

**AMENDMENTS TO THE CONSTITUTION OF THE COUNCIL – DELEGATION OF  
POWERS TO THE LICENSING COMMITTEE AND OFFICERS**

**Agenda Item 8**

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**Background Papers:-** None  
**Financial Implications:-** None  
**Equalities Implications:-** None  
**Legal Implications:-** See section on Risks.  
**Options:** See body of report  
**Risks:** The Council must have in place the correct and appropriate delegations to Officers to discharge the Council's duties under the Licensing Act 2003 and other statutory provisions in relation to Private Hire and Hackney Carriage Drivers Licenses and to ensure that the functional responsibilities of the Drivers Panel are correct to as to prevent legal challenge.

**EXECUTIVE SUMMARY**

To consider amendments to the Constitution of the Council under the Licensing functions in respect of Licensing Hearings and Private Hire and Hackney Carriage Drivers Licenses, and amendment to the terms of functional responsibilities of the Drivers Panel

**DECISION**

Members are requested to recommend to Full Council the approval of the amendments to the Constitution as set out at the end of the report.

## **AMENDMENTS TO THE CONSTITUTION OF THE COUNCIL – DELEGATION OF POWERS TO OFFICERS**

### Licensing Act 2003 and Licensing Act 2003 (Hearing) Regulations 2005 Delegation of Powers to Officers - Powers to adjourn a Licensing hearing

Licensing Hearing and their procedures are governed by the Licensing Act 2003 (Hearing) Regulations 2005. Once an application under the Licensing Act 2003 has received representations the matter is referred by the Licensing Team to Law and Governance who have conduct of the matter until the application has been determined at the Licensing Hearing and the Decision Notice issued.

The Licensing Act 2003 (Hearing) Regulations 2005 impose a strict time table on the Council as Licensing Authority to hold a Licensing Hearing within 20 working days following the closure of the public representation period where representation have been made.

Members of the Licensing Sub-Committees have expressed concerns that in adhering to the strict time table the Council has had to commence Licensing Hearings where negotiations between hearing parties are continuing with a view to resolve representations to the application and potentially making it unnecessary to hold a hearing.

The Licensing Act 2003 (Hearing) Regulation 2005, provided powers to the Licensing Authority in certain circumstances to management the Licensing Hearings and its procedures.

Regulation 12 gives powers to adjourn a hearing to a specified date, or arrange for a hearing to be held on specified additional dates where it considers this to be necessary for its consideration of any representations or notice made by a party. Upon adjourning a hearing notice must be given to all parties.

Regulation 11 of the Licensing Act 2003 (Hearing) Regulations 2005, also gives powers to the Licensing Authority to extend the time limits as specified with the Regulations, where it considers it necessary in the public interest. Upon extending a time limit notice must give all parties that states the period of the extension and the reasons for it.

The Constitution in its present form does not enable an adjournment or the extension of time limits without the need to convene the Sub-Committee. To ensure that best use is made of the Council's resources and to prevent the unnecessary attendance of Members to attend a Licensing Hearing to simply adjourn it, it is proposed that Part 3, Section 5 of the Constitution – Schedule of Functions Delegated to Officers (Licensing Functions) be amended to delegate to powers to the Head of Law and Governance to adjourn Licensing Hearings in accordance with Regulation 12 and to extend time limits in accordance with Regulation 11.

In exercising powers to adjourn a Licensing Hearing the Head of Law and Governance or her duly authorised officer will consult with the Chairman of the Licensing Committee. It is anticipated that where it is necessary to consult with the Chairman of the Licensing Committee this will be done by email or by telephone.

Members are requested to recommend to full Council that Part 3, Section 5 of the Constitution – Schedule of Functions Delegated to Officers – Licensing Functions be amended to include to the following delegation to the Head of Law and Governance:-

Function	Delegated to	Delegated by
In consultation with the Chair of the Licensing Committee to adjourn a Licensing Hearing in accordance with Licensing Act 2003 (Hearing) Regulations 2005	Head of Law and Governance	Licensing Committee
To exercise powers to extend the time limits with the Licensing Act 2003 (Hearing) Regulations 2005	Head of Law and Governance	Licensing Committee

Local Government (Miscellaneous Provisions) Act 1976

Delegation of Powers to Officers – Powers to suspend Private Hire and Hackney Carriage Drivers Licences

In September 2006 Members approved a recommendation to Full Council to delegate powers to Officers to suspend licenses of Hackney Carriages and Private Hire Vehicles.

In the course of providing legal advice to the Council’s Licensing Enforcement Officer who was investigating a serious allegation against a Driver of a Private Hire Vehicle, it was discovered that the Officer did not have the necessary powers to suspend the license without the need to convene a Driver’s Panel and bring the Driver before it.

S61 of the Local Government (Miscellaneous Provisions) Act 1976 enables a Local Authority to suspend a driver’s licence where there is reasonable cause. Use of these powers would enable the Council to suspend a driver’s licence with immediate effect where it has serious concerns about the “fitness” of the driver in relation to public safety as a result of evidence/information received which requires investigation before a decision can be made.

Upon the exercise of these powers notice must be given to the driver of the grounds on which the licence has been suspended and an explanation as to why. The notice should also include a demand for the return of the drivers badge issued by the Council. The suspension would take effect when the Notice is given to the driver. There is a right of appeal to the Magistrates Court.

To enable the Officers of the Council to take effective enforcement action and to suspend a driver’s licence where information/evidence has been received resulting in a serious concern in the interest of public safety, Members are requested to recommend to full Council that Part 3, Section 5 of the Constitution – Schedule of Functions Delegated to Officers – Licensing Functions be amended to include to following delegation:

Function	Delegated to	Delegated by
In consultation with the Head of Law and Governance authority to suspend licences under s61 of the Local Government (Miscellaneous Provisions) Act 1976 (as amended) immediately if it is in their opinion it is in the interest of public safety that the suspension have immediate effect, such suspension to last until the day after the next meeting of the Drivers Panel	Development Director	Licensing Committee

**AMENDMENTS TO THE CONSTITUTION OF THE COUNCIL – FUNCTIONAL RESPONSIBILITIES OF THE DRIVERS PANEL**

Part 3, section 6 of the Constitution stated that the functional responsibilities of the Drivers Panel include the following:-

“To make decision on any application for Hackney Carriages or Private Hire Drivers’ Licences where applicants have 6 or more penalty points, or have an unspent disqualification or criminal record.

To make decision in the continuation of any Private Hire/Hackney Carriage or dual Drivers Licence following serious complaints against the driver.”

There is a right of appeal to the Magistrate Court against the Decision of the Drivers Panel and part of that appeal may include a challenge to the Council’s authority to deal with such matters. While there may be sufficient evidence for the Court to be satisfied that the decision of the Driver Panel was correct, the Court would first have to deal with issue of whether the Council had authority to make that decision in the first instance. To rebut such a challenge would require production of the Council’s Constitution and should it be found that there is no such authority, an appeal may succeed on a technical ground.

The Council could expect a similar challenge if the Council took proceeding in the Magistrates Court against a driver whose license had been suspended/revoked and subsequently found to be driving a Hackney Carriage or Private Hire Vehicles.

The Constitution currently enables the Drivers Panel to make a decision on new applications for drivers’ licences where they have 6 or more penalty points or have an unspent disqualification or criminal record and a decision on the continuation of a driver’s licence following a serious complaint. However it does not include considering the continuation of the Drivers Licence on the occurrence of any other event as specified in the Council’s conditions for Hackney Carriage and Private Hire Vehicles Drivers licence or the Local Government (Miscellaneous Provisions) Act 1976. Copies of the Council’s conditions are annexed to the report.

It is paramount that the Council is satisfied that the drivers are a “fit and proper person to be licensed”, and remain to be so throughout the duration of the Licence.

To ensure that the functional responsibilities of the Drivers Panel are correctly recorded Members are requested to recommend to full Council that Part 3, Section 6 of the Constitution – the functional responsibilities of the Drivers Panel be amended to include the following:

To make decisions on the continuation of any Private Hire/Hackney Carriage/Dual Drivers License where event/s as specified in Conditions of Hackney Carriage and Private Hire Vehicles Drivers licence has/have arisen and the Local Government (Miscellaneous Provisions) Act 1976 (as amended)

Options available:

1. To accept the amendments to the Constitution and make a recommendation to Full Council
2. To refused to the amendments to the constitution
3. To accept the amendments to the constitution and make a recommendation to Full Council with further amendments by the Licensing Committee

#### Recommendations for Decision

For Members assistance all recommendation are repeated at the end of the report.

Members are requested to recommend to full Council that Part 3, Section 5 of the Constitution – Schedule of Functions Delegated to Officers to amended to include :-

Function	Delegated to	Delegated by
In consultation with the Chair of the Licensing Committee to adjourn a Licensing Hearing in accordance with Licensing Act 2003 (Hearing) Regulations 2005	Head of Law and Governance	Licensing Committee
To exercise powers to extend the time limits with the Licensing Act 2003 (Hearing) Regulations 2005	Head of Law and Governance	Licensing Committee
In consultation with the Head of Law and Governance authority to suspend licences under s61 of the Local Government (Miscellaneous Provisions) Act 1976 (as amended) immediately if it is in their opinion it is in the interest of public safety that the suspension have immediate effect, such suspension to last until the day after the next meeting of the Drivers Panel	Development Director	Licensing Committee

Members are requested to recommend to full Council that Part 3, Section 6 of the Constitution – the functional responsibilities of the Drivers Panel be amended to include the following:

To make decisions on the continuation of any Private Hire/Hackney Carriage/Dual Drivers License where event/s as specified in Conditions of Hackney Carriage and Private Hire Vehicles Drivers licence has/have arisen and the Local Government (Miscellaneous Provisions) Act 1976 (as amended)