

APPENDIX A



Draft Animal Welfare Licensing Policy

September 2024 (v.2b)

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PART 1 - INTRODUCTION

1. The Policy

1.1.1

This document outlines the approach of South Holland District Council in carrying out its responsibilities for regulating animal establishments under the Animal Welfare Act 2006 and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018; zoos under the Zoo Licensing Act 1981; and dangerous wild animals under the Dangerous Wild Animals Act 1976.

1.1.2

The primary aim of this policy is to ensure that current licence holders, applicants and the general public understand the Council's process for regulating animal licensing within the South Holland District Council area.

1.2 Policy Duration and Amendments

1.2.1

This policy will be periodically reviewed and modified as required to accommodate changes in legislation, case law, national guidance and best practice.

1.2.2

Administrative adjustments to this policy, arising from legal alterations, updated statutory guidance, or council restructuring, may be carried out by the Public Protection Manager and/or the Licensing Team Leader. Any modifications made under this section should be consistent with the existing legal and administrative framework and should not alter the core focus of local policy.

1.2.3

The policy will be periodically reassessed to ensure it remains relevant and effective, and modified where necessary.

1.2.4

In the event of any substantial amendment to the policy, a comprehensive public consultation will be conducted before the Licensing Committee considers it. For the purpose of this section, a significant amendment is defined as one that:

- a) Would have a major financial impact on applicants, licence holders, or the public;
- b) Would have a significant procedural impact on applicants or licence holders; or
- c) May not be perceived by the holder of an animal licence or the public to be consistent with the established licensing principles.

1.3 Departure from Policy

1.3.1

When conducting its regulatory functions, the council will consider this policy and its stated objectives whilst exercising a degree of discretion regarding requests to depart from the policy.

1.3.2

Despite the presence of this policy, each application or enforcement action will be evaluated based on its individual merits in relation to the licensing principles. Deviations from this policy will likely be limited to exceptional circumstances and should not be used to bypass the reasonable requirements of the policy.

1.3.3

Where an applicant can demonstrate that a minor departure from this policy, based on the individual circumstances of that application, would still ensure that the policy objectives are achieved, the Licensing Team Leader, or Public Protection Manager, may authorise the issuing of a licence.

1.4 Delegations

1.4.1 Authorised Officers

Licensing Officers of the Council, duly authorised under the Council's Scheme of Delegation and supported by specific written delegations, are responsible for the day-to-day operation of the Council's Animal Licensing Policy, unless stated otherwise.

1.4.2 Panel of the Licensing Committee-

The following powers are specifically reserved for a Panel of the Licensing Committee:

- (a) suspension or revocation of existing licences;
- (b) refusal to renew existing licences;
- (c) refusal to grant new applications; and
- (d) substantial departures from policy.

1.5 Legislation and National Guidance

1.5.1

By virtue of the Animal Welfare Act 2006, the Animal Welfare (Licensing of Activities involving Animals) (England) Regulations 2018 came into force on 1 October 2018 replacing previous licensing and registration regimes under the following legislation:

- Animal Boarding Establishments Act 1963
- Pet Animals Act 1951 and Pet Animals Act 1951 (Amendment) Act 1983
- Riding Establishments Act 1964 and 1970

- Breeding of Dogs Act 1973 and 1991
- Breeding and Sale of Dogs (Welfare) Act 1999
- Animal Licensing Policy
- Performing Animals (Regulation) Act 1925

1.5.2

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 introduced a single animal activity licence that can include one or more of the following licensable activities:

- Selling animals as pets
- Providing or arranging for the provision of boarding for cats
- Providing or arranging for the provision of boarding in kennels for dogs
- Providing or arranging for the provision of home boarding for dogs
- Providing or arranging for the provision of day care for dogs
- Hiring out horses
- Breeding dogs for sale
- Keeping or training animals for exhibition.

1.5.3

To assist local authorities with the regime and to promote transparency and consistency across the country, DEFRA issued Procedural Guidance Notes for Local Authorities. The Council will have due regard to this guidance when undertaking its licensing duties.

1.5.4

The Regulations do not impact on the licensing of dangerous wild animals under the Dangerous Wild Animals Act 1976 or zoos under the Zoo Licensing Act 1981 which remain unaffected by the legislative changes. Both of these licensable activities fall within the scope of this policy.

1.5.5

A Dangerous Wild Animal licence is required where an individual or a business intends to keep an animal included on the Schedule of Dangerous Wild Animals maintained and published by DEFRA. The legislation applies businesses such as ostrich farms, however it does not apply to dangerous wild animals kept in a zoo or a circus. The legislation applies to all individuals that wish to keep a dangerous wild animal at home, for example, a venomous snake or a species of large cat.

1.5.6

A zoo licence is required for an establishment where wild / non-domestic animals are kept for exhibition to which members of the public have access, with or without charge for admission, on more than seven days in any period of twelve consecutive months. The wide scope of this definition means that licensed zoos can range from traditional zoos and safari parks to small specialist collections such as aquaria, birds of prey centres and butterfly houses. Dispensations can be granted for small zoos which reduce the number of inspections to a reasonable level for the size of the establishment, without in any way weakening the establishment's obligation to achieve acceptable standards of animal welfare.

The Act does not extend to circuses or to pet shops which are covered by separate legislation.

1.5.7

Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent, crime and disorder in their area. This Policy has regard to the likely impact of such licences on related crime and disorder in the district.

PART 2 - LICENSING PRINCIPLES AND POLICY OBJECTIVES

2.1 Policy Objectives

2.1.1

This policy is intended to achieve the following objectives:

- Ensuring 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 relevant legislative requirements.
- Ensuring that the licence holder is not disqualified from holding a licence in accordance with the legislative requirements.
- Ensuring 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.
- Ensuring the safeguarding of any children or vulnerable persons in contact with a licensable activity.
- Ensuring that each application is considered on its own merits.
- Ensuring that decisions are made in a transparent, fair and consistent way.
- Ensuring, where possible, that the priorities of the Council Plan are supported.
- Ensuring that the obligations of the Council’s Public Sector Equality Duty under section 149 of the Equality Act 2010 is fulfilled by eliminating discrimination, harassment, victimisation and any other conduct prohibited by the Act, advancing equality of opportunity, and harbouring good relations between persons who share and those who do not share protected characteristics.

2.2 Animal Welfare Act 2006

2.2.1

This is now the main piece of legislation controlling the welfare of animals in England. It establishes that reasonable welfare standards must be maintained, whilst combining all animal welfare legislation, including responsibilities falling to other enforcement agencies.

2.2.2

The Animal Welfare Act 2006 introduces five overarching principles of animal welfare, known as the ‘five needs’, which are:-

- The need for a suitable environment; (by providing an appropriate environment, including shelter and a comfortable resting area).
- The need for a suitable diet; by ready access, where appropriate, to fresh water and a diet to maintain full health.
- 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).
- Any need to be housed with, or apart from, other animals; and (by providing the company of an animal of its own kind, where appropriate).
- 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).

2.3 Licensing Principles

2.3.1

The Council's animal licensing regime will be guided by the following four principles.

- (a) the responsibility to protect the welfare and wellbeing of all fellow creatures.
- (b) ensuring the welfare of domestic or captive animals by implementing appropriate standards that promote the 'five needs'.
- (c) ensuring that persons responsible for the management of animal welfare adhere to recognised standards of good practice; and
- (d) ensuring that, to the extent permitted by its authority, the requirements of all relevant animal-related legislation will be enforced as appropriate.

PART 3– LICENCE FEES

3.1

Current fee levels are published on the Council's website.

3.2

Fees have been set in accordance with the principles of the EU Services Directive and with consideration of 'Open for business: LGA guidance on locally set licence fees' and 'Animal Welfare Licence Fees – A Practical Guide to Fee Setting'.

3.3

The total fee has been split into an application fee and licence fee, plus vet fee where appropriate. The application fee must be submitted with an application as it covers the cost of administering and determining the application. This part of the fee is non-refundable.

3.4

Any fee that is incurred as a result of the requirement for a veterinary inspection is the responsibility of the applicant to pay in full on receipt of the final invoice. Reimbursement of

the vet's inspection fee is considered to be a requirement of the application process. Failure to pay for the Council for the vet inspection will result in the application being considered incomplete. The Council cannot issue a licence where an application is incomplete.

3.5

The licence fee must be paid once the Licensing Officer issues an 'intention to grant' notice to the applicant. On receipt of payment the licence will be granted. The licence fee covers ongoing maintenance of the licence, including inspections and enforcement. The licence will not be issued until the licence fee has been paid in full. In the event that the licence is subsequently surrendered, a pro-rata refund of the licence fee only, may be paid for any unused complete months. If the licence is revoked, no refund will be made.

PART 4 – WHO IS REQUIRED TO OBTAIN A LICENCE

4.1.

Schedule 1 of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 ("the Regulations") defines the licensable activities for each sector (as summarised in section 1.5.2 of this policy).

4.1.

In all cases, except dog breeding, the licensable activity is exclusively restricted to businesses or those operating on a commercial basis. For dog breeders a limit on the number of litters is also in place unless it can be proved that none of the puppies from these litters are sold.

Dog breeding

4.1.3

A licence IS NEEDED for breeding of dogs if ONE or both of the following apply:

- a) breeding three or more litters of puppies in any twelve-month period; or
- b) breeding dogs and advertising a business of selling dogs.

4.1.4

In both situations described in 4.1.3 above, the person carrying on the activity has to provide documentary evidence that no puppies have been sold, before consideration can be given to the Council not requiring that person to apply for a licence.

Commercial activity

4.1.5

As the licensing authority, the Council will give regard to any guidance issued from time to time, in respect of what defines commercial activity.

4.1.6

In determining 'business' in this context, the Council will have regard to the HMRC '9 Badges of Trade' test, as set out in the Statutory Guidance.

4.1.7

The Regulations which the Council must consider in assessing whether commercial activity is being carried on, are whether the operator:

- a) makes any sale by, or otherwise carries on, the activity with a view to either
 - i. making a profit, or
 - ii. earning any commission or fee from the activity.

4.1.8

Each individual case will be assessed on its own merits considering the criteria in sections 4.1.5 to 4.1.7 above. The over-arching consideration will be section 4.1.7 whereby an activity that attracts an income is likely to be considered commercial activity.

4.2 Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981

4.2.1

There is no assessment as to whether the activity is being carried on for commercial purposes for either of these Acts. In simple terms, if an activity as detailed in sections 1.5.5 and 1.5.6 of this policy is being carried on, a licence will be required.

4.2.2

The only exception to this is that the Secretary of State may issue an exemption for a small zoo that would otherwise require a licence. The operator / owner is responsible for making such an application.

PART 5 – SUITABILITY OF APPLICANTS

5.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018:-

New applicants

5.1.1

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 an animal activity licence for one or more of the licensable activities providing, they are not disqualified from holding a licence in accordance with Regulation 11 and Schedule 8.

5.1.2

In order to ensure compliance with its duty to ensure that an applicant has not been disqualified from holding a licence, the Council require a new applicant to provide a Basic Disclosure Certificate (issued within three months of the date of application) from the Disclosure & Barring Service (DBS). Applicants are required to request the full DBS service

that includes document checking. Applicants will be signposted to this service by the Council.

The council requires all licence holders to sign up to the DBS update service, which will allow the applicants DBS record to be checked by the council periodically and on renewal, without the need for applicants to reapply each time. Failure to sign up online will delay the renewal application.

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.

5.1.3

An applicant will be granted a licence if the Council is satisfied that:

- a) the applicant has not been disqualified from holding a licence; and
- b) the applicant is a 'fit and proper' person to hold a licence;

and providing that all other application requirements are met.

5.1.4

The definition of a "fit and proper person" is not provided within the regulations or guidance. However, for the purpose of this policy, the council will regard a 'fit and proper person' as an individual who, upon application, can demonstrate they possess:

- a) the right to work in the UK;
- b) no relevant convictions that impact on their suitability to hold a licence;
- c) the knowledge, experience, compliance history (where applicable), and ability to comply with the licence conditions and safeguard the welfare of animals in their care; and
- d) that they have made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licensable activities.

5.2 Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981

5.2.1

In order to ensure compliance with its duty to ensure that an applicant has not been disqualified from holding a licence, the Council require an applicant to provide a Basic Disclosure Certificate (issued within three months of the date of application) from the Disclosure & Barring Service.

5.2.2

An applicant will be granted a licence if the Council is satisfied that:

- (a) the applicant has not been disqualified from holding a licence; and
- (b) the applicant is a 'fit and proper' person to hold a licence;

and providing that all other application requirements are met.

5.2.3

The term 'fit and proper' person is not defined in the legislation however for the

purposes of this policy the Council will consider a 'fit and proper' person to be an individual who can demonstrate upon application that they have:

- a) the right to work in the UK;
- b) no relevant convictions that impact on their suitability to hold a licence.
- c) the knowledge, experience, compliance history (where applicable), and ability to comply with the licence conditions and safeguard the welfare of animals in their care, in particular a high degree of competency in understanding the specific requirements and risks associated with the individual species of animals to be kept; and
- d) that they have made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licensable activities.

5.3 Renewals

5.3.1

In the case of all renewal applications, it is the applicant's responsibility to submit their application in good time, to ensure licence continuity. The Council will consider any information received about the licence holder and/or business during the period of the existing licence. The Council will expect licence holders to always demonstrate appropriate professional conduct and behave in a manner befitting the trust placed in them to undertake the care of animals, protect staff working at the premises and safeguard the public visiting or in the vicinity of the premises.

5.3.2

The Council require an applicant to provide a Basic Disclosure Certificate (issued within three months of the date of application) from the Disclosure & Barring Service.

The basic DBS requirement will be required at every renewal. The council encourages all licence holders so sign up to the DBS update service. Which will allow the applicants DBS to be checked by the council periodically and on renewal, without the need for applicants to reapply each time. Failure to sign up online could delay the renewal application.

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. The Council require a minimum of ten weeks to determine renewal application and it is advisable that an applicant applies for a DBS at the time of applying to the council.

5.4 All Applications

5.4.1

To assist in assessing the suitability of an applicant, the Council may request information from:

- Lincolnshire Police relating to any relevant convictions an applicant may hold or any ongoing investigations that may impact on the applicant's suitability to hold a licence.

- Any other local authority that holds information about the applicant's suitability to hold a licence.

5.4.2

This information sharing is possible under the provisions of section 17 of the Crime and Disorder Act 1998 which places a duty on local authorities to have regard to the likely effect of the exercise of their functions on, and do all they can to prevent, crime and disorder in their district.

5.5 Relevance of Convictions

5.5.1

The purpose of this section is to offer guidance on how the Council will determine if an applicant / licence-holder is suitable to either be granted a licence in the first place or retain such a licence. In all cases, the Council will consider the conviction or behaviour in question, what weight should be attached to it and with every case being determined on its own merits with regard to these guidelines.

5.5.2

It is anticipated that the majority applicants or licence holders will have no convictions. In relation to those who may, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, an isolated conviction, especially if committed some time ago, will not automatically prevent the grant or renewal of a licence.

5.5.3

The Council will not normally grant a licence to a person with one (or more) conviction(s) for any offence that is related to animal cruelty or suffering. The primary purpose of the Regulations enforced by the Council is to ensure the welfare of animals and as such, these types of offences are highly relevant.

5.5.4

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.

5.5.5

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

5.5.6

The offences detailed in section 5.5.5 are indicative and any offences or behaviour not expressly covered therein may still be considered.

PART 6 – APPLICATION PROCESS

6.1 Advice for New Applicants

6.1.1

New applicants are advised to contact the Council's licensing team at their earliest opportunity, ideally before an application is made. This allows the officers to provide advice, as well as clarifying any areas of uncertainty. This can be done by visiting the South Holland website and via email licensing@sholland.gov.uk

6.1.2

The Council can also provide guidance in relation to other legal requirements of a new licence holder, for example, planning permission or building control approval. Such guidance should be sought from the appropriate Council department. The licensing page on the website contains helpful signposting.

6.1.3

The Council reserves the right to charge for pre-application advice or inspections. Any scheme for chargeable advice will be published on the Council website.

6.2 Making an application.

6.2.1 All licence applications must be submitted on the prescribed application form accompanied by:

- All supporting information required by this policy or the legislation (this can be found on the Council's webpage), which includes the DBS certificate;
- The appropriate application fee, made at the time of application; and
- Proof of planning permission (where necessary)

6.2.2

Applications can be made in hard copy or electronically. Electronically is the preferred and quickest option, submitted to licensing@sholland.gov.uk. Applications submitted in hard copy may experience a delay in being acknowledged.

6.3 Vet inspections

6.3.1

Where a veterinary surgeon inspection is required by legislation, or by the Council in order to determine an application, the cost of the inspection is the responsibility of the applicant and must be paid prior to the issue of a licence. This payment must be paid within 14 working

days of the date of issue of the invoice by the Council. Failure to pay will deem the application incomplete and may lead to refusal of a licence being granted.

6.3.2

If an application is refused, the veterinary surgeon inspection fee will still be the responsibility of the applicant.

6.4 Renewals

6.4.1

The Council will notify licence holders of the need to renew their licence no later than three calendar months prior to the expiry of the existing licence, however it is the licence holder's responsibility to ensure that their renewal application is submitted in a timely manner. The council take no responsibility for claims of missed renewal reminders as the onus is always on the applicant.

6.4.2

In order to ensure continuity of licence, renewal applications should be made no later than ten weeks prior to the expiry of the existing licence. The Council accepts no responsibility for a break in trading if a complete renewal application is submitted with less than ten weeks' notice prior to the expiry of the existing licence.

6.4.3

For the avoidance of doubt, if a renewal application:

- has not been submitted prior to expiry of the existing licence; or
- has been submitted but has not been determined prior to expiry of the existing licence, licensable activities must cease until such time as the renewal application has been granted.
- The applicant is solely responsible for ensuring that that their application and all supporting material is submitted a minimum of 10 weeks before expiry of the licence.
- If a premises continues to trade knowingly without a licence enforcement action may taken.

6.5 Application Determination

6.5.1

Once a completed application has been received and validated, the Council must inspect the site of the proposed licensable activities to assess if it is likely to meet the licence conditions.

6.5.2

The inspection must be carried out by a suitably qualified inspector, accompanied by a veterinary surgeon where required by legislation or where the Council deem it necessary to determine the application.

6.5.3

The inspector must produce a report in accordance with the requirements of the legislation and submit it in a timely manner.

6.5.4

The inspector's report will contain information about the applicant, the premises, any relevant records inspected, the condition of the animals and any other relevant matter. The report must state whether the inspector is satisfied that the licence conditions will be met.

6.5.5

Following a new licence inspection and / or receipt of the vets reports to the council, where the applicant has any outstanding issues such as policies and procedures required to meet the minimum standards, these must be submitted within a period of 21 days from notification, otherwise the application may be rejected.

6.5.6

Before a licence a licence can be issued, the balance of the application fee relating to ongoing compliance and administration must be paid (the licence fee). Where a veterinary surgeon has attended and inspected the premises, this fee must also have been paid prior to the issue of a licence.

6.6 Schedules of Animals

6.6.1 Licences issued for:

- Hiring of horses
- Pet shops
- Dangerous wild animals
- Keeping or exhibiting animals for exhibition
- Zoos

will generally have a schedule of permitted animals attached to the licence.

6.6.2

If a licence holder wishes to amend this list during the term of the licence, they will need to apply in writing (electronic submission included) to the Council to vary the schedule and pay the appropriate variation fee. Until such time as the Council confirm in writing that the schedule has been amended, the additional animals should not be used for licensable activities. This process may take up to 10 weeks for confirmation or not of the variation.

6.7 Additional licensable activity

6.7.1

If a licence holder wishes to add an additional licensable activity during the term of a licence, they will need to apply to the Council in writing including the appropriate fee. This may process may take up to 10 weeks for confirmation of the additional licensable activity and may require an inspection by an officer/vet if deemed necessary.

PART 7 – SAFEGUARDING

7.1

Whilst the legislation has the aim of maintaining and improving standards of welfare for animals, the Council has a statutory duty to consider safeguarding associated with all licensable activities.

7.2

The Council has a duty to protect children and vulnerable persons and always prioritises public safety. The council is aware that some licensable activities may involve unsupervised contact with children and/or vulnerable persons. Examples include, but are not limited to, horse riding tuition of a young person or an exhibition of animals at a children's party.

7.3

The Council expects all applicants and licence holders whose licensable activities may involve contact with children or vulnerable persons to:

- Have a written safeguarding policy
- Undertake appropriate safeguarding for all staff
- Keep a log of staff training records
- Have a procedure for vetting staff who have unsupervised contact with children and/or vulnerable persons
- Have a basic Disclosure and Barring Service (DBS) Certificate.
- To ensure that any staff who may not be the licence holder but have direct contact with children or vulnerable people hold a basic Disclosure and Barring Service (DBS) Certificate.

PART 8 – INSPECTORS

8.1 Animal Activity Licences

8.1.1

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations require all inspectors to be suitably qualified. This is defined in the national 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.

8.1.2

All inspections required as part of an application for grant or renewal of a licence will be undertaken by a suitably qualified inspector, as will any inspection required to vary a licence, as well as to determine if suspension or revocation may be appropriate following investigation.

8.1.3

Any unannounced informal inspection during the term of the licence or as a result of a complaint may be undertaken by a Council licensing officer where appropriate.

8.2 Dangerous Wild Animals

8.2.1

All inspections required as part of an application for grant or renewal of a licence will be undertaken by a suitably qualified inspector, as will any inspection required to vary, suspend or revoke a licence.

8.2.2

For the purposes of inspecting in accordance with section 8.2.1, the Council will use:

- A veterinary surgeon with experience of the specific type of animal; or
- Any other person deemed competent by the Council to undertake the inspection.

8.3 Zoos

8.3.1

All inspections required as part of an application for grant or renewal of a licence will be undertaken by a suitably qualified inspector, as will any inspection required to vary, suspend or revoke a licence.

8.3.2

For the purposes of inspecting in accordance with section 8.3.1, the Council will use:

- No more than three persons appointed by the Council, one of whom must be a veterinary surgeon, who are suitably competent for the type of premises; and
- Two inspectors from the list published by the Secretary of State (one from each part of the list)

NB: Zoo's with dispensation may require less persons to be present.

8.3.3

The Council's inspecting team may be accompanied by no more than three representatives of the licence holder plus any veterinary surgeon employed by the premises.

PART 9 – LICENCE DURATION AND STAR RATING

9.1 Extent of Licence

9.1.1

The issue of a licence in accordance with this policy does not imply approval or consent that may be necessary under any other laws, orders or regulations apart from those governing the issue of the licence.

9.2 Licence Duration

9.2.1

Licences for the keeping or training of animals for exhibition are issued for a period of three years.

9.2.2

Licences for the keeping of dangerous wild animals are issued for a period of two years.

9.2.3

Licences for new zoos are issued for a period of four years and existing zoos six years.

9.2.4

Animal activity licences are issued for either one, two, or three years, dependent upon the considered risk and welfare standards. The licence duration is linked to the mandatory star rating scheme (see below).

9.3 Star Rating Scheme (animal activity licences only)

9.3.1

All animal activity licences must be issued a star rating in accordance with prescribed national standards based on the inspector's report.

9.3.2 The Council will display a list of animal establishments and their star rating on its website.

9.3.3

The national star rating scheme does not apply to dangerous wild animals and zoos, or the exhibition of animals under the 2018 Animal Welfare (Licensing) Regulations.

9.3.4

Where a licence authorises more than one licensable activity and the activities meet different star rating criteria, the licence will be issued with a premises star rating of the lowest rating awarded. For example, a premises with a 5-star kennel and a 3 star cattery would be awarded a 3-star animal activity licence.

PART 10 – STANDARDS AND LICENCE CONDITIONS

10.1 Animal Activity Licences

10.1.1

Licences issued under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations are subject to mandatory conditions for each licensable activity.

10.1.2

To assist local authorities, DEFRA has issued national guidance on the interpretation of these conditions to promote uniformity across the country.

10.1.3

The licence conditions are split into two categories, 'general conditions' detailed in Schedule 2 of the Regulations and 'specific conditions' detailed in the appropriate Schedule of the Regulations dependent on licensable activity.

10.1.4

Applicants will need to demonstrate that they can meet all generic and specific conditions appropriate to the activities provided in order to be granted a licence, however minor failings may not preclude a licence being issued, if they are predominately administrative in nature and do not impact on animal welfare. This will impact upon the star rating awarded and all administrative failings would be expected to be resolved prior to renewal.

Higher standards

10.1.5

In order to achieve the higher star ratings, applicants will need to meet higher standards. These standards are optional but are the only way to achieve a four- or five-star rating. Higher standards are specific to each licensable activity except for keeping or training animals for exhibition.

10.1.6

The higher standards are divided into two categories within the national guidance, mandatory and optional. To qualify as meeting the higher standards, an applicant must meet all the mandatory higher standards and at least fifty percent of the optional higher standards.

For the purpose of clarification, this risk rating is carried out by a qualified inspector and is not for decision by an applicant. The risk scoring table demonstrates the level the applicant's premises practices must be at and only a qualified inspector is able to make this decision.

Samples

10.1.7

The Regulations allow for officers to take samples for laboratory testing from any animals on a premises to ensure that licence conditions are being complied with. A licence holder must make all reasonable efforts to comply with a request for samples including, but not limited to:

- facilitating the identification of the animal(s)
- facilitating the examination of the animal and the taking of the sample
- assisting with suitable restraint of the animal(s)

10.1.8

The number of samples taken should be the minimum number to address the animal welfare concerns to avoid undue stress to the animals and adversely impact on the business.

10.1.9

A veterinary surgeon would be expected to undertake sampling and the cost associated with that test would be the responsibility of the licence holder, unless otherwise decided by the inspector.

10.2 Dangerous Wild Animals

10.2.1

In order to determine the application, an annual independent veterinary inspection of the animals and premises is required prior to the issuing of a licence. The veterinary surgeon must have suitable experience of dangerous wild animals.

10.2.2

The Council will nominate the veterinary surgeon for each inspection and make the appropriate arrangements however the cost of any veterinary inspection will be the responsibility of the applicant and must be paid within 14 working days of the invoice being sent.

10.2.3

A licence will not be issued where the veterinary surgeon recommends refusal.

10.2.4

Licence conditions will predominately be concerned with suitable accommodation and care of the specific animal, to ensure that the keeping of the animal would not endanger public safety or create a public nuisance.

10.3 Zoos

10.3.1

An independent veterinary inspection of the animals and premises is required prior to the issuing of a licence. The veterinary surgeon must be a specialist in the field of zoo licensing.

10.3.2

The Council will nominate the veterinary surgeon for each inspection and make the appropriate arrangements however the cost of any veterinary inspection will be the responsibility of the applicant/licence holder. The vet fee must be paid within 14 days of the invoice being sent and the licence will not be issued until it has been made.

10.3.3

A licence will not be issued where the veterinary surgeon recommends refusal.

10.3.4

Licence conditions will predominately be concerned with a broad range of issues, including but not limited to, feeding, environment, conservation/education and public safety.

10.3.5

Conditions will be based upon DEFRA's Standards of Modern Zoo Practice. All veterinary surgeons inspecting a zoo must have regard to these standards but may amend the conditions to suit the individual establishment. The Council inspector may add conditions outside of this guidance if deemed necessary.

PART 11 – REFUSING AN APPLICATION

11.1

The Council will have regard to all available information when determining an application including, but not limited to:

- The appointed inspector's report
- The veterinary surgeon's report (if applicable)
- Comments and documentation supplied by the applicant

11.2

The Council will refuse to issue or renew a licence if it considers that the applicant cannot meet the licence conditions.

11.3

The Council will also refuse to issue or renew a licence if:

- a) the applicant has a history of non-compliance with licence conditions or Council requirements;
- b) the applicant is obstructive towards officers, inspectors or veterinary surgeons;
- c) there are safeguarding concerns relating to licensable activities at the
- d) premises;
- e) the applicant fails to meet the 'fit and proper' person test detailed in section 5.1.4 of this policy; or
- f) the applicant has been disqualified from holding a licence.

This list is not exhaustive but suggestive of the circumstances where the Council may refuse to issue or renew a licence.

11.4

Where an application is unsuccessful, all application fees and veterinary surgeon inspection fees are non-refundable.

11.5

If a licence is refused, the applicant will have the following rights of appeal:

(a) Animal Activity Licences

Within twenty-eight days of receiving the Council's Decision Notice to the First-Tier Tribunal (General Regulatory Chamber)

(b) Dangerous Wild Animals

Within twenty-eight days of receiving the Council's Decision Notice to the local Magistrates Court

(c) Zoos

Within twenty-eight days of receiving the Council's Decision Notice to the local Magistrates Court

11.6

Prior to the refusal of an application, the reasons why the application is likely to be refused will be advised to the applicant in writing. The applicant may then submit written representation stating any mitigating circumstances and/or reasoning why the application should be granted. Any representation submitted by the applicant will be considered as part of the determination.

PART 12 – STAR RATING APPEALS

12.1

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

12.2

The business will be provided with supporting information which will highlight the Inspecting Officer's decision on how the risk rating, compliance level and star rating has been determined. The business is encouraged to discuss the matter initially with the Inspecting Officer where possible.

12.3

A business may appeal if they consider their star rating to be wrong - in other words, 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.

12.4

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.

12.5

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.sholland.gov.uk/licensing

12.6

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.sholland.gov.uk/licensing).

PART 13– LICENCE VARIATIONS, SUSPENSIONS AND REVOCATIONS

13.1 Animal Activity Licences

13.1.1

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations allow for a local authority to vary a licence at any time either:

- (a) on written application (including electronic submission) by the licence holder; or
- (b) on the instigation of the Council with the written consent of the licence holder.

This approach can serve as a balanced response to addressing issues in cases where the licence holder and the council agree that a resolution can be achieved without necessity for formal action.

13.1.2

The Council may suspend, vary or revoke a licence without the consent of the licence holder where:

- (a) licence conditions are not being complied with;
- (b) there has been a breach of the Regulations.
- (c) the licence holder has supplied false or misleading information; or
- (d) it is necessary to protect the welfare of an animal.

13.1.3

A suspension or variation of a licence will ordinarily take effect seven working days after the written Decision Notice has been issued to the licence holder. The decision notice will be sent by email and via first class signed-for to the address of the licence holder. If the reason

for the decision is to protect the welfare of an animal the Council must specify in the decision notice that the decision will take immediate effect.

13.1.4

A Decision Notice varying or suspending a licence must and will always be given in writing (including electronic submission email) and contain:

- The rationale for the decision
- The date the decision takes effect
- The rights of the licence holder to make written representations
- A summary of the matters to be addressed to resolve the concerns

13.1.5

The decision to vary, suspend or revoke a licence will be appropriate based on the specific nature of the concerns.

Some examples of proportionality include, but are not limited to:

- **SUSPENSION:** Failure to meet administrative conditions or supply information when requested
- **REVOCATION:** Repeated failure to meet administrative conditions or supply information when requested
- **IMMEDIATE REVOCATION:** Poor welfare conditions or where it would be beneficial to remove the animals for welfare reasons
- **VARIATION:** Minor adjustments to the licence that will resolve concerns informally

13.1.6

In most cases, after receiving a suspension or variation notice, the licence holder will have 7 working days to submit written representations. Upon review of these representations, the Council may choose to either maintain the suspension or variation, or rescind its initial decision. However, if a licence has been immediately suspended, varied or revoked in order to safeguard an animal's welfare, the 7-day period for representation doesn't apply.

13.1.7

Once the suspension of a licence takes effect the business will no longer be able to provide licensable activities until such time as the suspension is subsequently removed by the Council once it is satisfied that its concerns have been addressed.

13.1.8

There is no right of appeal against the suspension of a licence however after twenty-eight days of suspension the licence must either be revoked or reinstated by the Council.

13.1.9

If a licence is varied or revoked by the Council, the licence holder has a right of appeal within twenty-eight days of receiving written notice (including electronic submission/ email) of the decision to the First-Tier Tribunal (General Regulatory Chamber).

13.2 Dangerous Wild Animals

13.2.1

At any time during the period of a licence, the Council may vary the licence by:

- Specifying a new condition
- Varying an existing condition
- Removing an existing condition

13.2.2

If the variation was requested by the licence holder it will take immediate effect.

13.2.3

If the variation was instigated by the Council it will not take effect until such time as the licence holder has been made aware of the condition and has is provided with 21 days to consider the proposed variation. Following this the variation will be added to the licence.

13.2.4

Once the variation is added and a decision notice provided by the council, there is a right of appeal to the local Magistrates Court against a decision to add, amend or revoke licence conditions. An appeal must be ledged with the court within twenty-eight days of receiving the Council's written Decision Notice.

13.2.5

Where an animal is being kept without an appropriate licence or where a licence condition is not being complied with, the Council may seize the animal and either retain it, destroy it, or otherwise dispose of it with no liability to pay compensation for the exercise of this power.

13.2.6

Where the Council incurs any expenditure exercising the power detailed in section 13.2.5 it shall be entitled to recover the full cost as a civil debt against the person from who the animal was seized.

13.3 Zoos

13.3.1

At any time during the period of a licence, the Council may alter the licence if they are satisfied that it is necessary or appropriate to do so for ensuring the proper conduct of the zoo.

13.3.2

Before amending a licence, the Council shall give the licence holder the opportunity to make written representations.

13.3.3

If the proposed amendment is a significant change, the Council shall:

- Consult the licence holder about the proposed alteration.
- Arrange an inspection by an appropriate inspector/veterinary surgeon.
- Consider the inspection report prior to making its final decision.

13.3.4

The Secretary of State is empowered to direct the Council to amend a licence where appropriate. If the proposed amendment is significant, the process in section 13.3.3 will apply.

13.3.5

The Council may, after giving the licence holder an opportunity to submit written representations, revoke a licence if:

- a) any reasonable requirements relating to the premises or conduct of the zoo notified to the licence holder following an inspection are not complied with in a reasonable time.
- b) it is satisfied that the zoo has been conducted in a disorderly manner or so as to cause a nuisance, or is in breach of licence conditions;
- c) the licence holder (or in the case of a corporate body a director, manager or similar official) is convicted of a relevant offence; or
- d) any person employed as a keeper in the zoo who, to the knowledge of the licence holder, has been convicted of a relevant offence.

13.3.6

There is a right of appeal within twenty-eight days of receiving the Council's written Decision Notice to the local Magistrates Court against a decision to refuse a licence, amend a licence, attach conditions to a licence or revoke a licence.

PART 14 – DEATH OF A LICENCE HOLDER

Animal Activity Licences

14.1

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations allow for the personal representative of a deceased licence holder to take over the licence if they inform the Council within twenty-eight days of the death that they are now the licence holder.

14.2

The licence will then remain in force in the name of the new licence holder for a period of three months from the death of the previous licence holder or for the remainder of the licence period if that time is shorter. The new licence holder must then apply for a new licence no later than one month prior to the expiry of this new period.

14.3

The Council can extend the three-month period by a maximum of another three months upon the written request of the personal representative if it is satisfied that this additional time is necessary to wind up the estate of the deceased licence holder.

14.4

If the personal representative does not notify the Council within twenty-eight days of the death of the licence holder, the licence will automatically cease to have effect.

Dangerous Wild Animals

14.5

On the death of the licence holder, the licence shall continue in force for a period of twenty-eight days as if it had been granted to the personal representatives of the deceased. If an

application is made for a new licence within the twenty-eight days, the licence shall be deemed to be still in force pending the grant or refusal of the new application.

Zoos

14.6 On the death of the licence holder, the personal representatives of the deceased are deemed to be the holders of the licence during the period of three months immediately following the death, or such longer period as the Council may approve, to allow for the lawful transfer of the licence.

PART 15 – INSPECTIONS OF A LICENSED PREMISES

15.1

There are occasions where inspections must be carried out during the term of a licence as follows:

(a) Animal Activity Licences (other than hiring out of horses)

- A minimum of one unannounced inspection must take place during the term of the licence irrespective of whether it is a one, two, or three-year licence.

(b) Hiring out of Horses

- An annual inspection by veterinary surgeon must be undertaken irrespective of the length of licence; this inspection is in addition to a minimum of one unannounced inspection during the term of the licence.

(c) Dangerous Wild Animals

- An annual inspection by veterinary surgeon must be undertaken.

(d) Zoos

- Periodic inspections must be undertaken in accordance with prescribed requirements.

15.2

Further unannounced inspections can also take place in the case of complaints or other information that suggests licence conditions are not being complied with or that the welfare of the animals involved in the licensable activity is at risk.

PART 16 – ENFORCEMENT

16.1

It is recognised that well-directed enforcement activity by the Council benefits not only the public but also the responsible licence holders.

16.2

In pursuing its licensing principles detailed in this policy, the Council will operate a proportionate enforcement regime in accordance with the Council's Enforcement Policy.

16.3

Where necessary to ensure the 'five needs' of the 2006 Act, the Council may utilise its enforcement powers under the Act to ensure the welfare of the animals is addressed at the earliest opportunity to avoid any distress or suffering.

16.4 The main enforcement and compliance roles for the Council are to:

- ensure compliance with the conditions placed on a licence;
- investigate complaints relating to a licensed premises; and
- investigate and take appropriate action against unlicensed premises.

16.5 Complaints

16.5.1

The Council will record and investigate, where appropriate, all complaints relating to animal licensed premises or premises allegedly operating without a licence.

16.5.2

The Council will require complainants to provide their name and contact details to ensure a complaint is not malicious or vexatious in nature and to enable witness statements to be obtained if required for formal enforcement action. The complainant's details will not be revealed to the licence holder/person being investigated unless it is necessary as part of legal proceedings. If complainant details are withheld the Council will not progress with any investigation, however the information will be retained for intelligence purposes.

16.5.3

On review of the information supplied, the Council will always approach the allegation with the intention to seek compliance. If it is found that unlicensed activity is taking place, where appropriate the council will encourage compliance by assisting with advice of how to obtain a licence.

16.5.4

Complainants need to ensure that they are willing to provide evidence to the council in order to support any investigation required. Evidence must be supported with an explanation as to how they came to know the information.

16.5.5

Where complaints involve information sought from social media, explanation needs to be provided as to how they have access to this and what leads them to believe that the social media post relates directly to the specific activities or premises they are complaining. The investigating officer will decide what weight is given to the posts.

16.5.6

If the complainant believes that animals are at risk of serious immediate harm the Council will expect this to be reported to Lincolnshire Police and request that a crime reference number is provided.

16.5.7

The Council anticipates that any allegation of unlicensed activity taking place, that's supported by evidence, will require a detailed investigation. Complainants need to be aware that an investigation can take a considerable amount of time to reach conclusion.

16.5.8

At the end of the investigation the council will write to the complainant with an outcome. The investigating officer will outline what investigation has occurred and what their rationale is in deciding to either-

- Pursue the case by taking enforcement action;
- Provide a warning to the accused if appropriate to do so;
- Resolve the case by seeking compliance with the accused;
- Take no further action.

16.5.9

Should a case result in no further action being taken by the council, the decision will be deemed final unless the complainant can provide new evidence that shows a material change to the evidence supplied previously.

PART 17 – SHARING OF INFORMATION

17.1

The Council will exchange information with other enforcement agencies such as, but not limited to, the Police, the RSPCA and DEFRA, for the purposes of:

- Safeguarding public safety
- Ensuring the safety, welfare and wellbeing of animals
- Evaluating the suitability and conduct of applicants and licence holders.

17.2

The Council may also disclose information with other local authorities or internal Council departments when deemed suitable and lawful, for the purposes for example of preventing crime and disorder or preventing fraud.

17.3

In sharing information, the Council will adhere to relevant data protection legislation.

PART 18 – DEFINITIONS

'Authorised Officer' means any Officer of the Council authorised under the Council's Scheme of Delegation as contained within the Constitution the Council South Holland District Council Other posts referred to mean that post or their successor post if changes arise as the result of restructure, etc.