

Public Document Pack

Mid Devon District Council

Regulatory Committee

Friday, 11 November 2016 at 2.00 pm
Phoenix House, Tiverton

Those attending are advised that this meeting will be recorded

Membership

Cllr D R Coren Chairman
Cllr K Busch
Cllr R J Chesterton
Cllr Mrs F J Colthorpe
Cllr Mrs G Doe
Cllr C J Eginton
Cllr T G Hughes
Cllr D J Knowles
Cllr P H D Hare-Scott
Cllr J L Smith
Cllr L D Taylor
Cllr R Wright

A G E N D A

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

1 APOLOGIES AND SUBSTITUTE MEMBERS

To receive any apologies for absence and notices of appointment of Substitute Members (if any).

2 PUBLIC QUESTION TIME

To receive any questions relating to items on the Agenda from members of the public and replies thereto.

3 MINUTES OF THE LAST MEETING (Pages 5 - 6)

To approve the minutes of the last meeting of the Committee.

4 **ENFORCEMENT UPDATE**

To receive a verbal update regarding any recent enforcement action.

During discussion of this item it may be necessary to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

ACCESS TO INFORMATION ACT – EXCLUSION OF THE PRESS AND PUBLIC

RECOMMENDED that under section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual.

5 **DRIVING QUALIFICATIONS** *(Pages 7 - 12)*

To receive a report regarding driving qualifications for new (and existing) Hackney Carriage and Private Hire drivers.

6 **RE-ADOPTION OF PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976** *(Pages 13 - 20)*

To receive a report regarding re-adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976.

7 **CHANGES TO LEGISLATION (AND PROPOSED CHANGES) AFFECTING HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING** *(Pages 21 - 28)*

To receive a report regarding changes to legislation (and proposed changes) affecting Hackney Carriage and Private Hire licensing.

8 **PROPOSED CONSULTATION ON THE ADOPTION OF NEW MODEL CONDITIONS AND GUIDANCE FOR DOG BOARDING ESTABLISHMENTS** *(Pages 29 - 32)*

To receive a report regarding proposed consultation on the adoption of new model conditions and guidance for dog boarding establishments.

Stephen Walford
Chief Executive
Thursday, 3 November 2016

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

If you would like a copy of the Agenda in another format (for example in large print) please contact Julia Stuckey on:

Tel: 01884 234209

E-Mail: jstuckey@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **REGULATORY COMMITTEE** held on 18 July 2016 at 10.30 am

Present

Councillors

Mrs F J Colthorpe, D R Coren, N V Davey, T G Hughes, Mrs G Doe, J L Smith, L D Taylor and R Wright

Apologies

Councillor

K Busch, R J Chesterton, D J Knowles and P H D Hare-Scott

Present

Officers

Thomas Keating (Lead Licensing Officer) and Sarah Lees (Member Services Officer)

1 **ELECTION OF CHAIRMAN (THE VICE CHAIRMAN OF THE COUNCIL, CLLR T G HUGHES, IN THE CHAIR)**

RESOLVED that Cllr Coren be elected Chairman of the Committee for the municipal year 2016/17.

2 **ELECTION OF VICE CHAIRMAN**

RESOLVED that Cllr Mrs J Doe be elected Vice Chairman of the Committee for the municipal year 2016/17.

3 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from the following Members:

Cllr K I Busch

Cllr R J Chesterton

Cllr P H D Hare-Scott

Cllr D J Knowles

4 **PUBLIC QUESTION TIME**

There were no members of the public present.

5 **MINUTES**

The minutes from the meeting held on 29 February 2016 were confirmed as a true and accurate record and **SIGNED** by the Chairman.

6 **ENFORCEMENT UPDATE**

The Lead Licensing Officer provided the Committee with the following updates:

1. A driver in Crediton had been issued with a simple caution due to having parked on a Hackney Carriage rank. He had said that he had been dropping off a passenger but had admitted this had not been the right thing to do therefore prosecution was not pursued in this case.
2. The Licensing Department had recently suspended a Hackney Carriage and Private Hire driver due to some concerns regarding whether the driver was fit on medical grounds. Contact would be made with the drivers GP to glean more information.
3. A Hearing had recently been held following the receipt of a new application for a Private Hire licence for a vehicle that was 5 years and 45 days old. The policy had stated that new applications would generally only be granted if a vehicle was under 5 years old. However, the Sub Committee had inspected the vehicle and had listened to evidence regarding its condition concluding that the licence could be granted.

A brief discussion took place regarding the licensing of vintage vehicles. It was explained that vehicles used exclusively in connection with weddings did not require a licence. If they were doing other work (i.e. proms) a licence would be required but exceptions could be made so classic vehicles did not necessarily need to have a Mid Devon District Council plate displayed on its bumper.

7 **PUBLIC HEALTH SERVICES ENFORCEMENT POLICY**

The Committee had before it, and **NOTED**, a report from the Public Health and Professional Service Manager presenting the new Public Health Services Enforcement Policy which encompassed the Licensing regulatory functions carried out by the Council.

Discussion had taken place regarding this item in the previous Licensing Committee. No further comments were made.

Note: * Report previously circulated; copy attached to the **SIGNED** minutes.

(The meeting ended at 10.45 am)

CHAIRMAN

AGENDA ITEM

REGULATORY COMMITTEE

11 November 2016

REPORT OF THE DIRECTOR OF CORPORATE AFFAIRS AND BUSINESS TRANSFORMATION

DRIVING QUALIFICATIONS FOR NEW (AND EXISTING) HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS

Responsible Officer: Tom Keating, Lead Licensing Officer

REASON FOR REPORT

1. Mid Devon District Council requires all new hackney carriage and private hire driver's to complete a Driving Vehicle Standards Agency (DVSA) Driver Assessment as part of the application process. Existing drivers are sometimes required to take this test if there are concerns about their standard of driving.

The DVSA have recently notified the licensing authority that this test will be withdrawn from 31 December 2016, although it appears from the relevant website that bookings can no longer be made. As a result, the licensing authority needs to research and establish suitable testing alternatives.

RECOMMENDATIONS

1. That all applicants for a hackney carriage / private hire driver licence be required to produce evidence of successful completion of a driving qualification which is included within a list of acceptable qualifications maintained by the Council (replacing the previous requirement of the DVSA taxi driver assessment).
2. That authority to establish a list of acceptable qualifications is delegated to the Public Health and Professional Services Manager and the Lead Licensing Officer. This will also include the authority to add, amend and remove qualifications from the list.

RELATIONSHIP TO CORPORATE PLAN

1. There are no direct links to the Corporate Plan. The licensing process does however contribute to the public safety of our community and visitors to the district.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	There is no direct expenditure by the Council for these qualifications as the applicant / licence holder is required to arrange and pay for them themselves. However, the options available must not be unreasonably expensive and it is hoped that the alternative options available are similar in cost to the DVSA test that has previously been available.
Legal	None
Risk Assessment	The Council must ensure that licences are only granted (and remain in the possession of) those considered fit and proper. This test contributes to this assessment by ensuring that individuals can drive safely.

CONSULTATION CARRIED OUT WITH:

1. N/A

1.0 BACKGROUND

- 1.1 Mid Devon District Council currently requires all applicants for new hackney carriage and private hire driver's licences to have completed the Driving & Vehicle Standards Agency Taxi Driving Assessment.
- 1.2 This qualification provides an additional measure in assessing an applicant's standard of driving, beyond merely holding a driving licence. The test essentially helps to ensure that applicants can drive in a manner that is appropriate and safe. Furthermore, should concerns ever arise about the driving ability of an existing licensed driver (i.e. they receive penalty points) the licensing authority could require them to take this test.

2.0 WITHDRAWAL OF QUALIFICATION

- 2.1 On 2 September 2016, the Council received notification from the DVSA that the Taxi Driving Assessment will be withdrawn from 31 December 2016. This is because they intend to focus on their core business of providing standard driving tests. A copy of this notification is attached as Annex 1.
- 2.2 Although the notification states that the qualification will be withdrawn from 31 December 2016, the website for booking these tests already states that '*You can't book a new taxi assessment with DVSA*'. It would appear from speaking to other authorities that some testing stations are still available while others have stopped offering the qualification already.

2.3 On behalf of a number of Councils, the Local Government Association has raised concerns with the Department for Transport over the short period of notice given of this decision. It was initially hoped that this would lead to a temporary extension of the existing qualification, however it does not look like this will now be the case.

2.4 In order to ensure that the licensing process can carry on with as little disruption as possible, especially to new applicants, it is important that alternative options are put in place as soon as possible.

3.0 ALTERNATIVES

3.1 The letter from the DVSA suggests that authorities may want to rely upon alternative qualifications as a replacement for the DVSA assessment, however no providers are specified.

3.2 It is suggested that, in the absence of a single recognised qualification provided by a national government agency, the Council maintains a list of appropriate driving qualifications which it considers to be suitable for licensing purposes. Applicants for new hackney carriage and private hire driver's licences will then be required to select from this list and pass a relevant qualification as part of the application process. Similarly, those existing drivers required to take a qualification for enforcement purposes can choose from the list.

3.3 It is further suggested that the maintenance of such a list, including the addition and removal of qualifications, be delegated to the Public Health and Professional Services Manager and the Lead Licensing Officer. This will allow the list to be updated faster and help to ensure that in future, delays are kept to a minimum should the qualifications available be altered.

4.0 RECOMMENDATIONS

4.1 That all applicants for a hackney carriage / private hire driver licence's be required to produce evidence of successful completion of a driving qualification which is included within a list of acceptable qualifications maintained by the Council (replacing the previous requirement of the DVSA Taxi Driver Assessment).

4.2 That authority to establish a list of acceptable qualifications is delegated to the Public Health and Professional Services Manager and the Licensing Lead Officer. This will also include the authority to add, amend and remove qualifications from the list.

Contact for any more information	Tom Keating, Lead Licensing Officer (4618) Simon Newcombe, Public Health and Prof. Serv. Manager (4615)
Background Papers	Hackney Carriage and Private Hire Policy 2016 / Correspondence from the DVSA
File Reference	Licensing/Hackney Carriage and Private Hire
Circulation of the Report	Regulatory Committee

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Tom



Driver & Vehicle Standards Agency

The Axis
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Nottingham
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T 0115 936 6370

www.gov.uk/dvsa

Chief Executive
Local Authority
MID DEVON
EX16 6PP



31 August 2016

DVSA Taxi Driver Assessments

DVSA (and previously DSA) have been conducting Taxi Driver Assessments for participating Local Authorities since 1999. Demand has increased over the years, with a throughput in 2015-16 of approximately 23,000 and a forecast of 28,000 for the business year 2017-18.

These assessments now require considerable examiner resource, at a time when the demand for statutory tests is at an all-time high. The Agency is under pressure to reduce car test waiting times and in order to achieve this, we need to prioritise our activities.

Regrettably, a decision has been made to withdraw the provision of Taxi Assessments with effect from 31 December 2016. We understand that this will be a disappointment and inconvenience to those Local Authorities who currently require their taxi drivers to pass the DVSA assessment.

The Agency also recognises the road safety benefits of such an assessment; therefore, we would point out that there are potential providers such as road safety charities and Driving Instructor representative bodies, who may be interested in providing an alternative service. Details of these organisations can be easily obtained by submitting a general internet search.

Yours faithfully

Neil Wilson
Head of Driver and Driver Training Policy

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AGENDA ITEM

REGULATORY COMMITTEE
11 November 2016

REPORT OF THE DIRECTOR OF CORPORATE AFFAIRS AND BUSINESS TRANSFORMATION

RE-ADOPTION OF PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 WITHIN THE DISTRICT OF MID DEVON

Responsible Officer Simon Newcombe, Public Health and Professional Services Manager

REASON FOR REPORT

1. To set out the final stage of the legal process to confirm the re-adoption of the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') for the whole of Mid Devon administrative area. Part II of the 1976 Act contains provisions relating to the licensing of private hire and hackney carriage vehicles, drivers and operators.

RECOMMENDATIONS

1. That the Regulatory Committee approves the passing of a resolution as set out in Annexe 3 to adopt, to the extent they are not already in force, the provisions of Part II of the 1976 Act in relation to the whole district.
2. That adoption of Part II of the 1976 Act shall come into effect on 12 December 2016, this being a date not less than one-month after the day the resolution is passed.

RELATIONSHIP TO CORPORATE PLAN

1. There are no direct links to the Corporate Plan, nonetheless re-adoption will help ensure taxi licensing standards within the district and contribute to the economy in addition to ensuring public safety of our community and visitors.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	The cost implication relating to the publication of statutory notices has been met from the existing licensing budget. This is potentially recoverable through the licensing fee regime
Legal	This report relates to the adoption of the above provisions. These deal with regulation of private hire and hackney carriage matters.

	<p>The regulation of hackney carriages goes back to the Town Police Clauses Act 1847 (the 1847 Act). Originally, these provisions required adoption in each local authority area. But a number of subsequent provisions (including those of the Public Health Act 1875 and the Transport Act 1985) have meant that the 1847 Act now applies automatically throughout the district.</p> <p>However, Part II of the 1976 Act remains an adoptive provision.</p> <p>The adoption procedure is set out in full in section 45 of the 1976 Act. There are two stages: (1) there must be a resolution by the Council adopting the provisions of Part II of the 1976 Act (the “Adoption Resolution”) and (2) there must be compliance with certain matters prior to the Adoption Resolution. In addition to complying with these two stages there is a pre-condition that the 1847 Act is in force in the area which is met. The procedure and compliance is summarised in Section 2 below.</p> <p>The actual adoption of the 1976 Act is a Council function delegated to the Regulatory Committee under the Council’s Constitution.</p>
Risk Assessment	Without undertaking the process set out herein the Council cannot continue to provide adequate evidence of adoption of the 1976 Act.

<p>CONSULTATION CARRIED OUT WITH:</p> <ol style="list-style-type: none"> 1. The Legal Services Manager 2. Lead Officer – Licensing Team 3. The Chief Executive, Management Team and Leadership Team

1.0 INTRODUCTION

- 1.1 Part II of the 1976 Act contains provisions relating to the licensing of private hire and hackney carriage vehicles, drivers and operators. Adopting the 1976 Act therefore enables the Council’s taxi licensing function to operate including the setting of fees and for carrying out its enforcement duties.
- 1.2 Most recently after the 1976 Act came into force, in May 1994 under the constitution in place at the time, the Environment and Amenities (E&A) Committee resolved that the Council should adopt Part II of the 1976 Act. Following compliance with the statutory procedures this came into effect from 18 August 1994.
- 1.3 A routine service review of the adoption of the Act completed during August 2016 evidenced the resolution above, unfortunately during the intervening twenty-two years the original press notices and the parish/town council notices do not fully survive, therefore cannot be produced.
- 1.4 The outcome of the above review was subsequently highlighted in the report of an audit of the Licensing team by internal audit services also in August 2016. The report recommendation E.2 has set out that the adoption of the Act be re-evidenced and

therefore that Regulatory Committee formally (re)adopt the Act (to the extent it is not already in force) as a high priority. A target date of no later than 31 December 2016 has been fixed in order to allow for statutory procedures to be followed. The audit outcomes were reported and agreed at the meeting of the Audit Committee on 20 September 2016.

- 1.5 Since records can now be scanned/duplicated and held electronically there is a significantly greater chance that the records of adoption will be traceable in the future.
- 1.6 There is no intention to change the existing position with respect to Part II of the 1976 Act therefore all policies, practices, conditions and delegations will continue unchanged where applicable.

2.0 PROCEDURE FOR ADOPTING PART II OF THE 1976 ACT AND COMPLIANCE

- 2.1 The procedure is set out in full in section 45 of Part II the 1976 Act. The Act can be viewed online at <http://www.legislation.gov.uk/ukpga/1976/57> and a copy is also available in the Legal Services team.
- 2.2 There are two stages: (1) there must be a resolution of the Council adopting the provisions of Part II of the 1976 Act (the "Adoption Resolution") and (2) there must be compliance with certain matters prior to the Adoption Resolution as set out below.
- 2.3 Appropriate wording for the Adoption Resolution is set out in **Annexe 3**.
- 2.4 Prior to adoption the Council is required to:

- (a) Publish on two consecutive weeks, in a local newspaper circulating in our area, a notice of our intention to pass the resolution.

An appropriately worded notice was published on the 11 October and 18 October 2016 in the Culm Valley, Crediton and Tiverton Gazette newspapers. The wording of the notice is shown in Annexe 1. For copyright reasons, scanned copies of the original notices cannot be included in this published/publically available report, however copies and originals are held on internal records.

- (b) Serve a copy of the notice, not later than the date on which it is first published above, on the council of each parish or community which would be affected by the resolution.

A copy of the notice was served on the majority of councils by email on 07 October 2016. A full list of all receiving parish and town councils (there are no community councils) is shown in Annexe 2. Two parishes (Clannaborough and Loxbeare) currently have no clerk, chairman or parish meeting therefore cannot directly receive the notice. As an alternative the Mid Devon ward members for these areas have received the notice.

3.0 RECOMMENDATIONS

- 3.1 In consideration of the above, it is recommended that:
 - That the Regulatory Committee approves the passing of a resolution to adopt, to the extent they are not already in force, the provisions of Part II of the 1976 Act in relation to the whole district as set out in **Annexe 3**.

- That adoption of Part II of the 1976 Act shall come into effect on **12 December 2016**, this being a date not less than one-month after the day the resolution is passed.

Contact for any more information	Simon Newcombe (01884 244615 or snewcombe@middevon.gov.uk) and Simon Johnson (01884 234210 or sjohnson@middevon.gov.uk)
Background Papers	<p>Local Government (Miscellaneous Provisions) Act 1976 – Part II, as amended</p> <p>Copies of the statutory notice published in the Culm Valley, Crediton and Tiverton Gazette newspapers on 11 October 2016 and 18 October 2016</p> <p>Copies of statutory notice served on the Parish and Town Councils as listed in Annexe 2 on 07 October 2016, together with relevant cover letter/email and confirmation of receipt</p> <p>Council minute 9 dated 25/04/94 E&A Committee</p>
File Reference	SN/Public Health/Licensing
Circulation of the Report	<p>Chief Executive Management Team Leadership Team Legal Services Manager Lead Officer – Licensing Team Regulatory Committee</p>

ANNEXE 1

Wording of statutory notice published on 11 October and 18 October 2016 in the Culm Valley, Crediton and Tiverton Gazette newspapers and also served on parish and town councils (as listed in Annexe 2):

MID DEVON DISTRICT COUNCIL

Part II Local Government (Miscellaneous Provisions) Act 1976

NOTICE IS HEREBY GIVEN in accordance with section 45(3) of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act'), that it is the intention of Mid Devon District Council ('the Council'), to pass a resolution at a meeting of the Regulatory Committee on 11 November 2016 that the provisions of Part II of the 1976 Act (other than section 45) shall be adopted and shall apply within the District of Mid Devon District Council, with effect from 12 December 2016.

Simon Johnson
Legal Services Manager

ANNEXE 2

List of parish and town councils served the statutory notice detailed in Annexe 1 on 07 October 2016:

Bampton Town Council
Bickleigh Parish Council
Borden Gate Parish Council
Bow Parish Council
Bradninch Town Council
Burllescombe Parish Council
Chawleigh Parish Council
Cheriton Bishop Parish Council
Cheriton Fitzpaine Parish Council
Clannaborough Parish Council*
Clayhidon Parish Council
Coldridge Parish Council
Colebrooke Parish Council
Coplestone Parish Council
Crediton Hamlets Parish Council
Crediton Town Council
Cruwys Morchard Parish Council
Cullompton Town Council
Culmstock Parish Council
Down St Mary Parish Council
Halberton Parish Council
Hemyock Parish Council
Hittisleigh Parish Council
Holcombe Rogus Parish Council
Kentisbeare Parish Council
Lapford Parish Council
Loxbeare Parish Council*
Morchard Bishop Parish Council
Morebath Parish Council
Newton St Cyres Parish Council
Nymet Rowland Parish Council
Oakford Parish Council
Poughill Parish Council
Puddington Parish Council
Sampford Peverell Parish Council
Sandford Parish Council
Shobrooke Parish Council
Silverton Parish Council
Stoodleigh Parish Council
Templeton Parish Council
Thelbridge Parish Council
Thorverton Parish Council
Tiverton Town Council
Uffculme Parish Council
Uplowman Parish Council
Washfield Parish Council
Washford Pyne Parish Council
Wembworthy Parish Council
Willand Parish Council
Zeal Monachorum Parish Council

** do not have a clerk, chairman or parish meeting so notice received by the MDDC ward member(s)*

ANNEXE 3

ADOPTION RESOLUTION

RESOLVED:

(1) To the extent that they are not already in force the provisions of Part II of Local Government (Miscellaneous Provisions) Act 1976 1976 Act, (other than section 45), are to apply to the whole area of the Council on and after the appointed day;

(2) The appointed day for the purposes of this resolution shall be 12 December 2016 (being not before the expiration of the period of one month beginning with the day on which this resolution is passed).

(3) All powers, duties and provisions in the Council's Constitution relating to Part II of the Local Government (Miscellaneous Provisions) Act 1976 and all existing policies, practices and conditions relating thereto shall continue to apply on and after the appointed day.

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AGENDA ITEM

REGULATORY COMMITTEE

11 November 2016

REPORT OF THE DIRECTOR OF CORPORATE AFFAIRS AND BUSINESS TRANSFORMATION

CHANGES TO LEGISLATION (AND PROPOSED CHANGES) AFFECTING HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING

Responsible Officer: Tom Keating, Lead Licensing Officer

REASON FOR REPORT

1. To inform the Committee of proposed changes to the hackney carriage and private hire licensing process as a result of the Policing and Crime Bill and the Immigration Act 2016.

RECOMMENDATIONS

1. That Committee Members note the content of the report.

RELATIONSHIP TO CORPORATE PLAN

1. There are no direct links to the Corporate Plan. It should be noted that the licensing process does however contribute to the safety of our community, as well as visitors to the district.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	The legislative implications may result in additional work for the licensing team which may impact on the fees that are charged.
Legal	The Council must ensure that the licensing process is compliant with relevant legislation.
Risk Assessment	The Council must ensure that the licensing process is compliant with relevant legislation or risk licensing people who are not fit and proper.

CONSULTATION CARRIED OUT WITH:

1. N/A

1.0 Policing and Crime Bill

- 1.1 This Bill is still progressing through the legislative process and amendments have been made in relation to hackney carriage and private hire licensing. The initial amendment stated that Licensing Authorities would have to 'carry out its functions with a view to preventing child sexual exploitation'. This has now been replaced by the following:

'The Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised as to protect children, and vulnerable individuals who are 18 or over, from harm'.

- 1.2 The overall purpose of the licensing regime is to protect the public and this includes protecting children and vulnerable adults from harm, irrespective of this potential new guidance. In considering the proposed new guidance, we are still waiting for the following information:
 - Whether or not the guidance will actually be introduced (the wording states that it 'may' be introduced)
 - The likely timeline for consulting and publishing the guidance
 - Whether or not authorities will be expected to follow the guidance, unless there is a good reason not to.
- 1.3 Members should be aware that the licensing team are looking at this area already, with a view to introducing training for hackney carriage and private hire drivers around the safeguarding of children and vulnerable adults. A further report outlining the specifics of this training will be brought to this committee in the first quarter of 2017 for discussion and agreement.
- 1.4 In recent years there have been a series of child sexual exploitation cases linked closely to hackney carriage and private hire licensing. It is vital that authorities reflect on what has taken place nationally and ensure that practices and processes are reviewed in light of what has happened.
- 1.5 In order to emphasise the importance of these issues it is sobering to remind ourselves of what happened in Rotherham. What follows is a brief summary of what was reported about Rotherham Metropolitan Borough Council following investigations which revealed that over 1400 children had been sexually exploited between 1997 and 2013.
- 1.6 As a whole, the investigation revealed:
 - a Council in denial about serious and on-going safeguarding failures
 - an archaic culture of sexism, bullying and discomfort around race

- failure to address past weaknesses, in particular in Children’s Social Care
- weak and ineffective arrangements for taxi licensing which leave the public at risk
- ineffective leadership and management, including political leadership
- no shared vision, a partial management team and ineffective liaisons with partners
- a culture of covering up uncomfortable truths, silencing whistle-blowers and paying off staff rather than dealing with difficult issues

2.0 Issues directly related to the licensing service

2.1 What follows is a summary of the issues found in Rotherham that directly related to the licensing service. We have included a note on each issue reflecting on the current situation in Mid Devon.

Division of service

2.2 The Councils taxi licensing service was split in to two branches:

- The Policy team which dealt with policy, applications, renewals, suspensions and revocations
- The Enforcement team which dealt with complaints and investigations

2.3 The split of these functions is not common in other licensing authorities and Inspectors found evidence of conflict between the two branches, notably on what kind of evidence could be presented when the Licensing Committee met to consider whether to revoke or suspend a licence.

2.4 The two branches of licensing also used different databases which did not interface, resulting in records being kept in multiple places and inconsistent recording of information in general.

2.5 Meetings were rarely held across the entire service and some officers said that the visibility of senior leaders was poor.

2.6 The licensing team at Mid Devon District Council are not split and actually sit as one group, with the Public Health and Professional Services Manager also located in the same area. This helps to ensure continued contact and helps information flow to all relevant people. Furthermore, there are regular discussions between officers concerning ongoing investigations.

2.7 The licensing team use one piece of software as much as possible and have recently moved to a ‘paperless’ system where documents are scanned on. However, a separate spreadsheet is maintained to record complaints received as the existing system is limited in this respect.

Lack of policy

- 2.8 Inspectors found that Rotherham was behind the times as the licensing service appeared to have few written policies and attempts to draw them up were stymied by interested parties. Inspectors found that the Council's conditions relating to vehicle, driver and operator licences had not changed since 1976, bearing out this contention.
- 2.9 **Members will be aware that our Policy was reviewed earlier this year and the document was lengthened to include a number of appendices to ensure the majority of policies and procedures were located in one place. The Policy regarding previous convictions has been greatly expanded and also includes 'other relevant information', (not necessarily convictions) that will impact on whether or not someone should be considered fit and proper.**
- 2.10 **We are currently awaiting new guidance from the Department of Transport and once this is available we will once again review our policy to ensure it reflects best practice, in as far as this is possible.**

Trade influence and the role of Members

- 2.11 Inspectors were often told that the licensed trade in Rotherham was vocal and demanding and some officers expressed the view that the licensing service seemed more geared towards facilitating the trade than protecting the public.
- 2.12 Members added to this pressure to support the trade. Some who had previously held taxi licences or 'badges' sat on the Licensing Committee. At one point, the Committee had been reluctant to hear any cases not related to matters showing up on DBS checks. That means where there were no actual convictions they would not suspend or revoke licences.
- 2.13 Licensing officers reported that they had received phone calls from Members over perceived delays in the processing of individual applications. Officers would be urged to 'stop wasting time'.
- 2.14 There were instances of Members making representations on behalf of the trade or individual drivers. For example, one Councillor wrote to the Crown Court offering a reference on behalf of a driver who had his licence revoked.
- 2.15 **The licensing team at Mid Devon District Council engage with the trade but there is no evidence that they exert pressure to the point that the system is more geared towards issuing licences than protecting the public. The same can be said for Members and from the licensing team's perspective; we have never experienced interference from Members in terms of carrying out the day to day job, issuing licences or taking enforcement action against applicants and licence holders.**

Complaints and investigations

- 2.16 There were major concerns over the licensing service's ability to undertake thorough investigations giving rise to a perception of undue weight being given to the need to protect drivers' livelihoods over and above the safety of the public.
- 2.17 The service had set too high a threshold of evidence before considering suspension and revocation of a licence. Officers are entitled to apply a 'balance of probabilities' test to alleged offences by drivers, but instead appeared to apply a test of whether something was 'beyond all reasonable doubt'.
- 2.18 Members of the Licensing Committee had not been given sufficient bespoke training on dealing with taxi hearings. Furthermore, after Member complaints the number and nature of documents being provided to Members in advance of suspension / revocation hearings had been reduced. This could diminish the quality of the judgements made and could lead to outcomes which place the public at risk.
- 2.19 The licensing team have always been able to make decisions under delegated authority where concerns arise around a driver's suitability or a vehicles safety and take immediate action (i.e. suspend or revoke). With the re-appointment of a full time enforcement officer in 2015 we are now better equipped to investigate complaints and take a more pro-active approach in enforcement. This includes vehicle inspections and dealing with contraventions. The team are fully aware however that continued efforts must be made in terms of enforcement activity as failing to do so would undermine the licensing process.**
- 2.20 There is now a standard item on committee meetings for an enforcement update and it is hoped this will give Members a good indication of the work undertaken by the licensing team and give them the opportunity to ask any questions they may have.**
- 2.21 When hearings generate a lot of paperwork we now arrange a briefing with Members in the days leading up to the hearing, rather than wait until the day of the hearing itself. It is hoped that this gives everyone enough time to read the documents in full and properly understand the matter(s) for consideration. Furthermore, Members are kept informed of relevant training events and also changes to the licensing process via reports like this one.**

Pressure on staff

- 2.22 Long term sickness had depleted the Principal Officer grade on the enforcement side for some time and an unresolved contractual issue over late working had meant that there was no enforcement around the night time economy. Enforcement officer caseloads were unevenly spread and officers clearly felt understaffed, with one officer commenting that it was sometimes impossible to log off from a telephone which rang incessantly.
- 2.23 The licensing team at Mid Devon District Council is relatively small, currently containing four members of staff (two of which are part time). As a result of the**

nature of the work (i.e. complaints or information may come to light at any time) workloads and caseloads need to be carefully monitored.

2.24 Out of hours work is now becoming more regular than it has been, with night time economy checks being carried out approximately every quarter (in addition to general day to day checks). To put this in to perspective, there were practically no pro-active out of hour's checks in 2014 and nothing regular in 2015. Recent checks carried out with the Police have the benefit of splitting resources and being highly visible to both the trade and members of the public.

3.0 Additional information about the licensing team and future work

- 3.1 Disclosure and Baring Service (DBS) checks are carried out on initial application and then every 3 years, in line with best practice guidance issued by the Department for Transport.
- 3.2 Applicants are advised on making their application that their details may be shared with other agencies to prevent or detect crime. Furthermore, additional questions have recently been added to application forms asking for details of any 'pending' convictions along with information on any previous driving licences they may have held (or been refused) and whether or not these had been suspended or revoked (this is all potential information that would not show up on a DBS).
- 3.3 Members of staff within the Licensing Team have undertaken safeguarding training although this will need to be updated and refreshed from time to time.
- 3.4 As noted in paragraph 1.3 above, the licensing team will be working on introducing safeguarding training to all drivers (and new drivers going forward) as they have the potential to be a vital source of information. It is therefore important that we provide them with the necessary information on spotting and reporting safeguarding issues.
- 3.5 The licensing team are also, at the time of writing this report, working on producing some cards for licence holders that contains information on who to contact in the event of safeguarding issues. It also contains some general points about safeguarding and the idea is that this can be kept in their vehicle so they have the information to hand when it is needed.
- 3.6 Although the licensing team do use one piece of software for the administration of the service it is limited in terms of logging and recording complaints (although this may improve following development upgrades). To this end a separate spreadsheet is currently kept and going forward the licensing team should consider the use of different software packages which enable all of this information to be stored in one place.
- 3.7 Finally, it must be stressed that the work and processes undertaken by the licensing team must be reviewed regularly, evolve where necessary and reflect any future legislative requirements.

4.0 Immigration Act 2016

4.1 The Immigration Act received Royal Assent on Thursday 12 May 2016. In general terms it will:

- introduce new sanctions on illegal workers and rogue employers
- provide better co-ordination of regulators that enforce workers' rights
- prevent illegal migrants in the UK from accessing housing, driving licences and bank accounts
- introduce new measures to make it easier to enforce immigration laws and remove illegal migrants

4.2 The Act can be seen in full here:

<http://www.legislation.gov.uk/ukpga/2016/19/schedule/5/enacted>.

4.3 In terms of the specific impact on licensing, it will introduce new requirements for hackney carriage and private hire licensing by placing a duty on Local Authorities to ensure that applicants for hackney carriage and private hire driver licences, and private hire operator licences are entitled to work in the UK. This includes those already licensed and this may ultimately be at a cost to the Council (potentially rechargeable).

4.4 No official start date for these licensing amendments has been set but at the time of writing this report, it has been suggested that it may be October.

4.5 The Immigration Act essentially amends the Local Government (Miscellaneous Provisions) Act 1976 in a variety of ways and a summary of these amendments is provided below:

Disqualified persons

4.6 Licensing Authorities will have to ensure that applicants have permission to work in the United Kingdom (UK) before granting a driver or operator licence. The Act then stipulates who would be 'disqualified' from holding a licence as a result of immigration status.

Licence duration (driver and operator)

4.7 The Licensing Authority will be prohibited from issuing these licences for a period of time beyond which the applicant has permission to remain in the UK. Licences can however be issued for a shorter period if required.

Lapse of licence

4.8 In relation to both drivers and operators, if the person loses the right to remain in the UK during the lifetime of the licence then the licence itself ceases to have effect.

Return of licence (and driver badges)

- 4.9 In relation to both drivers and operators, the licence (and badges for drivers) must be returned to the Licensing Authority within 7 days of the expiry of the licence. Similarly, they must be returned within 7 days when the licences have ceased to have effect due to the loss of the right to remain in the UK.

Offences

- 4.10 Where the licence has either ended or ceases to have effect, failure to surrender it (and the badges for drivers) to the Licensing Authority within 7 days is an offence.

5.0 Implications

- 5.1 The Licensing Authority must have regard to guidance issued by the Secretary of State when carrying out its new duties. As we are still waiting for this guidance it is not currently known how these additional conditions will work in practice. However, these checks will require additional work on the part of licensing staff and training provided by the Home Office is scheduled to take place in November.
- 5.2 Furthermore, as these checks and additional processes will result in more work for the licensing team it is suggested that once the full implications are realised, the fees currently charged be reviewed and amended where necessary to ensure full cost recovery. The matter will be referred back to this committee should the fees need to be changed.

6.0 Recommendations

- 6.1 That Committee Members note the content of the report and future work required of the licensing team.

Contact for any more information	Tom Keating, Lead Licensing Officer (4618) Simon Newcombe, Public Health and Professional Services Manager (4615)
Background Papers	Immigration Act 2016; Policing and Crime Bill
File Reference	Licensing/Hackney Carriage and Private Hire
Circulation of the Report	Regulatory Committee

AGENDA ITEM

REGULATORY COMMITTEE

11 November 2016

REPORT OF THE DIRECTOR OF CORPORATE AFFAIRS AND BUSINESS TRANSFORMATION

TO CONSULT ON THE ADOPTION OF NEW MODEL CONDITIONS AND GUIDANCE FOR DOG BOARDING ESTABLISHMENTS

Responsible Officer: Tom Keating, Lead Licensing Officer

REASON FOR REPORT

1. The Council is responsible for licensing a number of dog boarding establishments and currently has a set of model conditions in place. These conditions set out the general expectations and requirements for premises and guide officers in carrying out inspections.

The Chartered Institute of Environmental Health has recently issued new model conditions and guidance and this report seeks agreement to consult with the trade, a relevant authorised Vet and the general public on the adoption of these in 2017.

RECOMMENDATIONS

1. That the licensing team consult the existing licensed trade; a relevant authorised Vet and the general public (via the Council's website) on the new 'Model Licence Conditions and Guidance for Dog Boarding Establishments 2016' for a period of 12 weeks from January 2017.
2. Following the completion of this consultation a further report should be brought to this Committee setting out the responses received and providing a recommendation of proposed action (i.e. to adopt, not adopt or amend the proposed conditions and guidance).

RELATIONSHIP TO CORPORATE PLAN

1. There are no direct links to the Corporate Plan. It should be noted that the licensing process does however contribute to animal welfare and links to local business.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	Not at this stage but any additional work can be recharged via licensing fees.
Legal	The Council must ensure that the licensing process is compliant with relevant legislation.
Risk Assessment	The Council must ensure that the licensing process is compliant with relevant legislation and promote animal welfare.

CONSULTATION CARRIED OUT WITH:

1. None at this stage.

1.0 Introduction

- 1.1 Mid Devon District Council is responsible for administering a range of animal licences. This includes dog boarding and catteries; pet shops; dog breeding; dangerous wild animals; riding establishments and zoos. At the time of writing this report a total of 32 animal related licences were in effect. All of these are issued with appropriate conditions and these must be reviewed and updated from time to time.
- 1.2 The Animal Welfare Act 2006 made owners and keepers responsible for ensuring that animal welfare needs are met in terms of:
 - Providing a suitable environment
 - Providing a suitable diet
 - Allowing the animal to exhibit normal behaviour patterns
 - Being housed with, or apart from, other animals (where appropriate)
 - Being protected from pain, suffering, injury and disease
- 1.3 The 2006 Act is supposed to be followed up by secondary legislation to make changes to licence conditions but there has been no official word on this yet. However, the Department for Environment, Food and Rural Affairs (DEFRA) have recently carried out a consultation on reviewing the licensing regime for animal establishments. This consultation posed a number of questions around the licensing process (above and beyond conditions to impose) and when the licensing team receive an update on the outcome of this a further report will be brought to this Committee.

2.0 Licence conditions in general

- 2.1 In 2014 the Council adopted new model conditions for cat boarding establishments, dog breeding establishments and pet shops. These were all conditions produced by the Chartered Institute of Environmental Health (CIEH) and the licensing team have been working with licensed premises since then to ensure compliance. In general, the conditions seek to ensure that animals are provided with suitable:

- Accommodation
- Food
- Exercise
- Protection from injury and disease

2.2 The Council also adopted a set of conditions for dog crèches in 2014 as it became clear that this service was being offered in the area without any specific conditions in place.

2.3 The licensing team have found these updated conditions to be very helpful in clearly communicating to those we licence (and potential applicants) what is expected of them. The conditions also lead officers and Vets (where necessary) in carrying out inspections.

3.0 Model conditions and guidance for dog boarding establishments

3.1 This licensing authority currently licence 8 premises that offer a traditional dog boarding establishment to which the new model conditions would apply.

3.2 The current conditions in place, also produced by the CIEH, date back to 1995. The new proposed conditions were released earlier this year and can be found in full here: <http://www.cieh.org/policy/dog-guidance-2016.html>.

3.3 The document is similar in concept to previous CIEH model conditions that have been adopted by this authority. It covers things like the construction of the premises (from design to build), types of material that should be used, kennel size, areas for exercise, diets, interactions between dogs and general health and welfare issues.

3.4 At this point we wish to consult with those we licence, a Vet duly authorised to undertake inspections under the Animal Boarding Establishments Act 1963 as well as the public via our website, to get views on the proposed conditions. It is hoped that this will allow us to have a better understanding of the implications of these new conditions before deciding firstly, whether or not to adopt or amend them and secondly, to establish a timeline for premises to comply (if they are to be adopted).

3.5 By consulting in early 2017 we can have a clear agreement in place before animal boarding licences are required to be renewed - for member's information, all licences expire at the end of the calendar year as a result of the legislation.

3.6 Members should note that the adoption of model conditions does not prevent the local authority from removing; amending or adding additional conditions to a particular licence should it be considered appropriate based on the merits of the case.

4.0 Recommendations

4.1 That the licensing team consult the existing licensed trade; a relevant authorised Vet and the general public (via the Council's website) on the new 'Model Licence Conditions

and Guidance for Dog Boarding Establishments 2016' for a period of 12 weeks beginning in January 2017.

- 4.2 Following the completion of this consultation a further report should be brought to this Committee setting out the responses received and providing a recommendation of proposed action (i.e. to adopt, not adopt or amend the proposed conditions and guidance).

Contact for any more information	Tom Keating, Lead Licensing Officer (4618) Simon Newcombe, Public Health and Professional Services Manager (4615)
Background Papers	Model Licence Conditions and Guidance for Dog Boarding Establishments 2016
File Reference	Licensing/Animals
Circulation of the Report	Regulatory Committee