

Meeting:	Licensing and Enforcement Committee	Date:	19 March 2019
Subject:	Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 – Proposed Fee Structure		
Report Of:	Head of Communities		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	Yes
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Appendices:	1. Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018		
	2. Committee Report – 11 September 2018		
	3. Proposed Fees and Charges – 1 April 2019 to 31 March 2020		
	4. Benchmarking - Stroud, Cheltenham and Tewkesbury		

1.0 Purpose of Report

- 1.1 To present to members a proposed set of fees and charges to cover the cost of administering and enforcing the new Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

2.0 Recommendations

- 2.1 That members approve the proposed set of fees and charges for the period 1 April 2019 to 31 March 2020.

3.0 Background and Key Issues

- 3.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 took effect from 1 October 2018. The regulations are attached as **Appendix 1** of this report.

- 3.2 Members were previously updated on the key differences from the previous animal licensing regime at a meeting on 11 September 2018. For ease of reference that report is attached as **Appendix 2** of this report.

- 3.3 The report also included a proposed set of fees and charges for administering and enforcing the new regulations. However, with the approval of the Head of Communities in the run up to the 11 September 2018 the decision was taken to delay setting the fees to allow time for the regulations to bed in and to iron out any teething problems, as well as allowing time to benchmark across the County most of whom had not already set their fees under the new regulations at that time.

3.4 Under the Regulations, Local Authorities are able to set licence fees, based on the principle of **cost recovery** and in accordance with the parameters set by paragraph 13 of the regulations and the provisions of the guidance. The Regulations permit the Council to charge such fees as it considers necessary for:-

- The costs of consideration of an application, including any inspection relating to that consideration;
- 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;
- The reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator; and
- The reasonable anticipated costs of the local authority compiling and submitting the data required by regulation 29 to the Secretary of State.

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.

3.5 Under the provisions of regulation 14 the Council must have regard to the guidance issued by the Secretary of State in carrying out its functions. The procedural guidance notes for Licensing Authorities issued by DEFRA is relevant in relation to the setting of fees for animal welfare licensing and states at paragraph 59:-

'When setting fees, local authorities should have regard to Open for business: LGA guidance on locally set licence fees, which sets out the steps that must be taken to set fair and reasonable fees, and explains the EU Services Directive upon which the LGA guidance is based. Local authorities should also have regard to the BEIS Guidance for Business on the Provision of Services Regulations. As with other areas of licensing, regard should also be had to the principles in the Regulators' Code. "Reasonable anticipated costs" will be fact specific and dependent on the local authority in question. The "Open for Business: LGA guidance on locally set fees" guidance includes information on what could be considered reasonable.'

3.6 In this regard, the LGA guidance makes a number of suggestions as to which elements it may want to consider when setting licence fees. The guidance suggests initial application costs could include:

Administration – this could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

Initial visit/s – this could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include 'on-costs' in this calculation. Councils will need to consider whether 'on-costs include travel costs and management time.

Third party costs – some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.

Liaison with interested parties – engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

Management costs – councils may want to consider an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time reference below.

Local democracy costs – councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

On costs – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

Development, determination and production of licensing policies – the cost of consultation and publishing policies can be fully recovered.

Web material – the EU Services Directive requires that application, and the associated guidance, can be made online and councils should effectively budget for this work.

Advice and guidance – this includes advice in person, production of leaflets or promotional tools, and online advice.

Setting and reviewing fees – this includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

3.7 The Guidance suggests that further compliance and enforcement costs could include:

Additional monitoring and inspection visits – councils may wish to include a charge for risk based visits to premises in between licensing inspections and responding to complaints. As with the initial licensing visit, councils can consider basing this figure on average officer time, travel, administration, management costs and on costs as suggested above.

Local democracy costs – councils may want to recover any necessary expenditure in arranging committee meetings or hearings to review existing licences or respond to problems.

Registers and national reporting – some licensing schemes require central government bodies to be notified when a licence is issued. The costs of doing this can be recovered.

Charging for action against unlicensed traders – councils’ ability to charge for these costs as part of a licensing scheme depends on the licensing scheme in

question. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 make specific provision in regulation 13 to recover such costs.

3.8 The level of involvement required by officers to administer the new regime has increased substantially since the introduction of the new regulations and includes:

- A star rating scheme which includes an initial extensive risk based assessment including measuring compliance not only against minimum standards expected but also higher standards that an operator can accomplish with a view to achieving a higher star rating;
- Various inspection visit requirements dependant on star rating and length of licence;
- Appeals process;
- Re-inspection ratings and the associated administrative tasks.
- Training officers (Regulation 16 – Suitably qualified inspectors)
- Provision of information to the Secretary of State

3.9 Historically, the fees charged for animal welfare related licensing were of a more administrative nature and as a result were considerably lower than the fees currently proposed for Members' consideration. It should also be noted that under the previous regime where veterinary or qualified animal health staff expertise has been required the Council has not recovered its full costs for this process.

3.10 There is a disadvantage to current operators in increasing the fees particularly if they achieve a low star rating. There is also the risk that increasing licence fees may encourage unlicensed activity thereby increasing the risk to animal welfare. Increase in unlicensed activity would require additional reactive investigation and enforcement by officers.

3.11 There are potential advantages to those operators who achieve the highest star rating because they meet the higher standards, as they will be paying the same fee for a three year licence as those with a lower star rating may be paying for a one or two year licence. It is hoped that this overall lower charge for greater compliance might encourage more operators to strive to achieve the higher standards set out in the Guidance. The increased requirements on officers time has been reflected in the proposed fees as set out in **Appendix 3** of this report.

4.0 Asset Based Community Development (ABCD) Considerations

4.1 There is a legal process within the terms of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 that we must follow. However, giving communities as much information about an application including how much it costs by providing help and advice where it is needed should also be a consideration.

5.0 Alternative Options Considered

5.1 The Council may decide to leave the fees at the existing levels. If this decision is taken, it should be mindful that the Community Wellbeing Team would not be covering the full cost of administering and enforcing the new regulations as set out in paragraphs 3.3-3.6 above.

6.0 Reasons for Recommendations

- 6.1 The fees and charges in respect of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 have been calculated to reflect the cost of administering the licences, monitoring compliance of the regulations and submitting an annual return to DEFRA.

7.0 Future Work and Conclusions

- 7.1 It is intended that the Community Wellbeing Team will review the fees and charges associated with Animal Welfare Licensing annually to ensure they continue to adequately reflect the cost of providing this service.

8.0 Financial Implications

- 8.1 The Council is entitled to set fees that will generate income to offset the estimated cost to the Council of providing the service. It is anticipated that the fees and charges as proposed will be sufficient to cover these costs. The employee costs used to calculate the fees and charges will be made available to members at the committee hearing.

- 8.2 The Community Wellbeing Team will review the fees and charges before the start of the financial year in 2020 as part of the annual budget setting process.

- 8.3 The consideration for fee setting may be implicated with the relocation to Shire Hall and this will be taken into account when setting the 2020 budget.

(Financial Services have been consulted in the preparation this report.)

9.0 Legal Implications

- 9.1 The Council has a legal duty to set fees on a cost recovery basis. Not setting a fee would have legal and cost implications for the Council. However those fees will need to be recalculated and based on “reasonable anticipated costs” of the process.

- 9.2 Consideration should be given as to whether Consultation should be undertaken locally with regard to the impact on stakeholders and local businesses with increasing these fees.

(One Legal have been consulted in the preparation this report.)

10.0 Risk & Opportunity Management Implications

- 10.1 There is a risk that increased licence fees may encourage unlicensed activity requiring additional reactive investigation and enforcement by officers.

- 10.2 It is hoped that the overall lower cost for greater compliance will encourage Operators to strive for the higher standards set out in the regulations thereby increasing animal welfare standards in the city.

11.0 People Impact Assessment (PIA) and Safeguarding:

11.1 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

12.0 Other Corporate Implications

Community Safety

12.1 None

Sustainability

12.2 None

Staffing & Trade Union

12.3 None

Background Documents:

Animal Welfare Act 2006

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

Procedural guidance notes for local authorities

Open for business: LGA guidance on locally set fees

https://www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness_02_web.pdf

BEIS Guidance for Business on the Provision of Services Regulations

<https://webarchive.nationalarchives.gov.uk/20121205034810/http://www.bis.gov.uk/files/file53100.pdf>

Regulator's Code

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf