

GENERAL LICENSING COMMITTEE
28 July 2020

**REVIEW OF POLICIES AND CONDITIONS RELATING TO HACKNEY CARRIAGES,
PRIVATE HIRE VEHICLES AND THEIR DRIVERS AND OPERATORS**

SUMMARY REPORT

PURPOSE OF THE REPORT

1. To invite Members to approve the draft of the Council's revised policy document in respect of Hackney Carriages and Private Hire vehicles, their drivers and Operators, which is due to take effect from 01 January 2021. (Appendix 1 contains proposals and Appendix 2 is a draft of the policy)

SUMMARY

2. This report seeks Members approval for public consultation on the Council's Taxi Licensing Policy. The revised Policy reflects changes to licensing and other legislation and includes the latest government and professional body guidelines. The Policy was last approved on 1st January 2016.

RECOMMENDATIONS

3. The Licensing Committee is requested to approve this draft of the Taxi Licensing Policy for public consultation which will be applied to all licences from 01 January 2021.

REASONS

4. To introduce and reinforce measures to ensure the protection of the general public, in particular children and vulnerable adults and to provide an enforcement framework that takes account of legislative changes and amendments whilst providing encouragement and support to the taxi trade in the Borough.

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BACKGROUND PAPERS

The Equality Act 2010

The Town Police Clauses Acts 1847 & 1889

The Local Government (Miscellaneous Provisions) Act 1976

Darlington Council's Byelaws in respect of Hackney Carriages, 1990

Immigration Act 2016

The Current Policies and Conditions in respect of Hackney Carriage and Private Hire Vehicles, Drivers and Operators

Appendices:

1. Summary of the proposed amendments to the Policy
2. The proposed Policy

S17 Crime and Disorder	This report addresses issues specifically relating to criminal offences
Health and Wellbeing	Covid-19 is an ongoing issue that will need to be considered throughout this policy in line with government guidelines
Efficiency	This report has no impact on the Council's Efficiency Programme.
Diversity	The proposals will increase equality of opportunity for the disabled travelling public
Carbon Impact	Reduced emission and promotion of renewable energy will be addressed in this policy
Wards Affected	The proposals affect all Wards
Groups Affected	The proposals affects all travellers
Budget and Policy Framework	This report represents a change to Policy
Key Decision	The proposals do not represent a key decision
Urgent Decision	This is not an urgent decision
Delivering Success for Darlington	The proposals contribute to the growth of a sustainable economy whilst protecting the general public
Impact on Looked After Children and Care Leavers	This report has no impact on the Council's impact on Looked After Children and Care Leavers

MAIN REPORT

BACKGROUND

5. Hackney carriages are public hire vehicles which are permitted to ply for hire in the controlled district of Darlington and also from designated taxi ranks within Darlington. They may also undertake pre booked fares. Private hire vehicles on the other hand are limited to pre booked fares only and such bookings must be made through a licensed private hire operator. The licensing of hackney carriage and private hire vehicles, drivers and private hire operators is regulated by a range of legislation but specifically the Town Police Clauses Act 1847 (the 1847 Act) and The Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act).
6. Currently, hackney carriages and private hire are controlled by a mixture of Council policies, licence conditions and byelaws. The 1976 Act permits the Council to attach conditions to the grant of Private Hire Driver and Operator Licences and Private Hire and Hackney Carriage Vehicle Licences “as it may consider reasonably necessary”. The 1847 Act permits the Council to make Byelaws to regulate the conduct of Hackney Carriage Drivers. Policies are the overreaching requirements of licensing by Darlington Borough Council (e.g. age of vehicles, medicals, driver tests etc) and these are usually a pre-requirement to making an application. NB conditions cannot be attached to Hackney Carriage Driver Licences with the current legislation.
7. The 1976 Act also gives a right of appeal to the Magistrates’ Courts to any person who is aggrieved by any of the conditions placed on a licence. Such appeal must be made within 21 days of receipt of licence.
8. The policies and conditions relating to the taxi trade were last reviewed and approved by Council for implementation on 1st January 2016 following full consultation.
9. All policies and conditions have been revisited and as a result, some have been reviewed. Appendix 1 to this report details the proposed amendments to the Policy. The revised Policy is attached at Appendix 2.
10. At the time of writing this report, Darlington Council has 175 licensed Hackney Carriage vehicles and 103 licensed private hire vehicles. Of these 13 are wheelchair accessible, (7 hackney carriages and 6 private hire vehicles). For simplification, both types of vehicles are referred to in this report as “Taxis”. In addition there are also 164 hackney carriage drivers, 167 private hire drivers and 109 combined hackney carriage and private hire licensed drivers and 3 Private hire operators.
11. Licences are currently granted for up to three years. Changes to current licences can therefore only take effect at the renewal of licence. If Members are minded to approve the introduction of the new policies and conditions,

these will be phased in when a renewal licence is granted. This will mean that the new conditions will apply to the entire current trade within a three year period but will apply to all new applicants with immediate effect from the 1st January 2021.

THE CONSULTATION PROCESS

12. At the beginning of this year the Licensing Department issued communications to say that a review of this policy would be taking place and a draft would be ready for formal consultation later in the year.

Consultation with Licence Holders

13. Most licence holders are aware of the pending review and this will be widely advertised through Darlington Borough Council website, social media and personal contact. When approved for public consultation contact will be made with them once again.

Consultation with other Stakeholders

14. A consultation exercise will also be undertaken with other stakeholders including Darlington Borough Council Members, Durham Constabulary, Immigration Enforcement, Durham Fire Authority, Darlington Association on Disability (DAD), Highways, Environmental Health, Trading Standards, Planning, Public Health, Darlington Safeguarding Partnership, Home to School Transport Section and other local transport providers. These stakeholders will contribute directly into the conditions contained within the Policy.
15. The four other Tees Valley Local Authorities and Durham County Council will be directly consulted upon and this will also be made available to the North East Strategic Licensing Group (NESLG), which Darlington is a member.

CONSULTATION WITH THE LICENSING COMMITTEE

16. Members are respectfully asked to consider the proposed changes to the policy.

EQUALITIES IMPACT ASSESSMENT

19. The full policy was subject to an Equalities Impact Assessment when last reviewed in 2016 and DAD have been closely involved in the consultation process. There is nothing contained within this report that would adversely impact upon that assessment.

FINANCIAL IMPLICATIONS

20. There are no financial implications arising in respect of this report.

CONCLUSION

21 The proposed changes to policy and conditions will provide clarity for the licensed trade and ensure the licensing regime will continue to protect the travelling public.

Appendix 1

Proposed Changes to Taxi Licensing Policy for consultation

To subscribe to Disclosure and Barring Service (DBS) update service

1. Licensed drivers are currently required to provide an up to date record of their criminal history (an Enhanced Disclosure & Barring Service (DBS) check) on initial application and every three years thereafter. The cost of these checks is currently £44 and this is payable by the driver.
2. The requirement for a new DBS certificate every three years was relatively common practice and was deemed appropriate as taxi driving had historically been classed as a 'Notifiable Occupation' and, as such, the Police would notify a licensing authority if a driver had come to their attention between DBS checks.
3. The 'Notifiable Occupation' scheme has been replaced by 'Common Law Police Disclosures' with the effect that the Police will now only notify a licensing authority where they consider there is a 'pressing social need' to do so.
4. In reality, this has significantly reduced the amount of information being passed to licensing authorities by the Police and, as such, licensing authorities may not now be made aware of a driver's new cautions, convictions or other serious matters until the driver's next DBS check is due – which may be up to three years.
5. As a consequence, the new draft policy proposes that drivers must provide an Enhanced DBS certificate to the licensing authority every 12 months.
6. As the cost of each such certificate is £44, it is recognised that this would create a significant additional financial burden for drivers and, as such, it is proposed that drivers enrol on the DBS 'Update Service'. The Update Services allows for drivers to pay an annual fee of £13 and for which, in return, their DBS history can be viewed at any time, on line, for no additional cost.
7. Provided that the annual fee continues to be paid, a driver's criminal record can be checked by a licensing authority without the need for further DBS certificates.
8. After payment of the initial £44 for an Enhanced DBS certificate the driver must immediately pay an additional £13 to join the Update Service and

- then, after that, £13 annually. There would no longer be a requirement for the driver to pay £44 every three years for a new certificate and therefore, after the initial additional payment, this would represent a cost saving for drivers.
9. For those drivers who choose not to join the Update Service, they would be required to provide the Council with a new certificate each year at a cost of £44. For this reason, the draft policy recommends, and expects, that all drivers enrol on the DBS Update Service.
 10. Subscribing to this update service will be integral in modernising the application process when an on-line system is introduced.

NR3 Register

1. Drivers who have had their licence refused or revoked by a licensing committee for reasons that have not resulted in a criminal conviction or police involvement could in theory apply to a different local authority for a licence. If that driver failed to disclose that they had previously had a licence refused/revoked, that licensing authority could, after doing all their necessary checks, issue a licence to that driver, which could compromise the safety of the public.
2. The NR3 register is a database administered by the government appointed National Anti-fraud Network (NAFN) who maintain a national record of all drivers who have had their taxi/private hire driver licence refused/revoked. This register fully complies with The Data Protection Act 2018 and GDPR.
3. It allows officers who are processing an application to check the applicants details against this database to ensure that they have not had a licence refused/revoked by another licensing authority. If the Officer finds an applicant on this register, contact details are provided for the licensing authority refusing/revoking the licence so that the Officer can make further enquiries before continuing with the licensing process. A person on this register will not automatically be refused a licence, however it is another measure to protect the public.
4. Further to this, the current policy recognises that there are no statutory provisions within the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976 which allow for the voluntary return of a driver's licence, however there are many legitimate reasons why a driver may wish to return their licence. To enhance the effectiveness of the NR 3 Register it is proposed that a voluntary return of a licence will not be considered whilst an active investigation is being carried out. The conclusion of an investigation may ultimately result in the

revocation of a licence and this would not be recorded on this register should the licence be surrendered prior to the conclusion of an investigation.

5. This register has been in place since May 2019 nationally and it is proposed for inclusion in this policy to introduce consistency and clarity in assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence.

Disability Awareness Training

1. Included in the current policy is for all drivers to have completed a Child Sexual Exploitation awareness course. This is currently being delivered by Barnardo's at a cost to the driver. This cost has increased since its implementation and the Tees Valley Licencing Group, of which Darlington is a member, have decided to develop a bespoke course to replace that being delivered by Barnardo's. A website domain has been purchased and the course is currently being developed with a cost saving that will be passed to the drivers.
2. As we are the website domain owners it is possible to develop further on-line courses, at no or little cost to the drivers in other areas of concern. One such area is that of disability awareness. Although there is no requirement for drivers to partake in this form of training unless they have a wheelchair accessible vehicle, it has always been recommended as good practice for all drivers.
3. When this training package has been fully developed and available on-line it is proposed that Disability Awareness becomes a mandatory course for all new applications and existing drivers within a predetermined timescale.

Insurance 'write offs'

There are four categories of 'insurance write off's':

Category A - Scrap only. For cars so badly damaged they should be crushed and never re-appear on the road. Even salvageable parts must be destroyed.

Category B - Body shell should be crushed. Signifies extensive damage, although some parts are salvageable. Should never re-appear on road, although reclaimed parts can be used in other road-going vehicles.

Category S (formally Category C) - The new Category S means the vehicle has suffered structural damage. This could include a bent or twisted chassis, or a

crumple zone that has collapsed in a crash. Category S damage is more than just cosmetic, and the vehicle will need to be professionally repaired.

Category N (formally Category D) - Vehicles graded accordingly haven't sustained structural damage, so the issue may be cosmetic, or a problem with the electrics that isn't economical to repair.

1. The current policy will **not** allow any vehicle that has been declared an 'insurance write off' to be licenced. Being an insurance 'write off' means that it is not economical to make the necessary repairs but as highlighted in the categories above it is still possible, under certain circumstances, to make a vehicle safe and road worthy again. Insurance companies will make an assessment to 'write off' a vehicle based on the length of time a mechanic would need to make good the repairs and for any additional parts. Over the years there has been significant advances in technology and improved safety of vehicles for this policy to be reconsidered.
2. It is proposed that DBC allow vehicles in Category N (No structural damage) to be licenced.
3. Non-structural damage is often related to electrical faults that are too time consuming to diagnose, making any potential repair uneconomical. An enthusiast or a specialist in a particular field however may be able to dedicate sufficient time to diagnose and make an economical repair to the fault. This would allow those in the trade to purchase vehicles at a lower cost and perhaps keep their own vehicle on the road longer. Any application to licence such a vehicle would be on the provision that an engineer's report says it is safe and it has been declared suitable by DBC mechanics.

Colour

1. The colour specified for hackney carriage vehicles in the current policy red. It has however been noted by a number of people (including Purple Flag assessors) that Darlington has different coloured hackney carriage vehicles. Although vehicles may be classed as red on their log book there are a large range of shades that although classed as red may appear to be brown or a burgundy colour.
2. James Button, who is one of the country's leading taxi licensing solicitors recommends that policies specify a pantone colour to ensure consistency. Pantone is an internationally recognised colour chart where each shade has a specific number.
3. A basic red, Pantone 485, is proposed for Darlington. This is the same red used by the Royal mail. If this was to be specified, a phased approach

would be proposed so that it only applies to new vehicles, not those already on the fleet.

4. Members of the trade might argue that Pantone 485 may not be manufactured in the model of vehicle they would like, however we would propose allowing the 'wrapping' of the vehicle to circumvent this issue. This is a cheaper alternative to spraying and will actually provide protection to the paintwork underneath.

Age restriction and emissions

1. The issue of vehicle emissions has become extremely important in recent years with requirements for radical reductions. Standard European emission limits have been introduced for new vehicles as follows

Euro 1 – Mandatory for all new cars from 1993

Euro 2 – Mandatory for all new cars from 1997

Euro 3 – Mandatory for all new cars from 2001

Euro 4 – Mandatory for all new cars from 2006

Euro 5 – Mandatory for all new cars from 2011

Euro 6 – Mandatory for all new cars from September 2015

2. The current policy only allows a vehicle to be licenced if it is initially under three years old and can no longer remain on the fleet after it is six years old unless it is exceptionally well maintained.
3. The exceptionally well maintained element has fallen into disrepute over the years and vehicles have effectively remained on the fleet far longer than was envisaged. This has resulted in an aging fleet with older engines producing higher, more toxic emissions.
4. The North East Strategic Licensing Group (NESLG) agreed a minimum standard, and it is proposed that DBC apply this standard, of a vehicle required to be under 4 years to be licenced and at 8 years it will no longer remain on the fleet.
5. To comply with this standard the exceptionally well maintained element will be removed from the policy. This in effect will allow vehicles one year older to be licensed in the first instance however, there will be a requirement for it to be removed from the fleet after 8 years, 2 years longer than the current policy.
6. This would be applied from 1st April 2023, which would mean that all vehicles will need to comply with Euro 6 emissions standards by this time. It will also give drivers over 2 years notice for them to plan ahead should they need to change their vehicle.

7. There will be no age restrictions for emission free vehicles.
8. Concessions to this age policy will be available for wheelchair accessible vehicles to encourage their uptake.

On-line application and payments

1. With the proposed introduction of a new on-line application system, all applications will be processed using this system and payments will be made electronically. This will be essential if the new system is to work correctly.
2. Payment method is a decision that can be made locally and it is suggested this is included in the policy. Some members of the trade will argue that they don't have bank accounts or e-mails to do on-line applications and payments. We would argue that they all have access to e-mail and will have a bank account to run their business or receive a wage.
3. If on the very rare occasion this was not the case then the application could be completed by an agent. Consultation with other local authorities that have introduced on-line applications along with electronic payments have not experienced any issues with this process.

Reduce processing time for applications

1. Whilst it is always the aim to process applications as quickly as possible our current policy states that it will be processed within 6 months of application. With the introduction of a new on-line application system, it is a considered opinion that this time can be reduced to 3 months, subject to the availability of essential documents and a Licensing Committee, should a hearing be required for a decision.

CCTV

1. This refers to CCTV inside the vehicle cabin, not dashboard cameras that are outward facing and widely used by many motorists. It is not proposed to make this a mandatory requirement in this policy however it is recommended that where possible drivers consider their use.
2. Although some LA's have mandated CCTV, there is no compelling evidence that they are necessary in Darlington at the moment. If they were to be mandated, the Council would become data controllers under

General Data Protection Regulation (GDPR). This is a situation we can keep under constant review in accordance with national guidelines

Tinted Windows

1. The current policy requires **rear** windows to allow **70%** light transmission (Front windows have statutory requirements 75% and 70%). Many vehicles are now manufactured with rear window tints less than 70% as standard meaning drivers are having to replace windows at great expense before they can be licensed.
2. Although the argument for tints has always surrounded safeguarding children there is no evidence that this has a contributing factor. Many Local Authorities have no requirements for tints, however we feel that having totally darkened windows may create unnecessary anxiety among some groups.
3. During consultation with local disability groups, some have expressed a concern that they feel like they are in a 'goldfish bowl' when in wheelchairs in the rear of vehicles and would welcome reduced light transmission.
4. It is proposed that window tint be reduced to 30%, which will represent a cost saving to the trade whilst having no impact on safety. Indeed, by having darker windows it will also reduce the amount of UV light exposure, which is one of the reasons why standard tinting has increased over the years.

Previous convictions

1. Licensing processes place a duty on the local authority to protect the public. Given the nature of the role it is vital that those seeking a living in this trade meet the required standards. Previous offending behaviour can be considered a predictor in determining future behaviour and it is essential that this is taken into account when making decisions, along with the time elapsed since that behaviour occurred.
2. There is extensive research into the reasons why some individuals commit crime, why some learn from their mistake and why others spiral into a cycle of repeat offending. One common theme is that no two crimes are the same and that risk cannot be eliminated or future predicted. What can be done however is to examine each case on its individual merit.
3. Taxi drivers/private hire drivers and operators have access to sensitive information on individual customers such as their contact details, address, movements, vulnerabilities etc, that could be exploited by others. We have acknowledged guidance from the Institute of Licensing (IOL) in a

document entitled '**Guidance on determining the suitability of applicant and licensees in the hackney and private hire trades**', and propose an increase in the number of years an applicant must remain conviction free before their application will be accepted. This guidance, which was published in April 2018 was produced in partnership with, Lawyers in Local Government (LLG), National Association of Licensing Enforcement Officers (NALEO) and the Local Government Association (LGA).

- The list of offences is extremely large so most have now been placed into categories. The chart below shows what DBC's current conviction policy is in relation to a category of offence and what is proposed under the IoL guidelines.

Category	Current policy	Proposed
Drink Driving	5	7
Drugs	5	10
Dishonesty	5	7
Violence	5	10
Public Order	3	5
Sexual Offending	Ordinarily refuse	Ordinarily refuse

- Any offence that has been deemed to be aggravated due to discrimination of any kind will not be granted a licence until at least 7 years have elapsed since the completion of any sentence imposed.
- Where an applicant has more than one conviction showing a pattern of behaviour irrespective of time that elapsed should be given serious consideration as to whether they will be a safe and suitable person.

Advertising

- Using vehicles for advertising is becoming a common feature and is an additional way to help the trade generate income. DBC policy allows advertising to be used on vehicles in a prescribed manner, however it would appear that vehicles are now applying wrapped advertising to whole panels that have a different background colour to the vehicle. This was not considered when the current policy was approved. It enhances the advertisement, which is the intention, however it can make the vehicle look unsightly.
- It is proposed that the advert be limited in size (to the lower half of the rear quarter panel only) and the underlying colour of the vehicle must be visible. Timescales will be determined with the trade for removal if this was to be implemented so that it does not create unnecessary additional costs to the trade.

Spare wheels

1. In the current policy a spare wheel is a requirement, however some vehicles are now manufactured without a spare wheel as standard and a pressurised tyre sealant is provided for emergencies. This has reduced the number of vehicles available for use as a taxi/private hire vehicles for the trade.
2. Whilst these sealants were used with caution when first introduced, research into their use and technology advancements in recent years has shown there is no evidence that they compromise safety. Indeed some research has shown that a repair with these sealants may last the normal lifetime of the tyre if it does not interfere with the structural integrity. This however is not their intended use as they are for emergency short term repairs only and manufacturer's instructions should be followed at all times.
3. The use of these sealants would be welcomed by the trade as it will increase the choice of vehicles available to purchase, which will inevitably lead to a saving for them.
4. They are not to be used to replace a spare wheel where that is a standard part of the vehicle.