

BIRMINGHAM CITY COUNCIL

**REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT TO
THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

20 SEPTEMBER 2023
ALL WARDS

**DEPARTMENT FOR TRANSPORT:
STATUTORY TAXI AND PRIVATE HIRE VEHICLE STANDARDS
ACHIEVING COMPLIANCE: UPDATE**

1 Summary

- 1.1 In July 2020 the Department for Transport published their long-awaited Statutory Taxi and Private Hire Vehicle Standards document.
- 1.2 The statutory guidance was issued by the Secretary of State for Transport under powers conferred by the Policing and Crime Act 2017.
- 1.3 The guidance seeks to provide common core minimum standards to better regulate the taxi and private hire sector.
- 1.4 This report provides an update on the current position in Birmingham City Council, as well as any remaining actions required in order to bring us into alignment with the statutory guidance, specifically, the delegation of urgent matters of public safety.

2. Recommendations

- 2.1 The report be noted.
- 2.2 The proposal in Paragraph 7.8 to delegate consideration of immediate suspension or revocation of licences in the interests of public safety be agreed to ensure compliance with paragraph 5.11 of the Statutory Guidance.
- 2.3 In accordance with Paragraph 1.3 of the Statutory Guidance, should the proposal in Paragraph 7.8 not be agreed, a compelling reason must be recorded by committee.

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3. Background

- 3.1 The legislation providing for the licensing of the hackney carriage and private hire trade is very old, including the Town Police Clauses Act 1874 and Local Government (Miscellaneous Provisions) Act 1976.
- 3.2 At the time the legislation was drafted, things were very different, not just in the world of passenger transport. One Act was passed before the introduction of the internet, and one before the introduction of mains electricity or the motor car.
- 3.3 The antiquated legislation, coupled with the variety of local policies and conditions introduced across the country has led to inconsistency of approach which, in turn, led to an exploitation of loopholes or weaknesses in the system. It is this inconsistency the Department for Transport have sought to address in their guidance.
- 3.4 There have been many calls for root and branch review of the legislation, the most recent of which resulted in a commitment from Government to produce this guidance document. Save for the Deregulation Act 2015, which legalised the practice of 'cross border' hire, the legislation itself remains essentially unchanged since its enactment,

4. The Guidance

- 4.1 The Guidance sets out certain standards which Licensing Authorities are expected to comply with. These standards have been drawn up as a result of discussions with the trade, regulators and safety campaign groups. They focus on protecting children and vulnerable adults.
- 4.2 Paragraph 1.3 of the document clearly states: **"The Department...expects these recommendations to be implemented unless there is a compelling reason not to do so."** (emphasis added)
- 4.3 Compelling Reason?
An example of a compelling reason not to comply with the recommendations would be if existing requirements are more stringent than those in the guidance. We would not be expected to lower our standards to achieve compliance.

5. Implementation of the Guidance

- 5.1 In 2020 a report was brought to your committee explaining the detail of this Statutory Guidance, and setting out those areas which already met the requirements and those which required change.

5.2 Some proposals did require a change in policy. In fact, one of the main recommendations was the implementation of a standalone policy document which can be subject to regular review. Some required a change in internal processes within the licensing service and others will require an amendment to licence conditions.

5.3 Appendix 1 demonstrates the progress which has been made since the introduction of the Guidance and sets out the work which is still ongoing.

6. The Policy

6.1 The Policies Procedures and Delegations Report is usually presented annually to the Licensing and Public Protection Committee which includes all of the Licensing Policies.

6.2 The new separate policy document gives greater detail of the processes and procedures applicable to Hackney Carriage and Private Hire licensing, in a much more accessible and user-friendly format.

6.3 The Guidance introduces the need for vehicle proprietors and operators to provide basic criminal records disclosures regularly (unless they are also licensed drivers, in which case the enhanced check will suffice).

6.4 The Policy was approved by City Council in April 2023.

It is available at:

https://www.birmingham.gov.uk/downloads/download/6129/hackney_carriage_and_private_hire_licensing_policy

7. Ongoing work

7.1 Some of the actions outlined in Appendix 1 are awaiting the completion of the new licensing software system. The full integration of the online system will enable the final changes to be included within the application process.

7.2 Progress with the full initialisation of the licensing system was significantly hampered by the COVID-19 pandemic crisis which impacted on all aspects of development, including process mapping, design and training aspects. The teams had to prioritise continuing to deliver the licensing service using the old systems which were not designed for remote applications as the new system was yet to be finished. There have also been ongoing issues with the finance integration aspects.

7.3 Immediate Action in the interests of Public Safety.

Section 52 of the Road Safety Act empowers a licensing authority to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect – meaning that the suspension or revocation takes effect immediately once notice of the authority's decision has been given to the driver – where this decision is considered necessary in the interests of public safety.

- 7.4 Unlike other decisions to suspend or revoke, which are deferred for the duration of any appeal period, or until such appeal is finalised, decisions made in this way are immediate, and continue to apply even if the subject should appeal. These decisions can only be made where it is believed, on the balance of probability, that allowing the driver to continue to be licensed would present an immediate risk to the public. There is no requirement for the subject to have been charged with a criminal offence, nor for any arrest to have been made. The power is not used lightly, and any determinations made are in accordance with the relevant legislation, policies and statutory guidance.
- 7.5 Paragraph 5.11 of the Statutory Guidance states:
“All licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service”.
- 7.6 Where information is received which calls into question the fitness of a driver to such an extent that they are believed to present an immediate risk to the public, officers currently contact the Chair of Licensing and Public Protection for a determination as to whether the circumstances would warrant the immediate suspension or revocation of the driver’s licence.
- 7.7 Since January 2022 there have been fewer than ten drivers dealt with in this way for matters such as drink driving, drug offences, sexual assault, child sexual offences and actual bodily harm. These matters are reported routinely to your Committee.
- 7.8 In order to achieve compliance with the Guidance, your Committee is asked to consider the proposal that matters of this nature be delegated to Officers at the level of Principal Licensing Officer or above. Principal Licensing Officers already have this power delegated to them in relation to drivers who are medically unfit.
- 7.9 In the current process, where information of serious concern is identified/received, the Principal Officer and/or Licensing Manager will then contact the Chair of Licensing with the information, to request a decision.
- 7.10 This proposal would not only achieve compliance with the Statutory Guidance but would also bring these matters in line with the other determinations of immediate fitness to hold a licence and enable such decisions to be taken by more people; providing appropriate cover for periods of leave, absence or outside of office hours where required. Any decisions of this nature would still be reported to your Committee in accordance with the existing process.

8 Remaining concerns

8.1 Whilst the DfT Guidance does contain some welcome clarity on dealing with licence applications for drivers, vehicle proprietors and operators, there are still some disappointing omissions in the document. These remain unchanged since the guidance was first published,

8.2 Vehicle standards

Contrary to what the title would suggest, there are no standards within the guidance which relate to the actual vehicles. No mention of emissions standards, age policies or signage.

8.3 These issues are amongst the most contentious of all in terms of local variances in standards.

8.4 Vehicle Standards are to be addressed in the revised DfT Best Practice Guidance. This is still awaiting publication.

9. Consultation

9.1 This report is essentially a position statement comparing the current policies and processes against the requirements of the statutory guidance.

10. Implications for Resources

10.1 This report is for noting, there is no financial decision or implication as a result of the report recommendation. Following issuance of a S114 notice the Council is prevented, without explicit agreement of the Section 151 Officer, from entering into any new agreement or commitment for expenditure at this stage. All future expenditure decisions must follow the spend control process as per S114 arrangements.

10.2 The cost of administering the licensing service is recovered in full, from licence fees.

11. Implications for Policy Priorities

11.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services.

12. Public Sector Equality Duty

12.1 Under the Duty we must have regard to the need to:

- Eliminate unlawful discrimination, harassment, and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

12.2 The recommendations contained in this report will not have any effect on any of our duties under the Equality Act 2010. Any future changes to policy as a result of this report will be subject to separate consideration of this duty.

12.3 For the reasons set out in paragraph 12.2, it is considered an initial Equality Analysis is not deemed appropriate or necessary.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:

<https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards>

https://www.birmingham.gov.uk/downloads/download/6129/hackney_carriage_and_private_hire_licensing_policy

Actions Summary			
Paragraph	Actions/ Proposals	Comment	STATUS 2023
3.1 (3.5)	A Single Cohesive Policy to be produced, containing all relevant information. Readily accessible online. Regularly reviewed (3.5)	Policy	completed
3.7	Move to a 'standard' 3 year driver licence. Shorter duration by exception/ request	Policy	Will be complete with introduction of new online system
3.8	Whistleblowing - Communicate existing procedures to all staff. Consider if further process is necessary	Internal process	completed
3.12 (3.13)	Consultation: Devise a suitable clear consultation process for all matters according to the impact of the proposals. Including neighbouring Authorities (3.13)	Policy	completed

3.14	Consider appropriateness of retrospective application of new policies.	Policy.	completed
4.5 (6.2)	Require compulsory subscription to the DBS update service.	Policy. This will be a much more efficient and reliable process. There will be an impact on the Occupational Health Service who currently deliver this function.	Will be complete with introduction of new online system
4.11	Review the Information Sharing Protocols with the Police for appropriateness	Internal – officers.	Ongoing
4.12	Reduce deadline for reporting incidents/issues to 48 hours from 7 days	Conditions.	Requires revision to Conditions
4.14	Ensure matters of concern are reported to DBS	Internal process to be introduced.	In progress
4.17	Actions taken as a result of information disclosed by the police will be reported back to the police.	Internal process to be introduced	Complete
4.21	We will commence the processes required for subscribing to NR3 and include the checking of NR3 in the licence process.	Internal processes, including contacting affected individuals.	Completed
4.28	Maintain good links with MASH teams	Internal process. Make contact again, refresh training where appropriate	Completed

4.29	Robust system for recording complaints	Continue with replacement of licensing systems to a single solution.	Completed
4.31 (9.4)	ensure that passengers know who to complain to, licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that should be available on their website. Ways to make complaint to the authority should be displayed in all licensed vehicles	Internal – Produce Guidance/information for passengers on the safe use of licensed vehicles Review the appropriateness of current requirement concerning signage within the vehicles in the event of a complaint.	Ongoing as part of website update plan To be addressed at next review of conditions
5.3	Comprehensive training for decision makers	Internal process - Continue with the training programme, ensuring the relevant matters are addressed and training is up to date and appropriate	Completed /ongoing
5.6 (5.10)	Discharge of HCPH Licensing functions. This is constitutionally different to the Committee set up to dispose of LA2003/GA2005 matters, but utilises the same members. Currently, the majority of HCPH matters are delegated to a senior officer panel. This is reflected in the scheme of delegations.	Internal- Constitution is being updated to ensure the differences are appropriately referenced. Current delegated arrangements to be reviewed in accordance with the Committee decision in May 2020.	Completed

5.11	Consider whether the immediate suspension or revocation (in the interests of public safety) can be delegated to a senior officer as per the recommendations.	Licensing & Public Protection Committee Delegations matter.	SEE PARAGRAPH 7.8
5.14	Ensure <u>an applicant or licensee should not be 'given the benefit of doubt'</u> . If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence.	Internal Process – to be included in the content of reports for decision.	Completed
5.15	Adopt the Department for Transport recommendations on the assessment of previous convictions.	Policy.	Completed
6.6 6.11 6.13	Review the current safeguarding training to ensure it remains fit for purpose	Internal process.	Ongoing – to be revised as part of next procurement exercise
7.2, 8.2	Require a basic disclosure from the DBS and that a check is undertaken annually for vehicle proprietors (7.2) and PH Operators (8.2)	Policy	Completed
7.9	CCTV All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net	Officers to carry out the consultation and report back to Licensing and Public Protection Committee. (Potentially Policy)	Consultation completed.

	effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues		
8.9	Operators should be required to evidence that they have had sight of a Basic DBS check on all individuals listed on their register of booking and dispatch staff and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders.	Conditions	To be addressed at next review of conditions
8.12	Licensing authorities should also require operators or applicants for a licence to provide their policy on employing ex-offenders in roles that would be on the register as above	Conditions	To be addressed at next review of conditions
9.2	Licensing authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area	Internal Process – officers to progress with neighbouring authorities where appropriate.	No requests received to date.
9.3	Licensing authorities should ensure that drivers are aware of the policies that they must adhere to and are properly informed of what is expected of them	Internal process - Produce a clear package of information for all licence holders and applicants. Links to (3.1)(4.31)(9.4)	Completed – revised Policy published

	and the repercussions for failing to do so		Improved information to be available as part of website refresh.
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