

Report to: **Planning and Licensing Committee**
Date: **15 November 2016**
Title: **To consider changes to the Constitution of the Council in relation to the delegation of powers for determination of certain licensing functions.**
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee: Internal

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken: Referral to Full Council, 6th December 2016

Author: **Ian Luscombe** Role: **Community of Practice Lead - Environmental Health**
Catherine Bowen **Community of Practice Lead - Legal**

Contact: **Telephone/email: Ian.Luscombe@swdevon.gov.uk**
Tel. 01822 813713
catherine.bowen@swdevon.gov.uk
Tel. 01822 813666

Recommendations:

1. That the Planning and Licensing Committee recommends that the Council adopts the amendments proposed to the Constitution in relation to the delegation of powers for the determination of licensing decisions, as attached at Appendix A

1. **Executive summary**

- 1.1. The Council as the Licensing Authority is involved in the determination of many different licensing functions including caravan sites, premises licences with and without alcohol, houses in multiple occupation, dangerous wild animal licensing, taxi licensing and many others.
- 1.2. The current Constitution allows certain licensing functions to be delegated to the Community of Practice Lead for Environmental Health, sub-committees and full licensing committee. At times it is unclear on whom has the power to grant, refuse, and revoke many of the different licences that we currently issue and as such there is the potential for confusion leading to appeals.
- 1.3. The proposed amendments (attached at Appendix A) seek to clarify the delegation of powers so that the Committee only makes decisions on licences that have minimal technical input and the basis of the determination should be quasi-judicial.
- 1.4. The remainder of the determinations which are either wholly technical or simply procedural will be delegated to the Community of Practice Lead for Environmental Health.

2. **Background**

- 2.1. In the past 12 months the Licensing authority has determined over 500 applications, of which only 5 decisions have been made by the Planning and Licensing Committee or sub-committee.
- 2.2. The current Constitution does not stipulate which decisions the Committee can lawfully make under the various legislation that we enforce. The proposal seeks to clarify which types of applications and licences the Committee will determine to refuse, revoke, or suspend, and which will be delegated to the Community of Practice Lead for Environmental Health, other officers or the sub-committee.

3. **Outcomes/outputs**

- 3.1. In its current format the constitution is unclear and as such could, potentially, lead to appeals being made by applicants or licence holders on the basis that they don't believe the determination made was lawful. Appeals in regards to licensing decisions are generally to a Magistrates Court.
- 3.2. The changes to the Constitution will allow decisions made by the Council to be made in accordance with a clearer constitutional basis and also provide clarity to applicants as to how their applications will be determined.
- 3.3. The main changes to the existing scheme are;
 - a. Taxi licensing - Currently if a vehicle is deemed unfit or unsafe at renewal or contrary to policy this would have to come to a full Committee, it is proposed that the power to determine the suitability of a vehicle would rest with the Community of Practice Lead for Environmental Health.
 - b. Animal Boarding licenses - Currently the constitution is unclear on who has the power to refuse a licence to which no objection has been received, such as animal boarding licences, pet shop licences, caravan site licences etc. The proposed constitutional changes provides greater clarity over which applications will be considered by the Committee and

which will be determined by officers. Licences that require consultation with the public before issuing a licence and where objections are received, will be heard by the Committee.

c. Taxi Licensing- The proposed changes to the Delegation Scheme provide greater clarity and transparency over actions that can be taken in an emergency (for example, as occurred earlier this year in West Devon where there was a requirement to suspend a Taxi driver following notification from the Police of a serious allegation).

d. General – The proposed changes to the Delegation Scheme remove the right of appeal of officer decisions to committee, this is inappropriate as appeal against a decision should be to Magistrates Court or higher.

e. Taxi Licensing - The draft constitution seeks to change the power to determine vehicle licences from committee to the Community of Practice lead for Environmental Health.

3.4. In order to enable the Committee to determine whether the delegation of powers is too restrictive or otherwise, Officers will provide to the Committee, on an annual basis, an update report on the number of licensing applications received, the number approved/ refused/revoked in a year. The Committee may review, and recommend any changes to the Delegation Scheme in the future.

4. **Options available and consideration of risk**

- 4.1. The Council may choose not to change the delegation of powers. This may, potentially, lead to Committee decisions being challenged and decisions not being reached in the most efficient and appropriate way.
- 4.2. If decisions are made that are not fully and clearly supported by the delegation of powers the Council may be challenged and risk financial and reputational harm if a decision is successfully appealed.
- 4.3. Activity that requires a Licence may not be appropriately regulated and give rise to increased risk to public safety, harm to vulnerable children, public nuisance and crime and disorder (the four licensing objectives), or fail to safeguard the health and safety of the public from licensed activities.
- 4.4. Opinion has been sought from the Councils legal services team who support the intention to amend the delegation of powers.

5. **Proposed Way Forward**

- 5.1. That the Planning and Licensing Committee recommends to Council that the amendments proposed to the Constitution in relation to the delegation of powers for the determination of licensing decisions be adopted.
- 5.2. The Council will have an appropriate and clear constitution to support decisions as a Licensing Authority made under licensing legislation.
- 5.3. The Council will reduce the risk of decisions being appealed due to lack of clarity in the existing constitution.

- 5.4. The decision making process will be more efficient and appropriate where determination is based on technical, procedural or quasi-judicial requirements

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Council has a statutory duty as the Licensing Authority to consider applications made to it under a broad range of legislation. The Council must ensure that all decisions made by it are fair and consistent and comply with the Constitution of the Council</p> <p>The Council is required to have a Delegation Scheme setting out the roles and responsibilities of Council, its Committees and its officers. These are set out in Part 3 of the Council's Constitution.</p> <p>The Constitution of the Council includes the scheme of delegation for Licensing which sets out the powers of the Council's Officers and committee in resolving issues related to Licensing.</p>
Financial		<p>The financial implications of the report are that there will be a reduction in the risk of the Council receiving financial penalty should a decision that it makes be successfully appealed on the basis that the delegation of powers did not support the decision that had been made.</p>
Risk		<p>The risk to the Council is that we will continue to make decisions that do not appear to be fully supported by the Constitution across a number of areas of Licensing ie taxi's , premises licenses , dog boarding etc. If the Council is challenged on a decision then we may lose the case on appeal and incur reputational penalty and possibly compensation claims.</p> <p>Another risk is that an activity that the Council should control using the licensing legislation will not control the activity and expose the public to risk of increased harm.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		No impact
Safeguarding		The safety of the public including the safeguarding of vulnerable persons is a fundamental determinant for a number of licences. Ensuring decisions are

		defendable will ensure that licences are not granted that jeopardise this fundamental licensing objective.
Community Safety, Crime and Disorder		Community safety and crime and disorder public is a fundamental determinant for a number of licences.
Health, Safety and Wellbeing		The Licensing constitution will enable the Council to make decisions that ensure that the four Licensing Objectives are met.
Other implications		None

Supporting Information

Appendices:

Appendix A: proposed amended Delegation Scheme for Licensing

Background Papers:

[under provisions of the Local Government Act 1972]

None