

South Somerset District Council

Notice of Meeting



Licensing Committee

Making a difference where it counts

Tuesday 11th October 2016

10.00 am

**Main Committee Room
Council Offices
Brympton Way
Yeovil
BA20 2HT**

(disabled access and a hearing loop are available at this meeting venue)



The public and press are welcome to attend.

If you would like any further information on the items to be discussed, please ring the Agenda Co-ordinator, **Jo Morris, Democratic Services Officer**, website: www.southsomerset.gov.uk

This Agenda was issued on Monday 3 October 2016.

A handwritten signature in cursive script that reads 'Ian Clarke'.

Ian Clarke, Assistant Director (Legal & Corporate Services)

This information is also available on our website
www.southsomerset.gov.uk



Licensing Committee Membership

The following members are requested to attend the meeting:

Chairman: Martin Wale
Vice-chairman: David Recardo

Clare Aparicio Paul
Jason Baker
Neil Bloomfield
Dave Bulmer
Gye Dibben

Val Keitch
Tony Lock
David Norris
Crispin Raikes
Wes Read

Garry Shortland
Alan Smith
Linda Vijeh

South Somerset District Council – Council Aims

South Somerset will be a confident, resilient and flexible organisation, protecting and improving core services, delivering public priorities and acting in the best long-term interests of the district.

- Protect core services to the public by reducing costs and seeking income generation.
- Increase the focus on Jobs and Economic Development.
- Protect and enhance the quality of our environment.
- Enable housing to meet all needs.
- Improve health and reduce health inequalities.

Members Questions on reports prior to the Meeting

Members of the Committee are requested to contact report authors on points of clarification prior to the Committee meeting.

Recording and photography at council meetings

Recording of council meetings is permitted, however anyone wishing to do so should let the Chairperson of the meeting know prior to the start of the meeting. The recording should be overt and clearly visible to anyone at the meeting, but non-disruptive. If someone is recording the meeting, the Chairman will make an announcement at the beginning of the meeting.

Any member of the public has the right not to be recorded. If anyone making public representation does not wish to be recorded they must let the Chairperson know.

The full 'Policy on Audio/Visual Recording and Photography at Council Meetings' can be viewed online at:

<http://modgov.southsomerset.gov.uk/documents/s3327/Policy%20on%20the%20recording%20of%20council%20meetings.pdf>

Information for the Public

The Licensing Committee shall be responsible for those functions listed in part 3 of the Constitution as being the responsibility of the Committee. This will include licensing matters referred to it by officers, in accordance with the Officer Scheme of Delegation, such as contested public entertainment licences, and applications for taxi driver licences where the officer considers the application should be determined by members. The Committee shall also be responsible for all the functions assigned to it under the Licensing Act 2003.

The Statutory Licensing Committee has responsibility for all activities under the Licensing Act 2003 and the Gambling Act 2005 except for policies and fees. Established under the Licensing Act 2003, it exercises the functions of the Licensing Authority which itself is the Council.

The Other Licensing Committee can be responsible for all other licensing matters. Established by the Council under discretionary power contained in Section 101 of the Local Government Act 1972.

It is lawful for the membership of the two committees to be the same, but they are differently constituted and run under different powers.

Meetings of the Licensing Committee are held bi-monthly at 10.00am normally on the second Tuesday of the month in the Council Offices, Brympton Way.

Licensing Committee agendas and minutes are published on the Council's website www.southsomerset.gov.uk

The Council's Constitution is also on the web site and available for inspection in council offices.

Further information can be obtained by contacting the agenda co-ordinator named on the front page.

Licensing Committee

Tuesday 11 October 2016

Agenda

Preliminary Items

- 1. To approve as a correct record the Minutes of the Previous Meeting held on 7th June 2016**
- 2. Apologies for Absence**
- 3. Declarations of Interest**

In accordance with the Council's current Code of Conduct (adopted July 2012), which includes all the provisions relating to Disclosable Pecuniary Interests (DPI), personal and prejudicial interests, Members are asked to declare any DPI and also any personal interests (and whether or not such personal interests are also "prejudicial") in relation to any matter on the Agenda for this meeting. A DPI is defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012 No. 1464) and Appendix 3 of the Council's Code of Conduct. A personal interest is defined in paragraph 2.8 of the Code and a prejudicial interest is defined in paragraph 2.9. In the interests of complete transparency, Members of the County Council, who are not also members of this committee, are encouraged to declare any interests they may have in any matters being discussed even though they may not be under any obligation to do so under any relevant code of conduct.

4. Public Participation at Committees

a) Questions/comments from members of the public

This is a chance for members of the public and representatives of Parish/Town Councils to participate in the meeting by asking questions, making comments and raising matters of concern.

Items for Discussion

- 5. Child Sexual Exploitation Awareness Training (Pages 5 - 7)**
- 6. Legislative Changes (and proposed changes) Affecting Taxi Licensing & Licensing Act 2003 (Pages 8 - 15)**
- 7. Date of Next Meeting (Page 16)**

Agenda Item 5

Child Sexual Exploitation Awareness Training

Executive Portfolio Holder: Peter Gubbins
Assistant Director: Laurence Willis (Environment)
Lead Officer: Nigel J Marston, Licensing Manager
Contact Details: nigel.marston @southsomerset.gov.uk or (01935) 462150

Purpose

To consider the introduction of child sexual exploitation (CSE) awareness training for prospective applicants and current licence holders in South Somerset.

To update members on the current work taking place in relation to CSE within Somerset and how this is likely to affect potential licence applicants and current licence holders.

Recommendation

That the Licensing Committee:

1. Note the report
2. Instruct the Licensing Manager to prepare a report detailing how CSE awareness training can be delivered in South Somerset. The report to consider the following:
 - a) The financial implications and funding sources for the delivery of training.
 - b) The content of the training.
 - c) Who will require the training?
 - d) Timetables for delivery of the training.
 - e) The officer resource required to deliver the training.
 - f) Any policy changes that will be required in order to enable the training.

Background

Child Sexual Exploitation (CSE) has emerged as a real issue over the last few years, with enquiries taking place in Rochdale¹ and Rotherham². A key issue that has emerged is that much of this CSE takes place around the “Night Time Economy” (NTE) hotels, bars, guesthouses and take-aways and involves the use of taxis for the transportation of the children involved.

The Somerset Licensing Officers Group have had concerns in relation to this matter and have sought to address these concerns by asking Taunton Deane Borough Council in conjunction with Avon & Somerset Police and Somerset County Council to devise a training program in relation to CSE that can be rolled out across the County by each and every district.

A meeting to discuss this training and the proposed roll out of the training is scheduled for the 7th October 2016.

In addition to this work, and recognising the seriousness of this issue, an amendment was made to the latest Policing and Crime Bill, which is still progressing though the legislative process.

¹<http://www.rochdale.gov.uk/council-and-democracy/policies-strategies-and-reviews/reviews/Pages/independent-review-of-cse.aspx>

² http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham

The amendment which was introduced would require local authorities to 'carry out its functions with a view to preventing Child Sexual Exploitation.'

This has been replaced by a government proposal on 14th June 2016 which currently stands as clause 56 (in italics below).

'CL56 Licensing functions under Taxi and PHV legislation: protection of children and vulnerable adults.

(1) The Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance to be issued under this section and any revision of it, to be published.

(4) Any public authority which has licensing functions under taxi and private hire vehicle legislation must have regard to any guidance issued under this section.

(5) Before issuing guidance under this section, the Secretary of State must consult –

a) The National Police Chief's Council

b) Persons who appear to the Secretary of State to represent the interests of public authorities who are required to have regard to the guidance

c) Persons who appear to the Secretary of State to represent the interests of those whose livelihood is affected by the exercise of the licensing functions to which the guidance relates, and

d) Such other persons as the Secretary of State considers appropriate.

6) In this section 'taxi and private hire vehicle legislation' means –

a) the London Hackney Carriages Act 1843;

b) Section 37 to 68 of the Town Police Clauses Act 1847;

c) the Metropolitan Public Carriage Act 1869;

d) Part 2 of the Local Government (Miscellaneous Provisions) Act 1976;

e) the Private Hire Vehicles (London) Act 1998

f) the Plymouth City Council Act 1975

The overall purpose of taxi licensing is to protect the public and that already covers that of protecting children and vulnerable adults from harm. This is guidance to be issued by the Secretary of State and it is yet to be seen as to whether it actually becomes statute.

The Rotherham report into child sexual abuse highlights the fact that the safety of the public should be of the uppermost concern of any licensing and enforcement regime and that "there is nowhere more important than in taxi licensing where sometimes vulnerable people are unaccompanied in a car with a stranger"

Legal & Financial Implications

None at this stage

Implications for Corporate Priorities

None at this stage

Carbon Emissions & Climate Change Implications

None

Equality and Diversity Implications

None

Background Papers: Report of Inspection of Rotherham Metropolitan Borough Council
by Louise Casey
Independent Serious Case Review Rochdale Borough Council
Policing & Crime Bill

Agenda Item 6

Legislative Changes (and proposed changes) Affecting Taxi Licensing & Licensing Act 2003

Executive Portfolio Holder: Peter Gubbins
Assistant Director: Laurence Willis (Environment)
Lead Officer: Nigel J Marston, Licensing Manager
Contact Details: nigel.marston @southsomerset.gov.uk or (01935) 462150

Purpose of Report

To inform the Committee of proposed changes for both Taxi Licensing and the Licensing Act 2003, contained within the Immigration Act 2016 and the Policing and Crime Bill.

Recommendation

That Committee Members note the content of this report.

Report

1. Immigration Act 2016 and Taxi Licensing

The Immigration Act 2016 passed at the end of the last session of Parliament will introduce new sections to taxi legislation relating to the right to work. No official start date for these amendments has been set but unofficially October 2016 has been mentioned.

Once the provisions are in force, only persons with a right to remain in the UK and work in the UK, can be granted and then retain either a drivers licence (both hackney and private hire) or a private hire operators licence.

Disqualified Persons

Two new sections will be introduced and inserted into the Local Government (Miscellaneous Provisions) Act 1976 (referred to as LG(MP)A 1976 for remainder of report), 79A and 79B which will detail those who are disqualified from holding any hackney carriage drivers, or private hire drivers or operators licence by reason of immigration status and explain the meanings of immigration offences and immigration penalties.

79A Persons disqualified by reason of immigration status.

(1) For the purposes of this Part of this Act a person is disqualified by reason of the persons immigration status from carrying on a licensable activity if the person is subject to immigration control and –

- a) The person has not been granted leave to enter or remain in the United Kingdom: or*
- b) The persons leave to enter or remain in the United Kingdom _*
 - i) Is invalid;*
 - ii) Has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise);or*
 - iii) Is subject to a condition preventing the person from carrying on the licensable activity.*

2) Where a person is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016-

- a) *the person is to be treated for the purposes of this Part of the Act as if the person had been granted leave to enter the United Kingdom; but*
- b) *any condition as to which the persons work in the United Kingdom to which the person's immigration bail is subject is to be treated for those purposes as a condition of leave.*

3) *For the purposes of this section a person is subject to immigration control if under the Immigration Act 1971 the person requires leave to enter or remain in the United Kingdom.*

4) *For the purposes of this section a person carries on a licensable activity if the person-*

- (a) drives a private hire vehicle;*
- (b) operates a private hire vehicle; or*
- (c) drives a hackney carriage.*

Section 79B will define what is meant by 'Immigration Offence' and 'Immigration Penalty.'

All new applications (and renewals) for drivers licences will be subject to this as a consequence of a new subsection introduced to the existing Section 51 within the LG(MP)A 1976. This will mean that in addition to being a 'fit and proper person' an applicant for a drivers licence must not be disqualified from holding a licence as a result of their immigration status.

Section 51(1) will read (*new words in italics*):

'51 Licensing of drivers of private hire vehicles

1) Subject to the provisions of this Part of the Act, a district council, shall on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

Provided that a district Council shall not grant a licence-

- a) Unless they are satisfied-
 - i) That the applicant is a fit and proper person to hold a driver's licence; and
 - ii) *That the applicant is not disqualified by reason of the applicants immigration status from driving a private hire vehicle; or*
- b) To any person who has not for at least 12 months been authorised to drive a motor car, or is not at the date of the application for a drivers licence so authorised.

In addition the new S51 (1ZA) will require the local authority to have regard to Guidance issued by the Secretary of State (It is assumed this will be published by the Home Office but that is not made clear in the Act yet).

(1ZA) In determining for the purposes of the subsection (1) whether an applicant is disqualified by reason of the applicants immigration status from driving a private hire vehicle, a district council must have regard to any guidance issued by the Secretary of State .

There are then identical provisions in respect of applicants for private hire operators licences under the proposed S55(1)(b) and S55(1A).

Drivers Licence Duration

A new s53A will be inserted into LG(MP)A 1976 covering applicants for drivers licences who only have a limited time to remain in the UK. This will prohibit the local authority from

granting a licence beyond the period of permission to remain and it can be for a shorter period.

‘ 53A Drivers licences for persons subject immigration control

(1) Subsection (2) applies if –

(a) a licence within section 53 (1) (a) or (b) is to be granted to a person who has been granted leave to enter or remain in the United Kingdom for a limited period (‘the leave period’);

(b) the persons leave has not been extended by virtue of section 3C of the Immigration Act 1971 (continuation of leave pending variation decision);and

(c) apart from subsection (2) the period for which the licence would have been in force would have ended after the end of the leave period.

(2) The district council which grants the licence must specify a period in the licence as the period for which it remains in force; and that period must end at or before the end of the leave period.’

If the applicant has an extended leave to remain, the local authority cannot grant a licence for more than 6 months, but again it can be for a shorter period s53A(3) and (4).

Operators Licence Duration

Identical provisions in relation to Operators licences will be contained in section 55ZA covering operators licences who only have a limited time to remain in the UK. Local authorities will be unable to grant an operators licence that would continue beyond that limit of leave to remain in the UK (similar to drivers) but the authority can also grant a licence for a shorter period under section s55za(2). The same provisions are repeated in relation to extended leave periods under section s55ZA(4).

Lapse of Licence

For both drivers and operators, if the person loses the right to remain in the UK during the lifetime of their licence, the licence ceases to have effect. This is covered by S53A(5) for private hire drivers, S53A(6) for hackney carriage drivers and S55ZA(5) for operators.

Return of Licence

In relation to both drivers and operators, the licence (and badge for drivers) must be returned within 7 days of the expiry of the licence – S53A(7) (drivers) and S55ZA(7) (operators). The same applies where the licence ceases to have effect due to the loss of the right to remain in the UK and the licences must be returned within 7 days – S53A(8) (drivers) and S55ZA(8) (operators).

Offences

Where the licence has either ended or ceases to have effect, failure to surrender it to the Licensing Authority within 7 days is an offence under S53A(9)(drivers) and S55ZA(8) (operators).

It is not currently known how these additional conditions will work in practice as it will depend on the requirement within the guidance which we still await. However the additional checks will require additional work on the part of the staff to ascertain the ability of the applicant to be granted or retain a licence.

As these costs would appear to be associated with the 'issue and administration' of the licence the additional expenditure (once known) can be recovered via the drivers and operators fees under sections 53 and 70 of the LG(MP)A 1976.

These additional costs would need to be levied across all licensees and will lead to an increase in licence fees for drivers and operators.

Equality Act and Taxis

During a recent debate at parliament the Parliamentary Under Secretary of State at the Department for Transport stated ' the government intend to commence sections 165 and 167 of the Equality Act 2010 this year....'

Section 165 places a duty on drivers of wheelchair accessible hackney carriage and private hire vehicles listed by the local authority under s167 to carry passengers in wheelchairs and provide assistance loading and unloading the passenger and handling the passengers luggage.

It is possible for a driver to apply for an exemption certificate on medical or physical grounds under section 166.

Section 167 gives local authorities a power (but not a duty) to maintain lists of hackney carriages and private hire vehicles that are suitable for carrying persons in wheelchairs.

Licensing will continue to monitor the situation and encourage the fleet to improve wheelchair access of vehicles.

New Disability & Equality Training Proposals

On the 29th June 2016 Andrew Gwynne MP, put forward the Disability Equality Training (Taxi & Private Hire Vehicle Drivers) Bill to Parliament. It is aimed at ensuring all private hire and hackney carriage drivers complete disability equality training. The second reading of the Bill is set for the 18th November. Members will be comforted to know that this training is part of the requirements for all new drivers in South Somerset and has been since the Taxi Policy was amended in 2015.

Law Commission Taxi Reforms

On the 4th May 2016 Andrew Jones MP, Parliamentary Under-Secretary of State for Transport, confirmed in a House of Commons debate¹, the Government is "considering the Law Commission's recommendations" but "cannot give a date for when the scrutiny will be complete". When and even whether, the law reform proposals would indeed be implemented has been an uncertain issue from the moment of the original publication in May 2014. It is understood however that Mike Penning MP, Minister of State (Home Office), has recently assured the LGA of the Governments' ongoing commitment to pursuing this legislative reform of taxi licensing.

The Licensing Manager will endeavour to keep members up to date with any progress on this important issue.

¹ Taxi Licensing Regulations, Hansard Vol 609

Immigration Act and the Licensing Act 2003.

The Immigration Act also makes changes to the Licensing Act 2003 in relation to the right to hold a premises or personal licence. These are in Section 36 and Schedule 4 of the Immigration Act. There is no confirmed commencement date, similar to that of the proposed changes for taxi licensing but October 2016 is likely. Words in italics represent the new legislation.

Entitlement to Work

A new section 192A will be inserted into the Licensing Act 2003 which will detail a person's entitlement to work.

192A Entitlement to work in the United Kingdom.

(1) For the purpose of the Act an individual is entitled to work in the United Kingdom if-

(a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or

(b) the individual has been granted such leave and the leave-
(i) is not invalid

(ii) has not ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), and

(iii) is not subject to a condition preventing the individual from doing work relating to the carrying on of a licensable activity within section 1 (1)(a) or (d).

(2) Where an individual is on immigration bail within the meaning of Part 1 Of Schedule 10 to the Immigration Act 2016-

(a) the individual is to be treated for the purposes of subsection (1) as if the individual has been granted leave to enter the United Kingdom, but

(b) any condition as to the individual's work in the United Kingdom to which the individual's immigration bail is subject is to be treated for those purposes as a condition of leave.

New Responsible Authority

The Secretary of State (presumed to be the Home Secretary but not actually defined in legislation) will be an additional Responsible Authority for premises (excluding vessels) where the premises licence authorises the sale of alcohol or late night refreshment.

Responsible Authorities under the Licensing Act are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority. It is not known currently whether we will consult with the Home Office, as a Responsible Authority, on only those with immigration issues or all new applications.

Prohibition on applying for or holding a premises licence

There will be a prohibition on a person applying for a premises licence for alcohol or late night refreshment if they do not have the right to work in the UK. This will be contained in s16(2a) inserted by Schedule 4 para 4 of the Immigration Act;

S16(2A) An individual who is resident in the United Kingdom may not apply for a premises licence authorising premises to be used for licensable activity within section 1(1)a or (d) unless the individual is entitled to work in the United Kingdom.

Restrictions on the use of Interim Authority Notices

When a premises licence for alcohol sales or late night refreshment is in existence, it will lapse if the holder ceases to have the right to work in the UK (in the same way as on death, insolvency etc.) by virtue of a new S27(1a) inserted by Schedule 4 para 5.

In these circumstances and any other situation where an interim authority notice is served, it can only be served by a person who has a right to work in the UK. This is contained in a new s47(3a) inserted by Schedule 4, para 9 of the Immigration Act.

The Secretary of State can object to an interim authority notice if *'the exceptional circumstances of the case are such that a failure to cancel the interim authority notice would be prejudicial to the prevention of illegal working in licensed premises.'* Any such objection must be made within 2 working days of the receipt of the notice.

Restrictions on Transfer of Premises Licence

As above any application for the transfer of a premises licence must have the right to work in the UK by virtue of a new s42(2a) inserted by Schedule 4, para 6 and if the premises is for alcohol sales or late night refreshment the notice must also be given to the Secretary of State as well as the Police. The Secretary of State can then object to the transfer within 14 days of the notification under the new s42(8) and (9) inserted by Schedule 4, para 6 of the Immigration Act.

In those circumstances when an objection is received from the Secretary of State the Licensing Authority must reject the transfer if it *'considers it appropriate for the prevention of illegal working in licensed premises to do so.'*

Personal Licence Restrictions

In relation to personal licences there is a similar approach to that for taxi drivers.

A personal licence can only be granted to an applicant if;

'he is entitled to work in the United Kingdom'. (new s120(2)(aa) inserted by Schedule 4, para 15 of the Immigration Act)

And it lapses if that entitlement ends;

'(2A A personal licence ceases to have effect if the holder of the licence ceases to be entitled to work in the United Kingdom.' (s115 (2a) inserted by Schedule 4, para 14 of the Immigration Act)

Personal Licence Relevant Convictions

The offences in Schedule 4 of Licensing Act 2003 are amended to add 'immigration offence' and 'immigration penalty'.

Personal Licence Applicant Alterations

If an applicant for a personal licence has been

'a) convicted of an immigration offence,

b) convicted of a foreign offence that the authority considers to be comparable to an immigration offence' or

c) required to pay an immigration penalty,

the authority must give the Secretary of State a notice to that effect.'

On receipt of that notice the Secretary of State can then give notice within 14 days if he is *'satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises.'*

Existing Personal Licence Alterations

A person who currently holds a personal licence, must give notice of any immigration conviction or penalty to the Licensing Authority.

Powers of Entry

An Immigration Officer can enter any premises, under S179 as amended, if they *'have reason to believe'* a premises are being used for sale of alcohol or late night refreshment *'with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity.'*

Policing and Crime Bill 2016 and the Licensing Act

The Policing and Crime Bill 2016 contains proposals which will amend the Licensing Act 2003. It is still making its way through the parliamentary process so no commencement date for these changes have been announced.

Definition of Alcohol

The definition of Alcohol will be extended by clause 108 of the Policing and Crime Bill to include vaporised or dehydrated alcohol, which has apparently become widely available. This is achieved by the introduction of the words 'in any state' after the word 'alcohol'. This will cover any future developments of alcohol.

Summary Review Changes

There are some significant changes to summary reviews (often referred to as expedited reviews) of premises licences.

If interim steps are imposed following a summary review (under S53B) the premises licence holder can make representations against those, and at present can repeat that process without limit. The Licensing Act will be amended to allow initial representations, but after that, he can only seek to make further representations *'if there has been a material change in circumstances since the authority made its determination.'* Material is not defined, but it should prevent repeated challenges where there have been no changes, whilst allowing licensing authorities to respond where the licensee has made a significant move towards addressing or overcoming the problems that led to the summary review.

The uncertainty concerning the continuation (or not) of the interim steps after the full review, but before the appeal should be clarified by Section 53D which it is proposed will be inserted into the Licensing Act 2003, by clause 110(5) Policing and Crime Bill.

The Licensing Authority can determine that some or all of the interim steps stay in place pending any appeal. If they do remain in place, there is a right of appeal against those which must be heard by the Magistrates Court within 28 days of the application to appeal being lodged.

Legal & Financial Implications

None at this stage

Implications for Corporate Priorities

None at this stage

Carbon Emissions & Climate Change Implications

None

Equality and Diversity Implications

None

Background Papers: Immigration Act 2016
Policing & Crime Bill
Taxi Licensing Regulations, Hansard Vol 609

Agenda Item 7

Date of Next Meeting

Members are asked to note that the next scheduled meeting of the Licensing Committee will take place on Tuesday 13th December 2016 at 10.00am in the Council Offices, Brympton Way, Yeovil.
