

BRECKLAND COUNCIL

Report of: Phil Adams, Executive People and Public Protection Manager

To: Licensing Committee, 2nd October 2018

Author: Donna Hall Licensing and Business Support Manager

Subject: A Report on the New Animal Welfare Regulations

Purpose: To seek approval from members of the Committee on the new fee structure under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

To seek approval from members of the Committee to delegate authority from the Licensing Committee to officers

Recommendation:

- 1) That the Committee approve the proposed fees and charges structure attached at Appendix A
- 2) That the Committee agree to delegate authority to the Officers listed in this report under section 1.11
- 3) That the Committee agree to delegate authority for setting fees to the Licensing and Business Support Manager and Public Protection Manager in consultation with the Committee Chairman and the section 151 officer as explained in section 1.10.4 of this report.

1.0 BACKGROUND

- 1.1 The Committee were presented with a report on 28TH March 2018 to advise about the new draft Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. The regulations change the existing licensing regime for animal establishments including animal boarding establishments, dog breeding establishments, pet shops and riding establishments.
- 1.2 In 2016 DEFRA consulted on the introduction of new secondary legislation to introduce a single "Animal Establishment Licence". The stated aim was to "relieve the administrative burden on local authorities, simplify the application and inspection process for businesses, as well as maintain and improve existing animal welfare standards by modernising the current animal licensing system in England." DEFRA went on to write draft regulations made under the Animal Welfare Act 2006.
- 1.3 The government, the public, local authorities, welfare organisations and businesses have been calling for changes to legislation and robust enforcement. Current laws are decades old and difficult to adapt to the changing types of animal related businesses. The current process is also quite complex and burdensome in places. For example legislation currently limits licences to a calendar-year framework which arbitrarily focusses

inspections at the end of the year, and forces some businesses with multiple functions to have more than one licence.

- 1.4 The new regulations provide for the licensing of persons involved in England in selling animals as pets, providing or arranging for the provision of boarding for cats or dogs, hiring out horses, breeding dogs and keeping or training animals for exhibition. This replaces the requirement in England, to be registered under the Performing Animals (Regulation) act 1925 or to obtain a licence under the Pet Animals Act 1951; the Animal Boarding Establishments Act 1963; the Riding Establishments Act 1964 or the Breeding of Dogs Act 1973.
- 1.5 The Regulations provide for local authorities to be the licensing authorities. Any person wishing to carry on any of these activities in England must obtain a licence from their local authority. Any person carrying on any of these activities without a licence would commit an offence and that person would be liable to imprisonment for up to six months, a fine or both.
- 1.6 Part 2 of the Regulations set out how a person may apply for a licence and matters in respect of which a local authority must be satisfied when considering the grant or renewal of a licence. A local authority can charge fees to cover the costs of performing this function, as is the current situation. Officers will have powers to inspect premises and also to take samples from animals.
- 1.7 Part 3 sets out the circumstances and procedures under which a licence may be suspended, varied or revoked. It also makes it an offence to breach a condition or obstruct any inspector appointed for the purpose of enforcement of these regulations.
- 1.8 There is an appeal provision in Part 4 which can be made against licensing decisions by local authorities in relation to a refusal to grant or renew a licence, or a decision to revoke or vary a licence.
- 1.9 KEY CHANGES:
 - 1.9.1 The Regulations implement a single Establishment Licence which covers the four activities: dog breeding, dog/cat boarding, selling pets, hiring out horses for riding, keeping or training animals for exhibition Note the use of the term “activities” as opposed to “establishments” which emphasises that activities such as the online sale of pets are included.
 - 1.9.2 General and Specific conditions are laid out in the Regulations for each of the categories, as opposed to these being locally set or based on Chartered Institute of Environmental Health (CIEH) model conditions. The proposed conditions can be seen within the draft Regulations (see link under Background Papers).
 - 1.9.3 The Regulations provide for a licence to be granted or renewed for a period of one, two or three years in respect of that activity. The local authority must have regard to Secretary of State guidance as may be issued, having regard to the following when determining the period of licence: the risk of an operator breaching any licence conditions; the impact on animal welfare on any such breaches; and whether the operator is already meeting higher standards of animal welfare than are required by the licence conditions. A risk-based assessment system will be used.
 - 1.9.4 Legislation governing performing animals has previously fallen to the County Council. This will come under this Council’s remit under the new regulations and will go wider to cover animals that are exhibited, such as mobile animal exhibits.

- 1.9.5 Local authorities will be required to submit an annual data return in electronic format to DEFRA on the number of licences and registrations held for the animal activities. The publishing of this information nationally should help to reduce the burden of Freedom of information requests which are common on animal welfare licensing.
- 1.9.6 Anyone advertising a business of selling dogs, and/or breeding three or more litters of puppies in any 12 month period as part of a business, are now covered by the Regulations.
- 1.9.7 The regulations introduce specific requirements about advertisements for the sale of dogs, which will need to include: the licence number; the local authority that issued the licence; a recognisable photo of the dog being advertised, and the age of the dog being advertised.
- 1.9.8 The sale of puppies below eight weeks of age will be prohibited.
- 1.9.9 A lobbying group for “Lucy’s Law” is promoting a ban on all commercial third party sales of dogs. The proposal is that puppies can only be sold from licensed breeders, in the presence of their mothers, after the age of eight weeks, or alternatively from verified charity and rescue centres. This is not within the new regulations but is currently out for consultation.
- 1.9.10 A procedure for appeals will be written to ensure fairness to businesses enabling them to dispute the star rating given in respect of their business. This will be relevant where the business wishes to dispute the star rating given as not reflecting the animal welfare standards and risk level of their business at the time of the inspection.
- 1.9.11 It is also proposed that a policy for Animal Welfare Licensing is adopted, and this will be brought to a future Licensing Committee.

1.10 FEES AND CHARGES

- 1.10.1 The Licensing team have carried out an exercise to calculate a new fee structure based on the anticipated time that will be spent on each activity under the new legislation. The fees include: costs for consideration of the application; reasonable anticipated costs of consideration of a licence holder’s compliance with the Regulations; the reasonable anticipated costs of enforcement in relation to any licensable activity of any unlicensed operator and any fees in relation to the provision of information to the secretary of state.
- 1.10.2 When setting the fees we have had regard to the LGA Guidance on locally set fees Open for Business, and the BEIS Guidance for Business on the Provision of Services Regulations, and the Regulators’ Code.
- 1.10.3 The fee structure has been designed to be as simple, fair and equitable as possible, taking into account the different activities, durations and risks that each activity may present.
- 1.10.4 The Committee are asked to delegate responsibility for fee setting in relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 to the Licensing and Support Manager and Public Protection Manager in consultation with the Committee Chairman and the section 151 officer.

1.11 DELEGATED AUTHORITY

1.11.1 Under regulation 2 and Schedule 1 of the Functions and Responsibilities Regulations the following are all **non-executive functions** in relation to a licensable activity under the new Animal Welfare regulations (selling animals as pets, providing or arranging for the provision of boarding for cats or dogs, hiring out horses, breeding dogs or keeping or training animals for exhibition), and in accordance with the Constitution these functions fall to this Committee:

- Grant and renewal of licences
- Imposing conditions
- Enforcement
- Amending the licence
- Modifying the licence
- Varying the licence
- Revoking the licence
- Charging a fee for the licence

1.11.2 Agreement is sought from the Committee to delegate authorisation to the following officers: Licensing and Business Support Manager; Licensing Officers; Assistant Licensing Officers; Food Health and Safety Officers for the following activities:

- Grant, renew, vary or suspend (with or without consent), revoke or reinstate a licence including determining period and conditions of licence
- Act as suitably qualified inspectors and take all necessary action as inspectors (regulation 4)
- Be able to appoint listed veterinarians as appropriate
- (Regulation 20) Take enforcement action in relation to regulation 7 (duty to assist in the taking of samples from animals) and regulation 19 (obstruction of inspectors)
- Seek and execute a warrant for entry (regulation 21)
- Any other action required under the regulations

1.11.3 All policy related issues relating to the licensing functions detailed in the new Regulations are delegated to this Committee under the terms of the Constitution

2.0 **OPTIONS**

2.1 Do nothing

2.2 Approve the proposed fees and charges

2.3 Approve the proposed delegations of authority

2.4 Approve both the proposed fees and charges and the proposed delegations of authority

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 To enable the Licensing Authority to license existing businesses under the new Regulations, and licence new businesses falling within the scope of the regulations, the Licensing Authority must have approved fees and charges

3.2 Officers must also have the correct authorisations to enable them to carry out the work required under the Regulations on behalf of the Licensing Authority.

3.3 Failure to obtain approval for either matter could result in the Council acting ultra vires which could lead to legal, financial and reputational damage.

4.0 **EXPECTED BENEFITS**

- 4.1 Animal welfare is a subject that Members are often asked about as it is always a matter of concern for the general public. It is important that members and the public have confidence that the Licensing authority is acting lawfully and has the full range of powers available to officers to enable them to implement and enforce the legislation.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Constitution & Legal**

This report seeks to gain the correct authorisation for officers and the Legal Service has been consulted. All policy related issues relating to the licensing functions detailed in the new Regulations are delegated to this Committee under the terms of the Constitution.

5.2 **Corporate Priorities**

- 5.2.1 The animal welfare licensing framework serves to ensure that the welfare and safety of animals and the public is maintained. It also ensures that there is a fair trading environment for businesses. The new licensing scheme will be implemented to ensure that it is customer friendly and digital where possible. This supports the corporate priorities: Supporting Breckland to develop and thrive; providing the right services, at the right time and in the right way.

5.3 **Crime and Disorder**

- 5.3.1 The new Regulations will simplify the licensing framework for animal establishments and activities, and create criminal offences for breach of conditions and obstruction of officers.

5.4 **Equality and Diversity / Human Rights**

- 5.4.1 An impact assessment was carried out by DEFRA prior to the publication of the draft Regulations. It is the opinion of the report author that there will be no adverse effect on the equality, diversity or human rights of any individual.

5.5 **Financial**

- 5.5.1 There will be an additional burden on the authority, in terms of officer time, in implementing the legislation and making the necessary changes to procedures, database, website, forms, officer training etc.
- 5.5.2 The full impact of the new licensing scheme and fee structure is not yet known. All affected premises that are currently licensed will need to receive an inspection before the expiry of their current licence, to determine how long they will be licensed for, and the relevant fee. The fees have been calculated on a cost recovery basis, and in consultation with the finance officer.

5.6 **Staffing**

- 5.6.1 Officers have received basic training on the new legislation. Additional resources will need to be made available to help implement the new regulations and to enable officers to attend the national compulsory training that is anticipated in 2019.

5.7 **Stakeholders / Consultation / Timescales**

- 5.7.1 Consultation has been carried out nationally in respect of the new legislation. The results of the DEFRA consultation were taken into account when preparing the draft Regulations.
- 5.7.2 The draft Regulations come into force on 1st October 2018. It is anticipated that any unexpired licences under the current legislation will continue in force for the remainder of their term.

6.0 **WARDS/COMMUNITIES AFFECTED**

- 6.1 The legislation is coming into force nationally and will affect all wards.

7.0 **ACRONYMS**

DEFRA – Department for Environment Food and Rural Affairs
CIEH - Chartered Institute of Environmental Health
LGA – Local Government Association
BEIS – Department for Business Energy and Industrial Strategy

APPENDICES

Appendix A – Proposed Fees

Background papers:-

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
http://www.legislation.gov.uk/ukdsi/2018/9780111165485/pdfs/ukdsi_9780111165485_en.pdf

DEFRA Procedural Guidance on the new Regulations
<https://www.breckland.gov.uk/newanimalwelfare>

BEIS Guidance on the Provision of Services Regulations, <https://www.gov.uk/guidance/eu-services-directive>

LGA Guidance on Locally Set Fees <https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service