

COMMITTEE: COUNCIL

REF NO: E/18/13

DATE: 28 NOVEMBER 2018

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

PORTFOLIO HOLDER: COUNCILLOR A ROSS

HEAD OF SERVICE: IAN BLOFIELD

Short description of report content and the decision requested:

This reports details the introduction of new regulations relating to the licensing of activities involving animals and the revision in the licensing regime to comply with the new regulations. The report outlines some significant changes and requests approval for the Operations Manager to appoint 'authorised inspectors', to delegate powers to consider appeals against 'Star' ratings and to approve the Table of Fees

Ward(s) affected:

All

List of Appendices included in this report:

Appendix 1 - Table of Proposed Fees for Licensing of Activities involving Animals (from 1st October 2018)

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This report was prepared after consultation with:

Internal consultees:

Legal Services

Head of Service

Financial Services

External consultees: none

The following policies form a context to this report:

(all relevant policies must also be referred to in the body of the report)

Building a Better Ipswich 2017

LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

(papers relied on to write the report but which are not published and do not contain exempt information)

OTHER HELPFUL PAPERS

(papers which the report author considers might be helpful – this might include published material)

Guidance Notes Issued under the Animal welfare (Licensing of Activities Involving Animals (England) Regulations 2018:

- Guidance notes for conditions on breeding of dogs;
- Guidance notes for conditions for providing boarding for cats;
- Guidance notes for providing home boarding for dogs;
- Guidance notes for conditions for providing boarding in kennels for dogs;
- Guidance notes on providing day care for dogs;
- Guidance notes for conditions for selling animals as pets;
- Guidance notes for conditions for keeping or training animals for exhibition;
- Guidance notes for conditions for establishments hiring out horses

The above Guidance Notes can be accessed via our website:

<https://www.ipswich.gov.uk/content/animal-licensing>

1. Introduction

- 1.1 Following a review of the laws concerning animal welfare, the Department for Environment Food & Rural Affairs (DEFRA) has combined several different pieces of historical legislation into one set of regulations made under the Animal Welfare Act 2006.
- 1.2 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into effect on 1 October 2018.
- 1.3 This report details the changes that come into effect with these regulations and a revision to the licensing regime to enable compliance with them.
- 1.4 The Council is requested to approve the proposed licensing regime including modifications to the Scheme of Delegation, appointment of “authorised inspector(s)” under the 2006 Act and associated application fees.

2. Background

- 2.1 Prior to the 2018 Regulations the Council was responsible for licensing activities established under 6 separate pieces of legislation:
 - a) Animal Boarding Establishments (businesses offering accommodation to dogs or cats) - Animal Boarding Establishments Act 1963;
 - b) Breeding Establishments (Commercial Breeding of Dogs) – Breeding of Dogs Act 1973 , as amended;
 - c) Pet Shop Licences – Pet Shops Act 1951;
 - d) Riding Establishment Licences (premises that keep horses and ponies for hire for riding or tuition but not liveryes) – Riding Establishments Act 1970;
 - e) Zoo Licences – Zoo Licensing Act 1981;
 - f) Dangerous Wild Animal Licences – Dangerous Wild Animal Act 1976.

Current Licensing Situation

- 2.2 At present Ipswich Borough Council has the following active licences:
 - 11 Animal Boarding Establishments (including home boarders);
 - 3 commercial dog breeders;

- 6 pet shops

Forthcoming Changes

Activities Covered by Licensing

- 2.3 From 1 October 2018, the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 will come into force.
- 2.4 The licenses a) to d) in section 2.1 above will be affected. Licensing regimes e) & f) in 2.1 will be unaffected.
- 2.5 The 2018 Regulations aim to bring ‘animal welfare’ licensing issues under one regime and potentially reduce the administrative burden on applicants and licensing authorities. They define the following animal based activities that will require licensing by Ipswich Borough Council:
- 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;
 - Providing or arranging (e.g. broker or intermediary) for the provision of accommodation for other people’s cats or dogs in the course of a business where the provision of accommodation is a purpose of that business;
 - Hiring out horses in the course of a business for either riding, instruction in riding or both;
 - Breeding of Dogs – three or more litters of puppies in any 12 month period; or breeding dogs and advertising the 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 recording of visual images of them by any form of technology, or both. (Note: prior to 1 October 2018 this was an activity licensed by Suffolk County Council).

Licensing Regime

- 2.6 The summary of the Regulations and main changes to the legislation as a whole are contained within DEFRA’s Procedural Guidance Notes for Local Authorities which is attached as Appendix 1. Some important features are listed below:
- Applicants can apply for ONE licence to cover one or more of the activities listed;

- Some persons will not be permitted to hold a licence under these Regulations, for example those who have been disqualified from holding a licence under relevant legislation (listed in Schedule 8 of the Regulations);
- Instead of annual licences renewable of a certain date (often 1 January) each licence will run for a term from the anniversary of issue;
- Licences can be issued for 1 year, 2 years or 3 years. This is based on a risk assessment of each licensable activity. The only exception is that for licensing of the keeping or training animals for exhibition the term will be 3 years;
- Inspections by suitably qualified inspectors for each licensable activity who must be authorised by the Council under the Animal Welfare Act 2006. In the absence of an authorised inspector a veterinary surgeon must be used for all inspections;
- Veterinary inspections will still be required before grant of a licence to breed dogs and on each grant/renewal of a horse riding establishment.
- The introduction of a Star rating system from 1 star to 5 stars, dependent upon the risk and standards applied by the person carrying out the activity. This process is detailed in the procedural guidance notes to the Regulations (See link in 'Helpful Papers');
- Applicants will have 28 days to appeal to the First Tier Tribunal if their application is refused;
- Applicants will have the right to appeal to the Council against the star rating awarded and also to ask for a re-rating inspection (for which a fee can be charged);
- The Council will have the right, in certain circumstances, at any time to suspend, vary or revoke a licence;
- The imposition of mandatory nationally set standard licence conditions rather than locally set conditions.
- Licensing authorities must advise each licence holder, in writing three months before their licence is due to expire; Licence holders must apply for renewal at least 10 weeks before their current licence expires if they wish to continue operating without a break;

Transitional Provisions

- 2.7 Any unexpired licence granted under the legislation for the licences a) to d) in section 2.1 will continue in force for the rest of their term. Any registration of a person under the Performing Animals (Regulation) Act

1925 will continue for six months from the date these Regulations come into force i.e. on 31 March 2019.

- 2.8 These changes are being widely publicised by DEFRA via media and via animal and pet ‘trade associations’ but Ipswich BC will also publish the guidance on our website and will write to all existing licence holders advising of the changes.

Licence Fees

- 2.9 Licensing authorities may set their own fee structure (see 2.10 – 2.14 and Appendix 1).
- 2.10 The animal licensing regime falls within the definition of ‘services’ and is subject to the EU Services Directive, incorporated into UK law as the Provisions of Services Regulations 2009.
- 2.11 Proposed fees will be split into two elements; the Application Fee, payable at the time of application to cover the Councils’ costs in considering and determining the application; and the Licence Grant Fee , which covers ongoing enforcement and compliance requirements. The Application Fee will be non-refundable. The Licence Grant Fee will be required only upon a decision to grant a licence.
- 2.12 In some cases (dog breeding and horse riding establishments) a veterinary inspection re-charge will also be applicable.
- 2.13 Ahead of the implementation date, fees need to be set to accommodate the new animal licensing regime. The required powers, and proposed table of fees are set out in Appendix 1.
- 2.14 In considering appropriate fees, the following elements are relevant:
- The costs of consideration of an application, including any inspection relating to that consideration;
 - Costs of training and maintaining competence (as required by Regulations) of an authorised officer appointed;
 - The reasonable anticipated costs of consideration of a licence holder’s compliance with the Regulations and the licence conditions to which a licence holder is subject;
 - The reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator; and
 - The reasonable anticipated costs of the local authority compiling and submitting the data to the Secretary of State as required by regulation 29.

- 2.15 Council is requested to give delegated authority to the Operations Manager – Public Protection to appoint ‘authorised inspectors’ under the Animal Welfare Act 2006.
- 2.16 Council is requested to give delegated authority to the Operations Manager – Public Protection to delegate powers to consider appeals against Star Ratings to Principal Environmental Health Officers.
- 2.17 Council is requested to approve the Table of Fees for Animal Welfare Licences (Appendix 1) to enable applications to be processed efficiently.

3. Relevant Policies

- 3.1 Building a Better Ipswich 2017 underlying principle of a strong Ipswich economy.
- 3.2 Building a Better Ipswich 2017 underlying principle of working with businesses to ensure safe licensing practices.

4. Consultations

- 4.1 No consultations have taken place.

5. Risk Management

Risk Description	Consequence of risk	Risk Controls	Probability of risk occurring taking account of controls (scale 1-6) 1 – almost impossible 6 – very high	Impact of risk, if it occurred taking account of actions (scale 1 – negligible; 4 – catastrophic)	Actions to mitigate risk
The Council needs to issue licences in a timely manner to suitable applicants to ensure animal welfare.	Animal welfare standards not met. Public deceived into buying from/using unsuitable premises. Reputational risk to IBC	Ensure that processes, authorised inspectors and fees in place to enable applications to be processed	2	2	Regular review of requirements and processes. Training of staff.

6. Environmental Impact Assessment

- 6.1 There are no environmental impacts associated with this change in legislation.

7. Equalities and Diversity Implications

- 7.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 7.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 7.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.
- 7.4 An impact assessment was carried out by DEFRA prior to the publication of the Regulations. It was not considered likely that there would be any adverse impact on the equality, diversity or any human rights of any individual.

8. Financial Considerations

- 8.1 Please note that the below figures are indicative only as it is unknown if establishments will qualify for 1, 2 or 3 year licences. If an establishment only has to apply for a licence every 3 years then there will be loss of licence fees for 2 years. The full effect will need to be quantified after the new regulations have been implemented but it is anticipated that any loss of income can be absorbed within current service area budgets.

	2018/19 £	2019/20 £	2020/21 £
Current fees and charges income based on current charges	-2,620	-2,620	-2,620
Anticipated fees and charges income based on new proposed license fees	-3,168	-3,168	-3,168
Net cost/ saving (-)	-548	-548	-548
Band B equivalent	-0.02	-0.02	-0.02

9. Legal Considerations

- 9.1 Licensing of 'activities involving animals' is a function of the District Council. The statutory powers are contained within the Animal Welfare Act 2006 and the Animal Welfare (Licensing of Activities involving Animals) (England) Regulations 2018.
- 9.2 The Local Authority must determine whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet the licence conditions.
- 9.3 A star rating must be applied to each licence granted.
- 9.4 With respect to Fees Regulation 18 of the Provision of Services Regulations 2009 applies which states:
- (2) Authorisation procedures and formalities provided for by a competent authority under an authorisation must not -*
- (a) be dissuasive, or*
- (b) unduly complicate or delay the provision of the service.*
- And
- (4) Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.*

10. Performance Monitoring

- 10.1 An annual return of animal welfare licensing activity must be completed for DEFRA.

11. Conclusions

- 11.1 The revised scheme of licensing of activities involving animals gives the Council a revised and improved role in ensuring animal welfare and reassuring the public about the standards within licensed premises.
- 11.2 The revised fees (if approved) will allow complete cost recovery.

12. Recommendations

It is recommended that Council notes the report and:

- 12.1 Delegates authority to the Operations Manager – Public Protection to appoint ‘authorised inspectors’ under the Animal Welfare Act 2010;**
- 12.2 Delegates authority to the Operations Manager – Public Protection to delegate powers to Principal Environmental Health Officers to consider appeals against Star Ratings;**
- 12.3 Approves the Table of Fees for Animal Welfare Licences (Appendix 1) to enable applications to be processed efficiently.**