

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 DECEMBER 2019**  
**ALL WARDS**

**LICENSING AUTHORITY DELEGATIONS –  
HACKNEY CARRIAGE AND PRIVATE HIRE AND SEX ESTABLISHMENTS**

1. Summary

- 1.1 Following a review of the current policies, procedures and delegations of the Licensing and Public Protection Committee some proposals have been made in order to reduce the administrative burden on licensing committees, both at sub committee and main committee level.
- 1.2 This report proposes changes to the delegated authorities to Senior Officers in the Licensing Service in order that they may act, within specific Licensing Committee policy guidelines, in relation to Hackney Carriage and Private Hire licensing matters.
- 1.3 This report also proposes to delegate certain matters relating to sex establishments to sub-committee level for determination.

2. Recommendation

- 2.1 That the Committee approves the proposal to delegate, with immediate effect, the matters at 4.3 to officers,
- 2.2 That the Committee approves the proposal to delegate, with immediate effect, the matters at 5.3 to the Licensing Sub Committees.
- 2.3 That these delegations be included within the annual Policies Procedures and Delegations Report to the Licensing and Public Protection Committee.

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### 3. Background – Licensing and Public Protection Committee

- 3.1 The City Council has a number of licensing, regulatory and registration powers and duties and the exercise of these powers and duties are delegated to the Licensing and Public Protection Committee. The granting and issuing of specific licences, permits and registrations is delegated to the Director of Regulation and Enforcement on the understanding that any applications giving rise to concern or difficulty may be referred to the Licensing and Public Protection Committee or its sub-committees for determination where appropriate.
- 3.2 The licensing function of the City Council is disposed of through the processes and procedures of the Licensing and Public Protection Committee, sub-committees and officers by virtue of the Local Government Acts and other relevant statutory provisions.
- 3.3 The Licensing Service is responsible for the administration of grants, renewals and transfers as appropriate of hackney carriage and private hire vehicles, drivers and operators licences and for issuing licences under the Licensing Act 2003 and Gambling Act 2005, sex establishment and animal welfare legislation, and issuing permits for charitable collections and massage and special treatments etc. as well as the associated variations, amendments and transfers, which are carried out under policies delegated by your Committee.
- 3.4 The Court of Appeal stated in the “Hope and Glory” case (2011) that the licensing function of the licensing authority is an administrative function, by contrast with the function of the magistrates, which is a judicial function. The Court of Appeal said this:

*“The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of power delegated by the people as a whole to decide what the public interest requires.”*

This means that it must act in accordance with the two rules of natural justice. These are firstly that everyone has a right to be heard and secondly the rule against bias.

- 3.5 The right to be heard requires that a person directly affected by the matter under consideration must be given a fair opportunity both to state his/her case and to know of and to respond to any objections.
- 3.6 The rule against bias prohibits members participating in any decision if they have a financial or other interest in the outcome. Members will be familiar with this requirement from their general duties as Councillors.

#### 4. Matters relating to Hackney Carriage and Private Hire

- 4.1 A large number of decisions regarding hackney carriage and private hire drivers and vehicles are already delegated to officers.
- 4.2 These tend to be the more straightforward administrative matters and delegating the decisions to senior officers allows for applications to be dealt with expeditiously. For example, in February 2016, your Committee agreed to delegate the determination of applications requests regarding late renewals on medical grounds, and also in relation to applicants who cannot comply with the DBS requirements.
- 4.3 It is a licence requirement that approval must be sought before any alterations can be carried out on a vehicle. It is proposed to delegate consideration of applications from proprietors seeking conversion of their vehicle to LPG to senior officers. (subject to the vehicle being entered on the UKLPG register).
- 4.4 Delegating this matter to senior officers will ensure applications of this kind can be expedited without having to wait for a committee date, saving time for officers, the applicant and the committee.
- 4.5 Should the circumstances be more complex, or should there be any other aggravating factors, the Officers still retain the right to refer decisions to the Licensing Sub Committee for consideration.

#### 5 Sex Establishments

- 5.1 The scheme of delegations from the current Sexual Entertainment Venue Policy is attached at Appendix 1.
- 5.2 It is proposed to bring this licensing area into line with the other legislative regimes such as the Licensing Act 2003 and Gambling Act 2005.
- 5.3 Appendix 1 has been annotated to indicate those matters proposed for delegation to the sub-committee from the main, namely:
  - a) Applications for the grant or transfer of a licence
  - b) Applications for renewal or variation where a relevant objection has been received,
  - c) Consideration of licence revocation and
  - d) consideration of a licence waiver.
- 5.4 This move to sub-committees will enable much greater flexibility for both officers and applicants in terms of scheduling matters for determination and will enable applications to be dealt with in a more efficient and timely manner.
- 5.5 The full Committee process requires reports to be submitted over a month in advance of the date of the meeting, whereas the meetings of the sub-committees are much more frequent and more flexible in their scheduling requirements. This means there should be no unnecessary delays either in

processing applications for new licences or for acting against problem premises.

6. Consultation

- 6.1 These proposals do not seek to amend any policy matters, nor will they have any detrimental impact on service users. They seek to improve the service. No formal consultation process has been carried out on the matters contained in this report.

7. Implications for Resources

- 7.1 It is the responsibility of the Committee Chairman and the Director of Regulation and Enforcement to ensure the services provided by the Committee are contained within the approved budget.
- 7.2 Should the proposals be agreed there will be a slight reduction in business for Main Committee, fewer matters going to driver sub committees and an increase in business for general licensing sub-committees, although the overall workload should remain relatively unchanged.
- 7.3 Moving matters in this way will allow for a much quicker turnaround of applications of this kind, and will reduce the administrative burden.

8. Implications for Policy Priorities

- 8.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services.

8. Implications for Equality and Diversity

- 8.1 The matters identified in this report are in accordance with Regulation and Enforcement's enforcement policies which ensure that equality issues have been addressed.

**INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT**

**Sex Establishments  
Scheme of Delegations**

Nothing within this scheme of delegations shall prevent matters being referred to a higher level where appropriate. E.g. officers may refer matters to a sub committee, or a sub-committee may refer a matter to full committee. <b>Decision to be made by:</b>			
<b>Matter to be dealt with:</b>	<b>Full Committee</b>	<b>Sub-Committee</b>	<b>Officers (Senior Licensing Officer or above)</b>
Application for grant or transfer	All cases	All cases	
Application for renewal or variation	If relevant objection made	If relevant objection made	If no relevant objection made
Revocation of Licence	All cases	All cases	
Cancellation of Licence			All cases
Make/amend regulations prescribing standard conditions, terms and restrictions	All cases		
Setting of fees	All cases		
Waiver	All cases	All cases	
To make and amend policy relating to the licensing of sex establishments	All cases		
To enforce the provisions of Part II and Schedule 3 of the Local Government Miscellaneous Provisions Act 1982			All cases