

REGULATORY COMMITTEE
4 JULY 2019

THE SCHEME OF DELEGATIONS FOR FUNCTIONS OF THE REGULATORY COMMITTEE

Cabinet Member(s): Cllr Dennis Knowles, Cabinet Member for Community Well-being

Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

REASON FOR REPORT:

This report seeks Members' support to supplement and clarify the scheme of delegations as set out in the Council's Constitution in relation to the following Regulatory Committee functions:

- Hackney Carriage and Private Hire licensing
- Animal licensing
- Beauty related registrations
- Caravan Site licensing
- Sex Establishment licensing
- Hypnotism

The proposals relate to the following matters:

- Powers to administer and enforce the relevant legislation
- Setting of policy and relevant fees

RECOMMENDATIONS:

That the Regulatory Committee recommends to Full Council –

- (a) That the delegations set out in this report (attached as Annex 1) be approved;**
- (b) That the Constitution be amended to incorporate the delegations so approved.**

Financial Implications: None

Legal Implications: It is essential that delegations are clear, so that a decision is only taken by the person with authority to make it. It should also be noted that

depending on the relevant legislation, an Officer's decision can still be appealed, just like decisions of Regulatory Sub-Committees.

Risk Assessment: In the event of a successful challenge of a decision, the Council could be liable for costs.

Equality Impact Assessment: The general public sector equality duty within the Equality Act 2010 has overarching application and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity within and between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

When carrying out any of its functions, the Council must comply with this duty.

Relationship to Corporate Plan: This proposal links directly to the licensing function which has the aim of ensuring the safety and wellbeing of our community.

Consultation: No consultation has been carried out.

1.0 Introduction

- 1.1 Mid Devon District Council are responsible for the licensing and registration of various activities and businesses in Mid Devon. These regulatory functions are split between the Licensing Committee and the Regulatory Committee.
- 1.2 The Licensing Committee covers the Licensing Act 2003 and the Gambling Act 2005. The Licensing Authority must have a Policy (or 'Statement of Principles') for both of these functions and in line with national guidance, issued under S182 of the Licensing Act and S25 of the Gambling Act, this Authority has set out in a table the responsibilities of the Full Council; Full Licensing Committee; Sub-Committees; and Officers. This table is to be found at Appendix A to the Constitution. It is now proposed to have a similar table for the duties of the Regulatory Committee.
- 1.3 In addition to this, it should also be noted that there is a Scheme of Delegation for Public Health, which sets out the authority that specific Officers have and the decisions they may make. These particular authorisations can be updated by the Group Manager for Public Health and Regulatory Services and compliment the current proposal. It is anticipated that that the Group Manager for Public Health and Regulatory Services will essentially be responsible for setting the specific processes and practices in which delegated decisions are made.

2.0 Proposal and general Principles

- 2.1 The proposed table of delegated functions for the Regulatory Committee is attached as **Annex 1**. If approved, this would become Appendix AA to the Constitution.
- 2.2 At present, licensing matters are usually dealt with by Officers, Sub-Committees or the Full Regulatory Committee. In general terms, Officers are responsible for the day to day activities, such as granting a licence that is in accordance with a relevant policy; a Sub-Committee is responsible for considering applications that are not compliant with a relevant policy; and the Full Regulatory Committee is responsible for setting a Policy (and referring it on for further approval if necessary).
- 2.3 Within the current structure there are exceptions to these general rules. For example, Officers may, under delegated authority, immediately revoke a Hackney Carriage / Private Hire Drivers Licence should there be an immediate public safety concern. In such situations, having to refer the issue to a Sub-Committee would delay any action and potentially allow a licence holder to continue to work, endangering the public.
- 2.4 The proposal is to delegate with greater clarity existing and further powers to relevant Officers who will essentially then act in accordance with the relevant adopted policy. Where there is no current policy in place, decisions made by Officers will reflect the legislation and any relevant Guidance / Best Practice that may be available. This includes consideration of the Operations Enforcement Policy, which can be viewed here:

<https://www.middevon.gov.uk/residents/health-and-wellbeing/public-health-and-regulatory-services/>
- 2.5 It is important to note that although Officers would have the ability to make decisions on a variety of matters (should the proposal be approved), this does not prevent them from referring issues to a Sub-Committee (or the Full Committee), if it is considered appropriate. This decision will be made on a case by case basis and may be, for example, because the relevant policy is not definitive (although an Officer may still make a decision) or an issue has resulted in significant interest locally.
- 2.6 Additionally, decisions made under delegated authority will only be made by Officers that have the relevant responsibility (which encompasses the knowledge and experience required for a role). As is the case for decisions made by a Regulatory Sub-Committee, a statutory right of appeal to the Magistrate Court exists for many decisions that an Officer may make. This means that the merits of a decision can still be challenged and decisions will never be made lightly.

3.0 Examples of delegations in practice

- 3.1 It is not the intention of this report to detail all potential scenarios where delegated authority will be used. **Annex 1** provides an overview and in order to provide some additional information for Members about the likely impact of the proposals, the following examples below should be noted.
- 3.2 Before giving these examples, it is important to note that each decision will always take in to account the individual merits of the case. Therefore the following examples should not (and must not) be considered as actual decisions that have or will be taken in the future.

New Hackney Carriage / Private Hire Driver Applications

- 3.3 The Hackney Carriage and Private Hire Policy sets out some specific requirements for applicants and also states that in certain circumstances, a person will not be licensed. An example of this would be if they had a previous conviction for a crime resulting in someone's death. In such situations, it is considered likely that an Officer will refuse the application, without referring the matter to a licensing Sub-Committee.
- 3.4 This is an example is of a particularly serious crime, reflected in the Policy as a situation when a licence should never be granted. It is, however, possible that situations will arise where an applicant, although not fully compliant with the Hackney Carriage and Private Hire Policy, makes a significant and compelling argument for a licence to be granted. In such cases, a departure from Policy may be considered appropriate by an Officer, but the matter will still be referred to a Sub-Committee. This is in recognition of the fact that the decision itself would be contrary to the Policy that this Authority has set.
- 3.5 When something like this is referred to a Sub-Committee, the Officer's report will include details of the case, the reason it has been referred to a Committee and also include an Officer recommendation (i.e. whether the licence should be granted or refused).

Existing Hackney Carriage / Private Hire Driver Licence Holders

- 3.6 As is the case for applicants, the Hackney Carriage and Private Hire Policy also covers the requirements for existing licence holders. Issues of convictions (or alleged offences) during the life of the licence, especially if serious, are likely to be dealt with by Officers.
- 3.7 For example, should the Licensing Team receive information from the Police under the Common Law Disclosure system that a licensed driver has been arrested for an alleged serious offence, it is likely that an Officer will deal with the matter directly. From a practical perspective, the Officer will speak to the driver and try to gather as much information as possible, before potentially revoking the licence. This is done as soon as notification of the issue is received because the risk to the public is such that a decision cannot be postponed until a Sub-Committee meeting is arranged.

- 3.8 However, there are circumstances when a licensed driver has general compliance issues that in themselves (and individually) do not warrant immediate enforcement action, but cumulatively, indicate that they are no longer 'Fit and Proper' to hold a licence. In this situation there has likely been a phased approach to enforcement by the Licensing Team (verbal discussion / written warning etc.) that will ultimately result in the matter being referred to a Regulatory Sub-Committee, as opposed to an Officer making a decision under delegated authority.

Animal related applications

- 3.9 The new Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 have recently come into effect and as a result, it is considered appropriate to give some information about the impact that this will have on Officer delegation and decision making.
- 3.10 The new legislation has introduced the concept of Suitably Qualified Inspectors. This is defined as:
- Any person holding a Level 3 certificate recognised and regulated by the Office of Qualifications and Examinations Regulation (relevant to inspecting and licensing animal activities businesses)
 - Until October 2021, any person that can show evidence of at least one year of experience in inspecting animal activities businesses.
- 3.11 There are three Suitably Qualified Inspectors within the Licensing Team. As they have the required expertise, it seems appropriate that between them, they make the relevant decisions in relation to animal related applications rather than involve the committee in specific applications.
- 3.12 For Members information, it will be important that the Licensing Team correctly allocate applications to specific Officers. This is because different Officers may have to fulfil different statutory requirements. For example, an application will initially be assigned to an Officer ('Officer A'), who will ultimately decide whether or not to issue a licence following an inspection. As this Officer meets the criteria for competence, it is suggested that they are well placed to refuse a licence should there be concerns (it should also be noted that a Vet may also be consulted).
- 3.13 Should 'Officer A' issue a licence, they will do so with a star rating. The legislation then allows for the applicant to appeal this star rating and the case must then be referred to a separate Suitably Qualified Inspection ('Officer B') to review and re-assess. 'Officer B' must have had no involvement with the initial process and this is why there must be a clear separation of duties.
- 3.14 Having three Suitably Qualified Inspectors is considered necessary because some premises are particularly big and require two Officers to be on site for the initial inspection. The third Officer in such cases can then act as the independent assessor, should the star rating be appealed.

- 3.15 The Licensing Team is experienced in such separation of duties, as similar principles apply under the Licensing Act and also in relation to the pre-application advice service.

NOTE: The Licensing Team will begin work on an animal related licensing policy this year, following on from the introduction of the The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. This policy will be referred to the Full Regulatory Committee, along with Full Council.

4.0 Reasons for decisions and processes

- 4.1 As is the case for any decision made the Regulatory Sub-Committee, when an Officer makes a decision, for example in relation to a Hackney Carriage and Private Hire licence, the rules of natural justice will be applied. This enshrines the following basic principles:

- A party must be informed of the allegation / information against them
- A party must have a chance to put their case forward
- A person who has an interest in the matter must be disqualified from hearing it

- 4.2 In such cases, the processes in place will reflect these principles. Additionally, for a number of decisions, the right of appeal exists to the Magistrate Court, just as it would do against a decision of a Regulatory Sub-Committee. Care will be taken by Officers to provide reasons for the decision taken, as these will be important should an appeal be made.

- 4.3 With regards to the specific processes for decision making, it is proposed that the Group Manager for Public Health and Regulatory Services be given the ability to put them in place. This is because there are, potentially, a range of different decisions that need to be made and one process will not suit all issues. Additionally, allowing the Group Manager for Public Health and Regulatory Services to modify processes directly means that the department can react quickly to (and address) any issues, such as legislative changes and updated guidance.

- 4.4 As highlighted in Paragraph 3.15, the Licensing Team is experienced in separating the roles and responsibilities of Officers and this provides a solid base on which to delegate further powers.

5.0 Reporting

- 5.1 It is important that the Regulatory Committee remain informed of all relevant matters and decisions. The Licensing Team will provide notification of all

significant decisions made under delegated authority to the Chair of the Regulatory Committee as and when they are made. Additionally, updates will be provided to the Full Regulatory Committee on at least an annual basis. This will include details of:

- Any adoption of, or variation to fees
- Any suspensions or revocations of licences, permits or registrations
- Any refusals of applications
- Any appeals

6.0 Additional considerations

Potential benefits of the proposal

- 6.1 Broadly speaking, the proposal would result in fewer hearings and more efficient processes. As a Licensing Authority, we do not have a large number of hearings but each one does take up considerable amount of time. As a result, there would be a general saving of time for a number of Officers and Interested Parties. This includes Member Services; Legal Services; Members, and Licensing Officers.
- 6.2 From a practical perspective, the proposal would also likely result in quicker decisions being made. Although the current process is not considered slow, hearings themselves can take weeks to organise. Scheduling appointments for Officers, Members and rooms can delay the process, as can the creation of a report and its circulation, along with any associated paperwork.

Potential drawbacks to the proposal

- 6.3 With Officers making more decisions and referring fewer issues to Sub-Committees, there is potential for Members to become less familiar with elements of licensing. In order to guard against this, the Licensing Team are happy to run more frequent training sessions on licensing, if required, and also have more in depth briefings when hearings actually occur. This will ensure that the relevant information is relatively fresh in the mind of Members when specific issues are being considered.
- 6.4 The proposal would also give Officers additional responsibilities. For example, should a decision be appealed, it will ultimately be the licensing officer's direct decision that is being questioned, as opposed to the decision of the Regulatory Sub-Committee (although both would be recognised as appeals against the Licensing Authority). For this reason, the delegations given to Officers will be considered carefully and if the relevant Officer is unable to make a decision for some reason, then it is a good indication that the matter should be referred to a Regulatory Sub-Committee.
- 6.5 When hearings are held they are, at least to some extent, made public. This is important because the Council must be as transparent as possible (although this must be in accordance with any Data Protection requirements). There is a

danger that Officer decisions will be less ‘public’ than Sub-Committee decisions and for this reason, the Licensing Team will, on an annual basis, publish the following information on the Councils website (as a minimum):

- Any adoption of, or variation to fees
- The number of suspensions and revocations of licences, permits or registrations (and where possible, the reasons for these)
- The number of refusals of applications (and where possible, the reasons for these)

7.0 Recommendation

7.1 That the Regulatory Committee Recommends to Full Council –

- That the delegations set out in this report (attached as Annex 1) be approved;
- That the Constitution be amended to incorporate the delegations so approved.

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Background Papers	MDDC Constitution
Circulation of the Report	Regulatory Committee / Legal