

Report No: Public Agenda Item: **YES**

Title: **Hackney Carriage and Private Hire Licensing Policy**

Wards Affected: **All**

To: **Licensing Committee** On: **11 March 2021**

Key Decision: **Yes**

Change to Budget: **No** Change to Policy Framework: **Yes**

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1. What we are trying to achieve

- 1.1 For Members agreement to the new Hackney Carriage and Private Hire Licensing Policy referred to as 'The Policy'. This Policy shall amend and replace the existing Policy.

2. Recommendation(s) for decision

- 2.1 To approve the Policy as recommended and attached at **Appendix 1**.

3. Key points and reasons for recommendations

- 3.1 Under the provisions of the Town Clauses Police Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles, Private Hire Operators and the drivers of those vehicles within Torbay.
- 3.2 Torbay Council, as the Licensing Authority has duty to provide a framework within which vehicles, operators and drivers are licensed for the safety of the public and other road users. This Policy sets the expected standards and expectations and identifies how the Licensing Authority will conduct its functions in this regard.
- 3.3 The revised Policy, attached in **Appendix 1**, has been updated following new statutory standards issued by the Department for Transport in July 2020. The new statutory standards replace the relevant sections found within the Best Practice guidance issued by the Department for Transport in 2010, which elements of the current Policy are based on.
- 3.4 This draft Policy has not been subject to any consultation, this is due to a national

change in statutory guidance which has already gone through a consultation period with the Department for Transport. This guidance is now required to be reflected within our Policy.

- 3.5 In addition, within the draft Policy there are changes to implementation dates in respect of mandatory disability awareness and child sexual exploitation training, as well as vehicle compliance testing. Due to department resources and the pandemic, these requirements, whilst previously approved, have not yet been implemented and an extension is required.
- 3.9 Approval of the Policy is a Licensing Committee decision. Any challenge to the Policy would have to take place within three months of it being adopted. Such a challenge would be by way of Judicial Review.

For more detailed information on this proposal please refer to Annex A.

Steve Cox
Environmental Health Manager (Commercial)

Annex A – Supporting information to Report

A1. Introduction and history

- A1.1 Under the provisions of the Town Clauses Police Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles, Private Hire Operators and the drivers of those vehicles within Torbay.
- A1.2 Torbay Council, as the Licensing Authority has a duty to provide a framework within which vehicles, operators and drivers are licensed for the safety of the public and other road users. This Policy sets the expected standard and expectations in this regard.
- A1.3 The revised Policy, attached in **Appendix 1**, has been updated following new statutory standards issued by the Department for Transport in July 2020. The new statutory standards replace the relevant sections found within the Best Practice guidance issued by the Department for Transport in 2010, which elements of the current Policy are based on.
- A1.4 This draft Policy has not been subject to any consultation, this is due to a national change in statutory guidance which has already gone through a consultation period with the Department for Transport. This guidance is now required to be reflected within our Policy.

The main alterations to the Policy in **Appendix 1** are outlined in paragraphs A1.5 to A1.18 below:

- A1.5 The requirement relating to mandatory training in relation to, Child Sexual Exploitation and Disability & Dementia awareness as outlined at paragraphs 5.17 & 5.18 of the Policy, have not been implemented as of yet, although the majority of our drivers have been trained in CSE. The new proposed dates allow for departmental resources to be allocated so this mandatory training can begin from the specified date.
- A1.6 The requirement relating to Disclosure and Barring Service (DBS) checks following the issue of the Department for Transport statutory standards, are reflected within section 6 of the Policy. There is now a requirement that all named vehicle proprietors and operators require an annual Basic DBS check. Licensed Drivers currently require an Enhanced DBS check carried out every 3 years, however there is now a requirement to check their DBS records every 6 months. There is also a recommendation for licensed drivers to sign up to the DBS update service which in the long run, saves them money and makes it easier for the Licensing Authority to carry out their checks.
- A1.7 Section 7 of the Policy also reflects the new statutory standards set by the Department for Transport in regard to the relevance of convictions, cautions, fixed penalties and other relevant information for new applicants and existing licence holders.
- A1.8 The requirement relating to DVLA licence checking, as outlined in paragraph 12.2 of the Policy, has always been that we carry out 6 monthly checks, this is therefore

clarified.

- A1.9 Vehicle compliance tests were brought in under the Policy change made in November 2018 and again reviewed in October 2019. To date, due to the pandemic and departmental resources, these tests have yet to be implemented. The proposed dates at paragraphs 14.25 and 14.27 of the Policy allow for systems to be put in place and this test to be properly and efficiently implemented.
- A1.10 Also in relation to compliance tests, at paragraph 15.3 of the Policy, this wording has been removed due to a contradiction of wording. It states we require a compliance test on first application, however as per the existing Policy in relation to vehicle age, all new vehicles must be under the age of 4 years old. Under the compliance test requirements, we do not require a test for any vehicle under the age of 4 years old.
- A1.11 Replacing paragraph 15.3 of the Policy, is the requirement for all named vehicle proprietors to obtain a Basic DBS check as per the Department for Transport statutory standards.
- A1.12 The current Policy at paragraph 15.10 specifies what happens to any existing licence, if it is failed to be renewed in time. Paragraph 15.13 has been added specifically in relation to Hackney Carriages, this is due to quantity restricted numbers in place. This paragraph is only to be added following the Licensing Committee hearing in relation to the Unmet Demand Study, if a decision is made to introduce the recommended waiting list policy on how to re-allocate Hackney Carriage vehicle proprietor licences which have lapsed.
- A1.13 The grant and renewal of operator licences is covered at section 17 of the Policy. At paragraph 17.2 some wording has been removed as we only set one fee in relation to an Operator's Licence and the fees are not calculated as specified in the current Policy and never have been. An additional paragraph has been added at 17.4 where there is the requirement for all named operators to obtain a Basic DBS check as per the Department for Transport statutory standards.
- A1.14 The most significant change to the Policy can be found in the 'Taxi & PHV Licensing Criminal Convictions Policy' which is Appendix A of the current Policy. These changes have been made following the issue of the Department for Transport statutory standards. It is aimed at toughening up the licensing regime in relation to drivers, vehicle proprietors and operators convictions, as well as taking into account any cautions, warnings, reprimands, endorsable fixed penalties and any other relevant information.
- A1.15 Operator licensing is covered at Appendix C of the Policy. A replacement of the wording at paragraph 2.1 is now a requirement for any operator to inform the Licensing Authority immediately and within 48 hours of an arrest and release, charge or conviction as set out at Appendix A.
- A1.16 Also in relation to operator licensing at Appendix C of the Policy. At paragraph 4.6, the operator must now carry out and maintain records showing that they have carried out a Basic DBS check on any staff that are involved with booking or dispatching vehicles for their company.
- A1.17 Seasonal Hackney Carriages are covered by the recent changes to livery in

November 2018, however, wording in relation to this livery has been removed at Appendix D of the Policy. If the decision is made following the Licensing Committee in relation to Unmet Demand, to convert the 7 seasonal Hackney Carriages to full time licences, this wording will no longer be required.

A1.18 An additional Appendix to the Policy has been added, Appendix K. This is only to be added to the Policy if it is decided at the Licensing Committee, which is determining the results of the Unmet Demand Study, that the Licensing Authority should adopt a Policy for determining how the 2 non-renewed licences, along with any future Hackney Carriage licences which fail to be renewed are re-allocated.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

Approval of the Policy is a Licensing Committee decision. Any challenge to the Policy would have to take place within three months of it being adopted. Such a challenge would be by way of Judicial Review.

A3. Options

A3.1 The options in relation to the Hackney Carriage and Private Hire Licensing Policy are:

- (i) To agree the new Policy in its current form
- (ii) To amend and agree the new Policy
- (iii) To refuse to endorse the new Policy

A4. Summary of resource implications

A4.1 There are no significant additional resource implications that will derive from the Council discharging its routine and ongoing responsibilities, under the Hackney Carriage and Private Hire licensing regime.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no perceived equalities implications nor direct Crime and Disorder implications.

A6. Consultation and Customer Focus

A6.1 There has not been any consultation as this is a national change in statutory guidance. The Department of Transport has consulted nationally before the implementation of this guidance.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units relating to this report.

Appendixes

Appendix 1 Draft Hackney Carriage and Private Hire Licensing Policy 2021

Documents available in members' rooms: None

Background Papers:

The following resources and documents were used to compile this report:

Department for Transport Guidance ("Statutory Taxi & Private Hire Vehicle Standards")
– July 2020 Edition