

Mission Statement

To Improve the Quality of Life
For Those Who Live and Work in The District

8 May 2009

Dear Councillor

You are hereby invited to a meeting of the **Licensing Committee** to be held in **Committee Room 2**, Civic Centre, Portholme Road, Selby on **Monday, 18 May 2009** commencing at **10:00 am**.

The agenda is set out below.

1. Apologies for Absence and Notice of Substitution

To receive apologies for absence and notification of substitution.

2. Disclosure of Interest

To receive any disclosures of interest in matters to be considered at the meeting in accordance with the provisions of Section 117 of the Local Government Act 1972, and Sections 50, 52 and 81 of the Local Government Act 2000 and the Members' Code of Conduct adopted by the Council.

3. Minutes

To confirm as a correct record the minutes of the proceedings of the meeting of the Licensing Committee held on 6 April 2009 (pages 5 to 7 attached).

4. Licensing Sub-Committee

To receive the minutes of the Licensing Sub-Committee held on 9 April 2009 (pages 8 to 13 attached).

5. Procedure

To outline the procedure to be followed at the meeting (pages 14 to 15 attached).

6. Chair's Address to the Licensing Committee

7. Request for Private Hire Licence in respect of a Limousine and that the Licence be discreet in manner

Report of the Interim Head of Service – Legal and Democratic Services (pages 16 to 18 attached).

8. Application for medical exemption for a Hackney Carriage Driver and appropriate identification for same

Report of the Interim Head of Service – Legal and Democratic Services (pages 19 to 22 attached).

9. Local Government (Miscellaneous Provisions) Act 1982 Licensing of Sex Establishments – Licence Fee Review

Report of the Interim Head of Service – Legal and Democratic Services (pages 23 to 53 attached).

10. Private Session

That in accordance with Section 100(A)(4) of the Local Government Act 1972 in view of the nature of the business to be transacted, the meeting be not open to the Press and public during discussion of the following items as there will be disclosure of exempt information as defined in Section 100(1) of the Act as described in paragraph 3 of Part 1 of Schedule 12(A) of the Act.

11. Complaint about behaviour of Licensed Private Hire Driver

Report of the Interim Head of Service – Legal and Democratic Services (pages 54 to 57 attached).

M Connor
Chief Executive
8 May 2009

Disclosure of Interest – Guidance Notes:

- (a) Councillors are reminded of the need to consider whether they have any personal or prejudicial interests to declare on any item on this agenda, and, if so, of the need to explain the reason(s) why they have any personal or prejudicial interests when making a declaration.
- (b) The Democratic Services Officer or relevant Committee Administrator will be pleased to advise you on interest issues. Ideally their views should be sought as soon as possible and preferably prior to the day of the meeting, so that time is available to explore adequately any issues that might arise.

[Please note that the papers relating to the applications have been circulated to councillors of the Licensing Committee only, who should return the agenda to Democratic Services at the conclusion of the meeting to enable the papers to be destroyed confidentially].

Dates of Future Meetings of the Licensing Committee

Date of Meeting	Deadline Date	Distribution Date
8 June 2009	20 May 2009	29 May 2009
6 July 2009	18 June 2009	26 June 2009
3 August 2009	16 July 2009	24 July 2009

Membership of the Licensing Committee 10 Members

Conservative	Labour	Independent
J Dyson	D Davies	J McCartney
K McSherry	S Duckett	
C Pearson (Vice-Chair)		
S Ryder		
R Sayner (Chair)		
A Spetch		
D White		

Enquiries relating to this agenda, please contact Tracey Peam on:

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Descriptions of Exempt Information

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes –
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
8. Qualifications for Exempt Information:

Information falling within paragraph 3 is not exempt information by virtue of that paragraph if it is required to be registered under -

- (a) the Companies Act 1985;
 - (b) the Friendly Societies Act 1974;
 - (c) the Friendly Societies Act 1992;
 - (d) the Industrial and Provident Societies Acts 1965 to 1978;
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 1993.
9. Information falling within any of the 7 categories listed above is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
 10. Information which;
 - (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Agenda Item No: 3

SELBY DISTRICT COUNCIL

Minutes of the proceedings of a meeting of the Licensing Committee held on 6 April 2009, in Committee Room 2, The Civic Centre, Portholme Road, Selby, commencing at 10:00 am.

758	Minutes
759	Licensing Sub-Committee
760	Procedure
761	Chair's Address to the Licensing Committee
762	Private Session
763	Complaint about Behaviour of Licensed Private Hire Driver

Present: Councillor R Sayner in the Chair

Councillors: Mrs D Davies, Mrs J Dyson, N Martin (*for Mrs S Duckett*), Mrs P Mackay (*for Mrs D White*), J McCartney, Mrs K McSherry, C Pearson, Mrs S Ryder and Mrs A Spetch.

Officials: Senior Solicitor, Trainee Solicitor, Licensing Enforcement Officer and Committee Administrator.

Public: 0

Press: 0

756 **Apologies for Absence and Substitution**

Apologies were received from Councillors Mrs S Duckett and Mrs D White.

Substitute Councillors were N Martin (*for Mrs S Duckett*) and Councillor Mrs P Mackay (*for Mrs D White*).

757 **Disclosure of Interest**

None.

758 **Minutes**

Resolved:

That the minutes of the proceedings of the meeting of the Licensing Committee held on 9 March 2009 be confirmed as a correct record and be signed by the Chair.

759 **Licensing Sub-Committee**

Resolved:

That the minutes of the proceedings of the Licensing Sub Committee meeting held on 27 February 2009 be received.

760 **Procedure**

The Procedure was noted.

761 **Chair's Address to the Licensing Committee**

The Chair informed the Committee that the Licensing training which was held on Friday 6 March 2009 with Roger Butterfield had been well attended and worthwhile.

762 **Private Session**

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, as there will be disclosure of exempt information as defined in paragraph 3 of Part 1 of Section 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006.

763 **Complaint about Behaviour of Licensed Private Hire Driver**

Councillors received the report of the Licensing Enforcement Officer with regard to the conduct of the applicant in connection with his driving in Barwic Parade, Selby.

The Licensing Enforcement Officer outlined details of the case and also handed to councillors a letter he had received in connection with the case.

The driver denied all offences with the exception of parking illegally outside the school but only in the interests of a disabled child who had to be dropped off as close as possible to his classroom.

The driver had tried on numerous occasions to park in the school car park but was unable to gain access owing to parents blocking the entrance in order to drop their children off.

The Committee deliberated over their decision and it was agreed that no further action be taken and that the case be dismissed, although the Council would write to the appropriate authorities outlining the problems being created by parents illegally parking in the vicinity of the school

Resolved:

That the applicant be informed that no further action would be taken and that the case be dismissed, although the Council would write to the appropriate authorities outlining the problems of cars parking illegally in the vicinity of the school.

The meeting closed at 10:20 am.

Agenda Item No: 4

A record of the meeting of the Licensing
Sub-Committee in the Council Chamber,
Selby District Council, Civic Centre,
Portholme Road, Selby on
Thursday 9 April 2009 at 10:00 am

PRESENT:

Councillor Ruth Sayner - (Chair)
Councillor Joyce Dyson
Councillor Ann Spetch

OFFICERS:

Lorna McShane - Solicitor and Clerk
Tim Grogan - Licensing Enforcement Officer
Dean Richardson - Principal Environmental Health Officer - Commercial
Tracey Peam - Committee Administrator

Kelly Hamblin - Trainee Solicitor (only for observation)
Caroline Fleming - Senior Solicitor (only for observation)

APPLICANT:

Donna Marie Dyson - Chique, 38 Ousegate, Selby

REPRESENTORS:

Responsible Authority

Dean Richardson - Principal Environmental Health Officer - Commercial

Interested Parties:

Ms D Hibbert
Mr P Spance
Ms S Wilson

1. ELECTION OF CHAIRMAN

It was resolved:

That Councillor R Sayner be elected as Chairman for the duration of this Licensing Sub-Committee.

2. INTRODUCTIONS

The Chairman introduced herself and the other Members of the Licensing Sub-Committee.

The Clerk summarised the Hearings Procedure, as appended to the agenda, and said that each category of participant was entitled to 5 minutes in which to explain their case.

3. LICENSING ACT 2003 – APPLICATION FOR A PREMISES LICENCE FOR CHIQUE, 38 OUSEGATE, SELBY

In attendance and entitled to speak on this application were:

Mrs D Dyson as the applicant, Mr D Richardson (Environmental Health Services), PC John Gregson (North Yorkshire Police), Ms D Hibbert and Ms S Wilson as the interested parties.

The Licensing Officer gave a summary of his report. He advised that the application was for a premises licence as set out in the operating schedule included in the report.

The nature of the application was to grant a premises licence for Chique, 38 Ousegate, Selby and request that the licence be granted for the provision of: regulated entertainment in the form of live music, recorded music and performance of dance; entertainment facilities in the form of making music and dancing; late night refreshment and sale by retail of alcohol from 10:00 – 12:00 midnight Monday to Sunday (inclusive).

The Licensing Officer outlined the decision options for the committee and the options for appeals.

Mrs Dyson informed the Committee that she had 25 years experience in the licensing trade and wanted the premises to be for the over 25's where they could have a drink, a bite to eat and talk without having excessive loud music being played. She wanted the premises to be run more on the lines of a 'Continental Café' style bar.

Mrs Dyson confirmed that she was happy with the conditions being put forward by the Environmental Health Department and accepted all but three of the conditions that the Police were requesting.

The conditions excepted were: the cessation of the supply of alcohol at 22:00 hours, licensed door staff at the venue after 10:00 pm and that a Personal Licence holder always be on the premises whilst open to the public.

PC Gregson from North Yorkshire Police confirmed that the premises had previously been known for a notorious past and that it had been a crime generator. PC Gregson informed the Committee that the primary grounds for representations were in order to uphold one of the Licensing Objectives, namely the prevention of crime and disorder.

Mr Richardson, the Principal Environmental Health Officer – Commercial advised the committee that the variation to the premises licence would not be objected to provided the following conditions are imposed on the licence:

1. Noise from amplified and non-amplified music, singing and speech arising from regulated entertainment at the premises between the hours of 23:00 and 07:00 shall not be audible inside habitable rooms of noise sensitive properties in the vicinity.
2. No external doors and windows to the room/s where regulated entertainment is being provided shall be open during the course of the entertainment, other than for normal access and egress.
3. All external doors (including fire-exit doors and patio doors) to the premises shall not be propped open during the course of regulated entertainment.
4. Speakers used to relay amplified music, singing and speech provided as part of the regulated entertainment shall not be positioned outside the premises; where placed internally ensure that they are directed away from external doors and windows.
5. All amplified music, singing and speech provided as part of the regulated entertainment shall only be played through a sound amplification system incorporating a sound limiting device that has been installed and set to the express satisfaction of the Responsible Authority for Public Nuisance (Selby District Council's Environmental Commercial Team). The sound limiting device shall be retained and maintained throughout the life of the licence and no alteration to the approved setting shall be made without the express approval of the Responsible Authority.
6. Prominent, clear notices shall be displayed at all exists/in the beer garden requesting customers and staff to respect the needs of local residents and leave the premises and area quietly.
7. All external areas of the premises (beer gardens, patios, etc) must not be used by customers between the hours of 23:00 and 07:00.
8. The disposal of waste bottles into external receptacles shall not take place between the hours of 23:00 and 07:00.
9. Promotional leaflets (flyers) shall not be distributed to the public outside the premises (whether immediately outside or

some distance away) except with the prior written approval of the Licensing Authority, and under the terms of a litter control plan approved by the Responsible Authority for Public Nuisance (Selby District Council's Environmental Commercial Team).

10. At the end of business every day/night the pavement to the frontage (and sides) of the premises shall be cleared of litter and waste.

Ms Hibbert informed the Committee that her concerns were mainly in connection with noise from music, people congregating on the footpath, fighting, vomiting, urinating, not being able to sleep due to the excessive noise from music being played and the use of abusive language.

Ms Wilson understood that Mrs Dyson wants to run a good establishment but had concerns from previous experience with people urinating in the vicinity, drug users and not being able to sleep from the noise.

Following all representations the applicant, the police, the Environmental Health Department and the interested parties confirmed that they had received a fair hearing the Licensing Sub-Committee adjourned to debate their decision.

Resolved:

The hearing involved an application for a new premises licence in respect of Chique, 38 Ousegate, Selby, North Yorkshire ("the premises"), under the Licensing Act 2003.

The hearing has been necessitated by representations from Selby District Council Environmental Health Officer, North Yorkshire Police and 5 Interested Parties.

In arriving at the decision, the Sub-Committee has considered each point very carefully as well as the following:

(a) Guidance issued under Section 182 of the Licensing Act 2003 ("the Guidance"), dealing with hours of trading, Crime and Disorder, Public Safety, Public Nuisance and Protection of Children from Harm; and

(b) the Local Licensing Policy Statement of Selby District Council, in particular, Section 3 which addresses the Prevention of Crime and Disorder, Section 5 which addresses Public Safety and Section 6 which addresses the Prevention of Public Nuisance.

Police Constable John Gregson attended the hearing on behalf of North Yorkshire Police. The Police objected to the application on grounds of crime and disorder, and public safety.

Three of the Interested Parties attended the hearing. Their representations were concerned with possible problems relating to the Prevention of Crime & Disorder, Public Safety and Prevention of Public Nuisance Licensing Objectives.

The Sub-Committee is minded to grant this premises licence and is satisfied that the representations raised by the Responsible Authorities and the Interested Parties are adequately addressed by the Applicant's Operating Schedule, the mandatory conditions in the Licensing Act 2003 and the following conditions/modifications:

- 1 That there is no amplified music, singing or speech at the premises.**
- 2 Noise from non-amplified music, singing and speech arising from regulated entertainment at the premises between the hours of 23.00 and 07.00 shall not be audible inside habitable rooms of noise sensitive properties in the vicinity.**
- 3 No external doors and windows to the room/s where regulated entertainment is being provided shall be open during the course of the entertainment, other than for normal access and egress.**
- 4 Speakers used to relay non amplified music, singing and speech provided as part of the regulated entertainment shall not be positioned outside the premises; where placed internally ensure that they are directed away from external doors and windows.**
- 5 Prominent, clear notices shall be displayed at all exits requesting customers and staff to respect the needs of local residents and leave the premises and area quietly.**
- 6 All external areas of the premises (beer gardens, patios etc) must not be used by customers between the hours of 23.00 and 07.00.**
- 7 No more than six people will be allowed outside the front of the premises at any time and prominent, clear notices shall be displayed advising customers of this condition.**
- 8 The disposal of waste bottles into external receptacles shall not take place between the hours of 23.00 and 07.00.**
- 9 Promotional leaflets (flyers) shall not be distributed to the public outside the premises (whether immediately outside or some distance away) except with the prior written approval of the Licensing Authority, and under the terms of a letter control plan approved by the Responsible Authority for Public Nuisance (Selby District Council's Environmental Commercial Team).**

- 10 At the end of business every day/night the pavement to the frontage (and sides) of the premises shall be cleared of litter and waste.
- 11 That there are door staff at the premises from 22.00 onwards. This condition shall be reviewed by the Police three months from the date of commencement of trading at the premises.
- 12 Join and remain a member of the local Pubwatch scheme and regularly attend meetings.
- 13 Ensure regular staff training and keep records of it.
- 14 Operate Challenge 25 scheme and accept only picture driving licence or passport or identification card bearing 'pass' logo.
- 15 Keep a refusal and incident book.
- 16 Operate good quality CCTV system, with 30 day recording facility, covering all areas of the venue and monitor behind the bar that can be seen by patrons.

The Sub-Committee recommended it was good practice for the applicant to have a personal licence holder at the premises when they are open for trading.

We would remind all parties that they have a right to request a review if problems occur once the licence is in operation or to appeal. We also encourage all parties to maintain a constructive dialogue.

This decision and the reasons for it will be sent in writing to all parties within 5 working days.

The meeting closed at 11:40 am.

LICENSING COMMITTEE

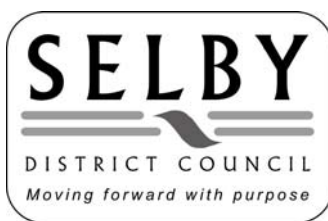
PROCEDURES TO BE FOLLOWED

The Licensing Committee acts in a quasi judicial capacity to give a fair hearing to an applicant where a hearing is required by law or equity. When considering the case the only evidence the Councillors of the Committee can take into account is evidence previously submitted to form the agenda and any verbal evidence given at the actual meeting by Officers representing the Council and by the applicant or his/her representative, and their witnesses. The following procedures must be followed.

1. Procedures to be followed when submitting an application to the Licensing Committee for consideration;
 - i) The Council's Officers will liaise with the Committee Section to arrange a suitable date for the meeting. The applicant and Members of the Committee will be informed of this date in writing and a copy of the procedure note will be included for the applicant.
 - ii) The applicant and Council's Officers will submit any written evidence to the Committee Section for inclusion in the agenda by a given date. If the evidence is to be verbal, this should be stated.
 - iii) If witnesses are to be called the Committee Section must be notified prior to the hearing.
 - iv) Any application for adjournment because of late submission of papers, will in principle be considered sympathetically by the Committee.
2. The procedure to be followed by the Licensing Committee:
 - i) For each individual case the applicant and any representatives will be shown into the Committee Room at the same time as the appropriate Council's Officers. Witnesses will enter the room at the same time unless there are any objections.
 - ii) The Head of Service – Legal and Democratic Service will introduce the applicant, any representatives, witnesses and the Council's Officers to the Members of the Committee.
 - iii) The Chair will introduce Councillors of the Committee.
 - iv) The Chair will then go through the procedure as follows:

- a) Officers representing the Council will present the case for the Council. They may present such witnesses as they believe are appropriate.
- b) Officers representing the Council, and any witnesses, will then answer questions from the applicant or his/her representative, and from Members of the Committee.
- c) The applicant or his/her representative will then present the applicant's case. They may present such witnesses as they believe are appropriate.
- d) The applicant or his/her representative, and any witnesses, will then answer questions from the Committee and the Council's Officers.
- e) The Council's Officers will then sum up on behalf of the Council.
- f) The applicant or his/her representative will then sum up.
- g) The applicant and his/her representative will then be asked whether they consider they have had a fair hearing and the Committee will take into account any comments, which are then made. The Chair of the Committee will then ask the Council's Officers presenting the case the same question and will again take account of any comments made.
- h) The Council's Officers, the applicant and his/her representative, all witnesses, will then withdraw from the meeting whilst the Committee makes their decision on the evidence presented.
- i) The applicant and his/her representative, the Council's Officers, all witnesses, will be invited back into the meeting to be informed of the Committee's decision.

Following the Committee meeting the Head of Service – Legal and Democratic Services will write to the applicant informing them of the decision of the Licensing Committee.



Public Session

Agenda Item No: 7

Title: Discreet Licensing Issues
To: Licensing Committee
Date: 18 May 2009
Service Area: Legal and Democratic Services
Author: Tim Grogan
Presented by: Tim Grogan

1. Purpose of Report

- 1.1 To seek a decision regarding the approval of the grant of a Private Hire Vehicle licence in respect of Nathan Corker and that the nature of such a licence be discreet in manner.

2. Recommendation(s)

- 2.1 **That councillors approve the issue of a Private Hire Vehicle licence in the form of a disc identifying a Mercedes 'E' Class motor vehicle as a Private Hire Vehicle.**

3. Executive Summary

- 3.1 Nathan Corker has applied for a Private Hire Vehicle licence in respect of a Mercedes 'E' Class motor vehicle and requests that the licence be discreet in manner.

4. The Report

- 4.1 On the 15th April 2009, Nathan Corker applied for a Private Hire Vehicle licence in respect of a Mercedes 'E' Class motor vehicle. Mr Corker requested that such a licence be discreet in manner as a consequence of his proposed customers requesting an executive transportation service using vehicles not displaying a 'plate'.

- 4.2 Two prospective business customers support this application and confirm this fact in writing.
- 4.3 Section 48(5) of the Local Government (Miscellaneous Provisions) Act 1976 is the legislation which deals with this matter. The Section provides that a District Council shall issue a plate or disc in order that a vehicle may be identified as a Private Hire vehicle.
- 4.4 Other Authorities have issued licences in the form of a disc which is discreet in nature. Selby District Council has granted such licences on four previous occasions.
- 4.5 A copy of the disc, which will be provided on a red background when issued thereby replicating the colour of the Private Hire Vehicle plate, is available for scrutiny.
- 4.6 A copy of Mr Corker's application letter is attached together with two letters from customers.

5. Financial Implications

- 5.1 There are no financial implications.

6. Link to Corporate Plan

- 6.1 It is the Corporate Policy of the Council to promote the health and safety of those who live and work in the District.

7 How Does This Report Link to Council's Priorities?

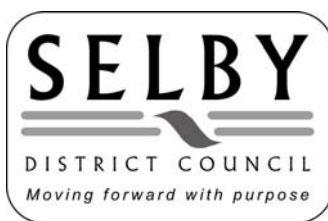
- 7.0 It is a Council priority to promote the health and safety of those who live and work in the District.

8 Impact on Corporate Policies

- | | | |
|-----|-----------------------------------|------------------|
| 8.1 | Service Improvement | No Impact |
| 8.2 | Equalities | No Impact |
| 8.3 | Community Safety and Crime | No Impact |
| 8.4 | Procurement | No Impact |
| 8.5 | Risk Management | No Impact |
| 8.6 | Sustainability | No Impact |
| 8.7 | Value for Money | No Impact |

9 Background Papers

- 9.1 A copy of Section 48(5) of the Local Government Act (Miscellaneous Provisions) Act 1976 is available in the Legal Services section.
- 9.2 Letter from Nathan Corker
- 9.3 Letter of support from Jim Fields
- 9.4 Letter of support from Charlie Cooper
- 9.5 Application for grant of licence by Nathan Corker
- 9.6 Copy of disc



Public Session

Agenda Item No: 8

Title: Application for medical exemption for a Hackney Carriage Driver and appropriate identification for same

To: Licensing Committee

Date: 18 May 2009

Service Area: Legal and Democratic Services

Author: Tim Grogan

Presented by: Tim Grogan

1. Purpose of Report

- 1.1 To advise on circumstances relating to granting an application for exemption from assisting passengers in wheelchairs owing to a debilitating medical condition.
- 1.2 To discuss the composition of the certificate of exemption from assisting passengers in wheelchairs.

2. Recommendation

- 2.1 **Councillors are requested to decide whether it is appropriate for the Council to issue an exemption from assisting passengers on medical grounds and if granted to approve the composition of the certificate approving such exemption.**

3. Executive Summary

- 3.1 The Council's Licensing Department has been approached by a Hackney Carriage Driver who has requested exemption from assisting passengers in wheelchairs. The application is supported by a letter from a qualified Osteopath.
- 3.2 Though such an exemption is referred to in Section 36 of the Disability Discrimination Act 1995 this part of the Act has never been formally implemented. However, in appropriate circumstances there is nothing to prevent a Local Authority from creating their own exemption where a Hackney Carriage Driver is unable to assist passengers in wheelchairs either on medical grounds or on the grounds that his physical condition makes it impossible or unreasonably difficult for him to do so.

4. The Report

- 4.1 On Wednesday 4th March 2009 the Council's Licensing Department was approached by Momo Milenovic, a licensed Hackney Carriage Driver, applying for exemption from assisting passengers in wheelchairs owing to a debilitating back condition. His application was supported by a letter from a qualified Osteopath.
- 4.2 Matters regarding the transportation of the disabled are dealt with by the Disability Discrimination Act 1995. Section 36 of this Act makes it clear that drivers of Hackney Carriages must carry a wheelchair-using passenger if requested to do so. The driver must also provide the passenger with such assistance as may be reasonably required at no extra charge. The section contains provisions to allow the driver to apply to the Licensing Authority for an exemption certificate. In relation to wheelchair-carrying, an exemption can be sought on either medical grounds or the driver's physical condition.
- 4.3 These provisions are intended to overcome the very real difficulties that have been encountered by some disabled people. Unhelpfully, notwithstanding the introduction of the Act on 2nd December 1996 no regulations have been so far published under this section of the Act. However, this does not prevent a Local Authority from creating their own exemption either on medical grounds or where a Hackney Carriage Driver is unable to assist passengers in wheelchairs because his physical condition makes it impossible or unreasonable to do so.
- 4.4 The Licensing Department is mindful of the provisions of the Disability Discrimination Act 1995 and the fact that they are intended to overcome the very real difficulties encountered by some disabled people. As a consequence in cases where a wheelchair-using passenger is able to provide assistance from a third party to board or leave the Hackney Carriage the driver may not refuse to carry such a passenger.

4.5 It is suggested that should a driver be awarded an exemption on health grounds, an appropriate certificate or card be issued to them which they are required to display in their Hackney Carriage and exhibit to passengers. Identification could be obtained in a number of ways; e.g. personal identification for the driver, identification placed on the windscreen, or identification placed within the vehicle. In anticipation the Licensing Department have drafted an exemption certificate, which is attached to this report. Such an exemption would be issued to the driver to retain but would not be issued to the Hackney Carriage. It therefore follows that such a certificate would only be displayed in a Hackney Carriage when it is being operated by a driver awarded an exemption by the Council from assisting wheelchair-using passengers.

5. Financial Implications

5.1 There are no financial implications.

6. Link to Corporate Plan

6.1 It is the Corporate Policy of the Council to promote the health and safety of those who live and work in the District.

7 How Does This Report Link to Council's Priorities?

7.1 It is a Council priority to promote the health and safety of those who live and work in the District.

8 Impact on Corporate Policies

8.1	Service Improvement	No Impact
8.2	Equalities The Council's Hackney Carriage Licensing Policy promotes equality of access to licensed vehicles	Impact
8.3	Community Safety and Crime	No Impact
8.4	Procurement	No Impact
8.5	Risk Management	No Impact
8.6	Sustainability	No Impact
8.7	Value for Money	No Impact

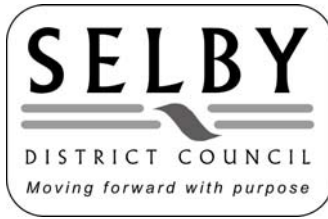
9 Background Papers

9.1 Letter of application from Momo Milenovic

9.2 Copy of Section 36 of Disability and Discrimination Act 1995

9.3 Exemption certificate

9.4 Exemption badge



Public Session

Agenda Item No: 9

Title: Local Government (Miscellaneous Provisions) Act 1982
Licensing of Sex Establishments – Licence Fee Review

To: Licensing Committee

Date: 18 May 2009

Service Area: Legal and Democratic Services

Author: Tim Grogan

Presented by: Tim Grogan

1. Purpose of Report

- 1.1 To seek a decision from councillors in principal to the proposed fees for the licensing of sex shops.

2. Recommendation

- 2.1 **Councillors are requested to agree the revised licence charges for sex establishments in light of the introduction of recent legislation.**

3. Executive Summary

- 3.1 Sex establishments, meaning a sex cinema or a sex shop are licensed under the Local Government (Miscellaneous Provisions) Act 1982. An applicant for the grant, renewal or transfer of a licence under the Act shall pay a reasonable fee determined by the appropriate authority.

- 3.2 The Department of Business Enterprise and Regulatory Reform is required to transpose the requirements of the EU Services Directive into UK law and practices before 28th December 2009. Part of the legislation is to ensure consistency and requires Local Authorities to set fees that are proportionate to the effective cost of the particular procedure.
- 3.3 The current charges for the grant and renewal of a licence were set in 2003 at £5000 and since this time, as a consequence of incremental annual increases, have risen to £6,023 for the grant of a licence and renewal of a licence. As a consequence of a costing exercise it is suggested that these fees should be revised in line with the introduction of the new legislation.

4. The Report

- 4.1 On 19th May 2003 Selby District Council's Licensing Committee resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, which allows a Local Authority to impose standard conditions for the licensing of sex establishments.
- 4.2 On the 3rd November 2003, the same Committee approved a charging policy in respect of the registration of such establishments at a sum of £5000 for the grant of a licence and £5000 for a licence renewal. By 2009 this figure had increased through inflation to £6,023 for both requirements.
- 4.3 In December 2006 the European Services Directive was adopted by EU countries and following a public consultation process the Department for Business, Enterprise and Regulatory Reform is now required to transpose the European Services Directive into UK law and practices before 28th December 2009.
- 4.4 Essentially the Directive aims to open up the European internal market to cross-border trade in services by making it easier for service providers to set up business or offer their services in other EU countries. Of the various requirements it imposes on EU countries is the necessity that Local Authorities must set fees that are proportionate to the effective cost of the procedures dealt with.
- 4.5 Accordingly Selby District Council is required to consider the likelihood of a legal challenge should a service provider feel that the level of the fees with regard to the licensing of sex establishments is being used as an economic deterrent.
- 4.6 Having undertaken a comprehensive costing exercise, the Licensing Department has proposed the following charges:

New Application & Grant of Licence: £4,882

This amount includes the costs incurred by licensing in processing the application, including inspection of notices, dealing with objections, compilation of committee report, hearing, associated costs and decision notice.

Licence Renewal: £2,046

This amount includes costs incurred by licensing in processing the renewal application and associated costs.

Licence Transfer: £248

This amount includes costs incurred in processing the application, liaison with the Police and prospective licence holder and the issue of the new licence.

- 4.7 Councillors should be aware that Selby District Council does not currently licence a sex establishment. However, the Licensing Department has had numerous enquiries from interested parties though none have progressed to the point of applying for a licence.

5. Financial Implications

- 5.1 There are no further financial implications beyond those already covered in the report.

6. Link to Corporate Plan

- 6.1 It is the Corporate Policy of the Council to promote the health and safety of those who live and work in the District.

7 How Does This Report Link to Council's Priorities?

- 7.1 It is a Council priority to promote the health and safety of those who live and work in the District.

8 Impact on Corporate Policies

- 8.1 **Service Improvement** **No Impact**
- 8.2 **Equalities** **No Impact**
- 8.3 **Community Safety and Crime** **No Impact**
- 8.4 **Procurement** **No Impact**

8.5	Risk Management The likelihood of a legal challenge should a service provider feel that the levels of the fee are being used as an economic deterrent.	Impact
8.6	Sustainability	No Impact
8.7	Value for Money	No Impact
9	Background Papers	
9.1	Schedule of costing exercise	
9.2	The European Services Directive Guidance for Local Authorities	

SCHEDULE OF COSTING EXERCISE

Sex Establishment - Initial Application / Grant : £ 4,882.00

Process Application:

Generate acknowledgement, check application, receipt/bank fee, enter onto system, copy to agencies & Ward Members, etc.

4 hrs @ 62.00 **248.00**

Respond to enquiries & objections, liaise with applicant, etc: average 1 hr per day over 20 days @ 62.00 **1,240.00**

Committee process:

Preparation of committee report & associated appendices

4 hrs @ 62.00 = 248.00

Committee Clerk – 3hrs @ 62.00 = 186.00)

Licensing Officer – 2hrs @ 62.00 = 124.00)

Legal Officer – 3hrs @ 85.00 = 255.00)

Notice of hearing to objectors and applicant

2hrs @ 62.00 = 124.00

Committee Hearing :

Committee Clerk preparation

2hrs @ 62.00 = 124.00)

Print & post run = 80.00)

(times include site visit, minutes, decision notice etc)

Clerk – 9hrs @ 62.00 = 558.00)

Licensing Officer – 9hrs @ 62.00 = 558.00)

Legal Officer – 9 hrs @ 85.00 = 765.00)

3,022.00

Annual compliance check/s (6hrs), includes inspection, administration, enforcement, general enquiries/liaison with agencies & other Local Authorities

6hrs @ 62.00 **372.00**

TOTAL £4,882.00

Sex Establishment - Annual Renewal: £2,046

Generate reminder letter, check application & current licence information,
receipt/bank fee, enter onto system, copy to police, etc.
3 hrs @ 62.00 **186.00**

Acknowledge objections & liaise with applicant, etc: average 1 hr per day over 20
days
20 days @ 62.00 **1,240.00**

Update of staff personnel records, liaison with police, enforcement team, other Local
Authorities etc
4hrs @ 62.00 **248.00**

Annual compliance check/s (6hrs), includes inspection, administration, enforcement,
general enquiries/liaison with agencies & other Local Authorities
6hrs @ 62.00 **372.00**

TOTAL £2,046.00

Sex Establishment - Transfer of Licence:

Update of staff personnel records, liaison with police enforcement team, other Local
Authorities etc
4hrs @ 62.00 **248.00**

TOTAL £248

**THE EUROPEAN SERVICES DIRECTIVE
GUIDANCE FOR LOCAL AUTHORITIES**

FIRST EDITION – FEBRUARY 2009

The European Services Directive Guidance for Local Authorities

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1 Introduction to the EU Services Directive

The Department of Business, Enterprise and Regulatory Reform (BERR) has issued this guidance to help Local Authorities implement the Services Directive in the UK¹. In order to implement the Directive effectively, we have been working with a cross section of Authorities to gain a better understanding of how practices vary across the UK. We are extremely grateful to the Local Authorities and Devolved Administrations who gave up their time to convene with us and without whose help this guidance would not have been possible: Ashford Borough Council, Wychavon District Council, Royal Borough of Kensington and Chelsea, Cumbria County Council, Blackpool Council, Somerset County Council, North Tyneside Council, Dover District Council, Conwy County Borough Council, Glasgow City Council, Newry and Mourne District Council.

Advice in this booklet is not definitive on how best to implement the Directive; it is intended to highlight suggested directions that Local Authorities may wish to take. As this is a living document, it will be revised and updated later in the year.

Benefits of the Services Directive

It is estimated that the UK economy could benefit up to £4-6 billion annually

The Directive creates significant new opportunities for UK business. It provides for the opening up of the internal market in services through the removal of unjustifiable barriers to service provision and the introduction of measures designed to create more jobs and facilitate the cross-border provision of services.

It aims to make it easier for businesses to set up in other EU countries and to provide services across national borders on a temporary or permanent basis. Some of the potential benefits of implementing the Directive are listed below:

- It is estimated that the economy could benefit up to the tune of £4 to £6 billion annually.
- Up to 80 000 new jobs could be created in the UK.
- Local Authorities may benefit from a greater choice of suppliers for those public services which are already open to competition through public tendering.

¹ Further information, including a link to the text of the Directive, can be found on our website at: <http://www.berr.gov.uk/servicesdirective>

- The removal of unnecessary administrative barriers will free up Local Authority resources.
- The processes for obtaining a number of licences to provide services will be simplified.
- There may be some reduction in the duplications of administrative processes.
- Electronic processing of licence applications will result in cost and time savings for Local Authorities.
- There will be quicker and simpler ways of co-operating with other Local Authorities and Competent Authorities² in the UK and in other EU countries.

These guidance notes are intended as signposts to help Local Authorities implement the Directive, they are not an attempt to change how they operate. Due to the generic nature of this document it is not feasible to give specific advice, therefore **it is strongly recommended that each authority seeks legal advice.**

We believe that by following advice in this booklet, Local Authorities are likely to reduce their exposure to possible legal actions from any aggrieved service providers.

2 What is the EU Services Directive?

The Services Directive must be implemented in the UK by 28 December 2009

The Directive was adopted by EU countries in December 2006. BERR carried out a public consultation³ on the best way to implement the Services Directive in November 2007. The result of this consultation was published in June 2008⁴. **BERR is required to transpose its requirements into UK law and practices before 28 December 2009.**

² **Competent Authority** – this is used to describe a body with whom registration or membership is mandatory in law for a service provider to operate in a given sector. And/or: membership of the body is mandatory in fact / the body is set up under statute / the body has a monopoly in that sector / the body can be viewed as filling a gap in state regulation. **All Local Authorities are Competent Authorities.**

³ Consultation Document on Implementing the EU Services Directive in the UK (November 2007, BERR)

⁴ A link to the Consultation Document and the Government's response to it can be found at: <http://www.berr.gov.uk/servicesdirective>

The Directive aims to open up the European internal market to cross-border trade in services by making it easier for service providers to set up business or offer their services in other EU countries. It imposes a number of requirements on all EU countries. The main ones are to:

- Screen UK legislation and amend or repeal non-compliant provisions. This has to be reported back on to the Commission by 28 December 2009.
- Set up the 'Point of Single Contact' (PSC) which will enable service providers to find out what they need to do to operate legally in the UK and to complete all necessary formalities electronically.
- Enhance Administrative Cooperation between regulators in the 27 EU countries. Facilitate use of the Internal Market Information (IMI) system and a UK National Liaison Point (NLP).
- Ensure consistency in the quality of information provided by service providers and transparency of redress procedures via the setting up of a Consumer Portal.

Implementing the Directive should reduce the administrative burdens on Local Authorities

Effects of the Services Directive are likely to be felt by every Local Authority and Government Department across the UK. **Implementing the Directive effectively will reduce the administrative burdens on Local Authorities**, while enabling consumers in the UK to benefit from a greater choice of service providers and lower prices. Businesses from other EU countries will be able to trade more easily in the UK, similarly UK businesses will find it easier and faster to enter and expand into EU markets. The consequences that the Directive has for Local Authorities can be divided into 4 areas. These concern:

- The screening and possible adjustment of the existing legislation and the authorisation schemes in them that are related to the relevant services.
- The electronic completion of procedures.
- Administrative Cooperation.
- Regulations in connection with the rights of recipients of services.

3 The scope of the Directive

Article 4(1) of the Directive defines a 'service'

EU countries will have to ensure that the rules of the Directive apply to a wide variety of service activities, whether provided to business or to consumers. **Article 4(1) of the Directive provides a definition of a 'service' and other key terms.** Core public services such as education, health and social services do not fall within the scope of the Directive (although privately financed education is included). Other Local Authority run services such as leisure and waste services are considered more 'economic' in nature and will fall within its overall scope. Without being exhaustive, the following are examples of services covered by the Directive⁵.

- the activities of most of the regulated professions (such as legal and fiscal advisers, architects, engineers, accountants, surveyors)
- craftspeople
- business-related services (such as office maintenance, management consultancy, the organisation of events, recovery of debts, advertising and recruitment services)
- services in the field of tourism (such as the services of travel agencies)
- leisure services (such as services provided by sports centres and amusement parks)
- building construction and maintenance services
- services comprising the installation and maintenance of industrial or commercial equipment
- information services (such as web portals, news agency activities, publishing, computer programming activities)
- accommodation and food services (such as hotels, restaurants, catering services)
- privately financed services in the area of training and education
- rental (including car rental) and leasing services

⁵ The European Commissions handbook on implementation of the Services Directive (a link to the handbook can be found at: <http://www.berr.gov.uk/servicesdirective>)

Article 2(2) of the Directive lists some important exclusions from its scope

- real estate services
- certification and testing services
- household support services (such as cleaning services, private nannies or gardening services)

Article 2(2) of the Directive lists some important exclusions from its scope, including financial services, transport services, electronic communications and healthcare services, and certain social services. Article 17 lists some specific derogations from the freedom to provide services. However it is important to note that the Directive applies to all services apart from those specifically excluded.

- transport services (including taxis and private hire)
- gambling activities
- audio/visual activities (such as cinemas)
- private security services

4 The Relationship between the Services Directive and other Directives

- The Directive is subordinate to other EU instruments where there is a conflict between their provisions.
- The Directive does not affect:
 - criminal law rules as stated in Article 1(5)
 - labour law or social security legislation as stated in Article 1(6)
 - rules of private international law in force in each EU country, as stated in Article 3(2)
 - fundamental rights and Community law as stated in Article 1(7).

- Article 3(1) states that, *'in case of conflict between a provision of the Directive and a provision of another instrument of secondary Community law, the provision of the latter takes precedence'*. This means that in such cases the provision of the other Community instrument prevails and the provision of the Directive will not be applied⁶. It should be noted that this concerns only the specific conflicting provision and not the remaining provisions of the Directive which still apply.

5 Screening

Legislative practices must be non-discriminatory, necessary and proportionate

Service providers based in one country can be hindered in their attempts to do business in another because of the need to meet the different regulatory requirements in that country. The Directive obliges EU countries to examine all legislation and practices which regulate service provision, and check whether discriminatory, unnecessary or disproportionate provisions which act as a barrier to operating in that country exist. Where rules and requirements cannot be justified, they must be amended or repealed. As most Local Authority regulation is nationally driven, BERR has been working with Government Departments and Devolved Administrations to ensure that legislation is compliant with the Directive. A full list of Acts screened, together with the results, can be found on our website: <http://www.berr.gov.uk/servicesdirective>). The work done so far suggests that the vast majority of our legislation is compatible.

Screening at a local level

Licence applications, **authorisation schemes**⁷, approval regimes, regulations and administrative practices can be specific to a Local Authority. They therefore need to be checked in each region to ensure that they comply with the Directive's criteria. For example they must be **non-discriminatory** (apply equally to providers from all EU countries), **necessary** (justified by some genuine underlying policy objective) and **proportionate** (must not be more stringent or onerous than is necessary to tackle the particular problem it is designed to address).

⁶ The European Commission's handbook on implementation of the Services Directive (a link to the handbook can be found at: <http://www.berr.gov.uk/servicesdirective>).

⁷ **Authorisation Scheme** – this encompasses any procedure under which a provider or recipient is in effect required to obtain from a Competent Authority a formal decision, or implied decision, concerning access to a service activity, or the exercise thereof.

6 Tacit Authorisation

All Licence applications, authorisations and administrative procedures applicable to service providers must be processed within a reasonable time period, which is fixed and made public in advance. When a response to an application does not occur within the time period set (or a set extension time), the authorisation will be deemed to have been granted tacitly (see Article 13).

7 Fees charged to service providers

Fees charged to carry out services vary: they are currently either fixed in the relevant national legislation or set by individual Local Authorities. Fees set must be proportionate to the effective cost of the procedure dealt with and must not be used as an economic deterrent.

8 Point of Single Contact

Service providers and service recipients must be given clear, online information on business regulation within scope of the Directive

The principal aim of the 'Point of Single Contact' (PSC) is to ensure that service providers are able to access information relating to procedures and formalities needed for access to and exercise of their service activity and can complete those procedures and formalities electronically. The Directive requires that a service provider interested in doing business in an EU country be given comprehensive advice through the PSC about the procedures or formalities they might be subject to. We anticipate that the principal users will be small and medium enterprises (SMEs) in the UK and overseas. The UK will have a single PSC built on businesslink.gov.uk and its equivalent sites for Northern Ireland, Scotland and Wales.

A user journey for overseas service providers will be built around businesslink.gov.uk and its equivalent sites. Its aim is to promote the UK as a good place to do business and, for those who have not chosen a location, allow promotion by regions and districts. General advice about starting in the UK will be given, explaining in broad terms what is required, with emphasis on how the UK may vary from their home country. The various options for offering services cross border will be provided. The PSC will use plain English to make it more understandable and a limited amount of content may be available in other languages.

BERR will oversee delivery of the PSC and assist Local Authorities to comply with the Directive

We expect that UK users will continue to access the national business sites as they do now. Service providers will be able to get online advice tailored to the activities they perform. The advice will describe the legal requirements, their main areas of coverage and exclusion and who the regulators are, with links to them available. The site will contain contact details of the competent authorities and other associations who may provide practical assistance. The site will offer additional advice to UK businesses wanting to expand across the EU.

BERR will oversee delivery of the PSC, represent UK interests with the European Commission and other EU countries, assist Local Authorities and other regulators to comply with the Directive and promote the Directive to the business community. **The PSC is a contact point, where no substantive assessment takes place.**

Procedures exempt from PSC

Procedures that are exempt from completion through the PSC are: the inspection of premises on which the service is provided; the inspection of equipment used by the service provider; physical examination of the capability or of the personal integrity of the service provider or of his responsible staff. It may, however, still be possible to start the application process through the PSC and confirm a decision electronically.

Legal obstacles to online completion

BERR is leading a review of Legislation that inhibits online completion, with a view to Government Departments and legislators removing these obstacles by December 2009. **Local Authorities are invited to draw any such conflicts to BERR's attention.**

9 Administrative Cooperation (Mutual Assistance)

Local Authorities and regulators must cooperate effectively with their counterparts in other EU countries, to ensure proper regulatory supervision of service providers operating across EU borders and the services they provide. This concerns the supply of information, undertaking of checks, informing within the shortest period of time of any conduct or specific acts by a provider that could cause serious damage, and the provision of information concerning the good repute of a provider. **Effective Administrative Cooperation will reduce regulatory burdens on businesses** in terms of the amount of information that they need to provide to relevant authorities.

Internal Market Information (IMI) system

To enable better communication the EU is building a web based information system

To enable better communication between EU countries, the European Commission is building a web-based EU **Internal Market Information system** that will allow secure messaging for regulators to communicate directly with each other, which Local Authorities are encouraged to use.

The IMI system is an internal portal, which will **allow Local Authorities and Competent Authorities in EU countries to be identified and Administrative Cooperation requests and responses to be electronically submitted to them**. It will be used to securely exchange information (such as files, documents, certificates) on service providers and share service provider registers. This will make the checking of service providers and the resolving of any disputes faster and more efficient. The system will translate any requests and replies into the relevant EU language.

Alert Mechanism

To ensure adequate protection of the public and the environment, it is vital that EU countries are quickly informed about service activities (which are provided on a cross border basis) that may cause serious damage to the health and safety of persons or the environment (see Articles 29(3) and 32). Any EU country that becomes aware of a problem must inform all other EU countries concerned and the Commission within the shortest possible time, the IMI system has been set up to facilitate these alerts. This will enable the Competent Authorities of other EU countries to react quickly, to closely supervise the service provider in question and if required take necessary preventative action in compliance with the Directive.

The Directive will allow EU countries to take action against service providers established in and regulated by another EU country

Case by case derogations

The Directive allows EU countries to take action against service providers established in and regulated by another EU country on the grounds of safety in very limited and specific cases.

The Commission is preparing guidelines for the use of the alert mechanism and case by case derogations and these will be made available later in the year. This guidance will include checklists of steps that need to be fulfilled before sending alerts or using case by case derogations.

Reporting on Administrative Cooperation breakdowns

EU countries will communicate to the Commission information on cases where other EU countries and their Competent Authorities do not fulfil their obligation of Administrative Cooperation. Where necessary, the Commission shall take appropriate steps to ensure compliance.

National Liaison Point (NLP)

There will be one NLP in the UK based in BERR, which will monitor Administrative Cooperation requests involving the UK and oversee the use of the IMI system. It will be able to direct Competent Authorities in other EU countries to their opposite number or relevant authority in the UK, as well as direct Local Authorities and Competent Authorities in the UK to NLPs in other EU countries. The NLP will be on hand to help out with any problems or disputes.

10 Quality of Services

Enhancing consumer confidence in buying services from other EU countries

The Directive clarifies the rights of service recipients in order to enhance their confidence when considering buying services from providers in other EU countries. **It aims to promote high quality service provision and enhance the rights of consumers for cross border services within the EU** while avoiding imposing unnecessary burdens on SMEs (see Articles 19-27 and 37). The Directive will increase transparency, remove restrictions on consumers' rights to access services, improve the information available to consumers about both service provisions and providers in other EU countries, and lay down means for encouraging the voluntary resolution of disputes. Of particular interest to Local Authorities are:

- Article 20(2) imposes a requirement that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, although providers are allowed to retain differences where these can be justified by objective criteria.
- Article 22 requires service providers to make certain information about them and their services available to service recipients (who may be either consumers or businesses). This will apply to all service providers in scope of the Directive, even if they do not provide services outside the UK. In practice, these requirements should not be onerous and most reputable service providers should already be providing much of this information.
- Article 27 requires service providers to respond to complaints 'in the shortest possible time' and 'make their best efforts to find a satisfactory solution'. These concepts will be included in legislation as much as is possible and we will provide further information about this in guidance.

We intend to include these provisions under Part 8 of the Enterprise Act, which provides for enforcement by local weights and measures authorities and other organisations such as the Office of Fair Trading (OFT). This will provide for similar enforcement to existing consumer laws where there is a breach that harms the collective interests of consumers.

11 Mutual Evaluation

By 28 December 2009, every EU country will present a report to the Commission, containing the information specified in Article 39 of the Directive, including information on licence applications, authorisation schemes, approval regimes and national requirements. Following this, we will take part in a six-month peer review process considering other EU countries' implementation reports.

12 Action Points for Local Authorities

12a Other EU Directives / Community Law

If Local Authorities are carrying out certain functions in a manner prescribed by other EU Directives or Community law, generally there will be no need to change those working methods. However, Local Authorities must ensure that the way in which any such functions are carried out is due directly to the requirements of the relevant Directives or other requirements of EC law, and does not go beyond the minimum requirement of the other EU Directives.

12b Screening at a local level

Local Authorities will have to carry out the following activities:

- Verify which local regulations, including authorisation schemes, fall under the Directive and screen them.
- Verify which policy rules fall under the Services Directive and screen them.
- Adjust the regulations and policy rules that do not satisfy the criteria of the Directive.

If Local Acts or byelaws apply in your area, you must ensure that there are no unnecessary barriers to service provision.

If you think a local Act or byelaw which is contrary to the Directive can nevertheless be justified, a report will have to be made to the EU Commission. In this situation please contact BERR for advice (email: servicesdirective@berr.gsi.gov.uk).

Local Authorities must screen local legislation and administrative practices to ensure that unnecessary barriers to service provision are removed

Authorisation Scheme barriers

Authorisation scheme justification

Administrative procedures should be examined from the service providers' perspective

Local Authorities must assess whether their administrative procedures are necessary by considering their cost, duration, clarity, accessibility, possible duplication, practical difficulties and the number of different administrative procedures a service provider must undergo. **Justification for authorisation schemes caught by Article 9 can only be made for 'overriding reasons relating to the public interest'** (ORRPI⁸). Article 9 requires that if the objective pursued can be attained by means of a less restrictive measure, the appropriate legislation must be brought in line with the Directive. Administrative procedures should be examined from the service providers' perspective while keeping in mind that their simplification will in turn reduce the administrative burden for a Local Authority.

Selection from among several candidates

Under Article 12, **limitations on the number of available authorisations are only permissible if they are motivated by the scarcity of available natural resources or technical capacity**, or if they are justified by an ORRPI. Where the number of available authorisations is limited there must be a specific selection procedure in order to ensure impartiality and transparency and conditions of open competition. These authorisations may only be granted for a limited period of time and may not be renewed automatically. The period for which authorisations are granted shall be published in advance and allow the service provider to have the opportunity to recoup the cost of investment and to generate a fair return on the investment made.

⁸ **ORRPI "overriding reasons relating to the public interest"** – as defined by Article 4(8), this means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

Duration of authorisation

According to Article 11 of the Directive, Local Authorities must ensure that authorisations granted to service providers are not for a limited period. Exceptions to this are the cases in which: the authorisation is automatically renewed or is subject only to the continued fulfilment of requirements; the number of available authorisations is limited due to an ORRPI; a limited authorisation period can be justified by an ORRPI.

Proof that a requirement has been satisfied

Local Authorities should not demand documents to be provided in an original form

The Directive (Article 8) requires that Local Authorities cannot demand originals of documents in most cases. Where Local Authorities require a provider or recipient to supply a document proving that a requirement has been satisfied, they must accept any document from another EU country which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. It is **prohibited to request a document from another EU country to be produced in its original form, or as a certified copy or translation, unless such a requirement is justified by an ORRPI**. The mere doubt as to the authenticity of a given document, or its exact content, can be addressed by appropriate contacts between Competent Authorities (in particular with the Competent Authority which has issued the document).

Establishment related barriers

The Directive prohibits a number of requirements on the grounds that they are discriminatory. For example, **Local Authorities cannot under Article 14(1-2) of the Directive take into consideration when granting an authorisation, the nationality of service providers and their staff, the location of a company's registered office** or the number of EU countries in which service providers have establishments. Article 14(3) prohibits requirements which restrict the type of establishment (for example a principal or secondary establishment or a specific type of secondary establishment, such as an agency, branch or a subsidiary) they are allowed. EU countries (including Local Authorities) are also forbidden to enter into any condition of reciprocity with the EU country in which the service provider already has an establishment (Article 14(4)). **Article 14(5) does not allow the case-by-case application of an economic test, for example subjecting the authorisation to proof of the existence of an economic need or market demand.**

Article 15 requires Competent Authorities to evaluate all requirements that they impose on service providers which are severe obstacles to the freedom of establishment, for example limits fixed according to population or a minimum geographical distance between service providers. While the Article does not require all listed obstacles to be abolished, all Competent Authorities must evaluate the need for these requirements on the basis of the criteria of non-discrimination, necessity and proportionality and see if they could be replaced by less restrictive means. **Justification for authorisation schemes caught by Article 15 can be made for ORRPI.**

Barriers to the freedom to provide cross-border services

Article 16 lays down the right of service providers to provide services in an EU country other than the one in which they are established. This Article requires Local Authorities to abstain from imposing their own requirements on incoming service providers except where justified by the reasons listed under Article 16 (1) & (3), which include reasons of public policy, public security, public health or the protection of the environment. There are a number of requirements listed in Article 16(2) that an EU country may not place on a service provider, for example a ban on setting up a certain type of infrastructure in the receiving EU country.

12c Tacit Authorisation

Local Authorities must at the outset indicate the time it will take to grant authorisations and advise the applicant whether tacit authorisation is permissible

When acknowledging all applications, Local Authorities must provide the following information: time period within which the authorisation should be granted; if tacit authorisation is applicable; exemptions from tacit authorisation together with reasons for this. Local Authorities must ensure their procedures comply with this obligation by screening all licence applications, authorisation schemes and administrative provisions. If it is felt that tacit authorisation will be problematic then please contact BERR (email: servicesdirective@berr.gsi.gov.uk). If other authorities, for example the Police, need to check or authorise licences, this should be taken into account when publishing your target turnaround times.

Mandatory timescales will run only from the time when all valid documentation has been submitted either via the PSC or direct to the Local Authority. In the case of incomplete applications, the Local Authority must inform applicants as quickly as possible of the need to supply any additional documentation. In exceptional

circumstances, the time period may be extended by the Local Authority once, only if it can be justified by the complexity of the issue. The applicant must be notified of the extension and its duration before the original time period has expired. Where applications have been made through the facilities on the PSC, Local Authorities will receive reminders when the tacit authorisation period is coming close.

12d Fees charged to service providers

All charges must be proportionate to the effective cost of the procedure dealt with

Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should a service provider feel that the levels of fee are being used as an economic deterrent or to raise funds for Local Authorities. Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.

12e PSC

Local Authorities need to ensure that service providers can obtain all licences, authorisation schemes, approvals etc., that they require to operate their service, through the PSC and ensure that the information is accurate and kept current. This section is an overview and the PSC is under development, so please refer to <http://www.berr.gov.uk/psc> for current and detailed information.

Local Authority websites must provide business information that covers:

- How service providers apply for a permit or licence.
- Relevant contact details.
- How public registers and databases on providers and services can be accessed.
- Means of redress in the event of a dispute.

Local Authorities can supply their own content. However, BERR will be commissioning material from recognised authorities for syndication, allowing Local Authorities to present a mix of locally generated and national best-practice content to site visitors. Local Authorities will be required to supply “deep links” to their sites, so that anyone requiring information on a particular regime is sent directly to the relevant web page and does not have to navigate the Local Authority site.

Online transactions

Service providers must be able to complete all their transactions online

The Directive requires that service providers can transact electronically with regulators. Therefore, an application form, plus any supporting documents and any fee payment must be able to be processed electronically and the Local Authority must be able to notify the applicant of success or failure electronically. As the Directive requires that Local Authorities cannot demand originals of documents in most cases, the PSC will have the capacity to allow service providers and Local Authorities to exchange documents, such as premises plans, electronically. In the absence of digitally signed documents, and, where justified, Local Authorities will be able to use the IMI system (see 12.g) to verify details of service providers new to their area.

If Local Authorities offer online services already, or wish to reap the full benefits of integration with back-office systems from December 2009, they can offer their own online service to which the PSC will link. For national regimes (see the list on the website), BERR will provide standard online forms, document attachment facilities and digital signing facilities. Where a fee is charged, the online form service will integrate with a Local Authority’s online payment facility. **Local Authorities will have to accept fees online by either extending their existing online payment solutions or using a commercial payment service.** There will also be a facility for Local Authorities and service providers to exchange secure messages, with an audit trail kept. Local Authorities will need to describe what their timelines are and how they process applications. The PSC will give Local Authorities some reminders that they need to complete activities but will NOT manage the process for them. It will be possible to send automated responses for some stages of the process.

The PSC is not a replacement for a Local Authority's back office technology

From December 2009, the PSC's online forms service will require Local Authority staff to log in to the service and download forms and attachments. Facilities will be given to Local Authorities to manage and configure this process, but the PSC is not a replacement for a Local Authority's back office technology. BERR is committed to offering an open, published interface to Local Authorities and their IT suppliers, so that data can be automatically transferred between the PSC and back office systems. This will be available in 2010.

For any one regime, Local Authorities must elect to either supply their own online service or use the BERR service; however, they can readily swap between the two and use a combination of both channels to serve all their regimes. Detailed guidance on how Local Authorities can make the choice is available on the web site. All Local Authorities using the BERR service will be provided with web access to their transactions and messages and a secure connection will be required for this.

- In England and Wales, the 'government-connect' secure extranet (GCSx) (www.govconnect.gov.uk) will be used. All English and Welsh Local Authorities should be accredited for connection to this network by September 2009, in time for the PSC's launch.
- In Scotland the GSX network, to which all Local Authorities are already connected, will be used.
- A solution is being devised for Northern Ireland in cooperation with the Northern Ireland Executive.
- These networks enable secure data sharing up to RESTRICTED level across government and Local Authorities.

While BERR will provide a means of online communication with service providers, it will remain the Local Authority's responsibility to process applications and provide the necessary IT infrastructure. The basic online forms service will be free of charge to Local Authorities during the current public spending round. A list of the formalities covered is provided on the website. If you have regimes within scope of the Directive which are not listed you must tell us about them, as they must be covered by the PSC. BERR may levy charges for value added services such as automatic data transfer.

Reporting

The PSC will give statistics of use such as number of applications submitted. Local Authorities will be expected to supply simple measures of applications processed via other channels such as on paper. This will be required once as part of implementation and then annually.

PSC Training

Online material will be provided and BERR will run a series of PSC workshops. The system is intended to provide the level of usability for Local Authorities that government provides for citizens in eGovernment applications and so training of individual Competent Authorities will not be supplied.

Timeline for the PSC

Given the complexity of the PSC, a series of deadlines will need to be adhered to. These are shown on the website at www.berr.gov.uk/psc. A measure, called "Readiness Level", will be used to provide a simple measure of how Local Authorities are progressing towards implementation of the PSC, by showing which key milestone they have reached.

12f Administrative Cooperation

The basic principle of Administrative Cooperation is that the request for information ends up with the organisation that has the competence, or is responsible for the administration of the requested information. For Local Authorities, this means that they should only accept requests for information in the areas for which they themselves are responsible.

Local Authorities and regulators must cooperate effectively with their counterparts in other EU countries

Local Authorities and regulators must cooperate effectively with their counterparts in other EU countries by replying to information requests, and if necessary carrying out factual checks, inspections and investigations. The Directive does not require UK authorities to carry out inspections in other EU countries. Rather than doing so, Local Authorities can request Competent Authorities in other EU countries to carry out checks and inspections on their behalf, **but only if the request is properly reasoned**, and the reasons for such a request must be explained. The authority in the other EU country is then obliged to provide information to or gather evidence on behalf of the requesting authority, who can then decide on the appropriate action to take. In liaison with authorities from other EU countries,

UK Competent Authorities may on occasion have to take account of the actions of UK service providers operating temporarily in other EU countries.

When information is requested it must be supplied by electronic means and within the shortest possible time. Information exchanged shall be used only in respect of the matter for which it was requested. **If there is difficulty in meeting a request or in carrying out checks, the requesting EU country must be rapidly informed with a view to finding a solution.**

Registers

To limit the number of information requests that authorities send to each other, the Commission is preparing a list of registers which holds information on service providers in each EU country. **Authorities are obliged to check these registers for the information they need and only contact other authorities if they cannot find what they are looking for.** This list will be held on the IMI system and will advise authorities from other EU countries of the type of registers held by UK Local Authorities (e.g. registered food premises). Local Authorities must ensure that registers in which service providers have been entered, and which may be consulted by UK Competent Authorities, may also be consulted on the same basis by Competent Authorities in other EU countries.

12g IMI system

BERR is responsible for overseeing the use of the IMI system in the UK and Local Authorities are strongly encouraged to register for use of the system. Authorities are obliged to cooperate with their counterparts in other EU countries in the shortest possible time and the IMI will facilitate this. Training packages will be available early in 2009 and BERR will help all authorities who use the system. Some Local Authorities are already signed up to participate in the IMI pilot, which is due to begin in March 2009 for certain service sectors. **To register for the system, Local Authorities should contact us at servicesdirective@berr.gsi.gov.uk. Further guidance and training can then be provided.**

12h Quality of Services

Article 19 states that service recipients cannot be asked to obtain authorisation from or to make a declaration to their Competent Authorities when wishing to use services of providers established in another EU country. Also, if financial assistance is provided for the use of a specific service, discriminatory limits that are based on the fact that the provider is established or the service is provided in another EU country, must be removed.

Local Authorities must not impose rules that discriminate against service recipients on nationality or place of residence

Article 20 states that Local Authorities must not impose rules that discriminate against service recipients on nationality or place of residence, and they must ensure that services they charge for (e.g. use of leisure facilities) do not discriminate on nationality or place of residence unless that can be justified by objective criteria.

The Directive requires providers to be able to demonstrate that they are compliant with the information and redress provisions, so we also want to enable a suitable and proportionate enforcement regime to support this. It is sensible that enforcement of these provisions falls under Part 8 of the Enterprise Act in common with other similar legislation such as the Unfair Commercial Practices Directive (UCPD). Enforcement would therefore fall to local weights and measures authorities (i.e. trading standards) as well as the OFT and the Department of Enterprise Trade and Investment Northern Ireland (DETINI). We anticipate that implementing these obligations should not result in a significant increase in Local Authority enforcement activity – the obligations and the risks involved through breaching them are minimal. It is possible that any resulting enforcement activity will form part of a wider action against breaches of other obligations by a service provider. We would also expect these provisions to be enforced in line with existing requirements, notably the Regulators Compliance Code.

13 Further Information

Further information about the implementation of the Directive and related documents can be found on our website, <http://www.berr.gov.uk/servicesdirective>. The Directive, the European Commission's handbook on Implementation, the Consultation Document on Implementing the Directive in the UK and the Government response to Consultation on implementing the Directive in the UK can all be found here.

We are happy to answer any queries you have, please email servicesdirective@berr.gsi.gov.uk.

Department for Business, Enterprise and Regulatory Reform.
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