

Environment Overview and Scrutiny Committee



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Tuesday, 4 June 2024 at 2.00 pm
Council Chamber - South Kesteven House,
St. Peter's Hill, Grantham. NG31 6PZ

Committee Members: All Members of the Committee

Agenda Supplement

8. **Animal Welfare Policy** (Pages 3 - 25)
Committee to review and recommend approval to Cabinet of the draft new animal welfare policy.

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Agenda Item 8

Submissions on the draft Animal Licensing Policy V1 submitted for consideration by the Environment Overview and Scrutiny Committee of South Kesteven District Council on 4 June 2024

Author: Peter C. Bell

Date: 26 May 2024

Version: 3 (updated 30 May 2024)

Here are my submissions on the current draft of the policy:

Misuse of the ‘fit and proper person’ test

The fit and proper person test is found in regulation 4(7) of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

<https://www.legislation.gov.uk/uksi/2018/486>

It reads:

“(7) In considering whether the licence conditions will be met, a local authority must take account of the applicant’s conduct as the operator of the licensable activity to which the application for the grant or renewal relates, whether the applicant is a fit and proper person to be the operator of that activity and any other relevant circumstances.”

Note that the fit and proper person test is to be applied, along with other considerations, “in considering whether the licence conditions will be met”. It is not a standalone test of whether the local authority considers the person to be a fit and proper person. That is not the legal test.

The test is related to the licence conditions and not to other considerations.

The “licence conditions” referred to in this paragraph of the legislation are the General conditions which are found in schedule 2 and the Specific conditions are found in schedules 3 to 7.

When determining if a person is fit and proper the local authority must be able to identify which of the conditions in schedule 2 and/or the applicable schedule in schedule 3 to 7 is the relevant condition that the authority was considering when the authority applied its mind to the question of whether the person is a fit and proper person to carry out the licensable activity.

Looking through each of the conditions in schedule 2 and schedules 3 to 7 it is difficult to identify a licensing condition set out in those schedules where the presence or

absence of the specified conviction (specified in the local authorities' policy document) would be a relevant consideration in determining whether or not the applicant would be able to satisfy the relevant licensing condition.

Looking at the Secretary of State's guidance, to which the local authority must have regard, the relevant paragraph in the guidance reads:

"The inspector must consider whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet their licence conditions."

Here the guidance focuses the attention of the inspector appointed by the local authority to inspect the premises and to examine the applicant on whether or not the applicant can "carry out the licensable activity and meet their licence conditions".

There is nothing in the Secretary of State's guidance which would indicate that the possession of a conviction for specified offences (specified in the local authorities' policy document) was a relevant consideration for the inspector.

Discrimination

The policy as currently drafted clearly discriminates against, in that it treats differently and to their detriment, those with specified convictions as compared to those without specified convictions.

Persons without specified convictions are not classed as a group of persons who would not normally be granted a licence whereas those with one of the specified convictions ARE classed as persons to whom a licence would not normally be granted.

This is as clear an example of discrimination as you could find. In order for this discrimination to be legal there must be a clear legal basis for operating this discriminatory rule. I can find no explanation in the policy document of the legal basis for such discrimination.

Children Act 2004

<https://www.legislation.gov.uk/ukpga/2004/31>

The local authority relies upon the provisions in the Children Act 2004 for excluding persons with specified criminal convictions from operating one of the licensable activities.

But this legislation has no applicability in the context of Animal Welfare and licensing of related activities.

The headnote to the Act reads:

"Children Act 2004

An Act to make provision for the establishment of a Children's Commissioner; to make provision about services provided to and for children and young people by local authorities and other persons; to make provision in relation to Wales about advisory and support services relating to family proceedings; to make provision about private fostering, child minding and day care, adoption review panels, the defence of reasonable punishment, the making of grants as respects children and families, child safety orders, the Children's Commissioner for Wales, the publication of material relating to children involved in certain legal proceedings and the disclosure by the Inland Revenue of information relating to children.”

This Act is about services provided to and for children .. by local authorities. The other persons referred to are those providing services on behalf of or under contract to the local authority. This Act does not apply to independent traders providing animal related services to the public at large.

Care Act 2014

<https://www.legislation.gov.uk/ukpga/2014/23>

The local authority relies upon the provisions in the Care Act 2014 for excluding persons with specified criminal convictions from operating one of the licensable activities.

But this legislation has no applicability in the context of Animal Welfare and licensing of related activities.

The headnote to the Act reads:

“Care Act 2014

An Act to make provision to reform the law relating to care and support for adults and the law relating to support for carers; to make provision about safeguarding adults from abuse or neglect; to make provision about care standards; to establish and make provision about Health Education England; to establish and make provision about the Health Research Authority; to make provision about integrating care and support with health services; and for connected purposes.

Whilst it is debatable as to whether this legislation has any relevant to decisions on whether to grant, suspend or revoke a licence related to animal welfare, any intervention by the local authority in pursuit of their wider objectives to prevent abuse or neglect must be the necessary proportionate and reasonable actions necessary to prevent that anticipated abuse or neglect so as to not interfere with the legitimate rights of other individuals.

It can hardly be argued that banning an individual from pursuing a legitimate economic activity based on an apprehension that a person with specified criminal convictions may abuse or neglect individuals in the operation of that economic activity is a reasonable and proportionate decision by a local authority.

Crime and Disorder Act 1998

<https://www.legislation.gov.uk/ukpga/1998/37>

The local authority claims that section 17 of the Crime and Disorder Act 1998 requires it to have regard to the question of whether or not an applicant has specified criminal convictions when deciding whether to grant, suspend, vary or revoke a licence in relation to an animal welfare licensable activity.

The relevant section of this legislation reads:

17 Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent,

- a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and
- b) the misuse of drugs, alcohol and other substances in its area; and
- c) re-offending in its area; and
- d) serious violence in its area.

The policy does not explain how, by refusing to grant a licence (animal welfare licence) to a category of person with specified convictions, this will prevent crime and disorder in its area; or prevent the misuse of substances; or prevent re-offending; or prevent serious violence.

Is it the intention of the local authority to use its licensing functions to prohibit persons with specified convictions from participating in ANY economic activities within its area? And if so, on what legal basis?

Legal risk to the local authority

Refusal to grant a licence

If a local authority refuse to grant a licence based on whether or not the applicant has criminal convictions in the list specified by that local authority (and not the list of relevant convictions specified in the legislation), is there a risk to the local authority of a successful challenge and a potential liability for damages?

The applicant has the option of appealing the local authority decision to the First Tier Tribunal (General Regulatory Chamber). If a local authority has acted wholly unreasonably in resisting an action in the Tribunal then the applicant has the option of asking for costs to be awarded against the local authority.

If it is clear that the local authority has acted wholly unreasonably in refusing to grant a licence and the applicant has suffered economic loss as a result of the wholly unreasonable actions of the local authority then the local authority is potentially liable for damages.

Suspension of licence

The local authority has the power to suspend a licence for a period of a maximum of 28 days following which it must either reinstate the licence or revoke the licence.

The local authority must have proper grounds for suspending a licence. These grounds are set out in regulation 15:

Grounds for suspension, variation without consent or revocation of a licence

15. A local authority may, without any requirement for the licence holder's consent, decide to suspend, vary or revoke a licence at any time on being satisfied that—

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

These grounds do not have any reference in them to the matters which the policy requires the applicant to report to them in paragraph 7.5 of the policy:

- They have any type of licence suspended or revoked;
- Are arrested (whether or not charged with an offence);
- Are charged with a criminal offence;
- Are convicted of a criminal offence;
- Receive any caution or warning;
- Allegations are made of involvement in criminal activity; or
- Any pending charges, to include any notices of intended prosecution.

Since none of these are instances of matters which would be a material consideration for the local authority when deciding if they were satisfied that one of the four conditions for suspending a licence pursuant to regulation 15 had been met, the local authority cannot require an applicant to provide this information to them, nor penalise the applicant for failing to provide such information.

The matters set out in section 7 of the policy are simply not matters to which the local authority should have regard when making licensing decisions under the Animal Welfare Act 2006 and subordinate legislation.

There is therefore a significant legal risk to the local authority if they refuse to grant or they suspend or revoke a licence when they have no legal basis to do so.

Comparison with similar businesses

If further consideration needs to be given to the aspects of the current draft policy as regards its discriminatory effect on those applicants with past convictions, then the author would suggest consideration of the following:

- a) would the Local Authority have the ability to prohibit an applicant from operating a tool hire shop, or operating car hire business, or operating a café or restaurant;
- b) would the Local Authority impose similar reporting requirements to those required under clause 7.5 of the policy;
- c) how does the Local Authority explain the difference between the criteria specified in section 7 compared with the conditions under which a licence could be refused as documented in section 13, or suspended or revoked as specified in section 15;
- d) clause 6.2 states that the Local Authority must consider safeguarding considerations, in particular around the protection of children and vulnerable persons and must consider these in light of the Children Act 2004 and the Care Act 2014, but will issue a licence for many other businesses without these considerations (as the law does not empower the Local Authority to refuse to allow a business to operate based on these grounds). Where is the justification for imposing these additional considerations on a business, simply because it is concerned with Animal Welfare, as opposed to the restrictions imposed on other businesses that the Local Authority licences.

END

References

Legislation

Acts

Animal Welfare Act 2006 <https://www.legislation.gov.uk/ukpga/2006/45>

Care Act 2014 <https://www.legislation.gov.uk/ukpga/2014/23>

Children Act 2004 <https://www.legislation.gov.uk/ukpga/2004/31>

Crime and Disorder Act 1998 <https://www.legislation.gov.uk/ukpga/1998/37>

Regulations

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 <https://www.legislation.gov.uk/uksi/2018/486>

Guidance

Department for Environment Food & Rural Affairs (2024) Statutory guidance

Animal activity licensing process: statutory guidance for local authorities Updated 15 May 2024

<https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities/animal-activity-licensing-process-statutory-guidance-for-local-authorities>

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Further comments on the draft Animal Licensing Policy V1 submitted for consideration by the Environment Overview and Scrutiny Committee of South Kesteven District Council on 4 June 2024

Author: Peter C. Bell

Date: 30 May 2024

Version: 1

Here are my further submissions on the current draft of the policy:

Governance issues missing from the policy

The draft policy does not describe how the licensing system will operate.

It is for the Council to determine how it operates the licensing system required by the law. Under the cabinet scheme of governance operated by South Kesteven District Council, it is either for the full Council or for the Cabinet to pass a resolution implementing the licensing regime that will implement the legislation under the Animal Welfare Act 2006.

The policy should describe the intended model of governance intended to be operated. For example, by specifying that the decisions to be taken which the Animal Welfare Policy will cover, are to be taken by the Licensing Committee of the Council acting as the Licensing Authority for the District.

The policy should also describe the scheme of delegation where and if that committee delegates some or all of the decisions to Officers of the Council. It should also describe the situations in which the Licensing committee can review and amend or overrule decisions of Officers.

The policy should specify whether decisions on suspension or revocation of a licence are delegated to Officers or reserved to the Licensing committee. The policy should also specify whether decisions on granting a licence are reserved to the committee or are delegated to Officers.

Where decisions have been delegated to Officer the policy should specify how and when those decisions should be reported to the Licensing committee, and what other information ought reasonably to be provided to the members of the Licensing committee and at what intervals.

The policy should also cover regulation of the training and competence of Officers to ensure that all Officers carrying out delegated functions from the Licensing committee or Officers carrying out specified roles under the legislation have the knowledge, experience and qualifications necessary to perform the particular function.

The policy should also cover the management information that should be regularly reported to the Licensing committee and what that management information should cover.

In addition, the policy should contain a section on how the policy is to be reviewed, at what intervals, and how its operation and effectiveness is to be monitored by the Licensing committee.

END

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
Agenda item 8					
29		Title	This item is titled Animal Welfare Policy	Naming of the policy is inconsistent	
29			Then says “This report provides an updated draft of the new Animal Licensing Policy ...”		
29		1	Provides a recommendation to Cabinet for approval of the updated South Kesteven District Council Animal Welfare Policy		
31		2.2	... adopt an Animal Welfare Policy		
32		4.1	That an Animal Welfare Policy is not necessary		
33		6.1	A new Animal Welfare Policy		
33		9.1	Appendix 1 – Animal Welfare Policy		
35		Title	Animal Licensing Policy 2024	There should be some consistency in the naming of this policy.	I would suggest that the title “animal licensing policy” is misleading because no animals are licensed! The licensing is of persons, and the concern is animal welfare. So perhaps “Animal Welfare Licensing Policy” is a better title. Alternatively, the title chosen by other local authorities is “Animal Welfare Policy”. Whatever title is chosen, it should be used consistently throughout the report and the actual policy document itself.
30		1.2	Whilst each individual licensing application or enforcement decision will be judged on its own merits, a Policy ensures a transparent and consistent approach to licensing that will reduce the opportunity for challenge through the Courts.	Use of word Courts when it is Tribunal which is appeal location	Legal challenge is initially through the First Tier Tribunal (General Regulatory Chamber) OR the High Court for a Judicial Review. So the first sentence should reference “First Tier Tribunal or the Courts”.

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
37	2		Corporate Objectives		Where can these be found
37	2		Enforcement Policy		Where can this policy be found
38	3	1.4	... as well as providing protection for the public and users of those licenced within the terms of the relevant Acts and legislative Guidance.		Need to identify where in the relevant Acts (which are these) and guidance this purpose of the legislation is set out.
39	4	1.6		No reference to legal advice	Suggets that legal advice from LCC is declared here
39	4	1.9	Section 17 of the Crime and Disorder Act 1998 – which imposes a duty on every Local Authority to do all that it reasonably can to prevent crime and disorder in its decision-making process. The duty now extends to anti-social behaviour, substance misuse and behaviour adversely affecting the environment.	Mistates the import of this section of the Act	This issue dealt with in separate document
39	4	1.9	The Provision of Services Regulations 2009 to ensure requirements are: i. Non- discriminatory. ii. Justified by an overriding reason relating to the public interest. iii. Proportionate to that public interest objective. iv. Clear and unambiguous. v. Objective. vi. Made public in advance, and vii. Transparent and accessible.	Policy does not meet many of these requirements of the PSR	Policy is a) clearly discriminatory, b) not clear and unambiguous, c) not transparent. It does not clearly state that one of the effects of the policy is to exclude from licensable activity any person with any form of criminal history or suspension thereof (for the listed categories of offence).
40	5	1.9	Disability and age discrimination legislation. South Kesteven District Council is committed to the implementation and application of this policy in such a manner as to ensure that no applicant or other person is treated less favourably on grounds of sex, marital status, race, nationality, ethnicity, national origin, colour, disability or age; nor is disadvantaged by the application of a rule, condition or requirement which has a discriminatory effect, which cannot be justified either in street trade licence terms or as a requirement of law.	Policy is indirectly discriminatory on the grounds of sex	Because the majority of the persons who have the criminal connections targeted by the policy are male. This policy has a disproportionate effect on the male population when compared with the female population. It is therefore potentially indirect sex discrimination.

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
40	5	2.3	In reaching a decision of whether to grant an animal licence, the Licensing Authority will take account of any non-compliance with other statutory requirements brought to its attention. Non-compliance with statutory requirements may demonstrate that the proposed activity or that the management of such is not appropriate to protect either the animal(s) welfare or the public from harm or nuisance.	Having regard to matters which the local authority should not have regard to when making its licensing decision. Protecting the public from harm or nuisance is not a purpose of the Animal Welfare legislation.	This appears to be Wednesbury unreasonable
40	5	3.1	The safeguarding of any children or vulnerable persons in contact with a licensable activity is ensured, in accordance with relevant legislation.	The relevant legislation needs to be identified	Refusing a licence because of safeguarding concerns (based on characteristics of the applicant) is unlikely to be a reasonable decision of the local authority
41	6	3.2	Ensuring the welfare of domestic or captive animals by implement appropriate standards that promote the "five needs".	Ensuring the welfare of domestic or captive animals by implementing appropriate standards that promote the "five needs".	Use verb
42	7	4.3	This legislation requires that a licence to keep certain animals considered wild, dangerous or exotic. A full list of the animals is outlined in The Dangerous Wild Animals Act 1976 (Modification) (No.2) Order 2007 (legislation.gov.uk).	This legislation requires a licence to keep certain animals considered wild, dangerous or exotic. A full list of the animals is outlined in The Dangerous Wild Animals Act 1976 (Modification) (No.2) Order 2007 (legislation.gov.uk).	"that a licence ... is held" or "a licence". "that a licence" is not correct
42	7	4.4	The Licensing Authority does not support the licensing of primates under the Dangerous Wild Animal Act 1976 as 'pets' living in domestic premises.	What is the legal basis for "not supporting"?	There appears to be nothing in the current or prospective legislation which would ban a person from obtaining a licence providing that the premises met the criteria in the act or regulations
42	7	4.5	The position in 4.4 supports The Animal Welfare (Primate Licences) England Regulations 2023, which will come into effect on 6 April 2026.	Legislation wrongly quoted	Correct title is: The Animal Welfare (Primate Licences) (England) Regulations 2024
40	5	5.2	Details on how to apply for a licence can be found on the Council's website but must be made in writing on the relevant application form.	Reference elsewhere to Licensing Authority	In this context reference to Council website is correct

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
43	8	5.3(a)	Applicant's Experience: Confidence in the ability to handle and control an animal and a clear demonstrated knowledge of its welfare needs are a paramount consideration and form part of the conditions in law.	Adverb rather than adjective	Applicant's Experience: Confidence in the ability to handle and control an animal and a clearly demonstrated knowledge of its welfare needs are a paramount consideration and form part of the conditions in law.
43	8	5.5	Legislation does not define the term "fit and proper person" and this policy does not attempt to provide such a definition. The Licensing Authority may consider any issue it deems relevant when making its determination.	The licensing authority can only take into account those matters which the law deems to be relevant matters when making its decision. There needs to be clarity for applicants as to what are and what are not relevant matters	The term fit and proper and its usage in the legislation is discussed in a separate document. There is a requirement for the policy to be clear and unambiguous. "any issues it deems relevant" is a phrase which could encompass almost anything. The Licensing Authority needs to spell out what matters it does consider relevant and what matters are not relevant
43	8	5.5		Guidance	The relevant passage from the guidance could usefully be inserted here after clause 5.5
43	8	5.6	As the term fit and proper is not defined in legislation, the Licensing Authority will consider a "fit and proper person" to be an individual who can demonstrate upon application that they have: <ul style="list-style-type: none"> • The right to work in the UK; • No relevant convictions • Not been disqualified from holding a licence (by means outlined in the policy); • The knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of animals in their care. • Made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licensed activity. 	Fit and proper person test	This issue is discussed in a separate document. This statement confuses several issues and a) does provide a definition of "fit and proper" (despite what 5.5 says) b) attaches to the fit and proper test conditions which the legislation does not mention in connection with the part of the legislation which uses the term fit and proper.
44	9	5.6	This list does not limit the scope of the fit and proper assessment and the Council may take into account others, should they be relevant to the licensing process.	Fit and proper person test	As above Also drafting - what are the "others" that the Council may take into account. Should Council be licensing authority?
44	9	6.1	Safeguarding is everyone's responsibility, and this Licensing Authority works to promote peoples welfare and protection them from harm.	Verb instead of noun	Safeguarding is everyone's responsibility, and this Licensing Authority works to promote peoples welfare and protect them from harm.

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
44	9	6.1	Councillors and everyone working for South Kesteven District Council has a role to play in identifying safeguarding concerns and taking prompt action issues are identified, via the relevant reporting mechanisms.	Plural not singular. Missing word "when"	Councillors and everyone working for South Kesteven District Council have a role to play in identifying safeguarding concerns and taking prompt action when issues are identified, via the relevant reporting mechanisms.
44	9	6.2	However, there are other safeguarding considerations arising from licensable activities, in particular around the protection of children and vulnerable persons and the Licensing Authority must consider these in light of the Children Act 2004 and the Care Act 2014	Whether relevant to animal welfare licensing decision	This issue of relevance is discussed in a separate document.
44	9	6.3	The Licensing Authority is aware that some licensable activities may involve unsupervised contact with children and/or vulnerable persons (e.g. the tuition of a young person provided at a Riding Establishment or entertaining at a children's party with an exhibition of animals).	Need to clarify what relevance this has to the granting of an animal welfare license.	Tuition is an activity for which DBS checks are required. Entertaining children is not an activity specified in the DBS legislation.
44	9	6.4	The Licensing Authority expects applicants and licence holders whose activities involve contact with children or vulnerable persons to: <ul style="list-style-type: none"> •Have a written safeguarding policy and provide training for staff; and •Have a procedure for vetting staff who have unsupervised contact with young/vulnerable persons. 	Whether proportionate to require this where contact is supervised by a person (ie teacher) who has the relevant DBS checks	Legislation provides protection for children and requires DBS checks where contact is unsupervised. Need to check whether there is a similar requirement for contact with vulnerable adults and what the definition of vulnerable adults is.
44	9	6.1 (sic!)	In all cases, the Licensing Authority will consider the convictions or behaviour in question and what weight should be attached to it in relation to the applicant's suitability to hold the licence applied for. Every case will be determined on its own merits but in light of these guidelines.	Fit and proper person test	This is discussed in a separate document. Note that this clause needs to be renumbered from 6.1 to 7.1

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
44	9	7.2	The Licensing Authority will not normally grant a licence to a person with one (or more) convictions for any offence that is related to animal cruelty or suffering. The primary purpose of the Regulations enforced by the Licensing Authority is to ensure the welfare of animals and as such, these types of offences are highly relevant.	Fettering discretion. Not normally grant vs every case on its merits.	<p>This presumption by the licensing authority is dealt with in a separate document.</p> <p>The effect is that the policy is discriminatory as it affects persons with convictions detrimentally when compared with persons without convictions.</p>
44	9	7.2	The Licensing Authority will not normally grant a licence to a person with one (or more) convictions for any offence that is related to animal cruelty or suffering. The primary purpose of the Regulations enforced by the Licensing Authority is to ensure the welfare of animals and as such, these types of offences are highly relevant.	Spent convictions should be disregarded (see 7.7) BUT NEED TO CHECK WHETHER ANY LEGISLATION OVERRIDES the Rehabilitation of Offenders Act	The Licensing Authority will not normally grant a licence to a person with one (or more) unspent convictions for any offence that is related to animal cruelty or suffering. The primary purpose of the Regulations enforced by the Licensing Authority is to ensure the welfare of animals and as such, these types of offences are highly relevant.
44	9	7.3	<p>In addition, the Licensing Authority has wider obligations to prevent crime and disorder and safeguard both children and vulnerable adults. As a result, the Licensing Authority will not normally grant a licence to a person with one (or more) convictions for any of the following offences:</p> <ul style="list-style-type: none"> •Offences involving violence. •Possession of a weapon. •Sex and indecency offences. •Offences involving dishonesty. •Offences involving drugs. 	How refusing a licence will prevent crime and disorder. How licensing authority know that person with convictions will be a threat to children and vulnerable adults.	This issue is dealt with in a separate document.
44	9	7.3	<p>In addition, the Licensing Authority has wider obligations to prevent crime and disorder and safeguard both children and vulnerable adults. As a result, the Licensing Authority will not normally grant a licence to a person with one (or more) convictions for any of the following offences:</p> <ul style="list-style-type: none"> •Offences involving violence. •Possession of a weapon. •Sex and indecency offences. •Offences involving dishonesty. •Offences involving drugs. 	Spent convictions should be disregarded	<p>In addition, the Licensing Authority has wider obligations to prevent crime and disorder and safeguard both children and vulnerable adults. As a result, the Licensing Authority will not normally grant a licence to a person with one (or more) unspent convictions for any of the following offences:</p> <ul style="list-style-type: none"> •Offences involving violence. •Possession of a weapon. •Sex and indecency offences. •Offences involving dishonesty. •Offences involving drugs.

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
45	10	7.4	Any offences or behaviour not expressly covered by this Policy may still be considered by virtue of any other Guidance, Policies and Strategies outlined in Section 2 above.	Clear and unambiguous	<p>See clause 1.9 for requirements of the PSR</p> <p>How is an applicant to know what matters the licensing authority will take in to account and which the licensing authority will not have regard to when making their decision to grant a licence</p>
45	10	7.5	<p>The Licensing Authority must ensure that licence holders remain suitable to retain their licence, therefore licence holders must notify the Licensing Authority in writing within 5 working days if any of the following occurs (in relation to the types of offences outlined above):</p> <ul style="list-style-type: none"> •They have any type of licence suspended or revoked; •Are arrested (whether or not charged with an offence); •Are charged with a criminal offence; •Are convicted of a criminal offence' •Receive any caution or warning; •Allegations are made of involvement in criminal activity; or •Any pending charges, to include any notices of intended prosecution. 	No legal basis for requiring this information	<p>This issue is dealt with in a separate document.</p> <p>The licensing authority need to make it clear the legal basis on which they would suspend or revoke a licence based on any of these matters being reported to them. The basis for revocation of a licence is set out in regulation 15. None of these matters are grounds for revocation of a licence.</p>
45	10	7.6	Failing to provide such notification will raise serious questions for the Licensing Authority as to the honesty of the licence holder and may result in a review of the suitability of the licence holder to continue to hold a licence.	No legal basis for this threat	What are the legal grounds for revoking a licence based on this failure
45	10	7.7	Animal Welfare licence holders are not identified as an exempt profession under the Rehabilitation of Offenders Act 1974, and, therefore, the provisions of that Act relating to convictions becoming spent after a certain amount of time will apply in full.	Misspelling of "under"	Animal Welfare licence holders are not identified as an exempt profession under the Rehabilitation of Offenders Act 1974, and, therefore, the provisions of that Act relating to convictions becoming spent after a certain amount of time will apply in full.

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
	45	10	8.1 The guidance produced by DEFRA for licences issued stipulates that once a Licensing Authority receives an application for the grant or renewal of a licence it must do all of the following before granting or renewing a licence: •The individual sends an animal activity licence application, supporting documents and Part A fee to the Licensing Authority. •The Licensing Authority appoints an appropriately qualified Licensing Authority Inspector and/or vet. •The Inspector and/or vet visits the animal activity site and produces a report. [etc]	The first bullet point is an activity that the applicant must do NOT the licensing authority	The guidance produced by DEFRA for licences issued stipulates that once a Licensing Authority receives an application for the grant or renewal of a licence together with supporting documents and the Part A fee it must do all of the following before granting or renewing a licence: •The Licensing Authority appoints an appropriately qualified Licensing Authority Inspector and/or vet. •The Inspector and/or vet visits the animal activity site and produces a report including a Star rating. [etc]
20	46	11	8.5 An animal activity licence will comprise of the licence holder detail and activities they are carrying out, the start rating, a list of conditions and a set of specific conditions relating to the particular activity or activities that have been authorised.	Misspelling of Star Rating Insert general before conditions to match terms in legislation	An animal activity licence will comprise of the licence holder detail and activities they are carrying out, the Star Rating, a list of general conditions and a set of specific conditions relating to the particular activity or activities that have been authorised.
	46	11	9.2 At the time of making the application the applicant must pay to the Licensing Authority the application fee (Part A) and the sum quoted by the vet or approved Inspector. The Licensing Authority will then instruct that vet or approved Inspector and pay the fee.	What regulations apply regarding fees and recovery of same from applicant	Who has the contract with the vet or approved Inspector and can therefore sue for poor performance. Do the regulations give the licensing authority the power to recover the costs of the vet from the applicant?
	47	12	9.4 Where the licensable activity falls under the Regulations an inspection will be required on first application and every subsequent renewal.	Meaning or import of phrase "falls under the Regulations"	Could this be made more clear?
	47	12	10.1 Depending upon the nature of the licensable activity , the duration of the licence may be issued for one, two or three years corresponding to the Star Rating for the establishment.	Correct grammar. Also include risk rating as factor that affects duration of licence.	Depending upon the nature of the licensable activity , the licence may be issued for a duration of one, two or three years corresponding to the Star Rating and risk rating for the establishment.
	48	13	10.4 Following the issuing of a rating, an operator may wish to apply for a 're-rating' following completion of works to rectify any non-compliance or improvements to achieve higher standards.	Clarify that Rating is a Star Rating	Following the issuing of a Star Rating, an operator may wish to apply for a 're-rating' following completion of works to rectify any non-compliance or improvements to achieve higher standards.

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	49	14	12.1 to 12.4		Do not understand the conditions/standards / categories / mandatory/ general / specific / higher standards distinctions.
	49	14	12.5 The Licensing Authority will impose any conditions prescribed in the legislation, suggested by DEFRA or required by the Licensing Authority Inspecting Officer and/or Vet.	Lack of clarity	What conditions have been suggested by DEFRA. Why has the licensing authority decided to impose these on all applicants?
	50	15	13.4(c) c) Any animal will at all times of its being kept only under the authority of the licence: i. Be held in accommodation which secures that the animal will not escape, which is suitable as regards constructions, size temperature, lighting, ventilation, drainage and cleanliness and which is suitable for the number of animals proposed to be held in the accommodation, and	In sub clause (1) "with" should be "which"	c) Any animal will at all times of its being kept only under the authority of the licence: i. Be held in accommodation which secures that the animal will not escape, which is suitable as regards constructions, size temperature, lighting, ventilation, drainage and cleanliness and which is suitable for the number of animals proposed to be held in the accommodation, and
21	50	15	13.4 (e) e) All reasonable precautions will be taken at all such times to prevent and control the spread of infectious diseases;	Correct spelling of "infectious"	e) All reasonable precautions will be taken at all such times to prevent and control the spread of infectious diseases;
	50	15	13.5 A licence may be refused where an applicant has been convicted of any relevant offence, as per the relevant legislation.	Incorrect interpretation of the law	Under the Dangerous Wild Animals Act 1976 a licence cannot be granted to a person who is disqualified under the Act. Whilst a person may have been convicted of an offence under the Act or other legislation specified in the Act it is for the sentencing Court to decide whether to disqualify the person and for what period of time (see 1(2)(d) and 6(2)). So a licence must not be granted if the person has been disqualified. The licensing authority does not have discretion. It would be hard to argue that the licensing authority could decide to refuse a licence based solely on a conviction alone where the Court has not decided to disqualify the person.
	50	15	13.6 If a licence is refused under the Dangerous Wild Animals Act 1976, the application has the right of appeal to the Magistrates Court within 21 days of the decision notice.	Spelling of "applicant"	If a licence is refused under the Dangerous Wild Animals Act 1976, the applicant has the right of appeal to the Magistrates Court within 21 days of the decision notice.

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
	50	15	13.7(c) They are not satisfied that the standards of accommodation, staffing or management are adequate for the proper care and well-being of the animals either individually or as a whole, or otherwise for the proper conduct of the zoo.	Spelling of "care"	They are not satisfied that the standards of accommodation, staffing or management are adequate for the proper care and well-being of the animals either individually or as a whole, or otherwise for the proper conduct of the zoo.
	51	16	13.7(d) They are not satisfied that planning permission has been granted for a zoo (or the granting of a licence can be suspended until the local planning authority confirm that permission has been, or is deemed to be, granted.	Opening but no closing bracket Removed opening bracket. Alternative - insert closing bracket	They are not satisfied that planning permission has been granted for a zoo or the granting of a licence can be suspended until the local planning authority confirm that permission has been, or is deemed to be, granted.
	51	16	13.9 If a licence is refused under the Zoo Licensing Act 1981, the application has the right of appeal to the Magistrates Court within 28 days of the decision notice.	Spelling of "applicant"	If a licence is refused under the Zoo Licensing Act 1981, the applicant has the right of appeal to the Magistrates Court within 28 days of the decision notice.
22	52	17	15.8 The business must not trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by the Council, due to either the decision being reversed, or it is satisfied that all licence conditions are being met	Consistency of terms. Council should be Licensing Authority	The business must not trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by the Licensing Authority, due to either the decision being reversed, or it is satisfied that all licence conditions are being met
	54	19	17 Inspections during the course of a licence	Consistency of terms	Heading uses "course" 17.1 uses "term" 17.2 uses "length"
	54	19	17.1 There will be cases where inspections must be carried out during the term of a licence.		
	54	19	17.2 For the activity of hiring out horses, there is a requirement for an annual inspection by a listed vet, regardless of the total length of the licence.	Consistency of terms. Clarity on what a "listed vet" is	Should "length" be "duration" to be consistent with earlier clauses? Should "listed vet" be defined or explained?
	54	19	17.2 It is this Licensing Authority's policy that the vet must be independent and not one that is retained by the applicant / licence holder.	Is policy supported by law	What is the legal basis for requiring the vet to be independent and not one retained by the applicant

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
54	19	17.6	During the inspection of premises licensed under the Animal Welfare Regulations, the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by and operator.	"an operator" instead of "and operator"	During the inspection of premises licensed under the Animal Welfare Regulations, the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by an operator.
54	19	18	Fees and Charges	Fees and charges in clause 9.2 not mentioned here	Need clarity on how the vet fee, which is additional to the standard fixed Part A fee, will be described. Is it an additional fee or is it a variable part of the Part A fee?
55	20	19.1	Can show evidence of at least one year of experience in licensing and inspecting animal activities businesses - this person needs to be enrolled on a course leading to a Level 3 certificate qualification or equivalent to be completed by 1 October 2023 and granted by a body recognised and regulated by Ofqual.	This cannot be achieved as the completed by date has passed.	Suggest remove this last bullet point and insert an "and" at the end of the first bullet point.
55	20	20.2	In carrying out its enforcement duties, the Licensing Authority has adopted a Corporate Enforcement Policy, which is available on our website at www.southkesteven.gov.uk	Where is the Corporate Enforcement policy	Suggest add link to the policy or enhance search function so that it can be readily accessed
56	21	20.4	The Licensing Authority aims to maintain a consistent approach when investigating complaints and make decisions.	Correct to use present participle	The Licensing Authority aims to maintain a consistent approach when investigating complaints and making decisions.
56	21	20.4	In reaching any decision it will consider, amongst other things, the following criteria: •Seriousness of any offences or breach of conditions; •Operator's past history; •Consequence(s) of non-compliance; •Likely effectiveness of the various enforcement options; •Danger to the welfare of animals and/or public.	Tighten up wording. Relevant offence; licence conditions Question whether danger to the public is a relevant consideration when dealing with granting, suspending or revoking an animal welfare licence	In reaching any decision it will consider, amongst other things, the following criteria: •Seriousness of any relevant offences or breach of licence conditions; •Operator's past history; •Consequence(s) of non-compliance; •Likely effectiveness of the various enforcement options; •Danger to the welfare of animals [and/or public].
57	22	20.13	The provision for sampling is primarily aimed at vets carrying out inspections and it is not expected that samples be taken by those without the training to properly and safely do so	Inserted "will" before "be taken"	The provision for sampling is primarily aimed at vets carrying out inspections and it is not expected that samples will be taken by those without the training to properly and safely do so

Report page	Policy page	Clause	Text	Issue	Comment / Suggested text
	57	22	20.14 Additional information about the suspension and revocation of a licence can be found in section 13 of this policy.	Suspension and revocation is section 15.	Additional information about the suspension and revocation of a licence can be found in section 5 of this policy.
	57	22	20.15 Anyone that keeps a dangerous wild animal without the required licence is committing a criminal offence and is liable for a fine.	Liable to a fine (in the legislation)	Anyone that keeps a dangerous wild animal without the required licence is committing a criminal offence and is liable to a fine.
	57	22	20.16 It is also criminal offence to obstruct an inspector who has been appointed by the Licensing Authority to enforce the Act.	Insert "a" before "criminal offence"	It is also a criminal offence to obstruct an inspector who has been appointed by the Licensing Authority to enforce the Act.
	57	22	20.17 Anyone who operates a zoo without the required licence is committing a criminal offence and is liable for a fine.	Liable to a fine (in the legislation)	Anyone who operates a zoo without the required licence is committing a criminal offence and is liable to a fine.
	57	22	20.18 It is also criminal offence to obstruct an inspector who has been appointed by the Licensing Authority to enforce the Act.	Insert "a" before "criminal offence"	It is also a criminal offence to obstruct an inspector who has been appointed by the Licensing Authority to enforce the Act.
24	58	23	App 1 Relevant convictions: Offences outlined in the policy that are not considered spent under the Rehabilitation of Offenders Act 1974, namely: <ul style="list-style-type: none"> • 7.2 – Convictions relating to any offence related to animal cruelty or suffering • 7.3 – Convictions involving violence, Possession of a weapon, Sex and indecency offences, Offences involving dishonesty, Offences involving drug However this list is not exhaustive and other convictions may be considered relevant due to the legislative requirements placed upon Local Authorities/Licensing Authorities as outlined in Section 2 of the policy.	Defined term "relevant convictions" does not appear in clause 7.2	This is a definition which starts to give a definite statement of what the term means, but then qualifies it with an additional paragraph which renders the definition so wooly as to be unusable
	60	Equality impact statement	Characteristic: Sex	No impact identified	Policy on convictions will affect all those with convictions for the listed offences; since vast majority of these with these offences are male, the policy will impact males far more than females; this is indirect sex discrimination and this should have been identified in the assessment.

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	61	Equality impact statement	Characteristic/area: Socio-Economic Impacts	No impact identified	Having a relevant conviction and this not being granted a licence will have a severe socio-economic impact of those applicants (as they will not be able to trade). This has not been identified in the assessment
	61	Equality impact statement	Other factors requiring consideration	None identified	The impact on ex-offenders should have been identified and included in the assessment.
	61	Equality impact statement	Consultations	See clause 1.3 pages 6/7	No consultation with ex-offenders or bodies representing ex-offenders has been carried out owing to the failure to identify them as an affected group during the impact assessment
	61	Equality impact statement	Proposed mitigation / action log	None	There should be an entry relating to mitigation for ex-offenders but this is not present due to failure to identify this group as impacted by the policy during the impact assessment
			END		

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