

# **TUNBRIDGE WELLS**

## **ANIMAL LICENSING POLICY**

### **CONTENTS**

<b>Part 1</b>	<b>Introduction</b>
<b>Part 2</b>	<b>Licensing Principles and Policy Objectives</b>
<b>Part 3</b>	<b>Legislation and guidance</b>
<b>Part 4</b>	<b>Who needs a licence</b>
<b>Part 5</b>	<b>Suitability of Applicant</b>
<b>Part 6</b>	<b>Safeguarding</b>
<b>Part 7</b>	<b>Application Process</b>
<b>Part 8</b>	<b>Licence duration and Star Rating</b>
<b>Part 9</b>	<b>Standards and Licence conditions</b>
<b>Part 10</b>	<b>Refusing an application</b>
<b>Part 11</b>	<b>Star Rating Appeals (Animal Activity Licences only)</b>
<b>Part 12</b>	<b>Licence variations, suspensions and revocations</b>
<b>Part 13</b>	<b>Death of a Licence Holder</b>
<b>Part 14</b>	<b>Inspections of a Licensed Premises</b>
<b>Part 15</b>	<b>Licence Fees</b>
<b>Part 16</b>	<b>Enforcement</b>
<b>Part 17</b>	<b>Information Sharing</b>
<b>Part 18</b>	<b>Definitions</b>

## PART 1 – INTRODUCTION

### **1.1.1 The Policy**

1.1.2 This document sets out how Tunbridge Wells Borough Council (“the Council”) will exercise its functions regarding the regulation of licensable activities involving animals.

1.1.3 The aim of this policy is to ensure existing licence holders; applicants and the public understand how the Council undertakes the regulation of animal licensing in Tunbridge Wells.

### **1.2 Policy Duration and Amendments**

1.2.1 This Policy will be kept under review and amended as and when necessary to reflect changes in the law, national guidance and to reflect best practice. A full review of the policy will be carried out every 5 years.

1.2.2 Minor amendments to this policy, required by virtue of legislative changes, revised national guidance or a Council restructure, may be made by the Animal Licensing Officer, following consultation with the Food and Safety Team Leader. Amendments under this section are restricted to those required to accurately reflect the current legal or administrative position.

1.2.4 Any significant amendment to the policy will be determined by the Licensing Committee. A significant amendment is one that:

- a) Will have significant financial impact on applicants, licence holders or the public
- b) Will have a significant procedural impact on applicants, licence holders or the public, or
- c) May be perceived by applicants, licence holders and the public to not be consistent with the licensing principles set out in this policy.

1.2.5 Any change required by law will not be considered a significant amendment.

### **1.3 Departure from Policy**

1.3.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy.

1.3.2 Despite the existence of this policy, each application or enforcement measure will be considered on its own merits. However, it is likely that departures from policy will be restricted to exceptional circumstances and not used to circumvent the reasonable requirements of the policy.

### **1.4 Delegations**

**Table 1. Delegation of functions relating to animal licensing**

<b>Matters to be dealt with</b>	<b>Licensing Sub-Committee</b>	<b>Head of Housing, Health and Environment</b>	<b>Animal Licensing Officer</b>
Day to day operation of the Council's Animal Licensing Policy			X
Granting of new or renewal licence, variation and/or suspension of any licence under the Regulations			X
Recommendation for a licence to be refused			X (in conjunction with the Food and Safety Team Leader)
Recommendation for a licence to be revoked			X
Revocation of any licence under the Regulations	X		
Immediate revocation of a licence where this is required for animal welfare reasons		X	
Issuing of a penalty notice		X	
Granting of a new zoo licence	X		
Granting of a renewal zoo licence		X	
Granting of dangerous wild animals licence			X
Substantial departures from the policy	X		

**PART 2 – LICENSING PRINCIPLES AND POLICY OBJECTIVES**

**2.1 Licensing Principles**

2.1.1 The Council will have regard to the following three principles:

- a) that animal welfare within the licensing regime is protected by implementing appropriate standards that promote the “five needs” established by the Animal Welfare Act 2006
- b) that persons responsible for the management of animal welfare observe recognised standards of good practice
- c) that the requirements of all animal related legislation will be rigorously and pro-actively enforced.

## **2.2 Policy Objectives**

2.2.1 This policy is intended 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 legislative requirements detailed in section 3.2.2 and/or section 3.3.1 of this policy
- 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
- decisions are made in a transparent, fair and consistent way
- enforcement action taken is fair and proportionate with regard to the Regulations and the Council’s Environmental Health Enforcement policy.
- the obligations of the Council’s Public Sector Equality Duty under section 149 of the Equality Act 2010 are fulfilled by eliminating discrimination, harassment, victimisation and any other conduct prohibited by the Act, advancing equal opportunity, and promoting good relations between persons who share and those who do not share protected characteristics.

<b>PART 3 – LEGISLATION AND GUIDANCE</b>
--

### **3.1 Animal Welfare Act 2006**

3.1.1 This is now the primary piece of legislation controlling the welfare of animals in England and Wales. It has established that reasonable welfare standards must be maintained whilst unifying all animal welfare legislation, including responsibilities falling to other enforcement agencies.

3.1.2 The Animal Welfare Act 2006 introduces five overarching principles of animal welfare known as “the five needs”.

3.1.3 The “five needs” referred to in the Animal Welfare Act 2006 are:

1. **the need for a suitable environment;** by providing an appropriate environment including shelter and a warm, dry and comfortable resting area
2. **the need for a suitable diet;** a diet to maintain full health and by ready access where appropriate, to fresh water.
3. **the need to be able to exhibit normal behaviour patterns;** by providing sufficient space, proper facilities where an animal can exercise and explore
4. **the 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 of, or rapid diagnosis and treatment of, injury and illness and ensuring conditions and treatment which avoid physical and/or mental suffering.

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

3.2.1 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. The Regulations replaced 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
- Performing Animals (Regulation) Act 1925

3.2.2 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 activities:

- Selling Animals as Pets
- Providing or arranging for the provision of boarding in catteries 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
- Keeping or training animals for exhibition

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

### **3.3 Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981**

3.3.1 The new 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 recent legislative changes. Both activities remain within the scope of this policy.

3.3.2 A dangerous wild animal licence is required where an individual or a business wishes to keep an animal included on the Schedule of Dangerous Wild Animals maintained and published by DEFRA. The legislation applies to all individuals that wish to keep a dangerous wild animal, for example, a venomous snake.

3.3.3 The Council recognises that primates are not suitable to be kept as pets or companion animals owing to their high intelligence and complex needs, neither of which can be met in a domestic premises. Due to this, the Council does not promote the licensing of any primate species under the Dangerous Wild Animals Act 1976 to be kept as pets/companion animals in a domestic premises, or to be sold or be kept with the intention to be sold as pets under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. Licence applications from establishments that can provide evidence to support the provision of zoo-equivalent standards for the primates and that the animals will not be sold or bred from will be considered.

3.3.4 A zoo licence is required for an establishment where wild animals are kept for exhibition to which members of the public have access to, with or without charge for admission, on more than 7 days in any period of 12 consecutive months. The wide scope of this definition means that licensed zoos can range from traditional urban 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 and a reduced inspection team 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 Zoo Licensing Act 1981 does not extend to circuses or to pet shops which are covered by separate legislation.

## PART 4 – WHO NEEDS A LICENCE

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

4.1.1 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 3.2.2 of this policy).

4.1.2. A licence is required if any of the following activities are being, or intend to be, carried out as a commercial activity:

- Selling animal as pets
- Providing or arranging for the provision of boarding in catteries 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
- Keeping or training animals for exhibition

#### Dog Breeding

4.1.3 A licence is also required for the activity of breeding of dogs if **either** or both of the following apply:

- a) breeding 3 or more litters of puppies in any 12 month period; or
- b) breeding dogs and advertising a business of selling dogs

4.1.4 In the case of breeding 3 or more litters of puppies in any 12-month period, if the person carrying on the activity provides documentary evidence that none of the puppies have been sold or given away with the intention of being sold, then a licence would not be required.

#### Commercial Activity

4.1.5 In order to assess whether an activity is being carried on as a commercial activity, DEFRA guidance says consideration should be given to:

- Whether the operator makes any sale or carries out the activity to make a profit or earns any commission or fee.
- HMRC’s 9 badges of trade which include:
  - profit seeking motive
  - the number of transactions
  - the nature of the asset
  - existence of similar trading transactions or interests

- changes to the asset
- the way the sale was carried out
- the source of finance
- interval of time between purchase and sale
- method of acquisition
- HMRC's trading income allowance.

4.1.6 Each individual case will be assessed on its own merits considering the criteria in sections 4.1.5 above.

## **4.2 Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981**

4.2.1 There is no assessment of whether the activity is being carried on for commercial purposes for either of the above Acts. If an activity as detailed in sections 3.3.2 and 3.3.3 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.

## **PART 5 – SUITABILITY OF APPLICANTS**

### **5.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 and Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981**

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 12 and Schedule 8.

5.1.2 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 hold a licence.

5.1.3 The term 'fit and proper' person is not defined in the Regulations or Guidance 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 or disqualifications 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



d) 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.

e) not had a licence revoked under the Regulations.

## **5.2 All Applications**

5.2.1 In the case of all applications, 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. In the case of renewal applications, the Council will consider any information received about the licence holder and/or business during the period of the existing licence.

5.2.2 If credible information about an applicant/licence holder comes to the attention of the Council, such as information in the public domain including news articles, this information will be taken into consideration in the licensing process.

5.2.3 The Council will not ordinarily grant a licence to a person with one or more convictions for any of the following offences:

- Offences involving animals including, but not limited to, offences involving suffering or danger caused to animals
- Licensing offences
- Offences involving violence
- Offences involving a minor
- Possession of a weapon
- Offences involving drugs (excluding simple possession offences more than 5 years from date of licence application)
- Offences involving dishonesty
- Sex and indecency offences

5.4.4 The offences detailed in 5.2.3 are indicative and any offence or behaviour not expressly covered herein may still be considered.

<b>PART 6 - SAFEGUARDING</b>
------------------------------

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

6.1.2 Specifically the Council has a duty to protect children and vulnerable persons and it 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.

6.1.3 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 training 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.

## **PART 7 – APPLICATION PROCESS**

### **7.1 Advice for New Applicants**

7.1.1 New applicants are encouraged to contact the Council's Animal Licensing Officer at their earliest opportunity, preferably before an application is made. This allows the officer to provide advice, as well as clarifying any areas of uncertainty. Initial advice is free of charge, however if more complex and in-depth advice including a site visit is required, then this is chargeable.

7.1.2 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. It is the applicant's responsibility to seek such guidance from the appropriate Council department and ensure the appropriate permissions are in place prior to any application being made.

### **7.2 Submission of Applications**

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

- All supporting information required by this policy and the legislation
- The appropriate application fee
- Proof of planning permission (where necessary)

7.2.2 Applications can be made electronically only.

7.2.3 The application process for a zoo licence differs to that of other applications. An applicant for a zoo licence is required to:

- Submit a notice of the intent to apply for a licence to the Local Authority

- Publish a notice in one local and one national newspaper of their intent to apply for a zoo licence two months before making the application to the Local Authority
- Display the notice of intent to apply at the site of the proposed zoo
- Submit the full licence application to the Local Authority not less than two months after giving notice of intent to apply

### 7.3 Veterinary Surgeon or other Expert inspections

7.3.1 Where a veterinary surgeon or other animal expert inspection is required either by legislation or by the Council 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 or within the required time frame as set out in the invoice.

7.3.2 In all circumstances including the refusal of an application, the veterinary surgeon/expert fee will be the responsibility of the applicant and is non-refundable.

### 7.4 Renewals

7.4.1 **Animal Activities:** The Council will notify licence holders at least 3 months before the expiry date of the existing licence. It is the licence holder's responsibility to ensure that their renewal application is submitted in a timely manner.

7.4.2 In order to ensure continuity of licence, the licence holder must apply to renew a licence at least 10 weeks before their current licence expires. The Council accepts no responsibility for a break in trading if a renewal application is submitted with less than 10 weeks' notice prior to the expiry of the existing licence.

7.4.3 **Dangerous Wild Animals:** The Council will notify licence holders at least 3 months before the expiry date of the existing licence. The licence holder must apply to renew a licence at least 10 weeks before their current licence expires.

7.4.4 **Zoo:** The Council will notify licence holder of the need to renew their licence no later than 9 calendar months prior to the expiry of the existing licence. The licence holder must submit a renewal application no later than 6 months prior to the expiry of the existing licence.

7.4.5 For the avoidance of doubt, if a renewal application:

- has not been submitted in full prior to expiry of the existing licence, or
- has been submitted but has not been determined prior to expiry of the existing licence,

in most circumstances, licensable activities must cease until such time as the renewal application has been granted

## **7.5 Determination of Applications**

7.5.1 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.

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

7.5.3 DEFRA have defined a suitably qualified inspector as:

- a) 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 animal activities businesses, confirming the passing of an independent examination.
- b) 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.

7.5.4 The inspector (and where appropriate, accompanying veterinary surgeon or other expert) must produce a report in accordance with the requirements of the legislation in a timely manner.

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

7.5.6 Before a licence can be issued, the balance of the application fee (part B) relating to ongoing compliance and administration must be paid. Where a veterinary surgeon or other expert has attended and inspected the premises and provided a report, this fee must also have been paid prior to the issue of a licence or within the required time frame as set out in the invoice.

## **7.6 Schedules of Animals**

7.6.1 Licences issued for:

- Hiring of Horses
- Selling Animals as Pets
- Keeping or Training Animals for Exhibition
- Dangerous Wild Animals

will have a Schedule of permitted animals attached to the licence.

7.6.2 If a licence holder wishes to amend this list by applying for a variation 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.

7.6.3 Should it be necessary for the additional animals to be inspected by the local authority's appointed vet or other expert, the cost of the inspection is the responsibility of the applicant and must be paid prior to the issue of the varied licence. 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.

7.6.4 With regard to hiring of horses, the Regulations do not impose any specific conditions or requirements for inspection of new horses between licences by the local authority vet.

7.6.5 Where individual horses are concerned, the Council will ask for a certificate from the riding establishment's own veterinary surgeon indicating that a new horse is fit to join the school (for example, that the horse is not lame, does not have heart or eye problems and is suitable for use). While this approach is not specifically provided for in the Regulations, it is fairly common practice and is a pragmatic and useful compromise.

7.6.6 Although not specifically covered in the Regulations, where there is a major change in horses, for example, where a new riding establishment is established and most of the horses arrive after the initial inspection, a re-inspection will be necessary. The veterinary surgeon fee will be the responsibility of the applicant. 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.

## **7.7 Additional licensable activity**

7.7.1 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. However, if the application for more than one activity is received at the same time on the same premises, they pay a reduced fee for the subsequent activity.

7.7.2 If a licence holder wishes to operate the same licensable activity across multiple premises, a separate licence will be required for each address.

## **PART 8 – LICENCE DURATION AND STAR RATING**

### **8.1 Extent of a Licence**

8.1.1 The granting of a licence pursuant to this policy shall not be deemed to convey any approval or consent under any other legislation e.g. planning permission.

### **8.2 Licence Duration**

8.2.1 Licences for the keeping or training of animals for exhibition are issued for a period of 3 years.

8.2.2 Licenses for the keeping of dangerous wild animals are issued for a period of 2 years.

8.2.3 Licenses for zoos are issued for a period of 4 years in the first instance, and 6 years thereafter.

8.2.4 Animal Activities licenses are issued for either 1-, 2- or 3-years dependent upon the perceived risk and welfare standards. The licence duration is linked to the mandatory star rating scheme (see below).

### **8.3 Star Rating Scheme (Animal Activity Licences only)**

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

8.3.2 The Council will display a list of animal establishments, their star rating and expiry date on its website.

8.3.3 Where a licence permits more than one licensable activity on the same site and the activities meet different star rating criteria, the licence will be issued with a premises star rating 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.

8.3.4 The star rating awarded will be based on the scoring matrix below:

	<b>Minor failings</b>	<b>Minimum standards</b>	<b>Higher standards</b>
<b>Low risk</b>	1 star rating, 1 year licence, at least 1 unannounced visit within 12 months	3 star rating, 2 year licence, at least 1 unannounced visit within 24 months	5 star rating, 3 year licence, at least 1 unannounced visit within 36 months
<b>Higher risk</b>	1 star rating, 1 year licence, at least 1 unannounced visit within 12 months	2 star rating, 1 year licence, at least 1 unannounced visit within 12 months	4 star rating, 2 year licence, at least 1 unannounced visit within 24 months

8.3.5 For the avoidance of doubt, the national star rating scheme does not apply to the keeping and training of animals for exhibition, dangerous wild animals and zoos.

8.3.6 Further information regarding the risk and star rating of a licence can be found in the [statutory guidance](#) issued by DEFRA.

## PART 9 – STANDARDS AND LICENCE CONDITIONS

### 9.1 Animal Activity Licences

9.1.1 Licenses issued under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 are subject to mandatory conditions for each licensable activity.

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

9.1.3 The licence conditions are split into 2 categories: “Part A General Conditions” detailed in Schedule 2 of the Regulations, and “Part B Specific Conditions” detailed in the appropriate Schedule of the Regulations depending on the licensable activity. Details of the full conditions for each licensable activity can be found on the Council’s website under ‘Animal Licensing and Welfare’.

9.1.4 Applicants will need to demonstrate that they can meet all general 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 predominantly administrative in nature and do not impact on animal welfare, unless it is a new applicant who is required to comply with all conditions. This will impact on the star rating awarded and all administrative failings would be expected to be resolved prior to renewal.

#### Higher Standards

9.1.6 In order to achieve the higher star ratings, applicants will need to meet all required higher standards and 50% of the optional higher standards. These standards are not compulsory but are the only way to achieve a 4 or 5 star rating. This is applicable for all licensable activities with the exception of Keeping or Training Animals for Exhibition.

#### Samples

9.1.8 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)

9.1.9 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.

9.1.10 In normal circumstances, veterinary surgeons would be expected to undertake sampling, however any person with appropriate training can do so.

## **9.2 Dangerous Wild Animals**

- 9.2.1 In order to determine the application an independent veterinary inspection of the animals and premises is required prior to the issuing of a licence. The veterinary surgeon or expert must have suitable experience of dangerous wild animals and the species he/she is inspecting.
- 9.2.2 The Council will impose DEFRA's standard conditions, in addition to any premises/animal specific conditions and recommendations deemed to be required by the inspecting vet/officer
- 9.2.3 The Council will nominate a veterinary surgeon or expert for each inspection and make the appropriate arrangements. However, the cost of any veterinary inspection will be the responsibility of the applicant.
- 9.2.4 Licence conditions will predominately be concerned with suitable accommodation and care for the specific animal(s) to ensure the welfare needs of the animal(s) are being fully met and that the keeping of the animal(s) would not endanger public safety or create a public nuisance.
- 9.2.5 A licence will not be issued where the veterinary surgeon or expert recommends refusal.

## **9.3 Zoos**

- 9.3.1 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.
- 9.3.2 In determining conditions the Council will have regard to The Secretary of State's Standards of Modern Zoo Practice, specified under section 9 of the Zoo Licensing Act 1981. All veterinary surgeons inspecting a zoo must have regard to these standards but may amend the conditions to suit the individual establishment.
- 9.3.3 Licence conditions will be concerned with a broad range of issues, including but not limited to, feeding, environment, conservation/education and public safety.
- 9.3.4 The veterinary surgeon for each inspection is nominated by DEFRA and the Council will make the appropriate arrangements; however the cost of any veterinary inspection will be the responsibility of the applicant/licence holder.
- 9.3.5 A licence will not be issued where the veterinary surgeon recommends refusal.

<b>PART 10 – REFUSING AN APPLICATION AND APPEAL</b>
---

- 10.1 The Council will have regard to all available information when determining an application including, but not limited to:
- The Council's Animal Licensing Officer report
  - The veterinary surgeon's report (if applicable)



- Comments and documentation supplied by the applicant

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

10.1.3 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 premises;
- d) the applicant fails to meet the 'fit and proper' person test detailed in section 3.1.4 of this policy;
- e) the applicant has been disqualified from holding a licence;
- f) the applicant has had a licence revoked under the Regulations.

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

10.1.4 Prior to the refusal of an application, the reasons why the application is likely to be refused will be advised to the applicant. The applicant may then submit justification within 7 working days of being informed in writing of the Council's intent to refuse the licence application stating any mitigating circumstances and/or reasoning why the application should be granted. Any comment submitted by the applicant will be considered as part of the determination. The Food and Safety Team Leader will review any comments submitted within 7 working days. After this, a decision will be issued to the licence holder regarding the application. The recommendation for refusal will either be upheld and a formal refusal notice issued or the application will continue and a licence granted, with any necessary conditions.

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

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

- a) **Animal Activity Licences** - First-Tier Tribunal within twenty-eight days of receiving the Council's written decision notice.
- b) **Dangerous Wild Animals** - Local Magistrates Court within twenty-eight days of receiving the Council's written decision notice.

- c) **Zoos** - Local Magistrates Court within twenty-eight days of receiving the Council's written decision notice.

## **PART 11 – STAR RATING APPEALS (ANIMAL ACTIVITY LICENCES ONLY)**

- 11.1 Whilst there is no formal appeal process against a star rating issued by the Council, an internal appeals process has been designed to ensure fairness to applicants and licence holders.
- 11.1.2 The applicant/licence holder will be provided with a copy of the Animal Licensing Officer's inspection report, risk rating and any other supporting documentation upon request. This information will explain how the risk rating and star rating has been determined. The applicant/licence holder will be encouraged to initially discuss their concerns with the Animal Licensing Officer
- 11.1.3 The applicant/licence holder can appeal the star rating if they believe it does not accurately reflect the standards found at the time of inspection. The appeal must be received in writing, including electronic submission, by the Council within 21 days of the star rating being advised to the applicant/licence holder.
- 11.1.4 An appeal will be assessed and determined by the Food and Safety Team leader, who will ordinarily conduct a desk-based appraisal of the rating given. Where necessary, the Food and Safety Team Leader may decide to visit the premises. If this is required, then the applicant would bear the cost of this. The applicant will receive a decision on their star rating appeal within 21 days of the Council receiving it.
- 11.1.5 If the applicant/licence holder disagrees with the outcome of the appeal the only further recourse available is to challenge the decision by way of a judicial review.
- 11.1.6 Alternatively, an applicant/licence holder may wish to be re-inspected or re-graded following completion of works to rectify any non-compliance found at the time of inspection or to demonstrate works undertaken to achieve the higher standards. These re-inspection/re-grading visits can be requested by payment of the appropriate fee.
- 11.1.7 A re-inspection or re-grading visit will be carried out by the Animal Licensing Officer in the normal manner and the premises will be assessed against the scoring matrix in section 8.3.4 of this policy.
- 11.1.8 Following a re-inspection or re-grading visit, if the applicant/licence holder disagrees with the star rating given, the appeal process detailed above will apply.

## **PART 12 – LICENCE VARIATIONS, SUSPENSIONS AND REVOCATIONS**

### **12.1 Animal Activity Licences**

- 12.1.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 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 can be a proportionate response to addressing issues where there is agreement between the licence holder and the Council that a resolution can be obtained without the need for formal action.

12.1.2 Additionally, 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(s).

12.1.3 A suspension or variation of a licence will ordinarily take effect 7 working days after the written decision notice has been issued to the licence holder. If the reason for the decision is to protect the welfare of an animal(s), the Council must specify in the decision notice that the decision will take immediate effect.

12.1.4 A decision notice varying or suspending a licence must be given in writing (including electronic submission) 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

12.1.5 The decision to vary, suspend or revoke a licence will be proportionate based on the specific nature of the concern. Some examples of proportionality include, but are not limited to:

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

- **REVOCAION:** Repeated failure to meet administrative conditions or supply information when requested
- **IMMEDIATE REVOCAION:** Repeated poor welfare conditions found or where it would be beneficial to permanently remove animals from the premises for welfare reasons

12.1.6 Ordinarily following the issuing of a notice of suspension or variation, the licence holder will have 7 working days to make written (including electronic) representations. Written representations in these instances will be reviewed by the Food and Safety Team Leader. Having considered any written representations, the Council can either continue with the suspension or variation or cancel its original decision. If the licence has been suspended, varied or revoked with immediate effect to protect the welfare of an animal(s) the 7 working day period does not apply. Written representations will be made to the Food and Safety Team Leader in case of immediate variation or suspension.

12.1.7 In the event that a recommendation to revoke a licence is made by the Animal Licensing Officer, the final decision will be made by the Licensing Sub Committee at which time the licence holder will have the opportunity to make representations against the revocation. This does not apply to licences that are revoked with immediate effect.

12.1.8 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.

12.1.9 There is no right of appeal against the suspension of a licence, however, after 28 days of suspension, the licence must either be revoked or reinstated by the Council.

12.1.10 If a licence is varied or revoked by the Council, the licence holder has a right of appeal within 28 days of receiving written notice (including electronic submission) of the decision to the First Tier Tribunal (General Regulatory Chamber).

## **12.2 Dangerous Wild Animals**

12.2.1 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

- 12.2.2 If a variation was requested by the licence holder it will be determined by the Animal Licensing Officer and the appropriate action will be taken which may require a site visit.
- 12.2.3 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 had reasonable time to comply with it.
- 12.2.4 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 lodged with the court within 28 days of receiving the Council's written decision notice.
- 12.2.5 Where an animal(s) is being kept without an appropriate licence or where a licence condition is not being complied with, the Council may seize the animal(s) and either retain it, destroy it, or otherwise dispose of it with no liability to pay compensation for the exercise of this power.
- 12.2.6 Where the Council incurs any expenditure exercising the power detailed in section 12.2.5 it shall be entitled to recover the full cost as a civil debt against the person from who the animal(s) was seized.

### **12.3 Zoos**

- 12.3.1 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.
- 12.3.2 Before amending a licence the Council shall give the licence holder the opportunity to make written representations.
- 12.3.3 If the proposed amendment is a significant change, the Council shall:
- Consult the licence holder about the proposed alteration
  - Arrange an inspection by the Animal Licensing Officer and veterinary surgeon(s)
  - Consider the inspection report, prior to making its final decision.
- 12.3.4 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 12.3.3 will apply.
- 12.3.5 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.

12.3.6 There is a right of appeal within 28 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 13 – DEATH OF A LICENCE HOLDER**

### **13.1 Animal Activity Licences**

13.1.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 allow for the personal representative of a deceased licence holder to take over the licence if they inform the Council within 28 days of the death that they are now the licence holder.

13.1.2 The licence will then remain in force in the name of the new licence holder for a period of 3 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 1 month prior to the expiry of this new period.

13.1.2 The Council can extend the 3-month period by a maximum of another 3 months upon the 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.

13.1.4 If the personal representative does not notify the Council within 28 days of the death of the licence holder, the licence will automatically cease to have effect.

### **13.2 Dangerous Wild Animals**

13.2.1 On the death of the licence holder, the licence shall continue in force for a period of 28 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 28 days, the licence shall be deemed to be still in force pending the grant or refusal of the new application.

### **13.3 Zoos**

13.3.1 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 3 months immediately following the death, or such longer period as the Council may approve, to allow for the lawful transfer of the licence.

## **PART 14 – INSPECTIONS OF LICENSED PREMISES**

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

- a) **Animal Activity Licences (other than hiring out horses)** - a minimum of 1 unannounced inspection must take place during the term of the licence irrespective of whether it is a 1,2 or 3 year licence.
- b) **Hiring out Horses** – an annual inspection by a veterinary surgeon of the riding establishment including each horse used for the activity must be undertaken irrespective of the length of the licence; this inspection is in addition to a minimum of 1 unannounced inspection by the Animal Licensing Officer during the term of the licence. The Animal Licensing officer will usually accompany the veterinary surgeon on these inspections.
- c) **Zoos** – 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.

There are 4 types of inspections for zoos; licence, periodical, special and informal; these must be undertaken in accordance with prescribed requirements.

- Periodical inspections and certain licence inspections must be undertaken in accordance with prescribed requirements and involve Secretary of State Inspectors. Local authorities must consult the Secretary of State for the names of inspectors to carry out the periodical inspections and licence inspections before the grant or refusal or renewal of a licence. The Council must have regard that, except where a direction under section 14(1) of the Act has been issued, a midterm periodical inspection must be arranged in the third year of the renewed or fresh licence.
- Special, informal and certain licence inspections are conducted by the Council's Animal Licensing Officer accompanied by persons whom the Council consider competent for the purpose of the inspection.

The veterinary surgeons and practitioners shall have experience of animals of the kinds which are kept in zoos or which in the Secretary of State's opinion might be so kept and shall be competent to advise about the implementation in zoos of the required conservation measures.

## PART 15 – LICENCE FEES

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

15.1.2 Fees have been set in accordance with the principles of and with regard to 'Open for business: LGA guidance on locally set licence fees and 'Animal Welfare Licence fees – A Practical Guide to Fee Setting', aiding the Council to recover its reasonable costs in processing and determining applications and ensuring compliance with the conditions of a licence.

15.1.3 **Animal Activity Licences** - The total fee has been split into an application fee and a grant of licence fee. The application fee (Part A) must be submitted with an application and is non-refundable as it covers the cost of administering

and determining the application including the inspection. Any application not fully submitted within **6 months** of the original application date (this includes supplying/amending supporting paperwork) and an inspection date confirmed with the Animal Licensing Officer will be rejected and any fees paid forfeited. A new application and Part A fee will be required before the application will be progressed.

15.1.4 If an applicant cancels an inspection appointment on two or more occasions without justified reasons the application will be rejected. A new application and Part A fee will be required before the application will be progressed.

15.1.5 The licence grant fee (Part B) must be paid before a licence is granted and covers ongoing maintenance of the licence, including inspections and enforcement.

## **PART 16 - ENFORCEMENT**

16.1.1 It is recognised that well directed enforcement by the Council benefits not only the public but also the responsible members of the trade.

16.1.2 In pursuing its licensing principles detailed in this policy, the Council will operate a proportionate enforcement regime as set out within the Environmental Health Enforcement Policy.

16.1.3 Where necessary to ensure the 'five needs' of the 2006 Act, the Council may utilise its enforcement powers under the 2006 Act to ensure the welfare of animals covered by licensable activities is addressed at the earliest opportunity to avoid any distress or suffering. Section 30 of the Animal Welfare Act 2006 allows for local authorities to prosecute any offences under the Act. The Animals (Penalty Notices) Act 2022 also offers the Council powers to issue fixed penalty notices to unlicensed and licensed businesses when committing an offence, as detailed in Section 1(3) of the 2022 Act.

16.1.4 The main enforcement and compliance role for the Council is to:

- Ensure compliance with the conditions placed on a licence
- Investigate complaints relating to a licensed premises
- Investigate and take appropriate action against unlicensed businesses and premises.

16.1.5 Enforcement action must be consistent and proportionate whilst ensuring that animal welfare is always protected. Factors that will be considered when determining enforcement action will include, but are not limited to, the:

- seriousness of any offence or breach of conditions
- previous compliance history and confidence in the licence holder
- consequences of any non-compliance



- likely effectiveness of the enforcement options and consequence of not taking enforcement action
- risk to the welfare of animals
- [Environmental Health enforcement policy.](#)

16.1.6 Options for enforcement action include, but are not limited to:

- take no action
- take informal action (advice and guidance)
- take formal action (verbal and written warnings)
- vary a licence
- suspend a licence
- revoke a licence
- refuse the application for a licence
- issue simple cautions
- penalty notices (pursuant to the Animals (Penalty Notices) Act 2022)
- prosecute
- a combination of any of the above

<b>PART 17 – INFORMATION SHARING</b>
--------------------------------------

17.1.1 The Council will share information with other enforcement agencies including, but not limited to, the police, DEFRA and RSPCA for the purpose of:

- Protecting public safety
- The safety and wellbeing of animals
- Assessing the fitness and propriety of applicants and licence holders.

17.1.2 The Council may also share information with other local authorities or internal Council departments where appropriate and lawful to do so.

17.1.3 All information shared will be compliant with relevant data protection legislation. Any data provided by licence applicants or holders will be held securely in accordance with the [Council's general policy](#) on the secure retention of personal data to the end of the retention period, the data will be erased and/or destroyed in accordance with this authority's general policy on the erasure and destruction.

<b>PART 18 - DEFINITIONS</b>
------------------------------

<b>TERM</b>	<b>DEFINITION</b>
Animal Licensing Officer	The officer of the Council authorised under the Scheme of Delegation as contained within the Council's Constitution
The Council	Tunbridge Wells Borough Council
This Policy	Tunbridge Wells Borough Council's Animal Licensing Policy
Food and Safety Team leader	The current post holder authorised by the Council's Scheme of Delegation
DEFRA	Department of Environment, Food and Rural Affairs
HMRC	His Majesty's Revenue and Customs
RSPCA	Royal Society for the Prevention of Cruelty to Animals
The Regulations	Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
National Guidance or the Guidance	Statutory guidance for Local Authorities (issued by DEFRA)

<b>TABLE OF AMENDMENTS</b>
----------------------------

<b>Date amendment made</b>	<b>Section of policy amended</b>	<b>Details of amendments</b>	<b>Amendment authorised by</b>
13 <sup>th</sup> November 2024	Part 1 – Introduction	Additional delegation added to the 'Table of Delegation' for the Head of Housing, Health and Environment to issue penalty notices.	Zoe Martin (Animal Licensing Officer), in consultation with Nollaig Hallihan (Food and Safety Team Leader) and Gary Stevenson (Head of Housing, Health and Environment).
13 <sup>th</sup> November 2024	Part 16 – Enforcement	Addition to 16.1.3 and 16.1.6 to include the additional enforcement powers to issue penalty notices as conferred by the Animals (Penalty Notices) Act 2022	Zoe Martin (Animal Licensing Officer), in consultation with Nollaig Hallihan (Food and Safety Team Leader) and Gary Stevenson (Head of Housing, Health and Environment).