

Central Bedfordshire  
Council  
Priory House  
Monks Walk  
Chicksands,  
Shefford SG17 5TQ



**please ask for** Martha Clampitt  
**direct line** 0300 300 4032  
**date** 4 November 2010

## **NOTICE OF MEETING**

### **REGULATION COMMITTEE**

Date & Time

**Wednesday, 17 November 2010 9.30 a.m.**

Venue at

**Council Chamber, Priory House, Monks Walk, Shefford**

Richard Carr  
**Chief Executive**

To: The Chairman and Members of the REGULATION COMMITTEE:

Cllrs L Birt (Chairman), T Green (Vice-Chairman), D Bowater, I Dalgarno, A Fahn,  
M Gibson, K Janes, H J Lockey, Ms J Nunn, A A J Rogers, G Summerfield and  
P F Vickers

[Named Substitutes:

P N Aldis, R D Berry, Ms C Maudlin, D McVicar, B J Spurr and Mrs C Turner]

All other Members of the Council - on request

***MEMBERS OF THE PRESS AND PUBLIC ARE WELCOME TO ATTEND THIS  
MEETING***

# AGENDA

1. **APOLOGIES FOR ABSENCE**

Apologies for absence and notification of substitute members

2. **CHAIRMAN'S ANNOUNCEMENTS AND COMMUNICATIONS**

To receive any announcements from the Chairman and any matters of communication.

3. **MINUTES**

To approve as a correct record the Minutes of the meeting of the Regulation Committee held on 25 August 2010 and note actions taken since that meeting.

(attached)

4. **MEMBERS' INTERESTS**

To receive from Members any declarations and the nature in relation to:-

(a) personal interests in any agenda item

(b) personal and prejudicial interests in any agenda item

5. **PETITIONS**

To receive petitions in accordance with the scheme of public participation set out in Annex 2 in Part A4 of the Constitution.

6. **PUBLIC PARTICIPATION**

To receive any questions, statements or deputations from members of the public in accordance with the Procedure as set out in Appendix 1 to Part A4 of the Constitution.

7. **STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS**

A copy of the statement of policy about relevant convictions is attached to assist Members in relation to items 9 and 10.

8. **EXCLUSION OF THE PRESS AND PUBLIC**

To consider whether to pass a resolution under section 100A of the Local Government Act 1972 to exclude the Press and Public from the meeting for the following item of business on the grounds that the consideration of the item is likely to involve the disclosure of exempt information as defined in paragraph(s) 1 of Part 1 of Schedule 12A of the Act.

<b>Reports</b>
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<b>Item</b>	<b>Subject</b>	<b>Exempt Para.</b>	<b>Page Nos.</b>
9.	<b>Application for a Private Hire Vehicle License</b>	* 1	11 - 22
	To make a decision whether or not to grant a private hire vehicle licence to Mr James Taylor of Taylor's Transport in view of the age of the vehicle.		
10.	<b>Application for a Private Hire Vehicle License</b>	* 1	23 - 34
	To make a decision whether or not to grant a private hire vehicle licence to Mr Sheraz Ahmed of D and R Taxis in view of the age of the vehicle.		

11. **RE-ADMITTANCE OF PRESS AND PUBLIC**

To consider whether to pass a resolution to re-admit members of the press and public on the grounds that consideration of the remaining items of business are not likely to involve the disclosure of exempt information as defined by Part 1 of Schedule 12A of the Local Government Act 1972.

<b>Reports</b>
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<b>Item</b>	<b>Subject</b>	<b>Page Nos.</b>
12	<b>Equalities Act 2010</b>	35 - 38
	This report seeks a decision on whether Members wish to carry out a consultation in order to ascertain how the authority can meet the needs of a broad range of disabled people using hackney carriages, not just wheelchair users.	
13	<b>Duration of Combined Hackney Carriage and Private Hire Driver Licences</b>	39 - 42
	This report seeks instructions on whether or not Members wish to carry out a consultation with the hackney carriage and private hire trade in order to ascertain their views with regard to the issue of three year combined hackney carriage and private hire driver licences.	

14      **Adoption of Schedule 3 to the Local Government  
(Miscellaneous Provisions) Act 1982 and Section 27 of the  
Policing and Crime Act 2009**      43 - 48

Adoption of the relevant provisions of the Local Government  
(Miscellaneous Provisions) Act 1982, for the licensing of Sexual  
Entertainment Venues.

15      **Adoption of Schedule 4 to the Local Government  
(Miscellaneous Provisions) Act 1982**      49 - 54

Approval to publish a notice of the draft resolution in relation to  
adoption of the relevant provisions of the Local Government  
(Miscellaneous Provisions) Act 1982, for the licensing of Street  
Trading.

# CENTRAL BEDFORDSHIRE COUNCIL

## DRAFT

### STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS

#### POLICY AIM

**To promote and maintain the highest professional standard of hackney carriages and private hire drivers by the continuous monitoring of services and to ensure that each driver is a fit and proper person to hold a hackney carriage or a private hire driver licence.**

1. Licences for drivers of hackney carriages and private hire vehicles may only be granted where the Council is satisfied that the applicant is a fit and proper person to hold such a licence.
2. The policy is intended to give guidance to applicants where he or she has previous convictions and or cautions.
3. The Council will endeavour to ensure:-
  - (a) That a person is a fit and proper person
  - (b) That a person does not pose a threat to the public
  - (c) That the public are safeguarded from dishonest persons
4. When submitting an application for a licence to drive a hackney carriage/private hire vehicle, applicants are required to declare all previous convictions they may have. Applicants are also required to declare all formal cautions and all endorsable fixed penalties together with details of all criminal matters of which they are currently subject of criminal investigation or prosecution.
5. Existing holders of driver licences are required to notify the Council, in writing, within seven days of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions)
6. The information given will be treated in confidence and will only be taken into account in relation to the relevant application to assist the Council in determining whether the applicant is a fit and proper person to hold a driver's licence for the purposes of Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976.
7. Applicants should be aware that the Council is empowered by Law to check with the Criminal Records Bureau (CRB) for the existence and content of any criminal record held in their name. This Council abides by

the CRB's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.

8. The disclosure of a criminal record or other information relating to criminal matters will not necessarily debar an applicant from obtaining a driver's licence. Whether or not an applicant will be granted a licence will depend upon whether or not the Council can be satisfied that the applicant is a fit and proper person to hold such a licence.
9. In accordance with current case law, the Council will not seek to go behind the convictions by reinvestigating the circumstances of the case or questioning the decision of the relevant judicial authority. It will be for applicants to persuade the Council that the conviction is no longer serious, relevant, or is so old that it should not affect their ability to hold a licence.
10. The Council may fail to be satisfied that an applicant is a fit and proper person to hold a driver's licence for any good reason. If adequate evidence that a person is a fit and proper person is not received, or if there is good reason to question or doubt the evidence provided, it could amount to good reason to refuse a licence.
11. In considering evidence of an applicant's good character and fitness to hold a driver's licence, where previous convictions or other information relating to criminal matters are disclosed, the Council will consider the nature of the offence, when it was committed, the date of conviction, the applicant's age when the offence was committed and any other factors which might be relevant.
12. The Council is also entitled to use other records and information that may be available to it in determining applicants or an entitlement to continue holding a licence. This may include information held by the Council or other Councils, and information disclosed by the Police under the Home Office scheme for reporting notifiable offences.
13. Any applicant refused a driver's licence on the grounds that the Council is not satisfied that he or she is a fit and proper person to hold such a licence has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.
14. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining applications for drivers' licences.
15. The guidelines will also be taken into account by the Council when dealing with applications for the renewal of existing driver's licences and when considering whether to suspend or revoke an existing driver's licence.

## GENERAL POLICY GUIDELINES

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure, so far as possible, that drivers are fit and proper persons to hold licences.
3. A person with a conviction for a serious crime need not be automatically barred from obtaining a licence but would normally be expected to (a) remain free of conviction for an appropriate period and (b) show adequate evidence that he or she is a fit and proper person to hold a licence. Simply remaining free of conviction will not generally be regarded as sufficient evidence that a person is a fit and proper person to hold a licence.
4. In some circumstances it may be appropriate to depart from the general policy, for example, where the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account. **Applicants will be invited to make representation to the Head of Service, Public Protection, before a final decision on whether an applicant is considered a fit and proper person to hold a licence.**
5. The following examples afford a general guide on the actions which might be taken where convictions are disclosed. **The period of post convictions before applications will be considered are based on the Home Office Guidelines.**

### Offence of Dishonesty

- a. Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare. A serious view is taken of any conviction for dishonesty. In general, an application less than 3 – 5 years after conviction is unlikely to be considered favourably.
- b. After 3 years the circumstances of the offence, together with any evidence demonstrating that the person is now a fit and proper person to hold a licence, will be taken into account.

### Violence

- a. As hackney carriage and private hire vehicle drivers maintain close contact with the public, a period of 3 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will generally be required before an application is likely to be considered.

### Drugs

- a. An application will normally be refused where the applicant has a conviction for an offence related to the supply of drugs and the conviction is less than 5 – 10 years prior to the date of application.
- b. After 5 years the circumstances of the offence, together with any evidence demonstrating that the person is now a fit and proper person to hold a licence, will be taken into account.
- c. An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3 to 5 years will require careful consideration of the facts.

### Sexual and Indecency Offences

- a. As hackney carriage/private hire vehicle drivers often carry unaccompanied passengers, applicants with a conviction for rape, indecent assault, or other similar offences will normally be refused a licence.
- b. Applicants with a conviction relating to sexual offences will normally be refused a licence until they can show a substantial period (usually between 3 and 10 years) free from any such conviction.

### Motoring Convictions

Disqualification.

- a. Where an applicant has been disqualified from driving because of a major traffic offence, the applicant will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 5 years where the disqualification relates to drink driving or a major traffic offence.
- b. **Where several motor traffic offences have resulted in the applicant being disqualified from driving for a period of time, this will normally be taken as reflecting seriously on the applicant's driving standard. Generally a period of 3 years free from conviction must have elapsed from the restoration of the DVLA licence.**



- c. In 'totting-up' cases where disqualification is considered by the Court, even if the court does not disqualify a driver (e.g. because of exceptional circumstances), the Council is likely to refuse a hackney carriage./private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the Court made its finding of exceptional circumstances justifying the non-disqualification.

#### Major Traffic Offences.

- a. An application will normally be refused where the applicant has a conviction for an offence within 2 years of the date of the application.
- b. More than one conviction for this type of offence within the last 5 years is likely to merit refusal.

#### Minor Traffic Offences.

- a. Isolated convictions for minor traffic offences should not prevent a person from obtaining a licence. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature, the applicant will normally be expected to show a period free of conviction of at least 6 months.

### **Drunkenness**

#### With a motor vehicle

- a. A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An application will normally be refused where the applicant has a conviction for an offence within 2 years of the date of the application. More than one conviction for this type of offence or one such offence within the last five years is likely to merit refusal. Where a disqualification has occurred as a result of a drink-drive offence, at least 5 years free from conviction should elapse after the restoration of the DVLA licence before an applicant is considered for a licence.
- b. **In addition, applications will normally be required to show a period of at least 5 years following successful completion of any rehabilitation course imposed as part of a community penalty.**

Not in a motor vehicle.

- a. An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination and refusal of a licence. In addition, applicants will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if he or she was an alcoholic.

### **Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws.**

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ('the Acts') and Hackney Carriage Byelaws is to ensure the protection of the public. For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence.

In particular an applicant will normally be refused a licence if he or she has been convicted of an offence under the Acts at any time during the 2 years preceding the application or has more than one conviction within the last 5 years preceding the date of the application.

### **Spent convictions**

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence.

### **Cautions and Endorsable Fixed Penalties**

For the purpose of these guidelines, formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

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**Meeting:** Regulation Committee

**Date:** 17 November 2010

**Subject:** Equalities Act 2010

**Report of:** Gary Alderson - Director of Sustainable Communities

**Summary:** This report seeks a decision on whether Members wish to carry out a consultation in order to ascertain how the authority can meet the needs of a broad range of disabled people using hackney carriages, not just wheelchair users.

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**Contact Officer:** Margaret James, Licensing and Enforcement Officer.

**Public/Exempt:** Public

**Wards Affected:** All

**Function of:** Council

#### **CORPORATE IMPLICATIONS**

**Council Priorities:**

Supporting and Caring for an ageing population – provision of safe public transport supports independent living.

**Financial:**

Fees are payable for hackney carriage and private hire licences. The fees being charged represent the cost of the Council producing the licence.

**Legal:**

Local Government (Miscellaneous Provisions) Act 1976.  
Town Police Clauses Act 1847.  
Equalities Act 2010 – Taxis and Private Hire Vehicles.

**Risk Management:**

Ensuring that hackney carriage and private hire vehicles operating in Central Bedfordshire are safe and properly regulated.

**Staffing (including Trades Unions):**

There are no staffing implications.

**Equalities/Human Rights:**

The Council has a legal duty to proactively promote race, gender and disability equality and to tackle discrimination experienced by other vulnerable groups. In order to ensure the personal safety of all vulnerable groups wishing to use licensed vehicles, conditions attached to licences ensure that this duty is met.

**Community Safety:**

Contributes to a safer public transport system and a safer night time economy. The Council has a statutory duty under Section 17 of the Crime and Disorder Act to do all that it reasonably can to reduce crime and disorder in its area. The provision of sufficient numbers of taxis is a key component of reducing crime and disorder problems linked to the night time economy and licensed premises. In addition, it is essential to ensure that the public, and particularly more vulnerable members of the community, are not left without safe transport options which may lead them to take decisions which put their safety at risk.

**Sustainability:**

By regulating this service area we can ensure that those businesses that are compliant can be supported and resources can be focused at those business that will not comply.

**RECOMMENDATION**

**that a 12 week consultation be carried out to seek views on how to meet the needs of a broad range of people using hackney carriages, not just wheelchair users.**

**that the following groups be consulted:**

- (a) Members of the Hackney Carriage and Private Hire trade;**
- (b) Groups Serving the disabled in Central Bedfordshire;**
- (c) Members of the travelling public.**

**Background**

1. The Council is the Licensing Authority for hackney carriage and private hire drivers, vehicles and operators and is responsible for providing a licensed service to the community that is safe and accessible.
2. The hackney carriage and private hire trade have a right to expect a fair and reasonable licensing regime.
3. Before a local authority can make a decision on policies and conditions affecting the hackney carriage and private hire trade, they must consider the views of all interested parties.

4. Under the Disability Discrimination Act, it is unlawful for taxi drivers to discriminate against disabled people and they have an obligation to provide a proper service.
5. Disabled people can take civil action under the Disability Discrimination Act against taxi drivers who discriminate against them.
6. In 2003, the Department for Transport announced an intention to set standards for wheelchair accessible taxis and to introduce regulations applying to local authorities that would include the possibility of criminal proceedings against licensed drivers who discriminate. The Department anticipated publishing a consultation on the issue of accessible taxis in 2008 but urged local Authorities who wished to adopt local accessibility policies for taxis not to hold back on any local initiative in anticipation of national regulations straight away.
7. At that time, both the former South Bedfordshire District Council and the former Mid Bedfordshire District Council, followed the Department for Transport's advice and adopted wheelchair accessible policies in order to improve the availability of taxis for disabled people in their areas. This policy was carried forward and included as a hackney carriage policy for Central Bedfordshire.
8. The conditions attached to hackney carriages for Central Bedfordshire Council, therefore, include a wheelchair accessible policy. Our conditions state that the vehicle must be wheelchair accessible and conform to various licence conditions. Our conditions also state that, hackney carriage vehicles currently licensed that are not wheelchair accessible, are permitted to be re-licensed up to a maximum of 10 years from the original date of vehicle registration provided they pass the mechanical inspection. Any replacement vehicle will be required to meet all our wheelchair requirements.
9. When the wheelchair policy was adopted by Central Bedfordshire in January 2010, Members were asked to note that many of the trade were unhappy because they felt that only a proportion of the hackney carriage fleet should be wheelchair accessible. Officers informed Members that, if they wished to change the policy, it would first be necessary for a full consultation to be carried out. Members were also asked to note that the Department for Transport were carrying out a consultation on how best to meet the needs of a broad range of disabled people, not just wheelchair users. Members were informed that they would be advised of any conclusions and recommendations made by the Government on the matter and, when received, the trade could be consulted on any government recommendations.
10. The government has now made new regulations for taxis and private hire vehicles. The Equalities Act 2010 appears to have overtaken the government consultation. It only refers to wheelchair accessible vehicles rather than specifying a broader range of vehicles although further recommendations could be received at a future date.

## **Equalities Act 2010 – Taxis and Private Hire Vehicles**

11. The Equalities Act 2010 brings together a number of different pieces of legislation about discrimination – including disability discrimination. The Act contains new provisions which will, when commenced, tighten the law by placing duties on taxi and private hire drivers to provide assistance to people in wheelchairs. Before these provisions come into force, provision will be made for those drivers who themselves suffer from a condition which makes it difficult to provide assistance, to apply for an exemption from these duties. Drivers will be able to apply for these exemptions from October 2010.

Our current conditions already require drivers of wheelchair accessible vehicles to assist in the loading and unloading of wheelchairs and their passengers and also in relation to their wheelchair use. However, our conditions do not currently specify that drivers who themselves suffer from a condition which makes it difficult to provide assistance, may claim exemption from this obligation.

The hackney carriage and private hire trade will, of course, be informed of this legislation and the conditions attached to their licences updated.

12. Also from October 2010, the sections of the Equality Act 2010 which oblige taxi and private hire drivers to carry guide dogs will be commenced. This obligation is already prescribed in the Disability Discrimination Act 1995. Our current conditions already specify that drivers have a duty to carry an assistance dog and may claim exemption from this obligation on medical grounds. Taxi and private hire drivers who are already exempt from the duty to carry guide dogs can continue to rely on their certificate of exemption, so in practice there will be no change for drivers.

### **Conclusion and Next Steps**

13. It was anticipated that local authorities would be advised of any conclusions made on the provision of licensed vehicles to meet a broad range of disabled passengers when the Government had concluded its consultation into the needs of the disabled traveller.
14. In the absence of any Government recommendations, and in view of the fact that the trade were informed that they would be consulted on the matter as soon as possible, officers would recommend that a 12 week consultation be carried out now.

#### **Appendices:**

None

#### **Background Papers:**

None

#### **Location of papers:**

The Council Offices, Dunstable

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**Meeting:** Regulation Committee  
**Date:** 17 November 2010  
**Subject:** Duration of combined Hackney Carriage and Private Hire Driver Licences  
**Report of:** Gary Alderson - Director of Sustainable Communities  
**Summary:** This report seeks instructions on whether or not Members wish to carry out a consultation with the hackney carriage and private hire trade in order to ascertain their views with regard to the issue of three year combined hackney carriage and private hire driver licences.

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**Contact Officer:** Margaret James, Licensing and Enforcement Officer.  
**Public/Exempt:** Public  
**Wards Affected:** All  
**Function of:** Council

#### **CORPORATE IMPLICATIONS**

**Council Priorities:**

Supporting and Caring for an ageing population – provision of safe public transport supports independent living.

**Financial:**

Fees are payable for hackney carriage and private hire licences. The fees being charged represent the cost of the Council producing the licence.

**Legal:**

Local Government (Miscellaneous Provisions) Act 1976.  
Town Police Clauses Act 1847.

**Risk Management:**

Ensuring that hackney carriage and private hire vehicles and drivers operating in Central Bedfordshire are safe and properly regulated.

**Staffing (including Trades Unions):**

There are no staffing implications.

**Equalities/Human Rights:**

The Council has a legal duty to proactively promote race, gender and disability equality and to tackle discrimination experienced by other vulnerable groups. In order to ensure the personal safety of all vulnerable groups wishing to use licensed vehicles, conditions attached to licences ensure that this duty is met.

**Community Safety:**

Contributes to a safer public transport system and a safer night time economy. The Council has a statutory duty under Section 17 of the Crime and Disorder Act to do all that it reasonably can to reduce crime and disorder in its area. The provision of safe, well regulated transport contributes to this duty and in order to ensure that drivers of hackney carriages and private hire vehicles are 'fit and proper' to hold a licence rigorous checks must be undertaken.

**Sustainability:**

By regulating this service area we can ensure that those businesses that are compliant can be supported and resources can be focused at those business that will not comply.

**RECOMMENDATION**

**That a 12 week consultation be carried out with the hackney carriage and private hire trade to seek their views on the issue of three year driver licences.**

**Background**

1. The Council is the Licensing Authority for hackney carriage and private hire drivers, vehicles and operators and is responsible for providing a licensed service to the community that is safe and accessible.
2. The hackney carriage and private hire trade have a right to expect a fair and reasonable licensing regime.
3. Before a local authority can make a decision on policies and conditions affecting the hackney carriage and private hire trade, they must consider the views of all interested parties.
4. January 2010, Members of the Regulation Committee resolved that it would be necessary for hackney carriage / private hire drivers to renew their licences annually rather than every three years.



5. On 12 October 2010, those drivers attending the monthly taxi and private hire forum expressed their disappointment that this authority does not allow the issue of three year driver licences and asked that Members reconsider the duration of driver licenses. Two Members of the Regulation Committee were present at the forum. They agreed that consideration to carrying out a consultation on the matter would be sought at the November meeting of the Regulation Committee

**Appendices:**

None

**Background Papers:**

None

**Location of papers:**

The Council Offices, Dunstable

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**Meeting:** Regulation Committee  
**Date:** 17 November 2010  
**Subject:** Adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and Section 27 of the Policing and Crime Act 2009  
**Report of:** Gary Alderson, Director of Sustainable Communities  
**Summary:** Adoption of the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982, for the licensing of Sexual Entertainment Venues.

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**Contact Officer:** Patricia Davies (licensing & Policy Officer); David McBain (Licensing Enforcement Officer)  
**Public/Exempt:** Public  
**Wards Affected:** ALL  
**Function of:** Council

#### **CORPORATE IMPLICATIONS**

##### **Council Priorities:**

Educating, protecting and providing opportunities for children and young people – By regulating sexual entertainment venues conditions can be placed on licences to protect children from harm.

Managing growth effectively – Legislation allows the Council to restrict the number and location of such premises.

Creating safer communities – The conditions that will be considered for licences will be in order to prevent crime and disorder, to protect public safety and to prevent public nuisance.

##### **Financial:**

There will be advertising costs attached to the public notices which need to be published in the local press and are required for the correct adoption of the legislation. A fee will be payable by applicants which will offset these costs over time. The process of adopting the legislation, and the licensing process will be administered by the licensing team and the fees will be set to cover these costs.

##### **Legal:**

Compliance with the Local Government (Miscellaneous Provisions) Act 1982. Without proof of adoption we would be unable to support any decision to refuse a licence for a sex establishment.

##### **Risk Management:**

Failure to adopt this legislation will lead to current premises in the area being operated without the correct conditions and controls in place to protect the community.

**Staffing (including Trades Unions):**

None

**Equalities/Human Rights:**

The Council has a legal duty to proactively promote race, gender and disability equality and to tackle discrimination experienced by other vulnerable groups. The council does not take a moral stand in adopting this policy and recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. It is the role of the Licensing Authority to administer the licensing regime in accordance with the law.

**Community Safety:**

The adoption of the legislation to regulate sexual entertainment venues will allow the council to take all reasonable steps to reduce crime and disorder within Central Bedfordshire under Section 17 of the Crime and Disorder Act 1998.

**Sustainability:**

In adopting this legislation Central Bedfordshire Council will be able to develop a policy to ensure a vibrant and thriving leisure industry with safe and well kept premises which will be run in an appropriate manner.

**RECOMMENDATIONS:**

1. That the Regulation Committee recommend that Full Council adopts the relevant provisions to enable the regulation of sexual entertainment venues and that these provisions come into force on the 1<sup>st</sup> April 2011 as ‘the first appointed day’.
2. That the Regulation Committee recommend that Full Council delegate responsibility for the licensing of sexual entertainment venues to the Regulation Committee and ask the Constitution Advisory Group to amend the Constitution accordingly.

**Introduction**

1. Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 27 of the Policing and Crime Act 2009, will enable the Council to control the licensing of sexual entertainment venues such as lap dancing clubs.

*Note: There is no option to adopt Section 27 and not Schedule 3, as section 27 only amends schedule 3.*

2. Schedule 3 originally empowered local authorities to licence “sex establishments” which covered sex cinemas and sex shop. However, following the introduction of Section 27 of the Policing and Crime Act 2009, Schedule 3 was amended to include “sexual entertainment venues”. This new category covers venues that provide ‘relevant entertainment’. Relevant entertainment is defined as “*any live performance or display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience*”.
3. The former South Beds District Council and Mid Beds District Councils had adopted Schedule 3, but due to the amendments introduced by Section 27 of the Policing and Crime Act 2009, it is now necessary to readopt Schedule 3 (including the amendments made by Section 27) to be able to licence all sexual entertainment venues as well as sex shops and sex cinemas.
4. The legislation is not mandatory for local authorities, however, if the Council chooses not to adopt the relevant provisions to regulate sexual entertainment venues by 6 April 2011, then the authority must consult local people about whether they should adopt these provisions as soon as is reasonably practical after that date.
5. In adopting these provisions premises which previously provided these facilities as “Regulated entertainment” under the Licensing Act 2003 licences will no longer able to do so and will need a sex establishment licence.
6. Within Central Bedfordshire there are currently four establishments that fall within Schedule 3: two sex shops and two sexual entertainment venues (which have both been regulated to date by the addition of voluntary conditions on their premise licence under the Licensing Act 2003).
7. Under the legislation, local authorities are allowed to set a limit on the number of sex entertainment venues that they consider appropriate for a particular locality.
8. Adoption of this legislation will :
  - Allow local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate, given the character of the area, for example if the area was primarily residential or next to a school etc.
  - Require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the local authority.
  - Allow a local authority to set a limit on the number of sex establishments as they think appropriate for the area.
  - Allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs that they are currently able to under the Licensing Act 2003.
  - Allow the local authority to set reasonable fees to cover administration and enforcement costs. (Suggested fees will be proposed during the consultation period, for agreement by the relevant working group).

## Adoption

9. For successful adoption, the local authority must pass a resolution under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 to adopt Schedule 3 and specify the day the provisions are to come into effect. This must be no earlier than 1 month after the date of the resolution.
10. The local authority must then publish a notice in a local newspaper for two consecutive weeks stating that they have passed such a resolution and its general effect. The first notice must appear no later than 28 days before the provisions are due to come into force.
11. If the Council resolves to adopt the legislation, the operator of a proposed sex establishment will have to apply for a licence under the Act. There is no presumption that the licence will be granted.
12. Under the Central Bedfordshire Council Constitution the Regulation Committee already has delegated responsibility to licence Sex Shops and Sex Cinemas under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
13. It is recommended that the Constitution Advisory Group are asked to revise the scheme of delegated responsibilities to add to the Regulation Committee delegations "Powers to licence sexual entertainment venues" in Part E2 Annex D of the Constitution.
14. A Central Bedfordshire Council policy on sex establishments is currently out for consultation. This consultation runs from 18 October 2010 to 9 January 2011. Subject to Recommendation 2 being approved, the Policy will then be brought to the Regulation Committee for approval.
15. It is recommended that for Central Bedfordshire Council the date the provisions come into effect is the 1 April 2011 ("the first appointed day"). This will allow adequate time for notices, consultations and the setting of fees.
16. Any existing premise seeking a sexual entertainment venue licence could then apply between 1 April and 1 October 2011 ("the second appointed day").
17. Any such applications must be determined together after 1 October 2011 so that none have priority over another.
18. Any such licences granted will not have effect until 1 April 2012 (the "third appointed day"). Any existing premises falling under the definition of a sexual entertainment venue can continue to operate under their premises licence for a period as specified in The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) (England) Order 2010.

**Conclusion**

19. Central Bedfordshire Council should consider adopting Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in order to regulate both new sexual entertainment venues and those already in existence in Central Bedfordshire. The provisions should come into force from the 1 April 2011 (“the first appointed day”) to allow sufficient time for advertising of the intention to adopt and for a 12 week consultation on the licensing of sexual entertainment venues policy.

**Appendices:** None.

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**Meeting:** Regulation Committee  
**Date:** 17 November 2010  
**Subject:** Adoption of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982  
**Report of:** Gary Alderson, Director of Sustainable Communities  
**Summary:** Approval to publish a notice of the draft resolution in relation to adoption of the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982, for the licensing of Street Trading.

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**Contact Officer:** Patricia Davies (licensing & Policy Officer); David McBain (Licensing Enforcement Officer)  
**Public/Exempt:** Public  
**Wards Affected:** ALL  
**Function of:** Council

#### **CORPORATE IMPLICATIONS**

##### **Council Priorities:**

Educating, protecting and providing opportunities for children and young people – Street trading proprietors are required to undergo Criminal Record Bureau Checks before a consent is issued. Conditions can be placed on consents to protect children from harm.  
Managing growth effectively – This legislation will allow the Council to consider the number of consents and location of street traders.  
Creating safer communities – The conditions that will be considered for each consent will help prevent crime and disorder, protect the public and prevent public nuisance.

##### **Financial:**

There will be advertising costs attached to the public notices which need to be published in the local press and are required for the correct adoption of the legislation. A fee will be payable by applicants which will offset these costs over time. The process of adopting the legislation, and the licensing process will be administered by the licensing team and the fees will be set to cover these costs.

##### **Legal:**

Compliance with the requirements of the Local Government (Miscellaneous Provisions) Act 1982.

##### **Risk Management:**

To ensure that street trading is undertaken in a safe and regulated manner

##### **Staffing (including Trades Unions):**

None

**Equalities/Human Rights:**

The Council has a legal duty to proactively promote race, gender and disability equality and to tackle discrimination experienced by other vulnerable groups. It is the role of the Licensing Authority to administer the licensing regime in accordance with the law and each application would be considered on it's own merits.

**Community Safety:**

The adoption of the legislation to regulate street trading will allow the council to take all reasonable steps to reduce crime and disorder within Central Bedfordshire under Section 17 of the Crime and Disorder Act 1998.

**Sustainability:**

In adopting this legislation Central Bedfordshire Council will be able to develop a policy to ensure a vibrant and thriving leisure industry with safe and well run premises. Compliant businesses can be supported, and resources can be focused at those businesses that will not comply.

**RECOMMENDATIONS:**

- 1. That Regulation Committee approve the publishing of a notice containing a draft resolution in relation to the adoption of the relevant provisions to enable the regulation of street trading from the 1 April 2011.**
- 2. That Regulation Committee recommend that Full Council adopts the relevant provisions to enable regulation of street trading, subject to there being no outstanding, or unresolved, negative representations, and that these provisions come into force on the 1 April 2011.**

**Introduction**

1. Adoption of schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 will enable the Council to control the numbers and quality of street traders in the area. The purpose of this is to allow the Council to add vitality and choice to town centres, ensure a level playing field for all businesses, and to regulate both compliant and non-compliant businesses effectively.
2. Street trading is defined as "The selling or exposing or offering for sale of any article (including a living thing) in a street.
3. A street is defined as "any road, footway, beach or other area to which the public have access without payment, and, a service area as defined in section 329 of the Highways Act 1980".
4. The intention is to make all streets in the area of Central Bedfordshire "Consent streets" – where street trading can lawfully take place with the consent of the Council.

## Adoption

5. For successful adoption the Council must publish a notice containing a draft of the resolution (Appendix A) in a local paper. Copies must be served on the Police and Highway Authority, and it must contain a statement that representations may be made within 28 days.
6. After the expiry of the representation period, any representations received must be considered. Should there be no representations, or any representations received are easily resolved by officers, then the resolution of this Committee, to recommend adoption of the provisions, will be taken directly to Full Council. The Council will be asked to consider the resolution and, if there are no objections, to adopt the relevant provisions.

In the case of any representations that need further consideration, due to the fact that they are unable to be resolved by Officers, a further report will be brought to Regulation Committee, to ask the Regulation Committee to determine how to deal with the representations made. Upon the further resolution of the Regulation Committee, a final report will be taken to Full Council for a decision on whether the resolution should be passed or rejected. In any event, the Regulation Committee shall receive a further report to provide an update to the adoption of the provisions.

7. The local authority must then publish a notice in a local newspaper for two consecutive weeks stating that they have passed such a resolution and its general effect. The first notice must appear no later than 28 days before the provisions are due to come into force.
8. If the Council resolves to adopt the legislation, the operator of a premises under the Act must apply for consent to trade.
9. A Central Bedfordshire Council policy on Street Trading is currently out for consultation. This consultation runs from 18 October 2010 to 9 January 2011. Under the Central Bedfordshire Council Constitution the Regulation Committee have delegated responsibility for the 'Powers to licence market and street traders'. Therefore, the Policy will then be brought to Regulation Committee for approval.

## Conclusion

10. Adoption of this legislation will:
  - Allow the Council to control the number and quality of street traders in the area.
  - Highlight the requirements and standards expected of street traders
  - Add vitality and choice to town centres
  - Allow the local authority to set reasonable fees to cover administration and enforcement costs. (Suggested fees will be proposed during the consultation period, for agreement by the relevant working group).

## Appendices:

Appendix A – Street Trading Draft Resolution

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## **Appendix A – Street Trading Draft Resolution**

### **Local Government (Miscellaneous Provisions) Act 1982 Adoption of Schedule 4 – Street Trading**

Notice is hereby given in accordance with Part III, Schedule 4 of the above Act, that Central Bedfordshire Council intends to make the following resolution:

“That for the purpose of the control of street trading under the relevant provisions of the above Act, all streets within the Central Bedfordshire Council area shall be consent streets where trading may only take place with the consent of the Council.”

If adopted the designations shall take effect from 1<sup>st</sup> April 2011.

If you have any representations regarding the intended adoption please submit the details in writing to The Licensing Team, Public Protection, Central Bedfordshire Council, The Council Offices, High Street North, Dunstable, Beds LU6 1LF within 28 days of the date of this notice.

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