



Chartered
Institute of
Environmental
Health

Consultation on the review of animal establishments licensing in England

Submission of the CIEH

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Executive Summary

The CIEH is a member of the National Companion Animal Focus Group and we have contributed to the development of the NCAFG response to this consultation. We support in full the Group's response.

The CIEH supports the proposal for a single "Animal Establishment Licence" issued via newly created secondary legislation made under the Animal Welfare Act 2006. The new secondary legislation should consolidate and enable standard procedures, definitions, penalties, offences, powers of entry (both licensed and unlicensed premises), disqualification and revocation/suspension powers regardless of the type of activity covered by the licence.

We agree with the proposal to promote and require the use of agreed Model Conditions to enable consistent application and enforcement by local authorities and assist businesses in being able to clearly see the standards that need to be met. But model conditions need to be regularly reviewed and updated by a group of experts led and/or supported by DEFRA; see para 2.2 for other provisos.

We strongly disagree with the proposal to set the statutory licensing threshold for dog breeders at three or more litters per year on the basis that it will not address the fundamental flaws of the current system (see para 4.1).

We agree entirely with the proposal to allow licences to be issued for a fixed term, set at any point in the year, as this would allow local authorities to plan their workload with regards to animal establishment licences more effectively, resolve current issues of the availability of competent persons to undertake inspections at the end of the year and be more cost effective for business (see para 7.1).

We do not support the proposal to allow an exemption from licensing requirements for businesses affiliated to a body accredited by UKAS (see para 14.1).

Question 1: To what extent do you agree or disagree with the proposal to introduce a single Animal Establishment Licence? Please provide any comments or evidence to support your answer.

- 1.1 We agree in principle to the proposal for a single "Animal Establishment Licence" issued via newly created secondary legislation made under the Animal Welfare Act 2006. The new secondary legislation should consolidate and enable standard procedures, definitions, penalties, offences, powers of entry (both licensed and unlicensed premises), disqualification and revocation/suspension powers regardless of the type of activity covered by the licence.
- 1.2 Each individual licensable activity should have bespoke Model Conditions that are applied by the local authority and regularly reviewed by appropriate stakeholders (local authorities, industry and relevant sector groups) to reflect changing scientific and technical evidence in terms of animal welfare. We further think that this is an opportunity to bring licensing to activities currently outside the existing scope, which will be mentioned later in the response.
- 1.3 With the above it will simplify the licensing regime for both businesses and local authorities to enable clearer understanding and thus assist in promoting consistent administration/ enforcement.

Question 2: To what extent do you agree or disagree with the proposal to promote or require use of the Model Conditions by local authorities, for activities where they have been agreed? Please provide any comments or evidence to support your answer.

- 2.1 We agree with the proposal to promote and require the use of agreed Model Conditions to enable consistent application and enforcement by local authorities and assist businesses in being able to clearly see the standards that need to be met. We commend to you the work of a national group that has been updating model license conditions. On behalf of the working party, in the last 3 years the CIEH has published model conditions updates for pet vending, dog breeding establishments, cat boarding establishments and stable and livery yards; shortly, we will be publishing updated conditions for dog boarding establishments, while home boarding, crèches etc. are currently under consideration. The working party enjoys membership from across the sector.
- 2.2 However, we would add the provisos that model conditions:
 - Should be updated/reviewed at appropriately agreed time periods by a Defra-led/supported/backed group of stakeholders.
 - Should be developed and agreed for every type of AEL activity including variations i.e. traditional dog boarding, home boarding, dog crèches etc.
 - Should be applied to allow consistent inspection and enforcement on a national level and any local variation wishing to be applied by a local authority be prior approved by the group referred to above.

- Improvement notices served in order to achieve compliance with the model conditions should have statutory recognition similar to Section 10 notices under the Animal Welfare Act which they do not under existing powers.
- Should set out the minimum competencies required by an inspector to inspect the various types of animal establishment licence.

Question 3: To what extent do you agree or disagree with the proposal to prohibit the sale of puppies below the age of eight weeks? Please provide any comments or evidence to support your answer.

- 3.1 Whilst we agree with this proposal it seems strange to be included in the consultation as this provision is already in place via the current Model Licence Conditions for Pet Vending which prohibits the sale of puppies below the age of eight weeks. In addition, Council Regulation (EC) No 1/2005 also prohibits cats and dogs under 8 weeks of age being transported commercially, unless accompanied by their mother.

Question 4: To what extent do you agree or disagree with the proposal to make clear that the statutory licensing threshold for dog breeders is set at three or more litters per year? Please provide any comments or evidence to support your answer.

- 4.1 We strongly disagree with this proposal on the basis that it will not address the fundamental flaws of the current system. The need for licensing officers to try and gather the evidential proof (extremely difficult and resource intensive) in order to demonstrate that a breeder should be licensed and is thus operating illegally will remain. Any new legislation should put the onus on dog breeders or dealers (definitions again to be clarified) to identify themselves to the local authority (similar to the requirement for a food premises to register prior to trading).
- 4.2 We would prefer an arrangement where anyone breeding/selling puppies would need to register with their local authority for a small fee and be given a registration number to be used on all forms of advertising. Any person breeding or selling more than one or possibly two litters (again this would need to be clarified) would then need to extend their registration to a formal licence application, subject to inspection and payment of an appropriate licence fee and continue to use their registration number on any advert. These registration numbers could be recorded against the appropriate microchip database when the breeder has to register the litter of pups before 8 weeks. An evidential chain would then be built up allowing local authorities to more easily identify and prove the level of activity by a given breeder/dealer. A simple black and white offence of breeding/selling a pup without a registration/licence number would allow local authorities to easily deal with unscrupulous breeders/dealers without the need of having to undertake the impossible task of proving the level of their breeding/dealing activity. This is exactly why the current system is poorly enforced. It would be a system that is simpler for business/individuals to understand, be simpler and properly administered and enforced. Our proposal would create a fair and level playing field for responsible breeders/dealers and allow those that are undermining them to be more readily identified and dealt with by local authorities.

- 4.3 It would form part of a risk-based approach (in line with all regulatory enforcement undertaken by local authorities), allowing those in compliance to be inspected at a lower level and thus potentially pay a lower licence fee whilst allowing the local authority to concentrate resources on higher risk businesses that are possibly un-registered/un-licensed or struggling to meet minimum standards.
- 4.4 We would be happy to explore this or similar variants with DEFRA to ultimately come up with a workable and simple solution that can be delivered by local authorities to ensure higher welfare compliance levels. We do not believe that reducing the existing threshold will see an increase in the numbers of licensed breeders and the opportunity for new legislation to make a significant difference to welfare standards will be missed.

Question 5: To what extent do you agree or disagree with the proposal to legally require pet sales to provide written information when selling animals? Please provide any comments or evidence to support your answer.

- 5.1 Again whilst we agree with this proposal it seems strange to be included in the consultation as this provision is already in place via the current Model Licence Conditions for Pet Vending which requires pet shops to provide pet care sheets.
- 5.2 However we would add these provisos:
- Opportunity to clarify definition of 'commercial' and 'written information'
 - If written information is required, then we need to know how it has been given out.
 - Does the purchaser need to sign to quantify they have received the information?
 - Who writes the 'written information'? It needs to be correct and have current information.
 - This information to cover other legal requirements that apply at the point of sale i.e. microchip detail updating or in the case of horses, passport transfer/re-registering

Question 6: What other proportionate measures could address concerns around the care of exotic animals?

- 6.1 In terms of the care of exotic animals within a licensed premise this should be adequately covered by the inspection regime and the input from a recognised competent person in that particular field. To assist local authorities when undertaking such inspections, an improvement would be a nationally-held list of recognised experts that could be consulted or used as part of the inspection process
- 6.2 To address concerns over the care of exotics once in the customer's home and to hopefully improve welfare standards, the appropriate care sheets referred to in Question 5 could refer the owner to an approved database (approved via sector council/industry) that has up to date and detailed best practice welfare standards for various exotic animals. Ultimately the types of exotics allowed to be sold via licensed premises could be structured to enable this to be kept to a manageable knowledge base. Other measures could include mandatory "cooling off" periods for certain species, to minimise impulse purchases or potential customers having to demonstrate a stipulated level of competency prior to purchase for certain exotic species.

Question 7: To what extent do you agree or disagree with the proposal to allow licences to be issued for a fixed term, set at any point in the year? Please provide any comments or evidence to support your answer.

- 7.1 We agree entirely with this proposal. This would allow local authorities to plan their workload with regards to animal establishment licences more effectively, resolve current issues of the availability of competent persons to undertake inspections at the end of the year and be more cost effective for business.

Question 8: To what extent do you agree or disagree with the proposal to increase the maximum length of a licence that local authorities may issue to up to three years? Please provide any comments or evidence to support your answer.

- 8.1 We believe that the inspection and licencing of premises should be a risk based approach. This is not something new to LA regulatory based inspectors and would be of benefit to business and local authorities.
- 8.2 There would need to be a nationally adopted risk-based framework for local authorities to work with in order to establish consistent and appropriate risk ratings for the various premises/activities to be licensed, which would then result in appropriate scores and inspection intervals. The designated risk score of a premise could change over time given issues with compliance, complaints, change of management etc. The power to revoke or suspend a licence following appropriate escalated enforcement activity, without the need for undue delay via a court hearing would be needed if licence intervals are to be extended up to three years. Ultimately the risk scoring could be used by the premise/business to demonstrate their level of compliance – allowing informed choice by the customer, something that is not currently present with the existing licensing regime.
- 8.3 In effect it would be not dissimilar to the “scores on the doors” scheme currently used for food premises. Businesses/individuals with high welfare standards and good compliance levels are rewarded with lower levels of inspection and potentially reduced fees as a consequence and ultimately customers choosing them over and above others who only meet minimum standards. An educated customer market will help facilitate and encourage improved welfare standards in the less well performing establishments.
- 8.4 The national risk-based framework would need to be developed and implemented by a Defra led/supported/backed group involving local authorities and other relevant stakeholders.

Question 9: To what extent do you agree or disagree with the proposal to allow licence holders to transfer licences to new owners of the same premises, subject to notification of and approval by the local authority? Please provide any comments or evidence to support your answer

- 9.1 If the new licensing regime is to be based on risk then a critical part of that risk assessment process is confidence in the way that business and subsequent risk is managed. This is determined by the ability, attitude and ultimate competency of the owner of that business and therefore we would not agree with the above proposal.

- 9.2 A transfer to a completely new owner would require assessment of that person and any changes to the operation of the business and thus appropriate local authority input. Given the proposal to allow licences to run from any point of the calendar year it would seem logical that a re-assessment on risk and new licence is issued following this change. There may be certain exemptions, say for close family members (following retirement, bereavement etc.) or managers of the same premises that have been closely involved in the operation of the business and the local authority has confidence in them that the risk will be managed in the same way. Equally the current requirement that a licence cannot be transferred to a family member or acquaintance if the holder has been refused or had a licence revoked for various reasons, should continue. In addition it should be possible for a local authority to suspend/revoke a licence, which the proprietor can then challenge at a Magistrates Court.

Question 10: To what extent do you agree or disagree with the proposal to require licence holders to notify local authorities of major changes, such as a change of premises or scale of activities? Please provide any comments or evidence to support your answer.

- 10.1 We would regard this as essential given the move to risk based inspections and potentially longer licence periods. Change of premise would be a straightforward new licence application but some guidance and clarification on "major changes" scale will be required dependent on the type of licensable activity. This again would help promote consistency of administration and make it clear to understand for business.

Question 11: To what extent do you agree or disagree with the proposal to maintain the registration requirement for performing animals? Please provide any comments or evidence to support your answer.

- 11.1 Given the review of animal licensing establishments, it is an opportune time to review the Performing Animals Act 1925. The definition of 'performing animal' has to be made clearer, or even a change of terminology from 'performing' to 'exhibiting'.
- 11.2 There has been a large growth in peripatetic 'zoos', which take exotic (and other) animals to schools, colleges, fetes and the like. They do not fit the definition of 'zoo' in the Zoo Licensing Act 1981 but are in effect mobile zoos and most local authorities expect them to register under The Performing Animals (Regulation) Act 1925. Most of these companies keep their animals at their private dwelling where there is no scrutiny of the housing and hence welfare conditions. A few have come to light and been prosecuted for appalling welfare. These organisations need to be regulated under a reformed Performing Animals (Regulation) Act 1925. It is mentioned in the preamble that it is an intention to extend powers of 'inspection' to premises where performing animals are kept. A power of entry is already in the Performing Animals (Regulation) Act 1925.
- 11.3 To repeal the Performing Animals (Regulation) Act 1925 and to instead rely on the provisions of the Animal Welfare Act, which is a discretionary function for local authorities (many of which do not have officers appointed under the Act) would be a significant backward step from the current position.
- 11.4 As an alternative and in line with our response to Question 15 perhaps licensing these types of business under the proposed Animal Establishment Licence regime

would be a more satisfactory route, thus allowing the Performing Animals (Regulation) Act 1925 to be repealed.

- 11.5 We note that the consultation makes no reference to the Dangerous Wild Animals Act 1976 and the licences that are issued by local authorities under this legislation to both safeguard animal welfare and the public. Given the potential for new legislation it would be an opportune time to review the provisions and standards of this legislation in order to bring it up to date and deal with various loopholes, such as pet shops keeping unlicensed DWA animals on display on the pretext they are for sale when they are actually used to entice customers into the premise or where they in effect are operating an unlicensed zoo and charging an admission fee.

Question 12: To what extent do you agree or disagree with the proposed changes to the registration system for performing animals? Please provide any comments or evidence to support your answer.

- 12.1 We believe repeal of the Performing Animals (Regulation) Act 1925 would be a disaster for the welfare of animals used by this sector, leaving it unregulated. It seems contradictory that someone home boarding a couple of dogs and is visited by the dog owners as well as local authority officers, is currently licensed annually, but those involved in the training of animals or use for public exhibition, and who may be using unacceptable and outdated methods or providing unsuitable conditions, can operate behind closed doors with minimal scrutiny. Anyone can set up as one of these organisations.
- 12.2 There are serious animal and public health issues with these operations which need to be taken into consideration. Bringing them out of regulatory scope would lead to severe criticism of Defra and Government, not least by public health authorities. Zoos have a very stringent licensing regime to control animal health, welfare and public safety, both directly from the animals and from zoonosis. Yet zoos pose a much lesser risk than these public animal encounters, using 'zoo' animals. The Animal Welfare Act does not cover all these particular aspects that are very much linked to public health.

Question 13: To what extent do you agree or disagree with these proposals on powers of entry? Please provide any comments or evidence to support your answer.

- 13.1 We consider that the proposal to only allow a maximum of four persons to use the powers of entry is unworkable for animal welfare and could put enforcement officers at risk. Some welfare cases can involve the seizure of hundreds of animals from one premise, to undertake this with four officers is unworkable, and would cause undue delays in safeguarding welfare. Obtaining evidence and documenting everything for a potential court case is very time consuming.
- 13.2 When dealing with animal based investigations it is paramount that entry is gained on the first occasion when offences are suspected, as inevitably evidence will have disappeared upon return with a warrant some hours later. Therefore in almost every scenario notice of intention to apply for a warrant is deemed unnecessary as it would defeat the object of entry at the evidence. Furthermore, there should be powers of entry (with a warrant) to establishments (whether a dwelling or not) where there is good reason to believe that licensable activities are being carried out.

Question 14: To what extent do you agree or disagree with the proposal to allow an exemption from licensing requirements for businesses affiliated to a body accredited by UKAS? Please provide any comments or evidence to support your answer.

14.1 We have a fundamental disagreement with this proposal, for a number of very important reasons:

- Transparency and accountability – accredited bodies ultimately have a commercial interest in maintaining and expanding those businesses affiliated to it. A situation that has already been heavily criticised with the formation of the GBGB and its overall governance. UKAS accreditation only deals with the inspection part of the process, not with any enforcement of legal minimum standards under the Animal Welfare Act or any proposed new licencing regime. Who will undertake this role if the premise is exempt from a local authority licensing regime? Not the local authority, as it does not have a statutory duty to enforce. How will the expertise, background training and impartiality of affiliated body inspectors be assessed? How will this be monitored on an ongoing basis to ensure consistency?
- It is the ideal time for Section 51 (3) of the Animal Welfare Act to be enacted and a list of competent people published by the national authority whom it is considered suitable for appointment by a local authority to be an inspector for purposes of the Act. A two-tier system as proposed would not tackle the fundamental issue of identifying those animal businesses that fall within a defined AEL activity that currently operate under the radar, thus the argument for reducing the burden on local authorities is flawed.
- A two-tier system would in effect remove from a local authority licencing regime the better performing premises, i.e. those that aspire to meet higher welfare standards, with a subsequent loss of licence fee and leave only those premises that are at the lower/minimum standard end of the welfare spectrum. The loss of income to local authorities may then have detrimental effects to the existing licensing service and thus would be unable to support the investigation of unlicensed premises or breaches of licence conditions.
- Affiliation to an accredited scheme does not mean that at some point there will not be breaches of legislation, as demonstrated by farmed animal health work where accredited farms under such schemes as Red Tractor, for example have still required formal enforcement action.
- The lack of public recognition for accredited bodies/schemes and ultimately how and where a consumer directs any complaint about an exempted premise would be very confusing for the public. If the premise was exempt from the local authority licensing regime then the local authority would have no grounds or powers to deal with the consumer complaint (again to deal with it under the Animal Welfare Act would be discretionary) and would simply refer the consumer to the accredited body, which would only have the sanction to withdraw the affiliation.

- 14.2 Licensing is an integral part of Councils' broader regulatory services. Regulatory services are increasingly recognised as being at the heart of Councils' approaches to economic growth. Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, whilst at the same time assisting and ensuring they adhere to important safeguards. Licensing regimes exist to protect communities and visitors; manage public health risks and remain responsive to local concerns. Regulation strives to produce a level playing field for legitimate businesses to trade in
- 14.3 All of this work requires funding and it is an accepted principle that licensed activities should be funded on a full cost-recovery basis, paid for by those benefiting from the licensed activity (i.e. licence holder), rather than drawing on the public purse. Where we do see value in accreditation is in it being part of a single tier, local authority risk-based licensing scheme which helps and encourages businesses to achieve and maintain higher welfare standards.
- 14.4 As part of a risk-based approach the local authority would use the fact that the business is part of an affiliated scheme, along with other factors laid out in an agreed risk framework, to come to an overall risk rating for that premise. This may determine that the business can be given a licence for an extended period up to 3 years with lower levels of inspection and possibly reduced fees as a consequence. The risk rating or "scores on the doors" principle allows consumers to make informed decisions prior to using or purchasing from the business and thus the business benefits from being part of an affiliated scheme. For this system to work there would need to be open and clear lines of communication between any affiliated bodies and local authorities to access various data and inspection records. Again this could be easily covered in the agreed risk framework.
- 14.5 The national risk framework led by DEFRA and supported/backed by various stakeholders should also set out other information on animal legislation and provide enforcement officers with all the tools they need to ensure that licensed premises and animal welfare legal requirements are maintained and monitored in their area. This could be done on a similar basis to that framework that already exists with the Food Standards Agency and local authorities, with similar areas of policy and guidance created i.e.
- Codes of practice
 - Audits of local authorities
 - Local authority tools
 - Training for enforcement officers
 - National animal crime unit

(See: <https://www.food.gov.uk/enforcement>)

Question 15: Do you think sector-led UKAS-accredited certification schemes could improve animal welfare in unlicensed areas? If so, what would work best and how could this process be encouraged?

- 15.1 In principle a voluntary sector-led accredited certification scheme is preferable to there being nothing in place. However, there already exist such schemes for unlicensed areas such as livery yards. The British Horse Society estimate they have

around 1000 accredited livery yards yet the estimated number of livery yards in the country is somewhere around 25,000-30,000. The uptake of such schemes is relatively low; we have to query whether a business being part of such a scheme means anything to the consumer?

15.2 We feel this is an opportune time for DEFRA to consider expanding the remit of a single AEL to encompass some of the unregulated animal businesses that local authorities receive complaints and concerns about. All of these establishments/activities can be set up by any person with no experience or vetting, potentially putting the consumer and animal welfare at risk.

15.3 The areas of concern to local authorities include:

- Dog Groomers
- Animal Sanctuaries
- Livery Yards
- Commercial breeders/dealers of all animals (supplying the trade or public)
- Animal exhibitors/performers
- Dog walking/pet sitters