

**Committee:** Licensing  
**Date:** 10 September 2003  
**Agenda Item No:** 2  
**Title:** Reform of Licensing Laws  
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### Summary

- 1 This report advises Members of the transition of liquor licensing responsibility to local authorities and includes a draft Licensing Policy for consideration and comment.

### Background

- 2 The modernisation of the archaic licensing laws in England and Wales has finally been given Royal Assent. This will, through the Licensing Act 2003, transfer the responsibility for licensing all premises in which a licensable activity takes place to the local authority.
- 3 Broadly licensable activities will include one or more of the following:-
  - (a) the sale or supply of alcohol
  - (b) the provision of regulated entertainment
  - (c) the provision of late night refreshment (the sale of hot food or drink between 11.00 pm and 5.00 am)
- 4 The major change regarding the sale of alcohol will mean that all public houses, restaurants, clubs, off-licences, supermarkets and corner shops will no longer have their licences dealt with by the Magistrates Court, but instead will apply to their local authority.
- 5 Local authorities will be responsible basically for two types of licences for:
  - (a) premises where any licensable activity takes place
  - (b) persons responsible for the supply of alcohol

Additionally, there is provision for temporary event notices for small, occasional events which must be administered by the local authority.

- 6 Although the Act has been passed, the regulations and guidance notes will not be available until September or October 2003 as these must be presented to both Houses of Parliament for agreement. This rather unusual situation does make the transition from the Magistrates system to an as yet uncertain local authority system difficult for implementation planning and funding. The fees and charges are to be set by Government, who wish to decriminalise the process, reduce bureaucracy, extend opening

hours/availability and generally to increase tourist and family use. Therefore generous funding for the transition is not anticipated.

### **Timetable for introduction**

- 7 Currently the Department for Culture, Media and Sport are indicating the following dates:-
- (a) Between August and December 2003 each local authority to prepare a Licensing Policy.
  - (b) April 2004 the first transitional date for existing licence holders to obtain new licences, including variations.
  - (c) January 2005 the second transitional date when the new licensing system is fully implemented.
- 8 Indications are that 'grandfather' rights will apply to existing premises and persons should they wish to continue the status quo. However, it is known that some trade associations are recommending members to consider the desirability of gaining extra hours and activities initially even though there are no immediate plans to fully utilise those freedoms. This could mean that the local authority Licensing Committee would be regularly in session from April 2004 if the anticipated variations are contested.

### **The Licensing Policy**

- 9 Attached as Appendix A is a copy of a draft Licensing Policy that has been jointly produced by the Essex Licensing Group which consists of officers from all Essex local authorities and Essex Police. Some informal consultation by the Group has already taken place with various trade groups, specialist solicitors, LACORS and DCMS and generally the reaction has been good. A final version will be produced by the end of September 2003, but few changes are anticipated.
- 10 Members views are invited on the attached draft Licensing Policy which should form the basis of the Uttlesford Licensing Policy for adoption by the full Council in February 2004

**RECOMMENDED** that Members consider the draft Licensing Policy and suggest any amendments for further consideration.

Background Papers:- Draft Essex Licensing Policy.

**Committee:** LICENSING  
**Date:** 10 September 2003  
**Agenda Item No:** 3  
**Title:** PRE-LICENSING STANDARDS FOR DRIVERS OF HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES  
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### **Summary**

- 1 This report is to inform Members of the new Licensing Committee of the Council's pre-licensing standards and to seek the view of Members as to whether they wish to recommend any variations in the current standards to Full Council

### **Background**

- 2 The power to regulate drivers of hackney carriages and private hire vehicles is contained in the Local Government (Miscellaneous Provisions) Act 1976. The provisions of the Act are adoptive, that is to say they only apply if a local authority resolves that the Act will apply in its area. Uttlesford District Council resolved to adopt the provisions of the Act in April 1992.
- 3 The main theme of the legislation is that control of drivers is desirable in the interest of the safety and security of the public, both fare paying and other road users. In order to qualify for a licence the applicant is required to satisfy the Council that he is a fit and proper person to hold a licence. The burden of proof in this respect is upon the applicant.
- 4 In dealing with applications Members are entitled to look at an applicant's entire history, including convictions which are spent under the Rehabilitation of Offenders Act. Clearly however it would not be appropriate for an individual to be prevented from holding a hackney carriage or private hire vehicle driver's licence for life because of one conviction. Because of this early in 1992 the Home Office and Department of Transport jointly issued guidance on the treatment of applicants with convictions. The guidance became effective on April 1992 and has not been updated since.
- 5 When the Council adopted the legislation in April 1992 it also adopted pre-licensing standards. This is a policy document which sets out the circumstances when a licence would not normally be granted. Where an applicant meets these standards the grant of a licence is delegated to officers. Where an applicant does not meet these standards the application is determined by the Licensing Committee. It is for the applicant to show that there are exceptional circumstances why he should be granted a licence contrary to the Council's adopted policy. In adopting its pre-licensing standards in 1992 the Council had regard to the guidance issued by Central

Government. A copy of the current pre-licensing standards is attached at Appendix 1.

- 6 Whilst having had regard to Government guidance, the Council's pre-licensing standards do not mirror the guidance. The first 5 of the Council's standards relate to motoring offences. Motoring offences are dealt with in two categories in the Government guidance, minor or major offences. The guidance describes minor offences as obstructing the highway, waiting in a restricted street, speeding etc. It suggests that such convictions should not prevent the grant of a licence and that if the applicant has been disqualified from driving for such offences under the totting up provisions a licence could be granted after the driving licence has been restored. A single serious motoring offence (reckless driving, driving without due care and attention etc) is suggested not to warrant a refusal. More than one such offence would justify a refusal with a fresh application not being considered until 1 – 3 years has elapsed from the convictions.
- 7 Members did not accept that view in 1992 and officers do not accept that view now. The safety of the fare paying public and other road users is of paramount importance. It is considered therefore that drivers should be able to demonstrate their safety by reference to any convictions they may have. Further social attitudes have now changed, particularly with regard to speeding which is no longer universally regarded as a minor offence. However there may be scope for simplifying the current standards with regard to motoring offences. It is suggested that a licence should not be granted to a person who has been convicted of a serious motoring offence (defined as a single offence in respect of which 6 or more penalty points were endorsed on the driving licence or a disqualification imposed) within the last 3 years before the application or more than 3 minor motoring offences (defined as single offences in respect of which 5 penalty points or less were endorsed on the driving licence) within the last 3 years before the application.
- 8 The Government guidance looks at drink drive offences differently. It suggests that a single offence should not debar an applicant but if there is more than one offence a licence should not be granted until 3 years after the driving licence is restored. If there is any suggestion that the applicant is an alcoholic 5 years should elapse after he has received treatment before a licence is issued. Again social attitudes to drink drive offences have changed over the last 21 years. Officers believe that even one offence should debar an applicant from holding a licence to drive hackney carriages or private hire vehicles. Bearing in mind that a disqualification may exceed 12 months it is suggested that the current policy of refusing a licence to a person who has lost his driving licence for a drink drive offence (implicit in paragraph 3 of the existing standards) remains reasonable but that the period for which a licence should not be granted be as set out in paragraph 9 below. Due to the Government's policies with regard to those considered at high risk of re-offending it is not thought necessary for Members to consider whether the applicant may be an alcoholic.
- 9 Where a person has been disqualified from driving for whatever reason it is considered that a 3 year period within which an application for a new licence

would not normally be considered should run from the expiry of the disqualification to prevent the grant of a licence to someone who has not demonstrated their safety by a reasonable period on the road after the driving licence has been restored.

- 10 Government guidance divides other offences into 5 categories, drunkenness, drugs, indecency, violence and dishonesty. A single conviction for drunkenness would not warrant refusal but a number of convictions may indicate a problem which need to be addressed. For drug related offences the suggested period is 3 years from date of last conviction or 5 years after treatment if the applicant was an addict. Indecency offences would prevent an applicant being granted a licence for 3 – 5 years from the last offence (at least 5 years if there is more than one conviction). A conviction for violence would be a bar for 3 years and dishonesty 3 – 5 years.
- 11 Members in 1992 clearly felt these provisions inadequate. Some guidance may be gained from the Rehabilitation of Offenders Act. This gives periods after which convictions are deemed spent (unless the offender re-offends within that period in which case the offence remains current until the next conviction is also spent).

Sentence	Rehabilitation Period
Imprisonment for more than 30 months	There is no rehabilitation period
Imprisonment for more than 6 but not more than 30 months	10 years
Imprisonment for 6 months or less	7 years
A fine or community punishment	5 years

It is suggested that a licence should be refused where the conviction is not considered spent for the purposes of the Act.

- 12 Government guidance does not deal with pending prosecutions. Recent case law has established that it is legitimate for a local authority to suspend a licence when a prosecution is pending. In the circumstances it is suggested that a licence should not be granted if the applicant is awaiting trial for any offence (motoring or otherwise).
- 13 Similarly, there is no guidance as to how applicants who have had a licence revoked or refused by another authority should be dealt with. So far as refusal is concerned, an applicant to this Council ought to be dealt with on the basis of its pre-licensing standards. If a licence has been revoked however (which may be for matters not related to convictions) then it is considered that a licence should not be granted for 3 years from the date of revocation.
- 14 Suggested revised licensing standards are attached at Appendix 2 for Members' consideration.
- 15 The object of a policy is to achieve consistency of approach in dealing with applicants and to allow applicants to see whether in the light of that policy an application would be likely to succeed in the absence of special

circumstances. Applicants who are aggrieved at a decision not to grant a licence have a right of appeal to the magistrates court. Members may consider therefore that unless there appear to officers to be special circumstances which would justify an exception to policy that a decision to refuse the grant of a licence could be delegate to officers with cases which merit consideration by the Committee being referred to it at officer discretion.

- RECOMMENDED (i) That Members approve the revised licensing standards and recommend to Full Council that the Council adopt the same
- (ii) That the Head of Environmental Services have delegated authority to refuse applications for drivers licences for hackney carriages and private hire vehicles which do not meet licensing standards with power at his discretion to refer appropriate cases to the Committee

Background Papers: Home Office Circular 13/92  
Uttlesford District Council Pre-licensing Standards

**Pre-Licensing standards**

In order that the licensed drivers will be reliable and of good standard the person being considered for a driver's licence for a first occasion and subsequently shall:

- (1) not have been convicted of a serious motoring offence during the previous five years,
- (2) not have been convicted of more than three other motoring offences during the previous three years,
- (3) not been disqualified from driving for any period during the previous five years,
- (4) not have been convicted of driving whilst disqualified during the previous five years,
- (5) not have been convicted of driving any vehicle uninsured against third party risks during the previous five years (in exceptional circumstances this may be waived if the Court has ruled it to be purely a technical offence),
- (6) not have been convicted of a criminal offence involving custodial sentence of more than six months during the previous ten years,
- (7) not been convicted of any other criminal offence during the previous five years,
- (8) not have a prosecution pending for a serious motor offence or criminal offence, and
- (9) not have had a hackney carriage or private hire driver's licence revoked or refused by any authority during the previous three years or 5 years if revoked because of lack of insurance.

The Chief Executive has discretion to grant licences in circumstances where applicants have lesser convictions, subject to the applicant providing a satisfactory explanation. However, in respect of the situations listed above, an interview must be held with the applicant, written details of the situation obtained, and the application, reported to the next meeting of the Licensing Sub-Committee for its determination. You may attend and make representations and answer any questions.

**Appeal**

If your application is refused you will be notified in writing. If you wish to appeal against the refusal you must do so to a Magistrates Court within 21 days.

## **Licensing standards**

Uttlesford District Council are responsible for ensuring the safety and well being of the fare paying public and others by administering control of hackney carriages and private hire vehicle drivers pursuant to the provisions of the Local Government (Miscellaneous Provisions) Act 1976. To achieve this objective the Council has adopted standards which it expects drivers licensed by the Council to meet, both on an application for a new licence and during the period a licence is held. Whilst each case will be dealt with on its individual merits applications for a new licence from persons who fail to meet these standards will normally be refused and existing licence holders who cease to meet these standards are likely to have their licence suspended or revoked or not renewed on application. The licensing standards are:-

1. No more than 3 minor motoring offences during the last three years. For this purpose a minor motoring offence is defined as one where 5 or less penalty points have been endorsed on the drivers licence.
2. No serious motoring offences in the last 3 years. For this purpose a serious motoring offence is defined as one where 6 or more points have been endorsed on the drivers licence.
3. Where a driver has been disqualified from driving for any reason an application for a licence will not normally be considered for three years from the date that the disqualification expires.
4. No criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974
5. No pending prosecutions for any criminal or motoring offence.
6. Not to have had a hackney carriage or private hire vehicle drivers licence revoked by another licensing authority in the last 3 years.