

REGULATORY COMMITTEE
19 JUNE 2020

ANIMAL WELFARE LICENSING POLICY

Cabinet Member(s): Cllr Dennis Knowles (Community Well Being)
Responsible Officer: Simon Newcombe, Group Manager for Public Health & Regulatory Services

Reason for the report: on 1 October 2018 changes to the licensing of animal boarding establishments, dog breeding establishments, pet shops and riding establishments were introduced. The Council also took on the responsibility for the licensing of 'keeping animals for exhibition'.

As a result, the Licensing Officers within Public Health and Regulatory Services have drafted and consulted on an Animal Welfare Licensing Policy. This report seeks to inform the Committee of the result of this consultation and puts forward a policy to adopt.

RECOMMENDATION: The Regulatory Committee recommends to Full Council that the draft Animal Welfare Licensing Policy (attached in Annex 1 of this report) be adopted.

Financial Implications: All fees for animal related licences have been set already, calculated on a cost recovery basis and will be reviewed regularly. The fees payable for specific premises are dependent on the length of licence granted, which is, in turn, dependent on the risk rating of the premises. In general, the lower risk the premises is, the longer the licence will be granted for.

The animal licensing scheme falls within the definition of 'services', and is subject to the EU Services Directive, incorporated in to UK law as the Provision of Services Regulations 2009.

The fees are therefore split into two parts; Part A and Part B. Part A is the application fee, which is payable on submission and covers the cost of considering and processing the application. Part B is the licence fee, payable by successful applicants to cover the costs of ongoing enforcement and compliance requirements.

Budget and Policy Framework

There are no direct budget implications of this policy. Indirectly, matters relating to fees for licenses as relevant to the internal budget and external financial regulatory compliance are discussed under Financial Implications above and within the report. The policy implications are as set out under Legal Implications below and also within the body of the policy itself (as determined by the statutory framework).

Legal Implications: The regulations and guidance issued by DEFRA set out the activities which must be licensed, who may apply for a licence and how the Council

must determine applications for a licence. The regulations also set out the conditions which must be applied to any licence granted.

The relevant legislation can be found here:

<https://www.legislation.gov.uk/ukdsi/2018/9780111165485>

The relevant DEFRA guidance can be found here:

<https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities>

Should the Council refuse to grant or renew a licence (or revoke or vary an existing license), the applicant may appeal to a First-tier Tribunal. This must be done within 28 days of the decision.

The statutory guidance issued by DEFRA requires the Council to provide an appeal process to enable applicants to challenge the star rating they are given. The guidance sets out the timescales for this and the level of officer who should deal with the appeal. If a business is still dissatisfied, they can challenge the appeal outcome by way of judicial review. Licence holders can also pay for a re-inspection when they have carried out improvements, which could lead to a higher star rating being issued.

The adoption of a specific licensing policy will assist the Council in carrying out its functions under the regulations in a fair and transparent way.

Risk Assessment: It is not a statutory requirement for a Council to have an Animal Welfare Licensing Policy. However, doing so has a number of benefits. For example, some of the decisions that the Council may make will have a right of appeal against them and a Policy will help to ensure consistency and can be used to help justify any action that is taken.

Equality Impact Assessment: The general public sector equality duty within the Equality Act 2010 has overarching application and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity within and between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

When carrying out any of its functions, the Council will comply with this duty in the general application of all its licensing duties. There are however no direct equality implications arising from the policy itself.

Relationship to Corporate Plan: none

Impact on Climate Change: None directly arising from the report or attached policy.

Consultation: The Council consulted on the draft Policy from 18 November 2019 until 31 January 2020. Further information on this is provided in section 3 of this report.

1.0 Background

1.1 Before 1 October 2018, the Council was responsible for the regulation of a variety of animal related businesses. These were:

- **Animal boarding establishments** - For businesses accommodating dogs or cats e.g. kennels, catteries, home boarders, dog day care.
- **Dog breeding establishments** - Premises used for, or in connection with, the commercial breeding of dogs.
- **Pet shops** - Any business which keeps animals with a view to selling them as pets.
- **Riding establishments** - Premises which keep horses and ponies for hire for riding, or for riding tuition (excluding livery stables).
- **Zoos** - An establishment where wild animals are kept for exhibition to the public (otherwise than for the purposes of a circus and in a pet shop)
- **Dangerous Wild Animals** - A licence which enables the keeping of an animal considered wild, dangerous or exotic. A full list of the animals that need to be covered by such a licence can be seen here: <http://www.legislation.gov.uk/ukxi/2007/2465/schedule/made>

1.2 Before 1 October 2018, numerous pieces of legislation (and secondary legislation) regulated the six licence types set out above. Additionally, Councils were able to adopt and implement their own specific conditions which meant that the process of applying for a licence (and subsequent compliance requirements) varied around the Country. This led to uncertainty and confusion, especially when applicants had businesses in other areas (or experience of running businesses in other areas).

1.3 Additionally, all of the licences were standalone, meaning that if a business wanted to offer two or more of the licensed activities then they would have to apply for two separate licences.

1.4 In addition to the licenses set out in Paragraph 1.1, it should also be noted Devon County Council was previously responsible for the registration of 'performing animals' within Mid Devon.

- 1.5 The Animal Welfare Act 2006 introduced a new licensing power which enabled nationally set regulations to be made for any animal related activities. As a result, the *Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018* were published, which significantly changed the way animal related businesses are inspected and licensed. The regulations came into force on 1 October 2018.
- 1.6 It is important to note that the new regulations do not change anything related to the licensing of dangerous wild animals and zoos. These premises are still licensed by Mid Devon District Council as they have previously been under their respective legislation.
- 1.7 Local Authorities are not required by law to have an Animal Welfare Policy but the Licensing Team believe that, for a number of reasons, it is beneficial to have one. The draft Policy is attached as Annex 1. It contains some proposed amendments (via tracked changes) and more information on this is provided later in this report.

2.0 Changes to animal related licensing

- 2.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the Regulations”) define the animal based activities that require licences as follows:
- **Selling animals as pets** (or with a view to their being later resold as pets) in the course of a business i.e. with the intention of making a profit or earning a commission
 - 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 dogs and advertising a business of selling dogs**; or breeding three or more litters of puppies in any 12-month period
 - **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.
- 2.2 The first significant change is that all four existing types of licence, together with the additional activity of keeping and training animals for exhibition (which is brought over from Devon County Council), will be covered by one new ‘**Animal**

Activity licence. If an applicant is running more than one type of activity, each activity will be assessed separately and set out in the one licence. The length of licence (previously one year in most cases) may now be anything between one and three years, and is dependent on the type of licence being applied for and the outcome of the inspection.

- 2.3 Unlike the previous legislation, conditions are no longer set locally. The Regulations include a set of minimum 'general' conditions for a range of issues, including record keeping, types and numbers of animals, staffing, maintaining a suitable environment and diet, monitoring behaviour, handling of the animals, protecting the animals from pain, suffering, injury and disease and dealing with emergencies. Each specific animal activity then has its own set of more detailed conditions, tailored to that particular activity.

Inspection Process

- 2.4 In the past, an inspection of the premises has been carried out by a member of the Council's Licensing Team and there was no requirement for this person to have any particular qualification. However, the new regulations now require a 'qualified inspector' to carry out inspections. Additionally, and specifically for new dog breeding establishments and new (and renewal) horse riding establishments, inspections must be completed by, or include, the involvement of a veterinary surgeon.
- 2.5 To qualify to inspect premises a person must now hold a Level 3 certificate granted by a body recognised and regulated by the Office of Qualifications and Examinations Regulations (Ofqual). It should be noted that a qualified veterinary surgeon is automatically able to carry out inspections.
- 2.6 Transitional powers are in place meaning that up until October 2021, any person that can show evidence of at least one year of experience in animal licensing (and inspecting animal activities businesses) can continue to undertake this work. After that time, the requirements set out in Paragraph 2.5 will need to be met. At the time of writing this report, two Licensing Officers have successfully completed the training and examination for the required Level 3 Certificate. They are currently completing the final stage work-based portfolio which is planned for completion at the end of 2020.
- 2.7 Under the new arrangements, the inspection process will be much more comprehensive, and built around providing the premises with a 'risk rating'. This process will establish whether the business is 'lower risk' or 'higher risk' based on the standards set out in the regulations and guidance. The risk rating will then result in a 'star rating', where the premises will be awarded between one and five stars. This in turn will determine the length of the licence (with the exception of *'Keeping and Training Animals for Exhibition'*, where all licences must be issued for 3 years). The star rating which a premises received will then be displayed on the licence.

- 2.8 As documented in the draft policy, operators of businesses will be able to appeal their risk rating, or request a reassessment if they have made improvements.

Suitable Applicants

- 2.9 Any individual who carries on a licensable activity will be designated as the operator of the business, and can apply for a licence providing they are not disqualified from holding a licence (in accordance with the regulations).
- 2.10 In order to ensure that an individual has not been disqualified from holding a licence, the Council has drafted a policy setting out the criteria which will ensure that only suitable applicants are granted a licence. This includes requiring an applicant to provide a basic disclosure (DBS) certificate.
- 2.11 The draft policy also states that a licence will only be granted if the Council is satisfied that the licence conditions will be met. In considering this, the Council will take into account whether the applicant is a fit and proper person to be the 'operator'. The term 'fit and proper' is not defined in the legislation or guidance but the draft policy states that the Council will consider a 'fit and proper person' to be an individual who can demonstrate upon application that they have:
- the right to work in the UK
 - no relevant convictions
 - not been disqualified from holding a licence
 - the knowledge, experience, compliance history (if applicable) and ability to comply with licence conditions and safeguard the welfare of animals in their care
 - made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licensed activity.

3.0 Consultation

- 3.1 The draft Policy originally consulted on is attached as Annex 1. The tracked changes it includes reflect subsequent amendments that are, in part, made in response to comment(s) received during the consultation period.
- 3.2 The Council consulted on the draft Policy from 18 November 2019 until 31 January 2020. Emails and letters providing details of the draft policy were sent to the following parties:
- All existing animal related licence holders within Mid Devon
 - RSPCA
 - DEFRA
 - Trading Standards

- 3.3 A notice advertising the consultation was also placed in the reception area of Phoenix House, Tiverton, on the Council's website and via its social media account. Additionally, an item was placed in the Council's Weekly Information Sheet (WIS) to notify Members.
- 3.4 Five responses were received to the consultation. One was from the RSPCA and four were from establishments that hold animal related licences with the Council already.
- 3.5 The relevant sections of responses, along with Officer Comments to each, is attached as Annex 2.
- 3.6 The proposed Policy for adoption (complete with tracked changes following consultation) is attached as Annex 1.

4.0 Summary of options

- 4.1 The Committee have the following options:
- a) Recommend to Full Council the adoption of the Policy attached as Annex 1;
 - b) Recommend to Full Council the adoption of a modified Policy; or
 - c) Make no recommendation to Full Council

5.0 Recommendation

- 5.1 The Regulatory Committee recommends to Full Council that the draft Animal Welfare Licensing Policy (attached in Annex 1 of this report) be adopted.

Contact for any more information:

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Background papers:

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 - <https://www.legislation.gov.uk/ukdsi/2018/9780111165485>

Animal activities licensing: guidance for local authorities (DEFRA) - <https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities>

Animal Welfare Licence Fees - A Practical Guide to Fee Setting (Non Statutory Guidance) - <https://www.local.gov.uk/animal-welfare-licence-fees-practical-guide-fee-setting-non-statutory-guidance>.