

Report of Head of Licensing and Registration

Report to Corporate Governance and Audit Committee

Date: 19th March 2013

Subject: Licensing Decision Making Framework

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report details the Council's licensing decision making arrangements as requested by the committee at their meeting in November 2012.
2. This report does not contain an overview of the council's decision making framework as that was given in the Head of Governance Services' report to committee in November 2012.
3. The report concludes that the existing licensing decision making framework is effective and fit for purpose.

Recommendations

4. Members are requested to consider and note the positive assurances provided in this report.

1 Purpose of this report

- 1.1 Members requested this report at their meeting in November 2012. The report details the decision making framework for licensing decisions.

2 Background information

- 2.1 This report provides assurance to the committee on the decision making framework for Licensing Act 2003, Gambling Act 2005, taxi and private hire and miscellaneous licensing (scrap metal dealers, motor salvage dealers, sex establishment licence, place of marriage, hypnotism, house to house collections and street collections).
- 2.2 Councillors have responsibility to set the policy which determines any decisions. Although it should be noted that certain licences are automatically granted in the absence of objections in accordance with the legislation. Dependant on the type of licence, Officers or Licensing Sub Committee makes individual decisions.
- 2.3 Details of the applicable policies, conditions and criteria agreed by councillors that are applied to licensing decisions are detailed at 3.10 onwards.
- 2.4 The Head of Licensing and Registration has responsibility to ensure that these licensing decision making arrangements are up to date, fit for purpose, effectively communicated, are made in accordance with legislation and/or local policy, routinely complied with and monitored.

3 Main issues

Entertainment and Miscellaneous Licensing Decisions

- 3.1 Appendix 1 gives details of licensing decisions taken regarding Licensing Act 2003, Gambling Act 2005 and miscellaneous licences (scrap metal dealers, motor salvage dealers, sex establishment licence, place of marriage, hypnotism, house to house collections and street collections).
- 3.2 The following table shows the number of applications received for 2010, 2011 and 2012, and the number of decisions made by Licensing Sub-Committee after representations were received. Please note that where no representations have been received, the legislation dictates certain licences must be granted.

			2010	2011	2012
Licensing Act 2003	Premises Licences	Number of applications	1065	1006	1034
		Number of committee decisions	134	177	152
	Club Premises Certificates	Number of applications	8	8	5
		Number of committee decisions	3	4	2
	Personal	Number of applications	498	467	517

	Licences	Number of committee decisions	6	5	5
	Temporary Event Notices	Number of applications	1490	1741	1741
		Number of committee decisions	0	23	6
Gambling Act 2005	Premises Licences	Number of applications	12	14	14
		Number of committee decisions	4	3	0
	Permits	Number of applications	94	55	13
		Number of committee decisions	1	0	0
	Small Society Lottery Registrations	Number of applications	66	50	65
		Number of committee decisions	0	0	0
	Temporary/ Occasional Use Notices	Number of applications	4	0	0
		Number of committee decisions	0	0	0
Miscellaneous	Marriage Act Premises Registrations	Number of applications	16	18	13
		Number of committee decisions	0	0	0
	Sex Establishment Licences	Number of applications	3	8	12
		Number of committee decisions	0	0	7
	Scrap Metal Dealers Registrations	Number of applications	11	21	59
		Number of committee decisions	0	0	0
	Motor Salvage Operators Registrations	Number of applications	6	5	3
		Number of committee decisions	0	0	0
	Street Collection Permits	Number of applications	154	161	237
		Number of committee decisions	0	0	0
	House to House Collection Permits	Number of applications	25	39	27
		Number of committee decisions	0	0	0
	Hypnotist Licences	Number of applications	2	2	2
		Number of committee decisions	1	0	0

Taxi and Private Hire Licensing Decisions

3.3

The granting of an individual hackney carriage (HC) or private hire (PH) licence whether for a vehicle, driver or operator is a council function under the Local

Government Act 2000. The related functions of determining whether and how to enforce any failure to comply with the licence, including suspension or revocation of it, are dealt with in the same way. The licensing functions allocated to the council may be delegated by it to a committee of the council or a sub-committee of the council or an officer under Section 101 of the Local Government Act 1972.

- 3.4 These functions are concurrently delegated in Leeds to the Licensing Committee and to the Director of Resources under the Scheme of Delegation approved annually at full Council. The Director of Resources has sub-delegated that power to the Head of Licensing and Registration, the Section Head of Taxi & Private Hire Licensing and, in some circumstances, to Principal Managers, Licensing Officers and Licensing Supervisors. An extract from the current sub delegation scheme is attached to this report at Appendix 2. All decisions taken by officers are taken in accordance with policy and guidance decided by Members of Licensing Committee.
- 3.5 The legal provisions relating to the grant, refusal, suspension and revocation of Licences are set out in summary at Appendix 3 to this Report. There are statutory Rights of Appeal to the Magistrates Court against almost all the decisions that would take effect. The exceptions to this Right of Appeal are in relation to the refusal to grant a Hackney Carriage Proprietor's Licence where the Appeal lies directly to the Crown Court and in relation to a decision to suspend a Vehicle Licence under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976 relating to the condition of the Hackney Carriage or Private Hire Vehicle where there is no right of appeal. Appeals must be lodged within 21 days of the decision. Notice of the decision being appealed must generally have been given in writing and with reasons.
- 3.6 It is also important to note that many decisions result from the application of other legislation and the decisions of other bodies such as the courts or DVLA. As explained earlier in this report, many officer decisions flow directly from the application of an approved council policy.
- 3.7 It should be noted that the Licensing Committee reviewed the current decision making framework for taxi and private hire licensing decisions in March 2012 and decided to retain the existing scheme of delegation.
- 3.8 The figures for 2010, 2011 and 2012 for applications, renewals, refusals, suspensions and revocations of taxi and private hire driver licences are set out in the table below.

	Applications	Refusals	Suspensions	Revocations
2010	629	18	86	69
2011	508	15	129	46

2012	794	16	74	37
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- 3.9 When considering the above information it is important to note that there is no direct correlation between the number of suspensions and revocations in any one year. For example, the number of licences revoked in any one year will include a proportion which were suspended in the previous year.

Licensing Policy Review

- 3.10 As mentioned earlier in this report, the licensing decision making framework is dependent upon a comprehensive list of policies agreed, as appropriate, by the then Licensing and Regulatory Panel, the now Licensing Committee, Executive Board or Full Council. These policies are regularly reviewed by Licensing Committee in response to changes in legislation, law and practice, or other circumstances. Any changes are carried out after a full public consultation.
- 3.11 For example, at the moment the Statement of Licensing Policy for the Licensing Act 2003 and Gambling Act 2006 have both been recently approved and are not due a review until 2015. Due to a change in legislation, the Statement of Licensing Policy for the Licensing Act is being reviewed early and will be going out to public consultation mid-2013 before returning to Licensing Committee later next year. Any final amendments to this particular policy will need to be agreed at Full Council.
- 3.12 Another example is the Statement of Licensing Policy for the Licensing of Sex Establishments. This policy was adopted in 2011 with no time period for a review prescribed by legislation. However, in July 2012 Licensing Committee approved a further review of the policy to address local concerns. The draft policy has now completed its first public consultation and returned to Licensing Committee in February 2013 before a further period of consultation commences. Any amendments to this policy will need to be agreed at Executive Board.
- 3.13 A further example is the comprehensive review of all taxi and private hire licensing policies, which are currently going through Licensing Committee in accordance with the following timetable. Due to the volume of policies, pre-application criteria and conditions that need to be reviewed, these were split into three distinct groups of policies. All these policies are subject to a comprehensive public consultation before any changes are agreed.
- Group 1 (reported to Licensing Committee in October 2012): the taxi and private hire licensing application process, the medical exemption policy, stretched limousine conditions (driver, operator & vehicle) and private hire driver conditions. Some minor changes were made to the private hire driver conditions and the committee decided to make no changes to the other policies. All to be reviewed again in five years' time.
 - Group 2 (reported to Licensing Committee in January 2013): Private hire vehicle conditions (including wheelchair accessible vehicles, vehicle age criteria, livery signs and markings); Hackney carriage Vehicle conditions; plying for hire policy; and executive private hire conditions. All were agreed with no amendments and to be reviewed again in five years' time. It was

further agreed that a full vehicle profiling program be undertaken to enable the vehicle age criteria to be reviewed in three years' time in response to comments received during the consultation. Also, in response to other comments received during the consultation, the Licensing Committee agreed that a working group of elected Members undertakes an immediate review of the minimum value pre-condition for Executive Private Hire vehicles. The recommendations from this working group are due to return to Licensing Committee in April 2013 for approval.

- Group 3: Private hire operator conditions; private hire vehicle proprietor (including rental companies); convictions criteria. Currently out for initial public consultation and due to return to Licensing Committee mid-2013, before commencing a further period of consultation.

- 3.14 In addition to the existing taxi and private hire policies listed in 3.13 above, Licensing Committee have recently proposed a new policy to direct officers when exercising their delegated power to suspend a licence with immediate effect. These proposals went out to public consultation in January 2013 and will go back to Licensing Committee in May 2013 for final determination. In addition to this, Licensing Committee are currently reviewing the arrangements for carrying out CRB disclosures on taxi and private hire licence holders (see para 3.18 for further details).
- 3.15 This comprehensive review process ensures that Licensing Committee have up to date information on changes to legislation or law and practice, and are able to take account of public and trade opinion before any changes are considered. It should be noted that the review timetable does not stop the council from reviewing any policy at any time due to a change in any circumstances, as demonstrated by the early review of the Statement of Licensing Policy for the Licensing Act and Sex Establishments above. This review process ensures that all policies remain up to date and are fit for purpose.
- 3.16 All the above licensing policies are published on the council's website and form part of a comprehensive training programme designed for new Members of the Licensing Committee. Newly recruited officers are provided training in the policies as part of their initial appraisal process and can only take decisions after they have completed their training. Only a limited number of officers can take decisions at different levels in accordance with the scheme of delegation. All training is monitored through the appraisal process and regular meetings with their line manager.
- 3.17 Reports on the numbers of licences granted and any delegated decisions are provided to Licensing Committee so they can monitor the effectiveness of the licensing decision making framework and the policies that guide it. Entertainment Licensing and Taxi and Private Hire Licensing last provided reports to Licensing Committee in February 2013. The Committee has now requested that further update reports be provided on a 6-monthly basis.

Regular CRB Disclosures for Taxi and Private Hire Licence Holders

- 3.18 At your meeting in November 2012, Members also asked for further information regarding regular CRB disclosures for taxi and private hire licence holders. Licensing Committee had previously directed officers in June 2012 to review the

current arrangements for CRB disclosures for licence applicants and existing licence holders.

- 3.19 Presently, all applicants for a new licence are subject to a CRB disclosure. Any offences or cautions for existing licence holders are reported to the section by the police so they can be investigated as soon as possible. In addition existing licence holders are required to sign an annual declaration that they have not been found guilty of committing an offence on renewal.
- 3.20 In response to guidance issued by the Department of Transport in March 2010 and comments made by the council's internal audit section in February 2012, Licensing Committee want to consider introducing regular CRB checks for applicants and existing licence holders. The Department for Transport recommends disclosures be conducted on first application and every three years after this. The Council's internal audit section agreed with this recommendation.
- 3.21 In June 2012 the Licensing Committee asked officers to conduct a three month public consultation on this proposal. The outcome of the consultation was reported back to Licensing Committee in October 2012 which showed support for the proposal from both the trade and the public, but concerns from the trade regarding the increased cost to them as licence holders. The report also detailed the additional resources required to process the regular disclosures and the costs involved.
- 3.22 In response to the trade's concerns regarding the increased costs, officers reported on a new online scheme that the CRB were introducing in 2013 that would substantially reduce the cost for licence holders and possibly reduce the requirement for additional resources to process the disclosures. It would also allow the possibility of carrying out disclosures on a more frequent basis.
- 3.23 Licensing Committee deferred a decision on the introduction of three yearly CRB disclosures until April 2013 when more information on the new online process would be available.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Licensing Committee regularly review the Statement of Licensing Policy for Licensing Act, Gambling Act, and Sex Establishment Licences as detailed in Appendix 1. These reviews involve a full public consultation as part of the process with the approval routes set by statute.
- 4.1.2 Licensing Committee is currently reviewing all taxi and private hire licensing policies, conditions and application criteria which involves a full public consultation process.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Equality and cohesion screening assessments are carried out on all reviews of licensing policies.

4.3 Council policies and City Priorities

4.3.2 Licensing decisions support the following elements of the Vision for Leeds: -

- Leeds' economy will be prosperous and sustainable, specifically high quality accessible, affordable and reliable public transport and making Leeds a lower carbon city;
- Leeds' communities will be successful, specifically that there are more community-led businesses that meet local needs; and
- Best City for Children, specifically helping ensure children are safe from harm.

4.3.3 Licensing decisions also support the following City Priorities: -

- Best City for Business, specifically improving journey times and the reliability of public transport and improve the environment through reduced carbon emissions; and
- Best City for Communities, specifically reduce crime levels and their impact across Leeds.

4.4 Resources and value for money

4.4.1 The fee setting process for entertainment and miscellaneous licences are set out in Appendix 1. The council currently has to subsidise the cost of providing the Licensing Act licensing function in this area as the statutory fees do not cover the full costs associated with the process. The Government has recognised this as an issue affecting licensing authorities across the country and is currently introducing new legislation that will allow councils to set licence fees locally to help cover true costs.

4.4.2 Fees for taxi and private hire licensing are set locally to cover the costs of providing the service. The legislation states that funds raised from taxi and private hire licensing fees must be held in a ring-fenced account and used for providing the taxi and private hire licensing function only. These arrangements are fully complied with in Leeds.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The legislation surrounding licensing decision making has been outlined earlier in this report and more details regarding the legal provisions for taxi and private hire licensing can be found in Appendix 3.

4.6 Risk Management

4.6.1 The Head of Licensing and Registration gives assurance that the systems and processes that form part of the Council's licensing decision making framework are functioning well and that there are no risks identified by this report.

5 Conclusions

5.1 That the licensing decision making framework meets the requirements of legislation and local council policy and remain effective and fit for purpose.

6 Recommendations

6.1 Members are requested to consider and note the positive assurances provided in this report.

7 Background documents¹

7.1 None.

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Entertainment and Miscellaneous Licensing Decisions

Licensing Act 2003

Process prescribed by statute

Premises Licence

New/variation Automatic grant in the absence of representations.
If contested, determined by Licensing Committee

Minor Variation Licensing Officers decide whether the application meets
the criteria (ie minor enough to be dealt with by this
process). If not rejected and advised to apply for full
variation .

Transfer of Licence/Change of Designated Premises Supervisor
If uncontested granted automatically
If contested, determined by Licensing Committee

Club Premises Certificate

New/variation Automatic grant in the absence of representations
If contested, determined by Licensing Committee

Minor Variation Licensing Officers decide whether the application meets
the criteria (ie minor enough to be dealt with by this
process). If not rejected and advised to apply for full
variation.

S90 Withdrawal of Certificate Decision made by Head of Licensing and Registration
or Section Head if evidence shows club is not operating
within club rules.

Personal Licence

New Automatic grant in the absence of representations
If contested determined by Licensing Committee

Temporary Event Notice

All temporary event notices are “notifications” rather than applications. Only acknowledgement required. Officers provide `counter notice` if number of prescribed occasions exceeded.

If West Yorkshire Police or Environmental Health serve an objection notice, matter heard by Licensing Committee who may serve a counter notice and prevent the event taking place.

Review of Premises Licence

In our capacity as a `responsible authority' designated officers may apply for the review of a licence where it is considered that premises continue to undermine one or more of the licensing objectives. However, the application is determined before a Licensing Committee.

Representation against Premises Licence application/variation

In our capacity as a `responsible authority' designated officers may submit representation against an application. However, the application is then determined before a Licensing Committee.

Licensing Act 2003 Fees

Set by statute

Gambling Act 2005

Process prescribed by statute

Premises Licence

New/variation	Automatic grant in the absence of representations. If contested, determined by Licensing Committee
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Licensed Premises Gaming Machine Permit

Up to 2 machines	Automatic entitlement, no decision made
More than 2 machines	Decision made by Principal Licensing Officer depending on the size of the premises. If dissatisfied or the application is for more than 4 machines, determined by Licensing Committee.

Club Gaming/Machine Permit

Fast track application	Automatically granted
Non fast track	Automatic grant in the absence of representations , If contested, determined by Licensing Committee

Occasional/Temporary Use Notices

All use notices are "notifications" rather than applications. No permission is given, just acknowledgement that the notice has been received.

Small society lotteries

Permit issued subject to applicant meeting prescribed criteria.

Review of Premises Licence

In our capacity as a `responsible authority' designated officers may apply for the review of a licence where it is considered that premises continue to undermine one or more of the licensing objectives. However, the future of the licence is determined before a Licensing Committee.

Representation against Premises Licence application/variation

In our capacity as a `responsible authority' designated officers may submit representation against an application. However, the application is then determined before a Licensing Committee.

Gambling Act 2003 Fees

Set by statute to a cap with local discretion. Delegated to Officers but approval generally approval sought by Licensing Committee.

Miscellaneous Licences

Process set out by legislation in part but decision making subject to our constitution which sets out that officers are delegated to grant the following licences and permits in the absence of objections.

Furthermore regard must be had to the EU Services Directive `Tacit Consent' authorisation - licences are deemed granted after the given notice period in the absence of objections.

Scrap Metal Dealer

Registration process with no ability to refuse .

Motor Salvage Dealer

Automatic grant in the absence of objections. If contested, determined by Licensing Committee

Sex Establishment (SEV, sex shop, sex cinema)

New	All determined by Licensing Committee
Renewal	Automatic grant in the absence of objections. If contested, determined by Licensing Committee
Variation	Automatic grant in the absence of objections. If contested, determined by Licensing Committee
Minor variation (advertising)	Determined by Licensing Committee

Places of Marriage

Automatic grant in the absence of objections. If contested, determined by Licensing Committee

Hypnotism

Letter of authorisation supplied provided applicant meets local criteria otherwise referred to Licensing Committee.

House to house collections and street collections

Permit granted provided applicant meets local criteria, otherwise referred to Licensing Committee.

Miscellaneous Licence Fees

No charge for Scrap Metal Dealer, Hypnotism, House to House and Street Collections. Others to local discretion. Delegated to Officers but approval generally sought by Licensing Committee

Licensing Functions delegated by Licensing Committee

<p>Subject to the exceptions listed below, the Director of Resources is authorised to discharge the licensing functions² of the licensing authority.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> • any licensing function³ reserved to full Council⁴; and • any licensing function where full Council has referred a matter to a committee other than the Licensing Committee⁵; and • any licensing function within the terms of reference of the Licensing Sub-committees⁶; and • to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act 	<p>Licensing Act 2003 and the Gambling Act 2005.</p>
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Functions related to the Licensing Functions delegated by Licensing Committee

Subject to the exceptions listed below, the Director of Resources is authorised to discharge the functions set out in the following table that are delegated to the Director of Resources by Licensing Committee

(a)	To license hackney carriages and private hire vehicles	(a) As to hackney carriages, the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985 and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (b) As to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(b)	To license drivers of hackney carriages and private hire vehicles	Section 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(c)	To license operators of hackney carriages and private hire vehicles	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(d)	* To licence sex shops and sex cinemas and sexual entertainment venues.	The Local Government (Miscellaneous Provisions) Act 1982, Section 2, Schedule 3, the Policing and Crime Act

² “Licensing functions” means functions under the 2003 Act and the 2005 Act.

³ “Licensing functions” means functions under the 2003 Act and the 2005 Act.

⁴ Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

⁵ Under the provisions of Section 7(5)(a) of the 2003 Act

⁶ Except where a Licensing sub-committee has arranged for the discharge of any of their functions by an Officer

		2009, Section 27.
(e)	To license performances of hypnotism.	The Hypnotism Act 1952
(f)	* To license persons to collect for charitable and other causes	Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

Exceptions

The Director of Resources is not authorised to discharge those functions marked * above where objections have been received.

Appointments to Sub-Committees

The Director of Resources is authorised to appoint members to vacancies during the period between the local elections and the Annual Council meeting, in consultation with appropriate whips, in order to secure that meetings necessary to be held during that period can proceed with adequate and appropriate membership levels.

SUMMARY OF LEGAL PROVISIONS FOR TAXI AND PRIVATE HIRE LICENSING

Grant, Refusal, Suspension or Revocation of the Licence

- Hackney carriage drivers

- To grant a licence the applicant must be a fit and proper person.
- To suspend or revoke the licence the holder must have
 - (i) Been convicted of an offence involving dishonesty, indecency or violence, or
 - (ii) Been convicted of an offence under or failed to comply with the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976, or
 - (iii) For any other reasonable cause.

- Private hire drivers

The Council shall not grant a licence:

- (a) Unless satisfied that the applicant is a fit and proper person to hold a licence, or
- (b) The individual has been authorised to drive a motor vehicle for the 12 months prior to the date of the application.

A private hire driver's licence can be suspended, revoked or a renewal can be refused on the same basis that a hackney carriage driver's licence can be suspended, revoked or renewal refused.

- Private hire vehicles

Before granting a licence the Council must be satisfied that the vehicle is suitable in type, size and design for use as a private hire vehicle, not of a design or appearance to lead a person to believe it is a hackney carriage, in suitable mechanical condition, safe and comfortable and that the vehicle is insured. The 1976 Act allows the Authority to suspend, revoke or refuse to renew a vehicle licence on the grounds that it is unfit for use as a hackney carriage or private hire vehicle, an offence under or non compliance with the provisions of the Act of 1847 or the 1976 Act by the operator or driver or any other reasonable cause.

- Private hire operators

- The applicant must be a fit and proper person to be granted a licence.

- The licence can be suspended, revoked or there can be a refusal to renew on the following grounds:
 - Any offence under or non compliance with the provisions of the LG(MP) A 1976,
 - Conduct on the part of the operator which renders him unfit to hold the operator's licence,
 - Material change since the licence was granted of any of the circumstances of the operator affecting the basis on which the licence was granted,
 - Any other reasonable cause.