

Licensing Committee

Grand Jury Room, Town Hall
22 July 2009 at 6.00pm

The Licensing Committee deals with licensing applications for public entertainments, hackney carriages and private hire vehicles, sex establishments, gaming and lotteries, door registration scheme and other appeals.

Information for Members of the Public

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
22 July 2009 at 6:00pm**

Members

Chairman : Councillor Barrie Cook.
Councillors John Bouckley, Helen Chuah, Nick Cope,
Wyn Foster, Christopher Garnett, Mike Hogg,
Margaret Kimberley, Michael Lilley, Philip Oxford,
Ann Quarrie and Laura Sykes.

Agenda - Part A

(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should

indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

1 - 4

To confirm as a correct record the minutes of the meeting held on 11 March 2009.

7. Penalty Points Scheme

5 - 9

See report by the Monitoring Officer.

**8. Response to Home Office Consultation document
Safe.Sensible.Social. Selling Alcohol Responsibly 10 - 13**

See report by the Head of Environmental and Protective Services.

**9. Response to Department for Transport Consultation on Best
Practice Guidance for Taxi & Private Hire Vehicle Licensing. 14 - 17**

See report by the Head of Environmental and Protective Services.

10. Licensing Committee - Allocation of Dates 18 - 19

See report by the Head of Environmental and Protective Services.

LICENSING COMMITTEE

11 March 2009

Present: - Councillor Cook (Chairman)
Councillors Blundell, Chuah, Cope, Garnett, Hogg, Lilley,
Martin, P.Oxford, Quarrie, Sykes and Tod

Councillor Naish in respect of his employment as a private hire driver declared his personal interest in the following item which was also a prejudicial interest pursuant to the provisions of Meetings General Procedure Rule 7(10). He made representations in accordance with Paragraph 12(2) of the Code of Conduct for Members and then left the meeting during the Committee's consideration and determination of the matter.

18. Have your Say!

Councillor Naish attended and addressed the Committee on the penalty point scheme and in particular the proposed inclusion of further offences in the scheme. Councillor Naish indicated that he was speaking on behalf of a number of other hackney carriage/private hire drivers in questioning the addition of the offences listed in the report and made the point that some of them carried legal redress. He acknowledged that whilst some of the offences were necessary, such as the use of a mobile phone whilst driving, he was concerned that there were now 56 listed offences for which points could be awarded under the Council's hackney carriage/private hire drivers' and operators' penalty points scheme.

In responding to the points raised the Licensing Manager, Simon Harvey, addressed the specific points raised by Councillor Naish concerning the imposition of points for parking in residents' parking areas whilst waiting for a fare etc and explained that whilst there was legal redress for these offences action was generally not taken by the appropriate authority because it was rarely there when the offence was committed. The Solicitor to the Committee, Mr Essex responded that the law was quite clear and that no one should be punished twice for the same offence. The officers dealing with smoking and littering could issue penalty notices for some of the offences referred to and there was legal redress for other offences for which Parliament had determined the appropriate penalties.

RESOLVED that a written response be sent to Councillor Naish on the points he raised.

19. Minutes

The minutes of the meetings held on 26 November and 17 December 2008 were confirmed as correct records.

20. Member Development Scheme // Progress Report

The Head of Environmental and Protective Services reported on the progress of the member

development programme since its approval by the Committee in July 2008. As the new programme had started some way into the new municipal year it had not been able to run its full course and in particular the introduction phase for members new to the Committee had not been carried out in full however, despite this a number of key elements had been introduced and a number of modular courses had taken place.

The programme required existing members' to complete 12 points of training each year which equated to 4 courses, each course being worth 3 points. There was some discussion concerning the level of points and it was determined that members should complete 12 points of training but that these points should last for 2 years reflecting the ongoing nature of training and development. Compulsory modules would be weighed to reflect their importance to the operation of the Committee and points would also be awarded for attendance at outside training courses. Details of outside courses would be circulated to members as they became available.

The attendance of members at the sessions was also discussed and the view was expressed that if appointed to the Committee, members should be prepared to engage in the necessary training. It was suggested that more information be made available on licensing to other members of the Council as this may assist members when considering the appointments to Committee.

RESOLVED that-

- (i) Members be required to complete 12 points of training and that these points last for a period of 2 years.
- (ii) Points for training be allocated accordingly-

Compulsory modular units	4 points
Modular units	2 points
External courses	2 points
- (iii) Attendance must be at the training sessions provided within the context of the member training programme.
- (iv) Consideration be given to having a stall at the new member information day.

Councillor P Oxford in respect of his brother's employment as a private hire driver declared his personal interest in the following item which was also a prejudicial interest pursuant to the provisions of Meetings General Procedure Rule 7(10) and left the meeting during the Committee's consideration and determination of the matter.

21. Introduction of a Penalty Points Scheme

The Committee considered a report on a proposed amendment to the penalty point scheme for hackney carriage/private hire operators to include 15 further offences for which points could be awarded. The scheme, which had been approved by the Committee in July 2006 and further amended in February 2008, provided the licensing authority and its officers with a far greater degree of flexibility and transparency when investigating complaints and breaches of licensing conditions and in administering the appropriate sanctions.

In responding to the points raised by Councillor Naish earlier in the meeting the Licensing

Manager, Simon Harvey outlined the problems that were frequently reported to the Licensing Section for which other agencies such as the police or parking enforcement officers could take action but rarely did as they were not on hand to witness the problems. The scheme enabled the Council to respond to residents concerns and by means of the penalty point scheme to address the behaviour of drivers to ensure that it was in line with the conditions set out. The Solicitor to the Committee, Mr Essex advised that the law was quite clear on this point and that a person could not be punished twice for an offence.

In response Mr Harvey pointed out, and expressed his concern, that the legal principles behind the scheme had never been challenged by anyone before, either at its introduction in 2006 or at any of the more recent hearings involving the imposition of penalty points which had been brought before the Committee. Mr Harvey did not consider the imposition of points to be a further punishment but a means of upholding the driver conditions and asked that this be considered as a test of whether a driver could be considered a fit and proper person. There was stated case that supported the test of whether a person was a fit and proper person to hold a licence and allowed the Licensing Authority to attach any conditions it considered to be necessary and proportionate. The ability to issue a warning by means of penalty points enabled the driver to address their behaviour and provided a more flexible means of dealing with problems rather than suspension and revocation which was all that was previously available and which was not always felt to be a proportionate and reasonable response to the offences that might have been committed.

The Chairman responded that he did not consider the imposition of points to be punishing a person twice. He considered that the Council should have the right to have rules regarding conduct and to be able to uphold them. This view was supported by a number of other members of the Committee who expressed their opinion that holders of hackney carriage/private hire drivers' licences and licenced operators were aware of the conditions and the penalty point scheme when they applied for and obtained their licence.

Mr Essex reiterated his previously expressed concern that the imposition of points was double punishment and that the enforcement officers, if they witnessed an offence for which there was redress in law, were under an obligation to report the matter to the appropriate authority for it to take the necessary enforcement action. If the Council imposed penalty points and the driver was also dealt with by the courts, the imposition of the points would be illegal.

The Committee considered that the additional offences should be added to the penalty point scheme but requested that the Licensing Manager bring a further report back to clarify the legal position.

RESOLVED that

- (i) the following matters be added to the penalty point scheme –
 42. Failing to conform to statutory road signs or illegally parking.
 43. Drinking or eating in a licensed vehicle whilst the vehicle is in motion.
 44. Playing of a music radio or other sound producing equipment without the express permission of the hirer.
 45. Causing excessive noise from any radio or sound producing equipment which annoys anyone either in or outside the vehicle.

46. Proprietor displaying an unauthorized sign i.e. commercial advertisement on vehicle.
 47. Failure to carry an assistance dog without exemption certificate.
 48. Failure to attend at the requested time for a pre-arranged booring without sufficient good cause.
 49. Driving a licensed vehicle which is not properly maintained.
 50. Leaving a Hackney Carriage vehicle on a taxi rank parked and unattended without reasonable excuse.
 51. Allowing a Hackney Carriage to remain on a taxi rank in such a position as to cause obstruction to other hackney carriage vehicles.
 52. Driver smoking in vehicle.
 53. Driver allowing passengers to smoke in licensed vehicle.
 54. Smoking or allowing smoking in operators premises.
 55. Failing to deal with lost property in an appropriate manner.
 56. Failure to comply with Council Livery.
- (ii) items 42 to 56 inclusive carry 3 points each with the exception of item 49 which carries 6 points and 50 which carries 4 points each.
- (iii) the Licensing Manager be requested to bring a report back to the Committee on the penalty point scheme to clarify the legal position of imposing points under a hackney carriage/private hire drivers' licenses/operators penalty point scheme.



Licensing Committee

Item
7

22 July 2009

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Update on Penalty Point Scheme		
Wards affected	Not applicable		

**This report requests the Committee to note an update
regarding the penalty point scheme for
hackney carriage/private hire drivers/operators**

1. Decision(s) Required

1.1 To note the contents of this report.

2. Background

2.1 The Committee at its meeting on 11 March 2009 considered a report from the Head of Environmental and Protective Services which provided an update on the penalty point scheme and also proposed the introduction of further offences to the scheme. The Committee approved the report, but concerns were raised during the discussion on the report which related to the legal status of the scheme and whether it introduced any element or possibility of double jeopardy or double punishment for the licence holder for the offences concerned.

2.2 As a result of the concerns raised, the Licensing Committee asked that a legal opinion be sought on the validity and legality of the penalty point scheme and a further report be brought back to the Committee to clarify the matter. This report therefore addresses those concerns and also confirms the legal status of the scheme.

2.3 The law requires that a Licensing Authority, when granting licences to hackney carriage / private hire drivers/operators must ensure that they are a "fit and proper person" to hold that licence. This requirement applies not only when the licence is granted but equally importantly, it subsists for the duration of the licence.

2.4 Many Licensing Authorities also use a penalty points system to enable them to establish and enforce this "fit and proper" requirement on an ongoing basis throughout the term that the licence is held.

2.5 It is acknowledged that in rare cases, this could mean that a driver who is convicted of a particular offence may also incur penalty points for the same matter under the Council's penalty point scheme. The penalty point scheme is more intended to be used however as a means whereby unacceptable behaviour or conduct can be addressed in a proportionate, considered and managed way without having to automatically seek redress or enforcement through means of seeking a criminal conviction or a suspension or revocation of the driver or operators licence.

2.6 In response to the concerns raised that this may amount to double punishment in some rare circumstances, it must be remembered that the primary and underlying duty of the Licensing Authority is to ensure that the travelling public are safe and protected whilst travelling in a vehicle that it licences. This duty must take priority over any other issues

and a driver/operator who is concerned about the operation of the Council's penalty point scheme always has the option of appealing to the Magistrates court, as the scheme is a term and condition of their licence.

- 2.7 Other Licensing Authorities penalty point scheme are broadly the same as our scheme and all follow the same principles.
- 2.8 Members are also advised that in the Department for Transport's document entitled 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance', (first issued in October 2006), the DfT states that "the aim of local authority licensing of the taxi and PHV trades is to protect the public' and 'well directed enforcement activity by the local licensing authority benefits not only the public but also the responsible people in the taxi and PHV trades'.
- 2.9 Accordingly, it is my firm view that the Committee's penalty point scheme is legally sound and is an appropriate method of determining whether a driver/operator is a "fit and proper person" throughout the life of their licence and as mentioned above, the Licensing Authority's primary duty is to ensure that the travelling public are safe and protected whilst travelling in any vehicle that is licensed by it and this must take priority over any other concerns, for which there are alternative remedies available such as the appeal process.
- 2.10 For the Committee's information attached to this report in the Appendix are details of why and when penalty points have been issued up to the present date. The names of the persons have been removed to protect their identity for data protection purposes, however, Members will note that points have been issued in a reasonable, proportionate manner and only on a very limited number of occasions since the inception of the scheme in September 2006.

3. Strategic Plan References

- 3.1 The standards regime forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

4. Financial Considerations

- 4.1 There is a right of appeal to the Magistrates and Crown Courts by any licence holder against the terms and conditions of their licence. This would include the Councils penalty point scheme which is a condition of driver and operators licences granted. Any successful appeal to the Courts by a licence holder could see the costs of such proceedings awarded against the Council.

5. Equality, Diversity and Human Rights Implications

- 5.1 All of the above issues were considered at the time that the penalty point scheme was agreed by the Licensing Committee at their meeting of the 6 July 2006. The scheme was also subject to a wide consultation process following the Licensing Committees initial consideration of it on the 1 March 2006.

6. Publicity Considerations

- 6.1 No direct implications.

7. Consultation Implications

- 7.1 The scheme was widely consulted on before its adoption at Licensing Committee on the 6 July 2006.

8. Community Safety Implications

- 8.1 The penalty point scheme is designed to protect the safety of those persons that travel in hackney carriage and private hire vehicles also the wider community at large.

9. Health and Safety Implications

- 9.1 The penalty point scheme is designed to protect the safety of those persons that travel in hackney carriage and private hire vehicles and also the wider community at large.

10. Risk Management Implications

- 10.1 The penalty point scheme is designed to protect the safety of those persons that travel in hackney carriage and private hire vehicles and also the wider community at large and on balance, the concerns raised at the meeting on 11 March 2009 regarding the possibility of “double jeopardy” or “double punishment” for licence holders who have committed offences, is far outweighed by the risk to the safety of the travelling public and the wider community at large by not having a penalty point scheme in place which allows the Council to effectively monitor and enforce the “fit and proper person” test throughout the life of the licence held by a hackney carriage/private hire driver/operator.

PENALTY POINTS ISSUED

Date	Offence	Points issued		
2007	Specking	6		
	Swearing at Fare	3		
	Non advice of a conviction	6		
	Battery	Revoked		
	Assault	Revoked		
	Use of mobile phone whilst driving	3		
	Various	Revoked	Reinstated	
	Crown Court appeal.	Revoked		
	Non advice of address change.	3		
	Failure to produce insurance	4		
	Failure to produce insurance	4		
	Failure to produce insurance	4		
	Non advice of address change.	3		
	Failure to produce insurance	4		
	Non advice of motoring conviction	3		
	2008	Abusive language to parking attendant	3	
		Specking	9	
Non advice of conviction		6		
Non advice of conviction		6		
Littering/smoking in vehicle		3		
Failure to display drivers badge		4		
Non advice of conviction		4		
Non advice of conviction		Revoked		
Non advice of convictions		Revoked		
Failure to produce mot and insurance		4		
Failure to advise accident		4		
Failure to produce mot and insurance		4		
Plate affixed to rear window		3		
Abusive language to member of public		3		
Failure to produce insurance		4		
Failure to produce insurance		4		
Non advice of address change		3		
Failure to produce mot and insurance		4		
Parking on Rank/Abusive gesture		6		
2009		Smoking in vehicle	3	
	Failure to report convictions	6		
	Failure to notify change of address	3		
	Failure to report convictions	6		
	Failure to report convictions	6		
	Smoking in vehicle	3		
	Leaving vehicle on rank	4		
	Failure to notify change of address	3		
	Leaving vehicle on rank	4		
	Failure to comply with HC livery	3		
	Aggressive behaviour	3		
	Smoking in vehicle	3		
	Smoking in vehicle	3		
	Unsatisfactory behaviour or conduct	3		
	Wrong Category on licence	Suspended		
	Smoking in vehicle	3		
	Using mobile whilst driving	3		
	Smoking in vehicle	3		
Failure to report accident/damage	3			

Date	Offence	Points issued
	Failure to comply with order of authorised officer	4
	Smoking in vehicle	3
	Failure to produce Insurance	4
	Failure to produce Insurance	4
	Failure to produce vehicle for inspection	4
	Failure to produce vehicle for inspection	4

Licensing Committee

Item

22 July 2009

Report of	Head of Environmental & Protective Services	Author	Simon Harvey
Title	Response to Home Office Consultation Document - Safe. Sensible. Social, Selling Alcohol Responsibly.		
Wards affected	All		

This report concerns a consultation document from the Home Office issued in May 2009 which seeks views on a new code of practice for alcohol retailers entitled Safe. Sensible. Social. Selling alcohol responsibly. The Licensing Committee are asked to endorse or amend where they think appropriate the Licensing Managers proposed response to this consultation document in order that the Councils response to it can be submitted before the deadline imposed by the Home Office of the 5 August 2009.

1. Decision(s) Required

- 1.1 The Licensing Committee are asked to endorse or amend where they think appropriate; the Licensing Managers proposed response to the Home Office consultation document Safe, Sensible, Social, selling alcohol responsibly a new code of practice for alcohol retailers, in order that the Council's response to the consultation can be submitted to the Home Office before the deadline imposed of the 5 August 2009.

2. Reasons for Decision(s)

- 2.1 The Council has been invited by the Home Office to submit a response to their consultation document entitled Safe, Sensible, Social, selling alcohol responsibly a new code of practice for alcohol retailers prior to the closing date for such submissions of the 5 August 2009. (See attached as appendix 1).

3. Alternative Options

- 3.1 There is no alternative option other than to submit a response, although the consultation is voluntary not mandatory.

4. Supporting Information

- 4.1 The Licensing Act 2003 has been in force now since the 24 November 2005 and there have been a number of guidance documents to accompany the Act that have been issued or made available for the reference and use of all stakeholders by the Department for Culture, Media and Sport. .
- 4.2 The Home Office has now issued its own consultation and guidance document entitled Safe, Sensible, Social, selling alcohol responsibly a new code of practice for alcohol retailers.

- 4.3 The primary proposals put forward by this consultation document is that through additional legislation which will be introduced by the 'Policing and Crime Bill' to augment the Licensing Act 2003, there will be a number of new mandatory conditions attached to all premises licences for what is known as the 'on trade' (pubs, bars, nightclubs and restaurants) and qualifying club premises certificates (private members clubs), as well as the 'off trade' (off licences, convenience stores, supermarkets).
- 4.4 In addition to these mandatory conditions, new powers will be given to Licensing Authorities whereby they can apply 'discretionary' conditions to groups of two or more premises in any local area that have been clearly linked to alcohol related nuisance and disorder.
- 4.5 An executive summary of 'Safe, Sensible, Social', is included within the consultation document and which is shown on pages 5, 6, 7 and 8 of that document. For the ease of reference for the Members of the Licensing Committee, this summary is also attached as an appendix to this report. (See attached as appendix 2).
- 4.6 In the Licensing managers opinion, it is particularly those matters that relate to the proposed additional mandatory and discretionary conditions which are shown in summary on pages 19 and 30 respectively of the consultation document, that could have the most direct impact on Colchester Borough Council and its Licensing Authority, especially where the enforcement of the Licensing Act 2003 is concerned.
- 4.7 For the ease of reference for Members of the Licensing Committee, these summaries are also attached as an appendix to this report. (See attached as appendix 3).
- 4.8 The proposals for additional mandatory and discretionary conditions to be applied to premises licences could also have the most direct impact on all other parties that have an interest or stake hold in the Licensing Act 2003, not least of which are the licensed premises themselves who sell alcohol in both the 'on' and 'off' trade markets.
- 4.9 The Home Office consultation document seeks opinion and feedback to the consultation document from Licensing Authorities, Enforcement Agencies and Health Bodies on 19 separate and specific questions which are shown on pages 64, 65, 66, 67 and 68 of the consultation document. A list of these questions is attached to this report. (See attached as appendix 4).
- 4.10 The Licensing Manager has addressed these questions and his draft response to them is also attached to this report for the consideration of the Licensing Committee. (See attached as appendix 5).
- 4.11 Included in the consultation document are also questions specifically designed for members of the public and also those that sell or supply alcohol and trade associations.
- 4.12 All responses and submissions must be returned to the Home Office by no later than the 5 August 2009.

5. Proposals

- 5.1 The Licensing manager proposes to submit the responses that he has drafted which are attached as appendix 5 of this report, subject to any amendments or additions that the Licensing Committee may wish to make.

6. Strategic Plan References

6.1 The Home Office consultation document and the proposals it contains links into the strategic plan for the following criteria:

- Community Safety
- Community Development
- Health Living
- Addressing older peoples needs
- Addressing younger peoples needs

7. Consultation

7.1 The circulation of the document entitled 'Safe, Sensible, Social, selling alcohol responsibly consultation on the new code of practice for alcohol retailers' is entirely a matter for the ownership and control of the Home Office. The proposals put forward by this document are open to the scrutiny and consultation of a very broad spectrum of authorities, agencies, associations, interested parties in the licensed trade and those representing them and also members of the public. The referral of the consultation document to the Licensing Committee and the Environmental & Protective Services Portfolio Holder for their scrutiny and comment is relevant within the context of the interested parties that represent the views and opinions of Colchester Borough Council in relation to the Licensing Act 2003, particularly in regards to policy matters.

8. Publicity Considerations

8.1 Not applicable within the subject matter and context of this report which only gives information concerning the content of the Home Office consultation document 'Safe, Sensible, Social' and the consultation process that this document is subject to and which has been submitted to the Licensing Committee and to the Environmental & Protective Services Portfolio Holder for their scrutiny and comment. All other matters in this regard are for the consideration of the Home Office whose consultation document and exercise this is.

9. Financial implications

9.1 Not applicable within the context of this report.

10. Equality, Diversity and Human Rights implications

10.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Home Office whose consultation document and consultation exercise this is.

11. Community Safety Implications

11.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Home Office whose consultation document and consultation exercise this is.

12. Health and Safety Implications

12.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Home Office whose consultation document and consultation exercise this is.

13. Risk Management Implications

- 13.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Home Office whose consultation document and consultation exercise this is.

14 Recommendation

- 14.1 The Licensing Committee is recommended to consider the draft response made by the Licensing manager to the 'Safe, Sensible, Social' consultation document as attached to this report as appendix 5 and amend or add to his response as it believes appropriate to do so and accordingly authorise the Licensing manager to return the response to this consultation document to the Home Office by the 5 August 2009.



Licensing Committee

Item

22 July 2009

Report of	Head of Environmental & Protective Services	Author	Simon Harvey ☎ 282701
Title	Response to Department for Transport Consultation on Best Practice Guidance for Taxi & Private Hire Vehicle Licensing.		
Wards affected	All		

This report concerns a consultation document from the Department for Transport which seeks views on the Departments revised Best Practice Guidance for Taxi and Private Hire Vehicle Licensing issued in May and the Licensing Committee are asked to endorse or amend where they think appropriate, the Licensing Managers proposed response to this consultation document in order that the Councils response can be submitted before the deadline imposed of the 28 July 2009

1. Decision(s) Required

- 1.1 The Licensing Committee are asked to endorse or amend where they think appropriate; the Licensing Managers proposed response to Department for Transport's consultation document on Best Practice Guidance for Taxi and Private Hire Vehicle Licensing in order that the Councils response can be submitted to the DfT before the deadline imposed of the 28 July 2009.

2. Reasons for Decision

- 2.1 The Council has been invited by the Department of Transport to submit a response to their consultation document entitled 'Taxi and Private Hire Vehicle Licensing Revised Best Practice Guidance' prior to the closing date for such submissions of the 28 July 2009. (See attached as appendix 1).

3. Alternative Options

- 3.1 There is no alternative option other than to submit a response, although the consultation is voluntary not mandatory.

4. Supporting Information

- 4.1 The Department for Transport published the first Best Practice Guidance for Taxi and Private Hire Vehicle Licensing in October 2006. The guidance is structured for and used primarily by Local Licensing Authorities in England and Wales, but is not exclusive to Local Authorities.
- 4.2 It is not mandatory or compulsory for local Licensing Authorities to comply with the Best Practice Guidance, however it is very useful to be able to refer to this document for opinion or advice when licensing conditions or policies concerning taxi and private hire licensing are being formulated or introduced.

- 4.3 The Department of Transport makes it quite clear in their Best Practice Guidance however that decisions on taxi and private hire licensing conditions or policy remain matters for the Local Authority concerned.
- 4.4 Where there have been changes or additions to the original Best Practice Guidance in the revised consultation document published on the 5 May, these have been highlighted. All other text remains the same as the original October 2006 guidance. (See attached as appendix 2).
- 4.5 In the Licensing managers opinion, it is particularly with regards to those matters that are discussed in paragraphs 33 to 35 of the guidance document concerning the personal security of drivers, paragraphs 63 to 66 concerning the medical fitness requirements for taxi and private hire drivers and paragraph 70 regarding skills training for drivers which may require the Council's careful attention, consideration and sympathetic determination when a number of these issues are likely to be brought to the attention of the Licensing Committee in the near future.
- 4.6 In the longer term, it is the matters that are referred to in paragraphs 13 to 21 of the guidance document concerning accessibility to vehicles by disabled persons and improvements in the provision of taxis for disabled persons as a result of the ultimate implementation of the requirements of the Disability Discrimination Act 1995, which will require thoughtful consideration and which may also set considerable challenges for the Council to meet.
- 4.7 The Department for Transport's consultation document seeks opinion and feedback on twenty four specific questions which are shown under annex B of the document. A list of these questions is attached to this report. (See attached as appendix 3).
- 4.8 The Licensing manager has addressed these questions and his draft response to them is also attached to this report. (See attached as appendix 4).
- 4.9 The consultation document and the draft responses that are proposed for submission to the DfT have also been submitted to the Environmental & Protective Services Portfolio Holder for his consideration.
- 4.10 All responses and submissions must be returned to the Department of Transport by the 28 July 2009.

5. Proposals

- 5.1 The Licensing manager proposes to submit the responses that he has drafted for appendix 4 of this report subject to any amendments or additions that the Licensing Committee may wish to make.

6. Strategic Plan References

- 6.1 Where it is possible, feasible, reasonable and proportionate to do so, Colchester Borough Council's adherence to the content and aspirations of the Department for Transport's Best Practice Guidance in relation to Taxi and Private Hire Vehicle Licensing will have a number of direct links to the Strategic Plan for 2009 to 2012. These are:

- To listen and respond
- To be cleaner and greener
- Addressing older peoples needs
- Addressing younger peoples needs

- Community Development
- Community Safety
- Congestion busting

7. Consultation

- 7.1 The circulation of the Best Practice Guidance document for Taxi and Private Hire Vehicle Licensing is entirely a matter for the ownership and control of the Department for Transport and the proposed revised guidance itself is subjected and open to the consultation of a very broad spectrum of authorities and agencies including the National Taxi Association, the National Private Hire Association, Disabled Persons Advisory Committee and the Confederation of Passenger Transport. The referral of the consultation document to the Licensing Committee and the Environmental & Protective Services Portfolio Holder for their scrutiny and comment is relevant within the context of interested parties that represent the views and opinions of Colchester Borough Council for taxi and private hire licensing matters, particularly in regards to policy matters.

8. Publicity Considerations

- 8.1 Not applicable within the subject matter and context of this report which only gives information concerning the content of the Department for Transport's revised Best Practice Guidance for Taxi and Private Hire Vehicle Licensing and the consultation process that this document is subject to and which has been submitted to the Licensing Committee and the Environmental & Protective Services Portfolio Holder for their scrutiny and comment. All other matters in this regard are for the consideration of the Department for Transport whose consultation document and consultation exercise this is.

9. Financial Implications

- 9.1 Not applicable within the context of this report.

10. Equality, Diversity and Human Rights Implications

- 10.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Department for Transport whose consultation document and consultation exercise this is.

11. Community Safety Implications

- 11.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Department for Transport whose consultation document and consultation exercise this is.

12. Health and Safety Implications

- 12.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Department for Transport whose consultation document and consultation exercise this is.

13. Risk Management Implications

- 13.1 Not applicable within the context of this report. All other matters in this regard are for the consideration of the Department for Transport whose consultation document and consultation exercise this is.

6. Standard References

- 6.1 There are no particular references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications.

Background Papers

- Invitation letter dated 5 May from the Department for Transport in relation to the consultation exercise for their revised Taxi and Private Hire Vehicle Licensing Best Practice Guidance.
- Annexes A, B, D and E of the above consultation document for the revised Taxi and Private Hire Vehicle Licensing Best Practice Guidance.

22 July 2009

Report of	Environmental and Protective Services	Author	Sarah White Tel 506420
Title	Licensing Committee – Allocation of Dates		
Wards affected	Not applicable		

This report concerns the allocation of Councillors to the Sub-Committee that hears applications under the Licensing Act 2003

1. Summary

- 1.1 This report comes to you at the request of the Chairman to determine a method for the allocation of Councillors to the Licensing Act 2003 Sub-Committee.

2. Supporting Information

- 2.1 Members of the Licensing Committee are allocated to the various Sub-Committees at the beginning of the municipal year on a non political rota basis. This method of allocating members started as a result of the Licensing Act came into force and the large number of meetings relative to the number of Licensing Committee members available made it necessary to allocate members well in advance to enable them to plan their diaries accordingly and to reduce the workload for licensing staff in arranging the meetings. This system has also been used to allocate members for hackney carriage/private hire appeals.

3. Detailed Considerations

- 3.1 The meetings process for both Licensing Act 2003 applications and hackney carriage/private hire appeals is driven entirely by the number of applications/appeals submitted and therefore there is no control over the dates or number of hearings. Because of the number of hackney carriage appeals and the fact that it is often necessary to arrange ad hoc meetings there have been no particular problems with the allocation of members and it is suggested that members continue to be allocated on a rota basis at the beginning of the municipal year.
- 3.2 In the last year the number of Licensing Act hearings has levelled out to approximately one a month with a slight increase in the summer months and at Christmas. The cancellation of some of the scheduled meetings has resulted in some members being on the Sub-Committee frequently and others hardly at all. Towards the end of the last municipal year adjustments were made to the rota to enable some members to hear at least one application, although some members of the Committee expressed their concern at this practice.

- 3.3 Alternative methods for allocation of members to the Licensing Act Sub-Committee have therefore been considered and three options are outlined below for consideration-

Option 1 – current method

Members are allocated to the Sub-Committees on a rota basis. The disadvantage of this method has been that the cancellation of meetings has resulted in some members being on the Sub-Committee a number of times and others not at all. See Appendix 1.

Option 2 – monthly allocation

Members are allocated to the Sub-Committees for a month at a time. This would be likely to result in members sitting on a Committee at least once in the month based on the current figures. The disadvantage of this method is that because there is no control over the number of applications received, this method may result in some members doing several Fridays in a row, although members would have the option of nominating a substitute.

Option 3 – arrangements made on ad hoc basis

Members are assigned to the Sub-Committee when it is known that a meeting is necessary. The disadvantage of this option is that it is likely to result in more work for the licensing team and less certainty for members in planning their diaries. The timescales involved in Licensing Act hearings are extremely tight and are prescribed by legislation. The allocation of members would therefore probably have to be done on a first come first served basis and experience suggests that this is likely to distort the allocation of members.

4. Standard References

- 4.1 There are no financial considerations, human rights implications, strategic plan references, publicity implications, consultation implications, community safety, health and safety or risk management implications.

5. Options

- 5.1 The options available to Committee when determining this matter are set out in Paragraph 3.3 above.

6. Recommendation

- 6.1 It is recommended that members choose one of the options described in Paragraph 3.3.

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