

Agenda Item	13
Report No	CP/31/21

HIGHLAND COUNCIL

Committee: Communities and Place

Date: 31 August 2021

Report Title: Licensing of Activities Involving Animals

Report By: Executive Chief Officer Communities and Place

1. Purpose/Executive Summary

- 1.1 The purpose of this report is to provide an update on new animal licensing legislation, the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 and agree the Council's fees for licensing applications and renewals. The activities that will require a licence are concerned with pet selling, operating certain animal welfare establishments (including rehoming centres and animal sanctuaries), engaging in other animal rehoming activities and dog, cat and rabbit breeding.

2. Recommendations

2.1 Members are asked to:

- a) note the new licensing system for pet selling, operating certain animal welfare establishments (including rehoming centres and animal sanctuaries), engaging in other animal rehoming activities and dog, cat and rabbit breeding which come into force 1st September 2021;
- b) approve that the Council will use Council officers and either a vet or Scottish SPCA Inspector (if appropriate), for the initial inspection of dog breeders, cat breeders, and rabbit breeders;
- c) approve that the Council will use Council officers for the initial inspection of applications for a person involved in animal rehoming activities or for pet sales or for animal welfare establishments. If considered necessary, the Council may also use a Vet or Scottish SPCA Inspector (if appropriate). This may include the Vet or Scottish SPCA Inspector carrying out an inspection;
- d) approve that the fees for all licence applications for 2020/21 and 2021/22 follow the current fees for dog breeders and pet shops as set out below:

Licence type	New licence application	Renewal application (every 1-3 years)
Pet selling	£165*	£127
Animal rehoming activities	£165*	£127
Animal welfare establishments	£165*	£127
Dog breeding	£165*	£127
Cat breeding	£165*	£127
Rabbit breeding	£165*	£127
* As permitted by the regulations the costs of an inspection if required, by a vet or Scottish SPCA Inspector if appropriate, will be recharged to the applicant		

- e) approve that, in keeping with Scottish Government guidance, where Animal Welfare Establishments can demonstrate they are a charity they are charged 50% of standard application and renewal fees; and
- f) approve that cost recovery for enforcement action in relation to any licensable activity of an unlicensed operator is based on the appropriate productive hourly rate for the grade of officer taking the action with full cost recovery proposed unless it costs more to pursue the cost or where the operator has made their best efforts to comply with any enforcement action.

3. Implications

- 3.1 Resource – The regulations permit cost recovery through fees and these must not exceed the reasonable costs of the consideration of the application and inspection. Fees can also be charged for enforcement related to unlicensed premises carrying out licensable activities. A low number of applications are expected, and the work involved will be covered by existing staff resource. The income target for animal licence fees is £31,700 this year, an increase of £3k as agreed at Council in March 2021. The increased target reflects estimates of income achievable this year. As per the Council's Scheme of Delegation, future increases in the fees can be applied by the Environmental Health Manger by a factor agreed by the Council.
- 3.2 Legal – Implementation of the licensing regime will ensure compliance with statutory requirements on animal licensing under the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021.
- 3.3 Community (Equality, Poverty and Rural) – There are no new community implications arising from the regulations although they aim to extend regulation around animal welfare.
- 3.4 Climate Change / Carbon Clever – There are no known risk implications at this time but implementation of the new regulations will be monitored.
- 3.5 Risk – Given expected low numbers of applications, it is not planned to recruit any new officers for this regime. There may be a risk of delays in processing applications as officers may have to prioritise other workload, critical to public health or animal health & welfare, ahead of this legislation.
- 3.6 Gaelic – There are no known risk implications at this time.

4. Background

4.1 In Highland Council, the administration and enforcement of animal activity licensing is carried out by the Environmental Health team. These cover activities under the following legislation:

1. Animal Boarding Establishments Act 1963
2. Breeding of Dogs Act 1973
3. Breeding of Dogs Act 1991
4. Dangerous Wild Animals Act 1976
5. Guard Dogs Act 1975
6. Performing Animals (Regulations) Act 1925
7. Pet Animals Act 1951
8. Riding Establishments Acts 1964/70
9. Zoo Licensing Act 1981

4.2 In Highland there are currently the following number of active licences:

Activity Type	Licences
Animal Boarding Establishments	53
Breeding of Dogs	3
Riding Establishments	18
Pet Sales/Shops	6
Zoo Licensing	1

5. Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021

5.1 Following consultations in 2018 and 2020, the Scottish Parliament has brought in new licensing legislation covering certain animal activities. The regulations:

- 1) revoke previous legislation on licensing **pet sales and pet shops** and bring in a new licence for this activity;
- 2) revoke previous legislation on licensing **dog breeding** and bring in a new licence for this activity;
- 3) bring in new licensing for anyone involved in **animal rehoming activities**;
- 4) bring in new licensing for **animal welfare establishments (including animal sanctuaries or animal rehoming centres)**;
- 5) bring in new licensing for **cat breeders**; and
- 6) bring in new licensing for **rabbit breeders**.

The separate licensing regimes for animal boarding and riding establishments are retained.

5.2 The Scottish Government's policy objectives of the new licensing regime included:

- a) to replace existing and out-dated licensing legislation relating to pet selling and dog breeding with a more modern and flexible licensing regime;
- b) to extend licensing to a wider range of activities involving animals than currently found in existing legislation, namely activities concerned with operating certain animal welfare establishments (including rehoming centres and sanctuaries), engaging in other rehoming activities and cat and rabbit breeding in order to protect and ensure animal welfare;

- c) to require licence holders to include their name and licence number on any website operated in respect of the licensable activity;
- d) to require local authorities to publish a register of licence holders for each licensable activity so that the public can check to confirm that they are sourcing an animal from a licensed operator;
- e) to introduce measures to make unlicensed breeding and selling more difficult by, for example, requiring any advert for the sale of a pet to include the licence holder's licence number and the name of the authority that issued the licence;
- f) to obligate those selling animals to provide buyers with relevant guidance and information on the care of their new pet; and
- g) to prevent the third party sale of young cats and dogs as pets under 6 months old.

5.3 The new regulations come into force on 1st September 2021. Current active licences for existing dog breeders and pet shops continue until their expiry date when they are required to obtain a licence under the new regime.

5.4 The regulations provide details of specific activities that will require a licence and activities that are exempt. **Appendix 1** provides an extract from Interim Scottish Government Guidance that provides more information on the activities covered and exemptions.

5.5 The licensing process required by the regulations is similar to existing legislation but does introduce new measures including:

- a) a more flexible licence duration of 1, 2 or 3 years. In determining the duration of a licence the authority must be satisfied that the period to be granted is appropriate on the basis of its assessment of the following:
 - the risk of the applicant breaching the licence conditions (including any particular licence conditions to be attached to the licence by the authority in relation to that particular operator);
 - the possible impact of any such breaches on the welfare of any animals; and
 - whether the applicant is already operating to higher standards of animal welfare than required by the licence conditions.
- b) The regulations require local authorities to publish and maintain a register of all those holding a licence under these regulations.

6. Highland Position

6.1 Local intelligence indicates there will be a low number of additional premises requiring licences beyond the existing dog breeders and pet shops.

7. Licensing Fees

7.1 The Regulations make provision for local authorities to charge a fee for the consideration of an application for grant, renewal or variation of a licence and the subsequent grant, renewal and variation of the licence. The fee for consideration of an application can include the cost of any related inspection. The fee charged for the consideration of an application and for any related inspection must not exceed the reasonable costs of the consideration and inspection.

7.2 Local authorities may also charge a fee for the reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations and the licence conditions (including any inspection relating to that consideration).

- 7.3 It must be noted that the costs of Council staff carrying out inspections will be incorporated into the fees e.g. inspection of premises by Environmental Health Officers, Animal Health and Welfare Officers or technical officers.
- 7.4 The current Dog Breeding legislation requires the Council, for the first application, to employ the services of a vet to carry out an inspection and report on the suitability of the premises. The fees for the vet are charged separately to the applicant. The current pet shop legislation does not have the same requirement and officers would only consult vets in cases of concern.
- 7.5 The new regulations require Councils to carry out inspection but do not specify that a vet is used. The Scottish Governments Interim guidance states that inspectors should be both suitably experienced and qualified and have a sound understanding of animal welfare. This could be Council officers or a vet.
- 7.6 In the Interim guidance, the Scottish SPCA have offered to assist with or undertake inspections linked to licence applications, excluding any inspection of its own premises. This offer is welcome, and the Council will explore this option with the Scottish SPCA.
- 7.7 Given the new types of licence it is proposed that:
- a) the Council will use Council officers and either a vet or Scottish SPCA Inspector (if appropriate), for the initial inspection of dog breeders, cat breeders, and rabbit breeders;
 - b) the Council will use Council officers for the initial inspection of applications for a person involved in animal rehoming activities or for pet sales or for animal welfare establishments. If considered necessary, the Council may also use a Vet or Scottish SPCA Inspector (if appropriate). This may include the Vet or Scottish SPCA Inspector carrying out an inspection.

As permitted by the regulations the costs of a vet or Scottish SPCA Inspector will be recharged to the applicant.

- 7.8 For 2020/21 and 2021/22 it is proposed that the current fees for dog breeders and pet shops are used for all the new licences. These have been reviewed previously against the workload involved and are likely to be representative of the costs involved in the new licensing regime. For future years, a review of the workload involved in the various licences will be used to calculate fees.
- 7.9 The fees proposed for 2020/21 and 2021/22 are:

Licence type	New licence application	Renewal application (every 1-3 years)
Pet selling	£165*	£127
Animal rehoming activities	£165*	£127
Animal welfare establishments	£165*	£127
Dog breeding	£165*	£127
Cat breeding	£165*	£127
Rabbit breeding	£165*	£127

* As permitted by the regulations the costs of an inspection if required, by a vet or Scottish SPCA Inspector if appropriate, will be recharged to the applicant

7.10 The Scottish Governments Interim guidance states that *'Given that the vast majority of animal welfare establishments are run by charities and are regarded as being for the wider public good (given wider society's wish to protect animals from abuse and other forms of suffering), local authorities are encouraged to do all they can to minimise the cost of licensing for AWEs'*. It is proposed that where Animal Welfare Establishments can demonstrate they are a charity they are charged 50% of the standard application and renewal fees. Any vet or Scottish SPCA fees would be fully recharged to the applicant.

7.11 As per the Council's Scheme of Delegation, future increases in the fees can be applied by the Environmental Health Manger by a factor agreed by the Council.

8. Cost recovery for enforcement action

8.1 The licensing regime enables the Council to recover the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator. Recovery is at the discretion of the local authority.

8.2 It is proposed that:

- the Committee approve that cost recovery for enforcement action in relation to any licensable activity of an unlicensed operator is based on the appropriate productive hourly rate for the grade of officer taking the action with full cost recovery proposed unless it costs more to pursue the cost or where the operator has made their best efforts to comply with any enforcement action.

Designation: Executive Chief Officer Communities and Place

Date: 30 July 2021

Author: Alan Yates, Environmental Health Manager

Background Papers:

[The Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021 \(legislation.gov.uk\)](#)

[Policy note on the regulations](#)

[Current Environmental Health fees](#)

Extract from Interim Guidance for Local Authorities (14 July 2021)

Section 3: Licensable activities & thresholds

Under the Regulations persons engaging in the following activities and meeting, where stated, the specified thresholds **are required** to hold a licence.

1. Anyone selling animals as pets in the course of a business

See Part 1 of schedule 1 of the Regulations

This activity captures the following conduct:

- selling animals as pets in the course of a business,
- selling animals, with the expectation that they will be resold as pets, in the course of a business,
- keeping animals in the course of a business with a view to them being sold as pets,
- keeping animals in the course of a business with a view them being resold as pets.

The activity of selling animals as pets does not include selling or keeping animals in the course of any of the licensable activities of operating an animal welfare establishment (such as an animal sanctuary or rehoming centre), engaging in other animal rehoming activities or dog, cat or rabbit breeding (a breeding licence allows for the direct supply of animals as pets). However, if a licence holder is licenced to carry on one of those other licensable activities and carries on the activity of selling animals as pets in the course of a business outside the licenced activity, a separate licence will be required for the activity of selling animals as pets.

To determine whether a person supplying pets requires to be licensed, local authorities may consider a number of factors which must include:

- whether the person engages in the activity in order to make a profit,
- whether engaging in the activity earns the person any commission or other fee,
- the frequency of sales, and
- the number of animals kept by the person for the purposes selling them (as pets or to be resold as pets).

The criteria set out above for determining whether a person is selling animals as pets in the course of a business is not exhaustive and local authorities should use their own professional judgement and experience to decide whether a person selling pets requires to be licensed.

Other factors or situations that may need to be considered include the following:

- whether the licence holder imports, distributes and sells animals as a business,
- whether the business is registered with Companies House (individuals operating from domestic premises for commercial purposes may however not be listed with Companies House),
- whether premises are open to members of the public or to other businesses where animals are available for purchase,

- whether animals are bought and then re-advertised for sale or sold within a short period of time,
- the variability in the animals traded (a wide variety of species or taxa being traded could indicate the commercial nature of the activity).

Although the frequency of sales is a factor to be taken into account, a low volume of sales does not necessarily lead to the conclusion that the person is not carrying on the activity in the course of a business, particularly where high prices or large profit margins are involved.

Situations likely to be outwith the scope of licensing include the following:

- the infrequent sale of a small number of surplus offspring or excess stock by an individual who breeds animals as a hobby, for pleasure, exhibition or for education, study or scientific advancement (clearly, where hobby breeders breed 3 or more litters of dogs or cats or 6 or more litters of rabbits in any 12-month period they should be licensed as a breeder),
- the private sale of an individual animal, or animals on an infrequent basis, from one individual to another for no profit.

“Pet” means an animal kept permanently, or intended to be kept permanently, by a person mainly for personal interest, companionship, ornamental purposes or a combination of such purposes. ***Horses and other equines are not normally considered to be pets as they are generally kept for riding or other sporting or recreational purposes.***

2. Anyone engaging in animal rehoming activities (other than operating an animal welfare establishment)

See Part 2 of schedule 1 of the Regulations

Note that this activity **is separate** to the activity of operating an **animal welfare establishment** defined in Part 3 of schedule 1 of the Regulations. An animal rehoming centre is likely to qualify as an animal welfare establishment. A licence for engaging in animal rehoming activities **is not** required in relation to the rehoming of animals from an animal welfare establishment.

As highlighted in section 2, where the applicant for this type of licence resides or has a place of business in Scotland, the licensing authority for the rehoming activity can be any local authority in which there is such a residence or place of business. Where however the applicant neither resides or has a place of business in Scotland the licensing authority is the Scottish Ministers.

Under the Regulations this means any operator that supplies an animal as a pet to a person in Scotland is required, subject to some exceptions, to be licenced if the following conditions are met:

- the person being supplied physically receives the animal in Scotland, and
- the supply takes place during a 12 month period in which at least 4 other animals are supplied by the operator as pets to persons in Scotland.

Rehoming will require a licence where 5 animals are supplied as pets in a single movement or where 5 animals are cumulatively supplied as pets over the course of a 12 month period.

This activity relates to both the rehoming of animals originating within and outwith Scotland. An example would be an operator that sources street or rescue dogs from

eastern Europe for the purposes of rehoming them as pets with persons in Scotland, if the threshold number of animals is supplied within a 12 month period.

This activity does not relate to the supply of fish or animals bred by the operator and any such animals do not count towards the total number of animals supplied within a 12 month period. Additionally, horses and other equines are not normally considered to be pets as they are generally kept for riding or other sporting or recreational purposes.

3. Operators of animal welfare establishments (AWEs)

See Part 3 of schedule 1 of the Regulations

Under the Regulations, an operator of an AWE (such as an animal sanctuary or animal rehoming centre) will require a licence if a threshold number of animals are kept in the AWE for their care.

An AWE is a place in Scotland where—

- animals that have been abandoned or otherwise separated from their keepers, **or**
- sick, injured or captured animals that were previously living in a wild state, are kept for their care.

This activity only requires a licence if a threshold number of animals are kept in the AWE. This threshold will be met if—

- 5 dogs, **or**
- 5 equines, **or**
- 5 animals comprising a mix of dogs and equines, **or**
- 8 animals (of any type – except any animal under the age of 4 months born within the AWE or received into the AWE with its mother)

are kept in the AWE **at the same time** for their care.

An AWE can consist of multiple locations within the area of a local authority. If the operator keeps animals for their care at multiple locations within the area of the local authority, and each of those locations falls within the description of an AWE, all such animals will count towards the threshold.

A person does not carry on the activity of operating an AWE establishment by virtue of the following:

- keeping an animal as a pet,
- keeping an animal at premises used for the care or treatment of animals by a person who is a veterinary surgeon,
- a local authority keeping an animal,
- keeping an animal as part of farming or for use in the course of a business,
- carrying on an activity that requires a licence under section 1(1) of the Animal Boarding Establishments Act 1963,
- keeping or training an animal solely for military, police or sporting purposes,
- keeping or training an animal solely for exhibition for the purposes of education or entertainment of an audience,
- keeping or training an assistance dog,
- keeping an animal on premises if required to do so under or because of the Animal Health Act 1981,
- keeping an animal at a zoo,
- keeping an animal in the licensable activity of selling animals as pets in the course of a business or the licensable breeding activities,

- providing food or shelter to animal which roams onto land from which it is free to leave.

A fish is not a relevant animal for the purposes of the activity of operating an animal welfare establishment.

4. Dog breeders

See Part 4 of schedule 1 of the Regulations

Under the Regulations any person breeding **3 or more** litters of puppies in any 12 month period **must** be licensed. The requirement to be licensed applies regardless of whether the breeder sells or otherwise supplies a puppy as a pet to another person. The requirement to be licensed does not apply however to the breeding of dogs where the offspring are intended to be trained and used as assistance dogs. Where a breeder claims to be breeding assistance dogs, the local authority should take all necessary steps to verify that this is indeed the case.

5. Cat breeders

See Part 5 of schedule 1 of the Regulations

Under the Regulations any person breeding **3 or more** litters of kittens in any 12 month period **must** be licensed. The requirement to be licensed applies regardless of whether the breeder sells or otherwise supplies a kitten as a pet to another person.

6. Rabbits breeders

See Part 6 of schedule 1 of the Regulations

Under the Regulations any person breeding **6 or more** litters of kits in any 12 month period **must** be licensed. The requirement to be licensed applies regardless of whether the breeder sells or otherwise supplies a kit to be kept as a pet to another person.

The requirement to be licensed as a rabbit breeder does not apply where a person is breeding rabbits for the purposes of its consumption or in the course of commercial meat production.
