

Irish Zoo Licence Guidance notes

GN03 | Exemption criteria and application

Introduction

- 1.1 Statutory Instrument No. 440 of 2003 European Communities (Licensing and Inspection of Zoos) Regulations 2003 ('the Regulations') requires the inspection and licensing of all zoos in Ireland. The Regulations aim to ensure that, where animals are kept in enclosures, they are provided with their physical and behavioural requirements to ensure they experience a good quality of life and to give effect to the provisions of Council Directive 1999/22/EC which include delivery of conservation and education measures.
- 1.2 This guidance deals with measures that fall to the licencing authority in their role as the zoo licencing authority. It should be read in conjunction with the Regulations. It should not be taken as an authoritative statement of the legal effect of the Regulations.
- 1.3 The provisions of the Animal Health and Welfare Act 2013 S.I. No. 15 of 2013 also apply to animals in zoos, included those given an exemption from the Regulations.
- 1.4 Section 3(1) of the Regulations states that 'a person shall not operate a zoo unless the person has been granted a licence or an exemption under the Regulations'. A person who contravenes Section 3 paragraph (1) is guilty of an offence.
- 1.5 A 'zoo' as defined under European Directive 1999/22/EC is a permanent establishment where animals of wild species (as defined above) are kept for exhibition to the public for 7 or more days a year, with the exception of circuses, pet shops (as defined above) and establishments which Member States exempt from the requirements of this Directive on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of this Directive. Note: where a permanent establishment is closed to the public but maintains a collection of wild animals kept for the purposes of exhibition to the public external to the facility, on 7 or more days in a twelve month period, then the holding facility is classed as a zoo with regards to these regulations. This includes 'Hawk Walks', 'Mobile Zoos' and other similar operations.
- 1.6 As defined in the Standards, where a permanent establishment is closed to the public but maintains a collection of wild animals kept for the purposes of exhibition to the public external to the facility, on 7 or more days in a twelve-month period, then the holding facility is classed as a zoo with regards to the Regulations. This includes 'Hawk Walks', 'Mobile Zoos' and other similar operations.
- 1.7 The European Directive 1999/22/EC provides Member States with the option to provide collections with an exemption from the requirements of any zoo licencing processes on the grounds that the collection does not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of the Directive.
- 1.8 Section 11 of the Regulations provides for the provisions of the Directive with respect to the

issuing of an exemption from the requirements of the Regulations on the same grounds as defined by the Directive. Section 11 specifies that an exemption may be granted but only if:

- (a) the zoo does not or will not exhibit a significant number of animals or species to the public, and
- (b) the exemption will not jeopardise the protection of wild fauna or the conservation of biodiversity

1.9 A zoo is either exempt or not exempt, the Regulations do not allow for partial exemptions to be applied to the whole or individual components of the zoo. Where a zoo is not considered to meet the exemption criteria then the full Regulations apply.

Exemption for particular zoos

2.1 Section 11 provides the Minister with powers to exempt a zoo from the requirements of the Regulations for a small zoo or for a zoo exhibiting only a small number of different kinds of animals that meets the criteria for exemption as defined in these guidance notes. Each case will be treated on its individual merits.

2.2 Under section 11 the Minister may issue an exemption to the effect that the Regulations shall not apply to a particular zoo. The Minister will take account of the health, safety or welfare of the animals and visitors to the zoo, even if it is small or has only a few different species in reaching a decision. The Minister must be satisfied that the exemption does not detrimentally impact on the protection of wild fauna or the conservation of biodiversity. The Minister will also want to be satisfied that the animals are not of a hazardous nature.

2.3 If an exemption is issued the licensing authority will have no powers under the Regulations to inspect the zoo. However, in practice, the licensing authority is advised to review the exempt status on an annual basis. If the nature of the zoo changes dramatically through expansion or the acquisition of hazardous species, the licencing authority is advised to notify the zoo operator with any information they have which might suggest the exemption is no longer appropriate. The Minister has the power, after consulting the licencing authority and operator, under section 11(5) of the Regulations to revoke any such exemption, thereby requiring the zoo operator to obtain a zoo licence or face prosecution if the zoo continues to operate without one.

2.4 In reaching a decision on any request for an exemption under section 11, the Minister will consult such persons on the list referred to in section 12 of the Regulations as they see fit. Account will also be taken of the guidance notes and exemption criteria, with each case assessed on its own individual merits. Any exemption made under section 11 of the Regulations may be varied or revoked by the Minister on having consulted the licencing authority and such persons on the list as they thinks fit, and only where the Minister is satisfied that doing so is not prejudicial to the protection of wild animals and the conservation of biodiversity. The Minister will notify the licencing authority and the zoo operator in writing of any exemption made or of any revocation or variation to such an exemption.

Application for an exemption

3.1 It is for the zoo operator to apply for an exemption.

3.2 The application for an exemption must:

- (a) be made in writing to the Minister using the exemption application form
- (b) identify the location of the zoo

- (c) list in taxonomic order, using the scientific name and the common name, the species, or, where appropriate, the sub-species, of animals kept or to be kept for exhibition at the zoo (an example is found within the Irish Standards of Modern Zoo Practice)
 - (d) specify the numbers of each group of those animals
 - (e) Provide evidence that the exemption, if issued, will not jeopardise the protection of wild fauna or the conservation of biodiversity
 - (f) be submitted by the 1st October for the following year
- 3.3 Exemption applications will be reviewed by the licencing authority, with assessment undertaken by the appointed zoo inspectors. Assessment will often be undertaken by reviewing the submitted documentation but may also take into account site inspections or public multimedia such as websites or social networking groups to ensure an accurate assessment is undertaken.
- 3.4 If a person is granted an exemption, the Minister shall give the person written confirmation of the exemption coming into force, the duration of the exemption and the grounds on why it was deemed appropriate.
- 3.5 If a person is refused an exemption, the Minister shall give the person written reasons for the refusal.
- 3.6 An operator granted an exemption under this Regulation shall, as soon as possible, notify the licencing authority of any significant increases in the numbers of animals or species exhibited at the zoo for which the exemption was granted.
- 3.7 Any decision made by the Minister relating to an application for an exemption may be revoked or varied by the Minister.
- 3.8 The Exemption Application form is available from the licencing authority.

Duration of an exemption

- 4.1 An exemption has a duration of 12 months operating from the 1st of January to the 31st December of the year following the year of assessment.
- 4.2 In the case where an initial assessment is undertaken and an exemption is first approved then the exemption maybe issued to include the current year in addition to the exemption ending on the 31st December of the following year of the assessment. This is to prevent the need for unnecessary assessments and inspections for the operator twice in the same year. Such 'two year' exemptions are only issued in the year where an initial exemption is first assessed and approved and is at the discretion of the licencing authority.
- 4.3 An annual review is required to confirm that the exemption is still considered appropriate and this review will take the form outlined in 3.3.

Exemption criteria

- 5.1 Exemption criteria are not defined by the Regulations, only that if an exemption is given the zoo must not, or will not, exhibit a significant number of wild fauna or species to the public, and that the issuing of the exemption will not jeopardise the protection of wild fauna or the conservation of biodiversity.

- 5.2 To ensure that the criteria set out in Section 11(1) of the Regulations are protected the following guidance has been provided to clarify the requirements needed to be met before an exemption will be considered or approved. Each case will be treated on its individual merits.
- 5.3 Exemption from the regulations will be considered if a collection:
- (a) does not contain any wild species that are mammals;
 - (b) contains only non-hazardous wild species as defined by being animals not listed in categories 1 and/or 2 of Appendix twelve of the Irish Standards of Modern Zoo Practice;
 - (c) contains non-conservation sensitive wild species as defined by being animals not listed in Appendix I of CITES and/or listed in the following categories of the IUCN Red List of Threatened species: Extinct in the Wild; Critically Endangered; Endangered; or Vulnerable;
 - (d) does not normally exceed 100 specimens.
- 5.4 Wild species, for the purposes of these guidance notes, are as defined in the Standards as for 'wild animals': means any animal not normally domesticated in Ireland as outlined in Appendix thirteen of the Standards and including species in groups 3,4, and 5.
- 5.5 Whilst all exemption applications will be considered, failure to meet the criteria as set out in 5.3 will likely result in the refusal of an exemption.
- 5.6 Collections operating under the name, or culture, of a 'Farm Park', 'Sanctuary', 'Haven' or other such name may still be classed as a zoo even if the word zoo does not feature in their name if they meet the clearly defined definition of a zoo. Automatic exemptions will not occur in such situations and it is the responsibility of the collection to demonstrate that it meets the defined criteria, set out in this document, for an exemption to apply. Assessment for suitability of the application of an exemption will occur during the exemption application process and operators are advised to seek guidance from the licencing authority where they are unsure if they are a zoo or not.
- 5.7 Zoological collections that operate within another business, for example a theme park with a zoological collection, or a hotel or leisure facility with wild animals only accessible to guests entering the main business, are, for the purposes of the Regulations, still considered to be a zoo if the operation meets the definition of a zoo. The term 'public', when defining the definition of a zoo, is considered, for the purposes of the Regulations and the Standards, to include animal collections where members of the public have access either directly, indirectly through entrance to the main business, and/or access to any animals kept off show but maintained for the purposes of public exhibition, fee paying or not.
- 5.8 A collection is considered to be private, and exempt from the Regulations, if it is privately owned and only accessible by the owner and associated friends, family and members of staff. Such collections do not need to apply for an exemption as they are not, by definition, a zoo. 'Private' collections may fall into the definition of a zoo if they were to have open days that totalled seven or more days in a 12-month period where members of the public were admitted and as such the collection would require a zoo licence in such circumstances.
- 5.9 In exceptional circumstances specific conditions may be applied to the exemption which define the nature of the exemption. This may be applied for rare situations where, in the opinion of the Minister, following advice from the inspectors, an exemption would be suitable but the collection does not meet the criteria as outlined in 5.3. Such exceptional circumstances will not be considered for collections that house primates, large to medium carnivores, crocodylians or elephants of any species.

Refusal of an exemption

- 6.1 Section 11(3) states that if a person is refused an exemption, the Minister shall give the person written reasons for the refusal.
- 6.2 Section 11(5) allows the Minister to revoke their decision or vary an exemption at any time.
- 6.3 If an exemption is granted but the situation of the zoo changes, for instance they acquire a small number of mammals or the number of specimens exceeds 100 individual animals, then the onus is on the operator to inform the licencing authority of this change as soon as possible. This may result in the exemption being reviewed and revoked, meaning the Regulations then apply to the zoo.
- 6.4 Part 5 of the Regulations allows the operator to appeal against the decision made in the case of refusal or revocation of an exemption. This appeal must be brought within a period of 28 days of the notification to the operator by the Minister of the decision made.

Supporting documentation guidance

- 7.1 The exemption application form provides guidance and the details of the specific information required for the application for an exemption. It also outlines the assessment process that the inspector undertakes.
- 7.2 There are two specific areas where supplementary document must be attached to the exemption application. The first is a current Animal Stock Inventory – typically a stock list that reflects the population of the collection in the preceding year, unless recent changes have been made with large increases or decreases in the animal population where the previous year may not be reflective of the current situation. The second is documented evidence that an exemption, if issued, will not jeopardise the protection of wild fauna or the conservation of biodiversity.
- 7.3 The annual stock record must include the following:
- (a) common and scientific names of the species;
 - (b) total in the collection at 1 January of the preceding year of the application;
 - (c) number of arrivals into the collection from all outside sources during the year;
 - (d) number of births or hatchings within the collection during the year;
 - (e) number that died including culls;
 - (f) number that departed the collection, including sales, breeding loans, etc.;
 - (g) total remaining in the collection at 31 December;
 - (h) the sex of each animal, where known, must be recorded – e.g. 1.2.3 indicates one male, two females and three unsexed.
- 7.4 The records should be set out in a multi-column format as follows:

Common name	Scientific name	CITES Appendix / EU Annex	Haz Cat	Total at 1st Jan 2015	Arrived	Born	Died	Departed	Total at 31st Dec 2015
Black tailed marmoset	<i>Mico melanurus</i>	2 / B	2	1.1.0	1.2.0	0.2.0	1.0.0	0.0.0	1.5.0

- 7.5 The documented evidence that an exemption, if issued, will not jeopardise the protection of wild fauna or the conservation of biodiversity should constitute a written document or letter that simply states:

“An exemption for (the named collection), if issued, will not jeopardise the protection of wild fauna or the conservation of biodiversity on the following grounds: (list the rationale)”

The grounds need to be considered and relevant, reflecting an accurate representation of the situation for the individual zoo as to why an exemption should be considered with respect to not risking jeopardising the protection of wild fauna or the conservation of biodiversity in Ireland.

There are many reasons why this maybe the case, for example “the animals in the collection are all native species to Ireland”; “the species are a small number of tropical fish that would be unable to survive if accidentally or maliciously released into the wild and carry no known parasites”; or “the collection consists of a small number of tropical butterflies unable to survive outside of a tropical house if accidentally released”.

Evidence provided will be considered alongside the other elements of the assessment, as outlined above, in making the final decision as to whether an exemption is appropriate or not.

Exemption issue number

- 8.1 Zoo exemptions are issued with a dedicated number for each exemption application and approval. The licence number will be issued in the following format:

‘ZOO / E / Year of original exemption / Year current exemption issued / Consecutive inspection number issued for that year’ e.g. ZOO / E / 2015 / 2016 / 02