

Committee: LICENSING COMMITTEE

Agenda Item

Date: 21 January 2009

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Title: **DELEGATED POWERS**

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Item for decision

Summary

1. This report has been prepared at the request of Members to explain my delegated powers in dealing with licence applications and to seek an expansion of those delegated powers consistent with Members' recent resolution to outsource vehicle testing.

Recommendations

2. That in addition to the existing delegated powers the Assistant Chief Executive has delegated powers to revoke or suspend a vehicle licence where the licence holder has failed to supply a test certificate in respect of the vehicle or where the proprietor fails to produce the vehicle for inspection when requested to do so pursuant to section 50 Local Government (Miscellaneous Provisions) Act 1976.

Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report and can be found in the Members Handbook.

- The Council's Scheme of Delegation

Impact

- 4.

Communication/Consultation	None
Community Safety	Regular vehicle checks are essential to ensure public safety. There needs to be a mechanism to prevent vehicles being used unless they have been tested.
Equalities	None
Finance	None
Human Rights	The first protocol of Article 1 Part 2 Schedule 1 Human Rights Act 1998

	provides every natural or legal person is entitled to the peaceful enjoyment of his possessions. "Possessions" in this context include vehicle licences. Although the suspension or revocation of a vehicle licence would constitute an interference with a possession the Act provides that the protocol does not impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. I consider that public safety concerns justify interference in the public interest.
Legal implications	In the event any licence is suspended or revoked or if renewal is refused, the licence holder has a right of appeal to the Magistrates Court or (in the case of hackney carriage vehicles only) directly to the Crown Court. Where an appeal lies to the Magistrates Court there is a right of a further appeal to the Crown Court.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

5. Uttlesford District Council adopted Part II of the Local Government (Miscellaneous Provisions) Act 1976 in April 1992. Since that time the Council has been responsible for licensing hackney carriages and private hire vehicles, the drivers of those vehicles and operators of private hire vehicles.
6. With regard to drivers of vehicles, the legislation provides that the authority shall issue a licence on application by a person who holds a full current driving licence and who has held such a licence for at least 12 months (not necessarily consecutive). For operators of private hire vehicles legislation provides that the authority shall issue a licence upon receipt of an application. There is thus no inherent discretion concerning licences for drivers of vehicles or operators of private hire vehicles. However, in both cases the duty to grant a licence is covered by a proviso, namely that the authority shall not issue a licence unless it is satisfied that the applicant is a fit and proper person.
7. It is desirable for local authorities to have a policy which indicates the standards it will apply in determining whether a person is or is not fit and

proper to hold a licence. Although authorities are required to determine each case on its merits the existence of a policy leads to consistency in dealing with applications and enables applicants to know in advance whether or not their application for a licence is likely to be successful. There will be cases where an applicant fails to meet the Council's licensing standards but nevertheless there are good reasons for departing from policy and granting a licence in his or her case. Conversely there will be some circumstances where an applicant does meet licensing standards but nevertheless may be considered not to be a fit and proper person.

8. This Council has always operated licensing guided by a licensing policy. The first policy was adopted in 1992 when the Act was adopted. The policy was reviewed in September 2003. The Licensing Committee (then newly constituted) recommended to Full Council a revised policy which was adopted on the 14 October 2003. A copy of the current licensing standards is annexed at Appendix I.
9. With a view to achieving efficient delivery of service, local authorities habitually delegate powers to officers. It will clearly be impractical for all decisions relating to licensing matters to be referred to the Licensing Committee. For this authority 150-200 applications are received in each year. All local authorities therefore delegate power to make certain decisions to officers.
10. There are 3 possible degrees of delegation.
 - (a) Officers may grant applications which accord with policy but cannot refuse applications. Applications which do not accord with policy must therefore be referred to the Licensing Committee. This authority operated that delegation scheme prior to October 2003.
 - (b) Officers may grant or refuse applications which accord with policy but may not depart from the policy laid down by the Council. This is the delegation scheme currently operated by this Council which I will expand upon later in this report.
 - (c) Officers may take any decisions relating to licences where there is a right of appeal to the Courts. In practice this means all licensing decisions.
11. I do not consider the wide delegation powers referred to paragraph 10(c) above to be appropriate. In my view the Council sets the policy within which officers must operate and any departure from policy should be a matter for Members.
12. Likewise I consider the delegation scheme referred to 10(a) above too restrictive. There will be cases where it is obvious that there will be no deviation from policy and to hold a committee hearing in such circumstances would be an unnecessary use of resources. A classic example of this was where an application was received prior to October 2003 by an applicant

who was certified by his doctor as being medically unfit to drive. Clearly Members would not have made an exception to policy in that case but nevertheless under the scheme of delegation as it then stood it was then necessary to convene a hearing.

13. I believe the current scheme of delegation strikes a reasonable balance. I have authority to grant licences where licensing standards are met and to refuse them where licensing standards are not. I may at my discretion refer any cases to the Committee for determination.
14. In deciding whether or not to refer a case to Committee I do not take any decision myself with regard to the application. I simply seek to ascertain whether in accordance with the legislation and the case law there are any grounds which may exist whereby the Committee may be prepared to make a departure from policy. In one case referred to the Committee in the course of the last year, I would not have granted a licence had I taken the decision myself. However, I considered the Committee may be prepared to make an exception to policy. I therefore referred the matter and the Committee did indeed grant a licence.
15. It follows from the preceding paragraph that there are two classes of cases where I would refer a case to Committee rather than take a decision under delegated powers. The first of these is where an applicant does not meet the Council's licensing standards but grounds exist whereby I believe the Committee may be prepared to make an exception to policy. The second type of case to be referred to the Committee is where an applicant does meet our licensing standards but there are circumstances which exist which indicate that the Committee might consider the applicant not to be a fit and proper person.
16. Members will note that there is a standing item on the agenda regarding the use of delegated powers. At each meeting of the Committee I report (normally verbally but by way of written report if I am going to be absent) those cases which I have refused under my delegated authority. To date there has been no Member criticism of the exercise of my powers to refuse to grant a licence where the applicant does not meet licensing standards
17. In addition to my delegated powers to grant and refuse licences, I have power in certain circumstances to suspend a licence. Under the Local Government (Miscellaneous Provisions) Act 1976 local authorities may impose conditions on licences. A breach of a condition is not an offence however. There will also be circumstances where it comes to the attention of officers that an offence has been committed but a prosecution would be disproportionate or inappropriate. In such circumstances a suspension may be a suitable sanction. My delegated authority to suspend in these circumstances is for a period of up to two weeks. When Members were considering this delegated power Members suggested that I ought to be able to suspend for up to four weeks. My view however, was that the maximum length of time an officer should be able to suspend was for two weeks and Members accepted my advice in that respect. In practice the power is rarely

used. Again any exercise of this power is reported to the Committee. It is right to say that one Member expressed disquiet on one occasion on the factual basis upon which I issued a two day suspension. However the majority of Members supported the decision.

18. The Act also gives local authorities the power to revoke licences where there has been the commission of an offence of certain descriptions prescribed by the Act or for any other reasonable cause. In my view 'any other reasonable cause' means that the licence holder could no longer be considered to be fit and proper i.e. he or she no longer meets the Council's licensing standards. I do not have delegated authority to deal with revocations in these circumstances. If it comes to my attention that a licence holder has committed a relevant offence or no longer meets licensing standards, I can only bring the matter before the Committee for revocation.
19. I do have powers to revoke a licence in one circumstance only. The Council does accept applications for licences without a criminal records check on renewal or where the applicant has an enhanced criminal record check which is not more than 30 months old providing an application for such a check has been made and is pending. In these circumstances the applicant is required to provide a statutory declaration to confirm that he or she has not been convicted of any offences since the date of the last CRB check. I do have power to revoke a licence if it transpires that such a statutory declaration was false. To date I have not had to exercise this power but should the need arise it would of course be reported to the Committee.
20. Any decisions I take under my delegated powers have the effect of being a decision of the Council and accordingly are subject to the appeals procedure to the Magistrates and Crown Courts.
21. Where a licence is not renewed, is suspended or revoked the usual rule is that the decision does not take effect for 21 days after the licence holder has been notified of the decision. If an appeal is lodged within that timescale the licence holder may continue to carry on business until such time as the appeal has been determined and for 21 days thereafter if the appeal is unsuccessful. If an appeal within that period is lodged with the Crown Court the licence holder may continue to carry on business until such time as the Crown Court appeal has been disposed of. To date there have been no successful appeals against any decisions I have taken under my delegated powers.
22. There is one exception to this rule. Under section 61 of the Local Government (Miscellaneous Provisions) Act 1976 (as amended) a licence may be suspended or revoked with immediate effect if the local authority considers that it is in the interest of public safety so to do. I do not have power to revoke a licence in these circumstances, but where public safety may be at risk (e.g. due to a medical condition of a driver) I do have power to suspend immediately a licence until the day after the next meeting of the Licensing Committee. I have given this Committee an assurance that should such circumstances arise (as indeed they have) I will call an urgent meeting

of the Committee to consider whether the licence should be revoked with immediate effect. Although a licence holder still has a right of appeal against such a decision he or she may not drive pending the appeal being determined.

23. At its meeting on 19 November 2008 Members resolved that officers should work towards outsourcing the testing of motor vehicles. Vehicles are tested (or in respect of brand new vehicles inspected) when first licensed. Thereafter they are required to be inspected at yearly intervals until they are five years old. Inspections are then required at six month intervals bearing in mind the considerable mileage which hackney carriages and private hire vehicles undertake.

24. Local authorities have power under section 50 of the Act to require vehicles to be produced for inspection. This power can be exercised up to three times in a 12 month period. At present the requirement for a six monthly test is fulfilled under this section. However, this will not be the case once testing is outsourced and the Council will instead be placing reliance upon a certificate issued in a form prepared by the Council by a MOT registered tester. Officers consider that it is essential that there is some control to ensure that such certificates are provided at six month intervals. Further, in order to give Members assurance that tests are being adequately carried out it will be necessary for there to be a random testing of vehicles by Council employees using the statutory powers. In the circumstances, to ensure that certificates are provided in a timely fashion and that random tests can be effectively carried out I would suggest that the Committee delegate me the power to suspend licences in circumstances where a certificate is not provided as required or a vehicle is not presented for inspection for the remaining terms of the licence or until a certificate is produced or the vehicle presented for testing whichever is the sooner.

Risk Analysis

25.

Risk	Likelihood	Impact	Mitigating actions
Members revert to the delegation scheme used prior to October 2003 or a slight variation thereof.	2, Members may feel that they would wish to resume control over refusals of applications which do not accord with policy.	3, This would involve more Committee hearings which would require more Committee reports (thereby preventing licensing staff undertaking	Bearing in mind the safeguard of a right of appeal to the Magistrates, the existing practice of allowing officers to refuse applications which do not accord with policy with power at the officer's discretion to refer a case to Committee be

		other licensing work) and more officer time in arranging for meetings to be serviced and cases to be presented.	continued.
Members do not take adequate steps to ensure that vehicles are inspected at six month intervals when five years older or older or that vehicles are presented for random inspection as a quality control measure.	1, Members have in the past shown an overriding regard for the public safety.	4, If unsafe vehicles were allowed to be used, death or injury to Members of the public or damage to property could result.	Members approve the proposed expansion of delegation scheme.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

APPENDIX 1

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 licenced 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 or twelve months from the date that the driving licence is re-issued whichever is the later.
4. No criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974 nor any conditional discharges for any offence within the last 5 years.
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.