



**THE LICENSING AND HEALTH AND SAFETY
ENFORCEMENT COMMITTEE**

**TUESDAY 12 FEBRUARY 2013
FOLLOWING SUB-COMMITTEE**

COUNCIL CHAMBER, CIVIC CENTRE, HEMEL HEMPSTEAD

The Councillors listed below are requested to attend the above meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Cllr Bhinder	Cllr Link
Cllr G Chapman	Cllr Peter
Cllr Conway	Cllr Rance
Cllr Fantham	Cllr Ryan
Cllr Mrs Green (Vice-Chairman)	Cllr G Sutton
Cllr R Hollinghurst	Cllr Taylor
Cllr Lawson (Chairman)	Cllr Whitman

For further information, please contact Trudi Coston on Tel: 01442 228226, or Email: Trudi.coston@dacorum.gov.uk. Information about the Council can be found on our website: www.dacorum.gov.uk.

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1. MINUTES

To confirm the minutes of the Licensing and Health & Safety Enforcement Committee meeting held on 27 November 2012.

2. APOLOGIES FOR ABSENCE

To receive any apologies for absence

3. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a prejudicial interest in a matter, who attends a meeting of the authority at which the matter is considered:

- (i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and
- (ii) may not participate in any discussion or vote on the matter and must withdraw to the public seating area.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Members' Register of Interests or the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interest are defined in Part 2 of the Members' Code of Conduct.

4. PUBLIC PARTICIPATION

An opportunity for members of the public to make statements and ask questions in accordance with the rules on Public Participation



AGENDA ITEM: 5

SUMMARY

Report for:	Licensing Health & Safety Enforcement Committee
Date of meeting:	12th February 2013
PART:	1
If Part II, reason:	

Title of report:	Licensing fees 2013-14
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To outline proposals for licensing application fees in the financial year 2013-14
Recommendations	To instruct officers to commence public notification and consultation on the proposed fees, and to report results to a future meeting of the Committee
Corporate objectives:	<p>Dacorum Delivers</p> <ul style="list-style-type: none"> The proposed fees have been calculated on a cost recovery basis, and projections show that if the revised fees are adopted the costs of administering licensing schemes should be recovered.
Implications:	<p><u>Financial</u> Where required, public notice of the proposed changes to fee levels has been given, with an attendant cost. The proposed fee amendments are projected to result in an increase in Licensing service revenue of approximately £25-30,000 per annum.</p> <p><u>Value for Money</u> The proposed fees have been calculated on a cost recovery basis, with the aim of ensuring that administrative, processing and certain compliance costs are recovered in full.</p> <p><u>Risk / Equalities / Health & Safety</u> None</p>

Consultees:	Responses to consultation are set out within the report.
Background papers:	Draft Licensing Fees & Charges 2013-14
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

- 1.1. Dacorum Borough Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and permits. A number of these schemes allow the Council to levy an application fee, payable by an applicant for an authorisation, in order to cover the costs (or a proportion thereof) of the administration of those licences. In some cases, costs are also permitted to cover other aspects of providing the scheme.
- 1.2. The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years have confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed regularly (generally annually) to ensure that neither a significant surplus nor deficit is created. Surpluses or deficits are to be carried forward to future years to be redistributed or recouped, as applicable.
- 1.3. For a number of reasons, the fees charged in Dacorum have not been reviewed en masse for several years – for example, the fees charged in respect of taxi drivers and vehicles are unchanged since at least April 2004. Given that inflation alone in this period would account for an average 25% increase in costs, it is hardly surprising that the fees charged no longer accurately reflect the costs of administering the licensing scheme.
- 1.4. There have been a number of recent developments, such as the implementation of the EU Services Directive, and recent court cases such as R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council¹, which have had a significant impact on Council's powers to set and collect fees. Both the legislation and that case have confirmed that, at least for formalities within scope of the Services Directive, the costs of enforcing a licensing regime may not be recovered via fees (the Court of Appeal has recently heard an appeal on the Westminster case, but at the time of writing judgement has not yet been given).
- 1.5. It is now proposed to review and set licensing application fees for the financial year 2013-14, and the remainder of this report sets out the specific proposals in this respect.
- 1.6. Moving forward, it is expected that this will become an annual exercise. Due to recent and imminent changes in structure, personnel and procedures within the Licensing section, a number of costs have had to be

¹ [2012] EWHC 1260 (Admin)

estimated this year, and these costs will be among the first elements reviewed in subsequent years, to ensure the accuracy of our fees.

2. POWERS TO SET FEES

2.1. The table at Annex A summarises the Council's powers to set its fees in respect of licensing applications, and any limitations on those powers.

3. PROPOSALS

- 3.1. On the 27th November 2012, the Committee considered preliminary proposals for service-wide fees and charges for the period from 1st April 2013 to 31st March 2014, prior to consultation. A number of minor amendments have now been made to the proposals following consultation, and a revised draft list of licensing fees and charges is appended to this report as Annex B.
- 3.2. Increases are proposed to a number of the fees charged in respect of licensing applications, where the current fee does not currently accurately reflect the costs to the council of processing and determining that application type. However, a number of decreases have also been proposed, where costs are currently below the fee charged – for example, change of taxi vehicle ownership, renewal of home boarding licences, bingo licences, dog breeding establishment licences, and transfers of sex establishment licences.
- 3.3. It is understood that the economic climate for regulated businesses remains challenging at best, and any form of cost increase for those businesses will be unwelcome. Increases have not been suggested lightly, and represent an activity on which the Council currently incurs costs significantly greater than the current fee recovered. A number of policies and procedures are currently under review, with further areas to follow in the coming months, with a view to streamlining licensing processes and reducing costs wherever possible, which may in future years enable fees to be reduced.

3.4. The following comments are made on specific proposals:

Section 1.1: A fee for initiating an appeal against an officer's decision to refuse exemption from standard conditions or policies was initially proposed. There remain a number of concerns about the lawfulness of such a charge. For this reason, the proposal to introduce this charge is not currently being pursued. A review of the delegated authorities will now be carried out to ensure that such decisions are being properly made, and that the opportunity to challenge such decisions by way of request to the Committee is correct.

Section 2: We are currently awaiting confirmation of when the power to set fees for alcohol/entertainment applications will be commenced. In the absence of regulations setting out the matters that must be considered in setting these fees, this part of the exercise has not been completed. Should the powers be commenced in 2013 prior to the annual review of all fees, a separate proposal for these fees will be put to the Committee.

Section 3.1: A discount has been proposed in respect of home boarding establishments, which generally are smaller and carry a lower risk, thus

requiring less officer time. The limitation on the number of animals initially proposed has now been removed from the proposals – this will instead be considered during a review of all animal licensing policies later this year.

Section 3.2: Separate fees have been proposed for two types of variations. Those applications in respect of an increase in the number of animals or species being kept will generally engage officers and veterinarians, requiring an inspection of the premises to be carried out to ensure suitability. On the other hand, administrative matters (such as a condition permitting the transfer of animals for a temporary exhibition) will generally have a lower impact on service delivery.

Section 3.6: It is believed that these fees have not previously been set, and there are currently no such licences in force in the Dacorum area. As such, fees have been based on estimated costs only, as there is no relevant data against which to benchmark.

Section 4.3: All of these fees had previously been set at 50% of the prescribed maximum amounts on commencement of the licensing scheme, with the exception of bingo licences which had been set at 100%. These have now been adjusted in accordance with the authority's experiences to date. As no track betting, bingo or family entertainment centre licences have been issued to date, these fees have been based upon estimated costs only.

Section 6: A number of policy and procedural changes have either been proposed or are currently being implemented to this licensing area, and where possible the fees have taken those changes into account. However, in a number of cases, it has not been possible to accurately calculate the effect on costs, resulting in estimated costs being used here. Where these result in reduced processing costs, fees will be adjusted accordingly during future reviews.

Section 6.1: It was originally proposed to set different fees in respect of hackney carriage and private hire drivers, to help fund stand improvements. Upon closer examination of the legislation, it is now believed that this would leave the authority open to challenge, and these provisions apply to vehicles and operator licences only.

Section 6.2: It is still proposed to apply a £15 surcharge to annual hackney carriage vehicle licences, which will be utilised to develop the provision of stands around the borough.

Fees for stretch limousines were mistakenly omitted from the initial document. These vehicles are subject to different compliance standards, and are tested at an alternate test centre, with a higher fee. The more fragile nature of the vehicles also means that they are currently licensed for a 6-month period, as opposed to 12 months for standard vehicles. Stretch vehicle licensing procedures are another area likely to be reviewed in the coming months.

Section 6.3: Previously 3 fee bands were offered here. Amalgamation of the upper two bands has been proposed to more accurately reflect the costs involved in processing such applications, which are not necessarily quantity related, while preserving a cheaper option for the smallest

operators (e.g. sole traders). This has been identified as a priority area for review, and a report with various new policies and procedures is likely to be presented to Committee before the summer.

Section 7: Hypnotism authorisations were mistakenly omitted from the initial proposals, although it must be noted that, outside of London, there is no statutory power to require payment of an application fee.

Section 8: Currently there is no power to charge a fee in respect of the registration of scrap metal dealers. A new bill that would require scrap metal dealers to be formally licensed is currently under consideration in the House of Lords, which may receive Royal Assent and be commenced as soon as this Summer. It is understood that the Bill makes provision for the payment of a fee to cover the more robust checks and authorisation process that would be undertaken. Further proposals will be brought to the Committee at the appropriate time.

Section 9.1: Previously, fees were set at different levels for different categories of sex establishment. Given that the costs involved are similar, these have now been equalised across all categories. A separate enforcement component was also set previously – this has now been eliminated, as such an approach is no longer permissible.

Section 10: These fees have been proposed on an interim basis, as officers are now reviewing the policies and procedures applied to this category of licence, with a view to reporting to Committee shortly on possible amendments. Where these have the effect of reducing processing costs, this will be taken into account during the next fees review.

4. CONSULTATION AND RESPONSES

4.1. Following the November Committee meeting, details of the proposed fees and charges for the 2013-2014 period were published on the Council's website (in both the Licensing area and on the Consultations page), and linked via the Council's Facebook and Twitter accounts. Details were also included within the December taxi e-newsletter. A window for the receipt of comments on the proposals, from the 3rd December 2012 to the 20th January 2013, was offered.

4.2. The following responses to the proposals were received:

<p>From: Dacorum Hackney Carriage Drivers Association</p> <p>To licensing Department</p> <p>After a consultation with the majority of the Taxi drivers in Dacorum with regards to the proposed increase in Vehicle license renewal fee from the current £200 to £240 (20% increase). The vast majority of the drivers have expressed reservations with regards to the increase being far too high. We would like to point out that the current rate of inflation is at 2.7%, and also the services being offered by the licensing department has dropped considerably over the last few years, for example the time it now takes to get the new vehicle license paperwork - or to get an appointment to see a licensing officer. Other problems like the taxi rank space has still to be rectified.</p>
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On behalf of the Taxi trade we strongly oppose the 20% rise, we would recommend a reasonable increase linked to current inflation rate.

The drivers also have raised concerns as to why they were not given written information with regards to a proposed increase in licensing fees (we recommend that the Council still has time to notify the drivers of these proposed changes). Also it would be easier if the council could try to obtain e-mail addresses so that more drivers could be notified in future of any changes.

- 4.3. It is fair to say that taxi licensing remains the single largest area of work for the Licensing section. As noted earlier in this report, fees in this area are unchanged since 2004; however in this time the costs to the Council of processing such applications, including MOT/compliance test fees, plates and badges, printing and postage, and staffing costs have increased considerably, meaning that the current fees, reflective of costs several years ago, are now insufficient to cover expenditure. The proposed fee levels, in officers opinion, reflect the current cost of processing applications in this statutory area, and of issuing any associated paraphernalia. Reference is made to the rate of inflation – had the vehicle licence fee increased with inflation since 2004, it would currently be around the £260 mark, substantially more than what has been proposed. The proposed rise is aimed at closing the gap that has opened between our fees and processing costs during the recent years in which no fee increase has been implemented. In respect of service levels, a number of reviews are currently underway to try and streamline further the procedures utilised in the service, and it is hoped that the trade will begin to see the benefits of these improvements in the coming months.

From: J.P., Home Boarding licence-holder

Many thanks for your prompt reply, much appreciated.

Thank you also for the information, I am pleased the cost of fees have been looked at, however, you are correct in saying, I still feel the Home Boarding Fees are high compared to the capacity a kennels/cattery have for income, they literally can board dozens and dozens of cats and dogs at any one time, whereas we deliver a very personal service where we care for a dog/s from just one family at a time, I do feel the costly fees could and probably does put people off from doing the right thing and applying for a license.

If your proposed fees come into operation next year, it will be an improvement as far as renewal is concerned, but a hefty fee for a new license at £160! This is very expensive, surely there isn't a lot of difference processing a new license to renewing a license. In the case of newly recruited Host Families, who are mostly are retired, and living on a limited income, this cost of a new license would be completely out of the question, therefore the expenses falls on my shoulders.

I would be glad of your thoughts on this.

- 4.4. The animal boarding fees, like all others, have been proposed on the basis of the costs of current authorisation procedures. While the greater potential revenue from commercial boarding premises as opposed to home boarders

is recognised, it is not permissible to take this into account in setting fees. The authorisation procedures for both are largely similar, with the key difference being the longer inspection time required for commercial properties, due to the larger size and need to check the compliance of specialist accommodation. The difference between new applications and renewals stems from the further checks and consultations currently carried out on those applications. Officers now intend to carry out a review of operational procedures and policies later this year across all animal licences, with a view to simplification and streamlining, which when implemented may allow fees to be reduced further in future years.

5. RECOMMENDATIONS

- 5.1. In pursuance of the powers specified in Annex A of this report, that the Committee set as the fees and charges payable by applicants in connection with applications and other processes for licences, registrations and permits the fees and charges as set out in the attached document, 'Licensing Fees and Charges 2013-14', for the period from 1st April 2013 to 31st March 2014.

ANNEX A – SUMMARY OF POWERS TO SET APPLICATION FEES

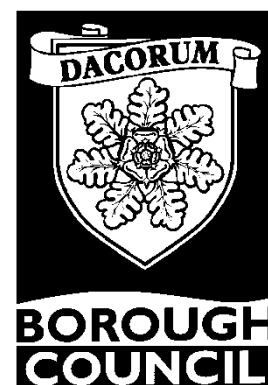
Section	Area	Power arises from
1.1	General service charges	Various legislation
2.1 – 2.5	Alcohol, entertainment, etc	At present, these fees are prescribed in regulations made by the Secretary of State under the Licensing Act 2003. Section 197A of that Act will allow licensing authorities to set fees locally on a cost-recovery basis, but is yet to be commenced.
3.1	Animal boarding	s.1(2), Animal Boarding Establishments Act 1963 Fee as may be determined by LA.
3.2	Dangerous wild animals	s.1(2)(e), Dangerous Wild Animals Act 1976 Sufficient to meet direct and indirect costs incurred
3.3	Dog breeding	s.3A(2), Breeding of Dogs Act 1973 Reasonable costs incurred in administration and enforcement.
3.4	Pet shops	s.1(2), Pet Animals Act 1951 Fee as may be determined by LA.
3.5	Riding establishments	s.1(2), Riding Establishments Act 1964 Fee as may be determined by LA. Cost of veterinary inspection.
3.6	Zoos	s.15(1), Zoo Licensing Act 1981 Sufficient to cover the reasonable expenditure incurred by the authority. Special provisions for inspections, closures, and direction making.
4.1, 4.3	Gambling notices, premises licences	Set on a cost recovery basis by the authority, up to maximum amounts prescribed in regulations made under the Gambling Act 2005. No fee chargeable for OUN's
4.2, 4.4	Gaming permits, lotteries	Prescribed in regulations made by the Secretary of State under the Gambling Act 2005
5.1 – 5.2	Charity collections	No fees chargeable
6.1	HC/PH drivers	s.53(2), Local Gov't (Misc. Provisions) Act 1976 Recovering the costs of issue and administration. Refundable if licence not granted.
6.2 – 6.3	HC/PH vehicles, PH operators	s.70(1), Local Gov't (Misc. Provisions) Act 1976 Sufficient to cover the cost of: inspection of vehicle for licensing purposes, providing hackney carriage stands, or other costs for administration and control/supervision of vehicles. Refundable if licence not granted. <i>Maximum fees must be advertised.</i>
7.1	Hypnotism	No fees chargeable
8.1	Scrap metal	No fees chargeable
8.2	Motor salvage	s.3(1)(b), Vehicles (Crime) Act 2001 Recovering the costs incurred in administration
9.1	Sex establishments	Sch 3, para 19, Local Gov't (Misc. Pr'ns) Act 1982

		Reasonable fee
10.1	Skin piercing, etc	s.14(6), 15(6) , Local Gov't (Misc. Pr'ns) Act 1982 Reasonable fee

ANNEX B – DRAFT LICENSING FEES AND CHARGES 2013-14

AGENDA ITEM: 6

SUMMARY



Report for:	Licensing Health & Safety Enforcement Committee
Date of meeting:	12th February 2013
PART:	1
If Part II, reason:	

Title of report:	Review of Hackney Carriage and Private Hire licensing procedures and policies
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To propose a number of amendments to the Council's procedures and policies in respect of taxi licensing
Recommendations	As set out throughout the report, at paragraphs 2.1.7, 2.2.5, 2.4.6, 2.5.8 and 4.7
Corporate objectives:	<p>Safe and Clean Environment</p> <ul style="list-style-type: none">Public safety is a key aim of taxi licensing, and it is envisaged that the proposals will strengthen the Council's powers to respond to concerns in this area. <p>Dacorum Delivers</p> <ul style="list-style-type: none">This report proposes the consolidation of a number of existing policies, making it simpler for officers to advise and members of the public to enquire as to general expectations of applicants and licence-holders.
Implications:	<u>Financial / Value for Money / Risk / Equalities / Health & Safety</u> None
Consultees:	Consultation has been carried out on the proposals, and the results are set out within this report.
Background papers:	

Glossary of acronyms and any other abbreviations used in this report:	
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1. INTRODUCTION

- 1.1. The Council is responsible for the regulation of hackney carriage (taxi) and private hire services within the Borough of Dacorum, through the issue and enforcement of a series of licence for drivers, vehicle proprietors, and operators. The framework for this licensing system is contained within numerous pieces of legislation, but primarily the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.
- 1.2. Since adopting the relevant parts of these pieces of legislation, a number of policies and procedures have been adopted by the Council governing its expectations of applicants and licence-holders, and the way in which it will process and consider applications for licences.
- 1.3. The Committee considered proposals on the 18th September 2012 for a number of alterations to the current policies and procedures, prior to consultation. The aim of these alterations was simplification and consolidation, and to ensure that our policies and procedures correctly reflect current Government guidance and statutory requirements.
- 1.4. Consultation on the four proposals considered at the September meeting, as well as a further proposal considered by the Committee on the 1st March 2012 in respect of the joint ownership of 'golden' hackney carriage plates, was carried out with the licensed taxi trade between the 1st October 2012 and the 23rd December 2012, with details being published on the Council's website, and referred to within the printed newsletter sent to the taxi trade in October 2012. Responses were received from the Dacorum Hackney Carriage Driver's Association, which are reproduced in section 3 of the report.
- 1.5. This report continues an ongoing review program of applicable taxi licensing procedures and policies, commenced by the Committee on the 4th October 2011 and continued on the 1st November 2011, 31st January 2012, 1st March 2012, and 27th November 2012.
- 1.6. The review also incorporates operational procedures, affecting the manner in which officers receive and administer applications. An update on these issues is provided in section 4 of this report.
- 1.7. Further outstanding areas of the review, which will require the Committee's consideration at future meetings, include:
 - Accessibility to licensed vehicles by disability groups
 - Types of Hackney Carriage vehicles to be licensed by the Authority;
 - Hackney Carriage/Private Hire Vehicle Age Policy;
 - Stretched Limousines/"Special" Vehicles;
 - Knowledge Testing (including literacy and numeracy testing);
 - Conditions in respect of Hackney Carriage and Private Hire Drivers;
 - Private Hire Operator licence procedures and conditions
 - Information regarding the expected conduct of licensed drivers.

2. PROPOSED ALTERATIONS TO CURRENT POLICIES

2.1. Age limits for driver licence applicants

- 2.1.1. The Council currently has a minimum age policy of 21 years for new driver licence applicants, for both hackney carriage and private hire. It is currently expected that applications from any person aged under 21 years would be refused.
- 2.1.2. With the advent of the Equality Act 2010, it is questionable whether this policy would comply with the prohibition on age discrimination.
- 2.1.3. Applicants are also required under sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 to have been authorised to drive motor vehicles for a minimum of 12 months, and no licence may be granted if this is not the case.
- 2.1.4. Given the vocational nature of the work for which licences are sought, it is now considered more appropriate to require applicants for licences to have held a full driving licence (issued either in the UK or by another EEA member state) for a minimum period of three years. This will have the effect of ensuring that licence applicants have greater driving experience, as would be appropriate for persons driving in a professional capacity, and to ensure the safety of the public, rather than an arbitrary age limit during which time driving experience may or may not have been accrued.
- 2.1.5. There is currently no maximum age policy, although drivers aged 65 years or over are required to obtain medical clearance on an annual basis, as opposed to the 3-yearly interval prior to that age. This is in accordance with Government guidance, and it is not proposed to amend this aspect of the policy.
- 2.1.6. In one change from the initial proposal, it is now proposed that an applicant relying upon an EEA member state driving licence to make their application must first obtain a British licence counterpart from DVLA. This will ensure that they are recorded on UK driving licence databases, and if offences are committed in Great Britain, that penalty points and licence endorsements can be correctly recorded. EEA licence holders may apply to DVLA for a British counterpart free of charge, by completing and returning form D9.

Recommendation

- 2.1.7. That Committee amend the Council's policy in respect of the licensing of hackney carriage and private hire drivers, with effect from the 1st April 2013, by repealing the previous policy requiring applicants to be over the age of 21 years, and adopting the following policy provisions:**

- **The Council shall require applicants for hackney carriage or private hire driver licences to demonstrate that they have been authorised to drive motor vehicles in Great Britain or an EEA member state for at least 36 continuous months immediately prior to the date of application, and continue to be so authorised. No licence shall be issued in any**

circumstances to an applicant who has been authorised to drive motor vehicles for less than 12 continuous months or who is not so authorised at the time of consideration of the application. Applicants with between 12 and 36 continuous months authorisation will be refused unless exceptional circumstances can be demonstrated.

- **Where an application is made in reliance upon a driving licence issued by an EEA member state, the applicant must obtain a British licence counterpart from DVLA. Both the British counterpart and the original EEA state licence must be produced for examination upon the making of an application.**

2.2. Dual driver licence applications

- 2.2.1. Hackney carriage and private hire driver licences are created by separate statutes, and as such applications for licences have traditionally been treated separately. A substantial number of drivers now hold licences to drive both hackney carriages and private hire vehicles. Because of the way in which these are currently administered, both licences have separate expiry dates, and must be renewed individually, increasing the administrative burden both on drivers and the Council.
- 2.2.2. A number of councils operate 'dual driver licence' application systems, allowing applications for both licence types to be considered simultaneously. Both licences would then be issued with the same expiry date, and a single application process would be followed to renew both licences, significantly reducing the administrative burden. The reduced administrative work is also reflected in a reduced application fee. Where the second licence is obtained part way through the first licence's validity, this would be issued with the same expiry date, and a reduced or pro rata fee would be charged to reflect the shorter licence period.
- 2.2.3. Consultation on the proposed introduction of such a system in Dacorum has seen positive responses, with the Dacorum Hackney Carriage Drivers Association supporting the proposal. Anecdotally, a number of drivers have already contacted officers to enquire when they will be able to make such applications. It is therefore proposed to move forward with this proposal.
- 2.2.4. Officers are still working out the details on the precise implementation of such a scheme, including revisions to knowledge test formats, procedures for interim 'conversion applications', application form formats, etc. For this reason, it is proposed that final adoption of this measure is deferred until the next meeting of the Committee, to allow these proposals to be finalised.

Recommendation

- 2.2.5. That Committee provisionally endorse the adoption of a dual driver licensing system, subject to ratification of precise details of implementation of such a scheme at the next meeting of the Committee.**

2.3. Signage on licensed vehicles

- 2.3.1. A proposal was considered for the amendment of vehicle licence conditions, so as to require the display on rear doors of additional, council-issued signage. The aim of this proposal was to make clear which vehicles have been inspected and licensed by Dacorum Borough Council, in response to recent concerns expressed by the trade about cross-border hiring.
- 2.3.2. This proposal has not received support from the trade, with the Association highlighting that such signage would likely have a detrimental effect on executive hire work. An alternate proposal has now been put forward by the trade for enhanced roof signs on hackney carriage vehicles, carrying a greater volume of information.
- 2.3.3. This alternate proposal is currently being evaluated in terms of practicality and cost by officers. It is therefore proposed to defer consideration of this matter until a future meeting of the Committee, when full details of both proposals will be made available.

2.4. Revised guidelines on fitness of applicants for drivers licences

- 2.4.1. When considering applications for hackney carriage and private hire driver's licences, the Council must be satisfied that applicants are "fit and proper" to hold such licences. No statutory definition of this term exists, and it is open to the Council to apply such considerations as it deems relevant.
- 2.4.2. In 2008 the Council adopted a set of guidelines on the relevance of criminal convictions and motoring endorsements for driver's licence applications. It is believed that those guidelines have not been reviewed since that date.
- 2.4.3. A single document on the fitness of applicants, which includes revised, updated and consolidated information on matters typically taken into account on applications, has been produced and is appended to this report as Annex B. The revised document covers (but makes clear that the Council's considerations will not be limited to) driving entitlement, character, licensing history, entitlement to work in the UK, medical fitness, criminal convictions and cautions, and motoring endorsements.
- 2.4.4. It must be noted that any such document can form guidelines only, and an inflexible policy would not be lawful. The Council must consider every application on its merits, and may depart from any published policy or guidance if the circumstances warrant. Failure to give adequate consideration to individual circumstances may give rise to judicial review, as may departing from guidelines or policy without sufficient reason.
- 2.4.5. By publishing a wider ranging document, it is thought that it will be clearer to both applicants and the general public what will be expected of applicants for (and holders of) driver's licence, and to make the Council's decision-making process in this area more

transparent and consistent, in accordance with the Better Regulation Principles.

Recommendation

2.4.6. That Committee adopt the attached document, “Guidelines on Fitness of Applicants for Hackney Carriage / Private Hire Driver’s Licences” as non-binding and non-exhaustive guidelines for the determination of applications and reviews of hackney carriage and private hire drivers licences in respect of applications received and similar processes commenced on or after the 1st March 2013, superseding the 2008 document “Guidelines to be used by the Licensing and Health and Safety Enforcement Sub Committee when considering the relevance of convictions”.

2.5. Joint ownership of ‘golden plate’ hackney carriages

2.5.1. The Committee considered a report on the transfer of ownership of ‘golden’ hackney carriage plates on the 1st March 2012, and expressed various concerns about the practice of transferring a pre-2004 plate (and the attached entitlement to operate non-accessible vehicles) among the trade, by placing the vehicle into joint ownership, switching the plate to the new joint owner’s own vehicle, and then reverting the vehicle to single ownership.

2.5.2. At that meeting, the Committee resolved, subject to the outcome of consultation with the trade, to:

- Permit those persons who have continued to license their saloon vehicles as a hackney carriage since 2004 and have continued to use their vehicle or upgraded to a new/newer saloon vehicle to be able to license a saloon vehicle as a hackney carriage under ‘grandfather rights’.
- Permit those persons who have continued to license their saloon vehicle as a Hackney Carriage since 2004 to be able to transfer the plate and vehicle to a third party.
- Not to approve any new joint ownership in respect of existing Hackney Carriage saloon vehicles. The Licensing Authority will consider applications for transfer of the vehicle and plate to a third party.
- Where a license holder becomes incapacitated or in the event of death, the vehicle and plate will become the property of the next of kin.

2.5.3. While no adverse comments were received in respect of the proposal, officers are now minded to recommend against proceeding with this measure.

2.5.4. Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires the proprietor of a hackney carriage or private hire vehicle, upon transferring his interest in that vehicle to another person, to notify the relevant Council, so that the licence may also be transferred. It is an offence to fail to comply with this requirement.

2.5.5. Under the provisions of the Interpretation Act 1978, the term 'person', when used in legislation, is to be taken to include any body of persons corporate or unincorporate. When read in conjunction with s.49, this effectively means that a vehicle proprietor may legitimately sell a partial stake in a licensed vehicle, thus forming an unincorporated partnership. As the interest in that vehicle has moved from one 'person' (a sole trader) to another 'person' (a partnership), there is a legal obligation on the proprietor to give notice to the Council. Were we to subsequently refuse to transfer the vehicle's licence for any reason other than the grounds specified in the Act for refusal of vehicle licences (which relate to the condition of the vehicle, rather than the owner), it is likely to result in a legal challenge.

2.5.6. Requests of this type have diminished in recent months, which may be attributed to a number of reasons, including the new position being taken on vacant plates (as detailed in section 4). It is now believed that more stringent standards on the type of vehicle that may be licensed as a hackney carriage or private hire vehicle will have more of an effect to discourage this conduct than adoption of the policy previously proposed. To this end, a review of vehicle standards for both categories of licence is now underway, with a view to reporting proposals to Committee later this year.

2.5.7. With respect to the proposal relating to death or incapacity of a licence-holder, there is no statutory provision for the automatic transmission of a licence to the next of kin or other personal representatives, and it is believed that the provisions of section 49 would still apply in such circumstances, requiring a formal notification of transfer to be given. Clearly in such circumstances, officers will act with sensitivity, and the notification will be accepted from the next of kin or representative rather than the deceased or incapacitated person.

Recommendation

2.5.8. That no further action is taken in respect of the proposal to prohibit new joint ownership of 'golden' hackney carriage plates, as considered by the Committee on the 1st March 2012.

3. RESPONSES TO CONSULTATION

3.1. The following responses were received to the consultation undertaken on all of the above proposals:

<p>From: T.K., Chair, Dacorum Hackney Carriage Drivers Association</p> <p>Ross Hill / Richard mebitt,</p> <p>...</p> <p>We looked at The amendments proposed by you and all agree on point about the age limit and to have passed driving test 3year,</p> <p>All agree on point about people with private hire &hackney licensees to be applied on one application.</p> <p>We didn't agree on a sign on back doors of taxis with dacroum logo we fill that u allready have hackney taxi plate on back and front wind screen and a top taxi sign and there for we do not agree with this, also this will effect all vip work clints which in this difficult climate we can't afford to loose.</p>

...

Thanks

From: L.M., Vice-Chair, Dacorum Hackney Carriage Drivers Association

Dear licensing committee

As a member of the Dacorum Taxi Committee, I would like to raise concerns expressed by drivers in relation to the proposed permanent signage on doors of licensed taxis.

Having spoken with most of the taxi drivers within the Berkhamsted area where I work, I can confirm a unanimous opinion against the idea of permanent signage.

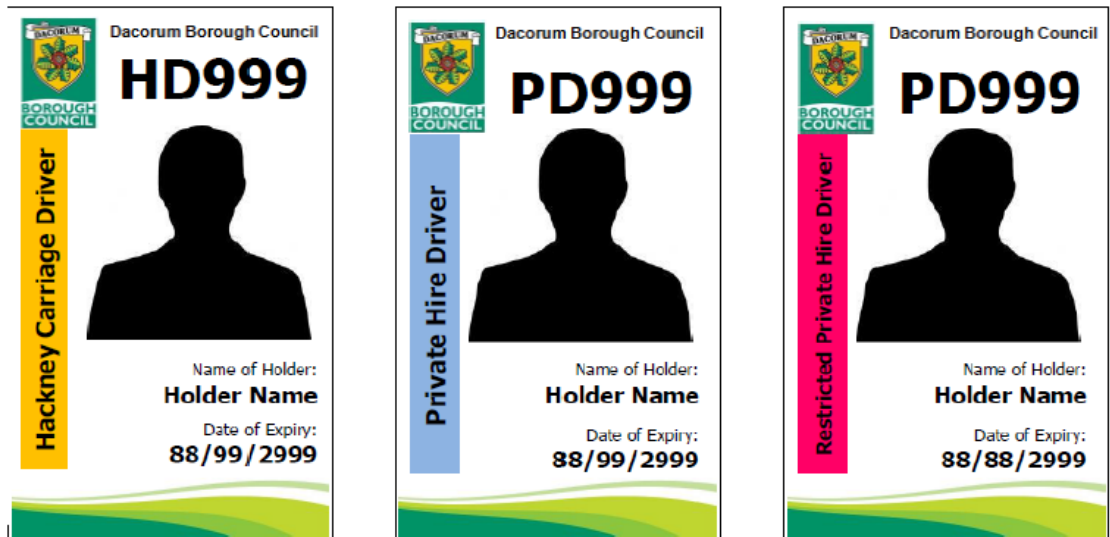
The main issue raised surrounds drivers investment in expensive vehicles to gain access to the executive end of the market. They express concern that permanent signage detracts from the image of the vehicle and will affect their earning potential.

A solution put forward, that has been met more favourably, is for new more comprehensive top signs to be commissioned which display all the relevant licensing data (registration, district, plate No etc).

I ask on behalf of the drivers I represent that these concerns are considered and this policy could be adjusted. I would also add that I have had no issues raised with any of the other proposed changes.

4. REVIEW OF OPERATIONAL PROCEDURES

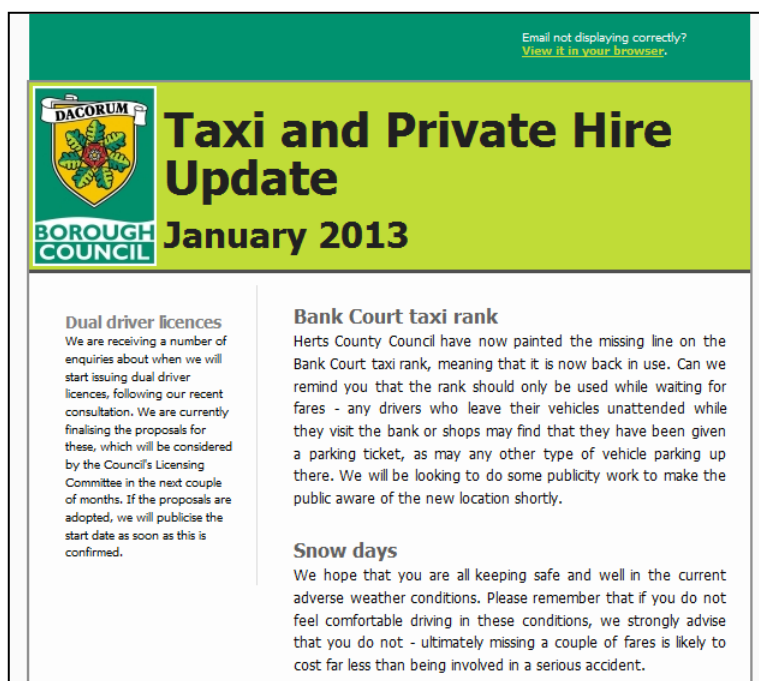
- 4.1. A specialist card printer for the production of driver's badges has now been procured and is in use for hackney carriage badges (stocks of the old-style private hire badges are still being used up prior to switching production of these as well). It is proposed to issue taxi badges in one of three formats dependent upon the type, as shown below. All of the badges have built in security features, including a watermark on the surface bearing the Council's logo. The material costs of these cards are around 70p each, as opposed to £2.00 for the older self-laminating format used previously. Officer time to produce each card is also substantially lower, leading to further savings.



- 4.2. A revised application form for vehicle licence applications has now been released for use by applicants. The form allows applications for both types of licences in a single format, and has eliminated a number of questions which were no longer required. The revised vehicle form is attached at Annex A. Revised forms for driver and operator licences are also underway, and are expected to be released in the near future.
- 4.3. For a number of years, officers agreed to 'hold' taxi plates for vehicle proprietors; for example, following an accident in which the vehicle has been written off, to allow the proprietor time to purchase a new vehicle. This was particularly relevant in the case of 'golden plates' for hackney carriages, where the proprietor wished to preserve their entitlement to licence a non-wheelchair accessible vehicle. In some cases, these plates were left essentially vacant for a period of years. Officers have now stopped this practice, which ran contrary to a decision of the Administrative Court². Proprietors must now specify the vehicle to which an application relates in every application. Where a vehicle has been irreparably damaged or is otherwise unfit for use, consideration will be given to the use of the power of suspension under section 68 of the Local Government (Miscellaneous Provisions) Act 1976, which carries a two month limit for rectification or replacement of the vehicle, with provision for automatic revocation of the licence after this time if the issue has not been resolved.

² R. (on application of Key Cabs, t/a Taxifast) v Plymouth Crown Court, [2007] EWHC 2800 (Admin)

4.4. Officers have periodically issued printed newsletters on two or three occasions per year for several years. These have been sent to all licence-holders in the taxi trade. Rising printing and postage costs, and the growing size of the trade in Dacorum, brought the financial viability of this newsletter into question, and officers made the decision in October 2012 to issue one final issue of the printed newsletter before switching to a new email format. This is delivered by way of an opt-in mailing list (EU legislation on electronic communications prohibits the use of existing databases of email addresses for unsolicited correspondence), and enables more frequent and timely updates to be sent to all subscribers as required. All drivers have been sent a QR code which can be used to subscribe to the newsletter, or it is also possible to sign up via the Council's website, at www.dacorum.gov.uk/default.aspx?page=8007. An example of a recent update is shown to the right.



- 4.5. The Criminal Records Bureau (CRB) has now been merged with the Independent Safeguarding Authority (ISA) to form the Disclosure and Barring Service (DBS), as part of the Government's efficiency program. While this change has to date had little effect on the disclosure service used by the Council in respect of taxi driver applications, it has been necessary to update the material and information issued by the Licensing Section to correctly reflect the new name of the service. Future committee reports in respect of taxi drivers will refer to criminal record certificates as DBS disclosures. There are expected to be a number of significant changes to the DBS service later this year which may adversely affect the Council's usage – these will be evaluated and disseminated as information becomes available.
- 4.6. All changes to operational procedures are being considered in light of the impending redevelopment of the Civic Centre site. It is anticipated that significant changes to the current working practices will be brought about by this, including a move to a 'paperless office' environment and increased usage of remote working.

Recommendation

4.7. That Committee note the contents of this section of the report.

ANNEX A REVISED VEHICLE LICENCE APPLICATION FORM



Licensing, Dacorum Borough Council, Civic Centre, Marlowes, Hemel Hempstead, HP1 1HH

Town Police Clauses Act 1847 &
Local Government (Miscellaneous Provisions) Act 1976

Application for Hackney Carriage / Private Hire Vehicle Licence

Type of licence sought: <small>(tick one)</small>	<input type="checkbox"/> Hackney Carriage	<input type="checkbox"/> Private Hire
I am applying for a: <small>(tick one)</small>	<input type="checkbox"/> New licence	<input type="checkbox"/> Renewal of licence
	<input type="checkbox"/> Change of vehicle	<input type="checkbox"/> Change of owner(s)
	<input type="checkbox"/> Revision of vehicle details	<input type="checkbox"/> Revision of owner(s) details

Please write legibly in **block capitals**, and ensure that your answers are inside the boxes and written in **black ink**. All questions must be answered. Incomplete applications will not be processed.

You may wish to keep a copy of the completed form for your records.

Section 1: Licence details		<i>This section should be left blank on new licence applications</i>	
Plate number:		Expiry date of current licence:	/ /

Section 2: Vehicle details	
Registration number:	
Chassis number (VIN):	
Manufacturer:	
Model:	
Body style: <small>Saloon, estate, etc</small>	
Colour:	
Date of first registration:	/ /
Engine capacity (cc):	cc
Engine type:	<input type="checkbox"/> Petrol <input type="checkbox"/> Diesel <input type="checkbox"/> LPG <input type="checkbox"/> Electric Other _____ <small>(For hybrids, please tick all that apply)</small>
Current odometer reading:	miles
Number of passengers that the vehicle is constructed to safely carry: <small>Do not include the driver in this number</small>	
Is the vehicle constructed to safely carry passengers in wheelchairs?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Section 3: Proprietor(s) details		
The application is made by: (tick one)	<input type="checkbox"/> A single individual <input type="checkbox"/> Multiple individuals <input type="checkbox"/> A limited company	Please give details in part A Please give details in Parts A & B Please give details in Part C

Part A: First individual proprietor		<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other _____	
Full name:			
Home address:			
Date of birth:	/ /		
Daytime phone number:		Mobile phone number:	
Email address:			

Part B: Second individual proprietor (if any)		<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other _____	
Full name:			
Home address:			
Date of birth:	/ /		
Daytime phone number:		Mobile phone number:	
Email address:			

If there are more than two individual proprietors, please give the details of further individuals on a separate sheet.

Part C: Limited company proprietor	
Registered name:	
Registered office address:	
Registration number:	<input type="checkbox"/> UK: Companies House <input type="checkbox"/> Other: _____
Daytime phone number:	
Email address:	

Section 4: Usage details			
PH only	Name of private hire operator: _____		
HC only	If licensed, will the vehicle be used wholly or mainly as a hackney carriage within the Borough of Dacorum?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Address where vehicle is kept when not in use:		_____	
Please give details of any persons who may drive the vehicle: <i>Use an additional sheet if necessary</i>			
Name:	_____	Driver's badge number:	_____
Name:	_____	Driver's badge number:	_____
Name:	_____	Driver's badge number:	_____
Section 5: Insurance details			
<i>A copy of your insurance certificate must accompany the application</i>			
Name of Insurer:	_____		
Policy cover dates:	From: / /	To: / /	
Section 6: Further questions			
Has the vehicle been modified in any way from the manufacturer's original specification, and the relevant European Whole Vehicle Type Approval?			<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the vehicle been damaged in any accident during the past 12 months?			<input type="checkbox"/> Yes <input type="checkbox"/> No
Have any of the proprietors ever had a Hackney Carriage or Private Hire Vehicle Licence suspended or revoked, by this or any other authority?			<input type="checkbox"/> Yes <input type="checkbox"/> No
Have any of the proprietors ever been refused a Hackney Carriage or Private Hire Vehicle Licence, by this or any other authority?			<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the vehicle currently licensed as a hackney carriage or private hire vehicle by any authority other than Dacorum?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If any of the above have been answered 'Yes', please give further details below:			

Section 7: Application fee(s)			
<i>Please tick one of the following options</i>			
<input type="checkbox"/> I enclose a cheque for £_____, payable to Dacorum Borough Council.			
<input type="checkbox"/> I wish to pay the application fee(s) by credit or debit card – please contact me to arrange payment.			

Section 8: Declaration and signatures*Every proprietor must sign the form*

- I/We declare that the motor vehicle subject to this application is owned by the proprietor(s) and that to the best of my/our knowledge and belief, the above particulars are true in every respect.
- I/We understand that it is an offence for any person knowingly or recklessly to make a false statement or to omit any material particular in giving information required in this form.
- I/We have read the Licence Conditions and undertake in the event of a licence being granted to observe and adhere to such Conditions.

Signed:		Print name:		Date:	
Signed:		Print name:		Date:	

If there are more than two proprietors, a copy of this page should be taken to allow all proprietors to sign. Where the application is made by a limited company, the form should be signed by an officer of the company.

Completed forms should be submitted, along with:

- the vehicle's registration certificate, with the proprietor listed as registered keeper
- evidence of an insurance policy which includes public or private hire usage (as applicable), and
- payment of the appropriate fee(s).

to:

Licensing, Dacorum Borough Council, Civic Centre, Marlowes, Hemel Hempstead, HP1 1HH

Data Protection – PLEASE READ THIS NOTICE CAREFULLY

We will use the information you provide in this form and in any supporting documents to process and determine your application for a licence. The information will be held on file and on an internal database, and such public registers as the Council may be required to maintain.

The information supplied may be passed to other bodies, including law enforcement agencies and government departments, as allowed by law. We may check information you have provided, or information about that that another person has provided, with other information we hold. We may also obtain information about you from, or provide information to, organisations such as government departments, law enforcement agencies, other local authorities, and private sector organisations such as banks, insurance companies or legal firms, to:

- Verify the accuracy of information,
- Prevent or detect crime, or
- Protect public funds.

We will not give information about you to anyone else, or use information about you for other purposes, unless the law allows us to.

Dacorum Borough Council is the data controller for the purposes of the Data Protection Act. If you would like to know more about what information we hold about you, or the way we use it, please contact us.

Office use only

Date received:		Fee received:	<input type="checkbox"/> Chq <input type="checkbox"/> Card
Receipt number:			
V5C Certificate:			
Insurance Cert:			
MOT/Comp test date:		Result:	
MOT/Comp retest date:		Result:	
Appn complete:		Lic. approved:	
Licence valid from:		Licence expires:	

Revised September 2012

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Annex B – Guidelines on Fitness of Applicants for Hackney Carriage / Private Hire Drivers Licences



AGENDA ITEM: 7

SUMMARY

Report for:	Licensing Health & Safety Enforcement Committee
Date of meeting:	12th February 2013
PART:	1
If Part II, reason:	

Title of report:	Review of Licensing Enforcement Policy
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To outline proposed amendments to the Council’s Licensing Enforcement Policy, following public consultation
Recommendations	To adopt the attached document as Dacorum Borough Council’s Licensing Enforcement Policy for the period from 1 st March 2013 to 29 th February 2016.
Corporate objectives:	<p>Safe and Clean Environment</p> <ul style="list-style-type: none"> • This policy sets out the principles for licensing enforcement activities, which ensure the legal and safe operation of licensed businesses <p>Dacorum Delivers</p> <ul style="list-style-type: none"> • The revised policy updates a number of sections in light of recent legislative developments and case law, and clarifies a number of delegated authorities.
Implications:	<u>Financial / Value for Money</u> None
Risk Implications	This report relates to a revision of an existing policy, and no new implications arise.
Equalities Implications	This report relates to a revision of an existing policy, and no new implications arise.

Health And Safety Implications	This report relates to a revision of an existing policy, and no new implications arise.
Consultees:	The results of consultation are set out within the report.
Background papers:	DBC Enforcement Statement Draft Licensing Enforcement Policy 2013
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

- 1.1. Dacorum Borough Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and permits. To summarise the principles guiding the exercise of these powers, a licensing enforcement policy has been adopted and published.
- 1.2. Although this document is not formally required under any statutory enactment, it is considered to be a key part of the Council's commitment to the Better Regulation principles – in particular, the transparency and consistency principles. It is also referred to in, and expands upon the contents of, the statutory Statement of Licensing Policy and the Statement of Principles produced by the Council under the Licensing Act 2003 and the Gambling Act 2005, as well as other, non-statutory policies adopted in respect of various licensing functions.
- 1.3. The current version of the enforcement policy was confirmed by Council on the 24th February 2010, at the same time as a corporate Enforcement Statement was adopted. The current policy was adopted for a three year period, expiring at the end of February 2013.

2. PROPOSED REVISIONS

- 2.1. A draft Licensing Enforcement Policy for the period 1st March 2013 to 29th February 2016 was considered by the Committee at its meeting on the 27th November 2012, prior to consultation on the amendments contained within it. The draft policy is attached to this report at Annex A.
- 2.2. In compiling the revisions, officers have had regard to the Council's Enforcement Statement, and to recently amended legislation, centrally-issued guidance and case law.
- 2.3. The following paragraphs highlight some of the more significant revisions proposed to the policy:
 - 2.3.1. **Section 1 (Enforcement Principles)**: reconfigured to utilise the principles published by the Better Regulation Executive, and paragraphs have been rearranged and redrafted accordingly.

- 2.3.2. **Para 2.10 onwards:** the paragraphs relating to cautions have been amended to reflect the revised entitlement. Local authorities may now only issue simple cautions, and in limited circumstances. Formal cautions are no longer issued. The police may issue conditional cautions which, as the name suggests, carry one or more conditions.
- 2.3.3. **Para 2.15 onwards:** Paragraphs have been added to reflect the licensing authority's status as a responsible authority under the Licensing Act 2003, and the powers to make representations and apply for reviews of authorisations.
- 2.3.4. **Para 2.20 onwards:** Paragraphs have been added to reflect the licensing authority's status as a responsible authority under the Gambling Act 2005, and the powers to make representations and apply for reviews of authorisations.
- 2.3.5. **Para 2.24 onwards:** Paragraphs have been added to summarise the powers of suspension, revocation and refusal of taxi related licences. In particular, a new scheme is proposed for the immediate revocation of licences following very serious allegations of misconduct. This is now necessary following a recent court case involving Cardiff City Council, which ruled that the use of the power of suspension as an interim measure is unlawful.
- 2.3.6. **Para 5.3:** Clarified that convictions and cautions may be formally recorded and reported.
- 2.3.7. **Para 7.5:** Adjusted to reflect the new judicial approval arrangements for covert directed surveillance authorisations
- 2.4. Following the November Committee meeting, details of the proposed policy for the 2013-2016 period were published on the Council's website (in both the Licensing area and on the Consultations page), and linked via the Council's Facebook and Twitter accounts. Details were also included within the December taxi e-newsletter. A window for the receipt of comments on the proposals, from the 3rd December 2012 to the 20th January 2013, was offered, but no comments were received within this period.
- 2.5. In the absence of adverse comments, adoption of the draft policy, as previously considered by the Committee, is therefore proposed.

3. DELEGATION OF ENFORCEMENT POWERS

- 3.1. As part of the consideration of the new policy, the Committee are also asked to give consideration to delegating a number of additional powers to officers, to enhance the enforcement powers and tools available, and to implement a number of the changes referred to in the draft policy – specifically, the making of representations and review applications on behalf of the licensing authority, and the immediate suspension of revocation of taxi licences. The proposed policy revisions were drafted as if the following delegations had been agreed.
- 3.2. In all cases, Committee are requested to delegate the power to the Assistant Director (Legal, Democratic & Regulatory), in accordance with the current scheme of delegation. It is envisaged that these powers would then

be further delegated to other officers as necessary, as indicated in the table below:

Delegated power	Ultimate delegation level
Licensing Act 2003	
To make representations on behalf of the licensing authority in its capacity as a responsible authority in respect of applications under sections 17, 29, 34, 41A, 51, 53A, 71, 84, 86A, 87 or 167 of the Licensing Act 2003	LTL, LEO
To apply for the review of a premises licence under section 51 of the Licensing Act 2003 on behalf of the licensing authority in its capacity as a responsible authority, and make appropriate supporting representations at the resulting committee hearing	LTL, LEO
To apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 on behalf of the licensing authority in its capacity as a responsible authority, and make appropriate supporting representations at the resulting committee hearing	LTL, LEO
Gambling Act 2005	
To make representations on behalf of the licensing authority in its capacity as a responsible authority in respect of applications under sections 159, 187, 188, 195, 197, 200 or 204 of the Gambling Act 2005	LTL, LEO
To apply for the review of a premises licence under section 197 of the Gambling Act 2005 on behalf of the licensing authority in its capacity as a responsible authority, and make appropriate supporting representations at the resulting committee hearing	LTL, LEO
To initiate reviews of premises licences of a particular class under section 201 of the Gambling Act 2005 on behalf of the licensing authority, and make appropriate supporting representations at the resulting committee hearing(s)	LTL, LEO
Local Government (Miscellaneous Provisions) Act 1976	
To suspend a vehicle's licence under section 60 of the Local Government (Miscellaneous Provisions) Act 1976, on the grounds that the vehicle is unfit for use as a hackney carriage or private hire vehicle	LTL, LEO, LSO
To suspend or revoke a vehicle's licence, a driver's licence, or an operator's licence with immediate effect under section 60, 61 or 62 of the Local Government (Miscellaneous Provisions) Act 1976 respectively, on any of the grounds thereunder, following consultation with the chair or vice-chair of the Licensing, Health & Safety and Enforcement Committee	LTL
To inspect and test a licensed vehicle under section 68 of the Local Government (Miscellaneous Provisions) Act 1976, and to suspend a vehicle's licence under that section where the officer was not satisfied as to the fitness of the vehicle or the accuracy of the	LTL, LEO

taximeter on inspection or test thereof, until such time as any defects have been rectified to the satisfaction of the officer	
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*LTL = Licensing Team Leader
LEO= Licensing Enforcement Officers
LSO = Licensing Support Officers*

4. RECOMMENDATIONS

- 4.1. That the attached document is adopted as Dacorum Borough Council's Licensing Enforcement Policy for the period from 1st March 2013 to 29th February 2016;
- 4.2. That authority to exercise the powers set out in the table at paragraph 3.2 in respect of the making of representations and review applications relating to premises licences and club premises certificates, and the suspension and revocation of various taxi-related licences, and to delegate further to other officers as indicated in the table, be delegated to the Assistant Director (Legal, Democratic and Regulatory).

ANNEX A – LICENSING ENFORCEMENT POLICY



AGENDA ITEM: 8

SUMMARY

Report for:	Licensing Health & Safety Enforcement Committee
Date of meeting:	12 February 2013
PART:	1
If Part II, reason:	

Title of report:	Deregulation of Entertainment Licensing
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To inform the Committee of imminent deregulatory changes to the licensing regime for regulated entertainment
Recommendations	That Committee note the contents of the report.
Corporate objectives:	Dacorum Delivers <ul style="list-style-type: none"> This report outlines a deregulation of regulated activities, delivered under the Government’s regulatory reform agenda.
Implications:	<p><u>Financial</u> The change to the definition of regulated entertainment is likely to result in a number of licensed premises reconsidering whether they need to continue to hold a licence, with a loss of revenue from annual fees and future application fees should they surrender their licences.</p> <p><u>Value for Money</u> Not applicable</p>
Risk Implications	None
Equalities Implications	None

Health And Safety Implications	None
Consultees:	Not applicable
Background papers:	Department of Culture, Media & Sport: Consultation Response on Entertainment Deregulation (January 2013)
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

1.1. Under the Licensing Act 2003, Dacorum Borough Council is a licensing authority, with responsibility for the authorisation of various licensable activities through a system of premises licences, club premises certificates and temporary event notices. It is a criminal offence to carry on licensable activities without, or in breach of, an authorisation.

1.2. The Act was brought fully into force in 2005, and consolidated several different licensing regimes into a single regulatory system. Since commencement, numerous changes have been made to the primary and secondary legislation. In particular, significant changes were made by the following statutes:

- **Regulatory Reform (Fire Safety) Order 2005**, removed the previous requirement to obtain a fire certificate, and shifted the onus to the proprietors of commercial premises to take appropriate action to assess and remedy fire hazards;
- **Violent Crime Reduction Act 2006**, introduced drinking banning orders, alcohol disorder zones, designated public place orders, summary reviews of premises licences, and a new offence of persistent underage alcohol sales;
- **Policing and Crime Act 2009**, introduced a new licensing requirement for sexual entertainment venues, allowed the Secretary of State to set further mandatory licence conditions beyond those set in the Act itself, and amended the offences relating to underage alcohol sales;
- **Provision of Services Regulations 2009**, which enacted the EU Services Directive, requiring regulators of service-based activity providers to eliminate barriers to cross-border provision of services, by way of increased electronic information and application mechanisms;
- **Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009**, introducing a new system for making minor, non-contentious changes to licences;
- **Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009**, allowed community-run premises to amend their premises licences to remove the requirement to nominate a designated premises supervisor with a personal licence;
- **Crime and Security Act 2010**, replaced underused provisions in respect of alcohol disorder zones with a new concept of early

morning alcohol restriction orders (EMAROs) (never commenced – superseded by the Police Reform and Social Responsibility Act 2011);

- **Legislative Reform (Licensing) (Interim Authority Notices etc) Order 2010**, extended the timeframe for reinstatement of a licence following the death of a licence holder, and for police objections to TENS;
- **Police Reform and Social Responsibility Act 2011**, designated licensing authorities and health bodies as responsible authorities, removed the vicinity test for making representations and review applications, reduced the evidential burden for taking Committee action, allowed environmental health to object to TENS, allowed late TENS, extended the timeframe for objections to TENS, increased the penalties for underage alcohol sales, amended and introduced the provisions for EMAROs, allowed suspension of licences for non-payment of annual fees, extended the duration of licensing policy statements, and new powers (not yet commenced) for fees to be set locally on a cost recovery basis and for a late night levy to be charged to certain premises;
- **Live Music Act 2012**, removed the licensing requirements for providing facilities for entertainment, and introduced a number of exemptions from the licensing requirement for live music entertainment.

1.3. The Live Music Act 2012, commenced in October 2012, made a number of changes to the definition of regulated entertainment – most notably by deregulating three previous licensable activities (provision of facilities for making music, provision of facilities for dancing, provision of facilities for entertainment similar to music or dancing), and by introducing three exemptions under which live music will not require a licence from the authority:

- Live music on licensed premises is exempt between 08:00 hours and 23:00 hours if, at the time of the performance alcohol is being lawfully supplied and consumed at the premises, and the music is either unamplified or, if amplified, takes place in the presence of no more than 200 persons;
- Live music in unlicensed workplaces is exempt between 08:00 hours and 23:00 hours, if it takes place in the presence of no more than 200 persons;
- Live music in any other location is exempt between 08:00 hours and 23:00 hours if it is unamplified.

2. CONSULTATION

2.1. The Department of Culture, Media & Sport (DCMS) consulted in 2011 on a possible deregulation of most forms of entertainment at premises with a capacity of less than 5,000 persons. 1,350 responses were received between September and December 2011, including 250 from licensing authorities.

2.2. The Government's response to the consultation was published in January 2013, and proposes going forward with the deregulation, albeit on a more limited basis than had initially been proposed. DCMS's response to the

consultation, setting out the Government's position and rationale for these changes, is available to view at <http://tinyurl.com/dcms-response>.

3. PROPOSALS

- 3.1. The specific deregulation proposals are as set out in the following paragraphs. In all cases, to be considered a licensable activity the entertainment must be provided in the presence of an audience, for purposes comprising or including entertaining that audience.
- 3.2. The proposals will need to be laid by the Government, most likely within a Legislative Reform Order. It is currently expected that the legislative changes will be made to take effect from the 1st April 2013.

Plays

- 3.3. The Government has recognised the valuable role of performances of plays and other dramatic pieces, and the comparatively low impact of performances on the licensing objectives, and has proposed that licences will only be required in the following situations:
 - Plays performed in front of an audience of 500 persons or more; or
 - Plays performed between 23:00 hours and 08:00 hours.

Films

- 3.4. No changes to the regulation of exhibition of films are currently being proposed, and as such films will continue to be licensable as follows:
 - All films, other than those whose sole or main purpose is to demonstrate a product, advertise a good/service, inform, educate or instruct; or if the film is or forms part of an exhibit in a museum or art gallery.

Indoor Sporting Events

- 3.5. The consultation response notes widespread support for deregulation of this activity, and highlights other sports safety legislation which is of direct relevance. Under the proposals, a licence will only be required in the following circumstances:
 - An indoor sporting event taking place in the presence of an audience of 1,000 persons or more; or
 - An indoor sporting event taking place between 23:00 hours and 08:00 hours.

Boxing and Wrestling

- 3.6. The Government have noted the higher risk factors associated with these activities, and no deregulation has been proposed. In addition, it is intended to amend the definition of the activity so as to specifically include cage fights and mixed martial arts (MMA) within scope of the licensing regime.

Live and Recorded Music

- 3.7. The consultation attracted a significant response from the live music industry, which expressed support for further deregulatory measures beyond those implemented as part of the Live Music Act. As a result, it is

now proposed that live music will only be licensable in the following circumstances:

- Any live music performed between 23:00 hours and 08:00 hours;
- Amplified live music performed at any time in on-licensed premises or workplaces, before an audience of 500 persons or more;
- Amplified live music performed at any time in other locations.

3.8. The response document also announces an intention to exempt recorded music in on-licensed premises for the first time under this Act. Licences would be required for:

- Any recorded music in on-licensed premises between 23:00 hours and 08:00 hours;
- Recorded music at any time in other locations.

3.9. The Live Music Act enacted provisions which render live music-related conditions imposed on a premises licence or club premises certificate unenforceable in certain circumstances, unless specifically applied upon a review of the licence or certificate sought on the grounds of public nuisance. It is understood that these provisions will remain in place, and would be extended to also apply to recorded music.

Performances of Dance

3.10. The Government has proposed treating Dance in the same manner as Plays, and has proposed that licences will only be required in the following situations:

- Performances of dance in front of an audience of 500 persons or more; or
- Performances of dance between 23:00 hours and 08:00 hours.

3.11. Regulation of sexual entertainment by way of dancing (e.g. pole, lap or table dancing) is now largely regulated under the sex establishment licensing system, and no change to this is proposed.

Exemptions

3.12. It is also proposed to add a number of further total exemptions to the Licensing Act 2003. Under the proposals, no licences will be required in the following circumstances:

- Any regulated entertainment arranged by and held on the premises of local authorities (including county, district, town and parish councils), hospitals, nurseries and schools; between the hours of 08:00 – 23:00;
- Any live/recorded music held on premises owned by local authorities (including county, district, town and parish councils), hospitals, nurseries and schools; with the specific permission of the owning organisation, for an audience of up to 500 people;
- Any live/recorded music held at community premises (church halls, village halls, community centres) for an audience of up to 500 people;
- Plays, indoor sports, live/recorded music, and performances of dance at circuses, between the hours of 08:00 – 23:00.

- 3.13. These exemptions would be added to those already contained within the Act, which include incidental music, playing of live television or radio broadcasts, entertainment at religious meetings or services or at places of public religious worship, entertainment at non-commercial garden fêtes, morris dancing, and entertainment aboard moving vehicles.

4. FUTURE CHANGES

- 4.1. The changes detailed in this report do not mark the end of the proposed changes to the Licensing Act 2003, with DCMS already announcing that they will launch a new consultation on the deregulation of community exhibitions of films next year.
- 4.2. In addition, the Home Office are reviewing a number of aspects of the Act in respect of the licensing of alcohol sales, as part of the delivery of the Government's Alcohol Strategy. These changes would include a review of the mandatory licence conditions which are applied to all premises licences, a scheme of minimum pricing for alcohol, and a new licensing objective related to public health.
- 4.3. Further reports and briefing notes will be provided to members as and when timetables for implementation of these, and any other, changes are confirmed.

5. UPDATES TO STATEMENT OF LICENSING POLICY

- 5.1. The significant nature of these changes, together with the substantial recent legislative changes set out in paragraph 1.2, mean that significant work is now needed to update the authority's Statement of Licensing Policy. One of the key changes enacted in 2012 was to change the review frequency of this statutory document from three-yearly to five-yearly, meaning that the policy adopted by the Council in February 2011 does not require formal renewal until 2016. However, in order to ensure that the policy correctly reflects the current statutory provisions and powers, it is now intended to carry out a review of this document ahead of schedule. Officers propose to begin preparatory work on revisions to the policy within the next couple of months, with a view to reporting proposed alterations to the Committee later this year. Any changes to the policy will require full public consultation and adoption by the full Council.

9. EXCLUSION OF THE PUBLIC

To consider passing a resolution in the following terms:

That, under s.100A (4) of the Local Government Act 1972 Schedule 12A Part 1, as amended by the Local Government (Access to Information) (Variation) Order 2006, the public be excluded during the item in Part II of the Agenda for the meeting, because it is likely, in view of the nature of the business to be transacted, that if members of the public were present during this item there would be disclosure to them of exempt information relating to:

DACORUM BOROUGH COUNCIL

LICENSING AND HEALTH AND SAFETY ENFORCEMENT COMMITTEE

27 NOVEMBER 2012

Present –

MEMBERS:

Councillors Lawson (Chairman), G Chapman, Conway, Fantham, Mrs Green, R Hollinghurst, Link, Peter, Ryan, Sutton and Whitman

OFFICERS:

L Crowley	Solicitor Advocate/Barrister
R Hill	Licensing Team Leader
R Mabbitt	Licensing Enforcement Officer
P Bowles	Members Support Officer

The meeting began at 7:30 pm

1. INTRODUCTIONS

The Chairman introduced himself and welcomed everyone to the meeting.

2. MINUTES

The minutes of the meeting held on 18 September 2012 were confirmed by the Members present and were then signed by the Chairman.

3. APOLOGIES FOR ABSENCE

Apologies for absence were received on behalf of Councillor Bhinder, Mrs Rance and Taylor.

4. DECLARATIONS OF INTERESTS

No interests were declared

5. PUBLIC PARTICIPATION

None

6. DRIVER LICENCE VERIFICATION CHECKS

The use of the DVLA driver licence verification service for taxi driver licence applicants, and proposed use of an alternative service was considered.

Ross Hill, Licensing Team Leader, introduced the report and explained that the Council currently undertake between 150 and 200 checks of driving licences per year. Although DVLA offer a bulk, electronic service, use of this is only financially

viable for larger authorities. An issue has arisen due to the diminishing response time from the current postal DVLA service. There are currently 25 checks outstanding, the oldest of which were sent to DVLA more than 6 weeks ago. In cases where licences have not previously been held, or where licences have been allowed to expire, the applicant is unable to work until the response has been received, as we require all checks to be complete prior to considering the issue of a licence.

A number of commercial service providers, offering an electronic driver licence verification system, were approached and Intelligent Data Systems is recommended as the preferred option based on ease of use, support and pricing.

If the proposal to change to a commercial provider is adopted, then a Service Level Agreement would need to be agreed between the Council and the provider, specifying the expected response times.

At the agreement of the Committee a demonstration was given to Members of how the driving licence verification service would operate. The process is carried out via a secure web based application and the expectation is that 90%+ of the responses would be delivered within 3 working days, which would be a significant improvement over the current system.

In response to a question from Councillor Whitman regarding the cost of each application, Ross Hill replied that the cost of the service is £5.75 plus VAT per check as opposed to the DVLA charge of £5, but is thought that the increase is justified by the faster response time and improved level of support. As is currently the case, the cost would be recharged to the applicant as part of the licence application fee.

Councillor Sutton asked where the service providers obtain the information. Ross Hill replied that they have direct electronic access to the DVLA database. Although this is theoretically available to local authorities, the cost of purchasing such direct access would be prohibitively high, unless several thousand individuals were to be checked.

The substantive recommendation, as set out in the report, was proposed.

Voting:

Unanimously agreed;

whereupon it was:

Resolved:

5. That, with effect from the 1st January 2013, any applicant for a private hire or hackney carriage driver licence, both on first application and on renewal, shall be required to undergo a driving licence verification check, carried out through the council by an appropriate verification agency. Applicants must give consent to the release of driving licence data as a prerequisite to the consideration of an application;
6. That officers shall periodically review the performance of the verification company providing this service, considering performance against agreed service levels and pricing in comparison to other service providers;

7. That the cost of the driving licence verification check be recharged in full to applicants;
8. That the preceding paragraphs shall supersede the resolution of the Licensing Health & Safety Enforcement Sub-Committee on the 25th November 2008 in respect of DVLA checks.

7. APPOINTMENT OF HACKNEY CARRIAGE STANDS

The proposals to appoint two new hackney carriage stands in Hemel Hempstead town centre were considered.

R Hill, Licensing Team Leader, introduced the report and pointed out an amendment to paragraph 3.2 of the report, in that the proposed stand in the Old Town will extend for approximately 30 metres, rather than 45, and will accommodate 6 hackney carriages.

In the case of the proposed Waterhouse Street stand, a traffic regulation order was passed in August, prohibiting other vehicles from stopping or waiting at the site of the proposed stand. A draft traffic regulation order for the Old Town redevelopment is currently out to consultation. The Highways Engineers at County have indicated that the work is currently expected to be carried out in February or March 2013.

Councillor Whitman referred to the validity of the waiting restrictions in Waterhouse Street. Ross Hill said that both he and the Parking Centre were aware of the situation, and both services had contacted the County Council to request the urgent rectification of the defect.

Councillor Whitman also queried the lack of provision for bank customers to park on a short visit to the bank, and suggested that an extended rank on the opposite side of Waterhouse Street, adjacent to the Water Gardens, may be a more appropriate location for a taxi rank. Ross Hill said that the proposed Waterhouse Street stand was formerly a bus stop, and there was no loss of parking spaces as a result of the proposal. This site was identified by Herts County Council as the most appropriate location for a taxi stand, and the two existing bays adjacent to the Water Gardens are designated as drop off points only.

The substantive recommendation, as set out in the report, was proposed.

Voting:

10 for and 1 against:

whereupon it was:

Resolved:

1. That the proposals to appoint new hackney carriage stands under section 63 of the Local Government (Miscellaneous Provisions) Act 1976 on Waterhouse Street (adjacent to Bank Court), Hemel Hempstead, and on High Street (adjacent to the Old Town Hall), Hemel Hempstead; and to revoke the previous appointment of a taxi stand on Waterhouse Street

(adjacent to Lord Alexander House), Hemel Hempstead, be notified to the Chief Officer of Police and published in a local newspaper; and

2. That authority to confirm the appointment of these stands, in the absence of any relevant written objections or representations received within 28 days of the first publication of the notice referred to in the preceding paragraph, be delegated to the Assistant Director (Legal, Democratic & Regulatory). Should objections or representations be received, the matter will be referred back to a future meeting of the Committee for consideration.

8. REVIEW OF LICENSING ENFORCEMENT POLICY

Proposed amendments to the Council's Licensing Enforcement Policy, prior to public consultation, were considered.

R Hill, Licensing Team Leader, introduced the report and explained that for the most part, the proposed amendments to the enforcement policy were semantic, or reflected updated practices with regard to enforcement activities. He highlighted section 2.3 of the report which set out some more significant proposed changes, in particular for the making of representations and review applications on behalf of the licensing authority in respect of alcohol, entertainment and gambling licences.

In respect of taxi licensing, the Administrative Court recently ruled, in R. (on the application of Singh) v. Cardiff City Council, that the use of the power of suspension of a taxi licence pending further investigation is unlawful, with Justice Singh making clear that suspension of a licence is the final resolution of a matter only, also confirming the suspension as a punishment is permissible. This prompted a re-examination of the method by which investigations were carried out by officers. The proposal now, following the most serious allegations against a licensed driver, is for a new delegated power of immediate revocation of a licence, where such a measure is deemed necessary in the interests of public safety. It is proposed that such a power would be exercised by the licensing team leader or a senior officer, in consultation with the chair or vice-chair of the committee, after consideration of any written or verbal representations made by the licence-holder in respect of the allegation. R Hill also highlighted a proposal, at paragraph 2.36 of the amended policy, for the effective restoration of a licence should the holder be cleared of the allegation or charges.

The report and draft policy were presented on a pre-consultation basis, and any responses or feedback will be reported to the Committee in February.

Councillor Lawson asked Ross Hill to clarify that, in light of the recent court case, following an alleged offence, a licence now cannot be suspended on an interim basis pending the outcome of any charges or investigations, and that if it was subsequently discovered that an allegation was baseless, that the licence holder would need to make an application which would be expedited to bring the licence back into force.

Ross Hill confirmed that this would be the case, and that the expedited reapplication would bring the Licence back into force on the previous terms, but without requiring the CRB and DVLA and medical checks that were completed on the previous application. In all cases the restored licence would not be valid for a longer period than was left on the previous licence. In the recent court case, it was

ruled that suspension is a final action, and if a licence were to be suspended the Committee could not take any further action affecting the validity of the licence.

The substantive recommendation, as set out in the report, was proposed and seconded.

Voting:

Unanimously agreed;

whereupon it was:

Resolved:

1. That the Committee note the proposed revisions in the draft 'Licensing Enforcement Policy' document and the proposed new delegations set out at section 3 of the report; and
2. That the Committee instruct officers to commence consultation on the proposals in accordance with the above timeline, and report the results back to the Committee at its meeting on the 12th February 2013.

9. LICENSING FEES 2013-14

Proposals for licensing application fees in the financial year 2013-14, prior to consultation were considered.

Ross Hill, Licensing Team Leader, introduced the report and circulated an additional paper showing the percentage changes between current fees and the proposed Licence fees and charges for 2013-2014. He explained that the fees have been proposed on the basis of the costs incurred in processing and determining applications, and where appropriate a proportion of the costs of developing policies, maintaining registers, and so forth. Cost recovery, in so far as is legally permitted, was the key basis for the review of these fees.

However, as paragraph 1.6 of the report sets out, a number of costs had to be estimated as a result of current and ongoing reviews of structures, procedures and suppliers. It is intended that costs and fees will be reviewed on an annual basis henceforth, to ensure that the fees charged by the council remain appropriate to the costs incurred.

There has been some discussion with the legal department as to the propriety of some of the fees, in particular the proposal for a charge to call in an officer refusal of an exemption from standard conditions, and this will be examined more closely during the consultation period and the result will be submitted to the Committee in due course.

This report was presented on a pre-consultation basis, and any responses or feedback will be reported to the Committee in February.

Councillor Sutton referred to Paragraph 8.1 (Application for transfer of sex establishment licence) and asked why the proposed fee was reduced from £2,000 to £700 (a reduction of 65%). Ross Hill said that this followed an evaluation of the amount of administration work that went into processing applications of this type, and the lower potential for hearings given the smaller scope for objections.

Councillor Peter queried the low fee for an application for registering of skin piercing. Ross Hill explained that the current £180 fee is for the registration of the premises. An additional registration for each individual practitioner undertaking the regulated activities would then be required. This area of work has been identified as one requiring attention within the next year, and that review is likely to result in a policy proposal being put to the Committee to set out the Council's expectations of applicants, and procedures for registering premises and practitioners.

Councillor Peter said he was concerned that there are currently no background checks for the operators of skin piercing businesses and asked that a review be speeded up if possible.

Councillor Lawson asked if the charges reflect the cost to the Council, and highlighted a proposed reduction in the fees charged for certain gambling applications. Ross Hill replied that the proposed fees do reflect the costs as far as possible. In terms of gambling, there have been very few applications in recent years to benchmark against and therefore these are projected fees based on other similar licences. The authority can set its own gambling premises licence fees within limits set by Government in Regulations. Every category of premises licence, apart from bingo, had previously been set at 50% of the maxima, with bingo set at the maximum level. This proposal would bring everything to around 60-65% of the statutory maximum fees, which would be consistent with the costs incurred in the processing of such applications.

The substantive recommendation, as set out in the report, was proposed and seconded.

Voting:

Unanimously agreed;

whereupon it was:

Resolved:

1. That the Committee note the proposals in the draft 'Licensing Fees and Charges 2013-14' document; and
2. That the Committee instruct officers to give the necessary public notices and commence consultation on the proposals in accordance with the above timeline, and report the results back to the Committee at its meeting on the 12th February 2013.

The meeting ended at 7.56 pm