

Public Document Pack

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A meeting of **General Licensing Committee** will be held in Committee Room 2 - East Pallant House on **Wednesday 23 March 2016 at 9.30 am**

MEMBERS: Mr J Ridd (Chairman), Mr H Potter (Vice-Chairman), Mr G Barrett, Mr R Barrow, Mr P Budge, Mr J Connor, Mr J W Elliott, Mrs D Knightley, Mr L Macey, Mr G McAra, Mrs P Plant, Mr D Wakeham, Mrs S Westacott, Mr P Jarvis and Mr N Thomas

AGENDA

- 1 **Chairman's Announcements**
Any apologies for absence that have been received will be noted at this point.
- 2 **Minutes** (Pages 1 - 5)
To approve as a correct record the minutes of the General Licensing Committee held on 21 October 2015.
- 3 **Urgent Items**
Chairman to announce any urgent items which due to special circumstances are to be dealt with under agenda item 8(b).
- 4 **Declarations of Interests**
Members and officers are reminded to make any declarations of disclosable pecuniary, personal and/or prejudicial interests they may have in respect of matters on the agenda for this meeting.
- 5 **Public Question Time**
Questions submitted by members of the public in writing by noon on the previous working day (for a period of up to 15 minutes).
- 6 **Adoption of the Council's Sexual Entertainment Venues Policy for the period 2016 to 2021** (Pages 6 - 26)
To introduce the Council's revised draft Sexual Entertainment Venues Policy for the period 2016 to 2021 and seek its approval by Council on 17 May 2016.
- 7 **Proposed changes to the existing Licence fees for Hackney Carriages and Private Hire Licences** (Pages 27 - 40)
This report provides a summary of the proposed fee changes to the existing Hackney Carriage and Private Hire Licence fees as a result of the Deregulation Act 2015.
- 8 **Consideration of any late items as follows:**
 - (a) Items added to the agenda papers and made available for public inspection;
 - (b) Items which the chairman has agreed should be taken as matters of urgency

by reason of special circumstances to be reported at the meeting.

NOTES

1. The press and public may be excluded from the meeting during any item of business whenever it is likely that there would be disclosure of exempt information as defined in section 100I of and Schedule 12A to the Local Government Act 1972
2. The press and public may view the agenda papers on Chichester District Council's website at [Chichester District Council - Minutes, agendas and reports](#) unless these contain exempt information.
3. Subject to the provisions allowing the exclusion of the press and public, the photographing, filming or recording of this meeting from the public seating area is permitted. To assist with the management of the meeting, anyone wishing to do this is asked to inform the chairman of the meeting of his or her intentions before the meeting starts. The use of mobile devices for access to social media is permitted but these should be switched to silent for the duration of the meeting. Those undertaking such activities must do so discreetly and not disrupt the meeting, for example by oral commentary, excessive noise, distracting movement or flash photography. Filming of children, vulnerable adults or members of the audience who object should be avoided. [Standing Order 11.3 in the Constitution of Chichester District Council]



Minutes of the meeting of the **General Licensing Committee** held in Committee Room 1 - East Pallant House on Wednesday 21 October 2015 at 9.30 am

Members Present: Mr J Ridd (Chairman), Mr H Potter (Vice-Chairman), Mr G Barrett, Mr R Barrow, Mr P Budge, Mr J Connor, Mr J W Elliott, Mr L Macey, Mrs P Plant and Mr D Wakeham

Members not present: Mr I Curbishley, Mrs D Knightley and Mr P Jarvis, Mr G McAra and Mrs S Westacott

In attendance by invitation:

Officers present all items: Mrs K Jeram (Member Services Officer), Mr N Bennett (Litigation Lawyer), Mr I Brightmore (Health Protection Manager), Mr L Foord (Licensing Manager) and Mrs V McKay (Deputy Estates and Valuation Manager)

1 **Chairman's Announcements**

Apologies for absence had been received from Mrs Knightley.

Post meeting note: Apologies were received from Mr Jarvis who had not been notified of the meeting.

2 **Minutes**

That the Minutes of the General Licensing Committee meeting held on 22 October 2014 be approved and signed by the Chairman as a correct record.

3 **Urgent Items**

There were no urgent items for consideration at the meeting.

4 **Declarations of Interests**

There were no declarations of interest in respect of items on the agenda for the meeting.

5 **Public Question Time**

No public questions had been submitted.

6 **Street Trading Guidance - Changes to Charges and Restrictions on Stall Numbers**

The Committee considered the following report copy attached to the official Minutes).

Mr Foord introduced this report and provided the background to street trading within the Chichester City. Since 1991 East Street and North Street had been prohibited streets for street trading purposes and as a result the only way that street trading could take place in these areas was by obtaining a street trading consent or by operating under a pedlar's certificate. These certificates were issued by the Police and enabled an individual pedlar to operate as a pedlar anywhere in the country. The main applications received for street trading consents were from known market providers such as those who ran the Christmas, summer and local food fairs markets, as well as Chichester District Council for its farmers market.

He referred to a report to be considered by Cabinet later in the year concerning the wider provision of markets in the area following consideration by the Traders Market Task and Finish Group of current practices. He advised that the amendment of the Street Trading Guidance would supplement that work. He advised that the Council's charging regime for street trading consents was limited to cost recovery under legislation unlike the private market operators.

Each year four or five privately operated markets took place in East Street and North Street for which the Council received an income of approximately £2,000. It was for the Committee to consider if a review of the current Street Trading Guidance and the current fees was deemed appropriate. The Council had a challenging time dealing with pedlars and explained that one suggestion was to look at the restriction on the number of stall holders which was currently no less than 10 allowed to see if a smaller number of stalls could be permitted.

Mr Bennett explained that the legislation regarding the Council's charging powers was complex and that it was important that the charges were not considered to be an additional tax by charging more than the Council's administrative costs. With regard to the proposal to allow smaller groups of stall holders than 10, there were some concerns in respect of the Council's enforcement powers. There was a concern that by making the number of stall holders too low those persons acting improperly could use the lower number allowed as part of their defence. The current limit made clear the definition between a large market and a group of pedlars.

Mr Foord answered questions with particular reference to the income received by the Council for the farmers market as well as how the different types of market and street trading worked. Mrs McKay added that the fee obtained by the Council for the traders market was a commercial fee. Comment was made by the Chairman questioning whether the current operator of the general market for the traders market was pricing out the traders. Mrs McKay responded that when the contract with the current operator of the general market expired the Council would go out to tender.

She advised that the current fee charged by the market operator to the stall holders was not known and the Council would not necessarily be aware of the fees to be charged to stallholders by the operator if the general market was moved to East Street and North Street. Mr Bennett added that it was hoped that the proposed increase in the scale of charges would be absorbed by the agents running the markets and not passed on to the traders.

In response to a question from a member, Mr Bennett referred to the issue of whether or not the minimum number of 10 stalls should be kept and the impact changes may have on any enforcement action taken by the Council. It was difficult to recommend a suitable figure. However, he advised that if the number was reduced by too much the less difference there would be between an individual pedlar and an approved trader, which could cause difficulties when taking enforcement action. He confirmed that no applications for less than 10 stalls had ever been received by the Council. He added that a request had been received from the Chichester Business Improvement District for the inclusion of Crane Street, Chichester as a consent street for the purposes of street trading.

Mr Foord reported that this Council along with other councils was lobbying the Department for Business, Innovation and Skills (BIS) on the revision of the Street Trading Controls legislation. However, the DBI had issued a statement the previous week advising that this was not a priority and that it would not be considered until late 2016. Mr Foord explained the difficulties encountered when observing pedlars who often only acted as pedlars whilst being observed and may well be stationery when not.

The Chairman reported that the Committee was not being asked to designate the number of stalls to be allowed, but was being asked to give officers authority to review the current Guidance and to look into the number of stalls that could be allowed.

The Committee voted on paragraphs 5.1 to 5.6 of the report as follows:

5.1 – agreed

A recorded vote was taken on paragraph 5.1 as follows:-

For the recommendation (8): Mr Barrett, Mr Barrow, Mr Budge, Mr Elliott, Mr Macey, Mr Potter, Mr Ridd and Mr Wakeham.

Against the recommendation (2): Mr Connor and Ms Plant.

5.2 – agreed.

5.3 – agreed subject to the addition of ... “commercial” markets held in the precinct...

5.4 – agreed

Mr Bennett added that this would be dependent on paragraph 5.1 and any changes to the minimum number of groups of stalls permitted to trade.

5.5 – agreed.

5.6 – agreed.

The Chairman thanked the officers concerned for the progress on this matter.

Resolved

That officers be authorised to revise the Street Trading Consent Guidance to provide for the recovery of costs as indicated at paragraphs 5.1 to 5.6 of the report and to permit street trading by smaller groups of stalls subject to the issue of a trading consent by the Licensing Team which reflects the other criteria of the Street Trading Consent Guidance.

7 Exclusion of the Press and Public

Resolved

That, in accordance with the section 100A of the Local Government Act 1972 the Act), the public and the press be excluded from the meeting during the consideration of the following items on the Agenda for the reason that it is likely in view of the nature of the business to be transacted that there would be disclosure to the public of “exempt information” being information of the nature described in Paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part I of Schedule 12A to the Act and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

8 Street Trading Guidance - Changes to Charges and Restrictions on Stall Numbers

The Committee considered the Part II appendix (Charges and Regulations of Street Trading, Chichester City) to the Street Trading Guidance – changes to Charges and Restrictions on Stall Numbers report.

Mrs McKay provided details of the current and potential charges for street trading within the Chichester City, how these figures were arrived at and responded to questions from the Committee.

At the end of this item the committee resumed in open session in order to consider the outstanding Part I items of business.

9 Housing and Environment Services Enforcement Policy

The Committee considered the following report (copy attached to the official minutes).

Mr Brightmore introduced this report and explained that the current Housing and Environment Services Enforcement Policy had required updating to take into account changes to Government legislation and guidance. The draft Policy had also

been simplified to make it easier for those who were the subject of enforcement action to read.

Officers responded to members questions. Mr Brightmore confirmed that where there were mitigating factors that had led to an offence these would be taken into account and he added that prosecution proceedings were only taken by the Council as a last resort. With regard to the public interest test and the issue of financial gain arising from an offence, Mr Bennett advised that the sentencing guidelines required the offender to be punished more severely. The guidelines also advised that when the Council was assessing whether or not to take enforcement action, it should focus on offences that the courts would take more seriously.

Resolved

That the draft Housing and Environment Services Enforcement Policy be adopted.

10 **Consideration of any late items as follows:**

There were no late items for consideration.

The meeting ended at 11.00 am

CHAIRMAN

Date:

Agenda Item 6

Chichester District Council

GENERAL LICENSING COMMITTEE

23 March 2016

COUNCIL

17 May 2016

Adoption of the Council's Sexual Entertainment Venues Policy for the period 2016 to 2021

1. Contacts

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2. Executive Summary

To introduce the Council's revised draft Sexual Entertainment Venues Policy for the period 2016 to 2021 and seek its approval by Council on 17 May 2016

3. Recommendation to General Licensing Committee

- 3.1 That the draft revised Sexual Entertainment Venues Policy (the Policy) is approved for public consultation.**
- 3.2 That authority be delegated to the Head of Housing and Environment Services to consider any representations arising from the consultation exercise and, provided the representations do not require significant amendments to the draft Policy, to recommend adoption to Council on 17 May 2016 (with minor amendments if considered appropriate) following consultation with the Cabinet Member for Environment.**
- 3.3 In circumstances where significant amendments to the Policy are required that these are reported back to the General Licensing committee for further consideration.**

Recommendations to Council

- 3.4 That the Policy (as amended in accordance with 3.2 and/or 3.3 above) be approved and published.**

4. Background

- 4.1 Communities and local Councils were given greater opportunities to influence whether licensed sex establishments should be allowed to operate in their area following amendments to the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009.
- 4.2 During 2011 the re-adoption of the amended legislation and the development, for the first time, of a documented Sexual Entertainment Venues Policy for Chichester took place.
- 4.3 At Licensing and Enforcement Committee on 10 February 2011 Members were informed that adoption of the amended legislation and formulation of a policy was not compulsory. The Council could have chosen not to pursue adoption however it was emphasised at the time that such a choice would not have given the necessary powers to regularise the provision of striptease and lap-dancing premises.
- 4.4 During the development of the policy Members decided to adopt the amended legislation and that 'nil' was the appropriate number of sex establishments for the Council's area. Careful consideration was given to 'relevant locations' to be included in the policy. Officers were given authority to make the necessary changes to the draft policy prior to consultation and approval by Council.
- 4.5 The current Sexual Entertainment Venues Policy (the 'Policy') received approval by Council on 2 April 2011 along with the re-adoption of the amended legislation for the Chichester area.
- 4.6 Since adoption of the amended legislation and approval of the policy there has been minimal work in this subject area. No applications have been received from potential operators of licensed premises and there has been a single enquiry (2013) regarding a potential 'sex shop' which did not result in an authorisation being necessary based on the business model. The Council's Licensing Team is not in receipt of any intelligence to suggest relevant entertainment is being provided in the district which is reinforced by the absence of complaint.

5. Outcomes to be achieved.

- 5.1 Whilst noting the comments in paragraph 4.6 above, officers believe it is appropriate for this Council to retain a Sexual Entertainment Venues Policy for our area.
- 5.2 No significant amendments are proposed to the existing policy other than basic facts and figures when referring to the characteristics of the district and any changes to the relevant localities since the last draft was prepared. In essence the policy remains unaltered. Unless officers are guided otherwise there is also no intention to amend the previously agreed 'nil' criteria.
- 5.3 In view of the current policy expiring on 2 April 2016 it is necessary to seek approval for appropriate consultation on the proposed policy and obtain approval by Council at its meeting on 17 May 2016.

6. Proposal.

- 6.1 In view of the limited activity associated with this area of work it is proposed to undertake a four week electronic/web-based consultation. Once completed, responses will be considered in accordance with recommendations of this report. Any resulting minor changes to the policy will be discussed with the Head of Housing and Environment Services and Cabinet Member for Environment. It is then requested that Council approve the final policy. After this date the Policy will be used by Officers and Members, alongside national guidance issued by the Home Office when making decisions on any potential individual applications.

7. Alternatives that have been considered.

- 7.1 No alternatives have been considered as it is felt appropriate for the Council to have in place and publish a Sexual Entertainment Venues Policy.

8. Resource and Legal Implications

- 8.1 There are no resource or legal implications associated with this report.

9. Consultation

- 9.1 A four (4) week public consultation exercise will be undertaken starting on 24 March 2016 which will engage a range of statutory partners as well as various interested parties. These will include;

- Responsible Authorities under the Licensing Act 2003 (e.g. Sussex Police, Fire Service, Environmental Health etc.),
- Representatives of the licensing trade (ChiBAC, BID etc.)

- 9.2 All will be advised of the consultation period and provided with a link to the draft Policy which will be displayed on the Council's website.

10. Community impact and corporate risks

- 10.1 There are no community impact and or corporate risks raised by this report.

11. Other Implications

Crime and Disorder	None
Climate Change	None
Human Rights and Equality Impact It is not proposed to significantly amend the existing Policy. However the application of the Human Rights Act 1998 and its relevant Articles in particular, Article 6 (Right to a fair trial), Article 8 (Right to respect for private and family life) and Article 1 of the first protocol (Protection of property) will be considered by the Licensing Authority in the determination of applications and other matters governed by the Policy. Equality issues and their impact will also be duly considered in respect of each application considered	Yes.

by the Licensing Authority.	
Safeguarding	None

12. Conclusion

- 12.1 That Members agree the draft Policy in accordance with the recommendations, support a four week consultation exercise and ultimately approve the document at Council on 17 May 2016 as the Sexual Entertainment Venues Policy for Chichester District Council covering the period 2016 – 2021.

13. Background Papers

Chichester District Council’s Sexual Entertainment Venues Policy
Home Office Guidance ‘Sexual Entertainment Venues’ (March 2010)

14. Appendices

Appendix A Revised copy of draft Policy 2016 - 2021 (not printed but available on CDC’s website)

CHICHESTER DISTRICT COUNCIL

**Sex Establishment Venues
Statement of Policy 2016 – 2021**

**Under the Local Government (Miscellaneous
Provisions) Act 1982
As amended by
Policing and Crime Act 2009**

**DRAFT
VERSION
(V5 09.02.16)**

CHICHESTER DISTRICT COUNCIL

Sexual Establishment Venues

POLICY 2016 - 2021

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CHICHESTER DISTRICT COUNCIL

SEXUAL ESTABLISHMENTS VENUES POLICY 2016 – 2021

FOREWORD

Chichester district is predominantly a rural area. It covers some 303 square miles and is the second largest district (in area) within Sussex. The Census conducted in 2011 reported a population of approximately 114,000 mainly concentrated in the cathedral city of Chichester, the towns of Midhurst, Petworth and Selsey together with the Parishes of Tangmere and Southbourne.

The district includes a significant area which forms part of the South Downs National Park ('SDNP'). The 'SDNP' came into being in 2010 and at the time of adopting this Policy is England's most recently created National Park. The South Downs National Park Authority (SDNPA) became fully operational in 1 April 2011 and is responsible for keeping the South Downs a special place.

This Licensing Authority recognises that the entertainment industry in this district is a major contributor to the local economy. It attracts tourists and visitors, makes for vibrant communities and is a major employer. Balanced against this the Authority is aware of and fully recognises the special and clearly defined role of the SDNPA.

The district also contains the Chichester Harbour Area of Outstanding Natural Beauty, one of the South coast's finest recreational areas as well as being an important natural habitat for birds, flora and fauna.

Presently in June 2015 there are in excess of 3,000 commercial premises of which approximately 1,500 are registered food premises, over 100 accommodation establishments, hotels and B&B's, and one of the largest caravan and campsites in Europe located in Selsey. There are many historic and cultural attractions in the region including Goodwood, with its renowned horse and motor-car racing, Fishbourne Roman Palace, the internationally recognised Chichester Festival Theatre, the Weald and Downland Museum and the award winning Pallant House Gallery.

Throughout the district there are approximately 600 premises operating by way of an authorisation granted under the Licensing Act 2003 i.e. either a Premises Licence or Club Premises Certificate.

The district currently has no premises licensed as a 'Sex Establishment'.

In adopting this Policy the Licensing Authority has set out the approach this Council will generally apply when making decisions on applications. It also sets out the information about the application process, what is expected of applicants and the types of controls that are available to the Council when decisions are made about licence applications. The Licensing Authority confirms that each application will be considered on its individual merits.

The Licensing Authority, in adopting this policy, recognises both the needs of residents and visitors for a safe and healthy environment in which to live, work and enjoy their recreation.

1. INTRODUCTION

1.1 This document sets out Chichester District Council's Policy (the 'Policy') concerning the regulation of and procedures relating to applications for;

- *Sexual Entertainment Venues*
- *Sex shops*, and
- *Sex cinemas*

Hereinafter, referred to as '*Sex Establishments*' as defined in the Local Government (Miscellaneous Provisions) Act 1982 amended by the Policing and Crime Act 2009.

1.2 Whilst every application will be determined on its individual merits the Policy is intended to be of benefit to applicants, operators and the community. It also aims to guide and re-assure communities and public authorities with regards to transparency and consistency in decision-making.

The objectives of this Policy are to –

- Enable applicants, licensees and Interested Parties to understand the principles that will be applied by this Licensing Authority when regulating such premises;
- To establish the general principles that will be applied by this Licensing Authority in its regulatory activities; and
- To assist in applying the national legislation within the local context i.e. within the wards making up the area of Chichester District Council.

1.3 The overriding objective of this Policy is to ensure that any premises licensed by this Council do not contribute directly or indirectly to crime, disorder or harm to individuals or groups within the community; whilst seeking also not to be unduly restrictive of the rights of persons seeking to operate well run premises in appropriate locations.

1.4 The role of the Council, in its position as Licensing Authority, is to administer the licensing regime in accordance with the law and not in accordance with any moral standpoint. The Council is however mindful of the possible concerns of the local community and potential conflict between applicants and objectors. This Policy will guide the Council when considering applications for licenses, seeking to balance the conflicting needs of commercial operators, patrons, employees, residents and communities.

1.5 A copy of the draft revised policy was made available for inspection at the Council Offices and a copy published on the Council's website prior to its adoption.

1.6 This Policy will take effect on 17 May 2016 and will remain in force for a period of five years. During this period it will be kept under review and, if appropriate, it may continue beyond this period subject to future legislative changes.

2. LOCAL CONTEXT

- 2.0 To control 'sex establishments' by way of licensing within the Chichester district, Chichester District Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 10 November 1982. This required anyone wishing to operate such a venue within the district obtaining a licence from the Council.
- 2.1 At the date of this policy Chichester district does not currently have any licensed sex shops or sex cinemas. The district also has no specific lap-dancing or striptease clubs and it is believed there are no licensed premises providing entertainment that would require a Sexual Entertainment Venue licence, for instance pubs and/or clubs where strippers, pole dancers or lap dancers etc perform.
- 2.2 On 6 April 2010 new measures came into force in England under Section 27 of the Policing and Crime Act 2009 ('2009 Act') that reclassified lap-dancing clubs, pole-dancing clubs and strip-shows and similar activities as Sexual Entertainment Venues.
- 2.3 The new legislation, provided Local Authorities re-adopted it, allowed them to regulate such venues under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27.
- 2.4 These powers were not mandatory and only applied where they are adopted by Local Authorities.
- 2.5 Chichester District Council resolved to re-adopt the amended provisions as a result of Section 27 on 1 March 2011 however as previously stated there are no premises within the district identified as falling within the definition of sex establishments at the date of this policy. However, the Council will contact any premises identified as holding activities of a sexual nature with a view to assessment.
- 2.6 Following the new provisions of the 2009 Act, the Authority has more power to control the number and location of lap dancing clubs and similar venues within its district. Should an application be received, the new provisions enable Licensing Authorities to take a broader range of considerations into account before making any decisions about licences. The powers also give local communities a greater influence over the regulation of lap dancing clubs and similar venues in their area.
- 2.7 There are a number of terms that are used in the Local Government (Miscellaneous Provisions) Act 1982, as amended, which have specific meaning as defined in the Act, or which are open to interpretation, and in which case this Policy seeks to set out the interpretation that will generally be applied by this Authority.

3. DEFINITIONS

- 3.1 **The Act** – this refers to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.
- 3.2 **The Policy** – refers to the Chichester District Council 'Sexual Establishment Venues Policy' which will be reviewed at least every five years. Its content will be revisited to incorporate statute and Guidance as appropriate.

3.3 **Sexual Entertainment Venues** – is any premises, vehicle, vessel or stall where any live performance or any live display of nudity is of such a nature that, regardless of financial gain, it must reasonably be assumed to have been provided solely or mainly for the purpose of sexually stimulating any member of the audience (one person can comprise an ‘audience’).

The category ‘Sexual Entertainment Venue’ includes the following forms of entertainment, as they are commonly understood:

- Lap-dancing;
- Pole-dancing;
- Table-dancing;
- Strip-shows;
- Peep-shows;
- Live-sex shows;

These entertainments are defined as ‘*relevant entertainment*’.

Premises, which provide ‘relevant entertainment’ on an infrequent basis, are exempt and are not required to be licensed as a Sexual Entertainment Venue. Exempted premises are defined as premises where –

- No relevant entertainment has been provided on more than 11 (eleven) occasions within a 12 month period;
- No such occasion has begun within a period of one month beginning with the end of the previous occasion;
- No such occasion has lasted longer than 24 hours.

Such premises will continue to be regulated under the Licensing Act 2003, solely in so far as they are providing ‘regulated entertainment’ under that Act. The Council will however carefully monitor the use of these exempt premises and take firm action should there be evidence of abuse.

In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a Premises Licence or Club Premises Certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.

3.4 **The Organiser** – this is any person who is responsible for the organisation or management operation of the relevant entertainment on the premises.

3.5 **Display of nudity** – This means;

- In the case of a woman; exposure of her nipples, pubic area, genitals or anus; and
- In the case of a man; exposure of his pubic area, genitals or anus.

3.6 **Sex Shop** – a sex shop is any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- (a) sex articles
- (b) other things intended for use in connection with or for stimulating or encouraging: -
 - (i) sexual activity
 - (ii) acts of force or restraint which are associated with sexual activity.

3.7 **Sex Articles** – is anything for use in connection with or for stimulating or encouraging:

- (a) sexual activity
- (b) acts of force or restraint which are associated with sexual activity
- (c) anything –
 - (i) containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
 - (ii) to any recording of vision or sound, which
 - (a) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
 - (b) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

3.8 **Sex Cinema** – is any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures however produced, which:

- (a) are concerned primarily with the portrayal of, or primarily deal with or relate to or intending to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity
- (b) are concerned primarily with the portrayal of, or primarily deal with or relate to genital organs or urinary or excretory functions but does not include a dwelling-house to which the public is not admitted.

3.9 **Relevant locality** – this is the locality where premises are situated or where the vehicle, vessel or stall is going to be used as a sex establishment. The locality and the area that this covers is a matter for the Authority to decide at the time it considers an application for the grant, renewal or transfer of a sex establishment licence.

3.10 **Permitted hours** – These are the hours of activity and operation that have been authorised under a sex establishment licence.

3.11 **Appropriate Authority** – Chichester District Council is the ‘Appropriate Authority’ for the purposes of the sex establishment licensing regime introduced by the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and adopted by the resolution of the Council on the 1 March 2011 taking effect from the 2 April 2011.

4. GENERAL PRINCIPLES OF THE POLICY

- 4.1 This Policy has been prepared with due regard to the provisions of the Crime and Disorder Act 1998 in respect of the reduction of crime and disorder including anti-social behaviour and other behaviour that can, or is adversely affecting the relevant localities described below. This Authority will work closely with the Police and other partners/responsible authorities to achieve the objectives of the Act and those set out in this policy.
- 4.2 This policy should be read in conjunction with the relevant legislation and the Home Office Guidance (dated March 2010) which refers to case law in relation to not considering objections on moral grounds/values and in relation to whether or not an entire area can be deemed to be the 'relevant locality' when considering setting a limit on the appropriate number of sex establishments for that locality. These matters are considered in more detail later in this policy. The policy will continue to be reviewed in light of developing practices, Guidance and any further secondary legislation. Any significant future amendment will only be implemented after further consultation with the partner agencies and individuals originally consulted.
- 4.3 Any significant amendment is defined as one that:
- Is likely to have a significant financial effect of the licence holders; or
 - Is likely to have a significant procedural effect on the licence holders; or
 - Is likely to have a significant effect on the community
- 4.4 Any minor amendments may be authorised by the Head of Housing and Environment Services and undertaken in accordance with the Council's Constitution.
- 4.5 This policy does not in any way fetter the discretion of the decision makers appointed by this Authority, and each case will be taken on its individual merits. The main consideration when determining matters under this policy is whether to apply the policy as set out or whether there is good reason, having regard to all relevant matters and disregarding all irrelevant matters, to deviate from the policy if the individual facts warrant a different approach to be taken. Every decision will be approached with an open mind.
- 4.6 If this Authority receives an application for a sex establishment licence under the Act, it will consider whether to grant or refuse the application. Given the potentially sensitive nature of these applications, it is the policy of this Authority at this time that all such determinations shall be made by the Council's General Licensing Committee rather than through delegated powers.
- 4.7 Specific mandatory grounds for the refusal of a Licence are set out in the Act.
- 4.8 A Licence cannot be granted:
- a) to a person under 18 years of age;
 - b) to a person that has held a Licence that was revoked in the last 12 months (from the date of revocation) and who was disqualified from holding a Licence for that period:

- c) to a person who has been refused a new Licence or renewal of Licence within the last 12 months (from the date of making the application);
 - d) to an individual who is not resident in the United Kingdom or who has not been resident for six months prior to the making of an application; or
 - e) to a company not incorporated in the United Kingdom.
- 4.9 In determining an application for the grant, renewal or transfer of a Sex Establishment Licence the Licensing Authority will assess the application on its individual merits having regard to the content of this policy and any relevant legislation or Guidance.
- 4.10 The Local Authority will take into account representations from the applicant, any person objecting and the Chief Officer of Police. The Council shall normally take the following into account when determining whether an applicant is 'fit and proper':
- a) previous relevant knowledge and experience of the applicant and their managerial competence;
 - b) the operation of any existing or previous licence(s) held by the applicant, including any licence held in any other area;
 - c) any report about the applicant and management of the premises received from objectors or the Police and any criminal convictions or cautions of the applicant;
- 4.11 The Authority may also refuse a Licence if the applicant is unsuitable to hold a Licence because they have been convicted of an offence or for any other reason. The determination of the suitability of the applicant is a matter for the Local Authority to decide at the time the application is made.
- 4.12 Whilst every application will be considered on its individual merits the Authority will be unlikely to grant an application from any person, or for the benefit of any person, with unspent convictions.
- 4.13 Applications for a Sex Establishment licence may be refused where the Authority is not satisfied that the application has been advertised in accordance with the requirements of the Act.
- 4.14 The Authority may refuse to accept an application where it considers that relevant information has been omitted or an application is incomplete.
- 4.15 Where the Authority refuses to grant, renew or transfer a licence a Notice of the reasons for that decision will be sent in writing to the applicant within seven days of that decision.
- 4.16 Were the Licence to be granted, renewed or transferred, the business to which it relates would be managed or carried on for the benefit of a person other than the applicant, who would have been refused a Licence if they had applied themselves. The determination of the business benefit is a matter for the Local Authority to decide at the time of application. Again each application will be considered on its own merits.

5. RELEVANT LOCALITY

- 5.1 The 'relevant locality' will be determined in accordance with where the premises are situated or where the vehicle, vessel or stall is going to be used. The area and extent of the 'relevant locality' is a matter of the Local Authority to decide at the time the application is made. Each application for the grant, renewal or transfer of a Sex Establishment Licence will be considered on its own merits on a case-by-case basis.
- 5.2 This Licensing Authority considers the 'relevant locality' to mean the area which surrounds the premises specified in the application; and in accordance with the legislation, does not seek to further define any precise boundaries or markings.
- 5.3 A decision to determine the number of Sex Establishments appropriate for this particular area has not been made, however this may be subject to review. Nil may be the appropriate number.
- 5.4 On receipt of an application the Local Authority will take into account representations from the applicant, any person objecting and the Chief Officer of Police. The Council shall normally take into account:
- Comments/observation of the Police and Council personnel, including compliance with licensing conditions, relevant history (including noise complaints) together with details of previous convictions/prosecutions pending.
 - The suitability and fitness of an applicant/operator to hold a licence.
- 5.5 The number of Sex Establishments or Sex Establishments of a particular kind in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality.
- 5.6 The Licensing Authority shall normally take into account;
- i) the character of the relevant locality;
 - ii) the use to which any premises in the vicinity are put; or
 - iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made;
 - iv) where it can be shown that the business would be managed for the benefit of a third party who would be refused a licence.
- 5.7 In determining the character of 'relevant locality' and the appropriate number of Sex Establishment in that relevant locality, the Local Authority will take into account, but not limit its determination to:
- (a) the use to which any premises in the vicinity are put;
 - (b) the number of existing Sex Establishments both in total and also in respect of each type, i.e. sex cinemas, sex shops or sexual entertainment venues;
 - (c) the number of existing premises engaged in and/or offering entertainment of an adult or sexual nature or entertainment or associated with an adult or sexual nature (for example tattooing, piercing);

- (d) the proximity of residents to the premises, including any sheltered housing and accommodation for vulnerable persons;
- (e) the proximity of educational establishments to the premises;
- (f) the proximity of places of worship to the premises;
- (g) access routes to and from schools, play areas, nurseries, children's centres or similar premises;
- (h) the proximity to shopping centres;
- (i) the proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs. This list is not exhaustive;
- (j) the potential impact of the licensed activity on crime and disorder and public nuisance;
- (k) the potential cumulative impact of licensed premises in the area taking into account the days and hours of operation of the activity and the character of the locality where the premises are situated;
- (l) the nature and concerns of any objections received from residents/establishments objecting to the licence application;
- (m) any evidence of complaints about noise and/or disturbance caused by the premises;
- (n) current planning permission/planning requirement on the premises;
- (o) any current planning policy consideration;
- (p) whether there is planned regeneration of the area;
- (q) any current licensing permissions related to the premises in relation to activities, uses and hours.

Determining Applications

- 5.8 The Council has determined that the principles contained within this policy will apply and that applicants must address the principles of this policy in order for any grant of an application to be considered.
- 5.9 The Council can set the number of licensed Sex Establishments it grants in a 'relevant locality'.
- 5.10 An application for a Licence can be refused if the Council considers that the number of Sex Establishments they consider appropriate in a 'relevant locality' would be exceeded by the grant. The term 'relevant locality' is not defined in the Act.

- 5.11 This Council has therefore decided to identify areas in which they do not consider the granting of a Sex Establishment licence to be appropriate.
- 5.12 Chichester District Council covers an area, which includes urban and rural communities.

Chichester, Midhurst, Petworth and the 'Manhood peninsula'

- 5.13 The four main conurbations are the city of Chichester, towns of Midhurst and Petworth and the area referred to as the 'Manhood Peninsula' (including Selsey, and East and West Wittering) these have busy and diverse shopping centres laid out as traditional 'High Streets', incorporating a mixture of independent and national traders.
- 5.14 Commonly included in these areas are a large and diverse range of licensed premises such as pubs, restaurants, cafes and take-away food outlets. There are community facilities in the form of libraries, community centres, schools and places of religious worship.
- 5.15 There are also a number of residential properties within the City and Town centres themselves, many above and adjoining retail units. Bordering these 'High Streets' are large residential areas. Access is equally viable on foot, public or private transport. Accordingly the footfall covers all range groups.
- 5.16 This Council considers that licensed sex establishments may not be suitable for these relevant localities.

Rural communities

- 5.17 Throughout the Chichester district there are currently 29 District Wards and 67 Parishes (59 of which have a Parish Council) consisting of small villages and rural communities. Many of these also have smaller shopping areas.
- 5.18 This Licensing Authority has identified these areas as significantly quieter than those specifically referred to above. Many of these areas however also have pubs, restaurants and take-away outlets. They are not therefore immune to entertainment venues. They too have residential properties either within the trading areas or bordering the main shopping streets, together with residential accommodation above or adjoining retail units. The footfall in these quieter areas still covers all age groups.
- 5.19 This Council considers the association that Sex Establishments have with the 'sex industry' and adult entertainment means they are not suitable for these relevant localities.
- 5.20 There are a number of rural localities within the Chichester district that have small residential communities and businesses. These include agricultural and/or horticultural businesses, operations run from rented accommodation in farms and in some cases small industrial units.
- 5.21 These communities have chosen to live and/or work from these locations because of its tranquillity. The Council wishes to maintain these standards its residents,

businesses in the area and for visitors to enjoy. These areas are too numerous to list due to the size of the district.

5.22 This Council considers that licensed sex establishments may not be suitable for these relevant localities

Business Parks and Industrial Estates

5.23 There are a number of Business Parks/Industrial Estates within the district.

1. Selsey Gate - Pye Business Centre/Mountbatten Place/Pulsar Business Centre/Ellis Square, Selsey
2. Landerry Industrial Site - Selsey
3. Chichester Business Park - Tangmere
4. Terminus Road Industrial Estate – Terminus Road, Leigh Road, Chandler Road - CHICHESTER
5. Dukes Court - Bognor Road CHICHESTER
6. Quarry Lane Industrial Estate - Quarry Lane, Phoenix Business Centre, Spur Road, Angells Estate, Gravel Lane - CHICHESTER
7. Forum Business Centre - Stirling Road CHICHESTER
8. City Business Centre - Basin Road CHICHESTER
9. Appledram Barns, Appledram
10. Vinnetrow Business Park - Runcton
11. North Farm North - Mundham
12. Donnington Park - Donnington
13. St James Industrial Estate - CHICHESTER
14. Ben Turner Industrial Estate - CHICHESTER
15. Shopwhyke Industrial Centre - CHICHESTER
16. Kingley Centre - West Stoke
17. Eastmead Industrial Estate - Lavant
18. Oldwick Farm West - Lavant
19. Charlton Sawmills - Charlton
20. Allmans Business Park - Birdham
21. Northleigh Business Park – Birdham
22. Enborne Business Park, Sidlesham
23. Hills Barns - Chichester
24. East Wittering Business Centre, East Wittering
25. Manor Road EMSWORTH
26. Clovelly Road Industrial Estate – Southbourne/Emsworth
27. Broadbridge Business Centre Bosham
28. Southfield Industrial Park Bosham
29. Holmbush Industrial Estate - MIDHURST
30. The Wharf/Midhurst Business Centre – MIDHURST
31. Hampers Common Industrial Estate – PETWORTH
32. Colhook Industrial Park – PETWORTH
33. Hurstfold Farm Industrial Estate Fernhurst
34. Fernhurst Business Park - Henley, Fernhurst
35. The Old Sawmills Stedham
36. Station Works Elsted
37. Nyewood Industries Nyewood
38. Bognor Road Industrial Estate - CHICHESTER

5.24 The size of these sites varies, but they consist of anything from warehouses, retail outlets and distribution centres to car repair units.

5.25 The hours of operation are generally early morning to early evening.

- 5.26 The nature of the Chichester district is such that these are not sprawling areas and many are bounded by residential communities. Whilst it is accepted that the Business Parks themselves have no residents, consideration must be given to the business communities therein.
- 5.27 The siting of a Sex Establishment within the confines of such areas may give rise to concern.
- 5.28 The issue of late night opening is a factor that must be taken into account. The areas are likely ordinarily to be quiet after the respective units have ceased operating. Customers frequenting Sex Establishments may therefore be vulnerable in these areas, particularly after dark. There is also the question of increased footfall during hitherto quiet times and the inherent risk of opportunist and organized crime against the business units.
- 5.29 This Council acknowledges that a Sex Establishment venue in a business/industrial area does not carry the same risk to vulnerable groups as a residential or retail area. However it does conclude a different type of crime risk, due to the loneliness of the operation and the subsequent risk to established businesses.
- 5.30 This Council considers that licensed sex establishments may not be suitable for these relevant localities and near residential areas.

6. INTEGRATING STRATEGIES AND AVOIDING DUPLICATION

- 6.1 This Authority understands that the co-operation and integration of policies, strategies and initiatives is important. Such integration will be achieved through liaison with the Planning Authority (Development Management or SDNPA), Housing & Environment Services, Police, Trading Standards, Fire Authority, Community Safety Partnership, local businesses, local people and other persons. Agreement about best practice will be achieved where possible.
- 6.2 In addition to the above the Authority will also seek to secure integration of its policy with local crime prevention, transport, tourism, race equality schemes and cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Agreement about best practice will be achieved where possible.
- 6.3 In undertaking its licensing function and in determining applications, the Authority recognises and accepts the duty imposed on it to fulfil its obligations under other legislation, at the same time avoiding duplication as far as possible.

In particular, the Licensing Authority is mindful of statutes and related guidance on:

- Section 17 of the Crime and Disorder Act 1998 (as amended) which requires a Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on and the need to do all that it reasonably can to prevent crime and disorder in the district;
- The European Convention on Human Rights, which is given effect by the Human Rights Act 1998, places a duty on public authorities to protect the rights of individuals in a variety of circumstances. In particular, due consideration will be given to the rights under article 1 of the first protocol – protection of property, article 6 – right to a fair hearing and article 8 – respect for private and family life;
- Health and Safety at Work etc Act 1974 and its associated Regulations;
- Environmental Protection Act 1990, in relation to statutory nuisance;

- The Anti-social Behaviour, Crime and Policing Act 2014 in relation to public nuisance;
- Equality Act 2010 in relation to elimination of unlawful discrimination and promoting premises that show safe design for all users;
- The Clean Neighbourhoods and Environment Act 2005 (as amended); and
- The Health Act 2006.

7. DURATION OF LICENCE

- 7.1 Sex Establishment licences will normally expire on an annual basis, but can be issued for a shorter term if deemed appropriate.

8. HEARINGS/APPEALS

- 8.1 Under Paragraph 10 (19) Schedule 3, this Authority will give applicants the opportunity of appearing before the relevant Licensing Sub-Committee prior to a decision being made to refuse the grant, variation or transfer of a licence.
- 8.2 Where the Licensing Authority is required to determine an application by reference to a Sub-Committee, the applicant and objectors will be advised of the date, time and venue of the hearing.
- 8.3 In preparation for the hearing, all parties will receive a copy of the Licensing Officer's report that will contain a summary of the application, objections and any other relevant information.
- 8.4 At the hearing, all parties will have the opportunity to address the Sub-Committee and ask questions of all parties that they feel are relevant to the determination process. All parties will be reminded that they can if they wish be legally represented at their own expense at the hearing.
- 8.5 The Sub-Committee will either communicate the decision at the end of the hearing or within five working days. All parties will receive written notification of the decision within seven working days.
- 8.6 Whilst the Act does not stipulate a timescale for hearing applications where objections have been submitted and accepted, this Licensing Authority will endeavour to determine the application within 28 days from the last day of the advertising period.
- 8.7 The Act strictly limits who can appeal to the Magistrates Court, the matters about which they can appeal. The Act affords rights of appeal to the industry only. The decisions against which a right of appeal lies are refusals of grants, renewals, transfers or variations, the imposition of conditions and also revocations.
- 8.8 Any appeal to the Magistrates Court must be made within 21 days from the date on which the person is notified of the decision or became aware of conditions imposed by the Licensing Sub-Committee.
- 8.9 Where an application is lodged against refusal to renew or for revocation of a licence, the licence remains in force until such time as the appeal is determined.

- 8.10 Where an appeal is lodged against conditions applied to a licence, the conditions are deemed not to come into force until the determination or abandonment of the appeal.

9. CONDITIONS

- 9.1 This policy provides for a set of 'standard conditions' to be attached to each licence granted, renewed or transferred by the Licensing Authority unless they have been expressly excluded or varied. Such conditions will be applicable to Sex Establishments, Sex Cinemas and Sex Shops.
- 9.2 Further conditions may be attached to individual licences where the Authority deems it necessary.
- 9.3 The Licensing Authority will seek to avoid duplicating licence conditions where a premise holds licences under both the Licensing Act 2003 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

10. ENFORCEMENT

- 10.1 It is essential that premises are maintained and operated so as to ensure compliance with the specific requirements of the Act and the relevant licence. The Licensing Authority will make arrangements to monitor premises and take appropriate action to ensure this.
- 10.2 The Licensing Authority will liaise with Sussex Police and partner agencies on issues of enforcement including such matters as crime prevention, public safety, public nuisance, protection of children from harm, transport and anti-social behaviour, with the view to establishing, where necessary, an enforcement protocol in order to ensure that resources are targeted at problem and high-risk premises.
- 10.3 Premises visits will be made on a targeted and risk-assessed basis, or as necessary e.g. following a complaint.
- 10.4 Wherever possible inspections will be co-ordinated with other inspection/enforcement/partner agencies.
- 10.5 When considering enforcement action, the Licensing Authority will consider each case on its own facts and merits and in accordance with the Housing & Environment Services Enforcement Policy.
- 10.6 The Licensing Authority may from time to time exercise its power under Section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners to fulfil its statutory objective of reducing crime and disorder.

11. HUMAN RIGHTS

- 11.1 In determining applications, the principles of the Human Rights Act 1998 must be taken into consideration. The Act acknowledges that Local Authorities are entitled, amongst other things, to act where this is in the 'general interest'.
- 11.2 Should it be decided to refuse or to grant an application, or to attach conditions, the rights of appeal that exist through the Magistrates Court will ensure that the principles of the Human Rights Act 1998 are adhered to.

12. POLICY REVIEW

- 12.1 As indicated above, this Policy will take effect on the 17 May 2016 and will remain in force for a period of five years.

Chichester District Council
General Licensing Committee
23 March 2016

Proposed changes to the existing Licence fees for Hackney Carriages and Private Hire Licences

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2. Executive Summary

This report provides a summary of the proposed fee changes to the existing Hackney Carriage and Private Hire Licence fees as a result of the Deregulation Act 2015.

3. Recommendation

- 3.1 That Members adopt the proposed fees policy for the Hackney Carriage and Private Hire Licensing Regimes set out within Appendix 1 of this report.**
- 3.2 That Members consider and approve for public consultation the proposed Licence fees for 2016/17 for Hackney Carriages, Private Hire Vehicles and all Hackney Carriage/Private Hire Drivers Licences and all Private Hire Operators Licences within the Chichester District which are set out at Appendix 2.**

4. Main Report

Introduction

- 4.1 Currently most Local Authorities issue a driver's licence and private hire operator's licence for 1 year, however, Section 53 (drivers) and Section 55 (private hire operators) of the Local Government (Miscellaneous Provisions) Act 1976 (LG(MP)A) does permit for a driver's licence to be issued for up to 3 years and for a private hire operator's licence to be issued for up to 5 years.
- 4.2 The LG(MP)A has been amended by Section 10 of The Deregulation Act 2015 the effect being that Local Authorities should now issue hackney carriage and private hire driver's licences for the maximum period of 3 years and private hire operator's licences for the maximum period of 5 years. Such licences should only be issued for a lesser period if **'appropriate to the circumstances of the case'**. It is worth

noting that these changes have no impact upon the duration of hackney carriage or private hire vehicle licences.

- 4.3 As a result of the Deregulation Act 2015, an extensive review of this Council's taxi and private hire fees has been undertaken, in order to ensure that all fees associated with each application type have been properly costed and to determine what the appropriate fee would be for 3 year driver licences and 5 year private hire operator licences.
- 4.4 A document called 'Chichester District Council's Fees Policy for the Hackney Carriage and Private Hire Licensing Regimes' (The 'Fees Policy') has been devised listing key legal aspects and case law, as well as, outlining the methodology used to calculate the fees. A copy of this document is at **Appendix 1**. Some of the key legal points have been summarised below.

Legal Principles

- 4.5 Under Section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976 Chichester District Council, as Licensing Authority, "*may demand and recover for the grant to any person of a Licence to drive a Hackney Carriage, or a Private Hire Vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of **issue and administration** and may remit the whole or part of the fee in respect a Private Hire Vehicle in any case in which they think it is appropriate to do so.*"
- 4.6 It is clear from the above and from the significant case law set out in the Fees Policy (**Appendix 1**) that fees for both hackney carriage and private hire drivers have to be reasonable and with a view to recovering the cost of issue and administration of the licenses. Administration has been interpreted to encompass compliance with the terms of the licence i.e. investigating complaints, conduct issues that might result in Committee Hearings etc. However, this Section of the Act makes no provision for recovering the costs of enforcement in relation to driver licenses.
- 4.7 Section 70(1) of the 1976 Act allows the Council to charge "*such fees for the grant of vehicle and operators licences as may be resolved by them from time to time and is maybe sufficient in the aggregate to cover in whole or in part.....*
- a) *the reasonable cost of carrying out by or on behalf of the District Council of inspections of Hackney Carriages and Private Hire Vehicles for the purpose of determining whether any such licence should be granted or renewed;*
 - b) *the reasonable cost of providing Hackney Carriage stands; and,*
 - c) *any reasonable administrative and other costs in connection with the foregoing and with the control of the supervision of Hackney Carriages and Private Hire Vehicles"*
- 4.8 In relation to the fees for hackney carriage and private hire vehicles, fees can be set to recover the cost not only of issue and administration of licences but also the cost of providing taxi ranks and other enforcement costs.
- 4.9 Different fees can be set in relation to hackney carriage vehicles and private hire vehicles to enable the cost of taxi ranks to only be recovered in respect of hackney carriage vehicles, as only these can use the ranks. However, the Chichester

District only benefits from a small hackney carriage fleet with the main two ranks being North and South side of Chichester Railway Station. Therefore at this current time it is not felt appropriate to be levying an additional charge for the creation and maintenance of ranks.

Proposed Fees for 2016/17

- 4.10 The Fees Policy (**Appendix 1**) outlines the methodology used to calculate the fees associated with each application type. A summary of the proposed fee structure can be found at **Appendix 2**.
- 4.11 Projected 2016/17 figures are based upon the assumption that the take up of 3 year driver licences and 5 year operator licences will be 80% each and the remaining 20% will be 1 year licences. This will result in income peaking in the first year, with income dropping substantially in the remaining 3 year period relating to drivers and 5 year period relating to operators. The figures above take this into account and have been averaged out in order to give a fair comparison.
- 4.12 The main reasons for the fall income after year 1 of the scheme is as follows:
- Drivers – Assumption that the majority of drivers will opt for the 3 year licence.
 - Drivers – Historically the fee for a dual licence has been double that for a hackney or private hire i.e. 2 x £85. There are no additional checks involved when processing an application for a dual licence. Therefore the dual driver's licence has been changed to the same fee as a single driver's licence. Only a small proportion of our drivers hold a dual licence.
 - Vehicles – Costs associated with providing this service have been re-assessed.
 - Vehicles – Since the fees were last reviewed in 2010, CDC policy has been implemented to require vehicles, over 5 year's old, to have 6 monthly MOT and fitness checks. The fitness checks must take place at our Westhampnett depot and also most proprietors make use of the MOT service provided by the Council at the same time. As a result the need for officers to spend time on checking vehicle standards and compliance has fallen.
 - Vehicles – No additional fee levied against hackney carriage vehicles for the provision of taxi ranks.
 - Private Hire Operators – Moving away from a tiered charging system based on size of fleet to a flat rate fee. The tasks associated with an application for a private hire operator licence and subsequent compliance is not necessarily influenced by the amount of vehicles operated.
 - Private Hire Operators – The assumption that the majority of operators will opt for a 5 year licence.
- 4.13 A benchmarking exercise has also been undertaken to compare the new proposed fees with neighboring Local Authorities to help provide Members with some comparative figures. This appears at **Appendix 4**.

Public Consultation on Fees Policy

- 4.14 Following consideration of the proposed new fees by Members there is a requirement upon the District Council to publish a public consultation notice in at least one local newspaper circulating in the area. Legislation then allows for

objections to be made against the proposed fees within a prescribed 28 day period from the date of publication of the notice. Any such objection(s) must be submitted in writing to the District Council within this period.

- 4.15 The General Licensing Committee will then consider any objection(s) or comment(s) received during the consultation period before determining whether to adopt the proposed fee structure in full or modify the fees in light of the comments received. The Committee have the ability to make any modifications to the fees as deemed necessary.

5. Conclusion

- 5.1 Following the legislative change outlined in this report a comprehensive review of Chichester District Council's taxi and private hire fee structure has been undertaken.
- 5.2 Licence fees are set at a level that it is reasonably believed will cover the costs of providing the service, and in accordance with the legal principles involved. This is necessary in order to ensure that the taxi and private hire communities are charged correctly, whilst at the same time minimising the taxpayer's subsidy of the work concerning the taxi/private hire licensing regime.

6. Human Rights and Equality Impact

- 6.1 The application of the Human Rights Act 1998, in particular the application of Article 8, Article 14 and Article 1 of Protocol 1 of the Convention will be considered in relation to the application and implementation of the recommendations contained in this report.
- 6.2 There are no equality issues raised by this report.

7. Background Papers

- 7.1 'Open For Business' – Local Government Association Guidance in locally set fees (Nov 2015)
- 7.2 James Button Bulletin - 'Licensing Fees – An Update' (June 2013)
- 7.3 James Button Bulletin (Dec 2015)
- 7.4 Button on Taxis: Licensing Law and Practice (Third Edition)
- 7.5 All Wales Licensing Expert Panel – Taxi Fees Toolkit v2.1

8. Appendices

Appendix 1 Chichester District Council's Fees Policy for the Hackney Carriage and Private Hire Licensing Regimes

Appendix 2 Proposed Fee Structure for 2016 onwards

Appendix 3 Benchmarking exercise comparing proposed fees with those charged by neighbouring Authorities

Chichester District Council's Fees Policy for the Hackney Carriage and Private Hire Licensing Regimes (Appendix 1)

The Local Government (Miscellaneous Provisions) Act 1976 (The 1976 Act) has been amended by the Deregulation Act 2015 (The 2015 Act).

As of 1st October 2015 Local Authorities are required to offer 3 year Hackney Carriage (HC) and Private Hire (PH) Driver Licences and 5 year PH Operator Licences as the norm and only issue licences for shorter periods 'as appropriate to the circumstances of the case'.

In light of the above a comprehensive review of Chichester District Councils HC and PH Licensing Fee structure has been undertaken.

This policy has been developed with reference to the following documentation:

- LGA Open for business - LGA guidance on locally set fees (Nov 2015)
- James Button Bulletin - 'Licensing Fees – An Update' (June 2013)
- James Button Bulletin (Dec 2015)
- Button on Taxis: Licensing Law and Practice (Third Edition)
- All Wales Licensing Expert Panel – Taxi Fees Toolkit v2.1

The policy relates to the following matters:

- The legal principles that govern the setting of fees;
- The fee payable in each circumstance;
- The method of apportionment of those costs in setting those fees;
- Propose implementation date;
- How surpluses and deficits are to be treated; and
- Other matters that are deemed to be relevant.

1. Key principles for the setting of licence fees

Outlined below is a list of key principles that need to be considered when Local Authorities are setting a fees policy. It is worth noting that some of these cases are not specific to HC or PH Licensing regimes, but provide strong guidance as to how fees should be set.

1. There must be a proper determination of the authorisation fee (See Hemming [2013] EWCA Civ 591).
2. A clear understanding of the policy and objects of the regime in question is required (See R v Manchester City Council ex parte King (1991) 89 LGR 696; also R (on the application of Davis & Atkin) v Crawley Borough Council [2001] EWHC 854 (Admin)). Particular attention needs to be had to those statutory

provisions where a power is given to the local authority for the determination of an authorisation fee and other administrative fees.

3. Although the European Service Directive does not apply to HC or PH Licensing Regimes it is useful to make reference to its core principle for fee setting – *non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible* – apply to fee setting and are already practiced by a large number of councils with the aim of ensuring a fair and transparent approach for local businesses and communities.
4. Different fee levels for different types of application. A Local Authority is entitled to set either the same or different fee levels for different types of applications: i.e. grant, renewal, variation, alteration or transfer. *R v Greater London Council, ex parte Rank Organisation [1982] LS Gaz R 643.*
5. Recovery of deficit. In *R v Westminster City Council, ex parte Hutton (1982) 83 L.G.R. 461* it was held that where the fee income generated in one year fails to meet the costs of administering the licensing system, it is open to the local authority to make a proportionate increase in the licence fee for the following year so as to recoup the cost of the shortfall (Hutton at p518). This longstanding principle was confirmed in *Hemming [2012]*.
6. Accounting for surplus. In *Hemming [2012] EWHC 1260 (Admin)* and *[2013] EWCA Civ 591* the court determined surpluses as well as deficits are to be carried forward. The Local Authority is not entitled to make a profit (*R v Manchester ex parte King 1991 89 LGR 696*).
7. Rough and ready calculations. In *Hemming [2012] EWHC 1260 (Admin)* and *[2013] EWCA Civ 591* the court did not require pin-point precision year on year. The Local Authority does not have to adjust the licence fee every year to reflect any previous deficit or surplus, so long as it ‘all comes out in the wash’. And the adjustment does not have to be precise – a rough and ready calculation which is broadly correct will suffice.
8. Anticipated costs. Cases demonstrate that the fee level may be fixed by reference to anticipated costs of administering the authorisation scheme.
9. Over–estimation. If the fee levied in the event exceeds the cost of operating the scheme, the original decision will remain valid provided it can be said that the Local Authority reasonably considered such fees would be required to meet the total cost of operating the scheme. *R v M ex parte King*.

2. Legal framework

Under Section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976 Chichester District Council, as Licensing Authority, “*may demand and recover for the grant to any person of a Licence to drive a Hackney Carriage, or a Private Hire Vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of*

the fee in respect a Private Hire Vehicle in any case in which they think it is appropriate to do so.”

It is clear from the above and from the significant case law outlined in Section 1 that the fees for both hackney carriage and private hire drivers have to be reasonable and with a view to recovering the costs of issue and administration of the licenses. Administration is interpreted to encompass compliance with the terms of the licence i.e. investigating complaints, conduct issues that might result in Committee Hearings etc. However, this Section of the Act makes no provision for recovering the costs of enforcement in relation to driver licenses.

Section 70(1) of the 1976 Act allows the Council to charge “*such fees for the grant of vehicle and operators licences as may be resolved by them from time to time and is maybe sufficient in the aggregate to cover in whole or in part.....*”

- a) *the reasonable cost of carrying out by or on behalf of the District Council of inspections of Hackney Carriages and Private Hire Vehicles for the purpose of determining whether any such licence should be granted or renewed;*
- b) *the reasonable cost of providing Hackney Carriage stands; and,*
- c) *any reasonable administrative and other costs in connection with the foregoing and with the control of the supervision of Hackney Carriages and Private Hire Vehicles”*

In relation to the fees for hackney carriage and private hire vehicles, however, fees can be set to recover the cost not only of issue and administration of licenses but also the cost of providing taxi ranks and other enforcement costs.

3. Summary of legal framework and case law

In summary, the 1976 Act and associated case law enables a Local Authority to reclaim costs for:

- the issue and administration (including compliance) of a HC and/or PH Driver Licence;
- the issue and administration (including compliance) of a Private Hire Operator Licence;
- the issue, inspection, control and supervision (including enforcement) of HC and PH Vehicle (An additional charge can be levied against the HC Vehicle Licence for rank provision and maintenance).

It is worth reiterating that the local authority is prevented from:

- Making a profit (Any surpluses to be paid back over the course of time by recalibrating fees at a lower level);
- Recovering costs in relation to unsuccessful applications for the grant of new licences i.e. new applications that are refused by Committee;
- Recovering any enforcement costs in relation to HC and PH drivers, as well as, PH Operators;

- Recovering enforcement costs associated with unlicensed drivers/operators/vehicles;
- Recovering costs associated with Freedom of Information and Data Protection Act requests as separate provision is made for this; and
- Appeals against decisions made by the Committee. With enforcement action there is the possibility to recover some or all of the cost through the court process, however, this would be at the court's discretion.

4. Methodology for breakdown of tasks and time allocation

Each application type has been broken down into its constituent parts in order to identify clearly:

- Each task involved in the process;
- The average amount of time taken to complete each task; and
- The job role of the officer completing the task.

To determine what tasks are involved with a process, reference has been made to the Taxi Fees Toolkit v2.1 devised by All Wales Licensing Expert Panel, as well as, the experience of officers.

In general tasks fall into 5 main categories:

- Application – Includes enquiry, validation, data entry, technical issues etc
- Committee Hearing (Application) – Includes investigation, drafting of report, hearing preparation and attendance, drafting of decision notice etc.
- Committee Hearing (Disciplinary) - Includes investigation, drafting of report, hearing preparation and attendance, drafting of decision notice etc.
- Issue of Licence – Production of licence, badge, plate etc, checking of licence
- Other – Policy development (Review of fees policy), project work (Implementation of on-line DBS service), Compliance (investigating complaints, Operations such as Op Cabbie), General Admin (Developing/Maintaining template letters and website)

The average amount of time taken to complete each task and who completes it is based upon officer experience. It is the intention of the Licensing Team to introduce a time recording system to help better track time spent on tasks.

5. Methodology for determining fees

The time allocated to each task is fed through the relevant spreadsheet for that application type. The spreadsheets have been designed to apply the following to the time allocations:

- A co-efficient for those tasks that only occur periodically i.e. Hearings
- Any tasks that have been attributed with an annual time allowance have been divided by the average number of licence holders in that particular category, in order to share the cost of these tasks out equally i.e. Policy development

- Salary + 'On-Cost' figures (Salary of post holder + any additional costs incurred by the employer as a result of employing a person in that position)
- The spreadsheets take into account the service recharges for each strand of taxi licensing, along with any material costs associated with the issue of a licence i.e. plate, badge etc.
- Finally, to calculate the fees for 3 year driver licences and 5 year private hire operator licences, the cost of certain tasks that are ongoing year on year have been multiplied by the duration of the licence.

Co-efficient - A co-efficient has then been applied to certain tasks which are not undertaken for every application type. A prime example of this would be hearings, as only a small minority of applications are required to be placed in front of the Committee. Therefore a co-efficient based on previous hearing numbers along with officer experience and expectations of future potential hearings has been applied to such tasks.

Other tasks are based on an annual time allocation, which are tasks such as policy, project work, compliance etc. The cost for these tasks can be spread across the average number of licence holders in a year for that particular strand i.e. driver, vehicle, private hire operator. This breaks the cost of these tasks down into an equal share incorporated into the fee payable for that specific application type.

Salary and 'On-Costs' - The 'On-costs' (Salary of post holder + any additional costs incurred by the employer as a result of employing a person in that position). This is National Insurance, pension contributions etc.

Recharges – Details of service recharges associated with each strand of taxi licensing has been provided by the Council's Finance Team. Recharges cover services utilised by the Licensing Team in delivering the HC and PH Licensing regimes, such as IT, Finance, Customer Service Centre, along with other standard costs such as building provision, heating, lighting etc. The fees for Legal and Member Services have been removed from the recharges and costed through the task and time spreadsheet, as the cost of these support services are very much dependent upon the number of hearings held each year and this can fluctuate significantly year on year.

Licences of longer duration - For calculating the 3 year driver licence fee and 5 year private hire operator fee, there are some tasks that are a flat rate, linked solely to the application itself, that will not change regardless of the duration of the licence i.e. the production of the licence, badges etc will be the same cost regardless of whether a licence is issued once a year or every 3 years if a driver or 5 years if a private hire operator. There will be some tasks where the costs need to be tripled (drivers) or multiplied by a factor of five (PH Operators) as these will be annual costs that need to be extended across the full duration of the licence.

6. Publication of proposed fees

The proposed fees to be charged feature as part of the report to the General Licensing Committee and will be publicised in accordance with Section 70 of the 1976 Act (Please see Section 6 for further details).

In addition, the proposed fees and this policy will be published on Chichester District Council's website at www.chichester.gov.uk. A copy of the calculations that support this policy will be made available for viewing during the consultation period at the Council Offices.

7. Committee approval & consultation process

In the first instance the proposed fee structure has to be considered and approved by the General Licensing Committee (The 'Committee'), after which a public consultation must be undertaken in accordance with Section 70 of the 1976 Act.

The Local Authority must publish a consultation notice (The 'Notice'), in at least one local newspaper circulating in the area.

The Consultation period must be at least **28 days** and commence from the date the Notice appears in the local paper.

8. Objections

Any objection(s) must be submitted in writing to Chichester District Council within the consultation period.

If no objections are received then the fees will become active on the specified date as stated in the Notice.

Alternatively, if objections are made during the consultation period, then these will need to be considered by the Committee to determine whether to make any amendments to the proposed fees. The Committee have the ability to make any modifications as deemed necessary. Under these circumstances the fees will not come into effect on the specified date stated in the Notice. Once the Committee have met and considered the objections then a new date for implementation can be set, however this must be within 2 months of the original specified date.

Although Section 70 relates to vehicles and operators it is considered good practice for the same method to be used in relation to determining driver fees.

9. How surpluses and deficits are to be treated and reviewing the fees policy

A local authority can only charge in order to recover costs. Therefore, the fees will need to be reviewed regularly to determine whether a surplus or deficit has inadvertently been made. Adjustments to fees will be made on a 3 year basis in order to allow for surpluses and deficits to be addressed through annual fluctuations in application numbers. Any changes to the fees are subject to consultation with the trade, which is a statutory requirement, and the approval of the Committee.

If there are any significant changes to legislation, application numbers, tasks undertaken by the Licensing Team etc that have a significant impact upon costings for any or all application types then consideration will be given to undertaking an

additional review of the fees. Once again this will be subject to consultation with the trade, which is a statutory requirement, and the approval of the Committee.

10. Other matters

Cost of Rank Provision - Different fees can be set in relation to hackney carriage vehicles and private hire vehicles to enable the cost of taxi ranks to only be recovered in respect of hackney carriage vehicles. However, the Chichester District only benefits from a small Hackney Carriage Fleet with the main two ranks being North and South side of Chichester Train Station. Therefore at this current time it is not felt appropriate to be levying an additional charge for the creation and maintenance of ranks.

Refunds - Under the 1976 Act fees are payable for the grant of the licences so the whole fee is payable on issue with no statutory provision for a refund.

Issuing driver and operator licences for a lesser period - It is important to consider what circumstances may be appropriate for a driver or operator licence to be issued for a shorter period than the standard three or five years. After careful consideration it is felt that this is best assessed as '**appropriate to the circumstances of the case**'. Factors that may influence this include, but are not limited to – medical issues, financial constraints, conduct/driving issues leading to a driver/operator being on a probationary period etc.

Charges levied by external partners - The services provided by a number of different agencies are utilised by CDC as part of the application process i.e. DBS Criminal Record Check, DVLA Driver Licence Check etc. The Council reserves the right through this policy to amend our fees in line with any changes to the fee made by the agency offering the service.

Inflation - It is acknowledged that as the fees will be considered as part of a 3 year cycle this will not capture inflation year on year. Consideration has been given to this point, but it is felt that this can be redressed when reviewing the calculations.

APPENDIX 2 - PROPOSED FEE STRUCTURE FOR 2016/17

Fees and Charges Associated with the Hackney Carriage and Private Hire licensing regimes. These fees will take effect From ??????

Driver Licence

Application Fee	1 year	£140.00
Renewal Fee	1 year	£113.00
Application Fee	3 year	£312.00
Renewal Fee	3 year	£285.00
Knowledge Test (Hackney Carriage)		£41.00
DBS Application Fee (Criminal Record Check – Paper)		£44.00
DBS Application Fee (Criminal Record Check – Electronic system)		£56.00
DVLA Driving Licence Verification Fee		£7.00
DVLA Driving Licence Verification Fee - 3 year		£21.00

Vehicle Licence

Application Fee and Plate (Normal plate/Exemption plate)	£116.00
Renewal Fee	£116.00
MOT at Westhampnett Depot	£55.00
Vehicle Fitness Test	£25.50
Taximeter Test – If meter installed in vehicle	£21.00
Private Hire Door Signs (adhesive – two required per vehicle)	£6.00 each
Private Hire Door Signs (magnetic – two required per vehicle)	£12.00 each
Transfer of Vehicle Ownership	£23.50

Private Hire Operator's Licence

Application Fee	1 year	£182.00
Renewal Fee	1 year	£154.00
Application Fee	5 year	£696.00
Renewal Fee	5 year	£670.00

Sundry Charges

Replacement copy of paper licence	£10.50
Driver badge replacement	£9.00
Vehicle plate replacement (Normal plate/Exemption plate)	£15.50

Appendix 3 - Benchmarking for proposed Taxi/PH Fees

Table 1 – Comparing fees for 1 year driver licences with neighbouring Authorities (HC stands for Hackney Carriage) (PH stands for Private Hire)

	HC Driver - New	HC Driver - Renewal	PH Driver - New	PH Driver - Renewal	Dual Licence - New	Dual Licence - Renewal
Arun	162	151	162	151	162	151
Horsham	113	81	86	81	148	120
Mid-Sussex	86	62	86	62	86	62
East Hants	127	73	127	73	127	73
Chichester Existing	85	85	85	85	170	170
Chichester Proposed	140	113	140	113	140	113

Table 2 – Comparing fees for 3 year driver licences with neighbouring Authorities

	HC Driver - New (3 year)	HC Driver - Renewal (3 year)	PH Driver - New (3 year)	PH Driver - Renewal (3 year)	Dual Licence New - (3 year)	Dual Licence Renewal - (3 year)
Arun	345	336	345	336	345	336
Horsham	TBD	TBD	TBD	TBD	TBD	TBD
Mid-Sussex	182	159	182	159	182	159
East Hants	229	165	229	165	229	165
Chichester Proposed	312	285	312	285	312	285

Table 3 – Comparing fees for vehicle licences with neighbouring Authorities

	HC Veh - New	HC Veh - Renewal	PH Veh - New	PH Veh - Renewal
Arun	108	91	108	91
Horsham	325	298	298	268
Mid-Sussex	229	229	194	194
East Hants	160	146	160	146
Chichester Existing	222	222	173	173
Chichester Proposed	116	116	116	116

Table 4 - Comparing fees for private hire operator licences with neighbouring Authorities (This includes the new 5 year licence)

	PH Op - New	PH Op - Renewal	PH Op - New (5 year)	PH Op - Renewal (5 year)
Arun	110	105	510	470
Horsham	181 + 52 for each additional vehicle	181 + 52 for each additional vehicle	TBD	TBD
Mid-Sussex	157 - 239	157 - 239	394 - 804	371 - 781
East Hants	130	130	352	352
Chichester Existing	111 - 502	111 - 502	N/A	N/A
Chichester Proposed	182	154	696	670