

<b>Item No.</b> N/a	<b>Classification:</b> Open	<b>Date:</b> 19 October 2018	<b>Meeting Name:</b> Cabinet Member for Finance, Performance and Brexit
<b>Report title:</b>		Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 – Fees & Charges	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director for Environment & Leisure	

## RECOMMENDATION

1. That the schedule of fees and charges in respect of applications for licences under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, set out in Appendix A to this report, be approved.

## BACKGROUND INFORMATION

2. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 comes into effect on 1 October 2018. The Regulations introduces a new licensing regime for animal licensing to be administered by the local licensing authority.
3. The regulations makes provision for applications for:
  - Selling animals as pets;
  - Providing or arranging for the provision of boarding for cats or dogs;
  - Hiring out horses
  - Breeding dogs
  - Keeping or training animals for exhibition
4. Types of licence in each category are:
  - New Licences
  - Renewal licences
  - Licence and other replacement costs
  - Variation and transfer fees
5. Section 13 of the regulations states:
  - (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,
- (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) The fee charged for the consideration of an application for the grant, renewal or variation of a licence and for any inspection relating to that consideration must not exceed the reasonable costs of that consideration and related inspection.

6. This report seeks approval to a proposed schedule of fees and charges in respect of applications made under the Regulations. A copy of the proposed schedule is provided at Appendix A to this report. The schedule has been prepared with regard had to DRFRA draft guidance, LGA guidance on locally set licence fees, the principles contained within the EU Services Directive and also recent relevant case law.
7. While fees and charges would normally be considered by the cabinet, approval is sought on this occasion under IDM (by agreement under a general exception), in order that fees to be levied may be confirmed before the first fees are due on 1<sup>st</sup> November 2018.

## **KEY ISSUES FOR CONSIDERATION**

### **DEFRA draft guidance on fees and charges**

8. DEFRA has circulated draft guidance on animal welfare licence fees as a guide for Local Authorities setting fees under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
9. The guidance gives general principals which are:
10. Local Authorities should
- Recover any reasonable costs of administering and enforcing each licence,
  - Charge separately for application processing and enforcement
  - Continually seek service improvements to help reduce costs for businesses
  - Use evidence based data wherever possible as the basis of their fee charges, and retain this information for the purposes of transparency.
11. Local Authorities should not
- Charge for matters that do not relate directly to that licence
  - Seek to make a profit
12. The fees should include the inspection costs prior to the grant of a licence, which includes vet inspections, and all costs relating to the setting up of the licensing process and processing the application.
13. A separate enforcement fee can be charged after grant of the licence to include inspections to licensed premises as a result of complaints and enforcement regarding unlicensed animal establishments. See *Hemming v WCC* below.

14. This fee structure was also considered with reference to the LGA guidance on locally set licence fees

### **Hemming V WCC (2013)**

15. This position (13 above) was established by the case of Hemming V Westminster City Council. In April 2015, Supreme Court judges found that sex establishment licence fees charged by Westminster City Council since the introduction of the EU Services Directive had been incorrectly charged as they had sought to recover enforcement costs against illegal operators at the time of application. The Directive does provide for both the recovery of proportionate and reasonable costs incurred in administering the process and in enforcement of licensed and unlicensed premises, however the latter part is payable after the licence is granted, creating a two part licensing fee.

### **The schedule of fees and charges**

16. A full list of the proposed fees and charges to be approved is shown in Appendix A.
17. In calculating the fees, the following costs have been incorporated:
  - The costs of administering each individual process from receipt of application through consultation, criminal and other records checks, and determination of application;
  - A contribution toward startup and management costs;
  - The costs of inspections prior to the issue of a licence;
  - The costs for enforcement of the licence and unlicensed operators.

### **Policy implications**

18. The following principles have been applied in establishing this schedule of fees and charges:
  - That the costs of administering the licensing process should be borne by those operators who benefit from it;
  - That our charging regime should be fair, equitable and transparent;
  - That all applicants for licences shall receive a responsive and effective service; and
  - That all applicants shall be entitled to a fair hearing of their application.

### **Community impact statement**

#### **General guidance**

19. The new licensing regime established under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 provides a legal framework for ensuring that the lawful business for a variety of animal premises is conducted in accordance with all legal requirements.
20. The framework provides opportunity for anyone involved within the trade to apply for a licence and have that application considered in a fair, open and consistent manner.

21. Where the framework provides that applications for licences or variations may be refused, or licences granted to be revoked, then the opportunity is afforded in every case for the individuals concerned to make representations and receive a fair hearing of those representations. The Act also contains a right of appeal to a first tier tribunal where decisions to refuse applications or revoke licences are taken.
22. Any enforcement actions taken by this Authority will be appropriate, consistent and transparent and in accordance with the Council's Enforcement Policy.
23. The licensing regime intends to establish a proper legal framework within which lawful compliant operators may thrive, while enabling illegal operators and issues of non-compliance to be properly addressed.
24. The licensing scheme is to ensure that there are minimum standards for the welfare of animals in each of the licence categories and address concerns of public safety.
25. Having considered the statutory licensing regime it is considered that all opportunities are taken so as to ensure that there is equality of opportunity without potential for discrimination.

### **Financial Implications**

26. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 creates a fee raising power, to allow local authorities to recover the costs arising from administering and ensuring compliance with the regime. This report seeks to ensure that the relevant fees can be charged from the date this report is approved, 16<sup>th</sup> October 2018..
27. Section 13 of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 provides the statutory power for the Council to set a fee for applications received under the Act. And states:
  - (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,
    - (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) The fee charged for the consideration of an application for the grant, renewal or variation of a licence and for any inspection relating to that consideration must not exceed the reasonable costs
28. The Licensing unit has therefore proposed a set of fees as per Appendix A which has been set by reference to the actual costs associated with the licensing process. The Division will ensure that the income from fees charged for each service does not exceed the costs of providing the service.

29. The Income and Expenditure budgets will be amended as appropriate to accommodate any significant changes resulting from the introduction of these fees and charges. These changes will form part of the 2019/20 budget setting process.
30. The fees will be reviewed on an annual basis to ensure that they remain current and relevant.
31. The proposed fees set out in this report are based on the most up to date information available and are set to recover the cost of managing the licensing process. They will be subject to annual review as part of the Council's fees and charges Cabinet report that will next be considered by February 2019 Council Assembly when the service should have a more accurate assessment of the costs to process the licences.
32. It is anticipated that the additional demand made upon the licensing service by the introduction of this new responsibility may be absorbed by current resources.

### **Consultation**

33. No formal public consultation has taken place in preparation of this report. Involved services have liaised on establishing process and practice and the affected trades are being provided with advice and guidance on complying with legal requirements.
34. Licence fees of this nature are not formally consulted on as the fee is set on a cost recovery basis in accordance with guidance issued by the government to accompany the regulations and guidance from the Local Government Association.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Law and Democracy**

35. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 provides that an application must be accompanied by a fee set by the local authority on a cost recovery basis.
36. Under Directive 2006/123 art.13(2) and the Provision of Services Regulations 2009 reg.18(4), the costs of enforcing a licensing system against unlicensed operators can be reflected in licence fees charged by a local authority, This was reaffirmed in the case of Hemming V WCC (2013).
37. The decision for setting fees is an executive function. For the period to 01 April 2019 temporary fees can be made by the Cabinet Member for Finance, Performance and Brexit which will then be reviewed and presented with the other licensing fees at Council Assembly in February 2019.
38. There are no other legal implications.

#### **Strategic Director of Finance and Governance (E&L/13/026)**

39. This report seeks approval from the Cabinet Member for Finance, Performance

and Brexit to the schedule of fees and charges in respect of applications for licences under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, as set out in Appendix A.

40. The strategic director of finance and governance notes financial implications set out in paragraphs 26 to 32 and that these changes will form part of 2019/20 budget setting.
41. These changes are in accordance with the council's guidance on fees and charges, contained within the Medium Term Resources Strategy. This will need to be reviewed annually to ensure continued compliance with council and treasury guidance.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018	Office of Health Safety Licensing & Environmental Protection Unit, Hub C, 3 <sup>rd</sup> Floor, 160 Tooley Street, London, SE1	Mrs Kirty Read Phone number: 020 7525 5748
The Animal Welfare Act 2006	As above	As above
DFRA Draft fees Guidance	As above	As above
LGA guidance on locally set licence fees	As above	As above
DFRA Procedural guidance notes for local authorities	As above	As above

## APPENDICES

No.	Title
Appendix A	Schedule of fees and charges

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment & Leisure	
<b>Report Author</b>	David Franklin – Team Leader	
<b>Version</b>	final	
<b>Dated</b>	18 October 2018	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team/Community Council/Scrutiny Team</b>	18 October 2018	