
Cabinet Member for Policing and Equalities
Licensing and Regulatory Committee
Council

26 October 2017
14 November 2017
5 December 2017

Director Approving Submission of the report:
Director of Finance and Corporate Services

Title: Proposed Amendment to the Constitution: Revocation of Hackney Carriage and Private Hire Driver's Licences

Executive Summary:

Under the current Scheme of Delegation to Officers, the Deputy Chief Executive, Place and the Senior Licensing and Enforcement Officer have delegated powers to suspend a hackney or private hire driver's licence where it is necessary that immediate steps be taken in the interests of public safety. Any such decisions are taken in consultation with the Chair of the Licensing and Regulatory Committee (or in his/her absence the Deputy Chair or in the absence of either, the City Solicitor). This provision has been used by officers to suspend a driver following serious allegations of impropriety or criminal behaviour and pending the Committee's decision whether to revoke the licence.

Case law has confirmed, however, that the power to suspend a licence under Section 61 of the Local Government (Miscellaneous) Provisions 1976 is a final decision on the question of a person's fitness and propriety. It cannot be used to as an interim measure pending further investigation into a driver's conduct.

This means that if officers believe that an allegation is so serious that the driver should not be allowed to drive pending an investigation, they cannot suspend the licence. The only options are:

- (a) To allow the driver to continue to drive pending the matter coming before the Committee, which could be some time; or
- (b) Delegate power to officers to revoke a licence where public safety requires it. The driver would still have a right of appeal.

This report recommends changes to the Hackney Carriage and Private Hire Licensing Scheme of Delegation, which forms part of Part 2M of the Constitution to permit officers to revoke drivers' licences where public safety requires it.

This proposed change was considered by the Constitutional Advisory Panel at its meeting on 9 October 2017. The Panel resolved to recommend to the Cabinet Member that the change be approved.

Powers are delegated to officers under the licensing scheme of delegation by the Licensing and Regulatory Committee. A report will therefore be going to the next meeting of that Committee to ask it to agree the change. The Cabinet Member is therefore asked to approve this change, subject to the agreement of the Licensing and Regulatory Committee.

Any change to the Constitution must be approved by full Council.

Recommendations:

Cabinet Member is recommended to:

- (1) Approve the proposed change to the Hackney Carriage and Private Hire Licensing Scheme of Delegation; and
- (2) Recommend to the Licensing and Regulatory Committee that it approves the change in the Hackney Carriage and Private Hire Licensing Scheme of Delegation; and
- (3) Recommend to full Council that they agree to its being included in the Constitution.

Licensing and Regulatory Committee is recommended to:

- (1) Approve the proposed change to the Hackney Carriage and Private Hire Licensing Scheme of Delegation; and
- (2) Recommend to full Council that they agree to its being included in the Constitution

Council is recommended to:

- (1) Agree that the change to the Hackney Carriage and Private Hire Licensing Scheme of Delegation be included in the Constitution

Appendix included: None

Other useful background papers: None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

The report was considered and approved by the Constitutional Advisory Panel on 9 October 2017. The report will go to the next meeting of Licensing and Regulatory Committee.

Will this report go to Council?

Yes 5 December 2017

Report title: Proposed Amendment to the Constitution: Revocation of Hackney Carriage and Private Hire Driver's Licences

1. Context (or background)

- 1.1. Under the current Scheme of Delegation to Officers, the Deputy Chief Executive, Place and the Senior Licensing and Enforcement Officer have delegated powers to suspend a hackney or private hire driver's licence where it is necessary that immediate steps be taken in the interests of public safety. Any such decisions are taken in consultation with the Chair of the Licensing and Regulatory Committee (or in his/her absence the Deputy Chair or in the absence of either, the City Solicitor). This provision has been used by officers to suspend a driver following serious allegations of impropriety or criminal behaviour and pending the Committee's decision whether to revoke the licence.
- 1.2 Case law has confirmed, however, that the power to suspend a licence under Section 61 of the Local Government (Miscellaneous) Provisions 1976 is a final decision on the question of a person's fitness and propriety. It cannot be used to as an interim measure pending further investigation into a driver's conduct.
- 1.3 The Council therefore needs to consider how it is going to deal with urgent situations where a driver cannot be allowed to continue driving pending a full investigation into an allegation.

2. Options considered and recommended proposal

2.1 Option 1: Do nothing (not recommended)

If the Scheme of Delegation is left as it is, then officers could not suspend a licence where there are public safety concerns without running the risk that the suspension would be challenged, given the case law which clearly states that suspension is a final sanction, not an interim sanction. Otherwise, the driver would have to be allowed to continue driving pending a full investigation.

2.2 Option 2: Amend the Hackney Carriage and Private Hire Licensing Scheme of Delegation (recommended)

- 2.3 The current delegations to officers are set out below (at paragraph 6.6.66 of Part 2M of the Constitution):

1.3 Suspension of Licence

To suspend where:

(a) A driver is disqualified from driving during the term of a licence issued by the City Council and the driver's DVLA licence will be restored during that term; or

(b) In the opinion of the Senior Licensing and Enforcement Officer in consultation with the Chair of the Licensing Committee (or in his/her absence the Deputy Chair or in the absence of either, the City Solicitor) it is necessary that immediate steps be taken to suspend a licence in the interests of public safety.

1.4 Revocation of Licence

To revoke where a driver is disqualified from driving during the term of a licence issued by the City Council and where the driver's DVLA licence will not be restored during that term.

- 2.4 It is recommended that the Scheme of Delegation is amended as follows. Deleted text is scored through and new text is underlined:

1.3 Suspension of Licence

To suspend where:

- (a) A driver is disqualified from driving during the term of a licence issued by the City Council and the driver's DVLA licence will be restored during that term; or*
(b) ~~In the opinion of the Senior Licensing and Enforcement Officer in consultation with the Chair of the Licensing Committee (or in his/her absence the Deputy Chair or in the absence of either, the City Solicitor) it is necessary that immediate steps be taken to suspend a licence in the interests of public safety.~~

1.4 Revocation of Licence

To revoke where:

- (a) a driver is disqualified from driving during the term of a licence issued by the City Council and where the driver's DVLA licence will not be restored during that term; or*
(b) In the opinion of the Senior Licensing and Enforcement Officer in consultation with the Chair of the Licensing Committee (or in his/her absence the Deputy Chair or in the absence of either, the City Solicitor) it is necessary that immediate steps be taken to revoke a licence in the interests of public safety.

There will still be a requirement for the officer to consult with the Chair of the Committee in the event that revocation is required. Drivers will continue to have the right to appeal a decision to revoke and if, once the investigation is complete, it is considered that revocation was not justified, arrangements would have to be made to reissue the licence.

2.5 Recommendation

2.5.1 Cabinet Member is recommended to:

- (1) Approve the proposed change to the Hackney Carriage and Private Hire Licensing Scheme of Delegation; and
- (2) Recommend to the Licensing and Regulatory Committee that it approves the change in the Hackney Carriage and Private Hire Licensing Scheme of Delegation; and
- (3) Recommend to full Council that they agree to its being included in the Constitution.

2.5.2 Licensing and Regulatory Committee is recommended to:

- (1) Approve the proposed change to the Hackney Carriage and Private Hire Licensing Scheme of Delegation; and
- (2) Recommend to full Council that they agree to its being included in the Constitution

2.5.2 Council is recommended to:

- (1) Agree that the change to the Hackney Carriage and Private Hire Licensing Scheme of Delegation be included in the Constitution

3 Results of consultation undertaken

None, as the change requested arises from a change in case law.

4. Timetable for implementing this decision

4.1 Not Applicable

5. Comments from Director of Finance and Corporate Services

5.1 Financial implications

There are no specific financial implications arising from the recommendations within this report.

5.2 Legal implications

The change requested arises from case law which makes the current delegations to officers to suspend licences unsafe and liable to challenge. The change in delegation will allow officers to take decisions to protect the public quickly without having to wait until the Committee can consider the matter.

6. Other implications

None

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

Not applicable.

6.2 How is risk being managed?

The proposal seeks to address the current risk of the Council being challenged if officers continue to suspend licences on the ground of public safety.

6.3 What is the impact on the organisation?

The change will give officers the power to protect the public without having to wait until a scheduled Committee meeting.

6.4 Equalities / EIA

There are no public sector equality duties which are of relevance at this stage.

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

None at this stage

Report author(s): Carol Bradford

Name and job title: Corporate Governance Lawyer, Regulatory Team, Legal and Democratic Services

Directorate: Place Directorate

Tel and email contact: 024 7683 3976 carol.bradford@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Suzanne Bennett	Governance Services	Place	29.9.17	9.10.17
Names of approvers for submission: (officers and members)				
Finance: Graham Clarke		Place	29.9.17	29.9.17
Legal: Julie Newman	Legal Services Manager	Place	29.9.17	29.9.17
Adrian West	Members and Elections Team Manager	Place	29.9.17	29.9.17
Mick Coggins	Senior Licensing and Enforcement Officer	Place	28.9.17	29.9.17
Cllr A Khan	Cabinet Member Policing and Equalities			

