



Delegated decision report

Committee

DECISION UNDER DELEGATED POWERS

**DECISION CANNOT BE TAKEN BEFORE
TUESDAY, 21 MAY 2019**

Title

LICENSING - BOAT/BOATMAN POLICY

Report of

**CABINET MEMBER FOR COMMUNITY SAFETY AND
PUBLIC PROTECTION**

EXECUTIVE SUMMARY

1. This paper recommends that the attached Boat and Boatman Policy is approved which will provide consistency in these licensing processes.

BACKGROUND

2. The council does not currently have an active policy in place which details the requirements and processes for a person to apply for and acquire either a boatman or boat licence.
3. It is important that clear and concise guidance is available to applicants, surveyors and licensing officers to ensure a consistent approach is maintained when issuing a licence. A copy of the proposed policy is attached as Appendix A of the report.
4. Under section 94 of the Public Health Acts Amendment Act 1907 (the act) local authorities may grant upon such terms and conditions as they may think fit for licenses 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.
5. This policy has been created using the following guidance documents and regulations including but not limited to:
 - Solent and Southern Harbour Masters Association Licences for Boats and Boatmen Guidelines (SASHMA Guidelines);
 - Maritime and Coastguard Agency's guidance Inland Waters Small Passenger Boat Code (the MCA Code);
 - Merchant Shipping (Categorisation of Waters) Regulations 1992;
 - Marine Guidance Notes (MGN) 1853.

6. In addition to the guidance/regulations, advice has been obtained from local chartered marine surveyors and other members of the marine industry as well as via a formal consultation with all current boatmen and boat licence holders.

STRATEGIC CONTEXT

7. Boats or water taxis are a part of the transport network on the Island and at times during the summer months provide an important service to the community. Water taxis offer a more personal and bespoke public transport service to residents, businesses and visitors. This allows people to access parts of the Island and businesses where other timetabled transport providers are unable to do so.

CONSULTATION

8. A formal consultation with regards to the policy took place between 10 December 2018 and 10 January 2019. Details of the policy were advertised on the licensing webpages as well as within the consultation section on the council's website. Direct communication was also made with all current boat and boatmen licence holders at the time as well as external stakeholders listed below:
 - Marine Coastguard Agency (MCA).
 - Solent and Southern Harbour Masters Association (SASHMA).
 - Cowes Harbour Commissioners.
 - Bembridge Harbour Authority.
 - Professional Charter Association.
 - All councillors/members.
9. Six responses were received during the consultation period. Three comments requested that the council consider alternative qualifications or certification of competencies as supporting documentation when applications for a boatman's licence are made.
10. A response was submitted by the Maritime Coastguard Agency (MCA). Comments that were submitted included the need for clearer clarification on the areas (categorised waters) that boats licensed by the council were able to operate within. A suggestion was also put forward that supporting documentation that formed part of the application, specifically the applicants medical report and sea survival certificate be clearer in description and detail.
11. A further comment submitted by the MCA, queried the need for an applicant to have to submit as part of their application a recent Disclosure Barring Service (DBS) check.
12. Consultation responses were also submitted by Bembridge Harbour Authority (BHA) and Island Sailing Club (ISC) which requested that the licensing authority

consider their specific operational processes when applying the policy to their organisations.

FINANCIAL / BUDGET IMPLICATIONS

13. There are no cost implications as a result of this policy, however there may be costs associated with each individual enforcement action should non-compliance be identified through appropriate investigative processes. Such costs will be found from within existing budgets and/or reclaimed through the court process in way of costs applications in successful cases.

LEGAL IMPLICATIONS

14. The legislation relevant to the licensing of boats and those in charge of navigating such is section 94 of the act.

15. Section 94(3) of the act provides:

(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-

*(a) the boat or vessel is so licensed and the licence is not suspended; and
(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.*

16. The requirement to hold licences does not apply to boats or vessels licensed under Board of Trade regulations, or to those on a canal owned or managed by the British Waterways Board.
17. Any person who acts in contravention of section 94 of the act is liable for each offence, on conviction, to a penalty not exceeding level 3 on the standard scale and therefore the determination of applications under the act is an important statutory function.

EQUALITY AND DIVERSITY

18. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
19. An equality impact assessment has been completed which indicates that the policy has a potentially positive effect on the protected characteristics.

20. The policy provides consistent guidance that can be applied to each situation and will promote clarity so that all decisions relating the determination of applications will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the applicant.

OPTIONS

21. Option 1: To adopt the Licensing Boat/Boatman Policy at Appendix A.
22. Option 2: To adopt the Licensing Boat/Boatman Policy at Appendix A with amendments.
23. Option 3: Not to adopt the Licensing Boat/Boatman Policy at Appendix A.

RISK MANAGEMENT

24. The policy sets out how the Isle of Wight Council will regulate the licensing of boats that operate with the categorised waters of the council's jurisdiction as well as those persons that navigate and carry passengers within such boats. This includes processes covering application, determination, renewal, enforcement and appeals. The policy also offers guidance and information for both applicants and decision makers on the areas of consideration to promote a consistent approach.
25. The consistent application of the policy will help to ensure that members of the public are protected as far as practicably possible by ensuring those persons that acquire licences from the council are consistently screened through the documentation submitted as part of their application. By doing so will assist in determining that the applicant is competent in their profession as well as safe and suitable from a safeguarding perspective to carry passengers.
26. Failure to adopt the policy may impact of the level of consistency in both the documentation that is accepted as part of a valid application as well as the determination in the suitability of an applicant to be eligible for a boat or boatman licence, issued by the council.
27. The absence of a properly adopted policy may prejudice the council's ability to defend any challenge brought by an aggrieved person to the withholding, suspension, or revocation of any licence under the provisions of the Act.

EVALUATION

28. Comments that were received regarding the acceptance of alternative qualifications, proving competency in operating boats licence by the council were reviewed and have been found to be a valid suggestion. The decision has been taken to not include a specific list of qualifications within the policy that is acceptable regarding proof of competency. Although the council will have regard to the MCA's Boatmasters Qualifications, Crew and Hours of Work (MSN 1853) and Solent and Southern Masters Association (SASHMA) Guidance, it is recognised that qualifications and certifications will differ as time

goes on. The council proposes to add the following statement to section 6 of the policy to address this point:

Qualifications differing from those stated within MSN 1853 (Annex 3) and Section 7 of the SASHMA guidance will be considered when determining whether an application is valid.

29. Comments submitted from the MCA in that the policy could be clearer in its definition of the specific areas that boats and those in charge of navigating such (who are licenced by the Isle of Wight Council) can operate within, was found to be a valid point. Section 4.2 of the policy has been updated to list these categorised areas in more detail as well as a map, supplying a visual reference being at Appendix A of the policy.
30. Further comments submitted by the MCA included the suggestion that alternative equivalents of the Sea Survival Certificate should be considered (a supporting document which is required upon application for a Boatman's licence). This was reviewed and as with the suggestion of alternative qualifications for competencies (point 24 of the policy), a specific list of relevant certifications has not been included within the policy. Instead the council proposes to amend text as stated within Section 6.2 (iv) to:

An appropriate qualification in Personal Survival, First Aid and Fire Safety training which has been undertaken with an approved MCA training provider. The ancillary training syllabi can be found in appendix 8 of MSN 1853, which can be found on the MCA website or in www.gov.uk (search MSN 1853, The Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015, Structure and Requirements.

31. A further comment submitted from the MCA was querying the need for an applicant to have to submit a valid DBS check as part of the application process. It was the opinion of the MCA that this requirement may deter applicants from applying due to them incurring additional costs. This comment has been considered, however to ensure, from a safeguarding perspective that those individuals applying for a boatman's licence with the council are fit and proper to hold such a licence, the council proposes to retain this requirement.
32. The area of concerns submitted as part of the consultation by the Island Sailing Club (ISC) related to the need for the addition of liferafts to certain makes and models of boat licensed by the council and under the control of ISC, when operating within category D waters as defined within the policy. Bembridge Harbour Authority's (BHA) concerns related to the need for persons under their organisational control to require a boatman licence when operating within the harbour's jurisdiction. A response was submitted to both organisations stating that the policy permitted the licensing authority to deviate under section 9 of the policy, when justification permitted the council to do so. At the time of submitting this report, discussions are ongoing and are looking to be resolved by way of specific conditioning to licences issued to the two organisations in relation to their specific circumstances.

RECOMMENDATION

33. Option 1: To adopt the Licensing Boat/Boatman Policy at Appendix A.

APPENDICES ATTACHED

[Appendix 1 - Proposed Boat and Boatmen Licensing Policy.](#)

BACKGROUND PAPERS

MSN 1853

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/440487/MSN1853_Complete.pdf

Solent & Southern Harbour Masters Association

<http://www.portmarinesafetycode.co.uk/sashma15.pdf>

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COLIN ROWLAND
Director of Neighbourhoods

CLLR TIG OUTLAW
*Cabinet Member for Community Safety and
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