

# Gloucester City Council

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| <b>Meeting:</b>         | <b>Licensing and Enforcement Committee</b>   | <b>Date:</b> 13 <sup>th</sup> September 2016 |
| <b>Subject:</b>         | <b>Proposed Revised Draft Conditions for Hackney Carriage and Private Hire Licensing</b> |  |
| <b>Report Of:</b>       | <b>Head of Public Protection</b>   |  |
| <b>Wards Affected:</b>  | <b>All</b>   |  |
| <b>Key Decision:</b>    | <b>No</b>  | <b>Budget/Policy Framework: Yes</b>          |
| <b>Contact Officer:</b> | <b>Darren Mountford, Senior Licensing &amp; Markets Officer</b>                          |  |
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| <b>Appendices:</b>      | <b>1. The Hackney Carriage Rule Book</b>   |  |
|                         | <b>2. The Private Hire Driver and Vehicle Rule Book</b>                                  |  |
|                         | <b>3. The Private Hire Operator Rule Book</b>  |  |
|                         | <b>4. The Hackney Carriage and Private Hire Regulatory Guidelines</b>                    |  |

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 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

The revised Policy for Hackney Carriage and Private Hire Licensing is approved for an 8 week 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 June 2013 and has been in use since that date. These conditions have not been substantially reviewed since this time.
- 3.4 The revised draft conditions are attached as Appendix 1 - 4 of this report. The four documents that make up our full draft revised policy and conditions for Hackney Carriage and Private Hire Licensing include:
1. The Hackney Carriage Rule Book
  2. The Private Hire Driver and Vehicle Rule Book
  3. The Private Hire Operator Rule Book
  4. The Hackney Carriage and Private Hire Regulatory Guidelines
- 3.5 All the proposed amendments and revisions to the rule books (Appendices 1 - 4) are shaded in red.
- 3.6 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.
- 3.7 The proposed amendments include the following:-
- 3.7.1 Hackney Carriage and Private Hire Rule book under new applications for drivers**
- 1.1 A Adding "continuous"
  - 1.1 B Licensed drivers must be able to communicate effectively with customers, Police or authorised officers and other road users. The applicant is expected to have a good command of the English language, both verbal and written.
  - 1.2 Change the applicant age from 18 to 21.
  - 1.4 Applicants for new licences should have no more than six current penalty points on their DVLA licence.

Stopping applicants completing and submitting a consent form from Intelligent Data Systems Limited (IDS) for the release of information held by the DVLA on them. Current cost is £7.50. This will be replaced by a licence check code that the applicant must generate and provide so that Licensing and Enforcement Officers are able to check information held by the DVLA on the applicant. This is free of charge and provides the information straight away.

To also stop requesting applicants to complete an NVQ level 2 in road passenger transport.

**3.7.2 Under driver renewals**

Adding "if appropriate that drivers provide a DVSA driving assessment pass certificate".

### 3.7.3 Under vehicle renewals

2.5 F adding “Where an MOT has been carried out within the last two months without the added vehicle inspection checks, a Licensing and Enforcement Officer can then check the cosmetic elements for an appropriate fee”.

### 3.7.4 Under Convictions, Cautions and fixed penalties

Adding “(even if it is from a Gloucester City Council department or another Local Authority you will still need to notify Gloucester City Council’s Licensing Team)”.

Adding “If a driver fails to notify of any cautions, convictions or fixed penalties within seven days of being formally notified of any such charge, then penalty points will be issued. If this is picked up on a renewal application and these penalty points issued take a driver over 12 within a 12 month period, then the Licensing Team will not be in a position to renew the Private Hire or Hackney Carriage driver’s badge. The Licensing Team will therefore refer the driver to the Licensing and Enforcement Sub-Committee for members to decide if they continue to be a fit and proper person”.

### 3.7.5 Under Code of Conduct

3.18 C adding “Licensing and Enforcement Officers and Elected members”.

### 3.7.6 Under Smokefree Legislation

To include “E-Cigarettes, E-Liquid and any vaping products”.

## 3.8 Private Hire Operator Rule Book

1.8 e A minimum dress code of smart/business attire must be followed at all times the vehicle is being used to undertake a booking relating to executive work.

1.14 L The executive vehicle must not be used for any regular private hire work without all of the signage being displayed. All work must be pre booked as executive work and payment should be accepted following an invoice.

3.5 The Deregulation Act 2015 makes provisions for Private Hire Operators to sub-contract work to an operator licensed by a different local authority.

## 3.9 Hackney Carriage and Private Hire Regulatory Guidelines

### 3.9.1 3.3 B Major Traffic Offences

Have added the following offences:

**BA40** Causing death by driving while disqualified

**BA60** Causing serious injury by driving while disqualified

**DR31** Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity

**DR61** Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive

**DG10** Driving or attempting to drive with drug level above the specified limit.

- DG40** In charge of a vehicle while drug level above specified limit
- DG60** Causing death by careless driving with drug level above the limit
- MS10** Leaving a vehicle in a dangerous position
- MS20** Unlawful pillion riding
- MS30** Play street offences
- MS70** Driving with uncorrected defective eyesight
- MS80** Refusing to submit to an eyesight test
- MS90** Failure to give information as to identity of driver etc
- MW10** Contravention of special roads regulations (excluding speed limits)
- PC10** Undefined contravention of pedestrian crossing regulations
- PC20** Contravention of pedestrian crossing regulations with moving vehicle
- PC30** Contravention of pedestrian crossing regulations with stationary vehicle

### 3.9.2 7.1 Policy

Have changed the time when points will be issued and any appeals submitted from 10 to 21 days.

Adding “Licensing and Enforcement Officers may award half of the maximum points on a first offence, unless it is a legal Offence under the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976 where maximum points will be awarded”.

### 3.9.3 7.2 Points

Increase the maximum points from 6 to 12 for carrying more passengers than stated on vehicle licence point 2.

Increase the maximum points from 4 to 6 for failure to notify of any caution, conviction or fixed penalty within seven days of being formally notified of any such charge or/and of conviction point 15.

Increase the maximum points from 6 to 12 for failure to notify of change in medical circumstances point 19.

In the wording on point 20 have added, “this also includes E-Cigarettes, E-Liquid and any vaping products”.

Increase the maximum points from 4 to 6 for failure to produce vehicle for testing or inspection when required/requested point 26.

In the wording on point 34 have added, “to customers, other road users, Licensing and Enforcement Officers and elected members”.

Increase the maximum points from 4 to 6 for failure to produce any relevant document within timescale on request point 40.

Adding two further offences/breach of conditions:-

“Driving whilst using a mobile phone eg making a call or texting and not when using blue tooth and hands free maximum points of 12”.

“Must comply with all traffic regulations and legislation in force maximum points of 6”.

### 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 Asset Based Community Development (ABCD) Considerations**

There is a legal process that we must follow when changing/amending policies. This must be done through a consultation exercise. This gives communities as much information about the changes/amendments that are being proposed. We will engage with the Partnership and Engagement Team to develop an effective communication process.

#### **5.0 Alternative Options Considered**

5.1 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.

5.2 The HM Government's Code of Practice 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.

#### **6.0 Reasons for Recommendations**

6.1 Reasons for the key changes are provided within paragraphs 3.7.

6.2 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 18 June 2013. Since this time, Licensing Officers and elected members using the book have spotted some minor errors, elements that maybe are confusing so have taken the opportunity to tidy up the content.

- 6.3 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 December 2016.

## **7.0 Future Work and Conclusions**

- 7.1 The next review of the Policy is scheduled for 2019; however it may be amended prior to this, depending on changes to any legislative framework, national guidance or changes to internal procedures/processes.
- 7.2 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 will be designed outlining the key amendments. The consultation information and draft conditions will be posted on the City Council website and a public notice will be posted at the Council offices.
- 7.3 It is important that the consultation commences as soon as possible to allow for an 8 week consultation period before bringing back any feedback to the next Licensing and Enforcement Committee on 13 December 2016 for decision.
- 7.4 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.
- 7.5 Members are referred to the options at 2.1(1) of this report.

## **8.0 Financial Implications**

- 8.1 There are no financial implications relating to this report.  
(Financial Services have been consulted in the preparation this report.)

## **9.0 Legal Implications**

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.

- 9.5 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.
- 9.6 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.

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

## **10.0 Risk & Opportunity Management Implications**

10.1 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.

## **11.0 People Impact Assessment (PIA):**

11.1 The screen stage considered risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation or community cohesion. A further assessment will conducted to consider any feedback from the consultation.

## **12.0 Other Corporate Implications**

### Community Safety

12.1 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

12.2 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

12.3 None

## **Background Documents:**

Town Police and Clauses Act 1847

The Local Government (Miscellaneous Provisions) Act 1976