

## POLICY AND RESOURCES COMMITTEE - 5 NOVEMBER 2018

### PART I – PART DELEGATED

#### 8. ANIMAL WELFARE LICENSING FEES AND CHARGES for 2018/19 (DCES)

##### 1 Summary

1.1 On 23 October 2018 Council agreed to make all necessary amendments to the Constitution including in the Scheme of Delegation to Officers to provide:

- a) That the conditions of licensing are adopted and included in the Constitution
- b) That the necessary changes are made to the Council's Constitution to reflect the changes in the legislation
- c) That the Terms of Reference of Service Committees are updated as appropriate
- d) That where the Constitution refers to Animal Control Enforcement Officer this to be changed to Animal Welfare and Licensing Inspector and all documents amended accordingly.
- e) That Appeals from businesses disputing a star rating or a decision to vary, suspend or revoke a licence will be made to the director of Community and Environmental Services who will have delegated authority to determine such appeals in accordance with the Regulations and the Scheme of Delegation, which will be amended accordingly, and
- f) That the Chief Executive be given delegated authority, in consultation with the Chairman and the Spokesperson of the Regulatory Services committee, to finalise all the necessary amendments.

1.2 That the licensing fees for animal related licences be determined for 2018/19 on consideration of the information and options contained in this report.

##### 2 Details

2.1 In 2016 the Department for Environment Food and Rural Affairs (DEFRA) consulted on the introduction of new secondary legislation to introduce a single "Animal Establishment Licence". The Animal Welfare Act 2006 was the enabling legislation for new regulations for animal establishment licensing. 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".

2.1.1 The Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018 were eventually made on 16 April 2018, were released at the end of August 2018 and came into force on 1 October 2018.

##### 2.2 Key Changes

2.2.1 To Recap: The Regulations implement a single establishment licence which covers the following activities: dog/cat boarding (this includes home boarding for dogs), dog day care, dog breeding, 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 is

included. The Regulations supersede and amend the following legislation previously used: Animal Boarding Establishments Act 1963, Breeding of Dogs Acts 1973 and 1991, Pet Animals Act 1951, Riding Establishments Act 1964 and Performing Animals (Regulation) Act 1925.

- 2.2.2 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 the Chartered Institute of Environmental health (CIEH) model conditions. The Regulations and supporting guidance conditions for each activity can be seen in the link below under background Papers.
- 2.2.3 The Regulations provide for the licences 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 guidelines and will be required to use a national risk-based assessment system. Within the Regulations is a star rating system to allow customers to see how businesses perform against the regulation standards.
- 2.2.4 Legislation governing performing animals previously fell to the County Council. This activity will now become this Council's remit under the new regulations and goes wider to cover animals that are exhibited, such as mobile animal exhibits and animal encounters.
- 2.2.5 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 animal activities.
- 2.2.6 Licences issued under the existing legislative provisions (which limits licences to a calendar-year framework) and that remain in force on 1 October 2018 will continue to have effect until they expire. At that point an application will need to be made under the new licensing regime.
- 2.2.7 The current licensing procedures for zoos and those keeping dangerous wild animals are not affected by the regulations and will continue to be carried out under the existing legislative powers.

### **3 Method of Fee Construction**

- 3.1 There will be a change in the fee structure and the way in which licences are administered by the licensing authority. There will be separate fees for the application of a licence and the grant of a licence. Traditionally the full fee was payable upon return of the completed application form but the case of *Hemmings v Westminster City Council* concluded in the Supreme Court in July 2017 confirmed a number of points and 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:

**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 carrying out pre-licensing inspections (if required). 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 (including against un-licensed premises) and general administration. The Part B fee only becomes payable if, following inspection, a licence is granted and would need to be paid before the

licence is issued and becomes operational. Officers suggest that applicants granted a licence are given 7 days from the date of inspection to pay the Part B fee.

3.2 The regulations state:

“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.\*

3.3 \* Regulation 29 – Provision of information to the Secretary of State

(1) Each local authority must provide the following information to the Secretary of State in writing for the purpose of assisting the Secretary of State to carry out the review in accordance with regulation 28 –

(a) the number of licences in force for each licensable activity in its area on each reference date, and

(b) the average level of fees it has charged for licences it has granted or renewed for each licensable activity in each reference period.

## 4 Proposed Fees

4.1 The proposed fees (shown in Appendix A) have been calculated based on the service on-costs provided by the finance team and in line with the DEFRA's guidance on fee-setting procedures (shown in Appendix B). Recognition has been given to the size of the establishments and suggested fees have been adapted accordingly.

4.2 The method used to calculate the fees is to allocate the officer time spent historically issuing animal-based activities and the anticipated time to be spent based upon the requirements set out within the regulations throughout the year against each of the elements of Parts A and B. The appropriate proportion of an hourly rate (constructed from direct and indirect costs for all officers involved in the process, including Manager and Director) is then applied and totalled to give an overall cost. Direct costs are made up of salaries and salary on costs. Indirect costs include support recharges and operational running costs. These costs are then applied to the time allocations and divided by the number of licences to give the cost per licence.

## 5 Options and Reasons for Recommendations

- 5.1 Members are reminded that animal licensing is a statutory function legislated by the relevant Acts listed within the report, although it is for the Local Authority to determine the appropriate fees and charges.
- 5.2 Implementation of the new licensing regime is a statutory requirement and no other options are available.
- 5.3 To ensure compliance with statutory requirements placed on the Council, while keeping costs to business operators to a minimum.
- 5.4 This Committee is being asked to recommend the level of fees following the statutory guidance to enable officers to start working on new applications received since 1 October 2018 rather than wait until the meeting of Leisure, Environment and Community Committee on 28 November 2018. As the Council cannot charge more than being recommended in the report, Full Council will simply be asked to adopt the proposed fees and charges as set out in the report.

**6 Policy/Budget Reference and Implications**

- 6.1 The recommendations in this report are not within the Council's agreed policy and budgets.

**7 Equal Opportunities, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website.**

- 7.1 None specific.

**8 Financial Implications,**

- 8.1 The new regulations allow for a full cost recovery. Due to unknown demand and no precedent being set for the new regulations, the cost of the service will need to be monitored closely. Officers suggest a review of the fees in 12 months to ensure full, appropriate, proportionate and transparent cost recovery, with any adjustments required or necessary presented to Committee in a further report.

**9 Legal Implications**

- 9.1 Due to the nature of the Regulations, the scope of activities covered has broadened and clarity given on offences. This may lead to an increase in regulation and enforcement.
- 9.2 This is new national legislation with which we are obliged to comply.

**10 Equal Opportunities Implications**

- 10.1 Relevance Test

Has a relevance test been completed for Equality Impact?	Yes
Did the relevance test conclude a full impact assessment was required?	No

**11 Staffing Implications**

- 11.1 Additional qualifications are required for officers who will be carrying out this work. This is defined as a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations regulation which oversees the training and assessment of persons in inspecting and licensing animal activities businesses, confirming the passing of an independent examination. A person is only considered to be qualified to inspect a particular type of activity if their certificate applies to that activity. This week-long training course with assignments must be completed. There is a cost element to this as well as time; this cost will be covered by the existing budget, but will be recovered through fees and charges. By 2021, all officers involved in this work must have undertaken and passed the qualification.
- 11.2 In the light of the additional requirements of the new legislation, the current resource that is available has been considered and it has been identified that there will be additional statutory function to be undertaken and that there is insufficient resource for this.

## 12 Risk Management and Health & Safety Implications

- 12.1 As with any new legislation implementation, the Council may receive challenge on its decisions or the way that decisions are determined. All guidance will be followed to reduce risk to the authority.

There are risks to the Council in rejecting the recommendation(s).

The following table gives the risk that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

Description of Risk	Impact	Likelihood
Failure to approve an appropriate fee for the licenses will mean that licences cannot be charged for or the fee may be challenged.	III	E

- 12.2 Of the risks detailed above, none is already managed within a service plan.
- 12.3 The identified risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

Likelihood ↑	A						Impact	Likelihood
	B						V = Catastrophic	A = >98%
	C						IV = Critical	B = 75% - 97%
	D						III = Significant	C = 50% - 74%
	E		X				II = Marginal	D = 25% - 49%
	F						I = Negligible	E = 3% - 24%
		I	II	III	IV	V		F = <2%
Impact →								

12.4 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of treatment plans are reviewed by the Audit Committee annually.

### 13 Recommendations

- 13.1 That the licensing fees for animal-related licenses be determined for 2018/9 on consideration of the information contained in the report.
- 13.2 That a review of the fees and charges be made after the first year of operation to ensure they are correct; with a further report should any necessary adjustments be identified.

#### Recommend to Council

- i) That the proposed fees and charges in relation to animal licensing be adopted.

Report prepared by: Debra Sandling, Animal Welfare and Licensing Inspector.

#### Data Quality

Data sources:

Data checked by: Malcolm Clarke

Data rating: Tick

1	Poor	
2	Sufficient	X
3	High	

#### Background Papers

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

**Appendices:**

Appendix A - proposed fees calculated on the service on-costs provided by the finance team and in line with the DEFRA's guidance on fee-setting procedures

Appendix B - DEFRA guidance on fee-setting