

Cabinet

20 November 2008

Licensing Arrangements



Report of John Richardson (Cabinet Member Councillor Young)

1. Purpose of the Report

1.1 The purpose of the report is to:

- 1.1.1 Inform Cabinet about the preparations that have been undertaken in respect of the licensing functions the Council will be responsible for post Vesting Day, in relation to Taxis, the Licensing Act 2003 and the Gambling Act 2005.
- 1.1.2 Seek consent from Cabinet for the draft policies in respect of Taxis, the Licensing Act 2003 and the Gambling Act 2005 to form the basis of consultation with stakeholders.
- 1.1.3 Obtain a steer from Cabinet in respect of the possible future arrangements for Zoning and Regulating the number of Taxi licenses.

2. Background

- 2.1 The new Council, acting as Licensing Authority, will be responsible for administering the provision of a large number of licensing functions set down in a range of legislation. In order to ensure that on Vesting Day the new Authority acts in a legal manner it will be necessary to ensure that the appropriate policies and, where necessary, procedures are properly in place.
- 2.2 Officers have been reviewing best practice with a view to harmonising standards across the service areas in line with the stated aim of the submission bid. This is to provide an integrated and improved Licensing service, and seeking to improve the protection afforded by providing appropriate enforcement activity.
- 2.3. Currently there are approximately 1,500 hackney carriage / private hire vehicles and 2,500 drivers licensed under the relevant legislation; 2,000 premises and 2,500 persons licensed by the constituent authorities under the Licensing Act 2003, with a further 130 premises licensed under the Gambling Act 2005.

3. Gambling Act 2005

- 3.1 The Gambling Act 2005 was fully implemented in the Autumn of 2007. Under the Act, the Council will be responsible from the 1st April 2009 for issuing Premises Licenses, for premises such as casinos, bingo halls, betting offices, adult gaming centres and licensed family

entertainment centres, as well as permits for gaming machines in pubs, clubs and other alcohol licensed premises.

- 3.2 The Act contains three Licensing Objectives, which underpin the functions that the Gambling Commission and Councils, acting in their capacity as Licensing Authorities, will perform. These Objectives are central to the regulatory regime created by the Act and are:
- 3.2.1 preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
 - 3.2.2 ensuring that gambling is conducted in a fair and open way; and
 - 3.2.3 protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 3.3 Licensing Authorities are required to prepare and publish, every three years, a statement of the principles that they propose to apply when exercising their functions. In preparing such a statement, Licensing Authorities must follow the procedure set out in the Act as well as the accompanying guidance. The new Council will be required to publish its statement on or before 31st March 2009. The principles are subject to a suitable consultation period prior to adoption. A copy of the Statement of Principles in respect of the Gambling Act 2005 is attached as Appendix 1.

4. The Licensing Act 2003

- 4.1 The Licensing Act 2003 replaced a number of outdated licensing regimes in England and Wales. It was drafted to provide a more responsive and flexible licensing system governing the sale and supply of alcohol, public entertainment and late night refreshment.
- 4.2 Under the 2003 Act the Council as the Licensing Authority is required to prepare and publish a 'Statement of Licensing Policy'. The Council must have regard to the Secretary of State's guidance in the making and publication of its statement of licensing policy, and the Licensing Authority must have regard to this statement of licensing policy when discharging its licensing functions.
- 4.3 It is the duty of all Licensing Authorities to carry out their functions under the legislation with a view to promoting the four principal Licensing Objectives. These Licensing Objectives are:
- 4.3.1 the prevention of crime and disorder;
 - 4.3.2 public safety;
 - 4.3.3 the prevention of public nuisance; and
 - 4.3.4 protection of children from harm.
- 4.4 The Council is required to prepare and publish a 'Statement of Licensing Policy' every three years. During the three-year period the Council must keep the policy under review and may wish to make such revisions to it as it considers necessary and appropriate. For instance, revisions may occur in the light of feedback from the local community on whether the statutory Licensing Objectives are being met. The new Council will be required to publish its Statement on or before 31st March 2009.
- 4.5 This Statement of Licensing Policy is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the Authority and for promoting fairness, equal treatment and proportionality. It is subject to a suitable consultation period prior to adoption. A copy of the Policy is attached at Appendix 2.

5. Hackney Carriage and Private Hire licensing

- 5.1 The licensing of Taxis is complex and involves the application of a substantial amount of legislation and case law, some of which dates back to 1847. The effect of this regulation is to require any vehicle which is to be used as a Taxi to be licensed by the Licensing Authority, either as a Hackney Carriage or as a Private Hire vehicle.
- 5.2 Different conditions and requirements attach depending on the license which is obtained. Drivers of vehicles licensed by the local authority must also be licensed, as must those who operate licensed vehicles. The District Councils in Durham, each setting their own fares, license fees, bylaws, and conditions, currently undertake licensing of Taxis. Currently none of the Districts has adopted a formal Taxi policy but all have adopted conditions, which attach to the various licenses.
- 5.3 In order to allow for the appropriate Taxi licensing arrangements to be put in place, the Council will need to carry out extensive consultation and make a decision on zoning arrangements. It would be considered as best practice to also adopt a Taxi licensing policy.

5.4 Zoning

- 5.4.1 The Council should decide whether, from 1st April 2009, it will continue to operate hackney carriage licensing in 7 zones. In the absence of any decision by the Council, with effect from 1st April 2009, hackney carriage vehicles will be licensed only to operate within the zone in which their license was granted – i.e. in one of the areas of the previous District Councils.
- 5.4.2 In operating with 7 zones there would be no flexibility on the part of Hackney Carriages to operate as Hackney Carriage vehicles outside their current District Council boundary. In addition, there would potentially be 7 different sets of conditions, fees and fares applying to vehicles operating across the County. Although it would be possible to harmonise conditions, fees and fares across all 7 zones by adopting one policy, there would be differing conditions applying across the 7 zones until such time as any transitional arrangements were exhausted. This could lead to confusion amongst the public and create discontent within the trade.
- 5.4.3 It is, however, open to the Council to consider de-zoning the area, which would have the effect of creating one zone throughout the whole of the Council's area. In operating as a single zone all taxis would be able to operate throughout the whole of the Authority's area. There would be a single set of conditions, fees and fares and is the option favoured by the Licensing Officers.
- 5.4.4 The Department for Transport has recommended (in its "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance" published October 2006) that zones should be abolished for the benefit of the travelling public, as "*zoning tends to diminish the supply of taxis and the scope for customer choice.... Abolition of zones can also reduce costs for the local authority, for example through simpler administration and enforcement.*"
- 5.4.5 At present, two of the zones also limit the number of Hackney carriage vehicles that can be licensed in that area – Durham (74 vehicles) and Chester-le-Street (92 vehicles). This situation would also be perpetuated in the absence of a decision by

Members to de-limit the zone. The view of the Department for Transport is that de-limitation of numbers is best practice.

5.4.6 Four options are therefore open to Members. Each option should be considered with regard to the benefits or disadvantages that would arise for the public as a result of the option being exercised:

- Retain the status quo, with seven zones, two of which are limited;
- Maintain the zones with no limitations;
- Maintain the zones but introduce limits for the zones to currently limited; or
- De-zone with no limits over the New Authority area.

5.4.6.1 Retain the Status Quo

This option requires the least effort on the part of the new Authority in the short term. Over the longer term however it would prove the most costly due to the need to administer seven different regimes. It would also be anomalous with the provision of other services to the public, as the boundaries of the zones would be the administrative areas for the demising District Councils. It is likely that this may provoke discontent within the trade, who would not all be operating on the same terms, conditions, fares etc.

5.4.6.2 Maintain the Zones with No Limitations

In the event that Members wish to explore this option, it would be necessary to conduct a full consultation prior to any decision being made. Only once all of the information has been gathered as a consequence of the consultation can the decision be made. Any decision to de-limit numbers could be subject to Judicial Review by those most affected by the decision to de-limit numbers (i.e. those who have hackney carriages currently licensed in Durham and Chester-le-Street).

5.4.6.3 Maintain the Zones with Increased Limitation

It is possible to impose and maintain a limit in any zone, provided that there is a survey that confirms that there is no 'significant unmet demand' for Hackney Carriages within that zone. If Members wish to exercise this option, it would be necessary to conduct surveys in at least 5 of the Districts to establish that there is 'unmet demand', and repeat this survey at least every three years thereafter in all zones while the limitation is maintained. A decision to impose a limitation on numbers could be subject to Judicial Review by those most affected by the decision to impose a limitation on numbers (i.e. those who have been prevented access to the trade as a consequence of the decision to limit numbers). Such a decision would also be contrary to guidance issued by the Department for Transport. In addition, there would be a continuing risk of applications being made for a Hackney Carriage license and, when refused, appealed to the Crown Court.

5.4.6.4 De-zone with No Limits Imposed

De-zoning the area and removing limitations would lead to the easiest and cheapest administration of Hackney Carriage licensing. This would be reflected in the fees charged for licences. There would be unanimity of conditions, fees, fares etc, and enforcement would be the same for the whole of the new area. This option could only be pursued following appropriate consultation and at present the consent of the Secretary of State for Transport would also be required (a Regulatory Reform Order removing this requirement has been awaited since 2006). This option may affect the service available to the public in the short term whilst the trade gets used to there being

no restrictions across the County. A decision to de-zone and de-limit could be subject to Judicial Review by those most affected by the decision (i.e. those who are currently licensed in each of the seven existing zones).

- 5.4.7 In the event that the Council opts to retain the zones, consideration would need to be given as to whether the fares, fees, polices, conditions and bylaws should be harmonised across all zones. If the preference of the Council is for any option other than the retention of the precise status quo, formal consultation will be required. A final decision could only be taken once that consultation had concluded. It would be desirable to engage the services of an external facilitator should an option requiring consultation be preferred.
- 5.4.8 Independent legal advice has been sought in respect of the matters outlined above, and a copy of the advice is attached as Appendix 3.

5.5 Policy

- 5.5.1 The Licensing Authority is entitled, in accordance with the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 if adopted, to regulate the Taxi trade and impose such conditions as it sees fit upon the licenses it grants. It is proposed that the Council adopts a Taxi Policy, which will set the framework by which this regulation can take place, and will also include appropriate licensing conditions. The policy will provide guidance for Members when making Taxi related decisions, inform the trade of the operating standards with which they will be expected to comply and inform the public of the service that they can expect from the Taxi trade. It will also assist in the harmonization of the regulation of the trade across the County. A copy of the draft policy is attached as Appendix 4.
- 5.5.2 None of the demising District Councils has a taxi policy, though all have conditions, customs and practices which have evolved over a substantial period of time. A summary of the main provisions existing in the District Councils is attached as Appendix 5. It is therefore vital that the adoption of one policy across the Council is only undertaken following wide consultation, particularly with those who will be affected by the proposals.
- 5.5.3 In drafting the policy, Officers recommend that the following Objectives are adopted:
- To ensure that safe, comfortable, reliable and accessible Hackney Carriage and Private Hire vehicles are available for all who require them.
 - To ensure that drivers and Private Hire operators are fit and proper persons.
 - To provide clarity for licensees with respect to the Licensing Authority's requirements and the decision making process.
 - To promote a professional and respected Hackney Carriage and Private Hire trade.
- 5.5.4 The policy has been drafted to particularly address the following issues:
- 5.5.4.1 Age
The policy proposes that there will be no maximum age at which a vehicle will no longer be licensed. It is proposed that all vehicles must meet conditions that ensure the vehicle is safe, comfortable, well maintained and clean, regardless of age.

5.5.4.2 Colour

In order to assist the public to recognise a Hackney Carriage that has been licensed by the Council, it is proposed that all such vehicles are white in colour. This should assist in ensuring that public safety is maintained by preventing customers getting into unlicensed vehicles. In the long term it will provide a fleet of readily identifiable "Durham Taxi Fleet". The colour white is proposed as several District Councils already adopt it and there are generally fewer white non-commercial vehicles on the road. The colour white could therefore be a readily identifiable feature of the "Durham Taxi Fleet".

5.5.4.3 Special Vehicles

The number and type of vehicles that are used for carrying passengers has increased significantly in recent years. Durham as a major tourist and commercial centre has already experienced a number of such innovations. It is proposed that in order to allow for such varied vehicles a number of conditions have been included that recognises that non-standard vehicles may still be used which provide a safe and comfortable environment for passengers.

5.5.4.4 Driving Proficiency Test

In order to ensure that new Taxi drivers can demonstrate that they have the appropriate knowledge and skills that are required to take on responsibility for conveying fare paying passengers it is proposed that they satisfy a driving proficiency test. The Driver Standard Agency has developed a proficiency test aimed specifically at taxi drivers. New drivers must demonstrate that they have passed this test.

5.5.4.4 Driver Knowledge and Locality Test

In order to ensure that new taxi drivers can demonstrate that they have the appropriate knowledge of licensing conditions and appropriate geographical knowledge of the area it is proposed that they satisfy a driver knowledge and locality test. The knowledge test would ensure that drivers are aware of their ongoing responsibility to the Licensing Authority and the public. The locality test would ensure that passengers are taken by the most direct route to their chosen destination.

5.5.6 Where the above matters have a cost implication, this has been identified as far as possible, as set out in Appendix 6. Further information will be provided when the outcome of the consultation is reported to Council.

5.6 **Transitional Arrangements**

5.6.1 If adopted, the policy will have effect for all new applications from the 1st of April 2009. However, it would be inequitable to require those currently licensed by the District Councils to have to comply immediately in full with the terms of the policy. Licensing Officers are of the opinion that, providing valid renewals are received, existing license holders continue to be subject to their existing licensing conditions for a transitional period to ensure that the transition to the standard adopted by the Council is accomplished in a fair and managed fashion for the benefit of the public and the trade.

5.6.2 It is considered that, for drivers, the transition to the conditions adopted by the Council should be upon next renewal after 1st April 2009. However, provided that the license is subject to a valid renewal application, there would never be a requirement to comply

with the eligibility standard (i.e. driver proficiency test, local knowledge test etc).

5.6.3 For vehicles, provided that renewals are valid, it is proposed that the transition should be achieved within a period of three years. Any shorter period would not be appropriate as a transitional period. The Council could however determine a longer period, including the lifetime of the vehicle should it wish to do so.

6. Resource Implications

- 6.1 Licensing Officers have worked over many months to ensure that the draft policies and statements of principles are appropriate. They are therefore aware of the range of issues that they raise and will be able to amend their working practices to bring into effect any decisions made by the Council.
- 6.2 Consultation is required in respect of the statement of principles and policies that are proposed for adoption. Staff resources will be required to provide information to interested parties and stakeholders, carry out the consultation process, analyse responses received and formulate the final documents for approval by Council.
- 6.3 In the event that Council wishes to change the arrangements as far as the zones and limitations are concerned, formal consultation will be required. It is recommended that this consultation be done in conjunction with an external facilitator.

7. Legal Implications

- 7.1 In respect of the Licensing Act 2003 and Gambling Act 2005, the documentation and consultation required are prescribed by statute.
- 7.2 In respect of Taxi licensing, if the Council ultimately decides to amend the position in respect of zones, or adopts a Taxi Policy as recommended within this report, there will be an effect upon those currently involved with the Taxi trade. In view of this, Article 8 (right to privacy and family life) and Article 1 of the first protocol (right to peaceful enjoyment of possessions) of the European Convention of Human Rights have been considered. Article 8 is relevant in this case as the Licensing Authority must balance the rights of the applicant to run their business as they wish against the rights of the public to be protected and transported safely. A licence is viewed as a possession, thus making Article 1 relevant in this case.
- 7.2 Businesses do have the right to operate within the area, however the Council has a duty to regulate such businesses in the interests of public safety. The Council therefore needs to be clear as to the rights afforded by the Human Rights Act and the need to ensure that the reasons given for any decision clearly justify that the interference is necessary and proportionate and in accordance with the legitimate aim of promoting public safety. To assist in this matter, independent legal advice was sought as set out above in relation to the matters which are the subject of this report.

8. Risk Assessment

- 8.1 In respect of the Licensing Act 2003 and Gambling Act 2005, the Council is required to proceed as outlined, and the risk to the Council is therefore low, unless inappropriate documents are ultimately adopted by the Council.
- 8.2 In respect of the Taxis, each option in respect of zoning and de-limitation carries a certain level

of risk. The nature and level of the risk is dependent upon which option is chosen. The main risk is that the decision made by the Council is subject to a successful Judicial Review application. This risk should be successfully mitigated by ensuring that the appropriate procedure is followed in each event, and that decisions are made after taking into consideration the results of the consultation exercise to be carried out. There is minimal risk in adopting a policy across the Count provided that the adoption is to ensure the protection of the traveling public and the integrity of the taxi trade, and that suitable transitional arrangements are made.

9. Financial implications

- 9.1 In respect of the Licensing Act 2003 and Gambling Act 2005, there are no financial implications, unless inappropriate documents are ultimately adopted.
- 9.2 In respect of Taxi licensing, all options carry a potential financial implication. The level of the financial commitment will depend on whether the Council wishes to have all vehicles bearing the livery of the new authority, or whether they are prepared to manage the transition of the livery over a period of time. The financial implications in respect of zoning are difficult to quantify at the present time, and no doubt will be the subject of further exploration once a preferred option has been identified and the design of the Licensing Service has been addressed.

10. Recommendations

- 10.1 Cabinet is recommended to:
- 10.1.1 Agree that the Statement of Principles in accordance with the Gambling Act 2005 is approved to be released for consultation.
- 10.1.2 Agree that the Statement of Licensing Policy in accordance with the Licensing Act 2003 is approved to be released for consultation
- 10.1.3 Agree that the Taxi policy is approved to be released for consultation.
- 10.1.4 Indicate whether the Council should consult, with the assistance of an external facilitator, on;
- A) retaining the 7 Taxi licensing zones currently in existence from the 1st April 2009;
 - B) whether 7 Taxi licensing zones should continue for a specified period of time post Vesting day;
 - C) stakeholder views on the limitations on numbers of Taxis within the zones;
 - D) the appetite for having a single Taxi licensing zone;
 - E) de-regulating the number of Taxi licenses in the area.

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