

AGENDA

Regulatory Panel

**Wednesday, 25 February 2015 AT 14:00
In the Flensburg Room, Civic Centre, Carlisle, CA3 8QG**

Apologies for Absence

To receive apologies for absence and notification of substitutions.

Declarations of Interest

Members are invited to declare any disclosable pecuniary interests, other registrable interests and any interests, relating to any item on the agenda at this stage.

Public and Press

To agree that the items of business within Part A of the agenda should be dealt with in public and that the items of business within Part B of the agenda should be dealt with in private.

Minutes of Previous Meetings

To agree the minutes of the meetings held on 17 December 2014 and 21 January 2015.

(Copy Minutes in Minute Book 41(5))

PART A

To be considered when the Public and Press are present

A.1 APPLICATION TO LICENCE AN 8 SEAT HACKNEY CARRIAGE 3 - 18

The Licensing Manager to submit a report regarding an application to licence an eight seater Hackney Carriage.

(Copy Report GD.17/15 herewith)

Members are asked to inspect Mr Irving's vehicle and a Ford Torneo, which will be made **available from 1.30pm** outside the Civic Centre. Any Members who do not inspect the vehicle prior to the meeting will be asked to view it during the meeting to enable them to take part in the decision making.

A.2 DELEGATED AUTHORITY TO THE REGULATORY PANEL 19 - 24

The Director of Governance to submit a report on the possibility of changes to the delegated powers of the Regulatory Panel as requested by the Regulatory Panel.

(Copy Report GD11/15. herewith)

PART B

To be considered when the Public and Press are excluded from the meeting

- NIL -

Members of the Regulatory Panel:

Conservative – Bowman S, Layden, Morton, Mrs Parsons, Collier (sub), Nedved (sub), Mrs Prest (Sub)

Labour – Bell, Cape, Ms Franklin, Scarborough, Mrs Stevenson, Mrs Warwick, Wilson, Boaden (sub), Dodd(sub), Stothard (sub)

Independent - Betton, Graham (sub)

Enquiries, requests for reports, background papers, etc to Lead Committee Clerk: Rachel Rooney – 817039

Report to Regulatory Panel

Agenda
Item:

A.1

Meeting Date: 25 February 2015
 Portfolio: Finance, Governance and Resources
 Key Decision: Not Applicable:
 Within Policy and Budget Framework: NO
 Public / Private: Public

Title: APPLICATION TO LICENCE AN 8 SEAT HACKNEY CARRIAGE
 Report of: Director of Governance
 Report Number: GD 17/15

Purpose / Summary:

An application has been received from Mr David Irving, to licence an 8 Seat Hackney Carriage. The vehicle has 6 seats in the rear and a double bench seat in the front. Licensing Officers question whether the front bench seat is large enough to accommodate two adult people.

Recommendations:

Members are requested to consider the application and reach a decision from the options outlined on page 5 of this report.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

CITY OF CARLISLE

To: The Chairman and Members of the Regulatory Panel 25th February 2015

1. HISTORY

- 1.1 On 2nd February 2015, Mr Irving sold his 15yr old London Type TX1 Taxi to a new Hackney Carriage Driver. Mr Irving then informed Mr Sharrock, our Licensing Officer, that he would be purchasing a Citroen Despatch model, with 8 passenger seats.
- 1.2 When we licence 8 passenger seat vehicles, we have to be careful to ensure all seats are of an accommodating adult size. If two seats are in the front of the vehicle, we always ensure that the passenger seat nearest to the driver is not too close. This is to prevent any inadvertent contact between driver and passenger. Mr Irving informed Mr Sharrock that he was having a 'specialist partition' built between the driver and the passenger seats to take this into account. He was informed that until the vehicle was inspected, we could not confirm if the vehicle would be licensed for 8 seats. Our Hackney Carriage Specification is clearly listed on the back of every application form and members should note that point 10 states 'a driver is strongly advised to consult with a Licensing officer on the suitability of a vehicle before purchase'. **Appendix A**
- 1.3 On 5th February 2015 the vehicle arrived to be inspected. A meter test was undertaken by myself, with our admin clerk, Karen Blain sitting in the two front seats. The usual short journey was made to check the meter was working correctly. On arriving back at the Civic Centre, I was concerned with the cramped seating position and felt everyone's personal space was not of an acceptable level.
- 1.4 Mr Irving informed me that he has contract work for Network Rail and Virgin, should the trains break down. I felt the front seating would not be appropriate for two passengers travelling any long distance.
- 1.5 A second opinion was sought from the Licensing Manager and Licensing Officer Fred Watson, who both tested the seats. Both were unable to position themselves on the double seat, as well as close the door.
- 1.6 Measurements and photographs of the seats were taken. The measurement of the front bench seats were 38.1cm per seat, whilst the driver seat measured 52.4cm and the rear passenger seats measuring 45.07cm each, but of a bench style 3 seats' facing each other. **Appendix B**

1.7 A decision was then taken to licence the vehicle for 7 passenger seats and Mr Irving was informed of this. He confirmed that Citroen would replace the 2 seat bench with a single seat. Mr Irving's licence was then issued accordingly. **Appendix C**

2 MR IRVING'S APPLICATION

2.1 A letter wishing to challenge the Licensing Manager's decision was received on 12th February 2015. Mr Irving's reasons and licensing comments are as follows:

Appendix D

- Carlisle City Council has licensed Skoda Rapids and Citroen/Peugeot Tepee models that he claims cannot accommodate 3 large people in the rear seats. *Measurements of a Skoda Rapid and Peugeot Tepee can be seen **Appendix E** These are only 4 passenger seat Hackneys and after examining both vehicles confirm that 3 average adults can sit in comfort and safety in the 3 rear seats.*
- Ford Torneos have similar size double front seats
We currently have 1 Ford Torneo 8 Seat Hackney Carriage licensed; again see Appendix E for measurements. Members will have the opportunity to compare this vehicle to Mr Irving's Citroen Despatch prior to the meeting.
- Carlisle City Council has no vehicle conditions covering the size of front seats. *Our vehicle specification only gives a minimum exterior width of 1.701mm. As vehicle models change and have become more advanced, Licensing will be submitting a future report recommending adoption of a 400.06mm minimum seat requirement.*
South Lakes District Council minimum is 400.06mm width per seat, exclusive of any intrusion by wheel arches etc
Eden Council have a minimum seat width policy of 400mm
- That requesting Mr Irving to replace the double seat that the vehicle was manufactured with is a 'step too far'
The decision to request this was due to the fact that this vehicle will no doubt remain as a working Hackney Carriage for the next 10-15+ years with Carlisle City Council and will inevitably change hands. Mr Irving says he has lots of experience as a driver and can use his discretion, the next owner may not be quite as experienced. If an unlicensed seat remains in the vehicle it could invite illegal use in exceptional circumstances, which could be a public safety issue.

- It is clearly up to the discretion who the driver allows in the front seats of the vehicle.
All licensed seats need to be of a standard suitable for an average adult and not just at the discretion of who the driver feels is of the appropriate size to fit them.
- Mr Irving makes a point that we have put him in the position where he cannot tender for school contracts up to 8 children and the double seat is large enough for 2 children.
*Mr Irving was informed that we would need to look at the vehicle before we would be happy to licence it and that we have no vehicle of that model currently licensed. Our Hackney Driver Codes of Conduct state no children under the age of 10 years are to be conveyed in the front of vehicles. **Appendix F***

Finally, members are asked to inspect Mr Irving's vehicle and a Ford Torneo, which will be made **available from 1.30pm** outside the Civic Centre. Any Members who do not inspect the vehicle prior to the meeting will be asked to view it during the meeting to enable them to take part in the decision making.

3 LICENSED HACKNEY CARRIAGE 8 SEATER VEHICLES

- 3.1 Carlisle currently has 8 Licensed Hackneys that have 8 passenger seats. The vehicle make and models along with the seat measurements are in Appendix E, as previously referred to.
- 3.2 It should be noted that Mr Irving's Citroen Despatch is the first one the Council have been asked to licence.

4 SUMMARY

- 4.1 Although the Council currently has no seating policy, only a minimum width of the exterior of a vehicle. It is clear that more vehicles of this nature may come to our attention in the future. These vehicles can cost less than the London Type Black Taxi and can accommodate a maximum of 3 further seats, as well as being wheelchair accessible. A future report will be prepared to committee to recommend a minimum seat width of 40.06mm (16").
Currently, Licensing Officers advise drivers who are thinking of buying a new vehicle to check many aspects carefully, including seating, window tints, access doors & roof signs.

- 4.2 These vehicles may be licensed with us for the next 10 – 15 years and may change hands during this time, so it is important that the correct decision is taken on initial licensing.
- 4.3 Passenger safety, comfort and individual personal space is of prime importance when making decisions on licensing appropriate vehicles. Vehicles cannot be licensed for 'specific use' for example; seats cannot be licensed just for children, or for short journeys. Each Licensed vehicle must be capable of servicing all requirements.

5 LEGISLATION

- 5.1 Adoption of the Local Government (Miscellaneous Provisions) Act 1976. Section 47 (2) requires (under 1847 Act) a Council to require a hackney carriage to be of such a 'design or appearance to identify as a hackney carriage'

Appendix G

6 OPTIONS AVAILABLE TO MEMBERS INCLUDE:

- 6.1 To uphold the current licence of 7 passenger seats issued on 5th February 2015 and replace the front double seat to a single.
- 6.2 To uphold the current licence of 7 passenger seats issued on 5th February 2015 but allow the front double seat to remain, with only one of the seats being licensed.
- 6.3 To allow the amendment of Mr Irving's vehicle license from 7 to 8 passenger Seats.

Contact Officer: Sue Stashkiw Ext: 7029

Appendices attached to report:

- A Application Form with specification on rear**
- B Photo of seating arrangement**
- C Issue letter**
- D Application letter from Mr Irving**
- E Specimen seat sizes of licensed vehicles**
- F Code of practice indicating no children below the age of 10 to be conveyed in the front of a hackney carriage (5b)**
- G Legislation**

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's – N/A

Community Engagement – N/A

Economic Development – N/A

Governance – N/A

Local Environment – N/A

Resources – N/A

APPENDIX A

CITY OF CARLISLE
APPLICATION FOR A HACKNEY
CARRIAGE LICENCE

Lalpac Log	
Fee Paid	
Receipt No	
FUND 31 HA	
Lic. issued	

Before completing this form you should read the notes overleaf.

1. Full Name and Address of Applicant
(Including Postcode)

2. Tel No:
Email address:

3. Under which company's radio circuit do you intend to work?

4. Type of application (Tick appropriate box)

a) New	<input type="checkbox"/>
b) Renewal	<input type="checkbox"/>
c) Vehicle Change/Transfer	<input type="checkbox"/>

DETAILS OF VEHICLE

5. Make, model and colour

6. Registration No.

7. Date of first registration

8. Engine capacity

9. Seating capacity (Passengers)

10. *Wheelchair/Non Wheelchair *Delete as appropriate

11. Hackney Carriage Vehicle Licence No. (if applicable)

DECLARATION

In accordance with the provisions of the Public Health Act 1875, the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act, 1976, I hereby make application for a licence for the above vehicle to be used as a Hackney Carriage.

Will the Hackney Carriage be used primarily within Carlisle City Council area? Yes/No

I have read and understood the conditions under which the licence will be issued. The information above is true to the best of my knowledge and belief.

I CONSENT TO THE INFORMATION SUPPLIED ON THIS APPLICATION FORM TO BE DIVULGED TO THE POLICE AND OTHER AGENCIES INVOLVED IN THE PREVENTION OF FRAUD

DATE: _____

SIGNATURE: _____

Notes

1. You should enclose with your completed application form:
 - a) A remittance of £ licence fee and £ test fee
 - b) A deposit of £25.00 in respect of the vehicle licence plate (**new licence only**)
 - c) Evidence of insurance cover relating to the public use of the vehicle
 - d) The vehicle registration document (V5)
 - e) Remittances by cheque should be made payable to 'The City of Carlisle'

The deposit referred to in (b) above will be refunded upon the licence plate being surrendered.
2. This application must be signed by all persons shown at question 1. If it is on behalf of a limited company the application must state in what capacity you sign.
3. The completed form and fee should be returned to the Licensing Manager, Carlisle City Council, Civic Centre, Carlisle CA3 8QG.

Hackney Carriage Specification

4. The vehicle must be:
 - a) of the London type FX4 or later design as laid down by the Metropolitan Police Public Carriage Office or;
 - b) be a wheelchair accessible vehicle of a type approved by the council or;
 - c) be a saloon, hatchback, estate or people carrier (but not a mini-bus) and be white in colour.
5. The City Council will not license a vehicle in category 4c) above unless:
 - a) under 3 years old upon first licensing as a Hackney Carriage with this authority;
 - b) a manufacturer's stated width of not less than 5ft 7ins (1.701m) excluding door mirrors;
 - c) a manufacturer's stated length of not less than 14ft (4.266m)
 - d) an engine with a minimum power output of 90bhp or 66KW
 - e) at least 3 passenger doors;
 - f) seat belts fitted to all forward facing seats;
 - g) licences will not be renewed once the vehicle reaches the age of 5 years, save for exceptional condition.
6. With effect from 1st August 2007, the City Council will only issue new Hackney Carriage licences to wheelchair accessible vehicles which, in addition to 4a) & b) above, meet the following specification:
 - a) are under 3 years old upon first licensing as a Hackney Carriage with this authority;
 - b) licences for wheelchair accessible Hackney Carriages will not be renewed once the vehicle reaches the age of 10 years, save for exceptional condition.
7. Be equipped with an illuminated roof sign and "For Hire" light of a type specified by the council.
8. The window glass fitted to the vehicle is not tinted darker than 32% +/- 2%;
9. The Council regulates advertising on Hackney Carriage vehicles and application must be made through the Licensing Office at the Civic Centre before any advertising is carried out.
9. There are penalties for knowingly giving false information in respect of this application.
10. You are strongly advised to consult with a Licensing Officer on the suitability of a vehicle before purchase.

APPENDIX B

BX64 UFB

5 Feb 2015



**CARLISLE
CITY COUNCIL**



www.carlisle.gov.uk

Governance Directorate

Director of Governance: M D Lambert LLB (Hons)

Civic Centre Carlisle CA3 8QG Telephone (01228) 817000 Fax (01228) 817023

Document Exchange Quote DX 63037 Carlisle Type talk 18001 01228 817000

Council Website www.carlisle.gov.uk

Mr D N Irving
3 Northgate
54 Scotland Road
Carlisle
Cumbria
CA3 9DB

Enquiries to:

Direct Dial:

01228 817029

5 February 2015

Dear Mr Irving

Hackney Carriage Licence H115

Commences : 5 February 2015

Expires : 4 February 2016

Please find enclosed your new Hackney Carriage Licence.

The Conditions attached to this licence are also enclosed and should be read carefully.

After inspecting your vehicle, registration BX64 UFB, I can confirm that it is licensed for a total of 7 passengers, with only 1 of those passengers being transported in the front of the vehicle.

Yours sincerely

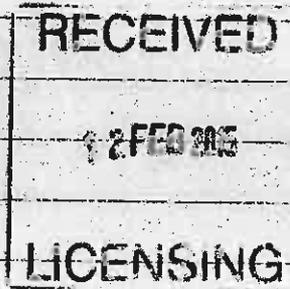
Licensing Manager

APPENDIX D

3 Northgate, 54 Scotland Rd
Carlisle CA3 9DB
12.2.2015

New Vehicle License, H115

Mr J Messenger
Licensing Manager
Carlisle City Council
Civic Centre
Carlisle



Dear Mr Messenger,

Thank you for your letter dated 6.2.2015, I wish to appeal against your decision not to license my new vehicle for 8 passengers, and the removal of my double front seat. You claim my front seat is too small for two adults. You have licensed several Skoda Rapides in recent months, and I have to point out you cannot get 3 large people in the rear of a Skoda Rapide and if they do squeeze themselves into the vehicle, they are clearly uncomfortable. The same applies to the Citroen Typee and Peugot Models.

You have recently licensed an 8 seater Ford Tomeo, On measuring the front seats of this vehicle, we find them to be of a similar size to my front seats. To my knowledge there are no conditions of license covering the front seats of these vehicles. To instruct me to remove a front seat that the vehicle was manufactured with is a step too far. I could understand if it was an odd seat that I had fitted myself. It is clearly up to the drivers discretion who he allows in the front of the vehicle. And after being a cab driver for 40 years in our great city, I have got quite good at using my discretion.

You are also putting me in a position, where I cannot
tender for school contracts involving eight children And
clearly my double seat is large enough for two children.
The Ford Terms and my own vehicle will be made
available for members of the panel to inspect.

Yours Faithfully
D. Irving.

Double bench front seats in Hackney Carriage

Plate	Reg. No.	Owner	Make	Model	Double Bench Front Seat		Driver Seat		Additional Info.
					Width	Individual Depth	Width	Depth	
H115	BX64 UFB	D Irving	Citroen	Dispatch	76.2cm	38.1cm	52.4cm		Rear bench seat each 45.07cm total 135.21cm

H158	AH04 ASH	A Hales	Renault	Traffic	82cm	41cm	47cm		
H112	MIM02 CAB	A McPake	Ford	Torneo	80.8cm	40.04cm	47cm	52.1cm	3 x seats in rear total 139.01cm
H195	KX09 DGV	B Haden	VW	Transporter	79cm	39.5cm	46cm		

Plate	Re. No.	Owner	Make	Model	Front Passenger Seat		Rear Passenger Seat		
					Width	Depth	Width	Depth	
H422	SJ12 OEB	Radio Taxis	Peugeot	Tepee	48.2cm	45.7cm	43.2cm	45.7cm	1 seat + double seat
H206	FX63 AEB	John Moore	Skoda	Rapid	49.5cm	50.8cm	125.7cm	49.5cm	3 seater

APPENDIX F

CITY OF CARLISLE

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

CODE OF PRACTICE FOR HACKNEY CARRIAGE DRIVERS

The holder of a Hackney Carriage driver's licence (hereinafter called the driver) shall observe and perform all the following codes of practice which shall be attached to and form part of his Hackney Carriage driver's licence.

1. This Licence is personal to the driver named herein and the driver shall not in any circumstances assign it or in any way part with the benefit thereof to any other person.
2. The driver shall at all times when acting as a driver of a Hackney Carriage, wear or display the driver's current year identity card issued by the Council **in such a position and manner as to be plainly and distinctly visible to the hirer.**
3. The driver's identity card issued by the Council remains the property of the Council and shall be returned to the Council by the driver or a person appointed by them within seven days of the date of the suspension or revocation of or refusal or failure to renew this Licence.
4. The driver shall not, at any time whilst driving or in charge of any Hackney Carriage (the Hackney Carriage):-
 - (a) station the Hackney Carriage on any place which is marked out as a bus stop or loading bay, or on any length of highway during times when a prohibition on loading and unloading is in operation;
 - (b) station the Hackney Carriage on a public highway in such a manner so that it is double parked or otherwise obstructing the free flow of traffic and this condition shall apply at all times and including whilst and before and after the hirer is boarding or alighting from the Hackney Carriage;
 - (c) station the Hackney Carriage so as to obstruct the exit or fire exits of any place licensed for regulated entertainment or to station the Hackney Carriage in such a way that a condition attached to the premises licence as to access for emergency vehicles cannot be complied with;
 - (d) leave the Hackney Carriage parked and unattended on any taxi rank.
5. (a) The driver shall not permit or cause or suffer to be carried in any licensed Hackney Carriage, a greater number of persons than that specified in the licence for that Hackney Carriage and shall provide that the seating arrangements are as specified in the licence for that Hackney Carriage.
 (b) The driver shall not allow there to be conveyed in the front of a Hackney Carriage beside him:-



(1) any child below the age of ten years; or

(2) more than one person.

unless the Hackney Carriage has been specifically designed to provide more than one passenger seat in the front, in which case the above rules apply to each seat.

(c) The driver shall not without the consent of the hirer of a Hackney Carriage convey, or permit to be conveyed, any other person or animal in that Hackney Carriage.

6. The driver shall not demand from any hirer of a Hackney Carriage a fare in excess of any previously agreed for that hiring between himself and the hirer or in excess of the fare shown on the face of the taximeter.
7. The driver of a Hackney Carriage shall not cause the fare recorded on the meter to be cancelled or concealed until the hirer has had a reasonable opportunity of examining it and has paid the fare.
8. The driver, except where he is the proprietor of the Hackney Carriage, shall report to the Proprietor of any Hackney Carriage as soon as practicable and in any case within 24 hours of its occurrence, details of any accident in which such Hackney Carriage has been involved.
9. The driver of a Hackney Carriage which has been hired to be in attendance at an appointed time and place shall unless delayed or prevented by some sufficient cause punctually attend at the appointed time and place.
10. The driver shall when requested by the hirer convey a reasonable quantity of luggage and afford reasonable assistance in loading and unloading, including assistance in removing to and from the entrance of any house or other place where he collects or sets down his passengers. The driver shall not accept a hiring if the hirer abandons a shopping trolley on a road or public place unless the driver first returns such a trolley to the store from which it was brought. He shall also provide all reasonable assistance with wheelchair bound, disabled, elderly and vulnerable passengers.
11. The driver shall not refuse to carry within the vehicle any household pets providing they are accompanied by an adult and providing such pets are suitably restrained or contained so as not to cause a nuisance or damage.
12. At the end of each hiring and before commencing any further hiring the driver shall search the vehicle for any property accidentally left by the immediately preceding hirer. It is the drivers legal obligation to try and reunite all lost property with the owner and shall as soon as practicable and in any case within 48 hours after the discovery of property, attempt to return it to the owner. Failing that and still within 48 hours, all identifiable property shall be handed into the Police Station within the Council's area and a receipt obtained, which must be kept by the proprietor of the vehicle. Identifiable property can range from purses, bank cards, driving licences, mobile phones, laptops, cameras, i.e anything that can identify the owner.
ALL unidentifiable property shall be kept by the proprietor for a minimum of 28 days and a record kept of the description.



<h1>Report to Regulatory Panel</h1>	Agenda Item: A.2
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Meeting Date: 25 February 2015
 Portfolio: Finance, Governance and Resources
 Key Decision: Not Applicable:
 Within Policy and Budget Framework YES
 Public / Private Public

Title: DELEGATED AUTHORITY TO THE REGULATORY PANEL
 Report of: Director of Governance
 Report Number: GD.11/15

Purpose / Summary:

Pursuant to Minute Excerpt RP.33/14 the Director of Governance investigated the possibility of changes to the delegated powers of the Regulatory Panel as requested by the Panel at their meeting on 12 November 2014.

Recommendations:

That Members note the content of this informative report and indicate whether they would like further consideration to be given to requesting that Council create a sub-committee to deal with certain items.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

- 1.1** On 12 November 2014 the Regulatory Panel met to consider three Policy and Budget items which were delegated through the Council's Constitution to the Regulatory Panel. The meeting began at 2.00pm and all three items had been considered and agreed by 2.20pm.
- 1.2** At the end of the meeting the Panel asked the Director of Governance to look at the delegated powers of the Regulatory Panel to see if decisions on future Policy items could be taken by the Chairman of the Panel.

2. CURRENT POSITION

- 2.1** Section 2A of the Council Scheme of Delegation provides that functions relating to licensing and registration (other than Licensing Act 2003 functions) are delegated to the Regulatory Panel, with a membership of 12 members of the Authority.
- 2.2** Section 2B of the Council Scheme of Delegation gives delegated authority to the Director of Governance and the Licensing Manager to grant or renew any licence, registration, permission or consent; to suspend private hire and hackney carriage drivers and operators until the next meeting of the Regulatory Panel; and to institute, defend or participate in any action or legal proceedings where such action is necessary to give effect to decisions of the Regulatory Panel or any officer acting under delegated powers or in any case where the Director of Governance considers that such action is necessary to protect the Council's interests.
- 2.3** The Council's Financial Procedure Rules require that the Regulatory Panel will deal with Taxi, Private Hire and other miscellaneous licences
- 2.4** There is, therefore, no delegation within the Constitution which permits the Chairman and Vice Chairman of the Regulatory Panel to determine policy agenda items.

2. CAN THE REGULATORY PANEL DELEGATE CERTAIN DECISIONS TO THE CHAIRMAN AND VICE CHAIRMAN?

- 2.1** With regard to the Licensing Committee, section 9(1) of the Licensing Act 2003 provides that a licensing committee may establish one or more sub-committees consisting of three members of the committee, and section 9(3) provides that, subject to regulations, each licensing committee may regulate its own procedure and that of its sub-committees. Further, section 10(1)(a) provides that a licensing committee may arrange for the discharge of any functions exercisable by it by a sub-committee established by it.
- 2.2** With regard to the Regulatory Panel, however, there is no such express statutory power to regulate its own procedure or set up sub-committees. The Regulatory

Panel has no greater powers than those conferred on it by Council and cannot itself amend those terms of reference. Section 2A, paragraph 17 provides that it is for Council to appoint sub-committees. In the absence of an express statutory power, therefore, it is for Council to determine terms of reference, the procedure, and any sub-committees of the Regulatory Panel.

3 SHOULD COUNCIL BE ASKED TO CONSIDER REVISING THE CONSTITUTION?

- 3.1** Section 101 of the Local Government Act 1972 provides that a local authority may arrange for the discharge of any of their functions (a) by a committee, a sub-committee or an officer of the authority; or (b) by any other local authority. There is no power to arrange for functions (other than Executive functions) to be discharged by a single Member as case law has held that there can be no delegation to a single Member and, further, a single Member cannot form a committee or sub-committee (*R v Secretary of State for the Environment ex parte Hillingdon London Borough Council [1986]*).
- 3.2** Furthermore, it would not be practicable to have a sub-committee of two. Schedule 12, paragraph 39 of the 1972 Act lays down the principle that all questions coming before the local authority are to be decided by a majority of members. Since, in a committee of even numbers, any deadlock is determined by the chairman's casting vote, in reality any question coming before a committee of two Members could be determined by the Chairman alone. Thus, it is best practice for any local government committee to be comprised of at least three Members.
- 3.3** Any revision to the Constitution, therefore, would need to involve forming a sub-committee of at least three Members to consider certain items.
- 3.4** Sub-committees should not be set up unless such a course is unavoidable. Members should therefore consider whether it is necessary to establish a sub-committee. Occasionally, as was the case on 12th November, the Regulatory Panel meets and considers a short agenda. This is generally avoided either by single items being deferred and meetings cancelled, or by combining a short agenda with a pre-arranged Licensing Committee meeting, but this is not always possible. The items which gave concern at November's meeting, indeed, were budgetary matters which were not appropriate for deferral.
- 3.5** It is also very important to note that the Regulatory Panel is required, in law, to be politically balanced. This is to ensure that any decisions taken reflect the balanced views of the different, proportionate views of the various parties which make up Carlisle City Council. The delegation of a budgetary matter to anything other than a politically balanced body would infringe an important safeguard of the system in which we work.

- 3.6** The Council has already set up a Regulatory Panel of 12 Members, that being the considered appropriate number for the function it carries out. Agendas are managed as carefully as possible so as to maximise the use of Members' valuable time when attending meetings. On an odd occasion it is inevitable that there will be a shorter meeting. That said, the meeting which raised the question being addressed in this Report did last twenty minutes and absolutely dealt with important and significant work on behalf of the Council.
- 3.7** Speed of decision making is also important. A sub-committee adds a further layer of administration to deal with and it is likely (albeit subject to terms of reference etc.) that the Regulatory Panel would want to hear back from its sub-committee before recommendations were referred on to full Council.
- 3.8** On balance, it is felt to be vital that all members of the panel have an input into budget and policy matters so as to properly reflect the political balance of the Council. Further consideration may, of course, be given to the creation of a sub-committee but it is officers' view that this is not necessary at this time and the concern is that this would also further reduce member engagement in the work of the Council.

3. CONSULTATION

- 3.1** None, this report is for information only.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1** Members will each have a view on whether it is necessary to recommend that Council amend the Constitution in this way, however, if this is a course of action which is being considered, detailed consideration needs to be given to terms of reference and it is suggested that a further report be prepared having regard to Members' views.

5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

5.1

Contact Officer: Penny Gray

Ext: 7020

Appendices attached to report: None

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- **Constitution of the City of Carlisle**
- **Local Government Act 1972 and Local Government Act 2000**
- **R v Secretary of State for the Environment ex parte Hillingdon London Borough Council (1986)**

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's – Not Applicable

Deputy Chief Executive – Not Applicable

Economic Development – Not Applicable

Governance – Included in the report

Local Environment – Not Applicable

Resources - Not Applicable

