



<u>Committee and Date</u>
Strategic Licensing Committee
20 June 2018

<u>Item</u>
14
Public

## **PROPOSED CONSULTATION RELATING TO THE HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY 2019 TO 2023**

**Responsible Officer** Mandy Beever Transactional and Licensing Team Manager  
e-mail: [mandy.beever@shropshire.gov.uk](mailto:mandy.beever@shropshire.gov.uk) Tel: 01743 251702

### **1. Summary**

- 1.1 The Hackney Carriage and Private Hire Licensing Policy ('the Policy') requires updating to reflect the Council's priorities and outcomes for 2019 to 2023, in particular in relation to protecting people from harm, promoting health and managing the environment. In addition, ongoing improvements in licensing practices and procedures need to be embedded within the Policy to further strengthen the application process and simplify this where possible, whilst maintaining the foundations for robust enforcement to continue to increase compliance across the hackney carriage and private hire trade.
- 1.2 This report sets out the proposed Hackney Carriage and Private Hire Licensing Policy 2019 to 2023 upon which the Council proposes to consult and highlights those matters that have led to the most significant proposed changes.

### **2. Recommendation**

- 2.1 That the revised Hackney Carriage and Private Hire Licensing Policy 2019 to 2023 as agreed by the Committee and set out in **Appendix 1** be approved for consultation.

## **REPORT**

### **3. Risk Assessment and Human Rights Act Appraisal**

- 3.1 The proposed Policy wholly supports the Council's wider priorities and outcomes associated with keeping people from harm, promoting health, managing the environment and helping people to help themselves.
- 3.2 The Policy specifically takes account of the Council's safeguarding responsibilities, particularly in relation to tackling child sexual exploitation, abuse, modern slavery and human trafficking of children and vulnerable adults.

- 3.3 Through agencies working together and sharing information, we aim to identify and prevent sexual exploitation, modern slavery and human trafficking to protect children, young people and adults with care and support needs and disrupt related activities in order to take action under relevant licensing legislation and, where appropriate, to prosecute perpetrators of abuse.
- 3.4 The Policy significantly increases the criteria that must be satisfied before a person will be deemed a 'fit and proper person' to be a private hire operator or to hold a vehicle licence as a vehicle proprietor. Drivers of Hackney Carriage or Private Hire Vehicles will continue to be required to meet the robust criteria that were implemented in 2015. The criteria continue to be set against the findings of the Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013 and now also take into account the wider implications of modern slavery, trafficking and exploitation.

### **Cross-Border Hiring**

- 3.5 The Deregulation Act 2015 has led to a significant increase in cross-border hiring, which is the most acute hackney carriage and private hire licensing problem currently facing the Council. In effect, if a driver applies to the Council for a licence and this application is refused, it is still very possible that a neighbouring Council will licence the driver based upon the same information that has been assessed against less robust policy criteria. Once a driver is granted a licence by another Council, they are then able to operate across Shropshire and other Council areas despite initially being refused the licence by Shropshire Council.
- 3.6 This situation poses a significant risk to public safety, as well as the reputation of local government as a whole. The existing legislative framework makes it extremely difficult to manage this risk and consequently it is important to recognise the significant responsibility the Council has to use all appropriate mechanisms and opportunities, specifically including close working arrangements with, and supporting other local authorities to, protect communities outside of its immediate responsibility.

### **National Register for Hackney Carriages and Private Hire Licence Revocations and Refusals**

- 3.7 The Local Government Association has recognised the risks associated with cross boarder hiring and in response are supporting the development of 'A National Register for Hackney Carriages and Private Hire Licence Revocations and Refusals'. The register will be launched this year and will be a mechanism for all local authorities across the country to check an applicant's history when determining their suitability to gain and continue to hold a licence. It is the intention to sign up to the register and record the basic details of applicants who have had their licence refused, revoked or suspended by the Council. The information recorded on the register will be used in support of the fit and proper person requirements when determining the suitability of an applicant.

## **Equality Act 2010**

- 3.8 The Council will maintain a list of designated wheelchair accessible vehicles in accordance with the provisions contained within the Equality Act 2010 (EA2010).
- 3.9 Section 165 of the EA2010 imposes legal duties on the driver of a designated hackney carriage and private hire vehicle, which has been hired by or for a disabled person in a wheelchair, or by another person who wishes to be accompanied by a disabled person who is in a wheelchair.
- 3.10 Section 167 of the EA2010 provides local authorities with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”) and Section 165 of the EA2010 then requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 3.11 Whilst local authorities are under no specific legal obligation to maintain a list under Section 167, the Government recommends strongly that they do so. Without such a list, the requirements of Section 165 of the EA2010 do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.
- 3.12 The list of designated wheelchair accessible vehicles will enable the Council to take formal enforcement action against those Hackney Carriage and Private Hire Drivers who refuse to transport wheelchair using passengers or those who attempt to overcharge them.

## **Removal of the Five Hackney Carriage Zones**

- 3.13 The proposed Policy sets out the current vision taking into account the position if the existing five Hackney Carriage zones were removed. This will enable all stakeholders to clearly understand the full impact that the removal of the zones will have on the operation of the Hackney Carriage regime within the context of the overall impacts of the revised Policy.
- 3.14 The proposal to consult on the actual removal of the zones is dealt with through a separate report to the Committee and a separate consultation will be undertaken to determine whether or not to remove the zones. The fact that the proposed Policy is currently drafted on the basis that the zones will be removed does not in any way prevent a decision being made to retain the existing five zones.

## **Environmental Impact - Vehicle Age Requirements**

- 3.15 Nationally, there continues to be a significant drive to improve air quality and it is acknowledged that motor vehicle emissions continue to be the primary cause of poor air quality and that this impacts on human health and the environment. The Council needs to continue to promote measures that

improve air quality including reducing the emissions from Hackney Carriages and Private Hire Vehicles.

- 3.16 In 2015 the Council introduced vehicle emission requirements for Hackney Carriages and Private Hire Vehicles. Initial analysis has indicated this has led to a significant improvement in the quality of the vehicles now being licenced by Shropshire Council and a reduction in the level of harmful pollutants being produced from these vehicles.
- 3.17 The Council now has the opportunity to continue to lead the local community and further reduce the impact that vehicle emissions have on the local environment and human health by continuing to support stringent standards that reduce emissions from Hackney Carriage and Private Hire Vehicles. The Council's Director of Public Health fully supports actions that improve air quality as air quality is an indicator in the Public Health Outcomes Framework.
- 3.18 Whilst recognising the importance of continuing to reduce harmful emissions from Hackney Carriage and Private Hire Vehicles, in response to requests from trade representatives to simplify the process, the proposed Policy no longer has a standard based on emissions. However, it is now proposed to replace this with an age requirement for Hackney Carriage and Private Hire Vehicles that has been formulated to ensure that the Council only licences those vehicles that further reduce harmful emissions. This is not a backward step and it will continue to have the effect of further reducing levels of air pollution.

### **Novelty and Executive Private Hire Vehicles**

- 3.19 In response to previous requests from trade representatives, the proposed Policy introduces specific sections and more suitable requirements for the work undertaken by Novelty and Executive Private Hire Vehicles that is, in practice, fundamentally different to the work undertaken by Standard Private Hire Vehicles.

### **Reviewing the Policy**

- 3.20 Unlike the Licensing Act 2003 and the Gambling Act 2005, the legislation that specifically controls the licensing of Hackney Carriages and Private Hire does not contain provisions that directly require the Council to prepare and publish a hackney carriage and private hire licensing policy in a particular manner
- 3.21 Nevertheless, the Regulators' Code, which has statutory effect by virtue of Section 22 of the Legislative and Regulatory Reform Act 2006, means the Council must have regard to the requirements of the Code. The development of a hackney carriage and private hire licensing policy to guide licensing activities will ensure that the Council satisfies its legal responsibilities with respect to specific elements of the Regulators' Code and will assist the Council to demonstrate that it has had due regard to the Code in relation to this particular area of law.

- 3.22 If the Council fails to prepare and publish such a policy the Council will be open to criticism; in particular from those parties whom the Council seeks to licence. Without a policy, officers and Members will find it extremely difficult to make appropriate and consistent licensing decisions and to take proportionate enforcement action. As a consequence, the Council will face significant difficulty in justifying the way it has reached licensing decisions and taken enforcement action.
- 3.23 This will result in the Council failing to adequately deliver its safeguarding responsibilities and reduce its ability to directly, and in partnership with other agencies, tackle modern slavery, trafficking and exploitation including child sexual exploitation. Furthermore, the Council's ability to control overall compliance of the Hackney Carriage and Private Hire trade will be hampered and there is the increased risk of:
- successful appeals by applicants who have had their licences suspended or revoked;
  - service complaints to the Local Government Ombudsman;
  - judicial review;
  - legal challenge to any criminal proceedings instituted by the Council; and
  - reputational and professional damage to the Council.
- 3.24 Conversely, by preparing and publishing a policy, the Council demonstrates that it takes its Hackney Carriage and Private Hire licensing role seriously. It creates transparency for all stakeholders providing the manner in which the Council intends to undertake its Hackney Carriage and Private Hire licensing responsibilities. Furthermore, it provides the Council with a basis for a robust defence to any challenges that may be encountered in respect of decisions made and enforcement action taken. It also demonstrates commitment to and compliance with the Regulators' Code.
- 3.25 The proposed Policy is consistent with national guidance on hackney carriage and private hire licensing and follows best practice.
- 3.26 The proposed Policy aims to ensure that the human rights of applicants, licence holders and the public who use hackney carriages and private hire services are protected. However, it is recognised that it is a fine balance to ensure that this is achieved for all parties involved. Nevertheless, the Policy has been written to assist the Council to comply with the Human Rights Act 1998 and to avoid the risk of adverse Human Rights Act implications as a result of undertaking the hackney carriage and private hire licensing function.
- 3.27 Whilst there is no legal duty specifically placed on the Council to consult with respect to this Policy, it is good practice to do so and is in line with the Department for Transport's 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' (March 2010). Initial informal engagement has already taken place with the Hackney Carriage and Private Hire trade through a 'Taxi Forum' held on the 27 October 2017. The notes from the Forum are

produced at **Appendix 2**. The proposed period for the formal consultation is set out at paragraph 6.1 below.

- 3.28 An Equality and Social Inclusion Impact Assessment (ESIIA) is being prepared and will be made available to the Committee following the conclusion of the consultation process.

#### **4. Financial Implications**

- 4.1 The financial implications associated with the recommendation are limited to the employee costs associated with undertaking the consultation exercise and any costs of publishing the revised Hackney Carriage and Private Hire Licensing Policy. These costs are recovered through the licensing fees.

#### **5. Background**

##### **General**

- 5.1 The Council has a duty to provide for the licensing of hackney carriages under the Town Police Clauses Act 1847 and under the relevant adopted provisions of the Local Government (Miscellaneous Provisions) Act 1976. In addition, the adopted provisions of the 1976 Act mean that the Council must provide for the licensing of private hire drivers, vehicles and operators.
- 5.2 Whilst it is recognised that this duty requires an efficient and effective administrative process, the fundamental purpose of the licensing regime is to protect the safety of the public. This means the Council must ensure that only fit and proper persons are licensed to be drivers, operators and holders of vehicle licences and that vehicles remain safe and fit for the purpose of transporting fare-paying passengers. The proposed Policy aims to build on the protection that was implemented in 2015.

##### **Relevant national reports and guidance**

- 5.3 The review of the Council's Hackney Carriage and Private Hire Licensing Policy is set against the background of the Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013 undertaken by Alexi Jay OBE. The outcome of the enquiry was published in August 2014. In particular, Members should note that the published report states: *'One of the common threads running through child sexual exploitation across England has been the prominent role of taxi drivers in being directly linked to children who were abused.'*
- 5.4 Consideration has also been given to national guidance that was produced by the Institute of Licensing in April 2018 on determining the suitability of applicants and licensees in the hackney and private hire trades.

## 6. Additional Information

- 6.1 The consultation process will have regard to the current government consultation principles including providing for a ten week period from 25 June 2018 to 2 September 2018 to receive responses. The outcome of the consultation will inform the revision of the Policy and the Committee will have the opportunity to consider this at a future meeting.
- 6.2 Unless there are specific reasons for an earlier review of the Policy, the Council will commence a review in 2022 with the aim of a revised Policy being effective from 1 April 2023.

### List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

- Department for Transport's 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' (March 2010)
- Deregulation Act 2015
- Equality Act 2010
- Town Police Clauses Act 1847
- Local Government Act 1972
- Local Government (Miscellaneous Provisions) Act 1976
- Report of the 'Independent Enquiry into Child Sexual Exploitation in Rotherham 1997 – 2013' Alexi Jay OBE, published August 2014
- Taxi and Private Hire Vehicle Statistics, England 2017
- <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>
- Institute of Licensing Guidance on determining suitability of applicants and licensees in the hackney and private hire trades (April 2018)

**Cabinet Member:** Councillor Joyce Barrow Portfolio Holder for Communities, Waste & Regulatory Services.

**Local Member:** Report is applicable to whole of administrative area of Shropshire

#### Appendices:

**Appendix 1** - Proposed Hackney Carriage and Private Hire Licensing Policy 2019 to 2023 (Consultation Copy has been sent to Members electronically and a copy is available with the agenda on the Council's website)

**Appendix 2** – Taxi Forum dated 27 October 2017 - Queries, comments and questions raised by members of the trade