

# Regulatory Committee

Date: **Tuesday, 20th November, 2007**

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Time: **2.00 p.m.**

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Place: **The Council Chamber, Brockington,  
35 Hafod Road, Hereford**

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Notes: Please note the **time, date** and **venue** of the meeting.

*For any further information please contact:*

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**County of Herefordshire  
District Council**



# AGENDA

## for the Meeting of the Regulatory Committee

To: Councillor P Jones CBE (Chairman)  
Councillor JW Hope MBE (Vice-Chairman)

Councillors CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, SPA Daniels,  
JHR Goodwin, R Mills, A Seldon and DC Taylor

	Pages
1. <b>APOLOGIES FOR ABSENCE</b> To receive apologies for absence.	
2. <b>NAMED SUBSTITUTES (IF ANY)</b> To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
3. <b>DECLARATIONS OF INTEREST</b> To receive any declarations of interest by Members in respect of items on the Agenda.	
4. <b>MINUTES</b> To approve and sign the Minutes of the meeting held on 23rd October, 2007.	1 - 2
5. <b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATHS SP19 (PART) AND SP20 (PART) IN THE PARISH OF STOKE PRIOR.</b> To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpaths SP19 and SP20 in the parish of Stoke Prior  <b>Ward affected:</b> Hampton Court	3 - 4
6. <b>HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER TO DIVERT PART OF FOOTPATH HN6 IN THE PARISH OF HENTLAND</b> To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath HN6 in the parish of Hentland as shown on drawing number D378/177-6.  <b>Ward affected:</b> Pontrilas	5 - 6
7. <b>AMENDMENT AND ADDITION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS</b> To consider implementing revised vehicle licence conditions due to abuse of the current; private hire and hackney carriage vehicle conditions.	7 - 8

8.	<b>AMENDMENT TO FEES FOR SPARE AND REPLACEMENT VEHICLE APPLICATIONS</b>	9 - 12
	To consider a reduction in the cost for spare and replacement vehicle applications.	
9.	<b>GUIDANCE POLICY ON CONVICTIONS</b>	13 - 20
	That the Committee consider the guidelines to the relevance of convictions with respect to licensing dual drivers as an appendix to the Taxi and Private Hire Policy.	
<b>EXCLUSION OF PUBLIC AND PRESS</b>		
In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time it is considered.		
RECOMMENDATION:	that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that the reports contain information relating to an individual under paragraph 1 of part 1 of Schedule 12A of the Act	
10.	<b>PROCEDURAL ARRANGEMENTS</b>	21 - 22
	To note the procedural arrangements for the meeting.	
11.	<b>DUAL (HACKNEY CARRIAGE &amp; PRIVATE HIRE) DRIVER LICENCE – TO REVIEW A SUSPENSION NOTICE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</b>	23 - 30
	To consider matters relating to the suspension of a hackney carriage/private hire driver's license	
12.	<b>DUAL (HACKNEY CARRIAGE &amp; PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</b>	31 - 34
	To consider an application for a hackney carriage/private hire driver's licence.	

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## **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**

**BROCKINGTON, 35 HAFOD ROAD, HEREFORD.**

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

**MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday, 23rd October, 2007 at 2.00 p.m.**

**Present:** Councillor P Jones CBE (Chairman)  
Councillor JW Hope MBE (Vice Chairman)

**Councillors:** CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, SPA Daniels, JHR Goodwin, R Mills, A Seldon and DC Taylor

**50. APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**51. NAMED SUBSTITUTES (IF ANY)**

There were no named substitutes at the meeting.

**52. DECLARATIONS OF INTEREST**

There were no declarations of interest made.

**53. MINUTES**

**RESOLVED:** That the Minutes of the meeting held on 28th August, 2007 be approved as a correct record and signed by the Chairman

**54. HACKNEY CARRIAGE FARES 2007/2008 - THE TOWN POLICE CLAUSES ACT 1847 AND LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

The Licensing Officer presented the report of the Head of Environmental Health and Trading Standards about proposed increases in taxi fares. She said that the Local Government (Miscellaneous Provisions) Act 1976 made provision for Local Licensing Authorities to set the rates/fares within the County together with distance and all other charges. She also said that the existing fares were last reviewed and increased in October, 2006. Proposals for an increase in charges for taxi fares were published in the Hereford Times on 11th October 2007 with a two-week consultation period taking in the trade, interested parties and the public, which would end on 26th October, 2007. The proposed increases were based on consideration of the annual inflation indices and submissions from the Herefordshire Hackney Carriage and Private Hire Association. It was proposed the new fares would take affect from 5th November, 2007.

The Committee considered the proposals fare structure and noted the financial pressures on the taxi trade and the anti-social hours involved. It was agreed that the new fare structure should be approved at the end of the consultation period, subject to there being no relevant adverse representations received. The Licensing Manager said that if there were, she would refer the matter back to the Committee.

**RESOLVED THAT**

- (i) the proposed fare increase be agreed in principal subject to there being no relevant objections by the end of the consultation process, and that the Head of Environmental Health and Trading Standards be delegated to implement them with effect from 5th November, 2007.
- (ii) If any relevant objections are received, the matter be brought back to the Committee.

**55. PROCEDURAL ARRANGEMENTS**

The Committee noted the procedural arrangements for hearing appeals to ensure that the laws of natural justice were followed to give a fair hearing for applicants and to the Licensing Officers.

**56. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE – TO REVIEW A SUSPENSION NOTICE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

In the absence of appellant, the Committee decided to defer consideration of the matter until its next meeting on 20th November, 2007.

The Principal Lawyer referred to an appeal lodged with the Magistrates Court by an applicant, arising from a decision made by the Committee at its meeting on 31st July, 2007 to refuse to reinstate his drivers licence. He said that the Magistrates had upheld the appeal and had decided to award costs against the Council. The Head of Environmental Health and Trading Standards was preparing a policy document about such issues for consideration by the Committee. Extensive consultation was taking place with interested parties and would include the Area Legal Manager of the Magistrates with a view to attempting to agree a more consistent approach regarding appeals which would be in harmony with that of the Council.

The meeting ended at 2.40 p.m.

**CHAIRMAN**

## **5 HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATHS SP19 (PART) AND SP20 (PART) IN THE PARISH OF STOKE PRIOR**

**Report By: Public Rights of Way Manager**

### **Wards Affected:**

Hampton Court

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpaths SP19 and SP20 in the parish of Stoke Prior.

### **Considerations**

- 1 Mr A Rixon, who was the landowner of The Heath Barn at the time, made the original application for a diversion of footpaths SP19 and SP20 in 1997. The application was made when it was identified that the signposts and stiles on footpath SP19 needed to be repositioned onto the legal line of the path, which runs through the garden of The Heath Barn. They had been installed on a permissive route in the 1980's, when a previous landowner had informed the employment training gang who were carrying out the works that the path had been 'diverted'; it was later found that no legal Order had been made to this effect.
- 2 The Public Rights of Way department carried out pre-Order consultation for Mr Rixon's proposed route in 1997. A plan showing the route is attached (see Annex A.) The proposal met with objections from user groups due to the loss of the footpath link A-B that ends at the junction of county roads C1110 and C1055.
- 3 The Foot and Mouth outbreak of 2001 and staffing shortages delayed further processing of the application until 2004, when a site visit was made and an alternative route proposed. By this time, Mr Michael Reed, who is the current applicant, had bought The Heath Barn. Due to pressure of other work, pre-Order consultation was not carried out on this proposal. In 2006, Mr Reed was offered the opportunity to carry out his own pre-Order consultation, which he accepted. This will reduce the administration fees payable for his application if an Order is made.
- 4 The applicant has carried out pre-Order consultation, which has resulted in the route shown on the Order Plan (Dwg no D264/361-19/20.) This route would be advantageous to all affected landowners, as it removes footpath SP19 from the garden of The Heath Barn and a pony paddock, and would facilitate agricultural operations by converting both footpaths from cross-field to field-edge paths. It retains the link directly to the junction of county roads C1110 and C1055.
- 5 The proposed route of footpath SP20 follows a route between D and E that runs parallel with Humber Brook in a wooded depression at the field edge, before ascending a slope to run along the level area of ground at the edge of the cropped field. The Open Spaces Society has indicated that this would be their preferred route,

as they feel it to be a more pleasant walk than a route that avoids the woodland by ascending directly from D to the field edge. In response to the Ramblers' Association's concerns that the path may suffer from erosion, section D-E was inspected following flood-level rainfall, on 29<sup>th</sup> June 07. The flood debris indicated that the bank between D and E had not flooded and the ground was not boggy. The Ramblers' Association have made no response to the letter sent to them in July of this year, which informed them that the route shown on the Order Plan is being considered. Welsh Water has confirmed that they have no objection, as installation of a roadside signpost should not interfere with the apparatus that is located close to point F. No objections have been received from other consultees.

- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. The affected landowners have given their consent to the route as shown on the Order Plan and have agreed in writing that they will not claim compensation if the proposed diversion comes into operation.
- 7 The local member, Councillor Keith Grumbley, has been consulted and supports the application.
- 8 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:
  - The proposal benefits the owners of the land crossed by the existing paths.
  - The proposal does not alter the point of termination of footpath SP20, although SP19 would terminate at a point further north on the C1110.
  - The proposal is not substantially less convenient to the public.

## Alternative Options

Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

## Risk Management

There is a risk that the Order will be opposed, leading to additional demand on existing staff resources.

## Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Local Member – Councillor Keith Grumbley
- Humber, Stoke Prior and Ford Group Parish Council.
- Statutory Undertakers

## Recommendation

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D264/361-19/20

## Appendices

Order Plan, drawing number: D264/361-19/20

Annex A-First route proposal, as submitted by Mr A Rixon

## **HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH HN6 (PART) IN THE PARISH OF HENTLAND**

**Report By: Public Rights of Way Manager**

### **Wards Affected:**

Pontrilas

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath HN6 in the parish of Hentland as shown on drawing number D378/177-6.

### **Considerations**

- 1 An application to divert part of Public Footpath HN6 under the Town and Country Planning Act 1990 in order to allow development to take place, was made in November 1994, by Mr. J. Goulding, who is the landowner. Despite an order being drafted (and possibly made and advertised) it would appear it was never confirmed or certified by South Herefordshire District Council. The applicant, believing the process to have been completed, carried out the development thus eliminating the possibility of completing the order under the Town and Country Planning Act.
- 2 As it would appear the responsibility for failing to make the order rests with the South Herefordshire District Council, Herefordshire Council have agreed to complete the order under the Highways Act at no expense to the applicant.
- 3 As consultation on the proposals has been carried out in the past, only the Parish Council and the Local Member were invited to comment. Both are in favour of the proposal. User groups such as the Ramblers Association will be sent copies of the order and will have an opportunity to comment.
- 4 The diversion is already in place on the ground and is currently being used by the public. There will be no additional costs other than advertising and staff costs involved in completing the legal process.
- 5 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:
  - The proposal benefits the owner of the land crossed by the existing path.
  - The proposal does not alter the point of termination of the paths.
  - The proposal is not substantially less convenient to the public.

## Alternative Options

Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

## Risk Management

There is a risk that the Order will be opposed, leading to additional demand on existing staff resources.

## Consultees

- Local Member - Councillor Godfrey Davies
- Hentland, Ballingham and Bolstone group Parish Council

## Recommendation

**That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D378/177-6**

## Appendices

Order Plan, drawing number: D378/177-6

**6 AMENDMENT AND ADDITION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847**

**REPORT BY: Head of Environmental Health and Trading Standards**

**Purpose**

1. To consider implementing revised vehicle licence conditions due to abuse of the current; private hire and hackney carriage vehicle conditions.

**Legal Background**

2. Under the terms of the Local Government (Miscellaneous Provisions) Act 1976 s 47 (Private Hire Vehicle), Town Police Clauses Act 1847 s 42 (Hackney Carriage), local authorities may make reasonable conditions for the regulation of both hackney carriages and private hire vehicles.
3. Any person aggrieved by any conditions, which have been imposed, has a right of appeal to the Magistrates Court.

**Background**

4. The licence conditions were last reviewed in April 2007 following full consultation.

The Licensing Section has received a number of complaints from members of the trade regarding the following matters: -

**Complaint:** Operators are purchasing Wheel Chair accessible vehicles which are under five years of age. They are then replacing these vehicles with much older vehicles very soon after. The original vehicle is then being sold or used again to purchase another plate.

**Comment:** There used to be a condition where any replacement vehicle had to be the same or higher standard both in age and vehicle type, this was removed following the consultation at the recommendation of the Steering Group; who felt it was too restrictive. The Licensing Section agreed to do this but advised them if the system was abused the condition would need to be reconsidered.

**Complaint:** Wheelchair accessible vehicles are being tested with a full capacity of eight seats, which means that the rear row of seats have to be removed to accommodate a wheelchair.

**Current and Proposed conditions**

- 5.

Current Condition	Proposed Condition
1.2 New condition to be added	1.2 Once a vehicle has been issued with a <b>hackney carriage</b> licence

			the vehicle cannot be re-used to get a new licence plate within Herefordshire.
2.3	New condition to be added	2.3	Once a vehicle has been issued with a <b>private hire</b> licence the vehicle cannot be re-used to get another licence plate within Herefordshire.
3.3b	The replacement vehicle shall be less than 8 years of age for a non wheel chair access vehicle and less than 15 years old for a disabled access vehicle.	3.3b	The replacement vehicle shall be no more than 2 years older than the outgoing vehicle, and have at least 30,000 less miles on the clock. All vehicles must be replaced at 8 years for non wheel chair and 15 years for wheel chair access vehicles.
20.11	Wheelchair accessible hackney carriages must remain wheelchair accessible at all times when plying for hire.	20.11	Wheelchair accessible hackney carriages must remain wheelchair accessible at all times.
20.12	New condition	20.12	Any wheelchair provision will be counted as a permanent passenger seat and this will be marked on the licence plate.

## Issues

6. Only wheelchair accessible vehicles, which are under 5 years of age, can get a new hackney carriage plate. The reason that we allowed this increase in numbers was to provide a better service to disabled users. Many of these vehicles are not being used with disabled access, but are being used predominantly for larger groups of passengers mainly for migrant farm workers based around the county. This is impacting on the rest of the trade who are running their vehicles with a reduced number of seats as they are maintaining the wheelchair accessibility, causing unfair advantage to parts of the trade.
7. The newer vehicles are being replaced in some cases with significantly older and poorer conditions vehicles, which reduce the quality of the fleet.
8. It is clear from government guidance that older vehicles tend to be more polluting than newer ones, and this has been proven by air quality modelling undertaken for the Council. Therefore, as many taxis and private hire vehicles frequent the air quality management areas in Hereford City, Bargates in Leominster and the A40 near Ross-on-Wye it is essential to encourage less polluting vehicles.

## RECOMMENDATION

**THAT the proposed amended and new conditions, as set out in this report, be adopted.**



**8 TO CONSIDER AN AMENDMENT OF LICENCE FEES FOR SPARE AND REPLACEMENT HACKNEY CARRIAGE/PRIVATE HIRE VEHICLES. THE TOWN POLICE CLAUSES ACT 1847 AND LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

**REPORT BY: Head of Environmental Health and Trading Standards**

### **Wards Affected**

County-wide

### **Purpose**

1. To consider a reduction in the cost for spare and replacement vehicle applications.

### **Legislation**

2. The Local Government (Miscellaneous Provisions) Act 1976 s70 allows the local authority to levy fees in respect of applications.

### **Background**

3. The current taxi fees were reviewed and increased in April 2007 (appendix 1).
4. Since the new fees have been in operation it has become evident that two of the application fees need adjustment. Complaints have been received and investigated resulting in this report.
5. It is proposed the fees adjustments should take affect from the date of this Committee agreeing the new fees and that appropriate refunds should be given for applicants who have paid the higher price since April 2007.

### **Proposal for amended fees.**

6. The proposed table of fees compared to the existing fees is shown in Appendix 2.
7. The break down in costs are shown in Appendix 3

### **Risk Management**

7. If the fees are not changed this may lead to increased complaints resulting in Officer time being taken up responding to them.

### **RECOMMENDATION**

Further information on the subject of this report is available from  
Suzanne Laughland Licensing Manager 01432361675.

**THAT the changes to the fees be agreed and appropriate refunds issued to existing applicants who have paid the higher charge since April 2007.**

## Appendix 1

<b>Taxi licensing fees</b>		<b>Fees from 10<sup>th</sup> April 2007</b>
<b>Hackney carriage vehicle</b>	New / Renewal/Transfer plate (will require vehicle examination certificate Below)	210.00
<b>Private hire vehicle</b>	New / Renewal/Transfer plate (will require vehicle examination certificate Below)	210.00
<b>Private hire operator</b>	1 vehicle	80.00
	2-5 vehicles	120.00
	Over 5 vehicles	180.00
	Plus (Annual Standard CRB cost if applicant has not had one previously)	
<b>Dual driver badge</b>	New (will require a CRB, medical and knowledge test at an additional cost)	120.00
	3 year renewal (will require a CRB at additional cost)	85.00
	Annual Self declaration renewal (not new or 3 year renewal)	45.00
<b>Change of proprietor of vehicle</b>		65.00
<b>Change of vehicle on plate</b>	Plus (vehicle examination certificate Below)	210.00
<b>Application to licence a spare vehicle</b>	Plus (vehicle examination certificate Below)	210.00
<b>Replacement of driver badge</b>		10.50
<b>Replacement of vehicle plate</b>		35.00
<b>CRB</b>		36.00
<b>Knowledge test</b>		12.00
<b>Vehicle test Rotherwas</b>		42.00
<b>Doctors examination</b>	Cost payable by examination	
<b>Doctors paper medical referral</b>		30.00
<b>Application that varies from standard conditions</b>	(Plus New application fee)	150.00

Further information on the subject of this report is available from  
Suzanne Laughland Licensing Manager 01432361675.

## Appendix 2

## Proposed change in fees

<b>Application to licence a spare vehicle</b>	Current fee £210 + £42 (test fee) = £252	Proposed fee £120 + £42 (test fee) = <b>£162</b>
<b>Change of vehicle on plate</b>	£210 + £42 (test fee) = £252	3 months or less left on licence = £190 + £42 = <b>£232</b>  6 months or less left on licence = £155 + £42 = <b>£197</b>  9 months or less left on licence = £120 + £42 = <b>£162</b>

## Appendix 3

## Table illustrating costs

<b>Cost</b>	<b>Activity</b>
£85	Process application
£35	Make Plate
£35	Visit
£42	Rotherwas Test Centre

**9 CONSIDERATION OF AN APPENDIX TO THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY PROVIDING GUIDANCE ON THE RELEVANCE OF CONVICTIONS. THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847**

**REPORT BY: Head of Environmental Health and Trading Standards**

### **Purpose**

1. That the Committee consider the guidelines to the relevance of convictions with respect to licensing dual drivers as an appendix to the Taxi and Private Hire Policy.

### **Legal Background – Relevance of Offences**

2. Under the terms of the Local Government (Miscellaneous Provisions) Act 1976 s 51 It is a requirement of local authorities that no licence should be granted to someone unless they are “fit and proper” person.
3. The Local Authority is entitled to adopt policies in relation to hackney carriage and private hire licensing. This was established in the case of *Stringer V minister of Housing and Local Government*.

### **Background**

4. The licensing Committee requested that a report be brought to the Committee regarding the relevance of convictions with respect to issuing and retaining dual drivers licences.
5. As part of the application process for dual driver’s licences, all applicants must undertake an enhanced criminal records bureau (CRB) check at the time of application. This check must be repeated at least every three years.
6. The guidance has been based upon advice from the DOT Circular 2/92, HO Circular 123/92 and CRB guidance. It is evident that some of the wording is open to interpretation, but this is to enable the licensing authority to exercise the necessary discretion when assessing individual cases.
7. Under the Local Government (Miscellaneous Provisions) Act 1976, should a licence application be refused or a licence be suspended or revoked for any reason, the applicant has the right to appeal the decision to Magistrate’s Court within twenty-one days of receiving notice of the intention to refuse/suspend/revoke the licence. During the period allowed for an appeal to be lodged, and up to the time the appeal is determined, a licensee has a statutory right to continue working as a dual driver. This is due to change in January 2007 when this right is removed and any refusal, suspension or revocation will be take immediate effect.

8. The Committee is requested to consider the guidelines, as outlined at Appendix 1 and advise officers whether it wishes whether it wishes to adopt the guidance as it is or amend it as they feel necessary, and to provide guidance on any amendments.

## **Issues**

9. The Licensing section feel it is necessary to consult with the Police and our Legal as well as the Committee, therefore it is suggested that the Guidance be considered in full at the December 2007 Committee.

## **RECOMMENDATION**

**THAT the Committee note the draft guidance and make comments to officers as part of the consultation period. (Comments required by 18th December, 2007)**

## Appendix 1

### APPENDIX TO TAXI AND PRIVATE HIRE POLICEY

#### STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS

*Section 59 (1) (a) The Local Government (Miscellaneous Provisions) Act 1976 states that a District Council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a 'fit and proper' person to hold the licence.*

*An enhanced CRB check is carried out on all drivers applying for a dual drivers licence, and every 3 years after that. The CRB shows details of Police Records of Convictions, Cautions, Reprimands and Final Warnings. Enhanced disclosures contain details of all current convictions, as well as spent convictions, cautions, reprimands or final warnings, plus details of other information held by the police.*

The criteria for spent convictions as defined by Rehabilitation of Offenders Act 1974 has the effect of removing a convicted persons criminal record, certain offences are removed after a stipulated time. Certain professions including Taxi drivers are exempt from the Act therefore spent and unspent convictions can be considered for applications in relation to determining whether they are a 'fit and proper persons'.

#### ADVICE FROM THE CRIMINAL RECORD BUREAU ON ASSESSING THE RELEVANCE OF CRIMINAL RECORDS

The suitability of a person with a criminal record will vary, depending on the nature of the job and the details and circumstances of any convictions. Deciding on the relevance of convictions is not an exact science, an assessment of an applicant's skills, experience and conviction circumstances should be weighed against the risk criteria for the job. Responsible parties need to identify what risks might be involved.

To facilitate this process, an applicant's criminal record should be assessed in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. It is recommended that organisations consider the following when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers and clients?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance of items of value?
- Does the post involve direct contact with the public?
- Will the nature of the job present any opportunities for the post holder to reoffend in the place of work?

The answers to such questions should help organisations to determine the relevance of convictions to specific posts. For example, pedophile, or child pornography offences would certainly disqualify any person required to work with children. Some violent offences would be relevant to positions involving unsupervised contact with the public. Fraud should be considered in relation to posts involving the handling of money or possessions.

It is recommended that the following issues are taken in account as a minimum requirement:

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property
- The length of time since the offence occurred
- Any relevant information offered by the applicant about the circumstances, which led to the offence being, committed, for example the influence of domestic or financial difficulties.
- Whether to offence was a one-off, or part of a history of offending
- Whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely
- The country in which the offence was committed, some activities are offences in Scotland and in England and Wales, and vice versa
- Whether the offence has since been decriminalized by Parliament
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

When submitting an application for a licence to drive a hackney carriage or private hire vehicle you are requested to declare any convictions or cautions you may have under the Rehabilitation of Offenders Act 1974. The information you give will be treated in confidence and will only be taken into account in relation to your application.

The disclosure of a criminal record or other information will not debar you from gaining a licence unless the authority considers that the conviction renders you unsuitable. In making the decision the authority will consider the nature of the offence, how long ago and what age you were when it was committed and any other factors, which may be relevant.

This policy has been compiled using the DOT Circular 2/92, HO Circular 13/92 and advice from the Criminal Record Bureau.



## GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

### GENERAL POLICY

1. Each case will be decided on its own merits having regard to this policy, the provisions of the Rehabilitation of Offenders Acts and amendments and the protection of the public. Hackney carriage and private hire drivers are expected to be persons of trust and therefore the principal considerations of any case will be whether the property or well being of the public may be at risk
2. Sentences imposed by the Courts reflect the seriousness of an offence and/or a person's past history; for that reason the Council regards a crime as a '**serious crime**' where indicated in this Policy as:-

Any Offence where the term of the sentence passed on conviction is a sentence, which is excluded from the Rehabilitation of Offenders Act 1974 by virtue of section 5 of that Act. That is:

- a) A sentence of imprisonment for life.
- b) A sentence of imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding 30 months.
- c) A sentence of preventative detention.
- d) A sentence of detention during Her Majesty's Pleasure or for life under section 90 or 91 or the Powers of Criminal Courts (Sentencing) Act 2000, 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975, or a sentence of detention for a term exceeding 30 months passed under section 91 of the said Act of 2000 (young offenders convicted of grave crimes) or under section 206 of the said Act of 1975 (detention of children convicted on indictment) or corresponding Court-martial punishment; and
- e) A sentence of custody for life.

A conviction for "serious crime" shall not permanently bar an applicant from obtaining a licence but he/she is expected to have remained free of conviction for any criminal offence, other than minor traffic offences, for three to five years from the end of a served sentence for a "serious crime". The circumstance of the offence, the sentence imposed by the Court or the fact an offence is an isolated one, may be sufficient in part in allowing discretion when considering the issue of a licence but the overall protection of the public must remain the paramount issue.

Where a person has been sentenced to over 5 years imprisonment at any one time the Council regards a sentence of this length as indicating that the offence was very serious. It is unlikely that a licence will be granted or maintained. It must be for the Court to decide the outcome if an applicant with such a history wishes to pursue an appeal against refusal of licence.

In relation to persons whose name appears on the Sex Offenders Register it is unlikely that a licence will be granted or maintained. It must be for a Court to decide the outcome of any applicant with such history wishes to pursue an appeal.

If an existing licence holder is convicted of any offence and is sentenced to any term of imprisonment, whether suspended or not, or their name is placed on the Sex Offenders Register, then (unless indicated otherwise in "Stances" below) their licence will be suspended immediately pending consideration of their "fit and proper" status.

Cautions are given when there is sufficient evidence for a conviction and the individual admits their guilt. Therefore, cautions must be considered as a conviction.

Stances on specific types of offences;

**a) Minor Traffic Offences**

An applicant whose ordinary driving licence is endorsed with a minor traffic offence, e.g. obstruction, waiting in a restricted street, speeding, etc., shall not be prevented from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's ordinary driving licence then a dual driver badge may be granted after its restoration (subject to statutory requirements), but a warning may be issued as to future conduct.

In relation to existing licence holders an isolated minor traffic offence shall not affect the validity of their licence but more than one such type of offence in a twelve month period may cause their "fit and proper" status to be reviewed.

**b) Major Traffic Offences**

An applicant who has an isolated conviction for reckless driving or driving without due care and attention, etc., will normally be warned as to future driving and advice on the standard expected of Dual drivers. More than one conviction for this type of offence within the last three years will merit refusal and no further application shall be considered until a period of one to three years free from a conviction of a similar nature has elapsed.

In relation to existing licence holders any conviction for a major traffic offence shall cause their "fit and proper" status to be reviewed immediately as the Council will regard any such conviction as indicating that they have fallen below the standards required for licensed drivers.

**c) Drunkenness with motor vehicle**

A serious view is taken of convictions of driving or being in charge of a vehicle while under the influence of drink.

An applicant who has an isolated conviction may not necessarily be debarred from holding a licence but strict warnings may be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to the applicant's fitness to hold a licence. At least three years shall elapse (after the restoration of the driving

licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination shall be arranged before the application is entertained. If an applicant is found to be an alcoholic a period of five years shall elapse after treatment is complete before a further licence application is considered.

In relation to existing licence holders any conviction for drunkenness in a motor vehicle shall cause the "fit and proper" status to be reviewed immediately as the Council will regard any such conviction as indicating that they have seriously fallen below the standards required for licensed drivers, and a licence(s) may well be suspended immediately pending consideration of this.

**d) Drunkenness not in a motor vehicle**

An isolated conviction for drunkenness may not debar an applicant or an existing licence holder for obtaining/continuing to hold a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see © above). In some cases, a warning may be given and/or their "fit and proper" status may be reviewed as appropriate.

**e) Drugs**

An applicant with a conviction for any offence where drugs have been used, supplied or stolen shall be required to show a period of at least five years free of conviction following the servicing of any sentence imposed by a court before an application is entertained, or seven years after detoxification treatment has been successfully completed if he/she was deemed to be an addict.

In relation to existing licence holders any conviction related to drugs shall cause their "fit and proper" status to be reviewed immediately. The Council will regard any such conviction as indicating that such status is seriously in doubt and a licence(s) may well be suspended immediately pending consideration of this.

**f) Further Offences of Indecency**

An applicant who has convictions or cautions for offences of Indecent Exposure or any other sexual related offence not previously mentioned shall not automatically be debarred from holding a licence. Each application must be considered in isolation and a guide of 'free from such conviction or caution for at least five years shall be used. If the conviction relates to an offence against children then the offence shall be considered as if it were a 'serious crime'.

In relation to existing licence holders any conviction relating to further offences of indecency shall cause their "fit and proper" status to be reviewed immediately. The Council will regard any such conviction as indicating that such status is seriously in doubt and a licence(s) may well be suspended immediately pending consideration of this.

**g) All Other Crimes**

All other applications where the applicant has convictions for criminal offences, where sentences of less than those previously mentioned are imposed, or where fines, probation, supervision order or conditional discharges have been imposed and a significant period of time has elapsed since conviction, should be treated entirely on their own merits.

In relation to existing licence holders if any person receives a conviction or caution for any criminal offence within the category of 'all other crime offences' then the suspension of their licence will be imposed or considered giving due thought to their "fit and proper" status in the light of the offence, sentence and circumstances presented.

**REGULATORY COMMITTEE**  
**LICENSING APPEAL PROCEDURE**

1. Introduction by Clerk to the Panel.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. Questions asked by the Panel or Licensing Officer or Applicant.
5. Applicant (or his solicitor) asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so, Chairman defers application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Clerk to the Panel, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Panel. When the additional information has been furnished, they should all be asked to leave again.
8. The Panel can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is a refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second application the same way.



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