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| Committee: | Cabinet | Date: |
| Title: | Review of Licensing Fees for Animal-related Licensing | Tuesday, 16 October 2018 |
| Portfolio Holder: | Councillor Susan Barker, Portfolio Holder for Environmental Services | |
| Report Author: | Marcus Watts, Environmental Health Manager - Protection mwatts@uttlesford.gov.uk Tel: 01799 510595 | Key decision: No |

Summary

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. This legislation comes into force on 1st October 2018.
2. The legislation allows licensing authorities to charge reasonable costs to cover the cost of considering the grant, renewal or variation of a licence. The regulations have amended the previous licensing regime. A number of significant changes have been made, including:
 - A licence will be able to authorise more than one activity.
 - All licensed premises will be given a 'Star Rating', similar to the current food hygiene rating system.
 - That a licence can last for 1, 2 or 3 years depending upon the business meeting set standard and optional conditions, and risk assessment produced in line with Secretary of State Guidance.
 - The change of licensing authority from County to District for the consideration of licences pertaining to performing animals.
 - There are new powers for licensing authorities to vary, suspend and revoke licences

Recommendations

3. To adopt the proposed fees and charges table in relation to animal licensing with immediate effect.

4. To delegate decisions in relation to the determination of licences and enforcement action to the Environmental Health Manager (Protection) with immediate effect.

Financial Implications

5. There are no financial implications. Where possible full cost recovery fees for fulfilling the statutory requirements of the licensing regime are sought within this report.

Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report:

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 & Associated Statutory Guidance.

Impact

- 7.

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|---------------------------------|---|
| Communication/Consultation | No consultation has been carried out. The Regulations allow the Council to recover full costs when administrating and enforcing the regime |
| Community Safety | There are no direct community safety implications |
| Equalities | None foreseen |
| Health and Safety | No impact on employee health and safety |
| Human Rights/Legal Implications | Animal welfare licensing is a statutory function of the Council to safeguard the welfare of animals within the district. All intervention work will be carried out in accordance with existing legislative framework. |
| Sustainability | There are no environmental implications linked directly with the adoption of the amenity standards |
| Ward-specific impacts | No specific impact |
| Workforce/Workplace | Environmental Health Service – from existing resources (assuming the |

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| | continuation of 1 x FTE Animal Warden) |
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Situation

8. Uttlesford District Council is currently responsible for functions in relation to the licensing and regulation of various animal-related activities. The various functions are currently carried out under a variety of different pieces of legislation. The table below sets out the activities regulated and the legislation under which the Council currently licences persons to carry out the activities:

| Activity | Legislation |
|--|---|
| Keeping a boarding establishment for cats or dogs (kennels, catteries, home boarding, day care facilities) | Animal Boarding Establishments Act 1963 |
| Keeping a riding establishment | Riding Establishments Act 1964 Riding Establishments Act 1970 |
| Keeping a breeding establishment for dogs | Breeding of Dogs Act 1973 Breeding and Sale of Dogs (Welfare) Act 1999 |
| Keeping a pet shop | Pet Animals Act 1951 |
| Keeping a Dangerous Wild Animal | Dangerous Wild Animals Act 1976 |
| Operating a Zoo | Zoo Licensing Act 1981 |

9. Section 13 of the Animal Welfare Act 2006 provided the Secretary of State with powers to repeal parts of the existing legislation and replace it with a new licensing or registration regime.
10. On 1st October 2018 the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 comes into force. The Regulations replace several licensing schemes for animal boarding establishments, pet shops, riding establishments and dog breeding establishments with a single 'Animal Establishment Licence'.
11. In addition to the above, Essex County Council (Trading Standards) is currently the authority responsible for the registration of persons who train or exhibit performing animals under the Performing Animals (Regulation) Act 1925. The above Regulations will also transfer this to the District Council and incorporate this within the licensing regime.

12. The current licensing schemes for zoos and operators who keep dangerous wild animals are not affected by the regulations and will continue to be carried out under the existing legislative provisions.

13. Some of the main differences in the new licensing scheme will be:

- A licence will be able to authorise more than one activity (for example animal boarding and dog breeding activities can be authorised by the same licence).
- Licences will be able to be issued for a one, two or three year period (based on an assessment of risk and meeting set standard and optional conditions).
- Standard licence conditions are prescribed by the regulations rather than each authority deciding its own licence standard conditions for its area. There are also extra optional higher standards for those that wish to attain a higher star rating, which in turn will allow them a longer length of licence.
- The number of litters a dog breeder can produce in a 12-month period before they are presumed to require a licence will be reduced from five litters to three. Irrespective of the number of litters, operators will require licensing if they make any sale by, or otherwise carries on, the activity with a view to making a profit, or earns any commission or fee from the activity. In the context of the above, trading income is currently set at £1000.
- There are new powers for licensing authorities to vary, suspend and revoke licences where there is non-compliance or where it is necessary to protect the welfare of an animal.

14. In August 2018, the following guidance documents in support of the regime were released:

- Procedural Guidance for Animal Activity Licensing 2018
- Guidance notes for conditions for breeding dogs 2018
- Guidance notes for conditions for providing boarding in kennels for dogs 2018
- Guidance notes for conditions for providing home boarding for dogs 2018
- Guidance notes for conditions for providing day care for dogs 2018
- Guidance notes for conditions for providing boarding for cats 2018
- Guidance notes for conditions for selling animals as pets 2018
- Guidance notes for conditions for keeping or training animals for exhibition 2018
- Guidance notes for conditions for hiring out horses 2018

15. Licences issued under the existing legislative provisions 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 by the operator for a licence under the new licensing scheme.
16. A current breakdown of licensing activities at Uttlesford District Council is given below

| Business Type | Number |
|-----------------------|---------------|
| Dog Breeder | 8 |
| Home Boarder | 19 |
| Dog Crèche | 2 |
| Pet Shop | 4 |
| Kennel & Cattery | 4 |
| Cattery | 4 |
| Riding Establishments | 7 |

17. Of the 48 premises currently licenced 28 are due to be licensed under the new regime by 31st December 2018. Several enquiries for applications for new businesses have are being received.
18. 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
19. 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. Appeals against the Council's decision are to be made to a First-tier Tribunal.
20. 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 and level of compliance with the set and optional conditions will determine the length of time that a licence will last for. A person can appeal against a Star Rating, and this appeal will be drafted for this purpose. It is anticipated that the Star Rating appeal will be determined by the Environmental Health Manager (Protection). The Council has 21 days to consider the appeal. Should the business disagree with the outcome of the appeal, they can challenge the decision by means of a judicial review.

21. Amongst the requirements of the legislation by 2021 there are new qualification requirements for inspecting officers.

22. In accordance with the statutory guidance, applicants are to be inspected before the license is issued to ensure standards are being achieved. In addition, at least one further inspection shall occur during the one, two or three year licensing period, which is set following a risk assessment exercise on initial inspection.

23. As part of the preparations to deliver the new licensing regime, the Environmental Health Service has set appropriate licence fees. Regulation 13 set out what a local authority may charge fees for:

- (a) The costs of consideration of an application, including any inspection relating to that consideration;
- (b) The reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations and the licence conditions to which a licence holder is subject. This includes the costs of any further inspections related to compliance;
- (c) The reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator; and
- (e) The reasonable anticipated costs of the local authority compiling and submitting the data required by regulation 29 to the Secretary of State.

24. 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.

25. Traditionally the fees charged for licences have included the costs of processing the application & costs of monitoring compliance. Until recently, application fees have been payable in full at the time of making an application. However, the case of *Hemmings 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.

26. The methodology used to calculate fees is based on estimated officer time based on existing licensing functions taking account increased inspection times to verify compliance with the statutory guidance and assessment of risks. 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. Fees as proposed are provided within Appendix A. For future fee setting purposes, it will be necessary to record officer time against all elements of work to ensure that full cost recovery is achieved.

Risk Analysis

27.

| Risk | Likelihood | Impact | Mitigating actions |
|---|------------|--------|--|
| Failure to regulate animal welfare activities may result in serious harm to animals | 2 | 2 | To regulate in accordance with the provisions of the regulations |

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.