

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

Submitted by: Head of Environmental Health

Portfolio: Environment & Recycling

Wards Affected: All

Purpose of the Report

To advise Members of recent changes as a result of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 which came into force on 1st October 2018.

Recommendations

That Public Protection Committee notes the impact that these new provisions will have on business/residents within the borough and:

- **Supports the proposed full cost recovery fees and charges for 19/20 as detailed**
- **Appoints Environmental Services Team Manager and Dog and Enforcement Officers (x2) as suitably qualified Inspectors and enforce provisions**
- **Agrees the policies in respect of reviews, appeals, re-inspection and refunds detailed in Appendix One**

Reasons

To comply with duties placed on the Council by the Regulations and to apply the provisions as directed to ensure that animal activities are correctly licensed and a national standard enforced.

1. Background

1.1. On 1st October 2018 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force repealing and revoking a range of animal licensing controls, some of which had been in force for more than fifty years.

1.2. The impact assessment to the regulations identified: *“The updated legislation and guidance should result in a clearer, simpler and more consistent licensing system. Licensing will no longer be restricted to the calendar year, allowing for a more evenly distributed administrative burden for local authorities. Animal welfare conditions should improve as a result of bringing licensing standards in line with the Animal Welfare Act 2006.”*

1.3. The new regulations identify five ‘Animal Activities’ which require licensing, if they meet specific criteria detailed in the regulations and the guidance which accompanies them. The activities are:

- Selling animals as pets
- Providing or arranging for the provision of boarding for cats or dogs, which includes: Boarding Cats; Boarding Dogs in Kennels; Home Boarding Dogs; and Providing Day Care for Dogs
- Hiring out horses
- Breeding dogs
- Keeping or training animals for exhibition.

1.4. Providing Day Care for Dogs (dog crèches) falls within the licencing regime for the first time, whilst keeping or training animals for exhibition was previously a County Council function. The controls recognise that practices have changes in recent years and now place licencing requirements on the ‘arranger’ of dog boarding, as well as the ‘host’

families which dogs are placed with. They also recognise that not all animal businesses are premises based.

- 1.5. The regulations suggest that anyone who receives more than £1,000 in any year from animal activities is likely to require a licence. The guidance also suggest which businesses are 'in scope' (ie will be subject to the licencing regime) and those activities which are 'out of scope'. This information is reproduced on the council's website to assist those considering stating an business involving animals to see if they need to apply for a licence. See: <https://www.newcastle-staffs.gov.uk/all-services/environment/dog-wardens/animal-welfare-and-licensing>
- 1.6. New definitions are likely to require many more dog breeders to have a licence and to be bound by its conditions.
- 1.7. New national guidance and standards, now replaces conditions previously adopted by Members. The council no longer has the scope to add conditions – for example to limit the maximum number of dog which can be home boarded (a maximum of three was previously applied).
- 1.8. The standards now set procedures which local authorities must follow to process applications. For the first time there is a competency standard for those involved in animal activity licensing.
- 1.9. Inspectors must determine if a premises meet the 'minimum standard' set by the regulations, or a voluntary 'higher standard' as detailed in the guidance. Existing businesses, who do not have all the records and procedures required by the Regulations, can still be licensed if they have 'minor failings', providing this does not have unacceptable implications for animal welfare.

2. Issues

Impact of the new regulations on businesses

- 2.1. Within Newcastle there are approximately 50 businesses which require an animal activities licence. The majority of these are small family businesses, often operated from the family home. Officers have dealt with the majority of these previously under the former licencing regime.
- 2.2. Although officers have shared information as it has been published, for many businesses the new regulations will be a step change. They place more emphasis on the qualifications of proprietors, policies, procedures and documentation. There is an expectation that detailed records will be kept.
- 2.3. The new inspection process is intended to be a compliance audit. Welfare Standards and Risk combine to produce a grading of between one and five 'stars'. Higher graded businesses receive longer duration licences, and accordingly the licence will be renewed and inspected less often.
- 2.4. Businesses are required to display their star rating so that potential clients can judge their standards. They are also obliged to provide their licence details on any web site where they promote their business. New rules apply where animals are advertised for sale.
- 2.5. Higher graded business are expected to gain from the new regime with potentially increased trade. Businesses with lower grades may lose custom and may struggle to finance refurbishment and may choose to stop operating.

- 2.6. Understandably businesses are finding the lengthy guidance confusing and seeking further explanation and advice. As this is now a national regime, and the only support material provided is the official guidance, it is frequently not possible to offer interpretation.
- 2.7. Guidance (now in its second version) is frequently unclear and contradictory resulting in confusion and frustration. We have ensured that all associated guidance and support material is published on the council's website.

Consequences of changes for the council

- 2.8. The new inspection regime requires considerably more resources than its predecessor.
- The application process is more complex, with applicants needing to provide more detail.
 - Gov.uk application / payment services have been withdrawn.
 - Neither the DEFRA or gov.uk websites have currently published the associated guidance.
- 2.9. The government acknowledges *"There will be one-off familiarisation costs to both businesses and local authorities from the updated regulation."* ...and that... *"Local authorities may need to deal with an additional workload if many more businesses are brought into scope but are unlikely to acquire additional resource so will need to meet this demand by re-prioritising existing activities."*¹
- 2.10. Each inspection typically now requires 2-3 hours on site, plus a further hour of report writing, this is a significant increase in officer time requirements.
- 2.11. A number of the inspection ratings issued are likely to be contested, and some licencing decisions are likely to be appealed. The regulations set a process where a licence holder wishes to challenge the score given, seeks a re-grading inspection after they have made changes, or appeals following a licence refusal or suspension. The authority can charge for re-inspections.
- 2.12. Although the present focus of officers is on ensuring that current licence holders are advised of the changes which affect their businesses and are able to have their licences renewed, from January the focus will change to identifying those who now fall within the scope of licencing and encouraging them to apply. Subsequently action may be required where those who are subject to licencing controls have failed to progress a licence application.
- 2.13. Longer duration licences for higher standard businesses should reduce the total number of inspections required during 2019/20 for existing businesses and enable a focus on those newly licenced and higher risk operations.
- 2.14. Regulation 4 (2) (a) requires that the authority appoints suitably qualified inspectors to inspect any premises on which a licensable activity is carried on.
- 2.15. The regulations now require that inspectors hold a Level 3 certificate. Associated staff training cost have therefore been projected to be approximately £4,000. Officers must be trained before October 2021. Training of three staff will be required. Attendance may impact on service delivery.

¹ Source: Regulations Impact Assessment: http://www.legislation.gov.uk/ukia/2018/71/pdfs/ukia_20180071_en.pdf

- 2.16. To comply with DEFRA’s procedural guidance the council is obliged to publish its policy in respect of: Resolving Disputed Scores; Licence Refusal and Suspensions; undertaking Re-inspections for Re-rating purposes; Fees & Charges and Refunds. Proposed policies attached as Appendix 1.
- 2.17. The increase in resources needed to process applications, inspect premises, and monitor compliance has more than doubled the amount of officer time required. Guidance confirms that authorities should set fees which recover the “reasonable anticipated costs”, but that do not generate a surplus. The Local Government Association guidance on locally set fees has been considered² as has the council’s Charging Policy³
- 2.18. Based on officer time, training, travel, production or reports and licences the following costs have been calculated. Fees for 2019/20 are therefore:

	First Application Grant	Renewal	Grading Review (No visit)	Variation / Re-inspection	Annual Horse Check
Selling Pets	£295	£260	£55	£80	
Animal Boarding	£295	£260	£55	£80	
Hiring Horses	£525 (inc Vet fee)	£460 (inc Annual Horse Check)	£55	£80	£260
Breeding Dogs	£475 (inc Vet fee)	£410 (inc vet fee)	£55	£80	
Training/ Exhibiting Animals	£160	£160		£80	

- 2.19. Where a new application is received officers will seek ‘Pre-Application Advice’ from the council’s Planning & Development team to establish whether planning permission, or building regulation approval may be required by the licence applicant. This is to ensure that any potential planning issues (e.g. need for change of use approval) are identified and can be resolved before an animal activities licence is granted. This avoids potential misunderstanding where an applicant may not appreciate that both planning and animal licensing consent may be required.
- 2.20. Consequential amendments are required to the Council’s scheme of delegation to reflect legislative repeals. Officer’s powers now originate from the Animal Welfare Act 2006. Members have previously appointed and authorised officers to enforce provisions under this Act. The Council’s scheme will be updated in due course through the usual mechanism.

3. Recommendation

- 3.1. It is recommended that Public Protection Committee notes the impact that these new provisions will have on business/residents within the borough and:
- Supports the proposed full cost recovery fees and charges for 19/20 as detailed
 - Appoints Environmental Services Team Manager and Dog and Enforcement Officers (x2) as suitably qualified Inspectors and enforce provisions
 - Agrees the policies in respect of reviews, appeals, re-inspection and refunds detailed in Appendix One

² <https://www.local.gov.uk/open-business-lge-guidance-locally-set-licence-fees>

³ <https://www.newcastle-staffs.gov.uk/all-services/your-council/policies-and-strategies-z/charging-policy>

4. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

4.1. This links to the following corporate priorities:

- Local services that work for local people
- A healthy, active and safe borough.

4.2. Businesses falling within the scope of Animal Activity licencing provide livelihoods for approximately 75 residents. Others provide animal care for their own pleasure. Supporting and promoting such businesses aligns with the council's priority to support local businesses.

4.3. Having access to reliable high quality animal care is important to many of our residents, enabling families to spend time away from home, confident that their pet is being looked after.

5. Legal and Statutory Implications

5.1. The authority is obliged to ensure that the new regulations are correctly implemented and that animal activities falling within the scope of the regulations are correctly licenced.

5.2. The authority must comply with statutory guidance and officers' actions must be consistent and fair. Decision making should be transparent.

6. Equality Impact Assessment

6.1. No adverse impact is anticipated.

7. Financial and Resource Implications

7.1. If adopted the proposed fee structure should make the licencing of animal activities cost neutral. Regulations prevent fees being set to generate a surplus.

8. Major Risks

8.1. No major risks have been identified.

9. Sustainability and Climate Change Implications

9.1. N/A

10. Key Decision Information

10.1. Actions required to implement The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, whilst impacting on more than 2 wards, are not considered Key Decisions as defined within the council's constitution.

11. Earlier Cabinet/Committee Resolutions

11.1. N/A

12. Background Papers

- Regulations: <http://www.legislation.gov.uk/uksi/2018/486/contents/made>
- Procedural Guidance for local authorities: https://www.newcastle-staffs.gov.uk/sites/default/files/IMCE/Environment/DogWarden/Guidance_Procedure.pdf
- Supporting Information for residents and businesses: <https://www.newcastle-staffs.gov.uk/all-services/environment/dog-wardens/animal-welfare-and-licensing>

Appendix One

Administration, Policies & Procedures: Animal Activities Licensing

Source: <https://www.newcastle-staffs.gov.uk/all-services/environment/dog-wardens/animal-activities-policies-procedures>

Policies and Procedures

The Borough Council is required to follow the relevant Regulations and Statutory Guidance when considering applications for Animal Activities Licences and inspecting premises

If you are unhappy with the officers' report or comments you should first contact the officer. If problems remain unresolved you have the following options:

Appeals

1. Disputed Scores and Licence Reports – Grading Review Request

If you wish to dispute the star rating given as not reflecting the animal welfare standards and risk level of your business at the time of the inspection you should first contact the officer to discuss this matter soon after receiving your rating. We will aim to respond within seven days of your request. A different process applies if changes have been made since the inspection occurred.

If you are not satisfied with the officer's explanation, you have the option to formally appeal. You must make your appeal in writing and submit it within 21 days of your grading being issued.

This can be by letter, addressed to Environmental Health, Newcastle-under-Lyme Borough Council, Castle House, Barracks Road, Newcastle, Staffordshire ST5 1BL or by email to environmental_health@newcastle-staffs.gov.uk. You can withdraw your appeal afterwards if you wish.

An appeal will be considered by the head of the department that issued the licence or another senior officer who has not been directly involved in the inspection on which the grade is based.

The council must consider the appeal and provide a decision to the business within 21 days of the written appeal request being received.

We will consider the appeal by reviewing the paperwork associated with the inspection. This will include the application form originally submitted and the inspector notes from the visit. The past record for the business will also be considered including previous inspections and any complaints in respect of animal welfare which have been investigated. In some circumstances a further visit may be required.

The costs of any additional inspections related to the appeal will be borne by the applicant unless it results in a higher rating being awarded. This will depend on the nature of the dispute and whether a decision can or cannot be made on the basis of the paperwork.

If you then disagree with the outcome of the appeal, you can challenge our decision through judicial review, and you also can contact the Local Government Ombudsman if you consider that we have not properly followed the regulations and any statutory guidance.

2. Licence Refusals / Suspensions

If an officer advises that a licence will be refused or will be suspended they should provide details, in writing, with the reasons why. Generally, the reason to refuse will be because the officer:

(a) Thinks the applicant is not capable of meeting their licence conditions

(b) Thinks that granting a licence might negatively affect the welfare, health or safety of the animals involved in the activity

(c) Considers the accommodation, staffing or management are inadequate for the animals' well-being or for the activity or establishment to be run properly. The relevant guidance documents for the activity will explain in detail the requirements and conditions that must be met so you should have regard to these documents

(d) Believes the applicant has been disqualified from holding a licence as per Schedule 8 of the Regulations.

The Licence Holder / Applicant may appeal to a First-tier Tribunal if they do not agree with the decision made by us. This must be done within 28 days of the decision.

The relevant forms are here:

- Form T98: Notice of appeal (General Regulatory Chamber (GRC))
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741602/t98-eng.doc
- Guide to completing the notice of appeal (General Regulatory Chamber (GRC))
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690455/t97-eng.pdf

3. Re-inspection visit for re-rating purposes

If you have made changes to your business since the licence inspection, have been graded 1-4 stars, and have made improvements you can request a re-inspection to re-assess your star rating. A re-inspection for re-rating purposes could lead to a lower rating being awarded rather than an improved grade.

We should carry out the re-inspection visit within three months of receipt of the request (and payment where required). There is no limit to the number of re-inspections that can be requested, however a fee may be charged for each.

The request should be made in writing. This can be by letter, addressed to Environmental Health, Newcastle-under-Lyme Borough Council, Castle House, Barracks Road, Newcastle, Staffordshire ST5 1BL or by email to environmental_health@newcastle-staffs.gov.uk. You should outline the case for a re-inspection, that is, indicate the actions you have taken to improve the level of compliance or welfare since the inspection and, where appropriate, should include supporting evidence such as photographs or documents. Explain what has changed and how this changes risk or welfare standards.

The council can refuse to undertake a re-inspection if insufficient evidence has been provided that risk or welfare standards have changed. If this happens the council will explain the priority actions that must be taken in order to improve the rating and indicate what evidence will be required for agreement to a re-inspection to be made on further request.

New ratings cannot be given purely on documentary evidence. A visit will always be made. The officer will not only check that the required improvements have been made, but also assess the ongoing standards. This means that the rating could go up, down or remain the same.

4. Fee Setting

Charges for animal activities licencing are calculated based the costs the council will incur through officer time, travel, production of reports, processing payments based on the costs the authority can reasonably anticipate. Fees comply with the councils charging policy <https://www.newcastle-staffs.gov.uk/all-services/your-council/policies-and-strategies-z/charging-policy> and guidance provided by the Local Government Association “Open for business: LGA guidance on locally set licence fees” <https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees> Fees at calculated annually and agreed by elected members. Where the council’s costs can be reduced through efficiencies, these savings will be reflected in future fees. Fees are set at a level which does not generate a surplus.

5. Refund Policy

Applicants may withdraw their applications, or surrender their licences at any point and may seek a refund by applying in writing. This should be by letter, addressed to Environmental Health,

Newcastle-under-Lyme Borough Council, Castle House, Barracks Road, Newcastle, Staffordshire ST5 1BL or by email to environmental_health@newcastle-staffs.gov.uk

Refunds will be calculated on a case by case basis for unused elements of the fee. For example if an application is withdrawn prior to an inspection being undertaken the majority of the fee may be returned, however, if an inspection has been undertaken officer time and travel costs incurred and those of any third party e.g. vet may be deducted.

Refunds will be by bank transfer, refund to a credit or debit card if used, or cheque and will be made within 10 working days of the request having been approved.