

SUBJECT:	Amendments to licensing delegations
REPORT OF:	Officer Management Team - Director of Services
	Prepared by - Head of Health and Housing

1. Purpose of Report

1.1 This report seeks approval for amendments to the current Scheme of Delegations in connection with licensing matters, primarily taxi and private hire licensing.

2. Links to Council Policy Objectives

2.1 The provision of an efficient and effective licensing service contributes to the Council's Corporate Plan Key Theme 3 of safe communities.

3. Background

3.1 Current delegations regarding taxi and private hire matters are generally set out in the Council's Constitution, Part 3, Responsibility for Functions. These delegations are repeated at Section 10 of the Council's Hackney Carriage and Private Hire Licensing Policy. Delegations to officers that have been approved in the past cover the grant, renewal and refusal of taxi and private hire vehicle, driver and operator licences in particular circumstances. There are currently no powers delegated to officers relating to the suspension or revocation of licences.

3.2 Delegations from the Licensing Committee to the Director of Services relating to taxi licensing matters are set out on pages 37 to 39 of the Constitution, as attached at Appendix 1.

3.3 Appendix 2 to this report sets out the powers available within Sections 60, 61, 62 and 68 of the Local Government (Miscellaneous Provisions) Act 1976 ("1976 Act") and the Town Police Clauses Act 1847 ("1847 Act").

3.4 In summary, Sections 60, 61 and 62 of the 1976 Act permit a Council to suspend, revoke or refuse to renew vehicle, driver and operator licences. The circumstances where these sanctions may be used include for example:

- where vehicles are unfit
- an offence or none compliance with taxi and private hire licensing legislation
- a driver has been convicted of an offence involving dishonesty, indecency or violence
- an operator has engaged in conduct which appears to render him unfit to hold a licence
- a material change has occurred since the operator's licence was granted
- any other reasonable cause.

3.5 Suspensions and revocations take effect at the end of 21 days of notification of the suspension or revocation, except in the case of suspensions of driver's licences where suspensions may have immediate effect if this is in the interests of public safety. If a council suspends, revokes or refuses to renew any licence under this section a right of appeal to the magistrates' court exists. In cases of immediate suspension on public safety grounds the suspension or revocation of a drivers licence remains in place pending the hearing of the appeal, whereas other suspensions or revocations cease to have effect upon the submission of an appeal, pending the appeal determination.

3.6 Section 68 of the 1976 Act permits an authorised officer of the council to suspend a hackney carriage or private hire vehicle licence in circumstances where the officer believes the

vehicle to be unfit. Any suspension issued stays in force until such time as the officer is satisfied as to the fitness of the vehicle. If the vehicle isn't made fit within two months of the issue of the suspension notice the licence is automatically revoked and a right of appeal applies. Currently appropriate delegations are not in place to allow officers to use the suspension powers provided by Section 68.

3.7 In addition to the powers to suspend, revoke and refuse to renew licences there are other delegations detailed in paragraphs 4.5 to 4.7 below that would benefit from updating. These relate to the Council's penalty points system of enforcement for private hire drivers, operators and hackney carriage drivers, authority to prosecute where criminal offences involving taxi and private hire matters may have been committed and amendments to existing licensing delegations to change the line of delegation from the Director of Services to the Head of Health and Housing.

4. Discussion

4.1 From time to time circumstances arise where it would be beneficial for officers to have powers to suspend, revoke or refuse to renew operator, driver or vehicle licences.

4.2 In the case of drivers, examples of the circumstances where it may be beneficial for officers to be able to exercise these powers at short notice in a simple and efficient manner include;

- failure to provide appropriate medical certification or inability to meet the councils medical requirements
- failure to provide up to date criminal record disclosure certification.

It is undesirable for the Council to continue to licence people who have not demonstrated compliance with the Council's requirements which are in place to protect public safety and a delay in taking steps to protect public safety could attract criticism. Similarly, if a driver is charged with or convicted of a serious criminal offence which results in him/her not being considered to be a fit and proper person to hold a licence the ability to revoke a licence very quickly is desirable.

4.3 In the case of operators the same situation applies in relation to Criminal Record Disclosures, but operators are not required to meet any medical requirements.

4.4 Examples of circumstances where it may be appropriate to suspend, revoke or refuse to renew a vehicle licence might include where a vehicle has been involved in an accident, a mechanical defect has been detected, a taxi meter is not working correctly, the vehicle licence plate or door stickers are not correctly displayed, it has not been demonstrated that the vehicle is appropriately insured or the owner has had their taxi or private hire drivers licence revoked or suspended.

4.5 The Council's current Hackney Carriage and Private Hire Licensing Policy contains at section 9.1 on pages 49 and 50 details of a penalty points system of enforcement. A licensed driver or operator may be issued with a notice awarding penalty points if he/she contravenes a licence condition or commits some other infringement, for example failing to report an accident or failing to report a change of details or conviction. It is proposed that the authority to issue penalty notices be delegated to the Head of Health and Housing.

4.6 The policy states that a licence holder shall have a right of appeal in writing to the Head of Environment within 14 days of receiving the notice, and will receive notification of the decision of the appeal within 30 days of receipt of the notice of appeal. However, Section 10 of the policy that details delegations states that appeal against the issue of a penalty points

notice shall be to the Licensing Sub-Committee. In order to clarify this situation it is proposed that the Council's Constitution, Part 3, Responsibility for Functions, is amended to make clear that an appeal against the allocation of penalty points shall be determined by the Head of Health and Housing.

- 4.7 Section 10 of the Council's Hackney Carriage and Private Hire Licensing Policy makes reference to authority to prosecute. The policy states that authority to prosecute shall be referred to the Licensing Committee. It is proposed that for reasons of efficiency the authority to prosecute in relation to taxi and private hire matters be delegated to the Head of Health and Housing in consultation with the Head of Legal and Democratic Services.
- 4.8 In line with current practice it is proposed to change all licensing delegations within the constitution that currently fall to "Director of Services" to "Head of Health and Housing", as it is this Head of Service that currently holds responsibility for licensing matters.
- 4.9 Page 37 of the Council's constitution titled "Licensing Committee" sets out delegations to officers from the Licensing Committee. Paragraph A of this section states "Chief Officers are authorised to arrange for delegated matters to be carried out by appropriate staff in their department". This reference should be updated to refer to "Chief Officers and Heads of Service are authorised to arrange for delegated matters to be carried out by appropriate staff in their department".
- 4.10 Page 39 of the Council's Constitution at paragraph 3A, which relates to "Applications for the renewal of Hackney Carriage and/or Private Hire Drivers Licences granted by the Licensing Sub-Committee" has an omission in that it does not state who this authority is delegated to. It appears delegations that this should refer to the Director of Services, and it is proposed that this should be amended to show the Head of Health and Housing as the officer responsible.

5. Risks, resources and other implications

- 5.1 The recommendations contained in this report are considered to be appropriate from an efficiency, practical and timeliness point of view.
- 5.2 The costs involved in carrying out these licensing functions will involve staff time and resources which will be met within existing budgets. However, if there was an appeal or challenge against the decision of officers or the Licensing Sub-Committee this would result in legal fees to defend the same which we would seek to recover if the appeal or challenge was unsuccessful. In the event of a successful appeal or challenge the Council may also have to pay the applicants costs.

6. Recommendations

- 6.1 Licensing Committee is asked to recommend to Council:
 - a) approval of amendments to the scheme of delegations contained within the Council's constitution to authorise the Head of Health and Housing to exercise powers contained within Sections 60, 61, 62 of the Local Government (Miscellaneous Provisions) Act 1976.
 - b) approval of addition to the scheme of delegations contained within the Council's constitution to delegate to the Head of Health and Housing powers contained within Section 68 to authorise appropriate officers.
 - c) approval of amendments to the scheme of delegations contained within the Council's constitution to authorise the Head of Health and Housing to commence prosecution

proceedings and issue formal cautions in connection with offences created by the enactments controlling or regulating the licensing of hackney carriage and private hire vehicle, driver and operators licences in consultation with the Head of Legal Services and Democratic Services.

- d) approval of addition to the scheme of delegations contained within the Council’s constitution to authorise the Head of Health and Housing to issue penalty notices in accordance with the Council’s hackney carriage and private hire licensing policy.
- e) approval of addition to the scheme of delegations contained within the Council’s constitution to authorise the Head of Health and Housing to determine appeals against the issue of penalty point notices issued in accordance with the Council’s hackney carriage and private hire licensing policy.
- f) approval of amendment of all references to “Director of Services” within the scheme of licensing delegations contained within the Council’s constitution to be amended to “Head of Health and Housing” and for 3A to be amended to show delegation to Head of Health and Housing.
- g) approval of amendment of page 37 of the Council’s constitution titled “Licensing Committee” to refer to “Chief Officer and Heads of Service are authorised to arrange for delegated matters to be carried out by appropriate staff in their department”.

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Background Papers	Local Government (Miscellaneous Provisions) Act 1976. Town Police Clauses Act 1847. Hackney Carriage & Private Hire Licensing Policy adopted 11 December 2007 & updated 12 April 2011.