

SUBJECT:	INTRODUCTION OF ‘THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (ENGLAND) REGULATIONS 2018’
DIRECTORATE:	COMMUNITIES AND ENVIRONMENT
REPORT AUTHOR:	FRANCESCA BELL, PPASB & LICENSING SERVICE MANAGER

1. Purpose of Report

- 1.1 To inform the committee of legislative changes to the licensing of Animal Activities and to seek approval for the implementation of the new regulations detailed below.
- 1.2 The report sets out revised fees and charges to be implemented from 1st October 2018 based upon cost recovery in relation to the licensing of Animal Activities and sets out the delegation of authority for the granting, refusing, suspending or revoking of licences.
- 1.3 The Animal Welfare (licensing of activities involving animals) (England) Regulations 2018 are due to come into effect on 1st October 2018.

2. Executive Summary

- 2.1 The Animal Welfare (licensing of activities involving animals) (England) Regulations 2018 (to be referred to as ‘the regulations’ from this point on) is due to come into effect on 1st October 2018.

- 2.1.1 The Regulations will be the primary legislation for the licensing of the following animal activities;

- Animal Boarding (Catteries and Kennels)
- Home Boarding of Dogs
- Dog day care
- Dog breeding
- Riding establishments
- Sales of animals (formerly pet shops)
- Performing animals (formerly a registration administered by LCC)

- 2.1.2 The regulations will amend or repeal the following legislation:

- The Breeding of Dogs Act 1973 – Repealed
- The Breeding of Dogs Act 1991(b) - Repealed.
- The Pet Animals Act 1951 – Amended
- Breeding and Selling of Dogs (welfare) act 1999 - repealed
- Riding Establishments Acts 1964 & 1970 - amended
- Performing Animals (Regulation) Act 1925 – Amended
- Animal Boarding Establishments Act 1963 – Amended

- Local Government Act 1974 – Amended
- Dangerous Wild Animals Act 1976 – Amended
- Zoo Licensing Act 1981 - Amended

2.2. Fees and Charges

2.2.1 The fees and charges are to be locally set based upon full cost recovery, 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*.

2.2.2 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.

2.3 The Regime

2.3.1 All animal activities, as set out in 2.2 above will be subject to the same regime. Conditions are nationally set for each defined activity as contained within the regulations.

2.4 Delegation and Authorisation

2.4.1 Delegation of powers is proposed as set out below:

- a) Granting and renewal of a licence – delegated to Officers.
- b) Refusal of a licence – delegated to officers, appeal heard by full licensing committee. Appeal of the council's decision to be heard by First Tier Tribunal.

- c) Suspension or variation of a licence – delegated to officers to be authorised by Team Leader or above. (to be heard by licensing full committee within 28 days)

The guidance issued by DEFRA 'The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Procedural guidance notes for local authorities' Page 9, clearly sets out the grounds for suspension of a licence and the mechanism for suspension dependent upon the offence.

- d) Revocation of a licence – Licensing Full Committee.

2.4.2 Within the regulations is a star rating system to allow customers to see how businesses perform against the regulation standards. The star rating will be issued by the inspecting licensing officer/animal specialist. Any appeal against the star rating assigned to the business will be dealt with by the PPASB & Licensing Service Manager or the Assistant Director for Communities and Environment.

3. The Regulations

3.1 What is Changing?

- a) The majority of animal related licensing will now be administered under one regime. See 3.2 for further details.
- b) Conditions will now be nationally set. See 3.4 for further details.
- c) Fees and charges will be locally set on a full cost recovery basis. See 4 for further details.
- d) Introduction of a star rating system. See 3.5 for further details.
- e) Officers undertaking inspections must be suitably qualified. See 3.9 for further information.
- f) The definition of dog breeders is reducing the number of litters per annum from five to three and/or will include anyone making a profit of over £1000.
- g) Pet shops will no longer be premises based only and will include animal sales online within our council boundary.
- h) Doggy Day Care has been clarified to be a licensable activity.
- i) Detailed guidance on the regulations has been issued by DEFRA.
- j) The introduction of one, two and three year licences based upon compliance history, star rating and associated risk.
- k) Introduction of statutory returns to the secretary of state. Further details contained in 4.1.2.

3.2 What's Included

Activity	Former legislation	New legislation
Animal Boarding (Catteries and Kennels)	Animal Boarding Establishments Act 1963	The Animal Welfare (licensing of activities involving animals) (England) Regulations 2018
Home Boarding of Dogs		
Dog day care		
Dog breeding	The Breeding of Dogs Act 1973	
	The Breeding of Dogs Act 1991(b)	
	Breeding and Selling of Dogs (welfare) act 1999	
Riding establishments	Riding Establishments Acts 1964 & 1970	
Sales of animals (formerly pet shops)	The Pet Animals Act 1951	
Performing animals (formerly a registration administered by LCC)	Performing Animals (Regulation) Act 1925	

3.3. What's Excluded

Activity	legislation
Dangerous Wild Animals	Dangerous Wild Animals Act 1976
Zoos	Zoo Licensing Act 1981

3.4 Conditions

All licence conditions are nationally set and are contained within the regulations. The conditions relate to the activity being applied for under the licensing regime. The general conditions to be applied to all licences are contained within Schedule 2 of the regulations. Activity Specific conditions are contained within Schedules 3 – 7 of the regulations.

3.5 The Star Rating System

Within the regulations is a star rating system to allow customers to see how businesses perform against the regulation standards. The star rating will be issued by the inspecting licensing officer/animal specialist. **The Scoring Matrix**

3.5.1

Scoring matrix		Welfare standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low risk	1 Star 1yr licence Min 1 unannounced visit within 12 month period	3 Star 2yr licence Min 1 unannounced visit within 24 month period	5 Star 3yr licence Min 1 unannounced visit within 36 month period
	Higher risk	1 Star 1yr licence Min 1 unannounced visit within 12 month	2 Star 1yr licence Min 1 unannounced visit within 12 month period	4 Star 2yr licence Min 1 unannounced visit within 24 month period

3.5.2 The risk rating of a business is determined by completing the risk scoring table shown in **Appendix A**.

3.6 Appeals Against Star Ratings

The guidance states:

3.6.1 To ensure fairness to businesses, local authorities must have an appeal procedure in place for businesses to dispute the star rating given in respect of their business. The appeal procedure is 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. This should not be used if the business has made improvements to their business and wishes to be reassessed – in this case, they should apply for re-inspection.

3.6.2 How can a Business Appeal their Star Rating?

If a business wishes to appeal the star rating given by the 'inspecting officer' (i.e. the officer undertaking the inspection) on behalf of the local authority, the appeal should be made in writing (including by email) to the local authority.

A business disputing a rating should be encouraged to discuss this informally first with the 'inspecting officer' so that there is an opportunity to help explain to the business how the rating was worked out, as this may help resolve the matter without the business having to lodge an appeal. Any such discussions do not form part of the formal appeal process and do not change the deadline within which an appeal must be lodged. This should be made clear to the business so that they may lodge an appeal, and may subsequently withdraw it, if they wish.

3.6.3 Businesses have 21 days (including weekends and bank holidays) following the issue of their licence in which to appeal the star rating.

3.6.4 Any appeal against the star rating assigned to the business will be dealt with by the PPASB & Licensing Service Manager or the Assistant Director for Communities and Environment. A decision will be made and the applicant notified within 21 days of receipt of the appeal.

3.7 Re-Inspection for Star Rating

3.7.1 Where a business has made improvements following a star rating they can apply to be re-inspected. A fee will be charged for this. The department will re-inspect within 3 months (determined by DEFRA guidance) although this will likely be completed much sooner.

3.7.2 The request for re-inspection should be made in writing (including by email) and should outline the case for a re-inspection, i.e. it should indicate the actions that have been taken by the business to improve the level of compliance or welfare since the inspection and, where appropriate, should include supporting evidence. The supporting case should refer to those actions that the local authority informed the business would need to be made in order to achieve a higher rating.

3.7.3 The star rating can only be altered following a practical re-inspection and cannot be changed based upon documentary evidence alone.

3.8 Publishing the Star Rating

3.8.1 The star rating must be added to the licence and the licence should be displayed by the business. In addition, we encourage local authorities to maintain a list of licensed businesses and their associated ratings on their websites.

3.9 Suitably Qualified Inspectors

16. All inspectors must be suitably qualified. This is defined as:

(a) Any person holding 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.
Or;

(b) Any person holding a formal veterinary qualification, as recognised by the Royal College of Veterinary Surgeons (“RCVS”), together with a relevant RCVS continuing professional development record;

(c) Until October 2021, any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses.

3.10 Period of Licence

A local authority may grant or renew a licence—

- (a) for a period of one, two or three years in respect of the activity or any part of the activity described in paragraph 2, 4, 6 or 8 of Schedule 1 if it is satisfied that a period of one, two or three years, as the case may be, is appropriate on the basis of its assessment, having regard to such guidance as may be issued by the Secretary of State, of—
 - (i) the risk of an operator breaching any licence conditions;
 - (ii) the impact on animal welfare of any such breaches; and
 - (iii) whether the operator is already meeting higher standards of animal welfare than are required by the licence conditions;
- (b) for a period of three years in respect of the activity or any part of the activity described in paragraph 10 of Schedule 1 namely Keeping or training animals for exhibition

The scoring matrix shown in 3.5.1 above demonstrates how the length of licences will be determined.

The risk of a business is determined by using the risk table shown in **Appendix A**.

4. Fees and Charges

4.1 The fees and charges are to be locally set based upon full cost recovery, the regulations state:

4.1.1 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,
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4.1.2 *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.

4.2 Current Fees and Charges

Activity	cost	
Riding establishments	75	PLUS VETS FEES
Cattery	75	PLUS VETS FEES
Kennel	75	PLUS VETS FEES
Home Boarders	75	PLUS VETS FEES
Dog Breeders	75	PLUS VETS FEES
performing animals	25	transferring from LCC
pet shops non reptile	110	Fee incorporates 2x Vet inspections
pet shops reptile	310	Fee incorporates 2x vet inspections one of which in undertaken by specialist zoo vet

4.2.1 Neighbouring Authorities Current Fees and Charges

Activity	costs					
	Lincoln	NKDC	SKDC	WLDC	ELDC	N&SDC
Riding establishments	75	244.05	115.75	82	120	160
Cattery	75	244.05	115.75	228	120	160
Kennel	75	244.05	115.75	228	120	160
dual cats and dogs			155.75	269		
Home Boarders	75	196.83	100.65	151	120	90
Dog Breeders	75	244.05	115.75	228	120	160
performing animals	25	25	25	25	25	17
pet shops non reptile	110	244.05	115.75	182	120	160
pet shops reptile	310	244.05	115.75	182	120	160
notes	inclusive of vets fees	all + vets fees			plus vets fees	All + vets fees

4.3 How the Fees and Charges have been Calculated

The fees and charges have been calculated based upon a combination of data available regarding the following:

- Time spent historically issuing licences for animal based activities; and
- Anticipated time to be spent based upon the requirements set out within the regulations.

4.4 Proposed Fees and Charges

Based upon cost recovery the cost to the authority in issuing a licence is £248.19 excluding Vets fees.

The proposed fee for all licensable animal activities is **£250 + vets fees**

This based upon full cost recovery.

The fee of **£250 + vets fees** is proposed for all licences whether issued for 1, 2 or 3-year periods. This is due to the officer work remaining the same albeit over a variable period. This should also be viewed as an incentive for businesses to be compliant in order for them to be eligible for a longer licence term. On a 3-year licence this represents a marginal increase in fees.

4.5 Fee for Requested Re-Inspection for Star Rating Review

Where a request is received from a licence holder for their star rating to be reviewed this will incur an additional charge. Based upon cost recovery this will be charged at **£105**.

4.6 Fee for Requesting a Variation of the Licence

Where a request is received by the licence holder to vary their licence this will incur an additional charge. Based upon cost recovery this will be charged at **£95**.

4.7 Current Demand

Activity	number
Riding establishments	2
Cattery	1
Kennel	0
Home Boarders	6
Dog Breeders	0
performing animals	0
pet shops non reptile	6
pet shops reptile	3

Total 18

We currently have 18 licences in operation that relate to animal licensing. Of these 18 current licenses, we expect all to renew under the new regime.

Additionally there are 5 performing animal permits currently administered by Lincolnshire County Council that will transfer over to City of Lincoln Council under the new regime. We have also have enquiries from 2 potential dog breeders.

As the new regime encompasses a broader range of licensable activities it is likely that demand on the service will increase particularly over the next year. This could be in the range of a 50 – 100% increase. Taking number from 18 currently to between 27 – 36 licences operating.

5. **Delegation of Authority**

5.1 **Proposed Authorisations**

Licensing Officers and the Animal Warden will be authorised under the regulations.

The PPASB & Licensing Service Manager and Assistant Director for Communities and Environment will be Authorised for the purposes of overseeing work undertaken and investigating Appeals of star ratings or complaints against service.

5.2 Delegation of powers is proposed as set out below:

- a) Granting of a licence – delegated to Officers.
- b) Refusal of a licence – delegated to Officers, appeal heard by full licensing committee. Appeal of council decision to be heard by a First Tier Tribunal.
- c) Suspension of a licence – delegated to officers to be authorised by Team Leader or above. (to be heard by licensing full committee within 28 days)
The guidance issued by DEFRA 'The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Procedural guidance notes for local authorities' Page 9, clearly sets out the grounds for suspension of a licence and the mechanism for suspension dependent upon the offence as well as grounds for reinstatement.
- d) Revocation of a licence – Licensing Full Committee.

5.3 When granting, refusing, suspending or reinstating a licence Officers will have full regard for the guidance issued by DEFRA 'The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Procedural guidance notes for local authorities'.

6. **Options Available to the Committee**

- 6.1
 1. Accept the report in its entirety and refer to Executive for consideration.
 2. Accept the introduction of the regulations and make recommendations or amendments to fees and charges.

7. **Summary**

7.1 The Licensing Committee is presented with information relating to the introduction of The Animal Welfare (licensing of activities involving animals) (England) Regulations 2018 that are due to come into effect on 1st October 2018.

7.2 The regulations make some significant changes to licensable activities and to the way in which licences are administered by the licensing authority.

8. **Organisational Impacts**

8.1 Legal Implications

8.2 As with the implementation of any new legislation, the council may receive challenge on its decisions or the way in which decisions are determined. The licensing authority will ensure all guidance is followed and that decisions are fair and transparent with documented reasoning to reduce risk to the authority.

8.3 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. **Financial Implications**

9.1 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 to ensure full appropriate, proportionate and transparent cost recovery.

10. **Equality & Diversity Implications**

10.1 The potential for any Equality and Diversity issues to arise has been considered and it is concluded that no issues relating to this, nor the Human Rights Act 1988 are relevant.

11. **Recommendation**

11.1 That the committee consider the information provided and provide reasons for their decision.

How many appendices does the report contain?

1

List of Background Papers: Appendix A – Risk scoring table

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