

REPORT:	Regulatory Committee
DATE:	12 October 2022
REPORTING OFFICER:	Operational Director – Legal and Democratic Services
PORTFOLIO:	Resources
SUBJECT:	Taxi Licensing Policy Amendments
WARDS:	Borough-wide

1 PURPOSE OF REPORT

To consider additions and amendments to the Council’s taxi licensing policies and Private Hire Operator Conditions.

2 RECOMMENDATION

That the Committee considers the proposals and makes appropriate recommendations to the Executive Board.

3 INTRODUCTION AND BACKGROUND INFORMATION

- 3.1 Two matters are being considered in this report. In respect of the first, members will recall that the Council’s taxi licensing policies are currently being reviewed in light of the Department for Transport’s guidance on “Statutory taxi and private hire vehicle standards” which was issued in July 2020 (“the Statutory Guidance”). This provides that public safety is to be of paramount consideration in discharging licensing functions and sets out a number of recommendations that the Department expects to be implemented unless there is a compelling local reason not to.
- 3.2 A number of the recommendations are already in place or have been recently adopted by the Council. This report considers another of the recommendations, namely the adoption of a private hire operator condition relating to Passenger Carrying Vehicles. This is discussed further at paragraph 4.1.
- 3.3 In respect of the second matter, Members will also recall that, on 25 February 2021, the Executive Board approved a temporary amendment to the vehicle policy which extended the maximum age restriction on Hackney Carriage and Private Hire Vehicles by 2 years, for a 2 year period, subject to conditions (as recommended by this Committee). That temporary amendment is due to expire on 25 February 2023 and there

has been a request from the trade to extend it by further in light of the ongoing cost of living crisis. This is dealt with at paragraph 4.2.

3.4 According to the Council's Constitution, the Committee is responsible for determining policies in connection with the grant, variation, suspension or revocation of licences relating to taxi and private hire.

3.5 However, the Constitution must now be interpreted in accordance with the case of R (On the application of 007 Stratford Taxis Limited v Stratford on Avon District Council 2011. This Court of Appeal decision interpreted the meaning of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 in respect of matters which must be dealt with by a Council's Executive or by a committee of its council. Essentially, the court held that: (1) it was clear that individual applications relating to taxi matters must be dealt with by the equivalent of this Council's Regulatory Committee and (2) matters calculated to facilitate, or be conducive or incidental to such applications must also be dealt with in the same way but (3) any "plan or strategy" associated with such a function would be an executive function and therefore have to be determined by a Council's Executive. The Stratford case concerned the introduction of a wheelchair access policy. The decision was taken by the Council's Cabinet rather than its Licensing Committee. The challenge from the taxi trade was that the Licensing Committee should have adopted the policy. This element of the challenge was rejected by the Court.

3.6 Consequently, any decision of the Regulatory Committee on matters contained in this agenda will be by recommendation to the Executive Board.

3.7 In deciding whether to recommend the adoption of a policy the following questions should be addressed:-

3.7.1 Has a proper consultation been undertaken where the duty arises?

3.7.2 Are the proposals necessary and proportionate?

4 POTENTIAL AMENDMENTS

4.1 Amendment 1: A new Private Hire Operator Condition regarding the use of Passenger Carrying Vehicles

4.1.1 As Members will be aware, a Private Hire Vehicle is a "motor vehicle constructed or adapted to seat fewer than 9 passengers". Where a larger vehicle is required, such as a minibus, bus or coach, this is known as a Passenger Carrying Vehicle or PCV. PCVs are subject to a different licensing regime.

4.1.2 Some Private Hire Operators hold PCV licences or subcontract bookings to PCV licence holders where a PHV is unsuitable. In these

circumstances, neither the driver nor the vehicle would have been licensed with the Council despite the passenger having booked through a Private Hire Operator which is licenced with the Council.

4.1.3 According to the Statutory Guidance,

*...driving a bus, does not present the same risk to passengers. Members of the public are entitled to expect when making a booking with a private hire vehicle operator that they will receive a private hire vehicle licensed vehicle and driver. **The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such as a minibus to undertake a private hire vehicle booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.***

Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than eight passenger seats are required or to accommodate luggage, the booker should be informed that a PSV is necessary, and that a PCV licensed driver will be used who is subject to different checks and not required to have an enhanced DBS check.

Proposal

4.1.4 In light of the above, it is proposed to introduce the following new condition for Private Hire Operators:

4.1.5 **A private hire operator must not provide (to include sub-contract) a vehicle that is able to carry more than 8 passengers without first obtaining written or verbal consent of the hirer. The hirer must be made aware that neither the vehicle, nor the driver (where applicable) are licensed by Halton Borough Council and as such are subject to different checks. The hirer must also be informed that the driver is not required to have an enhanced DBS check. Verification of consent must be kept for a period as stated in 2.2 of these conditions.**

4.1.6 For the sake of clarity 2.2 of the Private Hire Operator conditions requires that certain information must be kept for not less than 6 months.

Consultation

4.1.7 The Statutory Guidance provides that licensing authorities should consult on proposed changes in the licensing rules that may have significant impacts on passengers and/or the trade.

4.1.8 The trade were consulted by email on 29 July 2022 about the proposal and details of the consultation were posted on the Council's

website with a closing date for comments or opinions to be made by 12 August 2022.

4.1.9 No relevant responses were received.

4.2 Amendment 2: Extending the temporary amendment to the Vehicle Policy relaxing the maximum age of Hackney Carriage and Private Hire Vehicles.

4.2.1 The Council's Vehicle Policy provides the following age restrictions for licensed vehicles:-

Non fully wheelchair accessible vehicles

Can be no more than 5 years old when first licensed and the maximum age is 10 years old.

Fully wheelchair accessible vehicles

Can be no more than 13 years old when first licensed and the maximum age limit is 16 years old.

4.2.2 Due to the economic consequences of the pandemic on the trade, a temporary amendment came into force on 26 February 2021 which extended the maximum age restriction on Hackney Carriage and Private Hire Vehicles by 2 years, for a period of 2 years, subject to the following conditions:-

- any vehicle taking advantage of the dispensation shall be subject to 3 tests per year; and
- no vehicle taking advantage of the dispensation may be transferred to another proprietor.

Proposal

4.2.3 The temporary amendment was due to expire on the 25th February 2023 but the economic circumstances have not improved with the current cost of living crisis. The trade have therefore requested that the temporary amendment continue for a further period.

4.2.4 In determining whether the temporary amendment should be extended, the following considerations should be taken in to account.

- Replacing a licensed vehicle on attaining current age limit could, in the current time of austerity, be punitive to the proprietor and place unreasonable financial and/or personal pressure on the licence holders.
- Removing the conditions in their entirety could lower the standards achieved in the Borough since age restrictions were established, to the detriment of the service to which the public are entitled.

- Any extension that may be granted would only benefit a small percentage of the trade whose vehicles reach the current maximum age in the next year or two. Even those licence holders who may benefit from any temporary extension to the current policy may not necessarily take advantage of any potential rule change and choose to obtain a newer vehicle anyway. In fact, there are only 17 licence holders that are currently benefiting from the temporary amendment.

Consultation

4.2.4.1 The trade were consulted on 10 June 2022 by email and the following questions were posed:-

- (1) Whether you consider an extension of the maximum age limit on wheelchair accessible vehicles only is needed?
- (2) Whether you consider an extension of the maximum age limit on standard vehicles only is needed?
- (3) Whether you consider an extension of the maximum age limit on all vehicles is needed?
- (4) If you feel an extension is needed on any of the points above what length of time is required?

4.2.4.2 There were 54 replies to the consultation which have provided the following information:

- 43 replies are in favour of an extension to the vehicle age limit
- 1 reply was in favour of an extension to standard vehicles only
- 2 replies are in favour of an extension to fully wheelchair accessible vehicles only
- 4 replies were against an extension to the vehicle age limit
- Many of those who are in favour made various comments regarding the extension and length of time.

4.2.4.3 The findings with comments were collated and can be found at Appendix A of this report.

4.2.4.4 The public have also recently been consulted on the same questions. At the time of drafting this report, the public consultation period is ongoing but is due to expire on 12 October 2022. The Committee will be updated on the results of this at the meeting on 12 October 2022.

5. REGULATORS' CODE 2014

5.1 The Regulators' Code 2014 requires regulators (such as the Council) to take into account a number of factors when introducing new policies.

5.2 For example, paragraph 1.2 of the Code states: "When designing and reviewing policies, operational procedures and practices, regulators

should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best:

- understand and minimise negative economic impacts of their regulatory activities;
- minimising the costs of compliance for those they regulate;
- improve confidence in compliance for those they regulate, by providing greater certainty; and
- encourage and promote compliance.”

5.3 The Code also states that regulators should base their regulatory activities on risk. In the present case the balancing exercise is to weigh any negative consequences on the taxi trade against the positive consequences on the public who use the services of the trade.

5.4 It is taken as read that unnecessary burdens should never be imposed and that all actions need to be proportionate.

6. OPTIONS

6.1 The options available to the Committee are to **recommend**:

- Agreement to some or all of the potential changes or
- Amendment to some or all of the potential changes or
- Rejection of the potential changes.

6.2 The Committee are asked to recommend one of the above options to the Executive Board for adoption.

6.3 Should the Committee recommend the second option to amend any of the potential changes to the policy and/or licensing condition then they will need to be altered. The Committee would therefore be requested to include within the resolution a delegation of the task of preparing detailed wording and other consequential matters to the Licensing Manager.

7. POLICY IMPLICATIONS

7.1 Any changes made would amend elements of existing policy and vary conditions relating to a Private Hire Operator’s licences issued by the Council.

8. OTHER IMPLICATIONS

None

9. IMPLICATIONS FOR THE COUNCILS PRIORITIES

9.1 **Children and Young People in Halton**
N/A

9.2 **Employment Learning and Skills in Halton**
N/A

9.3 **A Healthy Halton**
N/A

9.4 **A Safer Halton**
None

9.5 **Halton's Urban Renewal**
N/A

10. RISK ANALYSIS

There are no associated risks which have been identified with this item.

11. EQUALITY AND DIVERSITY ISSUES

None identified.

12. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
1. Taxi Consultative Group Agendas	Licensing Section	Kim Hesketh
2. Current licence Conditions/policies		
3. Taxi Consultation File		