

Report to Regulatory Panel

Agenda
Item:

A.4

Meeting Date: 21 January 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

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Appendices None
attached to report:

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