

Public Agenda Item: **Yes**

Title: **Hackney Carriage and Private Hire Licensing Policy 2013**

Wards Affected: **All**

To: **Licensing Committee** On: **19 January 2017**

Key Decision: **No**

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

Contact Officer: **Gary O'Shea**
Telephone: **01803 207631**
E.mail: **Gary.oshea@torbay.gov.uk**

1. What we are trying to achieve

1.1 This report seeks Members agreement to minor amendments to the Hackney Carriage and Private Hire Licensing Policy which came into effect on 1 May 2013.

2. Recommendation(s) for decision

2.1 That the Licensing Committee agrees to:

The changes to the Hackney Carriage and Private Hire Licensing Policy 2013, as highlighted in **Appendix A** and that these take immediate effect.

3. Key points and reasons for recommendations

3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

3.2 The current Hackney Carriage and Private Hire Licensing Policy 2013 was implemented in order to assist the licensing authority in reaching decisions by clearly defining those matters that should be taken into account during the application process. It also provides clear advice and guidance as to standards that are expected of drivers and applicants and provides information to the general public.

- 3.3 A number of minor amendments have been identified, which are highlighted in **Appendix A**.
- 3.4 The changes are interim changes in lieu of a full review of the policy that is planned for May of this year. These have been brought about due to changes in circumstances that have overtaken the current policy thus rendering it out of date. These matters are described in **Appendix A**.
- 3.5 As these are policy changes, any subsequent legal challenge would be by way of a Judicial Review. This is considered unlikely for the nature of the proposed amendments.

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

Frances Hughes
Assistant Director Community and Customer Services

Appendix A – Supporting information to Report

A1. Introduction and history

- A1.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.
- A1.2 The current Hackney Carriage and Private Hire Licensing Policy came into force on 1 May 2013. A number of minor amendments have been identified, which are highlighted below. These have been necessitated to some degree by changes in circumstances.
- A 1.3 The most significant change has been brought about by a change in legislation, whereby the Council is now required to issue Driver licences for a period of three years and Operator licences for a period of five years by virtue of Section 10 Deregulation Act 2015. Whilst the periods of 3 and 5 years respectively should in law be considered to be the norm, there is some scope for a lesser period as the legislation states: *“for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case”*.

The Licensing Authority has already commenced the issuing of three year licences, however, in order to ensure that processes remains as streamlined as possible for the benefit of the licensing authority and drivers alike, it is proposed that driver licences be changed to three year terms from the renewal date that corresponds to the date that the next DBS (criminal records check) is due. Some licences are already issued for three years and this means that the remainder will be converted to three year licences as of 1 May 2017 and 1 May 2018 meaning that by 2018 all drivers will hold a three year licence and in all cases the DBS will be due at renewal. This will provide clarity and an efficient means of ensuring all checks are up to date so as to promote public safety.

In the interests of fairness, not least because the cost of a three year licence pro rata is less than the cost of a one year licence, any driver not due a DBS (and therefore proposed to have a one year renewal) on renewal this year (2017) will be given opportunity to apply for a three year licence, however, this would be on strict condition that they undertake a new DBS so that this will always correspond with their licence renewal date.

The above will result in a change to the policy at 9.1 and 9.3 with regard to drivers as follows:

Current 9.1

The Licensing Authority issues one or three yearly licences or part thereof to new applicants in accordance with Torbay Councils licensing year which currently runs from the 1st May to 30th April.

Proposed 9.1

Once the licensing authority is satisfied that any applicant for a new driver licence is a 'fit and proper' person, a licence will be issued for a period of up to 3 years. However, all licences run from 1st May and expire on 30th April; this means that any licence issued after 1st May will be valid for between 2 and 3 years dependent on when it is granted e.g. a licence issued on 1st September 2017 would expire on 30th April 2020 (as if it were granted on 1st May 2017 – valid therefore for a period of 2 years and 8 months).

Current 9.3

The Licensing Authority will issue an annual or three yearly licence to existing licence drivers, upon receipt of a completed application, which will be issued for the period of 12 or 36 months running from the 1st May to the 30th April.

Proposed 9.3

All renewals effective from 1 May 2017 will be issued for a 3 year term where a DBS is required. Renewals where a DBS is not yet due will be issued for a 1 year term up until 30 April 2018 when the next DBS is due, at this stage renewal will be for a 3 year term. Any driver not due a DBS in the current year may request a 3 year renewal, although this will be on condition that a new DBS is applied for in order to ensure that the date of licence renewal always corresponds with the date of the next DBS.

Given the current method of issuing Operator licences, some thought needs to be given as to how the transition to 5 year terms can be best managed. It is proposed therefore that these should remain unchanged pending a full review of policy in May this year and for any new measures to become effective from the next available date of renewal, this being 1 May 2018.

- A1.4 Given advances in technology and a move towards improving safety of both the travelling public and drivers alike, there is a growing trend towards CCTV systems being installed in licensed vehicles. Perhaps not surprisingly such use of potentially personal and/or covert information is strictly governed through the surveillance Commissioner.

The current Hackney carriage and Private Hire Licensing Policy already recognises the use of CCTV although it makes clear that such use remains at the discretion of the individual owners/drivers. Clearly the requirements of the Data Protection Act 1984 are spelt out in the policy and users are reminded of their legal requirement to ensure that they are fully compliant with regulation surrounding the use of recording equipment.

At the time the policy was written, there was only one known company that provided equipment that fully fulfilled legal requirements, however, over the last few years with the evolutions in technology and the increasing popularity of CCTV equipment, other companies have emerged onto the scene. It is therefore proposed to alter condition 14.35 of the policy as follows:

Current 14.35

Taxicam equipment is the only equipment that currently meets the requirements set out in paragraph 14.34 (above) for installation in vehicles at this time. The permission to use any other equipment would need to be obtained from a senior officer in the Council's licensing authority.

Proposed 14.35

CCTV equipment when installed in vehicles must meet the requirements set out in paragraph 14.34 (above). Permission to use such equipment does not need to be obtained from the licensing authority. However, it is the responsibility of the owner/proprietor of each vehicle to ensure full compliance with all responsibilities and regulation concerning use of recording equipment. Therefore, in case of any doubt, it is strongly recommended that any owner/proprietor should contact the licensing authority prior to any purchase and installation.

- A 1.5 In February 2016, the licensing authority moved to a system of Driver Standards Agency (DSA) Practical Driving Tests for all new drivers. Whilst this is a requirement when being licensed for the first time, the capacity of the Driver and Vehicle Licensing Agency (DVLA) to conduct the tests was unable to meet demand within a reasonable time span. Therefore, new drivers have been permitted to obtain a licence on condition that a DSA test is undertaken within the first 6 months. Failure to provide satisfactory evidence that the test has been taken, results in revocation of the drivers licence.

The licensing authority was notified by the DVLA in late 2016 that as of 31 December 2016, they would no longer be conducting these tests due to a National increase in demand that they were no longer able to meet. This has resulted in a need to find an alternative provider, in which regard, officers have worked closely with other Devon colleagues and secured an alternative provider, who will also be able to link the DSA training with Child Sexual Exploitation (CSE) training, which will strengthen the vetting of new drivers, particularly in light of the Rotherham findings and ensure that the process is not too onerous or restrictive on anyone wishing to enter the trade.

Whilst the above is subject to a short procurement process, it does mean that Torbay can maintain consistency with the majority of Devon partners and ensure adequate training of drivers in its efforts to safeguard the public. It is proposed that DSA and CSE training for new drivers will be available as soon as the end of February and this should not impact too much on ensuring that drivers meet the 6 month deadline in the short term moving towards undertaking the tests prior to licensing in the short to medium term i.e. by mid-year as a guide.

- A 1.6 Members of the Licensing Committee held on 18 February 2016 resolved that: *“the Environmental Health Manager (Commercial) be requested to explore options to roll out the requirement to obtain Driver Standards Agency (DSA) Practical Driving Test to existing drivers in the future (for example via renewals).*

This has been explored although was not something that was practical given the lack of capacity of the DVLA in providing the tests. Moreover there is a question as to whether it would be totally lawful to request that existing drivers undertake additional testing.

There would be a case for an existing driver, who has already be licensed on the basis that they are considered to be ‘fit and proper’ to challenge any move at such additional tests if they were able to show an unblemished licensed history as questions could be raised as to why they were considered ‘fit and proper’ at one stage only to be asked to undertake additional testing of driving awareness and ability in order to continue operating as a licensed driver.

The current policy already provides at 5.11 for existing drivers to be 'called in' for additional testing under certain circumstances where it states:

Existing 5.11

Where an existing licensed driver receives over 6 (six) endorsement/s or penalty points on their licence within each licensing year, the Licensing Authority will require that person to undertake the same assessment. If this is not obtained within 3 months, then the existing licensed drivers badge will be suspended until the necessary driving standards assessment is completed.

Whilst this element of the policy will be kept under review, there have been no concerns raised to date pertaining to existing drivers that would raise any question as to whether additional training is required. It is therefore proposed that the policy in respect of existing drivers should remain unchanged at this time.

A 1.7 Notwithstanding the above (A1.6), Members will be aware of National concerns over child sexual exploitation and the serious offenses outlined in the news over abuse that went on in Rotherham, Oxford and other places. Part of the investigation of these atrocities, particularly with regard to Rotherham highlighted an extreme lack of care and awareness in a number of areas. One such area was that of Hackney Carriage and Private Hire licensing, where it was shown that drivers were either unaware of, or worse ignoring, signs of abuse and grooming. Training programs have therefore been rolled out in various authorities, including Torbay. Members of the alcohol trade have already received training and advanced talks have taken place with a provider to expand this to licensed drivers.

It has already been highlighted in A1.5 how CSE training is intended to be rolled out for new drivers. However, given concerns that came out of these key investigations, it is to be proposed in the full review of the policy in May of this year that all existing drivers must undertake CSE training. However, one provider is able to provide free training at this stage and therefore all existing driving are to be invited over the next few months to a free session. Whilst they cannot be made to attend, there will be a charge for training from April this year and it is hoped therefore that as many as possible will take advantage of the free sessions.

A1.7 As these are policy changes, legal challenge would be by way of judicial review. This is considered unlikely for the proposed amendments.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

There is no significant risk, as there are no significant policy changes being implemented by this Licensing Committee.

A3. Options

A3.1 There are two other options:

- (i) Members to implement the policy changes outlined above;
- (ii) Members to implement amended policy changes;
- (iii) Members refuse the recommendation.

A4. Summary of resource implications

A4.1 There are no resource implications for the approval of the recommendation, as they are generally minor in nature.

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

A5.1 There are no crime and disorder, equality or sustainability issues regarding this report.

A6. Consultation and Customer Focus

A6.1 There has historically been limited consultation with users, notably regarding the changes to Driving Standards Agency (DSA) Practical Driving Test. However, as these changes have been brought through necessity and/or are minor in nature there has been no consultation in lieu of this report. There will however, be a full public consultation prior to a proposed major review of the policy in May of this year.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units, if the recommendations are supported.

Annexes

Annex 1 DRAFT Hackney Carriage and Private Hire Licensing Policy 2017

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Hackney Carriage and Private Hire Licensing Policy 2013