

Report of	Meeting	Date
Director of Public Protection, Streetscene and Community	Licensing and Public Safety Committee	22 July 2015

AMENDMENT TO SCHEME OF DELEGATION FOR LICENSING

PURPOSE OF REPORT

1. For the Licensing and Public Safety Committee to review the scheme of delegation in relation to taxi licensing and gambling.

RECOMMENDATION(S)

2. That the Licensing and Public Safety Committee recommend to full Council that it authorises the Head of Governance and Property Services to amend the current scheme of delegation to allow the Director of Public Protection, Streetscene and Community to make the decision to refuse private hire and hackney carriage vehicle renewals and to refuse to grant applications for new vehicle licences in consultation with the Chair/Vice Chair of Licensing and Public Safety Committee.
3. The Licensing and Public Safety Committee are asked to recommend to full Council to amend the Council's Scheme of delegation; To allow Officers to revoke a Gambling Premises Licence and the cancellation of licensed premises gaming machine permits issued under the Gambling Act 2005 in respect of the non-payment of an annual fee.

EXECUTIVE SUMMARY OF REPORT

4. The current scheme of delegation was agreed in March 2009.
5. The Director of Public Protection, Streetscene and Community does not have delegated authority to refuse an application for a Hackney Carriage or Private Hire Vehicle renewal or refuse to grant a new vehicle licence. A recent case where a hackney Carriage was presented for renewal and found not to comply with the Council's Vehicle Conditions has highlighted a potential deficiency in the Licensing service in this regard.
6. The issue of refusing a renewal for a Hackney Carriage Vehicle has not presented itself in this way previously as proprietors of hackney carriage vehicle licences generally renew with a suitable vehicle in order to preserve their right to the plate. Therefore the lack of officer delegation has not been an impediment to applicants prior to this case.
7. It is recommended that members agree an amendment which allows delegation to the Director of Public Protection, Streetscene and Community to make the decision to refuse private hire and hackney carriage vehicle licence renewal applications and to refuse to grant new vehicle licences in consultation with the Chair/Vice Chair of Licensing and Public Safety Committee.
8. Officers are subsequently authorised to issue a notice within 14 days to the applicant under Section 60(2) of the Local Government (Miscellaneous Provisions) Act 1976 containing the grounds for refusal and advising the applicant of his right to appeal to the local magistrates' court within 21 days.

9. Officers do not consider that such cases are best brought in front of members. Renewals if granted are turned around in a fairly short period of time. A member of the trade has a reasonable expectation that his or her application may be determined either way in a fairly short time. The decision is primarily a technical one based on vehicle safety and passenger comfort and does not involve the discretion which members bring to bear when for example considering whether a driver is fit and proper in the light of previous convictions. Deferring determination until a committee can be arranged would not be an efficient way of determining applications either for the trade or the Council.
10. Members will note that Section 193 of the Gambling Act 2005 limits any discretion or decision making for the Licensing Authority in its approach in administering the provisions of the Gambling Act 2005 in this regard save for any administrative error associated with the non- payment of the fee. If the annual fee has not been paid then the licence must be revoked unless there has been an administrative error.
11. Officers believe the recommendation as detailed above will allow such matters to be dealt with expeditiously and will promote efficient use of both Officer and Members time, the current situation dictates that any such matters are brought to the attention of Members via a meeting of the Licensing Act 2003 Sub-Committee for a determination where that Committee is compelled to revoke the Licence. It has no discretion to decide otherwise.
12. Members will note that there is no provision to appeal the revocation of such licences / permits under the Gambling Act 2005.
13. The proposed amendments are attached as Appendix 1 in a revised scheme of delegation.

Confidential report Please bold as appropriate	Yes	No
--	-----	----

CORPORATE PRIORITIES

14. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	X

BACKGROUND

15. The current scheme of delegation was agreed by the Licensing and Public Safety Committee on 11 March 2009 and the report is attached as a background paper for reference. The attached document provides all the information in relation to the legal framework for member's consideration.
16. A recent case where the refusal of a vehicle renewal application was the appropriate response by the Council, has highlighted that in the absence of delegated authority, the need to bring the case to Committee may cause a substantial delay in processing applications and as such hinder applicants.

17. Revocation of a gambling premises licence and cancellation of the premises gaming permit when the annual fees are not paid currently requires the matter to be brought before the Licensing Act 2003 Sub-Committee.
18. Part 8 , Section 193 of The Gambling Act 2005 states ; (1) Where the holder of a premises licence fails to pay the annual fee in accordance with regulations under section 184 the licensing authority shall revoke the licence.
19. Part 8 Section 184 of The Gambling Act 2005 states ; (1) The holder of a premises licence - (b) shall pay an annual fee to the licensing authority before each anniversary of the issue of the licence.
20. Schedule 13 of the Gambling Act 2005 states; 17 (1) The licensing Authority which issued a permit shall cancel it if the holder fails to pay the annual fee in accordance with paragraph 9. (2) But a licensing authority may disapply sub-paragraph (1) if they think that a failure to pay is attributable to administrative error.
21. Schedule 13 paragraph 9 of the Gambling Act 2005 states; (1) The holder of a permit (a) shall pay a first annual fee to the licensing authority within such period after the issue of the permit as may be prescribed, and (b) shall pay an annual fee to the issuing licensing authority before each anniversary of the issue of the permit.

IMPLICATIONS OF REPORT

22. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	X	Customer Services	X
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE MONITORING OFFICER

23. The gap in the current Constitution delegating authority to officers to refuse to renew private hire vehicle and hackney carriage proprietor licences is identified in the report.
24. It is unlikely that the delegated power to refuse to renew will need to be exercised very often. The requirement for consultation with Chair or Vice-Chair will provide some member scrutiny of the refusal to renew. The applicant has a right to appeal against the refusal in the magistrates' court within 21 days.
25. It is reasonable for members to approve the cut-off point for receipt of applications to renew a taxi vehicle licence as the close of business on the day before the expiry date. This provides an incentive to licence holders to apply in a timely way; although submission of an application much sooner than the last day is clearly preferable.
26. In relation to the Gambling Act 2005 if a premises has failed to pay its annual fee the licensing authority is legally obliged under Section 193 of the 2005 Act to revoke the licence. There is nothing to be gained by not delegating this function to officers since a committee would need to be arranged to approve a revocation and could not make any alternative decision.
27. Full Council is responsible for the Constitution so any changes to it can only be recommended by Licensing and Public Safety Committee to full Council as far as it is able.

JAMIE CARSON
DIRECTOR OF PUBLIC PROTECTION, STREETSCENE AND COMMUNITY

There is one background paper to this report:

Report Author	Ext	Date	Doc ID
Lesley Miller	5299	8/7/15	***