

County Council

23 March 2011

The Regulation of Taxis in County Durham (Public Consultation on Zoning, the Control of Hackney Carriage Numbers and Colour Policy)



Report of Corporate Management Team Terry Collins, Corporate Director of Neighbourhood Services Councillor Bob Young, Cabinet Portfolio Member for Strategic Environment and Leisure

Purpose of the Report

1. To inform Members of the outcome of the consultation exercise with stakeholders relating to the regulation of hackney carriages and private hire vehicles licensed by Durham County Council.
2. To approve recommendations for the revision of the current DCC licensing of hackney carriage and private hire vehicle policy with particular reference to the following issues:-
 - zoning
 - the regulation of hackney carriage numbers
 - colour policy

Background

3. In the context of this report, 'taxi' includes both hackney carriage and private hire vehicles.
4. Prior to the 1st April 2009, the taxi licensing function was undertaken by the former District Councils in County Durham. Each of the Districts had their own taxi related policies and requirements concerning matters such as vehicle, driver and operator licence conditions, fees and charges and taxi fares etc.
5. To provide the general overriding principles against which the licence conditions were set, Durham County Council (as the newly designated Licensing Authority) produced and adopted a single taxi licensing policy, which included various relevant licensing conditions. This policy, in its current revised form, provides guidance for members when making taxi related decisions, informs the trade of the operating standards with which they are expected to comply and informs the public of the service that they can expect from the taxi trade.

6. As from 1 April 2009, hackney carriage vehicles have continued to be licensed and can only operate as hackney carriage vehicles within the zone in which their license was granted. These zones correspond to the areas of the County previously identified by the former District Councils boundaries.
7. Two of the zones, namely the former Durham City Council area and Chester-le-Street District Council area, had by regulation under the Transport Act 1984, limited the number of hackney carriage vehicle licenses that were made available to the taxi trade. Current limits in these zones are 74 hackney carriage licenses in Durham City and 92 in the case of Chester-le-Street. These limitations had been imposed following detailed surveys that established at the time of the surveys, there was no unmet demand for hackney carriages within the respective areas.
8. The limitation on the availability of hackney carriage vehicle licences is directly associated with the existence of the zones in which the restrictions apply. Removal of a zone would therefore have the immediate effect of removing any associated limitations on taxi licence numbers. In this context, the removal of the limitations of taxi numbers is known as deregulation.
9. Since vesting day, maintenance of the existing arrangements in respect of zoning and the regulation of hackney carriage numbers was influenced by a number of important factors. It would not have been lawful to remove the zones immediately on transition from the former administrative authorities to the new Council. It was also accepted by the Authority that the situation relating to zoning was both complex and emotive in nature and that the removal of zones would impact on members of the taxi trade, the travelling public and the local authority.
10. In addition to the issue of zones and regulation of hackney carriage numbers, two of the former District Councils had also previously adopted a colour policy which affected the hackney carriages and private hire vehicles licensed and operating within their areas. Both the former Chester le Street and Wear Valley District Councils had adopted a white colour policy which meant that in these areas only, licensed private hire vehicles could not be white.
11. Cabinet had previously considered reports on the regulation of hackney carriage and private hire vehicles in November 2008 and March 2009 and at that time resolved to remove the colour requirement from the Durham County Council Hackney Carriage and Private Hire Policy. Any future decisions relating to zoning arrangements including regulation of licences and the introduction of a county wide colour policy would be taken subject to the outcome of further consultation.
12. Since the adoption of the Durham County Council Hackney Carriage and Private Hire Licensing policy, the Council has embarked on a major public consultation process concerning the future control and regulation of the hackney carriage and private hire trade (zoning, limitation of taxi numbers and colour policy).

13. There are five main options available for dealing with the issue of zoning for consideration by the Council. Although zoning and regulation are separate issues, because existing regulation arrangements are relevant to two out of the seven zones, the options presented also include for 'hackney carriage regulation' in addition to the issue of zoning. The options A to E listed below do not however, incorporate aspects of licensed vehicle colour policy which, is regarded as a separate, 'stand alone' issue in its own right.
 - A. Removal of the 7 zones with the simultaneous removal of all limits on hackney carriage numbers throughout the County of Durham.
 - B. Retain the status quo, with seven zones, two of which are regulated (limitation of hackney carriage vehicle numbers in Chester le Street and Durham City zones).
 - C. Maintain the zones with removal of all existing limitations on numbers of hackney carriages.
 - D. Maintain the zones and undertake further demand surveys in all zones with a view to carrying out further regulation.
 - E. Removal of the 7 zones with the simultaneous removal of all limitations on hackney carriage numbers in the Chester le Street and Durham City zones; and then to undertake a demand survey for the whole of the County of Durham with a view to carrying out further regulation.

Consultation Process

14. A phased consultation process was designed in September 2009 that aimed to be broad ranging, inclusive, balanced, and transparent and applied lessons that had been learned from the earlier licensing consultation processes. A detailed description of the phased consultation process is attached as Appendix 2 to this report. An 'options appraisal' was included in the consultation briefing paper see attached Appendix 3. A list of all interested parties who provided a response to this consultation is given in Appendix 4.
15. A detailed summary of the responses from the countywide public consultation exercise on zoning, the control of hackney carriage numbers and colour policy is contained in Appendix 5 and Appendix 6 provides a comprehensive presentation and analysis of results from the consultation process. This includes the tabular and graphical presentation of the consultation results, including statistics and various response data. The information and the analysis of the consultation results, set out and discussed in paragraphs A4, A5 and A6 of Appendix 5, are referenced to and should be read in conjunction with Appendix 6 of the report.

Outcome of the consultation exercise

16. Each one of these five options has associated with it various possible positives/advantages and negatives/disadvantages for the public, for the trade, for the Council and for other interested parties and stakeholders. The most significant advantages and disadvantages associated with the five options that were identified are detailed in the briefing paper attached as Appendix 3.

17. Overall the countywide response to the consultation process from individual members of the licensed hackney carriage and private hire trade was very low (7%).
18. Further representations from the licensed trade however were received via the County Working Group (CWG) / Area Working Groups (AWG) which were established prior to the consultation process as County / Area forums to support trade members and promote effective communications between the licensing authority and trade representatives.
19. Since the closure of the consultation there have been further representations made and these have been placed in the Members library.

Zoning and regulation of hackney carriage and private hire licensing

20. Using the overall member representation within Area Working Group (AWG) as an indicator, nearly 72% of the countywide licensed membership supported options which would remove the zones and the concurrent regulation of hackney carriage numbers in Chester le Street and Durham City (Options A and E combined responses).
21. Option B was supported by 3 of the AWGs and Option E was supported by 2 of the AWGs. Option A, as a preference, was supported by 2 of the AWGs. Overall 5 of the 7 AWGs supported options which would remove the zones and the concurrent regulation of hackney carriage numbers in Chester le Street and Durham City (Options A and E combined responses).
22. CWG members gave Options A and B as being their most preferred options with Option E also receiving support from two of the CWG members. Again, by grouping together the supporters of Option A with the support for option E, the CWG had more members who supported the removal of the zones than those who wanted to retain them.
23. In relation to the question of the regulation of hackney carriage numbers, 6 CWG members favoured regulation either within the existing zones or on a countywide basis should a survey of demand be supportive of this.
24. Grouped according to their zone, a much greater percentage of licensed individuals from three zones Chester le Street, Durham City and Wear Valley responded to the survey. Option B was the preference of more individual respondents from this category than any other preferred option. The greatest supporters of this option operated within Chester le Street and Durham City areas.
25. Of the individuals representing or associated with other interested parties who responded in respect of the zoning options, 5 favoured options that removed the zones and 4 respondents in this category wanted the zones to be retained.
26. Durham Constabulary recommend and support the removal of the 7 taxi zones with the implementation of one single taxi zone and the concurrent removal of the

limitations on hackney carriage numbers in the Durham City and Chester le Street.

Colour Policy

27. AWG representatives from two areas, Chester le Street and Wear Valley said “yes” to a colour policy. AWG representatives from three areas, Durham City, Derwentside and Easington said “No” to a colour policy.
28. Two members of the CWG said “Yes” to a colour policy and three members of the CWG said “No” to a colour policy.
29. During the consultation both Sedgefield and Teesdale AWG considered that the introduction of a colour policy was unnecessary as there was already sufficient means of identifying a vehicle as a hackney carriage. Since the Cabinet meeting in January 2011 however a representative from the Sedgefield AWG has approached the authority to clarify their position in that the Sedgefield AWG would be opposed to a colour requirement, should the Council be minded to introduce one.
30. Of the 154 individual licensed hackney carriage and private hire respondents, 102 did not want a colour policy. The zone which yielded the greatest percentage of individual respondents in opposition to a colour policy was Durham City.
31. Overall two of the three zones which yielded the greatest percentages of individual respondents in this category (Chester le Street and Wear Valley) are the zones which, under the control of the former District Councils, were previously subject to a colour policy.
32. The most popular colour for a hackney carriage amongst this group of respondents was white and the most popular colours for private hire vehicles were white and black.
33. The number of responses from the general public in relation to the issue of taxi colour policy was particularly small. 5 respondents from the general public said “yes” to the imposition by the Council of a taxi colour policy and 1 said “no”. Of the 6 ‘interested party’ respondents who commented, 5 favoured having a colour policy. No colour preferences were put forward. Durham Constabulary made no comments in relation to colour policy.

The position of governmental organisations

34. The Department for Transport advises that a limit on taxi numbers is unlikely to be in the best interest of consumers. They do however recognise that local licensing authorities are in the best position to determine whether taxi numbers should be limited.
35. The Office of Fair Trading considers that quantity regulation limits the number of taxis and reduces availability and lowers the quality of service to the public.

36. Paragraph 90 of the Department of Transport's Taxi and Private Hire Vehicle Licensing Best Practice Guide (March 2010 edition) states:

“The Department recommends the abolition of zones. That is chiefly for the benefit of the travelling public. Zoning tends to diminish the supply of taxis and the scope for customer choice - for example, if fifty taxis were licensed overall by a local authority, but with only twenty five of them entitled to ply for hire in each of two zones. It can be confusing and frustrating for people wishing to hire a taxi to find that a vehicle licensed by the relevant local authority is nonetheless unable to pick them up (unless pre-booked) because they are in the wrong part of the local authority area. Abolition of zones can also reduce costs for the local authority, for example through simpler administration and enforcement. It can also promote fuel efficiency, because taxis can pick up a passenger anywhere in the local authority area, rather than having to return empty to their licensed zone after dropping a passenger in another zone.”

The Guide referred to above does not refer to colour policies. Vehicle identification by colour is not addressed and the colour of a licensed vehicle is not specifically mentioned in the guidance.

37. The introduction of a colour requirement for hackney carriage vehicles has been undertaken already by 8 of the 12 (66%) local authorities operating within the north east region. 37% of those authorities have adopted a single black colour policy and 25% have adopted a single white colour policy.

Material Considerations

38. Zoning and the Regulation of Hackney Carriage Numbers within Zones:
- Should the existing zones be kept or should they be removed?
 - Should the existing regulation of hackney carriage numbers in two existing zones be maintained or ended?
 - Should the regulation of hackney carriage numbers in the remaining zone(s) be considered?
39. The Council may resolve to remove the existing zones and concurrent limitations on hackney carriage numbers in zones 1 and 2 and resolve not to regulate hackney carriage numbers anywhere within the County. **(Option A).**
40. If Council were to make a resolution to remove the zones and to deregulate hackney carriage numbers, an appropriate date would need to be set to enable the following prescribed process to be undertaken:
- (1) The Council has to pass an extension resolution under the Local Government Act 1972, Schedule 14, Part 2, Para 25 which is to abolish the zones and apply hackney carriage licensing uniformly throughout County Durham.

- (2) In order to propose the resolution the Council has to give notice in accordance with paragraph 25(5) which is to advertise the intention for two consecutive weeks in a local newspaper
 - (3) The Council must also no later than the date on which the advertisement is first published, serve notice of the intention on every parish or community council or parish meeting whose area, or part of whose area, is affected by the resolution.
- 41 If the existing zones are kept, and the Council continue to seek the regulation of the numbers of hackney carriages in zone 1 (Chester le street) and in zone 2 (Durham City), it would require regular (at least every three years) independent hackney carriage demand surveys to be undertaken in these two zones in order to assess the level of demand/unmet demand, followed by the regulation of numbers should these surveys show no significant unmet demand in existence. This is a costly and time consuming process. The fees for the demand surveys could be recovered via the licence fees applicable within the regulated zones. **(Option B)**
- 42 If the existing zones are kept, the Council may resolve to remove all imposed limitations on hackney carriage numbers in zones 1 and 2; and also resolve not to carry out any more demand surveys which would be needed if the future regulation of hackney carriage numbers in any of the zones were to be considered **(Option C)**.
- 43 If the existing zones are kept, and the Council continue to seek to regulate the numbers of hackney carriages in zone 1 (Chester le street) and in zone 2 (Durham City) the Council may resolve to undertake further surveys into the demand for hackney carriages in the other five zones with a view to regulating hackney carriage numbers in all zones? This is a costly and time consuming process. **(Option D)**.
- 44 If the existing zones are removed the Council may seek to regulate the numbers of hackney carriages across the County which would need to be supported by further assessment of the level of demand / unmet demand within the single zone, followed by the regulation of numbers should these surveys show no significant unmet demand in existence. It is however considered that it would be highly unlikely that such a survey would find sufficient evidence of unmet demand within such a large and diverse geographical location. This assessment would be a costly and time consuming process, the cost of which may be recovered via the licence fees. **(Option E)**.
- 45 In the event that any decision is taken other than retaining the status quo, a sufficient lead in period would be necessary to enable the Council to revise its administrative systems and procedures in order to adapt to any countywide changes in hackney carriage regulation. This would include the unification of fees and charges and, in conjunction with the trade, the setting of new countywide hackney carriage tariffs and; most importantly, to enable existing and future members of the licensed hackney carriage and private hire trade in the

County to plan for and adapt to any changes that may affect their business activities that may result from such changes.

46. In addition to the above the Council may resolve to adopt a colour policy for hackney carriages and private hire vehicles, a single colour for hackney carriage vehicles could be specified allowing private hire vehicles to be any other colour. Alternatively, parts of vehicles could be colour banded.
47. If the Council resolved to introduce a colour policy an appropriate date would need to be set for its implementation. Consideration would have to be given to how the policy would apply to new applications for vehicle licences and for existing vehicles.

In Conclusion

48. Whilst the individual consultation responses have been relatively low, the views expressed by the countywide and area working groups would appear more representative of the trade across the County. With this in mind there is clear support for those options which include the removal of zones (Options A and E) across the County and this view is further supported by the Police.
49. The removal of zones within County Durham would effectively remove any current limitations on the number of hackney carriage licences within Chester-le-Street and Durham City areas (Option A). Deregulation is supported by the Police, as well as other government organisations, however there is strong support amongst the trade from these two areas to maintain the regulation of hackney carriage licences either within zones or throughout the entire County. If the countywide regulation of hackney carriage numbers was to be supported by the Council in addition to the formation of one zone, an assessment of demand across the whole of the county would then have to be undertaken. If a survey found there was evidence of any significant unmet demand, the Council could then seek to regulate hackney carriage licences (Option E).
50. Given the need to undertake regular assessments of demand to support regulation of hackney carriage licences and that this would require significant investment by the authority, leading to increased costs of providing licensing services, Option A would be the preferred option.
51. The responses concerning the introduction of a colour requirement were originally somewhat inconclusive because whilst some AWGs, members of CWG, individuals and members of the public were able to present a preferred option, there were two members of the CWG who were unable to express a single or clear preference on behalf of the two AWGs that they represented. However, as stated in paragraph 28 of this report, since the Cabinet meeting in January 2011 a representative from the Sedgfield AWG has approached the authority to clarify their position in that the AWG would be opposed to a colour requirement should the Council be minded to introduce one. Notwithstanding above, comments were received from both AWG and CWG to the effect that they would expect that

should the vehicle colour requirements be introduced that this would be on a phased basis over an appropriate time scale.

52. The introduction of a colour requirement for hackney carriage vehicles would promote the safety of persons who flag down taxis in the street as this would assist them in identifying legitimate taxis operating within the Durham area and more importantly help them avoid rogue taxi drivers operating unlicensed vehicles. Taking this approach would contribute to ensuring the safety of residents and visitors to the area, reduce crime and promote confidence in using local taxi services. It will also assist in enforcement.
53. In relation to colour preferences, it is proposed that a single white colour policy is introduced for hackney carriage vehicles with private hire vehicles being any other colour except white.
54. It is acknowledged that the introduction of a colour requirement with immediate effect however would have financial implications for local taxi operators and in order to reduce any burdens on local businesses it was originally proposed that the introduction of any colour requirement for all hackney carriage and private hire vehicles is phased in over a five year transitional period with effect from 1 April 2011. However, having taking account of further representations from the trade with respect to this (see below), who have highlighted what their financial concerns are, it is now proposed to introduce this from the 1st April 2011 but only to apply to new applications and when an existing licensee is to replace his vehicle. There is also proposed a provision to minimise costs to licensees when their vehicles are temporarily off the road and they may not be able to comply with the policy for a short period whilst repairs are carried out.

General Licensing Committee

55. The General Licensing Committee of the Council considered this report on the 6th December 2010. In advance of its meeting letters had been received making representations. One from the trade's Association, writing on behalf of the Durham Taxi drivers, supporting the keeping of regulated areas and having no colour policy. That correspondence was read by the Committee before the meeting started and the views expressed taken account of.
56. The meeting was attended by members of the trade who spoke on its behalf and all representations were taken into account by the Committee. The Committee considered that removing the zones and deregulating the provision of taxis was the preferred option in that, whilst there would inevitably be a settling down period, it would produce a better service for the public
57. The Committee was advised that it has been considered the colour policy in Chester le Street has been successful.
58. The original recommendation for compliance with a colour policy was by April 2016. The objections voiced with respect to that only related to cost of compliance and the Committee considered it was right to take those concerns into account and that they could be adequately met by removing the

compliance date and replacing it with only when a vehicle is changed and also making provision for emergency occasions when a vehicle may be off the road. This would thereby remove the cost concerns that had been expressed.

Recommendations

59. That Members consider the contents of this report and approve the following:
- Adoption of Option A as detailed in paragraph 13, to remove the existing seven zones across the County and deregulation of existing hackney carriage licence limitations, to be effective from midnight on the 31st August 2011.
 - The introduction of a colour requirement in respect of vehicles submitted for licensing as hackney carriage vehicles or private hire vehicles as follows:-
 - (i) Hackney carriage vehicles shall be white.
 - (ii) Private hire vehicles shall be any colour other than white or a colour that could be mistaken for white, for example cream or ivory.
 - (iii) That the colour requirement for hackney carriage and private hire vehicles shall apply from the 1st April 2011 to all new applications for a vehicle licence. It shall not apply on the renewal of an existing vehicle licence but only when that vehicle is replaced. Nor shall the colour policy apply to a vehicle licensed or provided for a maximum period of two months on a temporary basis to substitute for an owner's existing licensed vehicle that cannot be used as a result of an accident or breakdown.
 - (iv) That this policy will apply to all licensed vehicles including purpose built vehicles and minibuses, but will not apply to any special vehicles as defined within the policy which will be exempt from any colour requirement.

Background Papers

- Durham County Council hackney carriage and private hire licensing policy
- Cabinet Report 19 March 2009 - Licensing Arrangements Results of Consultation

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Appendix 1: Implications

Finance

Significant financial implications would be associated with the carrying out of future hackney carriage demand surveys.

Staffing

None

Risk

Without the introduction of a colour policy there is a greater risk that members of the public will mistakenly use unlicensed vehicles.

Equality and Diversity

The issues associated with zoning and colour policy have been addressed by the Council's Equality and Diversity team. The effects of the Equality Act 2010 have also been considered by the General Licensing Committee which felt that the recommendations would make it easier to comply therewith. An Equalities and Diversity Impact Assessment has been carried out and is attached at Appendix 7.

Accommodation

None

Crime and Disorder

The police consider there to be advantages associated with the removal of the existing zones in terms of crime and disorder reduction.

Human Rights

None

Consultation

A countywide public consultation process has been undertaken.

Procurement

None

Disability Discrimination Act

The Equality Act 2010 contains new provisions which will, when commenced, tighten the law by placing duties on Hackney Carriage and Private Hire Vehicle drivers to provide assistance to people in wheelchairs and to carry guide dogs or assistance dogs.

Guidance relating to the Equality Act 2010 and the changes relating Taxis and Private Hire Vehicles is available on the Department for Transport website www.dft.gov.uk.

Legal Implications

There is a potential for an application for judicial review