



GUILDFORD  
BOROUGH

# Animal Welfare Licensing Policy

29 May 2019

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## **1. Introduction**

- 1.1 This policy sets out how the Council will exercise its functions under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981.
- 1.2 This policy has been introduced pursuant to the commencement of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the Regulations”) on 1 October 2018. It will be reviewed at least every 3 years following first approval, and at other times where considered necessary, for example, to reflect significant changes in relevant legislation or guidance.
- 1.3 This policy sets out the principles we will use when dealing with applicants and licence holders with whom the Council is responsible for.
- 1.4 This policy provides guidance to any person with an interest in Animal licensing. In particular, but not exclusively:
  - Applicants for licenses,
  - Existing licence holders whose licences are being reviewed,
  - Licensing Officers,
  - Members of the Licensing Committee, and
  - Courts and Tribunals hearing appeals against local authority decisions.
- 1.5 This policy sets out the criteria to be taken into account by the Council when determining whether or not an applicant or an existing licence holder is suitable to be granted, have renewed or continue to hold a Licence. In addition to criminal convictions the Council will also take into account other factors such as general character, compliance with licence requirements/guidance/conditions, non-criminal behaviour and police or other relevant records or information from reliable sources.

## **2. Policy Objectives**

- 2.1 The Policy is designed to ensure that:-
  - any person who carries on, attempts to carry on or knowingly allows a licensable activity to be carried on holds a licence in accordance with the Regulations,
  - the licence holder is not disqualified from holding a licence in accordance with the requirements of the Regulations,
  - that the five overarching principles of animal welfare, (known as the “five needs”) introduced by the Animal Welfare Act 2006 are upheld in any decision,
  - the safeguarding of any children or vulnerable persons in contact with a licensable activity is ensured
  - each application is considered on its merits
  - decisions made by the Council are transparent and consistent
  - relevant objectives of the Council’s Corporate Business Plan are supported
  - that the obligations of the Council’s Public Sector Equality duty under the Equality Act 2010, section 149 are fulfilled by eliminating discrimination, harassment, victimisation and other conduct prohibited by the Act,

advancing equality of opportunity and fostering good relations between persons who share and those who do not share protected characteristics.

2.2 In addition, the Council will base its licensing regime on the following principles which arise from the responsibilities arising under the Animal Welfare Act 2006:-

- Responsibility to protect the welfare of all fellow creatures;
- Ensuring the welfare of domestic or captive animals by implementing appropriate standards that promote the “five needs”;
- Ensuring that persons responsible for the management of animal welfare observe recognised standards of good practice;
- Ensuring that, so far as it falls within its powers, the requirements of all animal-related legislation will be rigorously and pro-actively enforced.

### **3. Animal Welfare Act**

3.1 The Animal Welfare Act 2006 (the Act) established that reasonable welfare standards must be maintained whilst unifying much animal legislation, including responsibilities falling to other enforcement agencies.

3.2 The Act introduced five overarching principles of animal welfare, known as the “five needs” which are:

**1. The need for a suitable environment;**

(by providing an appropriate environment, including shelter and a comfortable resting area)

**2. The need for a suitable diet;**

(by ready access, where appropriate, to fresh water and a diet to maintain full health)

**3. The need to be able to exhibit normal behaviour patterns;**

(by providing sufficient space, proper facilities and the company of an animal of its own kind, where appropriate)

**4. Any need to be housed with, or apart from, other animals;**

(by providing the company of an animal of its own kind, where appropriate);  
and

**5. The need to be protected from pain, suffering, injury and disease;**

(by prevention or rapid diagnosis and treatment, and ensuring conditions and treatment which avoid mental suffering).

### **4. Licensable Activities**

4.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force on 1<sup>st</sup> October 2018 and will have an impact on establishments licensed under the previous animal health legislation. This includes those previously licensed as pet shops, catteries, kennels, home boarders, dog crèche, riding establishments, dog breeders and performing animals.

- 4.2 A licence is required when any of the licensable activities outlined in Schedule 1 of the regulations are undertaken. These are:
- selling animals as pets (Part 2);
  - providing or arranging for the provision of boarding for cats or dogs (including the provision of boarding for cats; kennels for dogs; home boarding for dogs; or day care for dogs (Part 3);
  - hiring out horses (Part 4);
  - breeding dogs (Part 5);
  - keeping or training animals for exhibition (Part 6).
- 4.3 The Regulations replace previous licensing and registration regimes under the following legislation:
- Pet Animals Act 1951
  - Animal Boarding Establishments Act 1963
  - Riding Establishments Acts 1964 & 1970
  - Breeding of Dogs Act 1973 & Breeding and Sale of Dogs (Welfare) Act 1999
  - Performing Animals (Regulation) Act 1925
- 4.4 The Regulations do not impact on the licensing of Dangerous Wild Animals under the Dangerous Wild Animals Act 1976 and Zoos under the Zoo Licensing Act 1981, which remains unaffected by the legislative changes, however will fall within the scope of this Policy.

## **5. Suitability of Applicants**

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

- 5.1 In accordance with the Regulations any individual, who carries on a licensable activity will be designated as the operator of the business and can apply for a licence providing they are not disqualified from holding a licence in accordance with Regulation 11 and Schedule 8.
- 5.2 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-
- Will require the applicant to provide a basic disclosure (DBS) certificate (issued within 3 months of the date of application) showing that they are not disqualified from holding a licence, and/or hold no relevant convictions which may affect whether they are a 'fit and proper' person to hold a licence; and
  - May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold. This information sharing is possible under Section 17 of the Crime and Disorder Act 1998, which requires that local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent crime and disorder in their area.
- 5.3 An applicant will be granted a licence if the Council is satisfied that the licence

conditions will be met. In considering this, the Council will take into account whether the applicant is a fit and proper person to be the operator of the activity. The term 'fit and proper' is not defined in the legislation or guidance. For the purpose of this Policy, the Council will consider a 'fit and proper person' to be an individual who can demonstrate upon application that they have:-

- the right to work in the UK
- no relevant convictions
- not been disqualified from holding a licence
- the knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of animals in their care
- made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licence activity.

#### Dangerous Wild Animals and Zoos

5.4 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-

- Will require the applicant to provide a basic disclosure (DBS) certificate issued within 3 months of the date of application; and
- May request information from Surrey Police under our information sharing agreement about any relevant convictions an applicant may hold.

#### Relevance of convictions

5.5 The purpose of this section is to offer guidance on how the Council can determine whether an applicant/licence holder suitable to either be granted a licence in the first place or retain such a licence. In all cases, the Council will consider the conviction or behaviour in question, what weight should be attached to it and each and every case will be determined on its own merits, but in light of these guidelines. Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will not prevent the grant or renewal of a licence.

5.6 The council will not normally grant a licence to a person with one (or more) convictions for any of the following offences:

- Offences involving violence
- Possession of a weapon
- Sex and indecency offences
- Offences involving a minor
- Offences involving dishonesty
- Offences involving drugs
- Licensing offences

- Offences involving Animals, including but not limited to offences involving danger or suffering caused to animals

5.7 Any offences or behaviour not expressly covered by this Policy may still be taken into account.

## **6. Safeguarding**

6.1 The regulations have the aims of maintaining and improving animal welfare standards. However there are other safeguarding considerations arising from licensable activities which the Council has a statutory duty to ensure, in particular surrounding the protection of children and vulnerable persons.

6.2 The Council is aware that some licensable activities may involve unsupervised contact with children and/or vulnerable persons. For example the tuition of a young person provided at a Riding Establishment, or entertaining at a children's party with an exhibition of animals.

6.3 To this extent, the Council would expect applicants and licence holders whose activities involve contact with children or vulnerable persons to:-

- Have a written safeguarding policy and provide training for staff; and
- Have a procedure for vetting staff who have unsupervised contact with young/vulnerable persons.

## **7. Application Process**

7.1 Licence applications must be submitted in writing on the prescribed application form, along with any supporting information (as detailed in the application form and as required under this Policy), together with the appropriate fee. Proof of the planning permission required for the relevant activity on the premises should also be provided.

7.2 The Council will notify licence holders when their existing licence will expire (3 months prior to expiry) and licence holders must make a new application at least 10 weeks before the licence expires to continue the activity without a break. It is the licence holder's responsibility to ensure that any renewal application is made in good time, and the Council cannot be held responsible for any delays or lapses of a licence caused by an incomplete or late application.

7.3 Payment for vet inspections required either by legislation or by the Council in order to determine the application, will be an additional charge passed on to the applicant/license holder.

7.4 The Guidance stipulates that once a local authority receives an application for the grant or renewal of a licence it must do all of the following before granting or renewing a licence:

- The Council must consider whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet their licence conditions.

- The Council must inspect the site of the licensable activity and assess if it is likely to meet the licence conditions. The inspection must be completed by a suitably qualified inspector present (as well as a veterinarian for the initial inspection of a dog breeding establishment, or a listed veterinarian for inspections of horse riding establishments). The inspector must prepare a report, in accordance with the requirements of regulation 10, to be submitted to the local authority following their inspection.
- The inspector's report will contain information about the operator, any relevant premises, any relevant records, the condition of any animals and any other relevant matter and state whether or not the inspector considers that the licence conditions will be met.
- Ensure that the appropriate fees have been paid, these can include fees for the consideration of the application, the reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations, the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator and any costs reasonably anticipated in relation to the provision of information to the Secretary of State.

## 8. Rating and Licence duration

8.1 Licences can be issued for a period of either one, two or three years depending on the risk rating and level of compliance. This also corresponds with the Star Rating for the establishment.

8.2 The Scoring matrix is below:

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	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>3 Star</b> 2yr licence Min 1 unannounced visit within 24 month period	<b>5 Star</b> 3yr licence Min 1 unannounced visit within 36 month period
	Higher Risk	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>2 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>4 Star</b> 2yr licence Min 1 unannounced visit within 24 month period

8.3 Licences for the keeping or training animals for exhibition are issued for three years.

## 9. Standards and Conditions

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



- 9.1 The Regulations include mandatory conditions for each licensable activity and DEFRA has produced associated guidance. The conditions are divided into two categories namely General Conditions (stipulated in Schedule 2) and Specific Conditions from the associated Schedule of the Regulations.
- 9.2 Applicants/licence holders will need to meet all the mandatory conditions, although minor failings may be noted/recorded providing they do not compromise the welfare of the animals (these should be predominantly administrative in nature).
- 9.3 For each activity (except keeping or training animals for exhibition) a number of “higher standards” have been included in the guidance. Meeting the higher standards is optional but is the only way to gain a higher star rating.
- 9.4 The higher standards are classified into two categories – required (mandatory) and optional. These will usually be colour coded into blue and red respectively. To qualify as meeting the higher standards the business must achieve all the required (mandatory) standards as well as a minimum of 50% of the optional higher standards.
- 9.5 The Regulations make provision for Officers to take samples for laboratory testing from any animals on premises occupied by an operator for the purposes of ensuring the licence conditions are being complied with. A Licence holder must comply with any reasonable request of an inspector to facilitate the identification and examination of an animal and the taking of samples and, in particular, must arrange the suitable restraint of an animal if so requested by an inspector.
- 9.6 Samples should be as non-invasive as possible, however inspectors may deem more invasive samples necessary if there are concerns over the welfare of the animals. The provision for sampling is primarily aimed at veterinarians carrying out inspections and it is not expected that samples be taken by those without the training to properly and safely do so.

#### Dangerous Wild Animals

- 9.7 The Council will usually impose Defra’s standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

#### Zoos

- 9.8 The Council will usually impose Defra’s standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

### **10. Granting an application**

- 10.1 Where a licence is issued the Council will provide the following details:

- the Licence with the Star Rating;

- details of how the business has been rated including a list of the higher standards the business currently fails to meet or a list of the minimum standards the business is failing to meet and resulting in a “minor failing” category;
  - a copy of the risk management assessment table;
  - details of the appeals process and timescales.
- 10.2 Any fee(s) required upon the grant of the licence must be paid in full prior to the issue of the licence.

## **11. Refusing Applications**

- 11.1 The Council will consider the report from the inspector and any comments made by the applicant when deciding whether to issue a licence.
- 11.2 The Council will refuse to issue a licence if it considers that the applicant cannot meet the licence conditions, for example, if the granting of a licence will have a negative impact on animal welfare or if the level of accommodation, staffing or management is inadequate for the well-being of animals.
- 11.3 The Council will also refuse to issue or renew a licence if the applicant has a history of non-compliance with licensing conditions or requirements, is obstructive towards officers, or if there are safeguarding concerns arising from the licensed activity. The above list is not exhaustive, but indicative of the circumstances where they Council will want to refuse an application.
- 11.4 The Council will also refuse an application if it considers that the applicant does not meet the ‘fit and proper person’ test.
- 11.5 A licence cannot be issued to an operator who is disqualified.
- 11.6 Any application fees or veterinary inspection fees paid will not be refunded for unsuccessful applications.
- 11.7 If a licence is refused, the applicant will have the right of appeal to a First-tier Tribunal within 28 days of the decision notice.

## **12. Appeals to Star Rating**

- 12.1 To ensure fairness to the business, the Council has an appeals procedure in place for the operator to dispute the star rating given.
- 12.2 The business will be provided with supporting information (the inspection reports) which will highlight the inspecting officer’s decision on how the risk rating, compliance level and star rating has been determined. The business is encouraged to discuss the matter initially with the inspecting officer where possible.
- 12.3 A business may appeal if they consider their star rating to be wrong - in other words it does not reflect the standards found at the time of inspection. Any appeal to the rating given must be made in writing within 21 days.

- 12.4 A business may wish to apply for a re-inspection or re-rating on a chargeable basis following completion of works to rectify any non-compliance or improvements to achieve higher standards.
- 12.5 An appeal will be assessed and determined by an appointed manager within the Department, who will conduct a 'desk based' appraisal of the rating given.
- 12.6 The appointed managers for this purpose are the Licensing Team Leader, or Regulatory Services Manager in their absence.
- 12.7 If the business disagrees with the outcome of the appeal they can only challenge the decision by means of judicial review.

### **13. Variations, Suspensions and Revocations of Licences**

- 13.1 The Regulations provide for a local authority at any time to vary a licence:
- On the application in writing of the licence holder, or
  - On the initiative of the local authority, with the consent in writing of the licence holder.
- 13.2 In addition to the above a local authority may suspend, vary or revoke a licence without the consent of the licence holder if:
- The licence conditions are not being complied with,
  - There has been a breach of the Regulations,
  - Information supplied by the licence holder is false or misleading, or
  - It is necessary to protect the welfare of an animal.
- 13.2 A suspension or variation of a licence will normally take effect 7 working days after the decision has been issued to the licence holder unless the reason is to protect the welfare of an animal in which case the local authority may stipulate that the decision has immediate effect.
- 13.3 A decision to vary or suspend the licence must be notified to the licence holder in writing, explaining the reasons for the decision, and providing information regarding when the suspension or variation comes into effect and the rights of the licence holder to make written representation, as well as any specific changes deemed necessary in order to remedy the situation.
- 13.4 The decision to vary, suspend or revoke a license will be dependent on the severity of the situation. If an operator fails to meet administrative conditions or provide information when requested then this could potentially lead to the suspension of a licence. If such a scenario happens repeatedly, the Council may consider revocation appropriate. Revocation of a licence will also occur in an instance where poor welfare conditions are discovered or it would otherwise benefit the welfare of the animals involved to be removed from the activity. Variations can occur if adjustments need to be made, whether that is to the licence itself or to the premises/animals referred to in the licence.
- 13.5 Following the issuing of the notice of suspension or variation, the licence holder will have 7 working days to make written representation. Upon receipt of this the Council will decide whether to continue with the suspension or variation of the licence or cancel the decision.

- 13.6 If the licence has been altered with immediate effect to protect the welfare of an animal then the Council must indicate that this is the reason.
- 13.7 The business will not be able to trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by the local authority upon being satisfied that licence conditions are being met.
- 13.8 There is no right of appeal against the suspension of a licence. After 28 days of suspension the licence must be revoked or reinstated.
- 13.8 A licence holder may appeal to a First-tier Tribunal if they do not agree with the decision made by the local authority to vary or revoke a licence. This must be done within 28 days of the decision.

#### **14. Transfer of a licence upon the death of a licence holder**

- 14.1 If a licence holder dies, the procedure in regulation 12 of the Regulations applies. It allows the personal representative of the deceased to take on the licence provided that they inform the local authority within twenty-eight days of the death that they are now the licence holders. The licence will then remain in place for three months from the death of the former holder or for the rest of the time it was due to remain in force if that time period is shorter. The new licence holder should then apply for a new licence one month before the expiry of this new period.
- 14.2 Additionally the local authority can extend the three month period by up to another three months if requested by the personal representative and if they believe this time is needed to wind up the estate of the former licence holder.
- 14.3 If the personal representative does not notify the local authority within 28 days of the death of the licence holder, the licence will cease to have effect after those 28 days.

#### **15. Inspections During the Course of a licence**

- 15.1 There will be cases where inspections must be carried out during the term of a licence.
- 15.2 For the activity of hiring out horses, there is a requirement for an annual inspection by a listed veterinarian, regardless of the total length of the licence. The local authority must appoint a listed veterinarian to inspect the premises on which the activity is being carried out before the end of the first year after the licence is granted and then each subsequent year.
- 15.3 Unannounced inspections can also be carried out and will be used in the case of complaints or other information that suggests the licence conditions are not being complied with or that the welfare of the animals involved in a licensed activity is at risk.
- 15.4 During the course of an inspection the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by an

operator. The operator must comply with any reasonable request of an inspector to facilitate the identification, examination and sampling of an animal including ensuring that suitable restraints are provided if requested.

## **16. Qualifications of Inspectors**

16.1 All inspectors must be suitably qualified. This is defined in the Guidance as:

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

## **17. Fee Structure**

17.1 The current level of licence fee will be displayed on the Council’s webpage.

17.2 All fees have been calculated and reviewed annually, taking into account the statutory requirements of Regulation 13, with the aim of full cost recovery.

## **18. Enforcement**

18.1 The Regulations introduce a range of enforcement powers to allow the Council to issue a suspension, variation or revocation notice where licence conditions are not being complied with; there is a breach of the regulations or issues relating to the protection of the welfare of an animal.

18.2 The service of an enforcement notice is subject to a strict process and includes provision for the right to make written representations and/or appeal.

18.3 It is an offence to breach any licence condition. It is also an offence not to comply with an inspector’s request in the process of taking a sample from an animal.

18.4 It is also an offence to obstruct an inspector who has been appointed by a local authority to enforce the Regulations. Committing any of these offences could result in an unlimited fine.

18.5 Anyone who carries on any of the licensable activities without a licence is liable to imprisonment for a term of up to six months, a fine or both. Section 30 of the Animal Welfare Act 2006 allows for local authorities to prosecute for any offences under that Act.

- 18.6 The post-conviction power from section 34 of the Animal Welfare Act 2006 is in place whereby a person convicted of an offence under the Act or Regulations may be disqualified from owning, keeping, participating in the keeping of animals and/or from being party to an arrangement under which they can control or influence the way an animal is kept. They may also be disqualified from transporting or dealing in animals. Breaching these disqualifications is an offence.
- 18.7 The post-conviction power from section 42 of the Animal Welfare Act is also in place whereby a court can cancel a currently existing licence and disqualify a person from holding a licence for any period it sees fit when that person is convicted of an offence under the Act or Regulations.
- 18.8 The Council works closely with partners in accordance with a locally established joint enforcement protocol and will aim to promote the welfare of animals and safety of the public.
- 18.9 The main enforcement and compliance role for the Council in terms of the Regulations will be to ensure compliance with the conditions placed upon the licence and investigate and take appropriate action on unlicensed premises.
- 18.10 The Council will log and investigate as it considers necessary all complaints relating to Animal Establishments which are currently licensed or may require a licence. The Council will require complainants to provide their name and contact details so as to ensure that a complaint is not malicious in nature, and so that witness evidence may be obtained if required for further action. When investigating complaints officers will take care to not reveal the identity of the complainant, unless the complainant has agreed otherwise, or unless it is necessary for the progression of legal proceedings.
- 18.11 We aim to achieve and maintain a consistent approach when we investigate complaints and make our decisions. In reaching any decision we will consider the following criteria:
- seriousness of any offences or breach of conditions
  - operator's past history
  - consequence(s) of non-compliance
  - likely effectiveness of the various enforcement options
  - danger to the welfare of animals and/or public
- 18.12 In carrying out its enforcement duties with regards to the inspection of premises, the variation, suspension or revocation of licences, investigation of complaints and the powers to institute criminal proceedings in respect of certain offences under the Act, the Council has adopted an enforcement policy, which is available on [www.guildford.gov.uk](http://www.guildford.gov.uk).