

TONBRIDGE & MALLING BOROUGH COUNCIL
LOCAL ENVIRONMENTAL MANAGEMENT ADVISORY BOARD

24 November 2009

Report of the Director of Health and Housing

Part 1- Public

Matters for Recommendation to Cabinet - Council Decision

1 ANIMAL WELFARE ACT 2006

Summary

This report considers a new animal welfare function for the Council which provides a range of enforcement powers aimed at protecting animals.

1.1 Background

1.1.1 The Animal Welfare Act 2006 came into force in England on 6 April 2007 and seeks to protect certain animals. An animal is defined as “all vertebrates commonly domesticated in the British Isles which are generally under the control of man”. This is a deliberately wide definition and covers domestic pets, farm animals and working animals. The Act allows Codes of Practice to be introduced to inform the duty and for regulations to be introduced to promote welfare. The Welfare of Farm Animals (England) Regulations 2007 have been made to deal with farm animals but no Codes of Practice have yet been introduced.

1.2 What is the New Act?

1.2.1 The new function and associated powers are shared between district and county councils.

1.2.2 The Act introduced a number of new offences in respect of such animals which can be divided into two distinct groups.

1.2.3 The first of these concerns offences of cruelty including the offence of causing unnecessary suffering, mutilation, docking of dogs’ tails, administration of poisons and fighting. The main offence relates to the causing of unnecessary suffering (“the cruelty offence”). This can either be committed by an act or by omission e.g. by kicking, beating, starving or neglecting an animal. The test here is whether the person “knew or ought to have known” that the act or omission would have caused suffering which could have been avoided or reduced. This offence carries a maximum penalty of £20,000 or six months imprisonment, reflecting the seriousness of the offence.

- 1.2.4 The second type of offence which has been created is a failure to comply with a new duty to care for animals (“the welfare offence”). This is committed by those who are responsible for animals who must take such steps, as are reasonable in all of the circumstances, to ensure that the needs of the animal for which they are responsible are met. The Act goes on to specify that certain things must be suitable, including the animal’s environment, diet, any need it has to be kept with other animals or by itself, or to exhibit normal behaviour patterns.
- 1.2.5 The new welfare offence is broad enough to encompass animals being abandoned, if they are left in circumstances likely to cause unnecessary suffering and where their needs are not being met as required by the new duty. Similarly, a person who has left a dog in a hot car for any length of time may well have failed to meet the need of that animal to have a suitable environment under the Act. The penalty for this new offence reflects the wide spectrum of conduct which could occur. The maximum sentence available is six months imprisonment or a fine not exceeding level 5 (currently £5,000).
- 1.2.6 In addition to the criminal penalties which can be imposed for offences under the Act, the court can also, following conviction, take away animals from their owners and provide for their disposal. Disqualification orders can also be made and this can prohibit people from keeping animals or having control or influence over the way animals are kept, dealt with or transported. The legislation therefore affects domestic pet owners, businesses, farms, transportation companies, vets, riding establishments etc.

1.3 Enforcing the Act

- 1.3.1 The new Act provides discretionary enforcement powers to local authorities i.e. district and county councils. There is no new statutory duty relating to this Act.
- 1.3.2 The lack of specific guidance at this time on enforcement issues has led to uncertainty on how to deal with problems brought to our attention. The Kent Environmental Health Managers Group is currently considering this issue in liaison with Kent County Council officers and the RSPCA.
- 1.3.3 We anticipate that responsibilities for enforcing the Act will be split between the County Council and districts. This may see districts taking responsibility for animals in a domestic setting with the county enforcing the Act where farm and other animals are involved.
- 1.3.4 The Act allows for the appointment of inspectors. It is envisaged that it will be necessary to appoint a veterinary officer as an inspector if the discretionary enforcement power is to be utilised. This will have a budgetary impact, the exact level of which will depend upon the number of complaints received or investigations undertaken.
- 1.3.5 The Animal Welfare Act 2006 is not included in the Council’s Constitution. A report will be presented to Council by the Monitoring Officer recommending

relevant changes including delegation of the function to the Director of Health and Housing.

1.3.6 The changes to the Constitution are detailed below in bold text:

*“DHH 100. To be responsible for the Council’s environmental health and housing functions including the following: food safety, health and safety, dog control and pest control, **animal welfare**, environmental protection and public health, refuse collection, street cleansing, recycling and public conveniences and to inspect the borough and research as necessary the need for services and to plan and implement programmes and appropriate action as allowed by the following scheme of delegations”; and*

*“**DHH142. To deal with all aspects of the welfare of animals under the Animal Welfare Act 2006 including the power to appoint Inspectors under the Act and to carry out any enforcement work including the investigation and prosecution of all relevant offences and to take action to recover costs expended”.***

1.4 Legal Implications

1.4.1 The legislation does not impose a statutory duty on the authority to enforce the Act, rather it imposes a discretionary power as outlined in the report.

1.5 Financial and Value for Money Considerations

1.5.1 The Act will have cost implications for the authority. The requisite level of training and skill required to enforce the Act will require competent veterinary officers to be appointed. Ongoing costs, including veterinary inspection fees, will clearly depend upon the number of cases dealt with by officers. Having regard to the level of complaints to date, costs are expected to be minimal. Any future arrangements agreed with Kent County Council will reduce these costs and a coordinated approach should be the preferred way forward.

1.6 Risk Assessment

1.6.1 The failure to have in place procedures for dealing with the new legislation will prevent officers being able to effectively and efficiently enforce its provisions when complaints are received.

1.7 Policy Considerations

1.7.1 If the discretionary powers are utilised, enforcement will be undertaken, where necessary, in compliance with the Environmental Health and Housing Enforcement Policy.

1.8 Recommendations

1.8.1 It is **RECOMMENDED** that Cabinet:

- 1) **NOTE** the new function and associated powers relating to the Animal Welfare Act 2006 as detailed in the report and endorse the use of the discretionary powers as indicated in the report;
- 2) **REQUEST** the Director of Health and Housing to work with the Kent districts and Kent County Council to provide a Memorandum of Understanding in respect of the enforcement of this legislation; and
- 3) **RECOMMEND** to Council that the Constitution is amended to deal with the provisions of the Animal Welfare Act 2006.

Background papers:

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Nil

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