



CONSTITUTION: REVISION TO OFFICER SCHEME OF DELEGATION – ASSISTANT DIRECTOR, ENVIRONMENTAL HEALTH, LICENSING & COMMUNITY

1 PURPOSE OF REPORT

- 1.1 To provide Council with a revision to the current Officer Scheme of Delegation relating to the Assistant Director, Environmental Health, Licensing & Community, clarifying the provisions set out in paragraph 26.8.8 and Appendix E to the Scheme of Delegation, for approval.

2 LINKS TO COUNCIL'S PRIORITIES AND OBJECTIVES

- 2.1 People and Economy and Growth.

3 RECOMMENDATION

- 3.1 It is proposed that Council **RESOLVES**

- (1) To approve the revised Officer Scheme of Delegation for the Assistant Director, Environmental Health, Licensing & Community, as set out in Appendix 1 to the report.

4 INTRODUCTION

- 4.1 The Scheme of Delegation, set out in the Council's Constitution, forms one of the Council's governance documents and sets out those responsibilities that are delegated to Council Officers. It is reviewed to ensure it reflects current legislation and the structure of the Council. The current Constitution was reviewed during 2023/24 to ensure that it reflected the new structure of the Council and this was adopted at Annual Council in May 2024. The Constitution will be reviewed annually by the Overview & Scrutiny Committee and a Constitution Working Group has been set up to commence this work. Article 5 of the Constitution stipulates that only the Council can adopt and approve changes to the Constitution.

- 4.2 Delegations set out at paragraph 26.8.8 and Appendix E to the Scheme of Delegation of the current Constitution contain some errors. For example, (a) (ii) states: ‘To exercise the Council’s powers with respect to the provision, maintenance and development of the Council leisure and tourism functions.’ Appendix 1 contains an updated version with track changes highlighting the proposed changes.

5 OPTIONS

- 5.1 There is no alternative option to making the proposed changes to the Scheme of Delegation, as otherwise there would be a risk of unlawful actions being taken.

6 RISK IMPLICATIONS

- 6.1 The risk associated with not taking the recommended action set out in paragraph 3.1 is that the Council’s corporate governance will be less effective with officers not having the correct authority to take necessary actions.

7 CRIME AND DISORDER IMPLICATIONS

- 7.1 There are none.

8 ENVIRONMENTAL IMPLICATIONS

- 8.1 There are none.

9 FINANCIAL IMPLICATIONS

- 9.1 There are no financial implications arising from this report.

10 LEGAL IMPLICATIONS

- 10.1 There are none other than those already identified above.

11 HUMAN RESOURCES IMPLICATIONS

- 11.1 There are none.

12 EQUALITY AND DIVERSITY IMPLICATIONS

- 12.1 An equality impact assessment was completed when the Constitution was adopted by Annual Council in May, which found that there were no implications.

A handwritten signature in black ink, appearing to read 'Angela Law', with a horizontal line extending to the right from the end of the signature.

Angela Law

Assistant Director, Legal & Democratic Services and Monitoring Officer

Background Papers:-

None.

For further information please contact Sonia Worthington on:-

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Appendix 1

26.8.8 To the Assistant Director, Environmental Health, Licensing & Community

To be responsible for the following:

(a) Licensing

- ~~(i) To deal with all matters arising out of the Scrap Metal Dealers Act 2013, including the determination of all unopposed applications, variations and revocations;~~
- ~~(ii) To exercise all powers under the Licensing Act 2003; other than those reserved to the Council or the Licensing Committee, as set out in Appendix B and in accordance with the Statement of Licensing Policy 2021-2026;~~
- ~~(iii) To exercise all powers under the Gambling Act 2005 other than those reserved to Council or to the Licensing Committee; and in accordance with the Gambling Licensing Policy Statement 2019 – 2022 and as set out in Appendix A;~~
- ~~(iv) To exercise all powers under the Animal Welfare Act 2006, the Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018 and any subsequent regulations made under them for the purpose of animal licensing; other than those reserved to the Council or the Licensing Committee, as set out in Appendix C;~~
- ~~(v) To appoint Inspectors and Authorised Officers under any legislation;~~
- ~~(vi) The grant of licenses of hackney carriages and drivers, private hire vehicles, operators and drivers in accordance with agreed policy;~~
- ~~(vii) Responsibilities relating to street trading under Section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 subject to it being considered by the Licensing Committee where a valid representation or objection is made and not withdrawn.~~
- ~~(viii) Delegation of all regulatory functions specified in Legislation and Regulations in respect to Environmental Health, Health & Safety and Food Safety.~~

- ~~(a) Environmental Health~~
- ~~(b) Public Health & Safety~~
- ~~(c) Compliance with Statutory Requirements~~

Hackney Carriage and Private Hire Licences

To exercise all the Council's licensing and enforcement functions in relation to hackney carriages and private hire vehicles, their drivers and private hire operators, including:

- (1) To consider licence applications having regard to the policy criteria set out by the Council and grant or refuse licences accordingly.

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(Except in cases where the officer view is that there may be exceptional circumstances which merit further consideration, rather than automatic refusal, such matters will be referred to the Drivers' Panel).

- (2) To inspect and, where appropriate, suspend licensed vehicles in accordance with section 68 of the Local Government (Miscellaneous Provisions) Act 1976 where a vehicle is found to be unfit or a taximeter is found to be inaccurate.
- (3) Powers in relation to the testing and assessment of the fitness of licensed vehicles and offences thereunder.
- (4) Investigation and enforcement in relation to possible offences in respect of:
- i. Unlicensed vehicles, drivers or operators
 - ii. Overcharging of fares
 - iii. Unauthorised use of hackney carriage stands
 - iv. Prolongation of journeys
 - v. Misuse of taximeters
 - vi. Obstruction of officers
- (5) Those functions identified as officer functions within the Castle Point Borough Council Taxi Licensing Conditions.

In consultation with the Chair of the Licensing Committee to:

- (6) Suspend a hackney carriage or private hire vehicle licence where suspension of the vehicle is necessary on the grounds of public safety in accordance with section 60 of the Local Government (Miscellaneous Provisions) Act 1976.
- (7) Suspend a hackney carriage or private hire driver's licence or a private hire operator's licence in accordance with sections 61 and 62 of the Local Government (Miscellaneous Provisions) Act 1976.
- (8) Grant or refuse applications for an exemption from displaying the licence plate on a private hire vehicle.
- (9) Grant or refuse exemptions from carrying wheelchair passengers or assistance dogs in licensed hackney carriage vehicles.
- (10) Undertake any other functions identified as officer functions in consultation with the Chair of the Licensing Committee within the Castle Point Borough Council Taxi Licensing Policy.

Licensing Act 2003

- (11) To exercise all the Council's functions with regard to the Licensing Act 2003 (as amended) and any regulations made under the Act with the exception of those functions delegated to the Licensing Committee and Licensing Act Sub-Committee.
- (12) To approve applications where no representations or objections have been made (or where representations have been made but withdrawn) in respect of:

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- a. Section 18(3) determination of application for premises licence.
- b. Section 31(3) determination of application for provisional statement.
- c. Section 35(3) determination of application for variation of premises licence.
- d. Section 39(3) determination of application to vary designated premises supervisor.
- e. Section 44(5) determination of application for transfer of premises licence.
- f. Section 72(3) determination of application for club premises certificate.
- g. Section 85(3) determination of application to vary club certificate.
- h. Section 120(7) determination of application for grant of personal licence.
- i. Section 121(6) determination of application for renewal of personal licence.
- j. Any function under Section 52(2) or (3) (determination of application for review of Premises Licence) in a case where no relevant representations (within the meaning of Section 52(7)) have been made.
- k. Any function under Section 88(2) or (3) (determination of application for review of Club Premises Certificate) in a case where no relevant representations (within the meaning of section 88(7)) have been made; or
- l. Any function under Section 167(5) (Review following Closure Order) in a case where no relevant representations (within the meaning of Section 167(9)) have been made.
- m. The grant or refusal of minor variations to premises licences and club premises certificates under the Licensing Act 2003, in consultation with the Chair of the Licensing Committee.
- n. Agreement that following the decision to call a hearing, that the hearing be cancelled if all parties agree one is unnecessary.
- o. To agree in conjunction with the Monitoring Officer that a representation is frivolous, vexatious or repetitious.
- p. To include the imposition or variation of any condition imposed on any licence where it is legally permissible, save that in the case of an application for a licence which is subject to representation or objection, then the application will be referred to the relevant Licensing Sub-Committee as necessary for decision.

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Gambling

- (13) To exercise all the Council's functions with regard to the Gambling Act 2005 (as amended) and any regulations made under the Act with the exception of those functions delegated to the Licensing Committee and Licensing Sub-Committee.

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- (14) Functions relating to Licensing as set out in Sections 5 to 8 of the Licensing Act 2003.
- (15) Functions relating to occasional use notices for gambling purposes.
- (16) Functions relating to the determination of fees for premises licences.
- (17) Functions relating to the registration and regulation of small society lotteries.
- (18) Power to designate an officer of the licensing authority as an authorised person for a purpose relating to gambling premises.
- (19) Officers be empowered to approve applications where no representations have been made (and where representations have been made but withdrawn) in respect of:
- a. Applications for Premises Licence.
 - b. Application for Variation of a Licence.
 - c. Application for Transfer of a Licence.
 - d. Application for a Provisional Statement.
 - e. Application for a Club Gaming/Club Machine Permit.
 - f. Application for other permits.
 - g. Cancellation, variation or transfer of a Licensed Premises Gaming Machine Permit.
 - h. Consideration of a Temporary Use Notice (including the issue of Counter Notices under Section 218).
 - i. More than the automatic entitlement to two Category C or D AWP machines in licensed premises, on the basis that, as the Licensing Authority is a Responsible Authority, representations against applications of concern can be made by officers.
 - j. To modify a licence where all parties reach agreement in respect of an application for review without the need for a hearing.

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- k. To determine the manner and form of application for a Licensed Premises Gaming Machine Permit, Prize Gaming Permit and Family Entertainment Gaming Machine Permit.
 - l. To make representation in respect of applications.
 - m. To apply for reviews and make representations in respect of reviews.
 - n. To determine the validity of representations made under the Act.
- (20) Exercise duty to comply with requirement to provide information to the Gambling Commission.
- (21) That subject to Regulations permitting, that in the case of an application for a review, that if all parties reach agreement before the hearing, that the licence is modified without the need for a hearing.
- (22) To include the imposition or variation of any condition imposed on any licence where it is legally permissible, save that in the case of an application for licence which is subject to representation or objection, then the application will be referred to the relevant Licensing Sub-Committee as necessary for decision.

General Licensing

- (23) To exercise all the Council's functions with regard to:
- a. The classifying of unclassified films.
 - b. Hypnotists.
 - c. Street collections and house to house collections.
 - d. Societies' lotteries under the Lotteries and Amusements Act 1976 (as amended).
 - e. Scrap Metal Dealers and Scrap Metal Collectors.
 - f. To grant, renew, suspend or revoke but not refuse pleasure boat and pleasure operator and boatman's licences as defined under the Public Health (Amendments) Act 1907.
 - g. the functions of the Council in connection with the management and administration of street trading
 - h. Power to licence sex shops and sex cinemas or other sexual entertainment venue.

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Environmental Health

(24) To exercise all the Council's functions with regard to the licensing and associated welfare of animals in relation to the following:

- a. Animal Boarding
- b. Riding Establishments
- c. Zoos
- d. Dog breeding
- e. Dangerous Wild Animals
- f. Pet Shops
- g. The exhibition of animals

(25) To appoint and appropriately authorise inspectors and authorised officers in accordance with environmental health legislation including that listed below.

(26) To exercise the Council's stray dog function under the Environmental Protection Act and the statutory provisions relating to the microchipping of dogs.

(27) To exercise the Council's powers and functions in connection with food and health and safety at work, including the Food Safety Act 1990:

- (a) With respect to securing the safety of food and the condition of food premises including but not limited to powers of approval, licensing registration and enforcement, including:
 - i. Power to appoint officers of the local authority to confer on them the powers to enforce the provisions in respect of the importation of animal products from other Member States and Third Countries;
 - ii. Power to appoint officers of the local authority to confer upon them rights to request information; to enter and inspect premises, materials and records and take copies; to enforce notices and orders, and to apply for a warrant to authorise entry.
 - iii. Power to appoint officers of the local authority to confer upon them powers to enforce emergency orders and directions.
 - iv. Power to appoint officers of the local authority to confer upon them the powers to enforce the functions of a food authority in respect of specific emergency provisions adopted under the European Communities Act 1972.

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- (b) Functions under any of the “relevant statutory provisions” within the meaning of Part 1 (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the authority’s capacity as an employer.
- (c) Duty to enforce Chapter 1, Health Act 2006 smoke free premises, places and vehicles, and regulations made under it, and power to transfer enforcement functions to another enforcement authority – smoke free premises.
- (d) To register persons and premises for acupuncture, tattooing and skin piercing and electrolysis under sections 13-17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- (28) To exercise the Council’s functions with respect to notification, investigation and control of notifiable infectious diseases, including:
- (a) Power to appoint officers of the local authority to confer on them the powers contained within the Regulations;
- (b) The payment of compensation in lieu of wages to persons excluded from work on public health grounds;
- (c) Power to take action to protect public health through the imposition of restrictions or requirements and to request co-operation for health protection purposes and to disinfect or decontaminate things or premises on request
- (d) Proper Officer for relevant functions in relation to control of infectious diseases.
- (29) To exercise the Council’s functions with respect to:
- (a) Statutory nuisance legislation, including taking remedial action, apportionment and recovery of costs, the service of an abatement notice in respect of statutory nuisance, the inspection of the Authority’s area to detect any statutory nuisance, the investigation of any complaint as to the existence of a statutory nuisance.
- (b) The closure of noisy premises in accordance with section 85 of the Anti-Social Behaviour, Crime and Policing Act 2014 as authorised by the Chief Executive.
- (30) To exercise the Council’s functions with respect to:
- (a) Defective and blocked drains and sewers, drainage systems and the provision of sanitary accommodation and drainage.

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(b) Filthy and verminous premises, articles and persons.

(c) Water supplies.

(d) Clean air legislation and the management of air quality.

(e) Pollution control.

(f) Contaminated land.

(31) To exercise any of the Council's powers in respect of improving the standard of private sector housing, including dwellings and housing in multiple occupation.

(32) To serve notices and take action in respect of category 1 and category 2 hazards in housing accommodation, including emergency remedial action.

(33) To secure the improvement, repair, maintenance, demolition, closure and sanitary conditions of dwellings.

(34) To take any necessary action in respect of overcrowding of housing accommodation.

(35) To take action in respect of houses in multiple occupation, including:

(a) Administration of licensing and accreditation schemes.

(b) Refusing a licence where the proposed licence holder or manager is not a fit and proper person or where the proposed management arrangements are unsatisfactory.

(c) Granting a licence, subject to such conditions as are appropriate in the circumstances of each case.

(d) Revoking a licence where the licence holder is no longer a fit and proper person or when they have committed repeated breaches of licence conditions.

(e) Seeking rent repayment orders in respect of unlicensed HMOs.

(f) Making and managing interim and final management orders.

(36) To arrange for the restoration or continuation of supply of water, gas or electricity.

(37) To carry out any works which the Council has the power to carry out in connection with any of these delegations (including works in default) and to take any steps to recover the money spent on carrying out works in default (including placing a charge on land).

(38) Taking action relating to housing conditions, which:

(a) Concern the condition of any drain or private sewer.

(b) Mean that the Council may ensure that any building has adequate or improved drainage and/or sanitary conveniences.

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- (c) Concern the condition of any cesspool.
- (d) Concern the use and ventilation of soil pipes.
- (e) Concern remedial work, including the service of notices in relation to rainwater pipes, soil pipes and ventilating shafts and the apportionment and recovery of costs.
- (f) Concern the alteration of a drainage system to premises.
- (g) Concern the drainage and paving to yards and passages.
- (39) To exercise the Council's powers with respect to ruinous or dilapidated buildings.
- (40) To undertake the Council's licensing functions in relation to the Caravan Sites and Control and Development Act 1960 (as amended) imposing standard conditions, as appropriate.
- (41) To issue licences for moveable dwellings and camping sites under section 69 of the Public Health Act 1936 (as amended).
- (42) To obtain the particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- (43) To exercise the Council's functions in respect of disabled facilities grants and any discretionary grants made available to customers in accordance with Council policy.
- (44) To exercise the Council's powers in respect of the Housing Act 2004, the Health Act 2006, the Health Protection (Notification) Regulations 2010 and the Local Authorities' Cemeteries Order 1977 section 3.1 and Public Health (Control of Diseases) Act 1984 as amended by the Health and Social Care Act 2008.

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