

Hackney Carriage and Private Hire Licensing Policy Consultation

Draft Briefing Notes

August 2020

Introduction

The Council's current Hackney Carriage and Private Hire Licensing Policy was adopted in 2016 and amended in 2018. It is often referred to as the 'taxi policy'. It relates to the licensing, by the Council, of hackney carriages (taxis), private hire vehicles (must be pre-booked), licensed drivers who may drive these licensed vehicles and private hire operators, who take bookings for and control private hire vehicles and their drivers.

The purpose of the taxi policy is to explain how the Council undertakes its functions with respect to hackney carriage and private hire licensing. The primary focus being on safeguarding and public protection, with emphasis on the protection of children and vulnerable adults.

The Council reviews this policy at least every five years and makes such revisions as it considers appropriate at any other time and publishes it accordingly. This policy is now being reviewed and several possible changes to policy are being put forward for consideration.

The main changes that concern licensed vehicles, drivers and operators include:

A. The implementation of all the requirements of the new national standards for taxi and private hire licensing (Statutory Taxi & Private Hire Vehicle Standards*).

There is evidence to support the view that taxis and private hire vehicles are a high-risk environment. In terms of risks to passengers, this can be seen in abuse and exploitation of children and vulnerable adults facilitated and, in some cases, perpetrated by the trade and the number of sexual crimes reported which involve taxi and private hire vehicle drivers.

The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services.

The Department of Transport has recently published new standards called Statutory Taxi and Private Hire Vehicle Standards. These constitute Government guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised to protect children, and vulnerable individuals who are 18 or over, from harm. All licensing authorities must have regard to this guidance. This means that;

1. An authority must take it into account.
2. An authority cannot depart from it just because it does not agree with it.
3. It must give clear reasons for departing from it.

Authorities should publish their consideration of the Guidance and the policies or plans stemming from these.

The focus of the Statutory Taxi and Private Hire Vehicle Standards is on protecting children and vulnerable adults; all passengers will benefit from the recommendations contained in it. There is consensus that common core minimum standards are required to regulate better the taxi and private hire vehicle sector, and the recommendations in this document* are the result of detailed discussion with the trade, regulators and safety campaign groups. ***The Department for Transport therefore expects these recommendations to be implemented unless there is a compelling local reason not to.***

B. A new policy on vehicle emissions and the age of licensed vehicles (4.0 Vehicle Emissions and Manufacture Criteria). Adoption of the following proposed policy requirements will enable Durham licensed vehicles to meet similar, improved standards already required by several other councils in our region. This will help to reduce traffic pollution and improve local air quality:

- **New Licences** - From the date on which the new policy is adopted in 2021 all new applications for licensed vehicles will only be accepted if the vehicle to be licensed is less than 4 years old from the date of registration.
- **Existing Vehicles** - Adopt a maximum 8-year vehicle life with a start date of 1st April 2024. This means that from 1st April 2024 all diesel and petrol engine vehicles will be Euro 6 or above.
- All existing licensed vehicles that are more than 8 years old will not be re-licensed after 1st April 2024.
- **Wheelchair accessible vehicles (WAV)** - Existing licensed WAV's will have an extra 2 years added to the age restriction. This means that all existing licensed WAV's that are more than 10 years old will not be re-licensed after 1st April 2024.
- **Zero emission vehicles** - fully electric and zero emission (at source) vehicles would be exempt from the age restriction / emissions policy.

C. A new policy in respect of previous convictions and offences – (Criminal convictions and rehabilitation) – Guidance states that all licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being licenced regardless of the period elapsed in all but truly exceptional circumstances. In the case of lesser offences, a policy should consider the number of years the authority will require to have elapsed, since the commission of certain kinds of offences, before they will grant a licence.

Our proposal is to follow the Department of Transport's recommendations on the assessment of previous convictions. This draws on the work of the Institute of

Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and private hire vehicle licensees. See <https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards>

D. A new policy on drug testing - In view of the prevalence of drugs in society generally and because some licensed drivers have received cautions and/or convictions for drug related offences, the Council would require drug tests on drivers on both an intelligence-led and random-sample basis.

In association with this proposal, where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed. Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period, at their own expense, to demonstrate that they are not using controlled drugs.

E. Changes to the suspension and revocation of driver licences - Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made. The decision to suspend or revoke is based on the evidence available at the time the determination was made. New evidence may, of course, become available later.

New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.

A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.

Whilst most cases considering revocation will be referred to a licensing committee, all licensing authorities must also consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended by Government that this role is delegated to a senior officer/manager with responsibility for the licensing service.

F. Requirement for refresher training Safeguarding (including Child Sexual Exploitation) every three years - All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training. Currently we require all new drivers to have undergone training on the identification of Child Sexual Exploitation before being licensed. We consider that this training is so important that all drivers should undergo safeguarding refresher training periodically. These programmes have been developed to help drivers to:

- provide a safe and suitable service to vulnerable passengers of all ages
- recognise what makes a person vulnerable; and
- understand how to respond, including how to report safeguarding concerns and where to get advice.

G. Criminality checks for vehicle proprietors – Subject to any driver related DBS checks already undertaken, we propose that **all** applicants for a vehicle licence must undergo a basic DBS check - Enhanced DBS and barred list checks are not available for vehicle licensing. The Government recommends that licensing authorities should require a basic disclosure for vehicle proprietors from the DBS and that a check is undertaken annually.

Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to the **Statutory Taxi & Private Hire Vehicle Standards** (Annex – Assessment of previous convictions), other than those relating to driving, meet the ‘fit and proper’ threshold.

H. All drivers to be trained in Disability Awareness

The Disabled Persons Transport Advisory Committee (DPTAC) position on, and recommendations about, the accessibility of taxis and private hire vehicles (PHVs) includes the proposal that taxi and PHV services should be fully accessible to disabled travellers. “The driver needs to take active steps to ensure that the passenger is safe and comfortable and provide reasonable assistance to enable the passenger to use their service.”

In their consultation document DPTAC recommends that it should be part of the role of a licensing authority to make drivers aware of the breadth of their duties and provide training in how to carry out the full extent of their role. This being the case, licensing authorities will need, with appropriate guidance from the government, amongst other matters, to provide training for drivers on disability awareness and wider customer care issues. We propose to include this requirement as part of the application process and for all drivers as an assurance of their ongoing suitability to hold a licence.

I. Additional conditions for Private Hire Operators

Private hire vehicle drivers are not the only direct contact that private hire vehicle users have. There are private hire vehicle operators’ staff, for example a person taking bookings (be it by phone or in person). A vehicle dispatcher decides which driver to send to a user, a position that could be exploited by those seeking to exploit

children and vulnerable adults. It is therefore appropriate that all staff that have contact with private hire vehicle users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.

Durham County Council needs to be satisfied that private hire vehicle operators can demonstrate that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. We will therefore, as a condition of granting an operator licence, require an operator to keep a register of all staff that will take bookings or dispatch vehicles is kept.

Operators will be required to evidence that they have had sight of a Basic DBS check on all individuals listed on their register, of booking and dispatch staff, and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders.

When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment contract, to advise the operator of any convictions while they are employed in this role.

We will also require operators, or applicants for a licence, to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a private hire vehicle operators' licence, those with a conviction for offences (provided in the annex to the document **Statutory Taxi & Private Hire Vehicle Standards** (Annex – Assessment of previous convictions), other than those relating to driving, may not be suitable to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.

J. In-vehicle visual and audio recording (CCTV) - Government has acknowledged the potential risk to public safety when passengers travel in taxis and private hire vehicles. It is unfortunately the case that no matter how complete the information available to licensing authorities is when assessing whether to issue any taxi or private hire vehicle licence, nor how robust the policies in place are and the rigor with which they are applied, it will never completely remove the possibility of harm to passengers by drivers.

CCTV can provide additional deterrence to prevent this and investigative value when it does. The use of CCTV can provide a safer environment for the benefit of taxi/private hire vehicle passengers and drivers by:

- deterring and preventing the occurrence of crime
- reducing the fear of crime
- assisting the police in investigating incidents of crime
- assisting insurance companies in investigating motor vehicle accidents

We are consulting to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect

on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.

K. General – in drafting the proposed policy document, we have made several changes to the content and format of the existing policy, for clarification and explanatory reasons. All changes are highlighted in red in the draft proposal for a revised Hackney Carriage and Private Hire Licensing Policy 2021 – 26. [Link]

It is recommended that the following documents are read in conjunction with this briefing note before making any representations during the consultation period:

- The Council's webpage:
- The current Hackney Carriage and Private Hire Licensing policy
- The Department of Transport's Taxi and Private Hire Best Practice guide 2010
- The Department of Transport's Statutory Taxi & Private Hire Vehicle Standards 2020
- The draft proposal for a revised Hackney Carriage and Private Hire Licensing Policy 2021 - 26

Links to all these documents are provided on the Council's webpage. In addition, a Taxi Policy Revision Questionnaire is also available on the website and may be used to respond to this consultation. If you are unable to access these documents on-line, we can send you the briefing note, policy documents and the survey by post upon your request.

All representations should be made to: licensing@durham.gov.uk

If you require further information on any of these proposals, please contact the Licensing Team at licensing@durham.gov.uk

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The consultation will begin on Monday 7th September and will run for 12 weeks up until midnight on Sunday 29th November 2020.

I look forward to receiving your response to this consultation in due course.

Yours sincerely

Craig Rudman

Licensing Manager