



**SOUTH DERBYSHIRE DISTRICT COUNCIL**

# **Animal Welfare Licensing Policy**

**Version : #**

## **1 INTRODUCTION**

### **Powers and Duties**

- 1.1 This Statement of Licensing Policy (“the Policy”) is written pursuant to the powers conferred by the Animal Welfare Act 2006, Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018 (“the 2018 Regulations”) which place on South Derbyshire District Council (“the Council”) the duty to carry out its functions in respect of the licensing of activities involving animals.

### **Objectives**

- 1.2 In setting out the Policy, the Council seeks to promote the following objectives:
- The protection and promotion of animal welfare standards;
  - Public safety;
  - The establishment of a respected animal activities licensing regime;
  - The protection of the environment.
- 1.3 In carrying out their regulatory functions, the Council will have regard to this Policy and in particular, the objectives set out above. Notwithstanding the existence of this Policy, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons will be given for doing so.
- 1.4 The Policy refers to guidance that is available to applicants and licence holders to assist them with the application processes and the running of the service. This Policy, relevant application forms, current guidance and the current fees are available on the Council’s website.
- 1.5 The Council recognises that the Equality Act 2010 places an obligation on all public authorities to have regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs, sex and sexual orientation. In determining applications and carrying out any enforcement duties, the Council will ensure that the Public Sector Equality Duty has been fulfilled.

### **Background to Policy**

- 1.6 The Policy has been introduced pursuant to the commencement of the 2018 Regulations.
- 1.7 The Policy will take effect from # for a period of 5 years.
- 1.8 Prior to the end of the five-year period, a full consultation will be undertaken with a view to publishing a new Policy to take effect no later than the date of expiry of the existing Policy.
- 1.9 The Policy will be kept under constant review and amended as and when necessary to reflect changes in legislation and case law.

## **2 ANIMAL WELFARE**

## **Animal Welfare Act 2006**

- 2.1 This Act is the primary piece of legislation controlling the welfare of animals in England and Wales and established set welfare standards that must be maintained by all people who are responsible for an animal. It consolidated animal welfare legislation in areas such as preventing unnecessary suffering, mutilation and animal fighting. The Act also places responsibilities on to numerous enforcement agencies.
- 2.2 The Act introduces a 'duty of care' on any person that is responsible for an animal to ensure that the needs of that animal are met. A person does not have to be the owner of the animal for the 'duty of care' to apply.
- 2.3 The Act creates an offence of failing to provide for the needs of an animal in a person's care and increases the penalties for animal abuse allowing the courts to disqualify a person from being in charge of animals. Any person disqualified under the Act will also be disqualified from holding a licence under this Act and any associated regulations
- 2.4 Section 9 of the 2006 Act creates five overarching principles of animal welfare. The Act refers to these as the 'five needs' of all animals. It is the duty of any person responsible for an animal to ensure that each of these five needs are met.
  - The need for a suitable environment;
  - The need for a suitable diet;
  - The need to be able to exhibit normal behaviour patterns;
  - Any need to be housed with, or apart from, other animals; and
  - The need to be protected from pain, suffering, injury and disease.

## **3 LICENSABLE ACTIVITIES**

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

- 3.1 The 2018 Regulations came into force on 1<sup>st</sup> October 2018 and consolidated several pieces of legislation relating to animal licensing. This included legislation relating to pet shops, catteries, kennels, home boarding of dogs, dog day care centres, riding establishments, dog breeding and performing animals.
- 3.2 A licence may be required when any of the following licensable activities are undertaken:
  - Selling animals as pets;
  - Providing or arranging for the provision of boarding for cats or dogs including kennels, catteries, dog day care and home boarding;
  - Hiring out horses;
  - Breeding dogs;
  - Keeping or training animals for exhibition.
- 3.3 A licence is required where any of the above activities are being carried on in the course of a business, whether the operator makes a sale or carries on the activity with a view to making a profit or earns a commission or fee from the activity. With regards to defining a business, the Council will decide each case on its own merits considering the HMRC's nine badges of trade in addition to the consideration of the £1000 trading income referred to in the Guidance.

## **4. APPLICANT SUITABILITY**

- 4.1 In accordance with the 2018 Regulations, any individual who carries on a licensable activity will be designated as the ‘operator’ of the business and can apply for a licence provided they are not disqualified from applying for a licence as defined in the 2018 Regulations.
- 4.2 In determining an application, the Council will consider the conduct displayed by the applicant or licence holder to ensure they are a ‘fit and proper person’ to carry out the proposed licensable activity and meet the conditions attached to the licence.
- 4.3 The term ‘fit and proper’ is not defined within the legislation or guidance. For the purposes of this Policy, the Council would consider a ‘fit and proper person’ to be an individual who can demonstrate upon application 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.

This does not limit the scope of the fit and proper assessment and the Council may take into account other matters should they be considered relevant to the licensing process.

- 4.4 In the case of renewals, the Council will consider any information received about the operation over the period of the existing licence. The Council will expect licensees to demonstrate appropriate professional conduct at all times, act with integrity and demonstrate the conduct befitting the trust placed on them to operate their premises and care for the animals.
- 4.5 In reaching a decision on whether to issue a licence or not, the Council will consider the Inspector’s Report and will refuse to grant or renew a licence if it:
- Considers the applicant or licence holder is not capable of meeting the licence conditions;
  - Believes granting a licence might negatively affect the welfare, health or safety of the animals involved in the activity;
  - Believes the accommodation, staffing or management are inadequate for the animals well-being or for the activity or establishment to run properly;
  - Is established the applicant or licence holder has been disqualified from holding a licence per Schedule 8 of the 2018 Regulations.

### **Relevance of Convictions**

- 4.6 The purpose of this section is to offer guidance on how the Council can determine whether an applicant or licence holder is suitable to either be granted a licence in the first place or retain a licence under the 2018 Regulations. In all cases, the Council will consider the conviction or behaviour in question and what weight should be attached to it. Each case will be determined on its own merits, but in light of these guidelines.

- 4.7 Most applicants or licensees will have no convictions and that is clearly the ideal situation. It is accepted, however, 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.
- 4.8 The Council will not normally grant a licence to a person with one (or more) conviction for any offence that is related to animal cruelty or suffering. The primary purpose of the regulations enforced by this Council is to ensure the welfare of animals and as such, these types of offences are highly relevant.
- 4.9 The Council will not normally grant a licence to a person with one (or more) conviction for any offence that is related to licensing as these offences demonstrate a disregard for licensing processes and procedures.
- 4.10 In addition to the above, the Council also has wider obligations to prevent crime and disorder and safeguard both children and vulnerable adults. These obligations arise from the Crime and Disorder Act 1998; the Children Act 2004; and the Care Act 2014. As a result, the Council will not normally grant a licence to a person with one (or more) conviction for any of the following offences:
- Offences involving violence;
  - Possession of a weapon;
  - Sex and indecency offences;
  - Offences involving dishonesty;
  - Offences involving drugs.

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

- 4.11 The Council must ensure that licence holders remain fit and proper during the life of a licence. For this reason, licence holders must notify the Council, in writing, within 72 hours, if any of the following occurs (in relation to the types of offences highlighted above):
- They have any type of licence suspended or revoked;
  - They receive any warnings or cautions;
  - Are arrested (whether or not charged with an offence);
  - Are charged with any criminal offence;
  - Are convicted of any criminal offence;
  - Allegations are made of their involvement in criminal activity; or
  - Any pending charges, to include any notices of intended prosecution.

Failing to provide such notification will raise serious questions for the Council as to the honesty of the licence holder and their fitness and propriety to hold a licence.

## **5 APPLICATION PROCEDURE**

- 5.1 Licence applications must be submitted in writing on the relevant application form. Additionally, applicants should include any supporting information as required together with the appropriate fee which is available on the Council's website.
- 5.2 Payment for vet inspections will be an additional charge payable by the applicant or licence holder.

- 5.3 Although not a statutory requirement, the Council will aim to provide licence holders with 3 months' notice of when their licence is due to expire. Licence holders must then apply at least 10 weeks before their licence expires to continue the licensable activity with no interruptions. 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. If the renewal application has not been submitted for or granted by the expiry date of the current licence, the licence holder must stop trading until a licence has been granted. If the licence holder continues to trade with no licence in place even if an application has been submitted but not yet determined then enforcement action will be taken against the licence holder and their actions will be taken into consideration when determining any licence application.
- 5.4 Once a valid application has been received, an appointment will be booked with the applicant to arrange a risk rating assessment/inspection to be conducted of the premises. The inspection will be carried out by a suitable qualified inspector. The inspection will assess the whole site and determine if it is likely to meet the licence conditions. A report will be produced at the end of the inspection detailing the findings of the inspection stating whether the conditions will be met or not.

### **Standards and Conditions**

- 5.5 Under the 2018 Regulations, there are mandatory general conditions to be met by all premises offering any type of licensable activities. In addition, there are mandatory conditions specific to each type of licensable activity. Further to the general and specific conditions detailed in the 2018 Regulations, DEFRA have produced Guidance in relation to all conditions specific to each licensable activities. The Guidance can be found on the Council's website.
- 5.6 Applicants and licence holders will need to meet the requirements of all the minimum standards, although minor failings may be noted/recorded providing they do not compromise the welfare of the animals (these would be predominantly administrative in nature).
- 5.7 In addition each licensable activity (with the exception of the keeping or training animals for exhibition) also stipulates further optional conditions for "Higher Standards". Meeting the higher standards is optional but is the only way to gain the highest star rating. 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.

### **Determining Applications**

- 5.8 Having considered the inspection report and whether the applicant is a fit and proper person, the Council will decide whether to grant the licence or not. 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.
- 5.9 Any fee(s) required upon the grant of the application must be paid in full prior to the grant of the licence.
- 5.10 If having considered the Inspector's Report and the application, the Council is minded to refuse an application for grant or renewal then the application will be referred to the Licensing and Appeals Sub-Committee for determination. Information on this process will be provided to the applicant or licence holder if their application is to be referred to Committee for determination.
- 5.11 If the Licensing and Appeals Sub-Committee refuse the application, the applicant or licence holder has the right of appeal to a First-tier Tribunal within 28 days of the decision notice. No refund will be due on any application fees or veterinary fees for refused applications.

## **6 RISK ASSESSMENT AND RATING**

- 6.1 A risk-based star rating system has been introduced which will be used to determine how long a licence may be issued for from one to three years. The only exception is the activity of "Keeping or Training Animals for Exhibition" where all licences are issued for 3 years. The rating is determined by the animal welfare standards adopted by a business as well as their level of risk, based on elements such as past compliance. The model will be used every time a licence is granted or renewed. The scoring matrix is attached as **Appendix 1**.
- 6.2 Businesses will be rated from 1 to five stars, based on their risk rating and the results of their inspection (determining if the business meets the minimum and higher standards). The rating will appear on the licence issued by the Council. The licence issue letter will provide details of why the businesses received their risk rating score.
- 6.3 Any new business will automatically be classed as high risk if the Council does not have a 3-year history for the business. If the business is certified by a UKAS-accredited body with a good 3-year compliance history and evidence is provided, this Council will consider this new business as low risk. In addition, if the business has a good 3-year compliance history with another Council for a similar licensable activity and evidence is provided, the Council will consider this business as low risk.

### **Appeal of Star Rating**

- 6.3 Licence holders have 21 days (including weekend and bank holidays) following the issue of their licence in which to appeal the star rating if they consider the star rating awarded does not reflect the licence history and standards found at the time of inspection.
- 6.4 Prior to making an appeal, the Council encourages the licence holder to discuss the rating with the Inspecting Officer should they disagree with it. This will afford the Inspecting Officer the opportunity to explain the process that must be followed and may resolve matters without the business having to lodge an appeal. The business will be provided with the Officers' Inspection Report which will highlight the Inspecting Officer's decision on how the risk rating, compliance level and star rating has been determined. Please note the licence holder will still have to lodge any appeal within the 21 days even if they use the informal approach first.

- 6.5 To appeal, the licence must submit their appeal in writing by emailing the Licensing Department. The grounds for appeal must clearly be stated (i.e. the reasons why it is felt that the rating has been applied incorrectly).
- 6.6 Businesses should not appeal if they have made improvements to their business and wish for those improvements to be reassessed. This should be achieved by application for a re-inspection.
- 6.7 Appeals will be determined by the Head of Legal and Democratic Services or their appointed deputy, or by an equivalent person in another Council. No officer involved with the inspection or rating will determine an appeal.
- 6.8 A decision will be issued to the applicant for an appeal within 21 days of receipt of the appeal request.
- 6.9 The Council will determine the outcome of an appeal by considering the paperwork associated with the inspection and the past record of the business. In some circumstances, a further visit to the premises 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.
- 6.10 If a business disagrees with the outcome of the appeal, they can challenge the decision by way of judicial review. The business may also make a complaint via the council's corporate complaints procedure if they consider a council service has not been properly delivered.

### **Re-inspection**

- 6.11 Any business that has made changes since the last inspection and wishes for these to be taken into account should apply for a re-inspection. Please note a re-inspection for re-rating purposes could lead to a lower rating being awarded rather than an increase in rating.
- 6.12 To apply for a re-inspection, the licence holder must put their request in writing by completing the relevant application form and submitting to the Licensing Department including details of what actions and improvements have been made since the last inspection including any supporting evidence. A fee is payable.
- 6.13 On receipt of an application to re-inspect, the Council will decide whether the actions and improvements made by the business are sufficient for re-inspection. If there is insufficient evidence, the Council will inform the licence holder in writing detailing why the request has been refused and explaining what action needs to be taken by the licence holder before a re-inspection will be carried out. If the licence holder disagrees with this decision, they can appeal to the Head of Legal and Democratic Services or a complaint can be raised through the Council's Corporate Complaint process.
- 6.14 Once an application for re-inspection has been accepted, an Inspecting Officer will arrange for an inspection of the premises to be carried out. This may be an unannounced inspection dependant on the nature of the reasons for re-inspection. A full inspection will be carried out and the premises will be re-scored on the basis of the full inspection. This could lead to the rating of the premises going up, going down or staying the same. After the inspection, an amended licence will be issued as required and a decision letter will be issued with full details of the inspection.

## **7. TRANSFER, VARIATION, SUSPENSION AND REVOCATION**

### **Transfer**

- 7.1 There is no provision for the transfer of a licence under the 2018 Regulations. A new application would have to be made.
- 7.2 If a licence holder dies, the 2018 Regulations allow the personal representative of the deceased to take on the licence provided they inform the Council, within 28 days of the death, they are the operators of the licensable activity. The licence will 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.
- 7.3 Additionally, the Council can extend the three-month period by up to another three months if requested by the representative and if they believe this time is needed to wind up the estate of the former licence holder.
- 7.4 If the personal representative does not notify the Council within 28 days of the death of the licence holder, the licence will cease to have effect after those 28 days.

### **Variation, Suspension or Revocation of a Licence**

- 7.5 A licence holder may apply to vary the licence at any time during the term of the licence. An application must be made in writing on the relevant form and it must be submitted with any relevant documentation and fee. The process for the variation of a licence is the same as for the grant of a licence in that an inspection will be carried out to determine the variation. The premises will be re-assessed for the purposes of the star rating.
- 7.6 In addition, the Council may vary, suspend or revoke a licence without the consent of the licence holder if:
- (a) The licence conditions are not being complied with,
  - (b) There has been a breach of the Regulations,
  - (c) Information supplied by the licence holder is false or misleading, or
  - (d) It is necessary to protect the welfare of an animal.
- 7.7 The decision of whether to vary, suspend or revoke will depend on the severity of the situation. If the licence holder fails to meet administration conditions or fails to provide information repeatedly then this may lead to the suspension of the licence until they comply. However, the licence should be revoked if poor welfare conditions are discovered or it would otherwise benefit the animals involved to be removed from the activity. A variation would be used if there was a need to make changes to the licence, premises or animals i.e. reduce number of animals permitted or remove a licensable activity.
- 7.8 A decision to suspend or vary without consent will take effect 7 working days after the decision notice has been issued to the licence holder. The decision can take immediate effect if the reason for the decision is animal welfare. A decision to revoke will always take immediate effect.
- 7.9 The decision notice will explain the reason for the decision providing information regarding when the suspension, variation or revocation comes into effect, the rights of the licence holder and any specific changes necessary to remedy the situation. The

decision notice will be delivered in person, by leaving it at or posting to the licence holder's current or last known address or by emailing to the licence holder's current or last known email.

- 7.10 On receipt of a notice to suspend or vary, the licence holder has 7 working days to make written representation to the Council. On receipt of any written representation, the Council will decide whether to continue with the suspension, variation without consent, or cancel the initial decision. This decision must be made and notified to the licence holder within 7 working days otherwise the initial decision made is deemed to be overturned. If written representations are received, any suspension or variation does not take effect until the Council has made a decision on the written representations received unless the original decision stated the decision took immediate effect.
- 7.11 Once the decision comes into effect then the business cannot trade until the decision is overturned by the Council once they are satisfied the conditions are being met or after an appeal hearing at the First-tier tribunal. If the licence is suspended for a significant period of time, the Council will ensure that the animals are checked on regularly to ensure that the welfare of the animals is maintained.
- 7.12 As with applications, the licence holder may appeal to a First-tier Tribunal if they do not agree with the decision made by the Council. This must be done within 28 days of the decision.

## **8 INSPECTORS**

- 8.1 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.

## **9 INSPECTIONS**

- 9.1 In addition to the grant and renewal of a licence, in line with the Guidance, further unannounced inspections may be carried out during the term of the licence. In addition, further unannounced inspections will be carried out on receipt of a complaint or any other information is received about a premises suggesting licence conditions are not being complied with or that the welfare of the animals involved in a licensed activity is at risk.
- 9.2 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 Council will appoint a listed veterinarian to inspect the premises before the end of the first year after the licence is granted and then each subsequent year.

- 9.3 During the course of an inspection the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by a licence holder. The licence holder 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.

## **10 ENFORCEMENT**

- 10.1 The 2018 Regulations introduced new enforcement powers and measures in addition to the enforcement powers and measures contained with the 2006 Act. In addition, the 2018 Regulations provide safeguards to applicants and licence holders if they are aggrieved by any decision of the Council
- 10.2 It is recognised that well-directed enforcement activity by the Council benefits not only the public but also the responsible licence holders.
- 10.3 Wherever possible, the Council will adopt a graduated, education approach to enforcement however, where necessary, the Council will take appropriate and proportionate action against unlicensed and non-compliant businesses.
- 10.4 The Council will adhere to the Corporate Enforcement Policy and Associated Guidance to ensure that its enforcement is reasonable, transparent and proportionate.

## **11 PUBLIC REGISTER**

- 11.1 The Council holds a register of premises licensed under the 2018 Regulations which includes the star rating allocated to each premises (except premises licensed for the keeping and training of animals for exhibition). The register is available on the Council's website.

## **12 INFORMATION SHARING**

- 12.1 In the interests of protecting public safety, the safety and wellbeing of animals and ensuring fitness and propriety of licence holders, the Council will share information with other enforcement agencies including the RSPCA, police and other local authorities. Information may also be shared with internal council departments including Community Safety, Environmental Health, Revenues and Benefits and Planning. All information will be exchanged in accordance with relevant statute as the law permits.

## **13 FEES**

- 13.1 Fees in relation to these schemes are calculated on a cost recovery basis and reviewed on an annual basis. Applicants and licence holders will also be required to pay vets fees for inspections as required.
- 13.2 Fees payable consist of an application fee and a licence fee. The application fee is due on application. The licence fee is payable once a licence has been approved but before it is issued. A list of the current fees is available on the Council's website.

## **14 CONTACT DETAILS**

The Licensing Department can be contacted on the following details:

**In writing:** South Derbyshire District Council  
Council Offices

Civic Way  
Swadlincote  
Derbyshire  
DE11 0AH

**Telephone:** 01283 210000

**Email:** [licensing@southderbyshire.gov.uk](mailto:licensing@southderbyshire.gov.uk)

## Scoring Matrix

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

### DOCUMENT HISTORY

Issue No	Issue Date	Approved by
1	#	#