

Gloucester City Council

Meeting:	Licensing and Enforcement Committee	Date:	19th March 2013
	Licensing and Enforcement Committee		18th June 2013
Subject:	Proposed Revised Draft Conditions for Hackney Carriage and Private Hire Licensing		
Report Of:	Corporate Director for Services and Neighbourhoods		
Wards Affected:	All		
Key Decision:	Yes	Budget/Policy Framework:	Yes
Contact Officer:	Lisa Jones, Food and Licensing Service Manager		
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Appendices:	A: The Hackney Carriage Rule Book		
	B: The Private Hire Driver and Vehicle Rule Book		
	C: The Private Hire Operator Rule Book		
	D: The Hackney Carriage and Private Hire Regulatory Guidelines		
	E: Hackney Carriage and Private Hire Regulatory Guidelines		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 To present to GLT the draft revised conditions for Hackney Carriage and Private Hire Licensing.
- 1.2 To present the draft revised conditions for Hackney Carriage and Private Hire Licensing for approval by the Licensing & Enforcement Committee for consultation.

2.0 Recommendations

- 2.1 Licensing and Enforcement Committee is asked to **RESOLVE** that

- (1) The revised Policy for Hackney Carriage and Private Hire Licensing is approved for 8 weeks consultation.

3.0 Background and Key Issues

- 3.1 Councils have the power to attach conditions to Hackney Carriage and Private Hire licences through the relevant legislation namely, The Town Police Clauses Act 1847 and The Local Government (Miscellaneous Provisions) Act 1976. There is no statutory requirement for a local authority to set hackney carriage and private hire policies, however, it is an integral part of the decision-making process, informing and guiding the decision-makers, and providing a valuable aid to consistent decision making.
- 3.2 General conditions have been applied to Hackney Carriage licences since 1972 when the Byelaws in respect of Hackney Carriages were adopted. Similar conditions have been applied to Private Hire licences since they were first issued in 1980.
- 3.3 The current conditions booklet was approved in January 2010 and has been in use since that date. These conditions have not been substantially reviewed since this time.
- 3.4 Members are advised that the revised conditions have been written taking into consideration Guidance from the Department for Transport (DfT) – Taxi and Private Hire Licensing: Best Practice Guidance and feedback from representatives of the Hackney Carriage and Private Hire trade.
- 3.5 The revised draft conditions are attached as Appendix A - D of this report. The four documents that make up our full draft revised policy and conditions for Hackney Carriage and Private Hire Licensing include:
A: The Hackney Carriage Rule Book
B: The Private Hire Driver and Vehicle Rule Book
C: The Private Hire Operator Rule Book
D: The Hackney Carriage and Private Hire Regulatory Guidelines
- 3.6 All the proposed amendments and revisions to the rule books (Appendices A - C) are shaded in grey.
- 3.7 A large part of the revision concerns a ‘tidying up’ of the original wording and the deletion of those parts which are outdated and no longer relevant.
- 3.8 The following are considered to be minor amendments, and the amended paragraphs are noted below:-
- a) Updated application procedures to reflect the changes made to the process.**
- i) Hackney Carriage Rule Book: Paragraphs 1.1 – 2.8
 - ii) PHD Driver and Vehicle Rule Book: Paragraphs 1.1 – 2.8
 - iii) PH Operator Rule Book: Paragraphs 1.3 – 1.5

- b) Clarification regarding the use of an exchangeable drivers licences for the EEA (European Economic Area) or other countries.**
- i) HC Rule Book: Paragraph 1.6(c)
 - ii) PHD and V Rule Book: Paragraph 1.6(c)
 - iii)PHO Rule Book: N/A
- c) Information about the use of foreign national drivers who hold a student visa.**
- i) HC Rule Book: Paragraph 1.6 (e)
 - ii) PHD and V Rule Book: Paragraph1.6(e)
 - iii)PHO Rule Book: Paragraph 1.2 (d)
- d) Revised criminal record check information to reflect the introduction of the Disclosure and Barring Service, which merged the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) during 2012.**
- i) HC Rule Book: Section 5 Glossary: Enhanced Criminal Record Check and ISA
 - ii) PHD and V Rule Book: Section 5 Glossary: Enhanced Criminal Record Check and ISA
 - iii)PHO Rule Book: N/A
- e) Clarification of Officer and Council delegations around enforcement decisions as reflected in the Council’s current constitution.**
- i) HC Rule Book: Paragraphs 3.2 – 3.3
 - ii) PHD and V Rule Book: Paragraphs 3.2 – 3.3
 - iii)PHO Rule Book: Paragraphs 2.2 – 2.3
- f) Reference to our complaints procedure and disciplinary process is made clear within the rule books.**
- i) HC Rule Book: Paragraphs 3.5 – 3.8
 - ii) PHD and V Book: Paragraphs 3.5 – 3.8
 - iii)PHO Rule Book: Paragraphs 1.15 – 1.18
- g) Clarification on the ability for Members to depart from policy where they consider it necessary to do so.**
- i) HC Rule Book: Paragraphs 3.1
 - ii) PHD and V Rule Book: Paragraph 3.1
 - iii)PHO Rule Book: Paragraph 2.1
- h) Clarification on the use of ‘saloon’ type hackney carriages and the need for all new hackney carriage vehicles to be wheelchair accessible.**
- i) HC Rule Book: Paragraph 3.21 Wheel Chair Accessible Vehicles and 3.23 use of saloons.
- The delegation to decide upon the type of hackney carriage permitted for licensing falls with Full Council, these conditions over the use of wheelchair

accessible vehicles and saloon vehicles as taxis was resolved in March 2002.

i) Tidy up of wording where matters have caused confusion or appear to be contradictory or out of date.

- i) HC Rule Book: Medical: p.3.12, convictions: p.3.16, code of conduct: p.3.17 (c) & (p), Vehicles: paragraphs. 2.1, 3.21, 3.28, 3.29, 3.34, 3.36, 3.55, Details: p.4.4
- ii) PHD and V Rule Book: Medical: p.3.11, Convictions: p.3.15, code of conduct: p.3.16 (c) & (p), vehicles: paragraphs. 3.19, 3.20, 3.25, 3.26, 3.31, 3.33 Details: p.4.6
- iii) PHO Rule Book: Details: p.4.6, Glossary: paragraphs. 5.4, 5.6

j) Insertion of our Horse-Drawn Hackney Carriage conditions as agreed by Gloucester City Council's Hackney Carriage Sub Committee on 30th March 1998.

- i) HC Rule Book: Paragraphs 3.58 – 3.59 (a) – (z)

These conditions on horse-drawn hackney carriages have existed since 1998 however; they were absent from the rule books during 2010, because Gloucester has not had any licensed horse-drawn carriages for some time. Including them in the rule books, could help inform the public that Gloucester can consider such applications which in turn could benefit the economy and attract visitors to the City.

k) Publication of the Councils committee hearing procedures, complaints policy and penalty points scheme are included in the hackney carriage and private hire regulatory guidelines

- i) Guidelines to the relevance of convictions Appendix D, Section 3 (See 3.9(d) below)
- ii) Committee Procedure Section 4
- iii) Complaints Procedure Section 6
- iv) Penalty Points System Section 7

These procedures and policies have been collated into one guidance document to make it easier for Officers, Members and the Hackney Carriage and Private Hire Trade to follow and understand.

3.9 The following include new additions or significant changes that may require greater consideration:

a) Changes to the existing wording on 'Door Panels' for private hire vehicles.

- i) HC Rule Book: Paragraph 3.55
- ii) PHD and V Rule Book: Paragraphs 3.54 – 3.57
- iii) PHO Rule Book: Paragraph 2.15

Members should note that the current condition wording dated June 2010 refers to door panels being a minimum size of (2ft²) which should actually be

reflected as (2sq.ft). However, whilst this should be corrected, some drivers have found difficulties in meeting the minimum size on some vehicles that have different shape doors, particularly where the door itself has a raised crease across the middle of the door. This issue has been raised by a number of operators because the crease can raise the magnetic panel away from the door, making it susceptible to being blown off in the wind during journeys. The minimum size restricts certain vehicles from using magnetic plates with ease.

Another reason for proposing added discretion on this matter is that more car manufacturer's are using non-magnetic materials to construct the doors on new vehicles, due to its light weight nature. Private hire vehicles with fibre glass or aluminium doors cannot use the magnetic door panels in accordance with the current conditions. This difficulty will only become more apparent as further new vehicles are licensed, particularly models of higher specification.

b) Introduction of a formal procedure for Private Hire Operators to apply for an exemption from displaying plates and signage on a particular vehicle.

- i) PHD and V Rule Book: Paragraph 2.9
- ii) PHO Rule Book: Paragraphs 1.6 – 1.14

Section 75(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976 allows the Licensing Authority to issue an exemption from the requirement to display plates or signage on a private hire vehicle during periods of contracted 'executive' type work. There are a number of drivers in Gloucester that carry out contracted work, and this work often attracts the higher specification vehicles. By introducing criteria and conditions that would apply to these exemptions, it clarifies the process for any proprietors that are considering executive type work and the need to be discreet in appearance. A fee can also be introduced to cover the cost of this process.

c) Deletion of the allowance for Private Hire Operators to use words such as 'taxi's' or 'cabs' or such similar words on advertising their companies, where they also make Hackney Carriage vehicles available in their fleet.

- i) PHO Rule Book: Paragraph 2.15

The current conditions prohibit the use of these words that are similar in sound or appearance to taxi on both private hire vehicles and upon advertising in-house booking systems in pubs and clubs. Therefore, to prohibit the use of taxi-like words in general advertisements such as billboards, posters, business cars etc. will ensure a consistent approach and would keep the operator's trading name consistent too.

d) Changes to the guidelines for convictions in considering the suitability of a driver as included in the hackney carriage and private hire regulatory guidelines (see Appendix D, section 3.3):

- ii) Further guidance on Hybrid Traffic Offences Section 3.3(b)(i)
- iii) Further guidance on Indecency Offences Section 3.3(e)(i) – (iii)
- iv) Further guidance on Violence Offences Section 3.3(f)(i) – (iii)
- v) Further guidance on Dishonesty Offences Section 3.3(g)

Further clarification is given over these serious offences because the broad terms given such as ‘violence’ and ‘indecent’ actually cover a wide variety of offences. A broader understanding of the different categories and different levels of severity intend to guide Members further when making their decisions regarding the seriousness of these convictions. The current guidelines for convictions are attached as Appendix E for comparison.

3.10 When reviewing its Hackney Carriage and Private Hire Policy for Licensing, the Licensing Authority will consult with:-

- Hackney Carriage Drivers
- Private Hire Drivers
- Private Hire Operators
- Gloucestershire Licensing Officer Group
- Other interested Persons/Groups

3.11 There is nothing to prevent a Licensing Authority from consulting more widely than the above list. To this end the Licensing Authority will seek to identify and consult with other organisations and individuals who may be affected or have an interest in this Policy.

3.12 The current rule books covering all drivers, vehicles and operators each contain a condition which allows the Council to alter the conditions upon giving 28 days notice in writing to the licence holder following a consultation process and Committee decision. This condition will remain in the revised editions.

4.0 Alternative Options Considered

4.1 Alternative options will be considered where representations are raised against the proposed revisions. This policy will not take effect until after the 8 week consultation period and all feedback has been considered by the Licensing and Enforcement Committee for final approval and adoption.

4.2 The BIS Code of Practice on consultations 2008 states ‘*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible*’. This is certainly sensible for new policies, policies of a contentious nature or where a large number of stakeholders need to be consulted. However, a shorter period is allowed where the authority can rationalise this. Given the tight timescales available to consult before the next

Licensing and Enforcement Committee as well as the ability of the Licensing Team to engage stakeholders quickly, Gloucester City Council will consult on this document for a period of 8 weeks.

5.0 Reasons for Recommendations

- 5.1 Reasons for the key changes are provided within paragraphs 3.8 and 3.9.
- 5.2 The Current Council policy and conditions contained in the Private Hire Rule Book, Hackney Carriage rule book and Operators rule book was approved by Members at their meeting on 19 January 2010 and came into force following some further amendments on 1 June 2010. Since this time, Licensing Officers using the book on a daily basis have spotted some minor errors, elements missing or out of date or confusing and so the largest element of this revision is to tidy up the content.
- 5.3 The consultation will be placed on the Council's website and a public notice will be posted at the Council Offices. Eight weeks should allow adequate time for Officers to consult with key stakeholders, consider any responses and seek further clarification (if needed) before preparing a follow up report for the next Licensing and Enforcement Committee in June 2013.

6.0 Future Work and Conclusions

- 6.1 Members will be aware that the main legislation governing taxi's dates back to 1847 and in parts does not reflect modern society. The Law Commission for England and Wales, which advises the Government on law reform, launched a public consultation during 2012, seeking views on proposed changes to the way in which taxis and private hire vehicles are regulated. The consultation paper, "Reforming the law of taxi and private hire services", proposes to retain the distinction between taxis, which can "ply for hire" on the street or at a taxi rank and private hire vehicles which can only be pre-booked. Further proposals include licensing of Rickshaws and that all vehicles would be subject to national minimum safety standards.
- 6.2 The Food and Licensing Service will be following the progress on any changes to the legislative framework; however, it is not anticipated that such legislation will be available until at least 2014 (aim to produce final proposals by November 2013). Once new legislation is in force, the Council's policy for hackney carriage and private hire licensing will be reviewed again to consider those changes.
- 6.3 The next review of the Policy is scheduled for 2016; however it may be amended prior to this, depending on changes to the legislative framework, national guidance or changes to internal procedures/processes.

- 6.4 Representatives of both the Hackney Carriage and Private Hire trades will be invited to liaison meetings and copies of the draft conditions will be shared. A consultation letter and questionnaire will also be designed outlining the key amendments. The consultation information, questionnaire and draft conditions will be posted on the City Council website and a public notice will be posted at the Council offices.
- 6.5 It is important that the consultation commences as soon as possible to allow for a 8 week consultation period before bringing back any feedback to the next Licensing and Enforcement Committee on 18th June 2013 for decision.
- 6.6 Once the revised policy is approved and adopted by the Licensing and Enforcement Committee. Any alterations to conditions will take effect to all Hackney Carriage and Private Hire Licences, 28 days after each driver operator and vehicle proprietor has received notification from the licensing authority in writing.
- 6.7 Members are referred to the options at 2.1(1) of this report.

7.0 Financial Implications

- 7.1 There are no financial implications relating to this report.

(Financial Services have been consulted in the preparation this report.)

8.0 Legal Implications

- 8.1 The rationale behind the licensing regime is the provision of part of the public transport service that is accessible and safe, and seen to be so.
- 8.2 As referred to in the main body of the report, the Council has various powers for imposing reasonable licensing conditions on operators, drivers and vehicles.
- 8.3 A “person aggrieved” has a right of appeal to the Magistrates’ Court to challenge conditions imposed. These include persons from either trade and therefore it is important to apply conditions that are reasonable.
- 8.4 In reaching its decision, Members need to take account of all relevant factors and evidence, including the original Member decision and the validity of the arguments used in court to today’s situation, the feedback on the consultation, the nature of the Gloucester City area, the DfT Best Practice Guide and the legislation and the judicial authorities that have come from the Courts.

- 8.5 The law requires conditions to be added, or taken away from licences on the grant or the licence. There is no power to unilaterally alter the conditions during the currency of the Licence.
- 8.6 The situation regarding revocation of licences, and subsequent regrant, and the potential condition allowing the amendment of existing licences is dealt with in the report.

(Legal Services have been consulted in the preparation this report.)

9.0 Risk & Opportunity Management Implications

- 9.1 The risk management implications for this report and Policies are as follows:-
- Hackney Carriage and Private Hire Policy is unfair or too prescriptive.
 - Consultation inadequate.
 - The risk of an appeal to Magistrates should an inappropriate or unreasonable decision be made and the potential for a financial penalty in costs awarded to be incurred.
- 9.2 The risks identified above are all low due to the actions / risk responses taken.

10.0 People Impact Assessment (PIA):

- 10.1 The Screen stage considered risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation or community cohesion.
- 10.2 The PIA screening stage was completed and did not identify any potential or actual negative impact. The need to carry out a full PIA will be assessed once representations have been considered from the consultation process.

11.0 Other Corporate Implications

Community Safety

- 11.1 The basis of the guidelines is to provide a standard for licensed Private Hire and Hackney Carriage drivers to work to. The overall aim of the licensing regime is public protection.

Sustainability

- 11.2 Hackney Carriage and Private Hire licensed drivers provide an important addition to the public transport provision in the City and so contribute to environmental sustainability.

Staffing & Trade Union

11.3 None

Background Documents:

Town Police and Clauses Act 1847

The Local Government (Miscellaneous Provisions) Act 1976

Department for Transport: Taxi and private hire vehicle licensing: best practice guidance (March 2010)

HM Government Code of Practice on Consultation (July 2008)

Gloucester City Council Hackney Carriage Sub Committee Minutes 30th March 1998 – (minute 35)

Gloucester City Council Cabinet Minutes 13 March 2002 – (minute 116.7)