

For publication

Hackney Carriage and Private Hire Licensing Policy -

Amendments (A410)

Meeting: Appeals and Regulatory Committee

Date: 15 March 2017

Cabinet portfolio: Health and Wellbeing

Report by: Licensing Manager

For publication

1 PURPOSE OF REPORT

- 1.1 To propose necessary amendments to the Hackney Carriage and Private Hire Licensing Policy in relation to:
- 1.2 The Immigration Act 2016;
- 1.3 Driving assessments for potential taxi drivers;
- 1.4 Disclosure and Barring Service (DBS) checks on taxi drivers and operators;
- 1.5 Access for wheelchair users; and
- 1.6 Security/CCTV cameras in licensed vehicles

2 RECOMMENDATIONS

- 2.1 The provisions of the Immigration Act 2016 are incorporated into the council's Hackney Carriage and Private Hire Licensing Policy.
- 2.2 AA Drive Tech is recognised as the council's provider of driving assessments.

- 2.3 DBS checks to become an annual requirement on renewal or from first application.
- 2.4 The council maintains a list of designated wheelchair accessible vehicles, thereby requiring the drivers of such vehicles to provide assistance to those passengers and prohibit them from charging more for the journey.
- 2.5 If CCTV is fitted in a Chesterfield licensed hackney carriage or private hire vehicle then it must comply with the current version of the Home Office 'Surveillance Camera Code of Practice' or equivalent document. Any such system must not be on continuous audible recording.
- 2.6 The amendments on the Immigration Act 2016 and driving assessments to take immediate effect.
- 2.7 All other proposed amendments are subject to a period of consultation for three months after which they will be reconsidered by this committee.

3.0 REASON FOR RECOMMENDATIONS

- 3.1 The amendments will enhance public safety and ensure compliance with new legislation.

4.0 BACKGROUND

4.1 The Immigration Act 2016

- 4.2 This legislation requires licensing authorities to be satisfied the applicant is not disqualified by their immigration status from holding a licence before the licence is issued, extended or renewed.
- 4.3 The Act came into force on 1 December 2016 but is not retrospective.
- 4.4 For someone with limited permission to live and work in the UK the check is repeated at each renewal. For someone without restrictions, such as a British citizen, no further checks are necessary once evidence of their status has been obtained.
- 4.5 The licence length cannot exceed the applicant's remaining period of lawful leave and the licence will lapse if the holder's lawful leave or permission to work ends.
- 4.6 Immigration offences and penalties are grounds to consider suspension or revocation of a licence.

- 4.7 Right to work checks have been conducted by the council for a number of years but without the sanctions now provided by the Act.
- 4.8 All drivers and operators have been informed of the legislation.
- 4.9 **Driving Assessments**
- 4.10 The council's policy requires all new applicants to pass a practical test of their driving ability, administered by the Driver and Vehicle Standards Agency (DVSA). At the end of 2016 the DVSA stopped providing the assessment.
- 4.11 A tender process has taken place under the council's procurement rules to identify a replacement supplier, with the specification as close as possible to the test administered previously by the DVSA.
- 4.12 AA Drive Tech is in the process of being appointed as the council's provider but that needs to be reflected in the policy.
- 4.13 One element of the contract is to clear the back-log of drivers who have since been licensed without passing a test, at present there are 21.
- 4.14 **Disclosure and Barring Service**
- 4.15 The current policy requires a new DBS every three years from applicants who have been conviction free for a period of five years, and annually if the applicant has a conviction within the last five years that attracts five or more penalty points.
- 4.16 Concern has grown over the length of time between DBS checks and the danger this may place on the public.
- 4.17 The police no longer routinely disclose when they have arrested or charged a taxi driver, even if the driver discloses their occupation, as it may not meet their criteria of a 'pressing social need'.
- 4.18 An enhanced DBS costs £70 (£44 + £26 admin fee) and this could add to the costs of a licence, but drivers will be offered the opportunity of the DBS Update Service.
- 4.19 The update service is an online subscription that allows lets you keep your DBS certificate up to date and allows employers to check a certificate online, with your consent. You can use your certificate again when you apply for a position in the same workforce, where the same type and level of check is required provided you pay the annual subscription of £13.

4.20 Access for wheelchair users

- 4.21 Sections 165 and 167 of the Equality Act 2010 have recently been commenced by the government.
- 4.22 Section 165 of the Act requires the drivers of designated accessible vehicles to provide assistance to those passengers and prohibits them from charging extra. A designated accessible vehicle is defined as being capable of carrying a passenger in a wheelchair.
- 4.23 Section 167 permits, but does not require, the licensing authority to maintain a designated list of wheelchair accessible vehicles, although the government strongly recommends they do so. Without such a list the requirements of section 165 do not apply.
- 4.24 Exemptions are available to the requirement to carry wheelchair passengers, but only on medical grounds or because the drivers physical condition makes it impossible or unreasonably difficult for them to comply with the rules.
- 4.25 It is a criminal offence to not comply with these requirements, provided a designated list is maintained.
- 4.26 The council currently requires all but 30 of our hackney carriage vehicles to be wheelchair accessible to this level. Drivers of such vehicles must have passed an accredited assessment stipulated by the council in its policy. There are also a number of private hire vehicles that are wheelchair accessible.
- 4.27 Many of the provisions of sections 165 and 167 are already enshrined in council policy.

4.28 Security/CCTV cameras

- 4.29 The council policy already makes provision for the use of CCTV in licensed vehicles (paragraph 2.9), but our Information Assurance Manager has advised it needs to be more robust.
- 4.30 Reference should be made to a judgement by the Information commissioner that systems must be targeted and not on continuous audible recording.
- 4.31 The use of surveillance cameras in licensed vehicles must comply with the current version of the Home Office 'Surveillance Camera Code of Practice'.

5.0 OPTIONS

5.1 The Immigration Act 2016

5.2 This is national legislation which needs to be embedded in our policies.

5.3 Driving Assessments

5.4 Members have decided previously that applicants for a taxi driving licence must pass a practical test of their driving ability.

5.5 The procurement process has identified a preferred supplier and that should be adopted into the policy.

5.6 DBS checks

5.7 A DBS check has no official expiry date. Any information included will be accurate at the time the check was carried out. It is for the council to decide if and when a new check is needed.

5.8 An annual DBS will reduce the risk of unsuitable persons being licensed as drivers by the council.

5.9 The DBS update service can be promoted to drivers and operators, saving them money and being more effective.

5.10 Access for wheelchair users

5.11 The council has the discretion whether or not to comply with section 167 of the Equality Act, although government advice is that they should do.

5.12 Without the list as required by section 167, section 165 cannot be enforced.

5.13 Security / CCTV cameras

5.14 There have been a number of developments since the council's policy first included mention of security/CCTV cameras.

5.15 Our policy should reflect the judgement of the Information Commissioner against Southampton City Council (appeal no: EA/2012/0171) that CCTV fitted in licensed vehicles must not be on constant audio record.

5.16 Any CCTV fitted in a Chesterfield licensed vehicle must comply with current Home Office guidance and codes of practice.

6.0 EQUALITIES IMPACT ASSESSMENT

- 6.1 A full equalities impact assessment has not been completed but the impact of these changes on minority groups will be minimal, albeit the Immigration Act 2016 is clearly targeted at non-EU or British citizens.
- 6.2 The proposals on the Immigration Act 2016, driving assessments and DBS were discussed at the Taxi Consultative Committee on 25/01/17 without controversy.

7.0 RISK MANAGEMENT

- 7.1 A full risk management assessment has not been completed but these measures will all enhance public safety.

8.0 RECOMMENDATIONS

- 8.1 The provisions of the Immigration Act 2016 are incorporated into the council's Hackney Carriage and Private Hire Licensing Policy.
- 8.2 AA Drive Tech is recognised as the council's provider of driving assessments.
- 8.3 DBS checks to become an annual requirement on renewal or from first application.
- 8.4 The council maintains a list of designated wheelchair accessible vehicles, thereby requiring the drivers of such vehicles to provide assistance to those passengers and prohibit them from charging more for the journey.
- 8.5 If CCTV is fitted in a Chesterfield licensed hackney carriage or private hire vehicle then it must comply with the current version of the Home Office 'Surveillance Camera Code of Practice' or equivalent document. Any such system must not be on continuous audible recording.
- 8.6 The amendments on the Immigration Act 2016 and driving assessments to take immediate effect.
- 8.7 All other proposed amendments are subject to a period of consultation for three months after which they will be reconsidered by this committee.