section below)
- Before submission of an appeal, businesses will be encouraged to discuss their intention to make an appeal with the inspecting Officer before a formal written appeal submission is made. The 'inspecting Officer will explain how the rating was awarded which may help resolve the need for a formal appeal.
- In the event a business is still not satisfied with the risk rating score following an informal discussion with the inspecting Officer the business can submit a formal appeal in writing to the authority.
- Appeals will not be accepted after 21 days from the date the licence is issued. In this case businesses should be mindful to submit an appeal at the earliest possible opportunity with a view that should informal discussions with the inspecting Officer be productive, the appeal can be withdrawn.
- An appeal will be determined by the Joint Licensing Manager being the person responsible for the licensing function. In the event the Joint Licensing Manager is unavailable, or has had an involvement in the rating being appealed, an appeal will be determined by the Environmental Health Manager responsible for the food, Health & Safety and Licensing function. The inspecting Officer will not be involved in the process.
- The Council will consider an appeal within 21 days of receipt and provide a response to the business in writing within that time.
- The appeal assessment will be based on the paperwork completed by the inspecting Officer (inspected to include the relevant activity specific inspection proforma and risk rating) any premises history including compliance history, any documentation that supports the business and other useful material. A further visit to the business may be required but will not be a requirement of the process.
- There is no cost of submitting an appeal. In the case where the appeal is upheld and the original rating remains the same or lowered, should the need for an inspection be required, the cost of that inspection will be recovered.
- In the event that a business disagrees with the outcome of an appeal, there is a further right of challenge by means of a judicial review. In the event that a business feels that the service provided by the Council has not been

delivered properly, a complaint can be made in the first instance through the Council's complaint procedure and finally through the Local Government and Social Care Ombudsman. The Council's complaints procedure should not be used as another means of disputing a rating unless there is a clear link between the rating issued and a failure of the Council decision making when setting the rating.

#### Re-evaluation of rating

- Businesses will be able to request a re-inspection for the purposes of re-evaluating an issued star rating. A request can be made using the dedicated Animal Welfare Rating Scheme: Request for a re-inspection visit form.
- The business, should outline the case for re-inspection and should indicate the actions that have been taken by the business to improve the level of compliance or welfare since the inspection. If appropriate supporting evidence can be provided, however the case should relate to the actions the Council advises the business should be made in order to receive a higher rating.
- A re-inspection can be refused in the event the Council feels the request made has not been substantiated or there is insufficient evidence. In this case the Council will explain the reasons for a refusal and will reiterate the steps the business needs to take before a re-inspection will take place. In the event the business is not satisfied with this approach a complaint can be made via the Council's complaint procedure.
- The Council will never issue a new rating based solely on documentary evidence. A re-inspection visit will always be made.
- The Council will make a judgement as to whether a re-inspection visit will be announced or unannounced. It will be usual practice to undertake an announced visit unless the purpose of a re-inspection is to ensure that standards which are not procedural are being maintained.
- A re-inspection visit will not just focus on the grounds for the requested re-inspection and will always include an assessment of the ongoing standards seen at the time.
- A request for re-inspection will apply in the case where a business has been awarded a rating between 1-4 stars, where the rating has been accepted, and where the business has made the necessary improvements to address non-compliance raised at the previous inspection.
- A cost for a re-inspection will be required.
- It must be noted that a re-inspection could lead to a lower rating.

- A re-inspection request visit will be made within 3 months of receipt of a request. Where this does not occur, the business holder has the right to make a complaint in accordance with the Council's complaint procedure.
- A business is not limited to the number of re-inspection visits it can request, however a re-inspection fee will apply in each case.