

**Committee: LICENSING COMMITTEE**

**Agenda Item**

**Date: 16 March 2011**

**5**

**Title: Licensing by councils operating executive arrangements**

**Author: Michael Perry Assistant Chief Executive – Legal 01799 510416**      Item for information

## Summary

1. This report is to inform members how the council will deal with licensing matters under executive arrangements

## Recommendations

2. That members note this report

## Background Papers

None

## Impact

- 3.

Communication/Consultation	The council consulted on the proposal to adopt executive arrangements
Community Safety	None
Equalities	None
Finance	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	All
Workforce/Workplace	As a result of the move to executive arrangements there is likely to be fewer meetings of the committee

## Situation

4. Under the Local Government Act 2000 most local authorities were required to adopt executive arrangements. Initially there were 3 possible options. There was also a fourth option for councils with a population of less than 85000 as at 20 June 1999 who were permitted to operate alternative arrangements which did not involve an executive. At its meeting on 14 December 2010 the Full Council voted to adopt executive arrangements with effect from 8 May 2011.
5. Under alternative arrangements the council's functions may only be performed by the full council, by committees or sub-committees of the council or by officers. Individual members of the council are not permitted to have delegated powers to take any decisions or incur expenditure. Committees and sub-committees (with some exceptions including a licensing committee established under the Licensing Act 2003) are subject to the rules of political balance.
6. Although in theory the licensing functions of Uttlesford District Council could have been performed by Full Council in practice these functions have been delegated to a committee (the Development Control and Licensing Committee and later the Licensing Committee) or sub-committee (Development Control and Licensing Sub-Committee).
7. The Local Government Act 2000 and regulations made thereunder divide council functions into certain categories. There are those which can only be performed by the Council. These functions are sub-divided into those which may only be performed by Full Council and others which may be delegated to a committee or officers. Some functions are the responsibility of but may not be the sole responsibility of the executive (e.g. certain functions with regard to the setting of the gambling policy as to which see below). In respect of certain functions these are a matter for local choice and can be performed either by the council (which would include committees of the council) or by the executive. There are no such functions relating to licensing. Any functions which do not fall into any of the aforementioned categories must be performed by the executive.
8. Where functions are executive functions these may be performed by the leader of the council or he or she may delegate such functions to the executive as a whole, a committee of the executive, an individual member of the executive (a "portfolio holder") or to officers. The executive may delegate to a committee of the executive or to officers (but not to individual members of the executive). Executive committees and portfolio holders may delegate to officers.
9. Putting this into the context of licensing, the duty to adopt a licensing policy under the Licensing Act 2003 is reserved to Full Council. The adoption of a licensing policy under the Gambling Act 2005 is a function of the executive but is subject to scrutiny, adoption and/or amendment by the council. The granting of licenses for people, premises and vehicles required to be licensed by the council may not be a function of the executive.

10. The council is required to appoint a licensing committee under the Licensing Act 2003 to deal with the council's functions under that Act and under the Gambling Act 2005. The constitution adopted by the council also delegates to that committee all licensing functions of the council which by virtue of the legislation may not be the responsibility of the executive.
11. The effect of this is that from 8 May 2011 the executive will be responsible for policy decisions in connection with licensing matters (save for the statutory policies required by the 2003 and 2005 Acts as referred to above). This would include determining vehicle types to be licensed and setting licensing standards for drivers, operators and vehicles etc. The legislation is inconsistent with regard to fees and charges. The setting of a table of fares which may be charged by hackney carriages appears to be an executive function as is the setting of fees for licenses for hackney carriages and private hire vehicles and private hire operators. Determining fees for licenses for drivers however may not be an executive function. Setting fees for licenses under the 2005 Act is not a function of the executive. Fees for licenses under the 2003 Act are currently set by legislation and the council has no discretion.
12. The fee setting functions where these may not be set by the executive has been delegated under the adopted constitution to the Licensing Committee. I would anticipate that the committee and the executive/executive committee/portfolio holder will work closely with regard to setting fees for drivers, operators and vehicles.
13. The grant (with or without conditions) or refusal of licenses may not be a function of the executive. All such matters have been delegated under the adopted constitution to the Licensing Committee.
14. As the Licensing Committee will have limited policy making functions and no budget to control (the latter being a matter for the executive) the committee will no longer meet on a cyclical basis as at present. Instead it will be summonsed as and when necessary to deal with the grant or refusal of licenses where the grant or refusal would be contrary to policy; to consider revocation or suspension of licenses of drivers, operators or vehicles where statutory grounds for such action may exist; to consider applications for the grant or variation of premises licenses where representations have been received; to consider applications for the review of premises licenses in response to requests for reviews by responsible authorities or independent persons; to consider objections to the grant of personal licenses and to consider objections to temporary events notices. In such circumstances a limited number of members will attend the meetings as at present.
15. The committee will also need to meet as a full committee when preparing a statement of licensing policy under the 2003 Act either in accordance with the statutory requirements or because circumstances have arisen which require a sooner review. I would also anticipate that as the Licensing Committee will be responsible for the grant of licenses in accordance with policies which will be adopted by the executive that the executive/executive committee/portfolio holder will wish to seek the committee's views upon any proposed alterations to those policies and the committee will need to meet in full for that purpose.

16. It has been the practice of representatives of the hackney carriage/private hire trade to attend meetings of the Licensing Committee to make representations on a regular basis on a range of policy issues. I would expect the executive/executive committee/portfolio holder to make suitable arrangements with ULODA and other interested parties to enable such dialogue to continue.

### **Risk Analysis**

17. There are no risks associated with this report

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.