

Report for: Regulatory Committee 20th November 2018

Title: Animal Welfare Regulations 2018.

Report

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Ward(s) affected: 'All'

Report for Key/

Non Key Decision: Key decision

1. Describe the issue under consideration

1.1 The report is to advise the Committee of the new Animal Welfare Regulations which will change the existing licencing regime for animal establishments and seek approval for the fees to be charged under the new regime.

2. Recommendations

2.1 That the Regulatory Committee notes the contents of the briefing and agree fee levels required to administer the new arrangements as set out in Appendix 1.

3 Background information

3.1 The Council is at present responsible for the regulation of a variety of animal related businesses, as well as the keeping of specified dangerous animals by individuals, the various existing licence types issued by the Council are:

- Animal boarding establishment's licences – for businesses accommodating dogs or cats- e.g. kennels, catteries home boarders, pet day care.
- Dog breeding establishments – premises used for or in connection with the commercial breeding of dogs.
- Pet shop licences – any business that 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 – excluding livery stables. – Haringey has none of these.
- Zoo licences and Dangerous Wild Animals licences
- Performing animals licensing

3.2 Currently, numerous pieces of legislation and adoption of local policy and conditions regulate the six licence types set out 3.1. In addition, some business that offers two or more of the licensable activities e.g. pet shop that also offers accommodation for dogs and cats while their owners are away, would have to apply for both a pet shop and animal boarding establishment licence attracting two sets of fees.

3.3 In order to simplify, rationalise and bring legislation together the Animal Welfare (Licensing of activities involving animals) (England) Regulations 2018 were published earlier this year. They significantly change the way animal related businesses are inspected and licensed and came into effect on 1st October 2018.

4. **The main changes**

4.1 The Animal Welfare (Licensing of activities involving animals) (England) regulations 2018 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) ; the online sales of pets is also included
- providing or arranging for the provision of boarding for cats or dogs - on any premises where the provision of that accommodation is a purpose of the business.
- activity of hiring out horses – riding, instruction in riding or both
- activity of breeding dogs – breeding of three or more litters in a 12 month period, or breeding dogs and advertising a business selling dogs including online
- keeping or training animals for exhibition – or education or entertainment purposes, whether to an audience attending in person or by the recording of visual images of them by any form of technology or both,

4.2 The first significant change is that all six activities are brought into one new Animal Activity Licence. The regulation sets out the general approach the Council will take when carrying out its regulatory role under the Act. If an applicant is running more than one licensable animal related activity, each activity will be assessed separately and set out in one licence. The duration of the licence may be anything between one year and three years dependant on the outcome of their inspections and the type of licence.

4.3 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.

4.4 Part 2 of the Regulations set out how a person may apply for a licence and the matters in respect of which the local authority must be satisfied when considering the grant or renewal of a licence. A local authority may charge fees to cover the costs of performing this function. Officers will have powers to inspect premises and also to take samples from animals.

4.5 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 purposes of enforcement of these regulations.

- 4.6 The new provisions contain nationally set regulations for each animal based activity, which cannot be changed in anyway and forms the basis for conditions that are imposed on the new licences.
- 4.7 Breeding of dogs and advertising a business selling dogs and or breeding three or more litters of puppies in any 12 month period are now covered by the Regulations.
- 4.8 The Regulations also introduces 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.
- 4.9 The sale of puppies below eight weeks of age will be prohibited.
- 4.10 Part 4 sets out the appeal provision if the grant of a licence is refused or the licence is suspended the operator will be able to appeal to a First Tier Tribunal which would be made up of a panel with specialist knowledge administered by HM Courts and Tribunal services.
- 4.11 There a raft of new general conditions that apply to each activity. These have been distributed to the existing licence holders and will be available on the Councils website.
- 4.12 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 assist to reduce the time spent on Freedom of information requests which are common on animal welfare licensing matters.

5 Inspection Process

- 5.1 The new regime requires a 'qualified inspector' to carry out the inspections and in the case of the grant of a dog breeding establishment and at grant or renewal of horse riding establishments they must be accompanied by a veterinary surgeon. To qualify to inspect these premises a person must hold a Level 3 certificate granted by a body recognised and regulated by the Office of Qualifications and Examinations Regulations, which oversees training and assessments of persons inspecting and licensing certain animal activities businesses and must have passed an independent exam. Their certificate must apply to the specific type of activities they are inspecting. If an inspector is not available then a qualified veterinary surgeon must carry out the inspection. The Council will consider the use of the City of London Vets to fulfil this requirement on behalf of the Council.
- 5.2 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 low risk or higher risk based on the level to which it meets the standards set out in regulations and guidance and award between one to five stars, these determine the length of the licence (with the exception of 'Keeping and Training Animals for Exhibition' for which all Licences will be issued for 3 years as default). The star rating will be displayed on the licence and included in the Councils public register.

- 5.3 Businesses established will attain a star rating between one and four stars. One being the highest risk.
- 5.4 If one or two stars are issued they will be issued a one year licence and can expect a minimum of one announced visit during that period. If four stars are attained the licence will be issued for two years and the licence holder can expect one unannounced visit during the two year period.
- 5.5 Lower risk businesses can be issued a licence for any period between one to three years. Licence holders can expect a minimum of one unannounced visit at any time during the period specified on the licence. Businesses that are certified by a UKAS accredited body to operate animal welfare certification it should be considered low risk and receive a higher star rating (unless there is evidence of poor animal welfare or non-compliance. Existing businesses that are not certified must be assessed using a risk scoring table which is also set out in the guidance to ascertain their score, and from this their star rating. New business that are not certified will automatically be considered high risk as they have no operational history.

6 Finance

- 6.1 The Council aims to cover the cost of the service when setting discretionary charges, which accurately reflect the full cost of provision including recharges. Fees must be reasonable and proportionate however. It is also a requirement of the Council's policy that fees be reviewed annually to ensure that costs are appropriately recovered. It is not lawful however, for the council to seek to make a profit from licence fees that are within its discretion.

6.2 Method of Fee Construction

- 6.3 Traditionally the fees charged for licences have included the costs of processing the application, the costs of monitoring compliance, and the costs of enforcing against unlicensed and licensed operators. Until recently, application fees have been payable in full at the time of making an application. However, the case of Hemming's v Westminster City Council has clarified the costs that local authorities can include when setting licence fees. The courts also concluded that the licence fee is essentially made up of two parts, A and B as follows:-

Part A is to cover the direct costs associated with processing the application, to the point where a decision is made and if appropriate a licence is issued. This includes handling applications and payments, and carrying out pre-licensing inspections. The Part A fee is payable in full on submission of the application, and is non-refundable.

Part B is to cover the costs associated with running the licensing function. This includes investigating complaints, enforcement, and general administration. The Part B fee would only become payable if a licence is granted, and would need to be paid before the licence becomes operational.

- 6.4 The methodology that will be used to calculate fees is to allocate officer time throughout the year against each of the elements of Part A and Part B. The

appropriate proportion of an hourly rate (constructed from direct costs and indirect costs for all officers involved in the process) is then applied and totalled to give an overall cost. Direct costs are made up of salaries and salary on-costs. Indirect costs (overheads) include support recharges, general accommodation and operational running costs and insurance.

- 6.5 The hourly rates for each officer, including salary on-costs and overheads, are then applied to the time allocations and divided by the number of licences in each category to give the cost per licence.
- 6.6 The proposed fees are found at Appendix 1, and are separated in order to ensure the Council has a two stage process. At present fees have been estimated and need to be reviewed on a yearly basis as the new regulations become embedded. Significant non-compliance and poorly rated premises may have the effect of increasing the fee structure.
- 6.7 Members are asked to note the new regulatory requirements and the need to ensure that costs are recovered has meant there is significant increase in fees. The requirements are complex and require an experienced competent person to carry out the inspections and ratings. This is currently carried out by the City of London Vets.
- 6.8 Current Animal licences issued in Haringey:

Table showing breakdown by licence type

Animal Licence type	
Cat Boarding	1
Pet Shops	2
Doggy Day care/Boarding	3

7. Legal

- 7.1 The Assistant Director of Corporate Governance has been consulted in the preparation of this report and confirms that the legal implications are as set out in the body of the report.

8. Procurement

- 8.1 The Council has an existing contract with City of London Vets which will be renewed to ensure the Council is compliant with the new requirements.

9. Equality

- 9.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- a) Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- b) Advance equality of opportunity between people who share those protected characteristics and people who do not; and

- c) Foster good relations between people who share those characteristics and people who do not.
- 9.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnerships status applies to the first part of the duty.
- 9.3 The new regulations will improve the standards of animal-based activities listed in the report. The regulations will improve the wellbeing for pets in the borough and ensure that individual breeders are keeping their animals in appropriate conditions.
- 9.4 The regulations are likely to reduce puppy and kitten farming in the borough as they will restrict the ability for individuals to sell puppies and kittens if they have imported them or acquired them from a separate breeder.
- 9.5 License holders in the borough will be required to keep extensive records of their activities, which will ensure that they are held accountable for any negligence and can be more easily prosecuted if they are found to be operating illegally.
- 9.6 As a consequence of the new regulations, the levels at which the Council is proposing to set its licensing service fees in this area are commensurate with other Local Authorities across the country.
- 9.7 The Council does not hold data on the protected characteristics of individuals who engage in the defined list of animal-based activities. The Council holds data on individuals and groups who share protected characteristics for the borough as a whole. This information is available publicly on the Council's website (https://www.haringey.gov.uk/sites/haringeygovuk/files/equalities_profile_of_haringey.pdf). However, a comparatively small number of individuals currently engages in the defined list of animal-based activities. Therefore, it is considered reasonable to suggest that there is no reason to think that any group who share a particular protected characteristic would be overrepresented in the cohort of individuals engaging the defined list of animal-based activities or disproportionately impacted by the proposed changes.
- 9.8 The Council will work with the individuals affected to identify any potential equality impacts during the implementation of the regulations and fees. The Council will continue to ensure that the changes are well communicated in the borough so that individuals have time to prepare for the transition.
- 10. Use of Appendices**
- 10.1** The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
- 11 Local Government (Access to Information) Act 1985**
- 11.1 Appendix 1 – Fee costing and comparison