

BOROUGH OF BARROW-IN-FURNESS
LICENSING REGULATORY COMMITTEE

Meeting, Thursday 20th July, 2017
at 2.00 p.m. (Drawing Room)

A G E N D A

PART ONE

1. To note any items which the Chairman considers to be of an urgent nature.
2. To receive notice from Members who may wish to move any delegated matter non-delegated and which will be decided by a majority of Members present and voting at the meeting.
3. Admission of Public and Press

To consider whether the public and press should be excluded from the meeting during consideration of any of the items on the agenda.
4. Declarations of Interest.

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.
5. Apologies for Absence/Attendance of Substitute Members.
6. To confirm the Minutes of the meeting held on 29th June, 2017 (copy attached).

FOR DECISION

- (D) 7. Implementation of a Hackney Carriage & Private Hire Dual Drivers' Licences Application.
- (D) 8. Protected Cautions and Convictions.

PART TWO

- (D) 9. Application for a Street Trading Consent.

**NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 2 OF PART
ONE OF SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972
AND ACCESS TO INFORMATION (VARIATION) ORDER 2006**

- (D) 10. Application for a Street Trading Consent.

**NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPH 2 OF PART
ONE OF SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972
AND ACCESS TO INFORMATION (VARIATION) ORDER 2006**

**NOTE (D) - Delegated
(R) - For Referral to Council**

Membership of Committee

Councillors Callister (Chairman)
Seward (Vice-Chairman)
Biggins
Barlow
Cassells
Derbyshire
Gill
Heath
W. McClure
Proffitt
L. Roberts
Wall

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Published: 12th July, 2017

BOROUGH OF BARROW-IN-FURNESS
LICENSING REGULATORY COMMITTEE

Meeting: Thursday 29th June, 2017
at 2.00 p.m. (Drawing Room)

PRESENT:- Councillors Callister (Chairman), Seward (Vice-Chairman), Barlow, Biggins, Gill, Heath, Proffitt, L. Roberts, Sweeney and C. Thomson.

Officers Present:- Graham Barker (Principal Environmental Protection and Licensing Officer), Jennifer Curtis (Senior Licensing Officer), Sharron Rushton (Democratic Services Officer) and Katie Pepper (Democratic and Electoral Services Apprentice).

Legal Representative:- Paul O'Donnell (Local Authority Retained Solicitor)

Police Representatives:- PC Kendall, PC Renney and PC Jordan.

6 – The Local Government Act, 1972 as amended by the Local Government (Access to Information) Act, 1985 and Access to Information (Variation) Order 2006

Discussion arising hereon it was

RESOLVED:- That under Section 100A(4) of the Local Government Act, 1972 the public and press be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 2 (Minute No. 10) of Part One of Schedule 12A of the said Act.

7 – Apologies for Absence/Attendance of Substitute Members

Apologies for absence were received from Councillors Cassells, Derbyshire and Wall. Councillor Sweeney had substituted for Councillor Cassells and Councillor C. Thomson had substituted for Councillor Derbyshire for this meeting only.

8 – Minutes

The Minutes of the special meeting held on 9th May and the meeting held on 18th May, 2017 were taken as read and confirmed.

9 – Annual Review of the Licensing Authority 2016/17

The Principal Environmental Protection and Licensing Officer submitted a report summarising the work done by the Licensing Authority in the previous financial year.

Policies and Procedural Reviews

During the last financial year the Licensing Authority had continued to review the policies and procedures in relation to Taxi Licensing. The review was necessary in part, following the findings of the Independent Inquiry into Child Sexual Exploitation. Following an extensive consultation, the first of a suite of policies, was approved by Council on the Fitness of Applicants for Hackney Carriage and Private Hire Driver's

Licences. This policy also enabled the Licensing Authority to introduce appropriate and necessary training, to continually improve driver standards, knowledge and awareness. Officers were currently developing a similar policy in relation to the Private Hire and Hackney Vehicle specification and licensing and were due to consult with the taxi trade, to gain their opinions.

Officers had reviewed the current Taxi Tariff (fare), last undertaken in 2012, following a request from the Hackney trade. Members approved a new methodology that would be used to determine any percentage increase. It calculated the real costs of running a Hackney Carriage, and compared that to the national average. The retail price index (RPI) in relation to transport costs and wages would now be used to demonstrate 'how much' owning and running a vehicle had gone up/down, to determine any rise in tariff.

Work on a new Street Trading Policy was started and was due to be completed later this year.

Fees & Charges

A comprehensive Fee Setting review was undertaken, resulting in the Licensing Authority being able to operate at full cost recovery across the majority of licence types, where the Local Authority could set its own fees and charges. All Officers working within the Licensing Department now monitored and recorded all time spent, to ensure that accurate costs could be calculated. Members approved the fees and charges for 2017/18, with a view to recovering a deficit from 2015/16 of nearly £70,000.

Enforcement

Proactively, Officers had visited and inspected a number of pubs and clubs and all Off-Licences, ensuring compliance with licence conditions and 'coaching' licence holders, especially those where police intelligence suggested higher crime or disorder. Furthermore, random private hire and hackney carriage vehicle checks had been undertaken throughout the year.

A detailed investigation was undertaken into the validity of some Medical Examinations, received as part of a licenced drivers' fitness assessment. This resulted in a number of drivers having to undergo a further medical, ensuring that all licenced drivers met the required standards.

Stakeholder Involvement

The Taxi Liaison meetings were providing a good link between Officers and private hire operators, drivers and the hackney carriage trade. Similarly, a Multi Agency Licensing Team (MALT) continued to meet on an ad hoc basis to discuss problematic licensed premises. MALT was made up from Officers from Cumbria Constabulary, Cumbria Fire & Rescue Service, Trading Standards, Environmental Protection, Private Sector Housing and Health & Safety.

The Community Alcohol Partnership (CAP) was launched. A CAP was aimed at reducing underage alcohol consumption through partnership work. The Senior Licensing Officer had co-ordinated a programme of mentoring visits to all off-licences, alongside Police and Trading Standards colleagues and Retailers.

Zoo Licensing

Officers had undertaken a considerable and unprecedented workload in relation to Zoo licensing enforcement and also applications received in 2016/17. This had resulted in numerous inspections and subsequent preparation and consideration of reports for a number of committee hearings.

Delegated Decisions

A number of licensing functions were delegated down to Officers. In the financial year 2016/17 the following licences had been issued/renewed under these powers:-

Alcohol Licensing

- 69 Temporary Event Notices
- 57 Personal Licences
- 16 Premises Licences (New and Variations)

Taxi & Private Hire Licensing

- 352 Driver Licences
- 314 Vehicle Licences
- 17 Operator Licences

Miscellaneous Licenses

- 21 Street Trading
- 15 Animal Welfare Licences
- 16 Skin Treatment Registrations
- 15 Scrap Metal Premises/Collectors
- 7 Pleasure Boats and Boatmen
- 1 Sex Establishment

Ongoing Training and Workload

Officers had continued to attend training courses ensuring their competence was kept up-to-date through 'Continuous Professional Development'. Officers continued to work on the new Taxi and Private Hire Licensing Policies and the Street Trading and Charitable Collections Policies, along with the day-to-day management and administration of the Licensing regime.

10 – Disclosure of a Relevant Conviction

The Senior Licensing Officer reported on notice received regarding a relevant conviction from a Licensed Hackney Carriage Driver. She set out details concerning the application and the Committee's policy regarding such matters.

The applicant attended the meeting and addressed the Committee.

RESOLVED:- That no action against the Hackney Carriage Driver be taken.

The meeting closed at 3.35 p.m.

LICENSING REGULATORY COMMITTEE	(D) Agenda Item 7
Date of Meeting: 20th July, 2017	
Reporting Officer: Principal Environmental Protection & Licensing Officer	
<p>Title: Implementation of a Hackney Carriage & Private Hire Dual Drivers' Licences Application</p> <p>Report Summary:</p> <p>At its Committee on the 9th March 2017, Members approved a consultation on the implementation of a Hackney Carriage & Private Hire Dual Drivers' Licences Application.</p> <p>This report sets out the procedure by which Dual Drivers' Licences Application will be processed, subject to Members approval, the required changes to the current policy on the fitness of applicants, a proposed conversion fee and a new dual licences application fee.</p> <p>The introduction of the dual application process has no impact on the processing of the individual licences.</p>	

1. Background and Introduction

1.1. Hackney Carriage and Private Hire Driver Licences are created by separate statutes, and as such applications for licences have traditionally been processed individually. The framework for this licensing regime is contained within the following Acts:

Hackney Carriage Driver Licences - Section 46 of the Town Police Clauses Act 1847; and

Private Hire Driver Licences - Section 51 of the Local Government (Miscellaneous Provisions) Act 1976.

1.2. A number of drivers currently hold both Hackney Carriage and Private Hire Drivers' Licences, however as the applications are generally made at different times and processed separately, the licences have separate and different expiry dates; they must be renewed individually, increasing the administrative burden both on drivers and the Council.

1.3. A number of Councils operate 'Dual Drivers' Licences' application systems, allowing applications for both licence types to be considered simultaneously.

Both licences would then be issued with the same expiry date, and a single application process would be followed to renew both licences, significantly reducing the administrative burden and costs.

- 1.4. The Licensing team has received requests from licensed drivers to consider introducing a Dual Hackney Carriage/Private Hire Driver's Licences Application. Anecdotally, a number of drivers have already contacted officers to enquire when they will be able to make such applications.

Offering a Dual Drivers' Licences Application would provide the following benefits:

- Drivers would only incur the time and cost of one application.
- A reduction in officer and administration time.

2. Current Application Process

- 2.1. The process of applying for either a Hackney Carriage or a Private Hire Drivers' Licence is identical and a flowchart is attached at **Appendix 1**. A simpler process of renewal involves a declaration of previous convictions, DVLA check and a DBS check, if out of date. Medical history is also reviewed dependent upon age. For Members information 3 year licences required a new DBS Certificate.

3. Consultation

- 3.1. The introduction of Dual Drivers' Licences has been consulted upon with existing drivers asking them for any comments to be submitted before 15th June 2017. Information was sent to all existing drivers via email, all Private Hire Operators and to the Secretary of the Furness Taxi Trade Association.

A copy of the consultation email is attached at **Appendix 2**.

A total of thirteen responses were received, from:

- 5 Private Hire Drivers
- 4 Hackney Carriage Drivers
- 3 Private Hire & Hackney Carriage Drivers
- 1 Private Hire Operator

Two questions were asked:

- Are you in favour of the implementation of a dual licence / badge?
Yes – 100%
- To reduce the administrative burden of additional applications mid-term, do you accept the proposed phased implementation i.e. on renewal applications only?
Yes – 86%

4. Implementation of Dual Driver Licences

4.1. To enable the efficient implementation of Dual Drivers' Licences, it is proposed that this licence type would only be available upon renewal, reducing the administrative burden of additional applications mid-term. Allowing existing drivers to apply for a Dual Licence straightaway will produce 1 and 3 yearly peaks in income and resource demand. This will create difficulties in terms of financial budgeting and in allocating resources.

4.2. It is proposed that Dual Drivers' Licences will be granted for a 3 year or 1 year period and the appropriate fees were approved in March this year. (LRC – 9th March 2017 – Minute No. 87). The reduced administrative work is also reflected in a reduced application fee. For members information the following fees are applicable for 2017/18.

Hackney Carriage / Private Hire Driver - Renewal (1 Yr)	£ 102
Hackney Carriage / Private Hire Driver - Renewal (3 Yr)	£ 175
Driver Dual Badge - Renewal Only (1 Yr)	£ 139
Driver Dual Badge - Renewal Only (3 Yr)	£ 277

Driver Dual Badge / Licence cost savings: 1 year licence: £65
3 year licence: £73

4.3. The majority of respondents to the direct consultation with existing drivers, were in favour of the phased introduction of the Dual Licence; i.e. upon renewal only. However, a couple of respondents have requested the ability to convert their existing Private Hire or Hackney Carriage Drivers' Licence to a Dual Licence.

4.4. An administration fee to convert licences, calculated using the previously approved methodology (LRC – 9th March 2017 – Minute No. 87) and including:

- the cost of administration,
- IT software (dual licences applications only),
- direct costs such as badges and specialist printer and
- overheads.

is: £39.00

4.5. It is also proposed that the converted licence will have the same expiry date as the existing licence to reduce 1 and 3 yearly peaks in income and resource demand.

There would be no financial or licensing advantage for drivers who currently hold both Hackney Carriage and Private Hire Driver Licences, in converting either of their licences.

5. New Dual Drivers' Licences Fees

5.1. Currently, there are no approved fees for new applicants for a Dual Drivers' Licence. The methodology used to calculate the fees was previously approved by Members and is summarised below. It is based on actual time spent by Officers and associated costs of administering and operating the Licensing regime at full cost recovery. The fees take account of:

- Administration costs associated with the initial application and fee handling;
- Officer costs;
- Direct costs such as the cost of identification badges and DVLA checks;
- Support Services costs including Overheads, IT maintenance, External legal advice and Advertising;
- Compliance and monitoring costs; and
- Adjustments to take into account any surplus or deficit from the 2015/16 out-turn budget.

5.2. When the Licensing Authority proposes to set new fees for Drivers' Licences it must publish a notice of the proposed variation in a local newspaper stating that objections may be made within a period of not less than 28 days. If objections are received and not withdrawn the proposed fees will be brought back before the Licensing Regulatory Committee along with consultation responses for Members' consideration.

The proposed fees for New Driver Dual Licences are:

Driver Dual Licence - New (1 Yr)	£ 148
Driver Dual Licence - New (3 Yr)	£ 267

6. Fitness' Policy Amendments

6.1. Minor amendments to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy would be required to include the same application criteria for Dual Drivers' Licences. These amendments are as follows underlined:

1. Introduction

1.2 *The Council is responsible for regulating the provision of hackney carriage and private hire services under the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976, and other related legislation.*

When considering applications for many of the licence types available under the legislative framework, including hackney carriage, private hire and dual drivers' licences, the Council must be satisfied that the applicant is a fit and proper person to hold such a licence.

- 1.9 This policy will be taken into account by the Council when dealing with any of the following matters:
- a) An application for a new hackney carriage driver's licence (Section 46 Town Police Clauses Act 1847 / Section 59 Local Government (Miscellaneous Provisions) Act 1976).
 - b) An application for a new private hire driver's licence (Section 51 Local Government (Miscellaneous Provisions) Act 1976).
 - c) An application to **renew a private hire, hackney carriage or dual drivers' licence** (Section 51, 59 and 61 Local Government (Miscellaneous Provisions) Act 1976).
 - d) A proposal to suspend or revoke **a hackney carriage, private hire or dual drivers' licence** (Section 61 Local Government (Miscellaneous Provisions) Act 1976).

1.12 Information provided by applicants will be treated in confidence and will only be utilised by the Council to determine whether the applicant is a fit and proper person to hold **a hackney carriage, private hire or dual drivers' licence** for the purposes of Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976.

5. Training Requirements

- 5.5 The Council will have 'Safeguarding' policies and procedures to ensure the public are protected. This includes policies and procedures the Council uses to vet licence holders and also **a hackney carriage, private hire or dual licenced drivers'** ability to identify those at risk, protect those who may be vulnerable or being exploited, ensure that their actions do not negatively contribute to such persons becoming victims and responsibility to report any concerns.
- 5.6 From the date of adoption of this policy, all applicants (new and renewal) **for hackney carriage, private hire or dual drivers' licences** will be required to attend a Safeguarding Awareness training session. Failure to attend within the specified time may result in suspension / revocation or refusal to renew the relevant drivers licence.
- 5.8 Applicants **for hackney carriage, private hire or dual drivers' licences** will be required to undergo a written test as part of the process of satisfying the Council that they are suitable persons to hold such a licence. All new applicants will be required to pass a knowledge test as part of the application procedure.
- 5.12 A maximum number of 3 attempts has been imposed for which applicants (for the **grant of a new hackney carriage/private hire/dual drivers' licence**) are able to undertake the Council's knowledge test (numeracy, highway code, local geography, driver responsibilities etc.), after which there will be a minimum period of six months before any new testing may take place.

6. Right to Work in the UK

- 6.1 **All applicants for a hackney carriage, private hire or a dual drivers' licence** will be required to demonstrate that they have the right to live and work in the United Kingdom. We will follow the general advice given by the UK Border Agency, available at: www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/ in ascertaining this status.

7. Criminal Convictions, Cautions and Reprimands

- 7.4 As DBS disclosures can be considered accurate only on their issue date, and may contain additional, non-conviction information, specific to the application and released at the discretion of the Chief Police Officer, we will require all applicants to obtain a new disclosure through the Council every three years. Disclosures obtained previously through other bodies or for other purposes will not be accepted.

As previously mentioned within this document, an annual statement of declaration, upon the anniversary of the grant of the most recent licence, will be required to be **signed by licensed private hire, hackney carriage and dual licenced drivers**, declaring any new convictions and/or cautions.

8. Statement on the Relevance of Convictions

- 8.7 **As hackney carriage, private hire or dual licenced drivers maintain close contact** with the public, in general a period of 3 or more years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will be required before an application is likely to be considered favourably. An offence involving loss of life is likely to result in the refusal of an application.

9. Driving Licence Endorsements

- 9.1 For certain driving offences, either where an individual has been convicted by a court or has admitted the offence by way of a fixed penalty notice, driving licences may be endorsed with details of the offence, and a number of penalty points can be imposed upon the individual's driving licence. Endorsements may indicate a poor driving record and give rise to concerns about the applicant's fitness to **hold such a hackney carriage, private hire or dual drivers' licence**.

- 9.10 All such endorsements will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standards **expected of hackney carriage, private hire and dual licensed drivers**.

- 9.14 A single minor endorsement will not generally prevent an application from proceeding. However, a larger number of minor endorsements, particularly if incurred in a short period of time, will require careful consideration of the facts and will at the very least merit a warning as to future driving and

*advice on the standards **expected of hackney carriage, private hire and dual licenced drivers.***

9.18 *All applicants with 6 to 8 penalty points from valid endorsements on their licence, or two valid endorsements, will generally be required to attend an interview with a licensing officer to review the facts behind the endorsements. It shall be at the Environmental Health Manager's discretion as to whether to refer such applications to the Licensing Regulatory Committee for further consideration of the pertinent facts, or to approve the application. Where applications are approved, it is expected that a warning as to future driving and advice on the **standards expected of hackney carriage, private hire or dual licenced drivers will also be administered.***

9.22 *In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify a driver (e.g. because of exceptional circumstances) the Council is **likely to refuse a hackney carriage, private hire or dual drivers' licence.** This is because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.*

7. Options

The options available to Members are:

1. Approve a phased implementation of Dual Drivers' Licences application, through the renewal process, for both 3 year and 1 year licences; or
2. Approve the conversion of existing 3 year and 1 year licenced drivers to Dual Drivers' Licences, including a conversion fee of £39.00, for those drivers wishing to apply before their renewal is due.
3. Approve or amend the fees detailed in this report for New applications for Dual Drivers' Licences, with effect 28 days following the public consultation; and
4. If objections are received within 28 days of the publication of the notice of the proposed changes to the fees, the matter be brought back before the next available Licensing Regulatory Committee so that any such objections can be considered and any modifications made if necessary.
5. Approve the minor amendments to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy, to include the same criteria for Dual Drivers' Licences applications; or
6. Reject the introduction of Dual Drivers' Licences applications and any amendments to the Fitness of Applicants' Policy.

8. Recommendation

I recommend that Members:-

1. Approve a phased implementation of Dual Drivers' Licences application, through the renewal process for both 3 year and 1 year licences; and
2. Approve the minor amendments to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy, to include the same criteria for Dual Drivers' Licence applications.

9. Reasons for Recommendation

- Individuals can hold both Hackney Carriage and Private Hire Drivers' Licences;
- The majority of respondents (existing licensed drivers) are in favour of a phased implementation;
- Increased flexibility, enabling a dual licence holder to drive both a Hackney Carriage and Private Hire Vehicle, licensed by Barrow Borough Council without the additional costs of two licence applications;
- A driver would only incur the time and cost of one application;
- A reduction in Officer and administration time and associated costs;
- For those licences which allow fees to be set locally, the licensing authority is allowed to recover its reasonable costs in processing and determining licence applications and also achieve compliance with the appropriate legislation;
- The administration and operation of the Licensing regime is able to operate at full cost recovery; and
- The fees are reviewed annually and should a surplus or deficit occur as part of the final outturn position for the financial year, this will be taken into account when setting the fees in the next financial year.

10. Considerations

(i) Legal Implications

Town Police Clause Act 1847 - Section 46 Drivers not to act without first obtaining a licence.

No person shall act as driver of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a licence from the commissioners, which licence shall be registered by the clerk to the commissioners, and such fee as the commissioners may

determine shall be paid, for the same; and every such licence shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned.

Local Government (Misc. Provisions) Act 1976 - Section 51 Licensing of drivers of private hire vehicles.

(1) Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

Provided that a district council shall not grant a licence—

- (a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or
- (b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver's licence so authorised.

Section 54 Issue of drivers' badges.

(1) When granting a driver's licence under section 51 of this Act a district council shall issue a driver's badge in such a form as may from time to time be prescribed by them.

Section 59 Qualifications for drivers of hackney carriages.

(1) Notwithstanding anything in the Act of 1847, a district council shall not grant a licence to drive a hackney carriage—

- (a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or
- (b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver's licence so authorised.

The Licensing Authority can set its own fees for the licensing regimes listed in this report. The fee must be reasonable and cover the Council's costs in the administration and the processing of those application types and further costs to ensure compliance.

The above regimes are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that fees charged in relating to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds.

Private Hire and Hackney Carriage Drivers:

Local Government (Miscellaneous Provisions) Act 1976, Section 53

“may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of the fee in respect of a private hire vehicle in any case in which they think it appropriate to do so.”

(ii) Risk Assessment

Not applicable.

(iii) Financial Implications

There are 39 existing drivers who hold both private hire and hackney carriage licences. Of those, 10 will renew before the end of this financial year.

(iv) Key Priorities or Corporate Aims

Not applicable.

(v) Equality and Diversity

There are no issues relating to equality or diversity.

(vi) Other Human Rights

Any action undertaken by the Council, that could have an effect upon another person's human rights, must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole.

Any action taken by the Council which affect another's' rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of those obligations.

(vii) Health and Well-being Implications

Not Applicable.

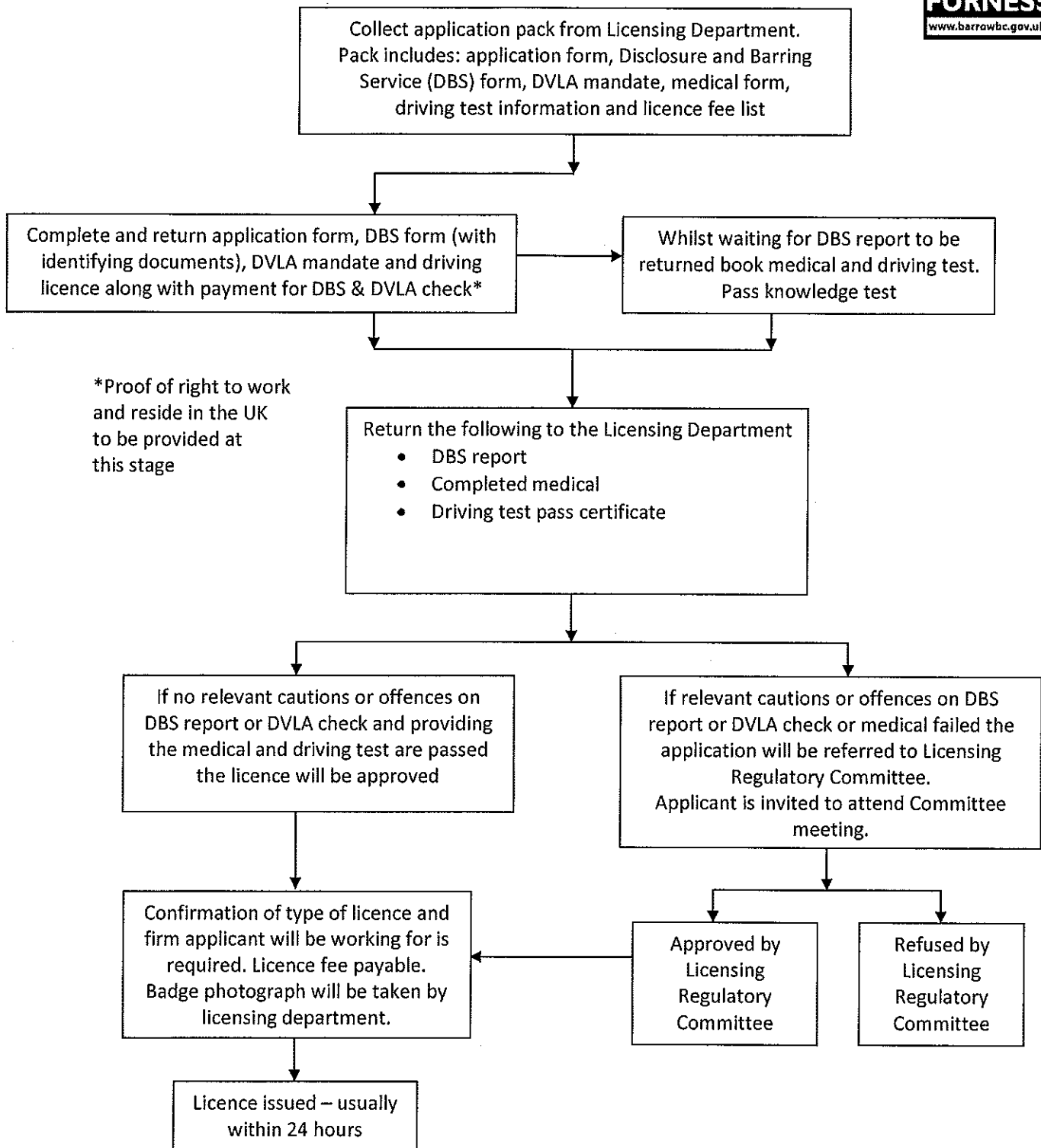
Background Papers

Licensing Regulatory Committee Minutes – 9th March, 2017 – Minute No. 87

Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy



Application Procedure for New Driver's Licence



For further guidance on application requirements please refer to the The Fitness of Applicants for Hackney Carriage and Private Hire Drivers Licences Policy

From: Env Health
To: Commercial Services
Subject: Dual Drivers Licences - Consultation with Drivers and Operators
Date: 06 June 2017 11:39:32

Implementation of a Dual Drivers Licence

Hackney carriage and private hire driver licences are created by separate statutes, and as such applications for licences have traditionally been treated separately. Because of the way in which these are currently administered, both licences have separate expiry dates, and must be renewed individually, increasing the administrative burden both on drivers and the Council.

To enable the efficient implementation of dual driver licences, for those wishing to be licensed to drive both Hackney Carriage and Private Hire Vehicles, it is proposed that this licence type would only be available upon renewal, reducing the administrative burden of additional applications mid-term and additional costs.

Dual drivers licences are granted for a 3 year or 1 year period and the appropriate fees were approved in March this year:

Driver Dual Badge - Renewal Only (3 Yr): £ 277 or (1 Yr): £ 139

Offering a dual drivers licence would provide the following benefits:

- Provide more flexibility by allowing the dual licence holder to drive both a Hackney Carriage and Private Hire Vehicle, licensed by Barrow Borough Council.
- A driver would only incur the time and cost of one application.
- A reduction in Officer and administration time.

Minor amendments to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy would be required to include the same criteria for Dual Driver Licences.

Results of this consultation will be reported to the Licensing Regulatory Committee on the 29th June 2017, therefore can you **please respond by Thursday 15th June 2017.**

Please answer the following questions in relation to the implementation of a dual drivers licence / badge.

1. Current licence type: Private Hire / Hackney Carriage / Both / PH Operator
2. Are you in favour of the implementation of a dual licence / badge: Yes / No
3. To reduce the administrative burden of additional applications mid-term, do you accept the proposed phased implementation i.e. on renewal applications only: Yes / No
4. Any other comments:

LICENSING REGULATORY COMMITTEE	(D) Agenda Item 8
Date of Meeting: 20th July, 2017	
Reporting Officer: Principal Environmental Protection & Licensing Officer	

Title: Protected Cautions and Convictions

Report Summary:

The Rehabilitation of Offenders Act 1974 ("ROA 1974") provides that criminal convictions and cautions for certain offences are deemed to be "spent" after a specified period. Offences for which a prison sentence of 30 months or more was incurred are excluded from rehabilitation and are never spent (s.5 ROA 1974).

The Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) (Amendment) England and Wales Order 2013 ('the Exceptions Order 2013') came into force on 29th May 2013 and allows certain old and minor cautions to no longer be subject to disclosure under the Exceptions Order. All cautions and convictions for specified serious violent and sexual offences and other specified offences of relevance will remain subject to disclosure.

New categories of 'protected cautions' and 'protected convictions' have been introduced, which mean that after the passage of time the applicant must be treated as not having been charged with, convicted of or sentenced for any of those offences.

The Exceptions Order 2013 amends the Exceptions Order 1975 by removing most protected cautions and convictions from the exceptions to rehabilitation under the ROA 1974 however there are still a small number of positions where **all** convictions and cautions (included protected convictions and cautions) may still be disclosed and taken into account.

This report asks Members to approve amendments to the Fitness of Applicants for Hackney Carriage and Private Hire Drivers Licences Policy to include to provisions of the Exceptions Order 2013.

1. Background

1.1. The Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) (Amendment) England and Wales Order 2013 ('the Exceptions Order 2013') came into force on 29th May 2013 and allows certain old and minor cautions to no longer be subject to disclosure under the Exceptions Order. All cautions and convictions for specified serious violent and sexual offences and other specified offences of relevance will remain subject to disclosure.

- 1.2. All convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where more than one conviction is recorded.
- 1.3. The legislative changes impact on what the Council can ask an individual in relation to convictions and cautions (for example a self-declaration on an application form of 'do you have any convictions') and what are released on a standard or enhanced DBS certificate.
- 1.4. New categories of 'protected cautions' and 'protected convictions' have been introduced, which mean that after the passage of time the applicant must be treated as not having been charged with, convicted of or sentenced for any of those offences.

2. Protected Cautions & Convictions

2.1. Protected Caution

A conviction is only a "protected caution" if:-

- It does not relate to a listed offence;
- It was given to a person aged under 18 at the time of the caution and **two years or more** have elapsed;
- It was given to a person aged 18 or over at the time of the caution and **six years or more** have elapsed.

2.2. Protected Conviction

A conviction is only a protected conviction if:-

- It does not relate to a "listed offence" such as violence and sexual offences;
- No custodial sentence was imposed;
- It is the only conviction that the individual has received;
- It was received by a person aged under 18 at the time of the conviction and **five and a half years or more** have elapsed; and
- It was received by a person aged 18 or over at the time of the conviction and **11 years or more** have elapsed.

3. Relevance of Cautions and Convictions

- 3.1. The Council as Licensing Authority can take account of disclosure information from the DBS including convictions which have been recorded against the applicant or holder of a private hire vehicle or hackney carriage drivers' licence and can have regard to all relevant cautions and convictions or allegations, particularly where there is a history of offending or a pattern of repeat offending/allegations.

- 3.2. If an applicant or existing licence holder has been arrested, charged or summonsed but not convicted for an offence, the nature of which suggests there would be concerns for the safety of the travelling public (particularly serious offences for example any form of violent conduct (including domestic violence) and serious sex offences) consideration will be given to refusing an application and the Environmental Health Manager will refer the application to the Licensing Regulatory Committee for determination.
- 3.3. Under the Provisions of ss.51, 55, and 59 Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a licence is a 'fit' and 'proper' person to hold a licence.
- 3.4. When determining whether the person is a 'fit' and 'proper' person the Council will have regard to the following:-
- The relevance of the offence(s) or other matters revealed in the application;
 - The seriousness of any offence(s) or any other matter revealed;
 - The class / nature of the offences(s);
 - The age of the offences(s);
 - The age of the person at the time of the offence(s);
 - Whether the disclosure reveals a pattern of behaviour;
 - Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters; and
 - Any other information that is deemed appropriate for consideration in determining whether the person is a 'fit' and 'proper' person.
- 3.5. In addition to the above, the Council is also entitled to use all other records and information available to it in determining applications or entitlement to continue holding a licence. This may include information held by the Council or other licensing authorities and information held by the police under the Home Office Scheme for reporting offences committed by notifiable occupations.
- 3.6. The overall offending history will be considered when assessing a person's suitability to be licensed or to continue holding a licence.

4. The Fitness of Applicants' Policy amendments.

- 4.1. Amendments are required to Section 7 of the Fitness of Applicants for Hackney Carriage and Private Hire Drivers Licences Policy following a legislative change: underlined

7. Criminal Convictions, Cautions and Reprimands

7.2 As hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974, subject to The Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) (Amendment) England and Wales Order 2013, convictions which would

ordinarily be considered 'spent' must be declared and may be considered in the determination of the application. The 2013 Order introduced new categories of 'protected cautions' and 'protected convictions', which mean that after the passage of time an applicant must be treated as not having been charged with, convicted of or sentenced for any of those offences.

Protected Cautions

A conviction is only a "protected caution" if:-

- **It does not related to a listed offence;**
- **It was given to a person aged under 18 at the time of the caution and two years or more have elapsed;**
- **It was given to a person aged 18 or over at the time of the caution and six years or more have elapsed.**

Protected Convictions

A conviction is only a protected conviction if:-

- **It does not relate to a "listed offence" such as violence and sexual offences;**
- **No custodial sentence was imposed;**
- **It is the only conviction that the individual has received;**
- **It was received by a person aged under 18 at the time of the conviction and five and a half years or more have elapsed; and**
- **It was received by a person ages 18 or over at the time of the conviction and 11 years or more have elapsed.**

The Council will generally only take such convictions into account if they are considered to be of particular relevance to the application in question or of an especially serious nature, or if there is some other cause to believe that the applicant cannot be considered to be 'rehabilitated'.

4.2. Amendments are also required to Section 8 of the Fitness of Applicants for Hackney Carriage and Private Hire Drivers Licences Policy to clarify relevant matters: **underlined**

8. Statement on the Relevance of Convictions

8.2 In circumstances where previous convictions, **cautions** or other information relating to criminal matters is disclosed, the Council, when determining whether the person is a 'fit' and 'proper' person, will have regard to the following:-

- **The relevance of the offence(s) or other matters revealed in the application;**

- *The seriousness of any offence(s) or any other matter revealed;*
- *The class / nature of the offences(s);*
- *The age of the offences(s);*
- *The age of the person at the time of the offence(s);*
- *Whether the disclosure reveals a pattern of behaviour;*
- *Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters; and*
- *Any other information that is deemed appropriate for consideration in determining whether the person is a 'fit' and 'proper' person.*

In addition to the above, the Council is also entitled to use all other records and information available to it in determining applications or entitlement to continue holding a licence. This may include information held by the Council or other licensing authorities and information held by the police under the Home Office Scheme for reporting offences committed by notifiable occupations.

The overall offending history will be considered when assessing a person's suitability to be licensed or to continue holding a licence.

5. Options

The options available to Members are:

1. Approve the minor amendments to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy; or
2. Amend the wording of the amendment to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy

6. Recommendation

Approve the minor amendments to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy, to the following:

- 7.2 As hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974, subject to The Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) (Amendment) England and Wales Order 2013, convictions which would ordinarily be considered 'spent' must be declared and may be considered in the determination of the application. The 2013 Order introduced new categories of 'protected cautions' and 'protected convictions', which mean that after the passage of time an applicant must be treated as not having been charged with, convicted of or sentenced for any of those offences.

Protected Cautions

A conviction is only a "protected caution" if:-

- It does not relate to a listed offence;

- It was given to a person aged under 18 at the time of the caution and two years or more have elapsed;
- It was given to a person aged 18 or over at the time of the caution and six years or more have elapsed.

Protected Convictions

A conviction is only a protected conviction if:-

- It does not relate to a "listed offence" such as violence and sexual offences;
- No custodial sentence was imposed;
- It is the only conviction that the individual has received;
- It was received by a person aged under 18 at the time of the conviction and five and a half years or more have elapsed; and
- It was received by a person ages 18 or over at the time of the conviction and 11 years or more have elapsed.

The Council will generally only take such convictions into account if they are considered to be of particular relevance to the application in question or of an especially serious nature, or if there is some other cause to believe that the applicant cannot be considered to be 'rehabilitated'.

8.2 In circumstances where previous convictions, cautions or other information relating to criminal matters is disclosed, the Council, when determining whether the person is a 'fit' and 'proper' person, will have regard to the following:-

- The relevance of the offence(s) or other matters revealed in the application;
- The seriousness of any offence(s) or any other matter revealed;
- The class / nature of the offences(s);
- The age of the offences(s);
- The age of the person at the time of the offence(s);
- Whether the disclosure reveals a pattern of behaviour;
- Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters; and
- Any other information that is deemed appropriate for consideration in determining whether the person is a 'fit' and 'proper' person.

In addition to the above, the Council is also entitled to use all other records and information available to it in determining applications or entitlement to continue holding a licence. This may include information held by the Council or other licensing authorities and information held by the police under the Home Office Scheme for reporting offences committed by notifiable occupations.

The overall offending history will be considered when assessing a person's suitability to be licensed or to continue holding a licence.

7. Reason for Recommendation

The amendment to the Fitness of Applicants for Hackney Carriage and Private Hire Driver's Licences Policy is required following a legislative change.

8. Considerations

(i) Legal Implications

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 amends the Rehabilitation of Offenders Act 1974 with the inclusion of the following sections:

Section 2A.—(1) For the purposes of this Order, a caution is a protected caution if it was given to a person for an offence other than a listed offence and—

(a) where the person was under 18 years at the time the caution was given, two years or more have passed since the date on which the caution was given; or

(b) where the person was 18 years or over at the time the caution was given, six years or more have passed since the date on which the caution was given.

(2) For the purposes of this Order, a person's conviction is a protected conviction if the conditions in paragraph (3) are satisfied and—

(a) where the person was under 18 years at the time of the conviction, five years and six months or more have passed since the date of the conviction; or

(b) where the person was 18 years or over at the time of the conviction, 11 years or more have passed since the date of the conviction.

(3) The conditions referred to in paragraph (2) are that—

(a) the offence of which the person was convicted was not a listed offence;

(b) no sentence mentioned in paragraph (4) was imposed in respect of the conviction; and

(c) the person has not been convicted of any other offence at any time.

(4) The sentences referred to in paragraph (3)(b) are—

(a) a custodial sentence, and

(b) a sentence of service detention, within the meaning of section 5(8) of the Act, as to be substituted by section 139(1) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(d).

(ii) Risk Assessment

Not applicable.

(iii) Financial Implications

(iv) Key Priorities or Corporate Aims

Service Delivery – the Council strives to provide good quality, efficient and effective services while reducing overall expenditure.

(v) Equality and Diversity

There are no equality and diversity implications.

(vi) Other Human Rights

Any action undertaken by the Council, that could have an effect upon another person's human rights, must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole.

Any action taken by the Council which affect another's' rights must be no more onerous than is necessary in a democratic society.

The matter set out in this report must be considered in light of those obligations.

(vii) Health and Well-being Implications

Many of the Licensing regimes can affect the health and wellbeing of the service user in some way.

Background Papers

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment)
(England and Wales) Order 2013

Fitness of Applicants for Hackney Carriage and Private Hire Drivers Licences Policy