

HAMBLETON DISTRICT COUNCIL

Report To: Audit, Governance and Standards Committee
26 March 2019

From: Director of Law and Governance (Monitoring Officer)

Subject: **AMENDMENT TO CONSTITUTION**

All Wards

1.0 PURPOSE AND BACKGROUND:

- 1.1 This report seeks consideration of an amendment to the Council's Constitution, specifically to the Scheme of Officer Delegation which is contained in Part 3 of the Constitution.
- 1.2 The Licensing and Appeals Hearings Panel has delegated authority to determine all hearings under licensing and registration functions and also to determine miscellaneous appeals in accordance with any Council powers and duties in accordance with Council procedures.
- 1.3 On occasion a matter of significant concern may arise regarding a licensed driver's fitness and propriety to hold a hackney carriage and private hire licence. In those circumstances it is in the interests of public safety for the Council to act quickly.
- 1.4 The power to revoke a licence currently lies exclusively with the Licensing and Appeals Hearings Panel and therefore there are currently no means of delegation which would permit officers to revoke a licence. As a result, potentially unscrupulous drivers can continue to provide private and/or public hire services until such time as a meeting of the Licensing and Appeals Hearings Panel can be arranged. In addition there are occasions where a licence must be revoked in accordance with statute. These matters are non-discretionary and therefore a Committee decision is not necessary.
- 1.5 To minimise the risk to public safety caused by a time delay, it is requested that the power to revoke or refuse to renew a licence be delegated to the Chief Executive, Deputy Chief Executive and Director of Law and Governance (Monitoring Officer).
- 1.6 It is envisaged that the power to revoke or refuse to renew a licence would only be exercised in instances where a statutory obligation exists or significant concern regarding a licensed driver's conduct has arisen. Under normal circumstances, the powers would continue to be exercised by the Licensing and Appeal Hearings Panel.

2.0 LEGAL IMPLICATIONS:

- 2.1 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 allows the Council to revoke or refuse to renew a hackney carriage and private hire driver's licence for any reasonable cause. The driver has a right of appeal to the Magistrates' Court against any such decision.
- 2.2 In the absence of appropriate delegation, any proposed action would need to be delayed until such time as a hearing can be held and the Council's failure to act swiftly could pose a significant risk to public safety and public confidence.

- 2.3 Section 68 of the Local Government (Miscellaneous Provisions) Act 1976 requires the Council to revoke a hackney carriage or private hire vehicle licence where, after a period of two months following the suspension of a licence, the Council is not satisfied as to the mechanical fitness of the vehicle. The proprietor has a right of appeal to the Magistrates' Court against any such decision.
- 2.4 Section 90 of the Licensing Act 2003 requires the Council to withdraw a club premises certificate in instances where the club ceases to be a qualifying club by virtue of its failure to satisfy the qualification criteria. The club has a right of appeal to the Magistrates' Court against any such decision.
- 2.5 Section 193 of the Gambling Act 2005 requires the Council to revoke a gambling premises licence where the annual fee has not been paid in accordance with the relevant regulations. Similar provision is made for the revocation of permits and registrations under the same Act. There is no statutory right of appeal against such a decision but the Council may exercise its discretion by disapplying the requirement to revoke where it is satisfied that the failure to pay the fee came as a result of an administrative error.

3.0 EQUALITY/DIVERSITY ISSUES:

- 3.1 These have been considered and there are no equality and diversity issues associated with this report.

4.0 RECOMMENDATION:

- 4.1 The Committee is asked to recommend to Council to implement the amendments to the Constitution as set out in paragraph 1.5 of the report and to authorise the Director of Law and Governance to update the Council's Constitution accordingly.

JUSTIN IVES
CHIEF EXECUTIVE

Background papers: Council's Constitution
Author ref: GN
Contact: Gary Nelson
Director of Law and Governance (Monitoring Officer)
Direct Line No (01609) 767012