

Wiltshire Council



Animal Licensing Decision Making and Enforcement Protocol

This document constitutes the enforcement and decision-making protocol with regards to animal licensing, which is a statutory function delivered by the Licensing Authority within the Public Protection Service in Wiltshire Council.

This protocol sits below the long established Public Protection Enforcement Policy and will be implemented by authorised officers in the Public Protection Service Licensing Team including the Licensing Team, Animal Health Officers and Dog Wardens. The protocol deals specifically with the following legislation:

- Animal Welfare Act 2006
- The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
- Zoo Licensing Act 1981
- Dangerous Wild Animals Act 1976
- Associated Government guidance to the above Acts / Regulations and relevant good practice documents

Policy

It is Council's aim, to safeguard the welfare of animals that come under the following licensing provisions:

- Providing or arranging for the provision of boarding cats & dogs (which includes home boarding, day crèches, kennels, catteries, arranging and host families).
- Breeding Dogs
- Selling Animals as Pets
- Hiring out of Horses
- Keeping or Training Animals for Exhibition
- Dangerous Wild Animals
- Zoos

Each licence is issued with relevant conditions. Inspections of the premises to which the licence relates are conducted in accordance with the relevant requirements of the applicable legislation. Additional visits may also be made where a complaint is being investigated or where there are concerns regarding the operation of a licence holder.

Inspecting officers will seek to secure compliance with the licence conditions informally by information, advice, and support, both face to face and in writing, and where appropriate will issue written warnings, directions, improvement notices, formal cautions and where necessary prosecute.

In relation to licenses issued under The Animal Welfare (Licensing of Activities Involving

Animals) (England) Regulations 2018 the authority may, without any requirement to the licence holders' consent, decide to suspend, vary, or revoke a licence at any time where it is satisfied that :

- the licence conditions are not being complied with,
- there has been a breach of these Regulations,
- information supplied by the licence holder is false or misleading, or
- it is necessary to protect the welfare of an animal.

Officers may also refuse to issue a licence or renew and in some cases seize the animals.

Enforcement powers are used to secure compliance with legal requirements, their purpose to:

- Ensure that the responsible persons take action to deal immediately with serious risks.
- Promote and achieve sustained compliance with the law.
- Ensure the responsible persons who breach animal welfare requirements are held to account, which may include bringing alleged offenders before the courts.
- Officers, when judging compliance with the law, consider relevant codes and guidance, use sensible judgement about the extent of the risk and the effort that has been applied to counter them.

The Principles of Enforcement

Wiltshire Council believes in firm but fair enforcement of animal licensing legislation. We shall follow the principle of proportionality in applying the law, securing compliance, and will be consistent in approach and targeting of enforcement action. We operate in a transparent manner and are accountable for our actions.

Proportionality

Proportionality means relating enforcement action to the risks. We will minimize the costs of compliance for business by ensuring that any action we require is proportionate to the risk. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

Targeting

We will ensure resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled.

Consistency

We will carry out our duties in a fair and equitable manner, by taking a similar approach in similar circumstances to achieve similar outcomes. The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

Transparency

We will be open and transparent by helping applicants to understand what is expected of them and what they should expect from inspectors, including distinguishing between statutory requirements which are compulsory and advice or guidance which is desirable but not compulsory.

Overlapping Legislation

If the licensed premise is also considered to be a workplace, then it will be subject to the Health and Safety at Work etc. Act 1974 and relevant regulations. The licence holder will be informed if a joint or separate visit is conducted for assessing compliance with these provisions.

Procedures

Operating Without a Licence

This could occur when a new business starts up or fails to renew a licence. It is an offence to operate without a licence under each relevant provision. The proprietor of such activities will be informed in writing of the breach of legislation, and they will be given an opportunity to apply for such a licence. If they do not use this opportunity and continue to operate an activity that requires a licence and they have no valid reason for why they do not need to obtain such a licence, then appropriate evidence will be obtained for a prosecution for operating without such a licence.

Obstruction/Power of Entry

Authorised officers will always carry their identification and authorisation with them. The relevant statutory provisions provide powers of entry to authorised officers to enter premises to ascertain whether an offence has or is being committed. If an authorised officer is obstructed in performing these duties, then the individual(s) would be informed of the offence at that time and entry will, again, be requested. If they still will not allow entry, then two options are available.

If there are serious concerns regarding the welfare of the animals, then the assistance of a police officer will be obtained. If not, the powers of entry will be explained to them in writing requesting entry within 24 hours. Where appropriate, a warrant to enter the premises will be obtained.

Enforcement Procedure

An officer will consider the most appropriate course of action during routine inspections or following incidents or complaints. In line with the policy the officer will use his/her judgement on what action to take that is namely:

- No action
- To give verbal and written warnings
- Refuse to grant/renew a licence
- Suspension/ variation or revocation of licence
- Serve a simple caution
- To prosecute

Animal Licensing Complaints

The Licensing Team is only able to investigate issues that are covered by licence conditions or if there are concerns that a premises or operator are conducting a licensable activity without the necessary licence in place.

If a member of the public considers that an unlicensed activity is taking place then the Licensing Officer will require evidence of the activity such as photographs, links to web pages which clearly indicate breeding and selling of dogs, animals being advertised for sale or advertising the service of boarding or horse riding. In some circumstances a signed

witness statement that can be used in court maybe required from the complainant.

If insufficient details are supplied, the Licensing Team will not be able to investigate. Not all operators will meet the threshold to require to be licensed depending on the activity they are conducting.

Where there is sufficient evidence to instigate an investigation, a Licensing Officer will be tasked to check the information supplied and take the appropriate action in line with this protocol and the enforcement policy. The officer may also involve any other relevant agency or colleague and may appoint an appropriate veterinary surgeon to support their investigation.

If the complaint relates to specific welfare issues not relevant to the Licensing team the complainant will be directed to the appropriate agency or team to address their concerns.

Enforcement Options

Refusal to Grant a Licence

New licences shall only be granted where the authorised officer is of the opinion that all licence conditions/ requirements have been complied with or met. In cases following a visit or report from a veterinary surgeon/practitioner where the authorised officer has information demonstrating substantial breaches of the adopted licence conditions, or the premises or operator is unable to meet the requirements of the regulations then refusal to renew or grant the licence must be considered.

A letter will be sent to the applicant without delay stating that consideration is being given to refusing the licence setting out the reasons why. Renewal applicants should be given a reasonable time to rectify the breaches before finally refusing the licence. In circumstances where the licence breaches or conditions are so serious as to fail to safeguard the welfare of animals then consideration should be given to removing or refusing the licence immediately. In such cases advice may be obtained from a veterinary surgeon/ practitioner.

Initial application, Variation, or modification of licence

On receipt of an initial application or variation of licence, a visit/ inspection will be made, and other information obtained to ascertain if the conditions will be met. On receipt of information, if it is considered by an authorised officer, taking into account appropriate guidance, that the number or type of animals should be reduced, then the licence holder should be informed of the reasons in writing and the application/licence shall be modified.

In relation to any application received under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 the length of any licence and the star rating of a business is determined using a risk based system. The star rating applied to a business is a reflection of both the level of risk identified and the animal welfare standards seen at the time of the inspection.

Fit and Proper Test

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 a 'fit and proper' person and not already disqualified from holding a licence in accordance with the Animal Activities Regulations.

The Council will 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 give reasonable confidence that they can comply with licence conditions and safeguard the welfare of animals in their care
- made suitable management and training arrangements to ensure the safety and welfare of any staff and/or members of the public who may be affected by the licensed activity

This does not limit the scope of the fitness and suitability assessment, and the Council may take into account other matters considered relevant to the licensing process.

Non-Compliance with Licence Conditions

For minor breaches, the matters will be discussed with the licence holder and confirmed in writing, if appropriate. For persistent minor breaches or for serious breaches threatening animal welfare, suspension / variation, or revocation of the licence and or prosecution will be considered. The advice of a veterinary surgeon/practitioner may be obtained. All decisions shall consider the principles of enforcement.

Seizure of Animals

This action should only be taken if in the opinion of a veterinary surgeon/ practitioner the safety or welfare of animals is at serious risk and that immediate action is necessary to safeguard their safety or welfare. This may be as a result of long-term neglect or due to severe circumstances posing an imminent risk.

Simple Caution

In cases where there is sufficient evidence of the suspected offender's guilt to give a realistic prospect of conviction, we may, subject to the following, consider issuing a simple caution:

- Would the simple caution be in the interest of the public including seriousness of the offence
- Is there mental illness, impairment, or severe physical illness
- the suspect offender's attitude
- the nature and extent of failures in animal welfare

It should be noted that the use of simple cautions for Local Authority work is currently under review.

Appeal Against Refusal/Modification to Grant a Licence

Where an applicant or licence holder is not satisfied with the officer's decision in refusing or modifying to grant a licence or in the variation of a licence, the applicant may be advised that they may appeal to the Public Protection Manager or Head of Service. They must state their reasons for dissatisfaction in writing.

Following the outcome made by The Licensing Manager/Head of Service and subject to the legislation, a further appeal to either the magistrates court / or first tier tribunal whichever is appropriate can be made within the required times.

Decision Making

When considering the appropriate course of action, the following factors must be considered:

- the principles of enforcement
- the enforcement policy
- compliance with the relevant statutory provisions
- the gap between the actual conditions and the standard expected
- information and advice from authorised veterinary surgeon/practitioner

The adopted conditions and relevant guidance will be used as the basis of the standard required at each licensed establishment.

Veterinary Surgeon/Practitioner

For all licences under this policy, the granting of such is subject to a satisfactory report from a registered veterinary surgeon/practitioner. The veterinary inspector must be experienced with the welfare of the animals concerned. Additional qualifications may be necessary to be deemed competent.

In most circumstances they will come from the same locality, but will be independent to that application, i.e., not their practicing vet. The local authority will authorise such inspectors under the relevant provision. The report given to the local authority will be used in the decision to grant or refuse a licence.

Once the licence has been granted, the frequency of a veterinary inspection is dependent on the type of licence issued. In addition to the routine granting/renewal veterinary inspection, the 'opinion' of a veterinary inspector will always be sought by the authorised officer of Wiltshire Council if there is concern regarding any issue which may affect the welfare of any animal.

Local Authority Officer

Officers of Wiltshire Council will only be authorised under the relevant provisions when they are deemed competent to conduct such tasks.

Working with others

- RSPCA Authorised officers. The Council will liaise with the RSPCA when there are allegations of cruelty to animals.
- Animal Protection Charities. Following receipt of information from such charities appropriate liaison will take place.
- Royal College of Veterinary Surgeons (RCVS). Authorised officers shall liaise with representatives of the RCVS for specific advice as required.
- Planning Authority. Authorised officers will liaise with the relevant planning authority or building control service where there are concerns about the authorised use of premises or construction of buildings.
- Environmental Control and Protection. In relation to any possible noise and /or odour nuisance.

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