

EAST LINDSEY DISTRICT COUNCIL

ANIMAL WELFARE LICENSING POLICY – ADOPTED 07 SEPTEMBER 2020

1.0 Introduction

1.1 This policy sets out how the Council will exercise its functions under the Animal Welfare Act 2006 and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

1.2 This policy has been introduced pursuant to the commencement of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 on 1 October 2018.

1.3 The Policy will be reviewed as standard every 4 years following first approval, and at other times where considered necessary (for example, to reflect significant changes in relevant legislation or guidance).

1.4 Any general reference to guidance in this policy document is reference to the Animal Activities Licensing: Guidance for Local Authorities produced by the Department for Environment, Food and Rural Affairs (DEFRA). This guidance can be viewed in full, on the GOV.UK website, here:

www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities.

If any other guidance is referenced in this policy document, specific details will be provided.

1.5 This policy sets out the principles the Council will use when dealing with animal welfare related licensing matters. This includes dealing with applications for new licences and issues relating to licensed premises. The policy does not cover the dangerous wild animal and zoo licensing regimes.

1.6 This policy document provides guidance to any person with an interest in animal welfare licensing. In particular, but not exclusively:

- Applicants for licences
- Existing licence holders whose licences are being reviewed
- Users of licensed premises
- Council Licensing Officers
- Members of the Council's Licensing Committee, and
- The tribunal hearing appeals against Local Authority decisions.

1.7 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, where permitted under the relevant legislation, also take into account other factors such as general character, compliance with licence requirements / guidance / conditions, non-criminal behaviour, and other relevant records or information from reliable and relevant sources.

1.8 Nothing in this document will bind the Council to a particular course of action, and we will continue to consider each licence application on its merits. Similarly, this policy does not take precedence over any statutory provision or guidance, or established case law.

1.9 The Council has delegated to its Officers the authority to consider and determine applications for licences, subject to the criteria set out in this policy document. The Council's scheme of delegation operates in such a way that if there is any doubt, in an Officer's mind as to whether a licence should be granted, then that licence application should be forwarded to the Council's Licensing Committee (consisting of Councillors) for determination. Please note that Officers can refer an application to the Licensing Committee at any time for determination.

1.10 It should be noted that because the Licensing Committee does not meet on a weekly basis, there may necessarily be a delay between the initial licence application and the grant or refusal in the case where the licence application is referred to the Committee.

1.11 An applicant will be given an opportunity to make representations, either in writing or orally at a meeting of the Council's Licensing Committee. Any representations will be given full consideration prior to a decision being made in respect of the application.

1.12 Further detailed information regarding the Authority's application procedures is available by contacting the Council's Licensing Team.

1.13 **Exchange of Information** – Applicants are advised to ensure they have the correct permissions in place to carry on their business. Upon receipt of a licence application we may consult with the Council's Planning Department and Business Rates Department. We cannot refuse to grant licences that do not have these permissions if all the requirements for Animal Activity Licences are met, however, action can be taken against applicants by the respective departments under their particular legislation or requirements if those permissions are not given.

1.14 Data may also be released in accordance with statutory provisions under the Data Protection provisions, the Freedom of Information Act 2000, and associated legislation.

1.15 The details of licensed premises and their star ratings will be included in a public register, available on the East Lindsey District Council website.

2.0 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.
- a licence holder is not disqualified from holding a licence in accordance with the requirements of the relevant 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, in accordance with the relevant legislation.
- each licence application is considered on its own merits.
- decisions made by the Council are transparent and consistent.

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 pro-actively enforced.

3.0 Animal Welfare Act 2006

3.1 The Animal Welfare Act 2006 established that reasonable welfare standards must be maintained whilst unifying all animal legislation, including responsibilities falling to various 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.*
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.*

4.0 Licensable Activities

4.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force on 1st October 2018 and have an impact on the following types of establishments - pet shops, catteries, kennels, home boarders, dog crèches, riding establishments (including beach donkeys), 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 replaced 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 Dangerous Wild Animals Act 1976 dictates that a licence is required from the Council to keep certain animals that are considered wild, dangerous or exotic. This policy document does not cover the licensing of dangerous wild animals. The Council has a separate policy relating to the licensing of such animals – that policy document can be found on the licensing area of the Council’s website (www.e-lindsey.gov.uk).

4.5 The Zoo Licensing Act 1981 dictates that a licence is required from the Council to display wild animals to the public for at least 7 days a year, in a place that is not a circus or a pet shop. This policy document does not cover the licensing of zoos. Information, regarding the licensing of zoos, can be found on the licensing area of the Council’s website (www.e-lindsey.gov.uk) and on the GOV.UK website.

5.0 Suitability of Licence Applicants

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 the Regulations.

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 a new applicant (or applicants) to provide a Basic Disclosure Certificate from the Disclosure and Barring Service (DBS). The certificate must have been issued within 2 months of the date of licence application.

5.3. For any renewal application, the requirement for a DBS will begin in relation to the renewals of licences that take effect from September 2020.

5.4. DBS checks must show that the applicant (or applicants) 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. The DBS check will then be required on a rolling 3 year basis.

5.5 It will be the applicant’s responsibility to obtain the DBS certificate in good time, and to pay any fees or charges associated with them.

5.6 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.

5.7 It is noted that no attempt is made within the legislation to define the term “fit and proper person”, and this policy document likewise makes no attempt to formulate such a definition. The Council may consider any relevant issue when making its determination on this point, and these guidelines should be regarded as examples of issues that may lead to the Council not being satisfied

that an applicant is fit and proper, rather than an exhaustive list of the issues that may be taken into consideration.

5.8 As detailed above the term 'fit and proper' is not defined in the legislation or guidance. For the purpose of this Policy, the Council will normally 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 licensed activity.

The above list does not limit the scope of the fit and proper assessment and the Council may take in to account other matters, should they be considered as relevant to the licensing process. The Council may fail to be satisfied that a person is a fit and proper person to hold a licence for any good reason.

5.9 The onus is on an applicant to satisfy the Council that they are 'fit and proper'. Simply being free from convictions and disqualifications is not enough. Licence holders must remain 'fit and proper' to retain their licence.

5.10 **Relevance of Convictions** - In all cases, the Council will consider the conviction or behaviour in question and what weight should be attached to it. Each and every case will be determined on its own merits, but in light of these guidelines.

5.11 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, may not normally prevent the grant or renewal of a licence.

5.12 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.

5.13 The Council will not normally grant a licence to a person with one (or more) current conviction for any offence that is related to licensing as these offences demonstrate a disregard for licensing processes and procedures.

5.14 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.

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

5.15 The Council must ensure that licence holders remain fit and proper during the life of a licence. For this reason, licence holders should 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.

5.15 Animal welfare licence holders are not identified as an exempt profession under the Rehabilitation of Offenders Act 1974, and, therefore, the provisions of that Act relating to convictions becoming spent after a certain amount of time will apply in full. The Council will not take into consideration any conviction, caution or similar sanction that is deemed to be spent by virtue of a provision of the 1974 Act (and any associated regulations).

5.16 **Financial Propriety** - As operators, of animal welfare licensed businesses, will be responsible for the financial aspects associated with operating a business (which may including maintaining customer accounts, negotiating contracts and sales, payments to employees, and maintenance of accurate business accounts), the Council will, where appropriate, consider evidence of previous financial impropriety or difficulties when assessing the fitness and propriety of applicants for licences.

5.17 **Previous Licences** - Any relevant licensing history relating to an applicant or operator may be considered during further applications. For example, if an applicant has previously had a licence revoked, whether by this Authority or by any other Authority, this may indicate an underlying issue with the fitness or propriety of that person. Where appropriate to do so, further information may be sought from any other relevant authority, to the extent permitted by data protection laws.

6.0 Safeguarding

6.1 Licensing Authorities must consider the need to protect children and vulnerable adults from sexual exploitation when undertaking licensing functions. Further information, regarding the Council's safeguarding policy, can be found on this Authority's website at:

www.e-lindsey.gov.uk/safeguarding

6.2 The policy indicates that safeguarding is everyone's responsibility and that this Authority will work to promote people's welfare and protect them from harm. The policy indicates that Councillors and everyone working for this Authority has a role to play in identifying safeguarding concerns and taking prompt action when issues are identified.

6.3 The 2018 Regulations have the aims of maintaining and improving animal welfare standards. However, there are other safeguarding considerations arising from licensable activities, in particular surrounding the protection of children and vulnerable persons, as detailed above, and the Council must consider these in light of the Children Act 2004 and the Care Act 2014.

6.4 The Council is aware that some licensable activities may involve unsupervised contact with children and/or vulnerable persons (e.g. the tuition of a young person provided at a Riding Establishment, beach donkey businesses, or entertaining at a children's party with an exhibition of animals).

6.5 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.

6.6 East Lindsey District Council is not setting any specific standards in relation to these requirements, but each case will be considered on its own merits. For information purposes, a number of charitable organisations offer advice on safeguarding issues, including policies and staff recruitment, such as the NSPCC, which applicants and licence holders may find helpful.

7.0 Application Process

7.1 Licence applications must be submitted in writing on the relevant application form and in accordance with the relevant legislation. Additionally, applicants should include any supporting information that is required (as detailed in the form, this Policy and as may be required in any particular case), together with the appropriate fee.

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

7.3 The Council considers that how the applicant intends to operate their business is extremely important, given that the licence holder will be assuming responsibility for the welfare of animals, either their own that are being used in the running of their business, or customer's animals that they are caring for. The 2018 regulations set out a number of conditions that the licence holder will need to comply with, and we will be looking for the following when considering an application:

- a) **Applicant's Experience:** Confidence in the ability to handle and control an animal and a clearly demonstrated knowledge of its welfare needs are a paramount consideration and form part of the conditions in law. Experience over many years, and/or qualifications achieved in animal handling and care will be taken into account when scoring the

application. Is the animal relaxed and happy in this environment? Applicants should be able to spot abnormal behaviours, and know when to seek veterinary advice or treatment if required. They should also be comfortable with maintaining the animal's health and condition while in their care – this may involve daily grooming, health checks of eyes, ears and feet, and ensuring they receive the correct diet for their species.

b) **Premises Suitability:** This not only means the condition and security of the premises as a whole, but also any areas in which animals are to be contained. This could range from an outside kennel block, to stabling to cages, aviaries, aquariums or any other area or structure in which the animal would be kept. We would be looking to ensure that the sizes of such areas comply with or exceed the minimum sizes set out in the Regulations and that they:

- are made of robust and non-porous or suitably treated materials, and,
- are well lit/ventilated and clean.

This also applies to the conditions in which animals are transported, and the steps taken to ensure their comfort and safety en route. Generally, a premises should be in good condition, with all entrances and exits suitably secured to minimise risk of escape or theft. Boundary walls/fences should be in good condition, and suitably high to contain whichever species is cared for within.

c) **Recording and Storing Information/Records:** This forms a large part of the legal requirements for businesses carrying out licensable activities involving animals. Before a premises is inspected we would expect to see templates of client forms, policies and procedures for the operation of the business that pay particular attention to the record keeping requirements set out in the regulations and address staff development (if staff are employed). Future inspections will require the licence holder to produce complete records for the period since the previous licence application/renewal.

7.4 The relevant Guidance produced by DEFRA for licences issued under these Regulations stipulate 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 the 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 (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 the Regulations, 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.

7.5 Although not a statutory requirement, the Council will aim to provide licence holders with 12 weeks notice of when their licence is due to expire. Licence holders should then submit an application at least 10 weeks before their 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. Renewal reminders are sent as a matter of courtesy and non-receipt of a renewal reminder will not be an excuse for failing to apply for renewal of a licence.

7.6 **Operating Procedures Guidance** - As part of the licence application applicants must submit a copy of the operating procedures for the business. The simple definition of operating procedures is:

- a set of instructions that describes all the relevant steps and activities of a process or procedure.

7.7 The operating procedures will be a file of documents consisting of step-by-step information on how to execute the tasks of properly caring for the animals including their needs and welfare. The procedure should make reference to how the applicant will achieve compliance with the animal's needs. As detailed earlier in this policy document, for the purposes of the Animal Welfare Act 2006, an animal's needs shall be taken to include:

- its need for a suitable environment,
- its need for a suitable diet,
- its need to be able to exhibit normal behaviour patterns,
- any need it has to be housed with, or apart from, other animals, and
- its need to be protected from pain, suffering, injury and disease.

7.8 This Authority recommends that the operating procedures should include:

- Each of the required policies for the licensable activity (or activities), subject of the licence application, as detailed in the DEFRA guidance notes for the activity.
- Records that contain all the information required by the statutory licence conditions and the DEFRA guidance notes that apply to the licensable activity undertaken by the business.
- Risk assessments – this should show the risks involved in caring for the animal and how those risks will be mitigated. This should include the risk assessment and written policies and procedures - with an indication that these documents will be reviewed regularly.
- Staff training procedures to make sure staff know what is expected of them, and clear evidence of how you will supervise and manage staff.

7.9 The documents should be included with the licence application and be available for the Council Officer (and/or veterinary inspector) to examine at the time of the licensing inspection. If well

documented procedures are not available for the business then this will be reflected in the risk rating for the business and stars awarded (if a licence is granted).

7.10 This Authority recommends that applicants should always look to cover the following matters in the procedures:

- Caring for and understanding the needs and welfare of the particular species / breed of animal. This would include the animal's mental and physical health, feeding and knowledge of environmental enrichment.
- Records that contain all the information required by the statutory conditions and guidance that apply to the licensable activity undertaken by the business.
- The risks involved in caring for the animal and how those risks will be mitigated. This should include a risk assessment and written policies and procedures - with an indication that these documents will be reviewed regularly.
- Staff training procedures to make sure staff know what is expected of them, and clear evidence of how you will supervise and manage staff.

7.11 The documents should be included with the licence application and be available for the Council Officer (and/or veterinary inspector) to examine at the time of the licensing inspection. If well documented procedures are not available for the business then this will be reflected in the risk rating for the business and stars awarded (if a licence is granted).

8.0 Animal Welfare Licensing & Planning

8.1 Any premises maintained by an animal based business may require planning permission for that usage, irrespective of how many animals are to be kept at that location. Therefore, it is advised that licence applicants seek advice from the Council's Planning Service prior to making an application for a licence, as to whether any planning permission will be required.

8.2 Planning and licensing operate as separate regulatory regimes, and the absence of planning permission for a particular site will not serve to prohibit the Licensing Authority from granting a licence. However, applicants should note that planning and licensing requirements must both be satisfied prior to the commencement of business operations, and if this is not the case then the applicant will be liable to enforcement action for breaches of the relevant legislation.

8.3 In simple terms there is no legal basis for the Licensing Authority to refuse a licence application because the business does not have planning permission.

8.4 Applicants are encouraged to make any necessary applications for planning permission before or at the same time as they make application for a licence – however, there is nothing in law which specifically precludes an application for a licence being made before planning consent has been sought.

8.5 There are several key differences between licensing and planning control. Licensing is concerned with the operation and management of the premises and the fit and proper status of the operator. Planning control relates to need and the use of premises.

9.0 Non-Compliance with Other Statutory Requirements

9.1 In reaching a decision of whether or not to grant a licence, the Licensing Authority may take account of any non-compliance with other statutory requirements brought to its attention, which undermine the animal welfare licensing regime. Non-compliance with other statutory requirements may demonstrate that the premises are unsuitable for the activities proposed or that the operator is not a fit and proper person to hold a licence.

10.0 Star Rating and Licence Duration

10.1 Once the licensing inspection has been carried out and the applicant has provided all the necessary documents, a risk rating will be carried out and the premises will be awarded a star rating between one and five. In order to do this Authority must follow a risk based system created by DEFRA. It is, therefore, important to stress the star rating process is not set by East Lindsey District Council. Taking into account points, detailed earlier in this policy, and providing as much information as possible to support the application will assist us when carrying out the risk rating process. As part of these considerations, this Authority will also take into account the applicant's conduct as the operator of the particular licensable activity, whether they are a fit and proper person to be the operator (in line with the requirements of the regulations) and any other relevant factors.

10.2 An Animal Activity Licence will comprise the licence holder details and activities they are carrying out, the star rating, a list of standard conditions, and a set of specific conditions relating to the particular activity or activities that have been authorised. Applicants must not operate prior to grant of any licence as it is an offence to do so. Any person found guilty of this offence would be prohibited from being granted a licence in the future.

10.3 With the exception of 'Keeping or Training Animals for Exhibition', licences can be issued under these regulations for a period of either one, two or three years depending on the risk rating for the business and level of compliance. The length of the licence will correspond with the Star Rating, issued by this Authority, for the establishment.

10.4 The 2018 regulations indicate that the Local Authority must be satisfied that the period granted is appropriate on the basis of the Authority's assessment (inspection) of the business, as well as having regard to the guidance issued by the Secretary of State.

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

10.6 The legal duty 'to have regard to' the DEFRA guidance requires that the guidance must be taken into account in the decision making process, and there will need to be clear reasons for any departure from it. However, that does not require the Local Authority to have a compelling justification in order to depart from the DEFRA guidance. In other words the Local Authority is not required to slavishly follow the DEFRA guidance – the Local Authority may deviate from the guidance where it is appropriate and there are reasons for doing so. In the small number of circumstances, where this Authority may decide to deviate from the DEFRA guidance, then clear and compelling reasons for doing so will be given.

10.7 **Kennel Club Assured Breeder Scheme (ABS)** - The DEFRA guidance indicates that any member of the Kennel Club Assured Dog Breeder Scheme, of at least three years standing, should be awarded

a five-star breeding licence valid for three years. However, the DEFRA guidance goes on to indicate that significant evidence of poor animal welfare standards or non-compliance found during a Local Authority inspection, would enable the Local Authority to grant a licence for a period less than that normally recommended. With this in mind the Council, may in some limited circumstances, decide not to grant a ABS member a five-star breeding licence valid for three years, where the Authority is of the opinion that it is appropriate and justified, in the particular case at hand, not to do so.

10.8 Star Rating: Break in Compliance History – When setting the star rating for the business this Authority will take into account the applicant’s compliance history – that is their conduct as the operator of the particular licensable activity. Where there has been a break of 12 months or over in compliance history, then this Authority will view that particular applicant as not having a compliance history, which can be taken into consideration, and the star rating will be reflected accordingly.

11.0 Standards and Licence Conditions

11.1 The Regulations include mandatory conditions for each licensable activity and DEFRA have produced associated guidance. The conditions are divided into two categories, namely ‘General Conditions’ and ‘Specific Conditions’.

11.2 Applicants and licence holders will need to meet all of the General Conditions and Specific Conditions, although for existing businesses, minor failings may be noted / recorded providing they do not compromise the welfare of the animals. However, these failings should be predominantly administrative in nature, as highlighted in the relevant DEFRA guidance. In due course this Authority will look to adopt a specific procedure on the types of things that it will view as a minor failing. With regard to minor failings - if animal welfare is being compromised, a licence should not be granted/renewed or, if already in place, should be suspended or revoked

11.3 For each activity (except keeping or training animals for exhibition) a number of “higher standards” have been included in the DEFRA guidance. Meeting the higher standards is optional but is the only way to gain a higher star rating, apart from UKAS accreditation.

11.4 The higher standards are classified into two categories – required (mandatory) and optional. These will typically be colour coded as blue and red respectively or otherwise clearly marked and differentiated. To qualify as meeting the higher standards the business must achieve all of the required (mandatory) standards as well as a minimum of 50% of the optional higher standards.

11.5 Any business that is certified by a UKAS accredited body and has three or more years compliance with this body should be considered low risk and receive the higher star ratings (unless there is significant evidence of poor animal welfare standards or non-compliance).

12.0 Granting a Licence Application

12.1 Where a licence is issued the Council will provide the following details (if applicable):

- 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 (resulting in a “minor failing” category)
- details of the appeals process and timescales
- details of the application for re-rating scheme

13.0 Refusing a Licence Application

13.1 The following section provides a brief overview of the powers the Council have to refuse a licence application. It must be noted that the non-inclusion of information does not prevent the Council from refusing a licence on any other lawful grounds.

13.2 Depending on the licence being applied for, the Council will consider the report from the inspector(s) and any comments made by the applicant when deciding whether to issue a licence.

13.3 The Council may refuse to issue a licence if it considers that the applicant cannot meet the licence conditions. The Council may also refuse a licence if the granting of a licence could have a negative impact on animal welfare or if the level of accommodation, staffing or management is inadequate for the well-being of animals.

13.4 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 the Council may want to refuse an application.

13.5 The Council may also refuse an application if it considers that the applicant does not meet the ‘fit and proper person’ test.

13.6 A licence cannot be issued to an operator who has been disqualified, as per the relevant regulations.

13.7 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.

14.0 Appeals to the Star Rating

14.1 To ensure fairness to the business, the Council has an appeals procedure in place for the operator to dispute the star rating given.

14.2 The business will be provided with supporting information 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.

14.3 A business may appeal if they consider their star rating to be wrong - in other words, if it does not reflect the standards found at the time of inspection. Any appeal to the rating given must be made in writing to the Licensing Authority within 21 days, from when the star rating is issued. It is important to note that the appeal concerns specifically the standards present at the time of the licensing inspection.

14.4 The DEFRA Guidance states that no Officer involved with the initial star rating or inspection should consider an appeal. Accordingly, the Council will ensure that a separate Officer determines the appeal in all cases. DEFRA Guidance also states that the appeal should be determined by the Head of the Department or a Designated Deputy and this Council will consider the delegation of such functions to an Officer that is considered suitably qualified. Depending on the specific details of the appeal, the relevant Officer may or may not visit the premises themselves.

14.5 If the business disagrees with the outcome of the appeal they can challenge the decision by means of judicial review. The business also has recourse to the Local Authority Complaints Procedure (then taking the matter to the Local Government Ombudsman where appropriate) if they consider that the service has not been properly delivered. Information regarding this Authority's complaint's procedure can be found on the Council's website – www.e-lindsey.gov.uk.

14.6 Separate to the appeal process highlighted above, a business may wish to apply for a 're-rating' following completion of works to rectify any non-compliance or improvements to achieve higher standards. This re-rating is carried out on a chargeable basis. Further information on the re-rating scheme can be found on the licensing area of the Council's website (www.e-lindsey.gov.uk).

15.0 Variations, Suspensions and Revocations of Licences

15.1 The Regulations allow a Local Authority 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.

This Authority may charge an administrative fee for the variation of a licence where the licence holder wishes to increase the maximum number of animals stipulated on the licence, add a class of animal to be authorised for sale under a pet vending licence, etc.

15.2 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.
- It is necessary to protect the welfare of an animal.

15.3 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.

15.4 A decision to vary or suspend the licence must be notified to the licence holder in writing and the reasons for the decision must be explained. It must also provide 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.

15.5 The decision to vary, suspend or revoke a licence 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.

15.6 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.

15.7 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.

15.8 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, for example, being satisfied that the licence conditions are being met.

15.9 There is no right of appeal against the suspension of a licence. After 28 days of suspension the licence must be revoked or reinstated.

15.10 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 appeal must be made within 28 days of the decision and details on the appeal process will be provided to the licence holder at the relevant time.

16.0 Status of a Licence upon the Death of a Licence Holder

16.1 If a licence holder dies, the Regulations allow 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.

16.2 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.

16.3 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.

17.0 Inspections during the Course of a Licence

17.1 There will be cases where inspections must be carried out during the term of a licence.

17.2 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.

17.4 Unannounced inspections will be carried out and may 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.

17.5 During the course of an inspection of premises, 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.

17.6 **Details of Horses:** For the activity of hiring out horses this Authority will list on the licence the details of all the horses that were subject to a satisfactory report at the time of the veterinary inspection. Should additional / new horses then need to be added to the licence at a later date the licence holder must advise the Council's Licensing Team of this and arrange for a satisfactory inspection of the horse by a listed veterinarian. The licence should then be returned to the Licensing Team for amendment.

18.0 Qualifications of Inspectors

18.1 All Licensing Authority inspectors (whether employed by the Council or contracted / appointed) must be suitably qualified. This is defined 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; OR
- 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; OR
- Until October 2021, any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses.

19.0 Fees

19.1 This Authority will require payment of a fee with every application for a licence. Fees are broken down into two parts – the application fee, which covers initial processing of the application and the licensing inspection (known as the Part A fee). Part A covers the direct costs associated with processing the application. Part B of the fee covers the costs associated with the running of the licensing function. This includes dealing with complaints, enforcement and general administration.

19.2 Fees will be reviewed and set ahead of every financial year, and fee levels will be made available from the Licensing team or via our website. In setting fees, we will have regard to any relevant guidance, and to the requirements of the EU Services Directive and applicable case law.

20.0 Enforcement and Compliance

20.1 The main enforcement and compliance role for the Council in terms of animal licensing will be to ensure the welfare of animals. This is done by ensuring compliance with the conditions placed upon the licence and taking action when standards are not met. The Council will also investigate and take appropriate action against unlicensed premises.

20.2 In carrying out its enforcement duties, the Council has adopted an enforcement policy, which is available to view on the Council website (www.e-lindsey.gov.uk). In relation to the Animal Welfare Act 2006, Section 30 allows Local Authorities to prosecute for any offences under that Act.

20.3 The 2018 Regulations introduced 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; where there is a breach of the regulations; or issues relating to the protection of the welfare of an animal.

20.4 Anyone who carries on any of the licensable activities without a licence is committing a criminal offence and is liable to imprisonment for a term of up to six months, a fine or both.

20.5 It is a criminal offence to breach any licence condition. It is also a criminal offence not to comply with an inspector's request with regards to taking a sample from an animal.

20.6 It is a criminal 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.

20.7 The Regulations also 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.

20.8 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.

20.9 Additional information about the suspension and revocation of a licence can be found in Section 15 of this policy document.

20.10 Applicants must not operate prior to grant of any licence as it is an offence to do so. Any person found guilty of this offence would be prohibited from being granted a licence in the future.

20.11 **Complaints and Allegations of Unlicensed Premises** – 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. This Authority 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.

20.12 This Council aims 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.

21.0 Public Liability Insurance

21.1 Public liability insurance is often an important cover for animal businesses in general, as it can protect the operator if someone is injured or their property is damaged because of the business.

21.2 Persons operating a Riding Establishment or Keeping or Training Animals for Exhibition, will need to provide a current certificate of Public Liability Insurance as part of their licence application. Public liability insurance is required for these licences because of the higher risks involved.

21.3 Public liability insurance is not legally required for any of the other animal welfare licences issued under the terms of the 2018 Regulations. However, we strongly recommend that operators consider the option of taking out a relevant level of public liability insurance.

21.4 Operators should ensure that their premises are insured against fire and other risks in the normal way. We recommend operators contact their insurer to establish the precise insurance requirements for their business.

21.5 Operators with employees, contractors, casual workers or temporary staff, are required by law to take out employers' liability insurance. It will cover claims from employees who have been injured or become seriously ill as a result of working for the operator.

22.0 Additional Information and Other Matters

22.1 The Council has additional information available online, including application forms and guidance documents. These can be seen here in the licensing area of the Council's website (www.e-lindsey.gov.uk).

22.2 **Licence Applications: Cash Payments** - This Authority no longer accepts cash for the payment of licence application fees. This is in line with the Council's policy of seeking to reduce cash payments to the Authority and encourage other forms of payment (e.g. debit or credit card).

22.3 **Beach Donkeys: Code of Practice** – As a seaside Licensing Authority this Authority will be in the position of licensing beach donkey operators. With this in mind this Authority has adopted a Code of Practice for Beach Donkey Operators – the Code of Practice can be found at **Appendix A** of this policy document. Beach donkey operators will be expected to comply with the Code of Practice.

22.4 **Donkey Sanctuary: Guidelines for Working Donkeys** - The Donkey Sanctuary is a national and internationally recognised organisation which aims to improve the welfare of donkeys both in the UK and abroad. This Authority will expect any relevant licence applicant and licence holder to be aware

of the guidelines issued by the Sanctuary on the subject of working donkeys. The guidelines can be found on the Sanctuary's website at:

www.thedonkeysanctuary.org.uk/working-donkeys

22.5 Fish as Prizes - Whilst the current law states that fish can be given as prizes in England and Wales if the person is over 16, or is with an adult, this Authority does not support the giving away of animals as prizes.

22.6 Authorisation for Licensable Activities - Licence applicants in a tenanted / rented property should ensure that they are authorised by their landlord to undertake the specific licensable activity in the property concerned.

22.7 Veterinary Inspections - In the interest of independence and impartiality this Authority will not normally appoint the licence applicant's or licence holder's normal day to day vet to undertake licensing inspections of the business.

22.8 Veterinary Inspections: Breeding of Dogs – First time applications, under the 2006 Act, seeking authorisation for the breeding of dogs, must be subject to a successful veterinary inspection, before a licence can be granted. It is this Authority's policy that such premises will then be subject to a veterinary inspection every 5 to 6 years thereafter – unless of course the business warrants veterinary inspection on a more regular basis. In particular, large scale dog breeding businesses may be viewed as warranting inspection on a more regular basis. Each case will be considered on its own merits.

22.9 The Licensing Team will look to advising applicants and licence holders in advance as to the likely cost of the veterinary inspection – this estimate will be based on factors such as the number of dogs, size of the premises and the distance travelled by the inspector to the inspection site. But this estimate will be with the proviso that the estimate will be for guidance only and the licensing service cannot be held to that figure should the actual cost prove to be different.

22.10 Individual or Joint Licence Applicants – Where the business, subject of the licence application, is a partnership then this Authority will be prepared to accept a licence application and grant a licence in more than one person's name. However, it should be noted that each person, subject of the licence application, will be subject of the fit and proper test.

22.11 Objections from the Public Regarding Animal Welfare Licence Applications - There is no statutory provision within the animal welfare licensing provisions for members of the public to object to or make comment on animal welfare licence applications. Nor is there a legal requirement for the Licensing Authority to consult with local residents on such licence applications.

22.12 The animal welfare licensing process is focussed on the health and welfare of the animals and the safety, training and animal related knowledge of the keepers. The prevention of public nuisance is not a specific factor to be considered in the licensing process. Similarly matters covered by the planning process will not be taken into account within the licensing process.

22.13 However, this Authority recognises that those in the immediate vicinity of the premises where the animal will be kept, may have information which is relevant to the application or relating to the

suitability of the applicant, such as being aware of previous issues with animals, any welfare concerns over the characteristics of the proposed premises or the wellbeing of the animal. With this in mind we will, where appropriate, accept comments from individuals during the animal welfare licensing process - however, those comments will not have the weight of a statutory consultation or objection process and so the Licensing Authority will weigh them up appropriately with this in mind.

23.0 Policy Review

23.1. This Policy Statement will remain in existence until superseded and will be subject to review and further consultation before the end of 2024. However, following consultation, the Council may make revisions to it as deemed necessary before the 2024 date.

CONTACT:

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APPENDIX A

EAST LINDSEY DISTRICT COUNCIL – ANIMAL WELFARE LICENSING POLICY

GUIDELINES AND CODE OF PRACTICE WITH REGARD TO BEACH DONKEY BUSINESSES

Donkey Sanctuary - Guidelines for Working Donkeys

The Donkey Sanctuary is a national and internationally recognised organisation which aims to improve the welfare of donkeys both in the UK and abroad. This Authority will expect any relevant licence applicant and licence holder to be aware of the guidelines issued by the Sanctuary on the subject of working donkeys. The guidelines can be found on the Sanctuary's website at:

<https://www.thedonkeysanctuary.org.uk/working-donkeys>

As a seaside Licensing Authority this Authority will be in the position of licensing beach donkey operators. With this in mind this Authority has adopted this Code of Practice for Beach Donkey Operators. Beach donkey operators will be expected to comply with the Code of Practice.

Code of Practice – Beach Donkeys

Provision of Water

Adequate water must be freely available at all times and be in adequate proximity to the donkeys.

Ratio of Donkeys to Handlers

The operator shall on a regular basis risk assess, and document, the ratio of handlers (donkey drivers) to donkeys which are required during the operation of the business. The number of donkeys per donkey handler (donkey driver) shall not exceed the safe limit set by the risk assessment.

Donkeys to Supervision

All donkey handlers (donkey drivers) should be visually identifiable as a donkey handler.

Use of Sticks and Whips to Control Donkeys

Neither the licence holder nor any person he/she has permitted to be in control of the licensed animals shall cause or allow to be caused ill-treatment to a licensed animal. A stick may be used but not to mete out punishment; it may only be used to tap or guide the licensed animals in order to keep the pack together and to maintain momentum. No whips or any other like thing shall be used or permitted to be used on any licensed animal and the kicking of licensed animals is strictly prohibited.

Working Conditions of Beach Donkeys

The maximum hours that any licensed animals shall be on the beach must not exceed nine on any day. Within this period all such animals shall be rested from their duties during each day; this rest period or rest periods shall be in total not less than one hour in duration and shall commence at a

time specified by the licence holder or any person he/she has permitted to be in control of the licensed animals. The rest period requirement can be relaxed for shortened working days of less than 6 hours. At the commencement of the rest period, all saddles must be loosened and the licence holder and any person he/she has permitted to be in control of the licensed animals shall supervise them to ensure that members of the public do not attempt to mount them. A register detailing hours worked by individual donkeys to be maintained and be available for inspection. All licensed animals must be given unhindered access to an adequate supply of fresh, drinking water at all times that they occupy the beach.

Hours Worked

A register detailing hours worked by individual donkeys to be maintained and be available for inspection by Officers authorised by the Council.

Physical Condition of Beach Donkeys

Licensed animals shall be kept in good physical condition; this includes an acceptable state of both cleanliness and the condition of their coats and hoofs.

Weight of Riders

No person over 8 stones (50kg) in weight shall be permitted to ride any licensed animal.

Rest Days for Beach Donkeys - Licensed animals must not be worked for more than 6 consecutive days before being afforded a work free day at rest at pasture.

Shelter

Shelter must be provided for the donkeys at pasture to provide protection from predicted extremes of weather, sufficient to accommodate all of the donkeys.

Hot Weather

During periods of extreme temperature donkey operators should carry out a risk assessment before taking their animals out, and judge whether or not they believe the conditions are suitable for their animals. Donkeys should not work on days where the risk assessment indicates that it is inappropriate to do so.