

REGULATORY COMMITTEE AGENDA

WEDNESDAY 27 JUNE 2012
5.35 PM

(OR ON CONCLUSION OF THE LICENSING COMMITTEE)

COUNCIL CHAMBER CIVIC OFFICES CENTRAL MILTON KEYNES

<http://cmis.milton-keynes.gov.uk/CmisWebPublic>

Councillor Burke (Chair)
Councillor P Geary (Vice-Chair) and McKenzie (Vice-Chair)
Councillors Alexander, Bramall, Brunning, Exon, Kennedy, McDonald, Miles, Venn
and P Williams

If you have any enquires about this agenda please contact Dino Imbimbo, Committee
Manager, Tel: (01908) 252458 or E-mail: dino.imbimbo@milton-keynes.gov.uk

Health and Safety

Please take a few moments to familiarise yourself with the nearest available fire exit, indicated by the fire evacuation signs. In the event of an alarm sounding during the meeting you must evacuate the building immediately and follow all instructions provided by the fire evacuation officer who will identify him/herself should the alarm sound. You will be assisted to the nearest designated assembly point until it is safe to return to the building.

Mobile Phones

Please ensure that your mobile phone is switched to silent or is switched off completely during the meeting.

Agenda

Agendas and reports for the majority of the Council's public meetings can be accessed via the Internet at: <http://cmis.milton-keynes.gov.uk/cmiswebpublic/> Wi Fi access is available in the Council's meeting rooms.

Comments, Complaints and Compliments

Milton Keynes Council welcomes comments, complaints and compliments from members of the public in order to make its services as efficient and effective as possible. We would appreciate any suggestions regarding the usefulness of the paperwork for this meeting, or the conduct of the meeting you have attended.

Please use the slip below by detaching it and passing it to the Committee Manager. Alternatively the slip can be returned by post to Democratic Services, Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ, or you can e-mail your comments to meetings@milton-keynes.gov.uk

If you require a response please leave contact details, ideally including an e-mail address.

A formal complaints / compliments form is available online at <http://www.milton-keynes.gov.uk/complaints/> or is obtainable at the meeting from the Committee Manager.

Meeting Attended: Regulatory Committee

Date of Meeting: 27 June 2012

Comments:.....
.....
.....
.....
.....
.....
.....

Contact details:.....

AGENDA

1. **Welcome and Introductions**

The Chair to welcome Members, officers and the public to the meeting and introduce Members and officers who are present.

2. **Apologies**

3. **Minutes**

To approve, and the Chair to sign as a correct record, the Minutes of the meeting of the Regulatory Committee held on 21 March 2012 Item 3(a) (**Pages 4 to 8**) and 23 May 2012 (Item 3b) (**Page 9**).

4. **Disclosure of Interests**

Members to disclose any personal or prejudicial interests they may have in the business to be transacted and officers to declare any interest in contracts to be considered by the Committee.

5. **Public Participation**

To consider the following items in accordance with the Procedures for Public Participation:

(a) Deputations and Petitions

No deputations have been received for the Committee to consider at this meeting. Any petitions will be reported at the meeting.

(b) Questions

To receive questions from members of the public in accordance with the Council's Constitution, not related to licensing applications.

6. **Amendment to Private Hire vehicle Conditions.**

To consider Item 6 (**Pages 10 to 16**).

7. **Milton Keynes Council Enforcement Policy**

To consider Item 7 (**Pages 17 to 24**).

8. **The Law Commission's Consultation on "Reforming the Law of Taxi and Private Hire Services"**

To consider Item 8 (**Pages 25 to 30**).



Minutes of the meeting of the REGULATORY COMMITTEE held on WEDNESDAY 21 MARCH 2012 at 17.40 pm

Present: Councillor Burke (Chair)
Councillors Barry, Bradburn, Box, Exon, Kennedy, McKenzie and Tamagnini-Barbosa

Officers: P Winsor (Assistant Director [Regulatory Services]), N Allen (Compliance Manager), E Fisher (Senior Licensing Officer), J Setchell (Principal Solicitor) and D Imbimbo (Committee Manager).

Apologies: Councillors Clarke, Fraser, Hoyle and Wright

Number of Public Present: 6

RC22 MINUTES

RESOLVED -

That the Minutes of the meeting of the Licensing Committee held on 21 December 2011 be approved and signed by the Chair as a correct record.

RC23 RENEWAL OF STREET TRADING CONSENT – BEST KEBABS

The Committee considered a report in respect of an application for a renewal to a six hour street trading consent in respect of Fishermead Boulevard, Fishermead granted to 'Best Kebabs for the past two years between 5pm and 11pm daily.

The Committee heard that the application had been deferred by the Committee on 21 December 2011 in a bid to negotiate an alternative location for the trader to operate from due to the representations made to them. It was reported by the Assistant Director – Regulatory Services that these negotiations had proven unsuccessful and an alternative site had not been identified.

The Committee heard that the trader had sought to address the litter issues by placing signs on the highway and employing a Parking Marshall to address the parking problems.

The Committee heard that the trader had been trading for in excess of 15 years without recorded complaint, but had now received a complaint from a local resident and the Parish Council due to congestion from vehicles parking and smells from the cooking, these problems had persisted.

The Committee recognised that the trader had been in situ for many years and was established on the site and being required to move could have a negative impact on his business

A motion to grant the renewal was moved by Councillor Exon, this was seconded by Councillor Tamagnini-Barbosa before being put to the vote and it was;

RESOLVED –

That the application be granted with the same conditions as previously applied.

RC24

STREET TRADING IN BROUGHTON

The Committee considered a report in respect of the outcome of a consultation exercise to amend the existing constraints on street trading by mobile vendors in Broughton.

The Committee heard that no objections to the proposals had been received and it was recommended that the streets listed below be added to the Councils list of prohibited streets with effect from 20 May 2012.

Dean Forest Way

London Road

Oxenhope Way

Tanfield Lane

Swannick Lane

Kelling Way

Bewdley Grove

Oakworth Avenue

Cavan Way

A motion in support of the Officers recommendation was moved by Councillor Barry and seconded by Councillor Exon before being put to the vote and it was;

RESOLVED –

That the Officers recommendation be approved and the streets listed in the Committee report, and as set out above, be added to the Councils list of prohibited streets with effect from 20 May 2012.

RC25

CRB CHECKS FOR HACKNEY CARRIAGE AND PRIVATE HIRE APPLICANTS

The Committee considered a report in respect of whether the Regulatory Committee considered it appropriate that all new applications and renewals for drivers licences requiring a Criminal Records Bureau (CRB) check should be at the highest level of disclosure – enhanced

The Committee heard that currently a check is carried out but to the 'standard' level, it was recommended that all applicants for Hackney Carriage or Private Hire Licences are required to apply for an enhanced CRB disclosure check to ensure that every reasonable measure was taken to ensure public safety. The Committee noted that the difference in cost between the two standards of check was £18 but that the Enhanced disclosure involves an additional level of checking to those carried out for the Standard CRB check by cross referencing to local police records. Where these records contain additional information that may be relevant to the position the applicant is being considered for, then Chief Officer of Police may release the information for inclusion in an Enhanced check. Standard checks no longer include a check of the old or new barred lists from 12 October 2009

A motion in support of the Officers recommendation was moved by Councillor Box and seconded by Councillor Kennedy before being put to the vote and it was;

RESOLVED –

That all applicants for Hackney Carriage or Private Hire Licences be required to apply for an enhanced CRB disclosure check.

RC26

APPLICATION - SEX ESTABLISHMENT LICENCE – SEXUAL ENTERTAINMENT VENUE

The Committee considered a report in respect of an application for a Sex Establishment Licence – Sexual Entertainment Venue at Phoenix Gentleman's Club, Leisure Plaza, Central Milton Keynes.

The Committee heard that if granted it will permit the provision of 'relevant entertainment' in a Sexual Entertainment Venue (SEV), between the hours of 8pm and 4am the following morning Monday through to Saturday.

Under the transitional arrangements, if the Committee is minded to grant the licence, it will not come into force until the third appointed day which is the 14 April 2012. The Phoenix Gentlemen's Club will be permitted to operate under its Licensing Act 2003 premises licence effectively as strip club until the 14 April 2012, whereupon the relevant entertainment will be regulated under the Miscellaneous Provisions Act 1982.

The Assistant Director (Regulatory Services) recommended that the application be granted in the terms of the Committee report.

A motion in support of the Officers recommendation was moved by Councillor Barry and seconded by Councillor Tamagnini-Barbosa before being put to the vote and it was;

RESOLVED -

That the application be granted in the terms of the Committee report.

RC27

SEXUAL ESTABLISHMENT LICENCE APPLICATIONS – LOCAL GOVERNMENT MISCELLANEOUS PROVISIONS ACT 1982

The Committee considered a report in respect of a request from the Assistant Director – Regulatory Services that the authority to determine contested Sex Establishment Licence applications be delegated to Regulatory Sub-Committee and the authority to grant non-contested Sex Establishment Licence applications be delegated to officers.

The Committee noted that this would allow such applications to be dealt with in a more expedient manner and thus remove unnecessary delay.

It was recommended that the Regulatory Sub-Committee be delegated the authority to determine contested Sex Establishment Licence applications and that officers be delegated the authority to grant Sex Establishments Licence applications where there have been no representations or representations had been withdrawn.

A motion in support of the Officers recommendation was moved by Councillor Burke and seconded by Councillor Kennedy before being put to the vote and it was;

RESOLVED –

1. That the Regulatory Sub-Committee be delegated authority to determine contested Sex Establishment Licence applications.
2. That officers be delegated authority to grant Sex Establishments Licence applications where there have been no representations.

RC28

STREET TRADING - CONSENT STREETS IN MILTON KEYNES

The Committee considered a report in respect of a proposal to review the current approach to designating Consent Streets throughout Milton Keynes.

The Committee heard that it was recommended that a borough wide consultation with the relevant stakeholders be undertaken with a view to designating all adopted highways as Consent Streets unless they are Prohibited Streets, or subject to a time weighted exemption e.g. community event

The Committee heard that the rationale for undertaking the consultation was firstly because the current ad hoc method of adding new streets to the list of Consent streets following justified complaints /member representations consumes considerable officer time and the cost of Public Notices in a local newspaper. Such actions may have to be repeated shortly after a previous sequence in some circumstances. Secondly, there was currently one regime for the evening /night time mobile food traders and another of no constraints or costs for the daytime operations by mobile food traders which was inequitable

The Committee heard that the Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 – Street Trading, that allows streets to be designated as ‘Prohibited’ or ‘Consent’ for street trading purposes.

The Committee heard that research has indicated that a borough wide approach has been adopted by neighbouring authorities – South Northamptonshire Council and Northampton and Bedford Borough Councils and the arrangements adopted.

A motion in support of the Officers recommendation was moved by Councillor Exon and seconded by Councillor Tamagnini-Barbosa before being put to the vote and it was;

RESOLVED –

That a borough wide consultation with the relevant stakeholders be undertaken with a view to designating all adopted highways as Consent Streets unless they are Prohibited Streets, or subject to a time weighted exemption e.g. community event etc..

THE CHAIR CLOSED THE MEETING AT 7:09 PM



Minutes of the special meeting of the REGULATORY COMMITTEE held on WEDNESDAY 23 MAY 2012

Present: Councillors Alexander, Bramall, Brunning, S Burke, Exon, P Geary, Kennedy, McDonald, McKenzie, Miles, Venn and P Williams

Also Present: Councillors Bald, Bint Brackenbury, Bradburn, Brock, M Burke, Coventry, Dransfield, Eastman, Edwards, Ferrans, A Geary, Hawthorn, Hopkins, Hoyle, Jury, Klein, Legg, Long, Maric, Marland, D McCall, I McCall, McLean, Middleton, C. Morris, O'Neill, Richards, Shafiq, Small, Tallack, Wales, Wallis, Webb, Wharton, White, C Williams and Zealley

RC01 ELECTION OF CHAIR

RESOLVED -

That Councillor Burke be elected Chair of the Regulatory Committee for the Council Year 2012/13.

RC02 APPOINTMENT OF VICE-CHAIRS

RESOLVED -

That Councillors P Geary and McKenzie be appointed Vice-Chairs of the Regulatory Committee for the Council Year 2012/13.

RC03 APPOINTMENT OF REGULATORY SUB-COMMITTEE

RESOLVED -

That all Members of the Committee be appointed to the Regulatory Sub-Committee for the Council year 2012/13, from which three Members will be selected for any particular meeting by the Assistant Director (Democratic Services).

AMENDMENT TO PRIVATE HIRE VEHICLE CONDITIONS

Contact Officer: Simon Teesdale (Team Leader Environmental Health) Tel: 252354

1. Purpose

- 1.1 The purpose of this report is to provide members with information regarding an application to allow the Mayor to have a crest on display on the front doors of the mayoral car.

2. Recommendations

- 2.1 That the Committee agree to:
- (a) Grant the application
 - (b) Refuse the application

3. Issues and Choices

- 3.1 On the 5 March 2012, the mayor's office made a request via e-mail (**Annex A**) for the mayor's car to be allowed the mayoral crest to be displayed on the front doors of the vehicle (**Annex B**).

The vehicle currently being used, is a private hire licensed vehicle owned by Prestige-Raffles based in Stacey Bushes. The current conditions with this council relating to private hire vehicles only allows the displaying of signs which show the operator of that vehicle and that the vehicle must be pre-booked, no other form of signage is allowed (**Annex C**).

The vehicle concerned is plate exempt and would not normally be required to display any signage. If the committee decide to grant the application the crests must be displayed on the two front doors of the vehicle and removed after the mayoral journey has been completed. It is proposed that the crest will be made of a magnetic material so it can be easily removed and affixed.

4 Implications

- 4.1 Policy.

Under Section 48 of the Local Government (Miscellaneous Provisions) Act 1976, the committee imposed conditions on private hire vehicles regarding the displaying of signs on the vehicle. This included size of sign and wording permitted on that sign and placement area. This was to keep a uniform display on licensed vehicles.

- 4.2 Any deviation from this condition may cause others to seek similar changes to suit their purposes.

5 Resources

None

6 Legal

6.1 Local Government (Miscellaneous Provisions) Act 1976

Section 48 - Licensing of private hire vehicles.

(1) Subject to the provisions of this Part of this Act, a district council may on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence:

Provided that a district council shall not grant such a licence unless they are satisfied—

(a) that the vehicle is—

- (i) suitable in type, size and design for use as a private hire vehicle;
- (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
- (iii) in a suitable mechanical condition;
- (iv) safe; and
- (v) comfortable.

(b) that there is in force in relation to the use of the vehicle a policy of insurance or such security as complies with the requirements of [F94Part VI of the Road Traffic Act 1988],

and shall not refuse such a licence for the purpose of limiting the number of vehicles in respect of which such licenses are granted by the council.

(2) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary including, without prejudice to the generality of the foregoing provisions of this subsection, conditions requiring or prohibiting the display of signs on or from the vehicle to which the licence relates.

6.2 Any person aggrieved by the refusal of a district council to grant a vehicle licence under this section or by any condition specified in such a licence, may appeal to a magistrates court.

Alan,

I work in Democratic Services and we recently had a meeting with the Deputy Mayor, Catriona Morris, who will become Mayor in May. When the Mayor or Deputy Mayor travels to an event we use Raffles Executive cars. The Deputy Mayor has asked if it is possible to put a magnetic sign on the side of the car when she is on mayor visits. In principle, Raffles say that they could do this, but I have been asked to check if any additional approval would be needed. The sign would only be used when the car is being used for Mayoral visits. Let me know what you think and if there is an application process can you let me have this too.
Many thanks

June Allen
Corporate Leadership Team Support Manager

T: 01908 254844
E: june.allen@milton-keynes.gov.uk



PRIVATE HIRE VEHICLE LICENCE CONDITIONS
Local Government (Miscellaneous Provisions) Act 1976

1. The vehicle must comply with Milton Keynes Council's approved specification.
2. The identifying plate issued in respect of the licensed vehicle shall be securely fitted at the rear exterior of the vehicle in such a manner as to be plainly visible at all times when the vehicle is being used as a licensed vehicle save as specified by Section 75 of the 1976 Act.
3. The identifying disc issued in respect of the licensed vehicle shall be affixed to the near side of the front windscreen so that the information thereon is plainly and distinctly visible from the exterior of the vehicle.
4. The proprietor shall cause to be affixed and maintained in the vehicle in a conspicuous position in accordance with the directions of the Council any sign or notices relating to private hire vehicles which the Council may from time to time require.
5. No signs, notices, advertisements, plates, marks, numbers, letters, figures, symbols, emblems or devices whatsoever shall be displayed on, in or from the vehicle, except as may be required by any statutory provision or as may be required by conditions hereof or permitted by conditions.
6. There may be displayed inside the vehicle:
 - (a) a panel not exceeding 254mm x 152mm (10 inches x 6 inches approx) for the display of an advertisement provided that such panel is not illuminated and is not readily visible from outside the vehicle.
 - (b) a table of fares in a form and printing previously submitted to and approved by the Council, provided that such table shall not be illuminated.
 - (c) a sign not exceeding 150mm x 105mm (6 inches x 4 inches approx) stating the Operators name and telephone number together with identification details of the driver, which may include a photograph, provided that such a sign is not illuminated and is not readily visible from outside the vehicle. The background colour of this sign shall not be white.
7. **There may be displayed on the exterior of each of the front door panels a non-illuminated sign not exceeding 600mm x 254mm(24 inches x 10 inches) approx, showing:**
 - (a) **the name of the operator of the vehicle or the name under which he carries on business;**

- (b) the telephone number, and;**
- (c) on wheelchair accessible vehicles only, an approved wheelchair logo not exceeding 154mm x 154mm (6 inches x 6 inches approx).**

8. There may be displayed within the vehicle a standard Halda type windscreen sign which shall:-
- (a) show no words, letters, figures or symbols, other than the name of the proprietor or the operator of the vehicle or the name under which either party carries on business;
 - (b) not be illuminated except when the car is stationary;
 - (c) not be illuminated otherwise than during the hours of darkness; and
 - (d) not be illuminated otherwise than in pursuance or a prior arrangement for the carriage of passengers.

PROVIDED that such sign may not be displayed unless at such times as it shall not be illuminated in accordance with this condition, any words, letters, figures or symbols shall not be readily legible from outside the vehicle.

9. There may be displayed in, on or from the vehicle a sign which:-
- (a) is displayed when the vehicle is stationary;
 - (b) shows no words, numbers, figures or symbols other than the name of the operator or the name under which he carries on his business AND in either case the name of the passenger or passengers to be carried in the vehicle;
 - (c) is displayed in pursuance of a prior arrangement made for the carriage of the said passenger or passengers; and such sign may be illuminated.
10. Other than as may be permitted by these conditions, or as may be required by any statutory provision, no device, lamp or light shall be fixed or placed in or on the vehicle other than a courtesy light fitted inside the roof which shall be illuminated solely for the purpose of the comfort and convenience of passengers entering or leaving the vehicle.
11. This licence must be surrendered to the Council if revoked or suspended at any time or on its expiry.
12. If ownership of the vehicle changes, or if the owner of the vehicle changes his address, or if there are any changes in the particulars endorsed hereon, notice in writing must be given to the Council.
13. The proprietor shall cause to be maintained through the period of this licence a policy of insurance in respect of the vehicle, giving full cover in respect of the use of the vehicle for the carriage of passengers for hire or reward for private hire purposes.

14. The occurrence of any accident materially affecting the safety, performance or appearance of the vehicle must be reported to the Council within seventy two hours.
15. The Council reserves the right to vary, delete or waive any of the foregoing conditions, eight weeks' previous notice of the Council's intention having been given to the licensee.

NOTE: ANY PERSON AGGRIEVED BY ANY CONDITIONS ATTACHED TO A VEHICLE LICENCE MAY APPEAL TO A MAGISTRATES COURT WITHIN 21 DAYS FROM THE DATE ON WHICH NOTICE OF THE REFUSAL IS SERVED OR THE DATE ON WHICH THE LICENCE IS ISSUED, AS THE CASE MAY BE.

MILTON KEYNES COUNCIL ENFORCEMENT POLICY

Contact Officer: Karen Ford (Head of Regulatory Unit) – 01908 252267

1. Purpose

- 1.1 To seek the adoption of a revised Milton Keynes Council Enforcement Policy.

2. Recommendation

- 2.1 That the Milton Keynes Council Enforcement Policy be agreed as being applicable to the regulatory functions of this Committee.
- 2.2 That any suggested amendments to the Enforcement Policy be recommended to the Cabinet to adopt, prior to recommendation of the Policy to Council.

3. Details and Outcomes

- 3.1 The **annexed** draft Cabinet report details how Milton Keynes Council must publish an enforcement policy setting out how we will enforce legislation. As a quasi-judicial committee, this Policy can only apply if this Committee agrees it is applicable.

4. Implications**4.1 Policy**

See attached draft policy and accompanying draft Cabinet report.

4.2 Resources and Risk

There are no resource implications. By not formally adopting the Milton Keynes Council enforcement policy, there will not be a consistent message to those who are regulated as to how we will conduct ourselves. Furthermore, a separate policy will need to be drafted and agreed by this committee.

4.3 Legal

It is a legal requirement for enforcing authorities to publish an enforcement policy.

Background Papers: Draft Cabinet report and Milton Keynes Council Enforcement Policy

Wards Affected:

All Wards

ANNEX**MILTON KEYNES COUNCIL ENFORCEMENT POLICY**

Author: Karen Ford, Head of Regulatory Unit, Tel: (01908) 252267

Executive Summary:

To comply with the law and set out how we will enforce legislation, the authority must publish an enforcement policy. This policy supersedes all previous published enforcement policies.

The proposed enforcement policy sets out how the services responsible for ensuring compliance and its officers will conduct themselves and how other parties can expect to be treated as we discharge our key duties. An enforcement policy is required by law, it is integral to our performance management and it could be challenged by defence solicitors looking to make headway due to alleged non-adherence to its provisions. This will be the first time the authority will have one overarching enforcement policy covering all regulatory functions, if it is adopted.

Consultation was undertaken whereby an explanatory email was sent to all consultees together with a copy of the proposed policy. Responses were received from just a few stakeholders and where appropriate suggested amendments have been included in the final draft. (Appendix).

1. Recommendation(s)

- 1.1 That Cabinet recommend the policy to Council to be adopted for all relevant Council regulatory functions.

2. Issues

- 2.1 Cabinet must be satisfied that the revised policy takes account of issues such as recent legislative changes, that it covers the breadth of council regulatory functions, that it is proportionate and that it does not infringe legislation such as the Human Rights Act 1998.
- 2.2 Currently there are a number of enforcement policies across the Authority but no one overriding policy.
- 2.3 By law, the authority has a duty to have regard to the Regulators' Compliance Code and must take into account the Code's provisions when developing policy
- 2.4 The compliance areas covered by the regulatory code of practice include the enforcement functions carried out by Education Welfare Officers, Housing Officers, Transport & Highways Officers, as well as all officers in the Regulatory Unit.
- 2.5 A full 12 week consultation was undertaken with relevant officers, regulatory partners, ward members and parish/town councils along with private sector partners who are commonly in contact with the service. Responses were

received from all categories of stakeholder and where possible have been included in the final draft.

3. Options

- 3.1 The one alternative option is to keep the current disparate number of enforcement policies already in place for the service areas, though many of these have not been consulted on, have not been seen by Cabinet for approval and are not published.

This approach is not recommended as the policy should apply to the council as a whole and not differing policies for different enforcement areas because the overriding principles are the same. Furthermore, apart from the current Regulatory Services Enforcement Policy, all the other policies are not fully compliant with the legal requirements set out in the Regulatory Compliance Code.

4. Implications

4.1 Policy

The current Regulatory Services Enforcement Policy has been adapted to ensure it includes within its scope other enforcement policy requirements and functions.

4.2 Resources and Risk

There are no resource implications to agree this new policy, however, if the current enforcement policies are not fit for purpose, prosecution cases may be lost on a technicality and costs will have been incurred by Milton Keynes Council up to the point of the investigation folding.

| | | | | | |
|---|---------|---|------------------|---|------------------|
| N | Capital | Y | Revenue | N | Accommodation |
| N | IT | N | Medium Term Plan | N | Asset Management |

4.3 Carbon and Energy Management

It is not anticipated that the proposals will impact on the Carbon and Energy Management Policy.

4.4 Legal

By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006, and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulators' Compliance Code was issued with parliamentary approval and specified regulators must have regard to the code when determining policies, setting standards, or giving guidance in relation to their duties.

As well as the enforcement functions normally carried out by trading standards and environmental health, the Order includes the local authority functions carried

out under Part 2 of the Children and Young Persons Act 1963, the Housing Acts of 1985, 1996 and 2004, the Anti-social Behaviour Act 2003, as well as the Road Traffic Act 1988 and Transport Act 1981.

4.5 Other Implications

An enforcement policy which is incompatible with key legislation such as the Human Rights Act 1998 could leave the council open to the challenge that their conduct is in breach of such legislation, which may result in formal proceedings being struck out.

This obviously has associated consequences not just in terms of costs for failed proceedings but also in terms of damage to council reputation and the likely corresponding adverse coverage in the media.

Complete the boxes at the end of this section to indicate with a 'Y' if there are any implications and an 'N' if not. Where a 'Y' has been entered the implications should be addressed in the text.

| | | | | | |
|---|----------------------|---|----------------|---|--------------------|
| Y | Equalities/Diversity | N | Sustainability | Y | Human Rights |
| N | E-Government | N | Stakeholders | Y | Crime and Disorder |

Background Papers: Appendix 1 – Milton Keynes Council enforcement policy



Enforcement Policy

Contents

1. Introduction
2. Aims
3. Scope
4. General principles of enforcement
5. Referrals / Service Requests etc.
6. Enforcement actions
7. Recovery of costs
8. Enforcement policy implementation

1. Introduction

Milton Keynes Council functions as a regulator and enforcement agency with a wide range of legal powers and duties enabled through legislation. The authority has an essential role in the safeguarding of children, protection of the environment, health, safety and interests of residents, visitors and businesses within and where relevant, outside of Milton Keynes.

This enforcement policy was produced through consultation with all relevant stakeholders and is designed to ensure a consistent, fair, proportionate and effective approach to regulatory inspection and enforcement.

2. Aims

The council's aim is to undertake its regulatory and enforcement role in an impartial, open and consistent manner. This is achieved through education, mediation, advice, inspections, monitoring and by regulating the activities of individuals, families, businesses and other trading entities as necessary. Securing compliance through the use of enforcement powers and sanctions, including prosecution is sometimes a necessary means to achieving this outcome. In doing this, Milton Keynes Council enforcement officers will act in accordance with the guidance and standards set out in this policy. In particular Milton Keynes council will:

- Work with individuals, families and businesses to help them to comply with their legal responsibilities and obligations

- Undertake fair and effective enforcement activities
- Robustly challenge the actions of individuals that negatively affect the community
- Liaise and co-operate closely with partner agencies to ensure the most appropriate and proportionate action is taken in each case
- Ensure enforcement staff are competent, appropriately trained and apply this policy and its principles professionally and consistently
- Make information about this policy widely available to the public and businesses within and outside Milton Keynes
- Monitor compliance with the policy and review it on an annual basis in consultation with relevant stakeholders
- Act in accordance with the Government Enforcement Concordat, Code for Crown Prosecutors and where relevant, the Regulators' Compliance Code.
- Have regard to other council policies and procedures that sit underneath this overarching policy

A further aim of this policy is to ensure that Milton Keynes Council can tackle the needs of individual communities by engaging with them, identifying issues of particular importance to them and using enforcement sanctions appropriately to bring about compliance. This approach will provide swift resolution to community problems through the use of intelligence and effective community engagement.

3. Scope

This policy applies to all of the enforcement functions carried out by Milton Keynes Council. It supports and supplements existing, specific guidance on enforcement action contained in the statutory code of practice for regulators and other statutory codes of practice, relevant guidance documents and guidelines issued by other government departments and other bodies. Due consideration will be given to any other enforcement policy or scheme such as the Primary Authority Principle, where relevant.

4. General Principles of Enforcement

Any decision regarding enforcement action will be taken on the merits of each case, be impartial, objective and will not be affected by race, disability, socio-economic factors, age, politics, gender, sexual orientation or religious beliefs of any council employee, offender, victim or witness. However, where a victim has been targeted by an offender by virtue of their status, for example ethnicity or where the perpetrator is young or vulnerable, consideration will be given to this when deciding on any course of action.

A copy of our equality and diversity policy can be found on our website: [Equalities Policy](#) and may also be obtained by applying in writing to: Corporate Equalities & Diversity Officer, Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ.

Where appropriate, we will seek to achieve compliance through early engagement, mediation, education and advice. Where this is not deemed by

officers as the most appropriate route, their decisions will be recorded and justified.

5. Referrals / Service Requests etc

Complaints which may result in enforcement action against a business, individual or family will be brought to their attention as soon as practicable. During the process of taking any enforcement action any significant complainant or witness will be notified of progress on a regular basis and of any new information which may affect the outcome. In circumstances where notifying any party could impede enforcement action, notification will not take place until those circumstances no longer exist.

6. Enforcement actions

The following sanctions are available to the council:

- Informal warnings
- Fixed / Variable Penalty / Monetary Notices
- Refusal, revocation or suspension of licence
- Statutory Notices
- Stop / Prohibition Notices
- Simple Cautions
- Undertakings / Injunctive Proceedings
- Prosecution
- Confiscation / Forfeiture

Any sanctions and penalties imposed will be consistent, balanced, fairly implemented and relate to common standards which ensure that individual safety and welfare, public safety, financial security, or the environment is adequately protected. Where it is clear that jurisdiction for enforcing any matter or imposing any form of sanction rests with another regulator, the matter will be passed across to them accordingly; however this will not preclude an investigation from taking place to ascertain relevant facts. The aim of using sanctions and penalties is to:

- Protect the public and businesses from harm
- Stop the infringing conduct immediately
- Change the behaviour of the offender
- Deter future non-compliance and reassure the community
- Restore the harm caused by regulatory non-compliance
- Eliminate any financial gain or benefit from non-compliance
- Be proportionate to the nature of the offence and the harm, or risk of harm caused and with consideration as to the public stigma that might come with receiving a criminal conviction

In deciding which sanction is appropriate, the service will have particular regard to the following criteria:

- Whether the breach was pre-meditated or committed deliberately or recklessly, or without due diligence;

- Whether there are any prior complaints and convictions or other information relevant to the individual, family, business or trader's history;
- Inadequate mitigation or explanation given by the individual, family, business or trader. Also, the individual, family, business or trader's attitude and in particular, whether they were obstructive or co-operative;
- The prevalence of the type of breach and whether a particular sanction could act as a deterrent and encourage compliance generally;
- The effect of the breach on the victim or affected person, in particular where the victim or affected person is in some way vulnerable or the infringement resulted in death or serious injury.

7. Recovery of costs

Where appropriate, the council will seek to recover all costs incurred in carrying out any proceedings (including staff time) from relevant parties to ensure that the financial burden of the infringement is not borne by the authority and ultimately the tax-payer.

8. Enforcement policy implementation

Scheduled internal quality audits will be undertaken to ensure that all enforcement activity is carried out in accordance with this policy. Significant instances of non-compliance with this policy will be recorded, reported to the Assistant Director and appropriate action instigated.

Complaints about our service will be addressed through our corporate complaints procedure, which can be found on our website: [Complaints](#) and may also be obtained by applying in writing to: Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3EJ.

THE LAW COMMISSION'S CONSULTATION ON "REFORMING THE LAW OF TAXI AND PRIVATE HIRE SERVICES".

Contact Officer: Simon Teesdale, Team Leader, Public Health and Licensing
Tel:01908 252354

1. Purpose

1.1 The purpose of this report is to provide Members with information on The Law Commission's consultation on "Reforming the law of taxi and private hire services".

2. Recommendations

2.1 That a Council response be made to all 73 questions/proposals raised by the Law Commissions consultation paper No 203.

2.2 That in response to the consultation, recommendations be made:

- (a) that any reforming of the law of taxi and private hire services should address the problems of Cross-Border activity, citing as evidence the problems that presently exist in Milton Keynes with hundreds of Private Hire Vehicles (PHV's), licensed by South Northamptonshire DC, mainly operating within the Borough of Milton Keynes; and
- (b) that any change in Cross-Border activity, brought about by restricting the licensing of PHV's to the authority within which they mainly intend to trade, should not rely upon national standard conditions for PHV's and licensing officers' enforcement powers should also be enhanced to help remedy this problem.

3 Issues and Choices

3.1 The terms of reference proposed by the Department of Transport to the Law Commission for this consultation are "To review the law relating to the regulation of taxis and private hire vehicles, with a view to its modernization and simplification, having due regard to the potential advantages of deregulation in reducing the burdens on business and increasing economic efficiency".

3.2 The legislation relating to the licensing of Taxis and Private Hire Vehicles is fragmented, complex and out dated we are still enforcing taxi legislation dating back to London Hackney Carriage Act 1831 and Town Police Clauses Act 1847. Whilst the legislation relevant to Private Hire Vehicles is more up to date being the Local Government (Miscellaneous Provisions) Act 1976 part II.

3.3 Legislation has obviously not kept up with the technological advances that have taken place over the recent years. The type and variety of vehicles that are available is now much broader. Communication between customers and

operators and operators and drivers has moved on leaps and bounds with new technological advancements simplifying the booking of taxi/PHV's being made readily available.

- 3.4 It can be clearly seen that there is a genuine need for a review of the legislation relating to the licensing of Taxis and PHV drivers, vehicles and operators. The consultation requests responses to both questions and their provisional proposals.
- 3.5 The overview of the provisional proposals in brief are:
- (a) That there should continue to be a split between taxi and private hire trades. (retain the present two tier system.)
 - (b) Only moderate changes to be made to the regulation of taxis. retain the local link with the setting of taxi conditions and fare regulation, licensing and enforcement. Review of the legal definition of 'plying for hire', which covers hailing and ranking but not proposing radical reform. Removing the local authorities power to limit the numbers of taxis licensed in any particular area, "quantity regulation".
 - (c) Private hire services to operate on a national basis. Private hire operators no longer being restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by the same licensing authority. Subcontracting would be allowed as is already the case in London.
 - (d) The setting of national standards for private hire vehicles and drivers and not allowing authorities to impose higher standards than the standard.
 - (e) The setting of national minimum taxi and mandatory private hire standards giving benefits in dealing with those operating on the border of mainstream activity. This would include limousines, motorbikes, wedding and funeral cars, cars hired on longer contracts etc.
 - (f) To improve the enforcement of conditions. Proposals designed to improve cross-border enforcement, and look at the extent to which enforcement officers' powers could be strengthened.
- 3.6 The consultation paper highlights the problem of Cross-Border Issues. In general it can be said that the term "cross-border hire" relates to when a taxi or PHV operates in an area other than that for which it holds a license
- 3.7 The supporting information states that "some cross border problems discussed stem from licensing practices that do not necessarily stem from the legislation itself". Close inspection of the problems "reveals disagreements about what is regarded as fair competition between licensees of neighbouring districts, and between taxis and PHV'S. This is particularly the case where it is claimed that private hire vehicles , as well as out-of area taxis wait for pre-booked work in an area which is not their own".
- 3.8 It further states "Although highly unpopular with the trades in the "host" area. It is unclear what legal rules are being breached. And, from a consumer's point of view, properly managed cross-border services may increase choice and decrease waiting times".

- 3.9 This problem was highlighted by evidence provided to the Transport Select Committee on taxis and private hire vehicles. Where cross-border hire was raised as a serious problem especially when private hire vehicles were waiting in an area they are not licensed, in order to fulfill bookings more easily. A practice predominantly prevalent in city centres, with allegations of out-of area PHV's illegally plying for hire. It was felt that private hire vehicles doing this undermined local licensing.
- 3.10 The consultation states they have looked at the problem of cross-border activity. Suggesting that one remedy might have been to make a condition of "return to area" for both taxis and PHV's once a fare had been dropped off. However, this is dismissed as unenforceable and proposes Provisional Proposal 42 "We do not propose to introduce a "return to area" requirement in respect of out of area drop offs".
- 3.11 There is no proposal to directly limit or inhibit cross-border hiring within this consultation. The suggestion is that this practice can be to the advantage of fare paying customers by introducing more choice and creating a competitive market. Their reforms will " increase competition within the private hire industry", " cross-border restrictions on operators would be removed and local authorities would no longer be able to place additional, unnecessary and at times arbitrary conditions on private hire licenses".
- 3.12 The issue of differing levels of enforcement by bordering authorities are raised "Whilst variations do of course exist between licensing authorities , cases where a licensing authority regulates at such a low level as to render vehicles and drivers licensed by them unsafe would be exceedingly rare"
- 3.13 It further comments "On the other hand, vehicles conforming to different sets of standards operating in one area could lead to confusion for consumers. This also raises the question of the local knowledge of drivers who work like this" .
- 3.14 It is generally accepted that Milton Keynes has a problem with cross-border hire. Speedline which is a taxi operator licensed by South Northamptonshire DC has the majority of its fleet of private hire vehicles operating within the borough of Milton Keynes.
- 3.15 Representation by the operators licensed by Milton Keynes has been made many times, stating that this cross-border practice is affecting their trade and the livelihood of their drivers. Presently it is estimated that nearly four hundred Speedline PHV's work in the Milton Keynes area. This is presently not illegal practice but causes friction between Milton Keynes licensed taxi and PHV drivers and Speedline drivers, increasingly so, during this period of austerity.
- 3.16 The question that needs to be answered is why do some drivers and operators prefer to be licensed with South Northamptonshire DC while working in Milton Keynes. The answer could be down to the cost of licensing, the ease of getting licensed, the local conditions on the license or a combination of any of these factors.
- 3.17 The costs of being licensed as an operator within either borough are not dissimilar although it is accepted that the initial cost of driver application is greater for Milton Keynes, once successful application is made annual licensing is of a similar cost.

- 3.18 The difficulty of getting a drivers license has been raised as a stumbling block by our operators. With our knowledge test being cited as a reason for drivers choosing to work for Speedline. It is alleged that the knowledge test for South Northamptonshire is easier as the questions that can be asked in the “How do you get from A to B.....” type of question are limited. The knowledge required for Milton Keynes is obviously wider and proves more challenging for applicants. It is suggested that drivers work initially for Speedline so they can familiarize themselves with Milton Keynes. They then apply to Milton Keynes and have a better chance of passing the test.
- 3.19 As for the enforcement of conditions Milton Keynes Taxi Licensing enforcement officers have long since been able to enforce licensing conditions on South Northamptonshire licensed driver and vehicles. We have a close working relationship with our enforcement officer counter parts in South Northamptonshire and regularly take enforcement action against their drivers and vehicles. Provisional Proposal 69 “Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensed areas”
- 3.20 It is also proposed to remove the requirement that operator, vehicle and drivers need to be licensed with the same authority, “triple licensing”. Provisional proposal 41 “Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by a particular licensing authority.”
- 3.21 This is seen as a proposal that would help remove the significance of cross-border issues in respect of private hire vehicles. While we can see how this might support drivers in gaining contract work in another area. How this will reduce cross border activity is not entirely clear. The other proposals suggested that will reduce the significance of cross-border activities are the introduction of national standard conditions for PHV’s and better enforcement powers for enforcement officers. Allowing them to enforce on all taxis and PHV’s operating within their area.
- 3.22 The consultation addresses the topological knowledge test for PHV drivers with Provisional Proposal 27 “Private hire services would not be subject to standards except those relating to safety. Requirements such as topological knowledge would no-longer apply to private hire drivers”. Explaining that while it is recognized as a feature of good quality for a driver to have knowledge of the area that they drive within, as taxi meters as a rule are not used by PHV drivers, it can be argued that no gain should be made from not taking the shortest route. Also with the majority of drivers using electronic navigational devices, planned routes made via a booking can be easily logged in and the best route provided.
- 3.23 It is further suggested that if a driver loses their way then the customer would react to the poor quality of service by showing their dissatisfaction by using another company for future journeys. The operator would lose customers and therefore it would not be in the interest of an operator for their drivers not to know the best and quickest routes from one destination to another.
- 3.24 It maybe that a removal of the topological part of our knowledge test would see an increase in the number of driver applicants deciding on being licensed in Milton Keynes as oppose to South Northamptonshire. Our knowledge test

would then consist of questions on the highway code and on conditions of the vehicle and drivers licence.

- 3.25 However, legislation to make it mandatory to be licensed within the area that any driver is considering to operate within, would effectively stop the cross-border issues that Milton Keynes and other cities are blighted by. The enforcement would be relatively straight forward as operator records are accessible upon demand and taxi drivers should be making records of their journeys and make them available for inspection at the request of an enforcement officer.
- 3.26 Separate legislation would be needed for PHV's operating within London due to the relatively small size of boroughs and the difficulty for private hire services to operate within one borough. However, this has always been the problem with London and is recognized by having it's own set of legislation.

All local Authorities and other stakeholders are requested to return the consultation by the 10th September 2012. The Consultation paper No 203, consists of 241 pages, 20 chapters and one appendix listing the 73 questions and provisional proposals.

Link to consultation document.

http://lawcommission.justice.gov.uk/docs/cp203_taxi-and-private-hire-services.pdf

A summary can be found.

http://lawcommission.justice.gov.uk/docs/cp203_taxi-and-private-hire-services_summary.pdf

An Impact Assessment for this consultation was produced but has since been withdrawn for amendments.

Reforming the law of taxi and private hire services IA no: LAWCOM0016

4 Implications

4.1 Policy

This consultation has a number of implications on policy as any changes to the statutory legislation would have major implications on the present conditions of enforcement. There would be a need to change all our present conditions in line with any statutory changes.

4.2 Resources and Risk

There would be considerable resources issues in both implementation of any new legislation and training of enforcement officers on new conditions. New conditions for taxi would have to be implemented in addition to any minimum conditions that were made. However if national model conditions were made then our Private hire vehicle conditions could be replaced. There may be risk to income from fees and charges if the fee charging scheme is replaced with a national scheme and fees not set locally but this is not mentioned within the consultation. The other risk being that if operators can operate from any location and use drivers licensed within another area it is possible that license fees could be lost.

5 Resources

- 5.1 There is officer time involved in providing responses to this consultation. The consultation is not short requiring 73 responses and consultation being required with officers from within different teams within the council including the Regulatory Unit and colleagues in Passenger Transport.
- 5.2 If officer time is costed at an average of £25 per hour it is estimated that the response to this consultation should be in the region of £500.

6 Legal

Law Commission Consultation Paper no 203, REFORMING THE LAW OF TAXI AND PRIVATE HIRE SERVICES.

London Hackney Carriage Act 1831

Town and Police Clauses Act 1847- General provisions regarding the licensing and operation of Hackney Carriages

Local Government (Miscellaneous Provisions) Act 1976

House of commons Committee, Taxis and private hire vehicles the road to reform (12 July 2011) HC720