

Taxi Licensing – Deregulation Act 2015

Portfolio:	Community
Ward(s) Affected:	All

Purpose

To report a change in legislation which revises the basis of duration of licences for drivers and operators, and to allow decisions to be made under powers delegated to the Executive Head – Community and to the Licensing Officer to grant licences for such lesser period as the Council thinks appropriate in the circumstances of the case.

Background

1. The conditions and duration of Hackney Carriage and Private Hire Drivers Licences, together with Private Hire Operator's Licences are regulated under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 [LG(MP) Act]. Hitherto it has been practice that each licence has been granted for one year only although legislation has permitted vehicle and operators' licences to be granted for up to three years and five years respectively.

Current Position

2. All licensed drivers are currently required to undergo a triennial criminal record check with the Disclosure and Barring Service (DBS). Drivers are also required to sign a disclosure form which enables officers to carry out a driving licence record check triennially and at any additional time over the following three years.
3. In addition, a licensed driver is required, by condition, to notify the Council in writing with details of any conviction imposed on them during the period of their licence. A further control is that the Council receives notification from the police where there is a public protection risk to allow it to act swiftly to put in measures to mitigate any danger. Such notification will usually relate to an arrest or charge for an offence. In such circumstances officers then have an opportunity to suspend or revoke the Hackney Carriage or Private Hire drivers licence as necessary under delegated powers.
4. Drivers are also required to undergo a medical examination with the Council's nominated medical practitioners every three years. The checks are required annually upon reaching the age of 60 years or at any age upon recommendation by the medical practitioner.
5. In Surrey Heath it is the current practice that licenses are granted for one year only. This places an administrative burden on business which does not improve safeguarding. This is because the DBS checks remain triennially;

DBS checks can be carried out any time during the three year period; licensed drivers are required to notify the Council of any convictions during the licence period; and the Police will provide the Council with timely and relevant information which might indicate a public protection risk.

Legislative Position

6. The Deregulation Act 2015 (the Act) gained Royal Assent on 26 March 2015 with Commencement Orders bringing some provisions into effect during a variety of dates from April 2015 through to January 2016. The provisions relevant to this report came into effect on 1 October 2015.
7. The Act provides for the removal or reduction of unnecessary burdens on businesses, civil society, individuals, public authorities and the taxpayer.
8. Section 10 of the Act relates specifically to the duration of Hackney Carriage and Private Hire driving licences, in addition to Private Hire operators' licences, retaining the default duration of the driving licences to 3 years and the operator's licence to 5 years, but to include the provision or *"for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case"*.
9. The provisions of Section 10 of the Act, together with the original relevant provisions of LG(MP) Act are copied at Annex 1.

Proposals

10. Officers are of the view that the control measures outlined in paragraphs 2-5 above are robust enough to protect the public from danger. If evidence of serious misconduct by a licensed driver is brought to the attention of officers by police the driver is most likely to have his licence suspended or revoked regardless of the remaining duration of a drivers licence.
11. Officers recommend that the triennial criminal record, driving licence and other checks continue in order to maintain the integrity of the 'fit and proper' standard and that in circumstances where there is less than three years left before further checks are required, the duration of a hackney carriage or private hire drivers licence is reduced accordingly. For example, if a medical report recommended an annual examination or if the most recent criminal record check was carried out 2 years previously then a licence would only be granted for one year.
12. With regard to private hire operators, officers recommend that in circumstances where an operator is not a licensed driver a criminal record check is required every 3 years.
13. The scale of charges for Hackney Carriage and Private Hire licence fees are set and agreed by this Committee on an annual basis. Currently Hackney Carriage and Private Hire driver's licences are set at £95 for an annual

licence. Private Hire Operator's licences incur a fee of £215 but reduced to £85 for a single vehicle operator.

14. Officers recommend that, for the remainder of the current financial year, where a licence is granted for a period longer than one year the fee charged is also increased on a pro rata basis and that thereafter fees be set by this committee at a future meeting. Any changes to the fee structure will be subject to a notice being published in a local newspaper followed by a 28 day consultation period. In considering whether there has been a 'variation' requiring publication, section 70 (3) a) of the LG(MP)Act suggests that this is not necessary in order to bring about the changes officers recommend, as the **maximum** fees are not being varied, on a pro rata basis.
15. Although some drivers may welcome the change, others may consider it a financial burden especially where they are approaching retirement or looking for a change in career. Officers therefore recommend that in circumstances where a driver requests a licence for only one year rather than three, then that request is usually permitted. It should be noted that the local authority's discretion as to whether a shorter period should be granted is not one that applies in exceptional circumstances. However, as with any exercise of discretion, there should be a reasoned explanation recorded. The circumstances given above are likely to be those that will engage the discretion. It is currently unclear if government guidance will be provided in this regard.

Recommendations

16. **The Committee is advised to RESOLVE that**
 - (i) **licensed hackney carriage and private hire drivers continue to be subject to a triennial criminal record check, driving licence check and medical examination in order to maintain the integrity of the 'fit and proper' standard and that in circumstances where there is less than three years left before further checks are required the duration of a hackney carriage or private hire drivers licence is reduced accordingly;**
 - (ii) **in circumstances where a private hire operator is not a licensed driver a criminal record check be required every 3 years;**
 - (iii) **subject to the statutory advertisement and consultation period, for the remainder of the current financial year, where a licence is granted for a period longer than one year the fee charged is also increased on a pro rata basis and that future fees be set at a future meeting; and**
 - (iv) **in circumstances where a licensed driver or private hire operator requests a licence for only one year rather than a longer period then that request is usually permitted in the exercise of**

discretion.

<u>Annexes</u>	Annex 1 – Legislative provisions of the Local Government (Miscellaneous Provisions) Act 1976 and the Deregulation Act 2015
<u>Background Papers:</u>	None
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