

Report to: **Licensing Committee**

Date: **23rd August 2018**

Title: **Adoption of procedures and fees in relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018**

Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: At Full Council on 27th September 2018

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Recommendations:

1. That Committee recommend to Full Council; the adoption of the discretionary powers contained within the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and delegate decisions in relation to the determination of licences and enforcement action to the Community of Practice Lead for Environmental Health and Licensing by the 1st October 2018.
2. That the Committee recommend to Full Council that the Council's Constitution be amended to reflect a new sub-committee structure to consider Objections to conditions on an Animal Licence.
3. Having reviewed the proposed fees table, committee recommend to Full Council that the proposed fees and charges in relation to animal licensing as of 1st October 2018 are adopted.

1. Executive summary

- 1.1 In April 2018 the Government passed the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. This legislation amalgamated, and replaced a number of pieces of legislation that governed the licensing of animals.
- 1.2 The legislation allows licensing authorities to charge a reasonable amount to cover the cost of considering the grant, renewal or variation of a licence.
- 1.3 The new regulations have amended the previous licensing regime in a number of ways but the three key changes are:-
 - A premises can have a single licence covering a number of licensed activities (similar to premises licences under the Licensing Act 2003).
 - The change of licensing authority from County to District for the consideration of licences pertaining to performing animals.
 - That a licence can last for 1 – 3 years depending upon a risk assessment produced in line with Secretary of State guidance.
- 1.4 Having undertaken an inspection of a premises the Council may impose conditions where they deem it appropriate to do so in accordance with s.15 of the regulations. A licence holder has a right of appeal to the Council against the imposition of conditions or variation of their licence, and it is recommended that this is heard by a sub-committee of the Licensing Committee rather than the full committee.

2. Background

- 2.1 The Animal Welfare Act was brought into force in 2006, and until this point the Local Authority has not needed to use the legislation. The legislation aims to ensure that animals are not mistreated, statutory guidance made under the legislation introduced the 5 freedoms of animal welfare which are:-
 - For a suitable environment (place to live)
 - For a suitable diet
 - To be housed with or apart from other animals
 - To be protected from pain, suffering, injury and disease
 - To exhibit normal behaviour patterns
- 2.2 The Act is the enabling legislation for new regulations that cover the licensing of activities involving animals. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 repeals and amends the following legislation previously used:-
 - Animal Boarding Establishments Act 1963
 - Breeding of Dogs Act 1973
 - Breeding of Dogs Act 1991
 - Pet Animals Act 1951
 - Performing Animals (Regulation) Act 1925

- Riding Establishments Act 1964
Etc. a full list can be found in Schedule 9 and 10 of the act.

2.3 The Council can charge a fee for the consideration of an application for the grant, renewal, or variation of a licence. Section 13 of the regulation states:

“**13.**—(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.”

It is not lawful for the Council to make a profit from its licensing functions, and the proposed fees have been set based on the guidance set out above and a reasonable estimate of the costs in undertaking this.

2.4 As part of the inspection process the Council will determine the level of risk posed by the activities on site using the DEFRA guidance. This risk assessment will determine the length of time that a licence will last for.

2.5 A person can appeal against a risk assessment score, and this appeal will be determined by the Community of Practice Lead for Environmental Health and Licensing.

2.6 A licensee can also request a re-score visit at any time, however the local authority can charge for this revisit score, and may charge the reasonable costs that they incur in doing so.

2.7 Based on the above it is recommended that the Council adopts the following fees and charges in relation to the granting of licences under the Act;

Licence Type	Licence Fee Proposed
Fee for a licence covering a single licensable activity	£234
Fee for each additional licensable activity	£87
Rescore visit	£120
Vets fees	A recharge to the licensee of the cost to the Authority

2.8 The current fee table for the licensable activities is set out below;

Animal Boarding Establishments (to 31 Dec each year)	Licence (per animal)	£5.00
	Minimum	£129.00
	Maximum	£187.00
	Home Boarding	£120.00
Dog Breeding Establishment	Licence Fee	£167.00
	Plus vet's fees and expenses	Actual Cost
Pet Shop (to 31 December each year)	Licensing Fee	£120.00
	Plus vet's fees and expenses	Actual Cost
Riding Establishment	Up to 10 horses	£168.00
	Plus for each additional horse	£8.00
	Plus vet's fees and expenses	Actual Cost
	Maximum Fee	£304.00

It is not possible at this moment to determine the impact that the proposed fees will have on the budget, although it is not envisaged that there will be a significant impact.

2.9 When considering the conditions that are placed on a licence the legislation states that the licensing authority may: suspend, vary or revoke a licence if they are satisfied that –

- a) The licence conditions are not being complied with,
- b) There has been a breach of the Regulations
- c) Information provided by the applicant was false or misleading,
- d) It is necessary to protect the welfare of an animal

2.10 Where the authority chooses to vary or suspend a licence, the licence holder has 7 days in which they can make written representations to the authority, which must be considered within 7 days of receiving those representations.

- 2.11 Due to the timescales involved in trying to organise a full licensing committee it is recommended that the constitution of the Council be amended to allow these representations to either be heard by the Community of Practice Lead for Environmental Health and Licensing, or where they believe that there is wider social or economic issues being raised by the written representation that the matter be heard by a sub-committee of 3 members. It will also be necessary that the standard rules on publication of committee agendas be altered to allow a shorter time period, but the minimum period needs to ensure that the committee have ample time to properly consider the implications.

3. Outcomes/outputs

- 3.1 Under the constitution of the Council, decisions in relation to the determination of licences is currently delegated to the Community of Practice Lead for Environmental Health. It is proposed that similarly the new legislation is delegated in the same way.
- 3.2 We are not expecting that there will be a significant number of appeals against imposed conditions, however in order for there to be appropriate oversight and scrutiny of decisions made by the authority it is proposed that appeals that may have wider social or economic impacts are considered by a sub-committee of 3 members. It would be pertinent for the new committee structure to be in place for the 1st October 2018.
- 3.3 The fees and charges proposed above have been produced using a cost calculator and reflect predicted outgoings for considering the grant of a licence, the cost of enforcement of both licensed and unlicensed premises and the cost of providing the annual return. These are the reasonable costs that we are allowed to recover as described in the legislation.

4. Options available and consideration of risk

- 4.1 In relation to the fees and charges proposed there is the potential that we could try and seek to add additional costs, however based on our expectation of how we will licence under the new regime we believe that the proposed fees are appropriate in accordance with the legislation.
- 4.2 There will be a review of the fees after the first year of operating to assess whether they are appropriate and produce a report to this committee suggesting a new fee and charge if they are not.
- 4.3 Whilst all appeals against the imposition of a condition could be heard by committee it was felt that where there is a technical rather than socio-economic impact these would be best heard by the Community of Practice lead. The department will produce a report each year to the committee to show what action has been taken under delegated powers, so that the committee can be satisfied that this approach is appropriate.

5. Proposed Way Forward

- 5.1 That Committee recommend to Full Council; the adoption of the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and delegate decisions in relation to the determination of licences and enforcement action to the Community of Practice Lead for Environmental Health and Licensing by the 1st October 2018.
- 5.2 That the Committee recommend to Full Council that the Council's Constitution be amended to reflect a new sub-committee structure to consider Objections to conditions on an Animal Licence.
- 5.3 Having reviewed the proposed fees table, committee recommend to Full Council that the proposed fees and charges in relation to animal licensing as of 1st October 2018 are adopted.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		Failure to act appropriately under the legislation will make the Council non-compliant with legislation and prevent appropriate regulatory action being taken to safeguard the welfare of animals in the Council area
Financial		Failure to approve an appropriate fee for the licence that will mean that licences cannot be charged for or the fee may be challenged. The proposed fees should provide a cost neutral approach to the animal licensing regime.
Risk		Failure to regulate animal welfare activities may result in serious harm to animals and have serious reputational impact on the Council.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None foreseen.
Safeguarding		None foreseen.
Community Safety, Crime and Disorder		None foreseen

Health, Safety and Wellbeing		None foreseen
Other implications		None foreseen

Supporting Information

Appendices:

Background Papers:

Hansard report on the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018:
[https://hansard.parliament.uk/Lords/2018-03-27/debates/077B086C-FFA3-4F67-8C6B-95C8948D80B2/AnimalWelfare\(LicensingOfActivitiesInvolvingAnimals\)\(England\)Regulations2018](https://hansard.parliament.uk/Lords/2018-03-27/debates/077B086C-FFA3-4F67-8C6B-95C8948D80B2/AnimalWelfare(LicensingOfActivitiesInvolvingAnimals)(England)Regulations2018)

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018:
<http://www.legislation.gov.uk/uksi/2018/486/contents/made>

Local Government Association: Open for business: LGA guidance on locally set licence fees

DEFRA guidance on the Animal Licensing Regime:
<http://www.cfsg.org.uk/layouts/15/start.aspx#/SitePages/Legislation%20and%20Guidance.aspx>

Approval and clearance of report

Process checklist	Completed
Portfolio Holder briefed	Yes
SLT Rep briefed	Yes/No
Relevant Exec Director sign off (draft)	Yes/No
Data protection issues considered	Yes/No
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	Yes/No