

Report to: **Licensing Committee**  
Date: **24<sup>th</sup> November 2016**  
Title: **To recommend for adoption by full Council a policy in relation to the licensing of pleasure boats and pleasure boatmen.**  
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y / N**

Date next steps can be taken: referral on of recommendation of approval to Full Council on Thursday 15<sup>th</sup> December 2016

Author: James Kershaw Role: **Senior Specialist Environmental Health Marine Officer**  
Adam Parnell

Contact: **Telephone/email:**  
**01803 861287 / [james.kershaw@swdevon.gov.uk](mailto:james.kershaw@swdevon.gov.uk)**  
**01548 843791/ [adam.parnell@swdevon.gov.uk](mailto:adam.parnell@swdevon.gov.uk)**

**Recommendations:** Needs to be clear and concise

1. That the Licensing Committee recommend to full council on the 15<sup>th</sup> December, for adoption the South West Regional Ports Associations guidelines for the licensing of Pleasure Boats and Pleasure Boatmen licences.
2. That the committee recommend to full council that the constitution be amended so that the power to grant, withhold, revoke or suspend Pleasure Boat and Pleasure Boatmen Licences is delegated to the Marine Officer

## 1. **Executive summary**

- 1.1. The Council under the Public Health Acts Amendment 1907 has the power to grant licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers, and also to license the person in charge of or navigating such boats and vessels.
- 1.2. A licence should only be granted to a vessel that is safe, and a person who is capable of operating such a vessel.
- 1.3. The South West Regional Ports Association (SWRPA) have produced guidelines on determining the suitability of applicants for a pleasure boat and pleasure boatmen licence.
- 1.4. The report seeks to adopt these guidelines as the formal guidance that we as the Licensing Authority will use to consider licence applications.
- 1.5. The report seeks to delegate power to determine licences to the Marine Officer.

## 2. **Background**

- 2.1. The Council, as the Licensing Authority, has the power to grant licences for the operation of Pleasure Boats and for Pleasure Boatmen. These should only be granted to persons whom we are satisfied are competent and capable of handling such a vessel. In relation to vessels, the licensing authority must ensure that they are safe for the passengers or users.
- 2.2. SWRPA is a forum of Harbour Masters who operate in the South West region (including Dorset, Devon and Cornwall).

This forum has produced a set of guidelines in relation to the licensing of vessels and operators. As these guidelines are now adopted good practice by this forum it is now essential that we adopt them as the licensing authority.

- 2.3. The expertise in issuing these licences and the interpretation of the guidelines is held by the Marine Officer. It is therefore appropriate to delegate authority to the Marine Officer to grant, refuse, suspend or revoke these licences.
- 2.4. Currently Salcombe Harbour Authority issues licences on behalf of the Licensing Authority, and there is no proposal for this to change.

### **3. Outcomes/outputs**

- 3.1. This report seeks to adopt the SWRPA licences for Boats and Boatmen guidelines as the policy that the Licensing Authority will use to determine whether to grant, withhold, revoke or suspend a Pleasure Boat or Pleasure Boatmen licence.
- 3.2. The report also seeks to delegate authority for making such determinations to the Marine Officer. Appeals against such determinations can be made to a court after 48 hours of such determination and having given 24 hours' written notice of an appeal with details of the grounds of appeal. Where an appeal is successful the Court may apportion costs to the appellant. It is therefore important that any determinations are defensible and based on sound judgments. The SWRPA guidelines, being recognised good practice, should provide a consistent and defensible basis for any determination.

### **4. Options available and consideration of risk**

- 4.1. Because the Public Health Act directs that Councils "may" grant licences, the Council could choose not to licence any vessels, however there are many such vessels operating in the South Hams area and these licences provide a comprehensive control measure to mitigate the risks of boats being unseaworthy and/or their operators lacking basic competencies.
- 4.2. Alternatively the Council could devise alternative guidelines for the licensing of such vessels, however as these are deemed as good practice it is not believed to be a good use of resources to carry out this work.
- 4.3. Article 13 (2) of Directive 2006/123/EC, given domestic effect by regulation 18(4) of the Provision of Services Regulation 2009 SI No 2999, provides that the 'authorisation procedures and formalities' for applicants 'shall not be dissuasive...and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures'.
- 4.4. As such all guidelines that we insist applicants must follow should accord with these regulations. The guidelines are good practice and only require such measures as deemed necessary to ensure the safety of users of such vessels, and as such should accord with the regulations.

### **5. Proposed Way Forward**

- 5.1. That the committee recommend for adoption by the Council the SWRPA guidelines for determining Pleasure Boat and Pleasure Boatmen licences.
- 5.2. That the committee recommend to the Council that the constitution be amended so that the power of determination to grant, withhold, suspend or revoke a licence is delegated to the Marine Officer.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Public Health Acts Amendment Act 1907 section 94 states:-</p> <p><b>94.— Power to license pleasure-boats.</b></p> <p><i>(1) The local authority may grant upon such terms and conditions as they may think fit licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers for hire, and to the persons in charge of or navigating such boats and vessels, and may charge for each type of licence such annual fee as appears to them to be appropriate.</i></p> <p><i>(2) Any such licence may be granted for such period as the local authority may think fit, and may be suspended or revoked by the local authority whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public: Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.</i></p> <p><i>(3) No person shall let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor shall any person carry or permit to be carried passengers for hire in any pleasure boat or vessel unless—</i></p> <p><i>(a) the boat or vessel is so licensed and the licence is not suspended; and</i></p> <p><i>(b) the person in charge of the boat or vessel and any other person navigating it is so licensed and his licence is not suspended and the conditions of his licence are complied with</i></p> <p><i>(4) A licence under this section shall not be required for any boat or vessel duly licensed by or under any regulations of the Board of Trade<sup>1</sup> or for a person in charge of or navigating such a boat or vessel.</i></p> <p><i>(5) No person shall carry or permit to be carried in any pleasure boat or pleasure vessel a greater number of passengers for hire than shall be specified in the licence applying to such boat or vessel, and every owner of any such boat or vessel shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said boat or vessel, his own name and also the number of persons which it is licensed to carry, in the form “Licensed to carry persons.”</i></p> <p><i>(6) Every person who shall act in contravention of the provisions of this section shall for each offence be liable to a penalty not exceeding level 3 on the standard scale but a</i></p>

		<p><i>person shall not be guilty of an offence under this subsection by reason of his failure to comply with such conditions as are mentioned in subsection 3(b) of this section if it is shown that there is a reasonable excuse for the failure.</i></p> <p><i>(7) Any person deeming himself aggrieved by the withholding, suspension, or revocation of any licence under the provisions of this section may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension, or revocation: Provided that the person so aggrieved shall give twenty-four hours' written notice of such appeal, and the ground thereof, to the designated officer for the court, and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt.</i></p> <p><i>(8) No licence under this section shall be required in respect of pleasure boats and pleasure vessels on any inland waterway owned or managed by Canal &amp; River Trust.</i></p> <p><i>(9) In subsection (1) and (3) of this section "let for hire" means let for hire to the public.</i></p>
Financial		<p>The Council can charge an annual fee for issuing such licences at such a rate as we see as being appropriate. However recent case law in the European Court; Hemming &amp; others v Westminster City Council; has stated that licensing fees should accord to Article 13 (2) of Directive 2006/123/EC, given domestic effect by regulation 18(4) of the Provision of Services Regulation 2009 SI No 2999, provides that the 'the cost of the authorisation procedures in question ... shall not exceed the cost of the procedures'.</p> <p>It is recognised that the introduction of a new licencing regime may be unwelcome for small marine-oriented businesses.</p>
Risk		<p>When granting licenses for Pleasure Boats and Pleasure Boatmen the Council needs to be satisfied that the safety of the public is protected and that all applicants are treated in a fair and consistent manner.</p> <p>The SWRPA guidelines provide a balance between protecting the public and ensuring a consistent approach.</p> <p>If decisions were unsound then any person aggrieved by such a decision could appeal and a court may find against the authority and award costs against us. By adopting the guidance which is</p>

		good practice across a number of licensing authorities this would limit the risk of a court finding our decision as being unsound.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None foreseen
Safeguarding		None foreseen
Community Safety, Crime and Disorder		Possibly an increase initially in enforcement action to regularise the licensing standards and unlicensed activities.
Health, Safety and Wellbeing		None foreseen
Other implications		None

### **Supporting Information**

#### **Appendices:**

South West Regional Ports Association Licences for Boats and Boatmen Guidelines

#### **Background Papers:**

None