

Cabinet

19th March 2009



Licensing Arrangements Results of Consultation

Report of Terry Collins, Corporate Director, Neighbourhood Services (Cabinet Portfolio Holder Councillor Bob Young)

1. Purpose of the Report

- 1.1 To inform Cabinet on the outcome of the consultation with stakeholders relating to three draft licensing policies:
 - Hackney Carriage and Private Hire
 - Gambling Act 2005 Statement of Principles
 - Licensing Act Statement of Licensing Policy.
- 1.2 To make recommendations to Cabinet on proposed amendments to the draft policies.
- 1.3 To seek approval for the redrafted policies to be forwarded to full Council for approval.

2. Background

- 2.1 From April 1st 2009 Durham County Council will be responsible for administering a range of statutory licensing functions. In order to ensure that the new Authority acts in a legal manner it will be necessary to ensure that the appropriate policies are properly in place for vesting day.
- 2.2 Currently there are approximately 1500 hackney carriage/private hire vehicles and 2500 drivers licensed under the relevant legislation; 2000 premises and 2500 persons licensed by the constituent authorities under the Licensing Act 2003, with a further 130 premises licensed under the Gambling Act 2005.
- 2.3 Cabinet previously considered a report on the 20th November 2008 which informed members about the preparations being made in respect of the licensing functions that the new Authority would be responsible for post vesting day. The report also sought consent to consult with stakeholders on three draft licensing policies and to obtain a steer on arrangements for the zoning and regulating the number of Taxi licenses. Cabinet resolved that the draft Hackney Carriage and Private Hire policy, draft Statement of Principles in respect of the Gambling Act and the draft Licensing Act 2003 Statement of Licensing Policy be released for consultation.

The consultation process involving all three licensing policies ended on the 20th February. A summary of the responses received during the consultation period are included in Appendix 1.

- 2.4 Cabinet also resolved that the Council would consult, with the assistance of an external facilitator on the zoning and deregulation of taxis operating throughout the County. The Consultation process will be undertaken post vesting day. The process regarding this issue will be reported to members in due course.

3.0 Detail

- 3.1 The draft Hackney Carriage and Private Hire Policy, Gambling Act 2005 Statement of Principles and Licensing Act 2003 Statement of Licensing Policy have been subject to a wide consultation process.
- 3.2 Licence holders in each of the 7 District Authorities together with responsible authorities such as Durham Police as well as national bodies such as the National Private Hire Association were notified of the new proposals and given the opportunity to submit their comments both for and against the proposals.
- 3.3 The summary of the responses included at Appendix 1 outlines the main points of the respondents. The responses have been evaluated by officers from the District Councils' licensing sections and colleagues from Durham County Council's Integrated Transport Unit.
- 3.4 As a result of this evaluation the officers have highlighted proposed amendments to the policies which members will need to consider.
- 3.5 In addition to the consultation process a series of public meetings were held throughout the County. A meeting was held in each of the seven District Council areas. These were for the benefit of those interested in the Hackney Carriage and Private Hire Policy. A further meeting was held at Durham County Hall which was to discuss issues involving all 3 draft policies. Approximately 200 people attended the 8 meetings.
- 3.6 Each of the meetings involved a presentation by licensing officers and a question and answer session. The questions raised related mainly to issues concerning the Hackney Carriage and Private Hire Policy as well as zoning, deregulation and enforcement. Many of the matters raised were also reflected as written comments during the consultation process.

4.0 The main issues

- 4.1 The vast majority of comments received during the consultation process related to Hackney Carriage and Private Hire Policy. The main issues concerned the proposed colour policy and driving proficiency tests. An outline of the comments received on each of these subject areas is attached at Appendix 2.

5.0 **Conclusion.**

- 5.1 Members will note that the information relating to all the responses from the consultation process is included in Appendix 1 and in each case an officer recommendation is offered which it is suggested that members take into consideration.
- 5.2. Members are asked to consider the proposal under Appendix 3 Paragraph 2 (iv) of the draft policy that Hackney Carriages Vehicles must be white. This requirement would apply to all new vehicle licences and to existing vehicles by 2012.
- 5.3 Currently three District Councils in County Durham already have a policy requiring vehicles to be white.
- 5.4 Licensing Officers consider that the public's safety can be enhanced by vehicles all being one recognisable colour.
- 5.5 There is of course a cost issue to this proposal and it has to be noted that the colour of vehicles is not included in the Department for Transport's Taxi and Private Hire Vehicle Best Practice Guidance.
- 5.6 With regards to the issue of colour, City of Durham District Council's proposal that all Hackney Carriage vehicles be white was previously challenged in the Crown Court in 2005, Durham City Council versus Adrian Fets. The Court found in favour of Mr. Fets. and the appeal by Durham City Council was dismissed with costs awarded to Mr. Fets.
- 5.7 More recently, in March 2009 York City Council also lost a legal challenge in relation to the introduction of a colour policy requiring all Hackney Carriage vehicles to be black. Following this ruling the Council are taking further legal advice and reviewing their policy.
- 5.8 Members are advised that a similar legal challenge may be forthcoming should members agree at this time to the proposed colour policy.
- 5.9 Members must therefore decide from a number of options:-
- leaving the colour requirement as detailed in the policy,
 - extend the transitional period to for example 2014;
 - removing the requirement from the draft policy and;
 - defer any decision regarding the introduction of a colour policy pending further detailed consultation and consideration of the effects of implementing this requirement.
- 5.10 In considering the options above, and bearing in mind the comments received during the consultation process, Officers would recommend removing the colour requirement from the draft policy and for Members to defer any decision regarding the introduction of a colour policy pending further detailed consultation and consideration of the effects of implementing this requirement.

- 5.11 Another major issue that has been raised from those responding to the Draft Hackney Carriage and Private Hire Policy is the proposal that all new drivers undertake a Driving Proficiency test (see Appendix 1 Para 1.1 (ii)). An outline of the comments received on each of these subject areas is attached at Appendix 2.
- 5.12 This is currently a requirement in two of the District Councils in County Durham. The reason for including such a requirement in the policy is to ensure that new drivers who become licensed Hackney Carriage or Private Hire Drivers for the first time have passed a recognised test of their driving ability one that is specifically aimed at Taxi drivers. It is vital that the safety of the public is considered above everything else when considering driver applications. Although there is opposition from a number of drivers, others who have previously completed the tests are in favour of its introduction throughout the County.
- 5.13 Opposition to the test is largely based on the cost of the test which currently is approximately £60. It is important to recognise that drivers when licensed under the new Authority will be able to drive throughout the Durham County. This test should therefore assist in improving public safety.
- 5.14 Members are asked therefore to consider whether the Driving Proficiency test should remain in the policy. Members are reminded that if implemented it will only apply to new drivers or existing drivers who have let their current licence lapse.
- 5.15 Bearing in mind the matters detailed above, Officers would recommend that requirements relating to the Driving Proficiency Test should remain within the policy, as drafted.
- 5.16 Members are also asked to consider whether the "Transitional Period" outlined in the draft policy should be extended to 2014 to assist licence holders who currently have 5 year finance agreements that require to be paid off. The proposed date of 2012 is important in that it is linked to the transitional requirements which, includes the colour of vehicles.
- 5.17 Depending upon member's decision to remove the requirement of colour from the policy, Officers would recommend that the "Transitional period" be extended to 2014.
- 5.18 No significant issues were raised during the consultation relating to the Draft Gambling Act 2005 Statement of Principles. It is not considered necessary to carry out any amendments to the Statement of Principles.
- 5.19 The majority of issues raised during the consultation process relating to the Licensing Act 2003 Statement of Licensing Policy were considered to be relatively minor and therefore required only minor changes in wording to the draft policy or indeed no changes at all. However members are asked to consider one matter which was raised regarding Paragraph 9.6 of the policy which states:

“Applicants must carefully consider the hours of opening which they consider appropriate for the future operation of their business, and in particular their requirements to accommodate special events and celebrations. Where an applicant wishes to apply to extend their current opening hours beyond midnight, the Licensing Authority will expect their Operating Schedule to detail measures that will ensure the Licensing Objectives are addressed and that there will be no significant disturbance to members of the public, living, working or otherwise engaged in normal activity within the vicinity of the premises concerned”

- 5.20 The respondent City of Durham Trust states they believe the reference to “beyond midnight” should be amended to “beyond 11pm in residential and mixed areas and midnight in commercial areas. The Trust is not asking that pubs and clubs should close at these hours, but that their Operating Schedule needs to address the issue of possible disturbance to residents. Given that many people start work at 8am or sooner, they must be retiring for the night at or before 11pm and licensees need to propose measures that will, as the policy says, mean there will be no significant disturbance.
- 5.21 The use of “beyond midnight” is existing practice and whilst any amendment to the policy will only affect new applications, Officer’s would recommend that this remains unchanged within the draft policy, pending further monitoring and review of the situation over the next twelve months.
- 5.22 Members are therefore asked to consider whether an amendment to the draft policy needs to be made in view of comments of the City of Durham Trust. Members should bear in mind that this will not affect existing licences unless application in made to vary them. New licence applications would be affected by this proposed change.

6.0 **Recommendations**

- 6.1 That members consider the officer’s recommendations contained within this report and appendices and in particular agree the following:-
- 6.1.1 Members confirm the removal of the colour requirement from the draft Hackney Carriage and Private Hire Policy and defer any decision regarding the introduction of a colour policy for Hackney Carriage vehicles pending further detailed consultation and consideration of the effects of implementing this requirement.
- 6.1.2 Members agreed to consider a further report within the next twelve months concerning the introduction of a colour policy for Hackney Carriage vehicles.
- 6.1.3 Members confirm that the Driving Proficiency Test should remain within the draft Hackney Carriage and Private Hire Policy.
- 6.1.4 Members confirm that the that the “transitional period” relevant to the draft Hackney Carriage and Private Hire Policy will be extended from 2012 until 2014.

6.1.5 Members confirm the reference to “beyond midnight” in Paragraph 9.6 of the Licensing Act 2003 Statement of Licensing Policy will remain unchanged pending further monitoring and review of the situation within the next twelve months.

Background papers:

Draft County Taxi Policy

Draft Gambling Act Statement of Principles

Draft Statement of Licensing Policy

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Appendix 3: Implications

Local Government Reorganisation (Does the decision impact upon a future Unitary Council)

This is considered a 'must have' requirement for harmonisation of statutory processes before vesting day.

Risk

Finance

None

Legal

Inability to deliver statutory duties.

Legal challenge.

Failed enforcement action.

Increase in complaints and level of dissatisfaction with relevant services.

Staffing

None

Equality and Diversity

None

Accommodation

None

Crime and Disorder

None

Sustainability

None

Human Rights

None

Localities and Rurality

None

Young People

None

Consultation

Consultation exercise undertaken involving key stakeholders, responsible authorities, National Private Hire Association and licensees.

Health

None