

Report from the Assistant Director – Housing and Community Safety

Hackney Carriage and Private Hire - Delegation of Enforcement Powers

Summary

1. This report seeks Members' support to amend the scheme of delegation in relation to enforcement powers under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, and recommend to Full Council the approval of these amendments.

Recommendations

2. That Members **approve Option 1** of this report to support the amendments to the scheme of delegation in relation to hackney carriage and private hire enforcement powers.

Reason: This will allow the Council to delegate hackney carriage and private hire enforcement powers, to other licensing authorities in West Yorkshire, as well as being retained by City of York Council as licensing authority.

Background

3. Licensing officers have been working with licensing services of the Combined Authority (West Yorkshire Authorities and City of York Council), to establish some common licensing standards and processes. This was at the request of the Leaders of each Council at their meeting in January and involves scrutinising each aspect of licensing processes.
4. A report was brought to this committee on 19 October 2015 explaining the introduction of the Deregulation Act 2015 and the concerns relating to the ability for private hire operators to sub-contract work to another licensed operator who may be licensed in another authority area.

5. This report highlights some of the potential consequences of these changes and seeks approval by Full Council for delegation of enforcement functions across the Combined Authority region to help minimise concerns.
6. We are also asking Full Council to agree to other authorities' enforcement powers to be delegated to this authority. Other Councils within the Combined Authority regions have or are in the process of undertaking a similar exercise of delegation of enforcement powers.
7. The relevant provisions relating to taxi licensing in the Deregulation Act 2015 came into force on 1 October 2015. These provisions allows for a licensed private hire operator to sub-contract a private hire journey from within one licensed authority area to another licensed operator who may be based anywhere in England and Wales.
8. Section 11 (private hire vehicles: sub-contracting) inserts two new sections (55A and 55B) into the Local Government (Miscellaneous) Provisions Act 1976, in relation to the sub-contracting of bookings from one private hire vehicle operator to another. This a major amendment to the 1976 Act affecting taxi and private hire drivers and operators, and will have far reaching implication for private hire operators in relation to the sub-contracting of bookings from one private hire vehicle operator to another.
9. There is currently no detailed information or operational guidance on these deregulation measures available from the Government, Department for Transport or other organisations.
10. There is also the additional problem of licensed hackney carriage drivers and vehicles from other authority areas being able to move and work in a different authority, from which it is operating through a licence private hire operator.

Consultation

11. Consultation with the hackney carriage and private hire trade is not a legal requirement in these circumstances.
12. Once delegation powers are in place the Hackney Carriage and Private Hire Associations will be notified.

Options

13. Option 1 – Support the amendments to the scheme of delegation in relation to hackney carriage and private hire enforcement powers.
14. Option 2 – Refuse the request to amend the scheme of delegation.

Analysis

15. Private hire sub-contracting presents significant difficulties for the council, in conducting its enforcement activities and potentially to the public, in terms of service standards and safety as:-
 - Currently officers in this authority have no powers to conduct any enforcement activity on taxis or private hire drivers or vehicles not licensed by this authority.
 - There may be significant difficulties in verifying whether a pre booking was in place, when investigating plying for hire concerns.
 - Potential confusion for the public, who may not recognise the vehicle which turns up and cannot readily verify the credentials of the driver.
 - Investigations may become protracted and on a national basis involving different licensing authorities.
 - Timescales for summary prosecutions (6 months) would be extremely tight.
 - Operators may choose to be licensed by authorities with less rigorous licensing standards and simply transfer bookings from the York district to that operating base.
 - Licensed vehicles from other licensed authorities may have minimal exterior identification making it easier for unlicensed vehicles and drivers to pass themselves off as licensed. This creates a risk to public safety.
 - City of York Council is reliant on other authorities having an enforcement capacity dedicated to Taxi & Private Hire Licensing.
 - In effect this part of the Act could make enforcement very difficult for the licensing authority.
16. These concerns are shared across many authorities. As stated, City of York Licensing Officers are working through the West Yorkshire and York Combined Authority to try and establish some common licensing standards and enforcement compatibility across the Combined Authority areas. Some of the key issues being considered by the Combined Authority are the following:-

- Safeguarding- child sexual exploitation - human trafficking - a common minimum training standard for the trade.
- Driver application process - improved common minimum standards
- English comprehension - common minimum standards for new applicants, it would only apply to existing licence holders where there was an identified need, with the focus being on training and development within an agreeable timeframe.
- Convictions Policy and Convictions Criteria - standard criteria be adopted.
- Decision making-scheme of delegation - all local authorities introduce a scheme of delegation to Officers for decision making.
- Private Hire Operator Conditions - a common standard across the Combined Authority.
- Private Hire Vehicle Conditions - all West Yorkshire and York licensed vehicles have similar recognisable door livery which deforms when removed.
- Common Byelaws - Hackney Carriages - a common standard across the Combined Authority.
- Authorised Officer status - Licensing and Enforcement Officers able to carry out inspection and suspension powers on a vehicle licensed by any Combined Authority, through the scheme of delegation of powers being coordinated across all the authorities to enable more efficient enforcement action.

17. Licensing officers from all West Yorkshire and City of York Authorities met regularly to agree an approach to tackle these concerns. It was agreed that all officers would consider whether there should be cross authority delegation of taxi and private hire licensing enforcement functions. The intention would be to work towards all authorities having this in place as soon as possible.

18. The current functions which are delegated to licensing officers in this authority are set out in the councils Delegation Scheme under Section 3 - Responsibility for Function. The intention would be that City of York licensing officers would retain the sub-delegation of these functions but the same functions would also be delegated to the West Yorkshire authorities.

- Local Government (Miscellaneous Provisions) Act 1976
- Section 53(3) (a) Driver to produce his licence for inspection
- Section 58 Return of identification plate or disc on revocation etc
- Section 60 to suspend and revoke vehicle licenses
- Section 61 to suspend and revoke driver licences

- Section 68 Fitness of private hire vehicles
 - Section 73 Obstruction of Authorised Officers

 - Town and Police Clauses Act 1847
 - Section 45 prosecution for plying for hire
 - Road traffic Act 1988
 - Section 143 (no insurance)
 - All criminal matters
19. Each authority would retain the ability to grant and renew licenses; those functions will not be delegated. Only the enforcement functions would be delegated. The ability to prosecute will rest as at present with the district within which the alleged offence occurred. Officers in each authority will agree to provide evidence where necessary to support prosecutions by the other authorities where they have been involved in investigating the alleged offence. How this will work in practice for each authority will be set out in an agreement between all of the authorities.

Council Priorities

20. The provision of hackney carriage and private hire licensing supports the council plan of a prosperous city for all, where local businesses can thrive.

Implications

21. The direct implications arising from this report are:
- (a) **Financial** – There are no significant financial implications for the council. The taxi licensing budget is ring-fenced with all fees retained solely for licensing purposes. There may be financial challenges which cannot be evaluated at the moment but the expenditure is closely monitored and any emerging needs would have to be met from the licensing fees charged which are set at the level required to fund the regulatory regime. The opportunity to seek costs from defendants or appellants will be strongly pursued by solicitors representing the council at court.

 - (b) **Human Resources (HR)** - There are no HR implications.

 - (c) **Equalities** – There are no equalities implications.

(d) **Legal** – The functions subject of this report are Council functions. Local functions are delegated to the Director of Communities and Neighbourhoods. The Local Government Act 1972 section 101(1)(b) permits delegations of council functions from one authority to another. Section 101(3) of the same Act permits that other authority to arrange for discharge of those functions by a committee, sub-committee or officer of that authority, effectively as though the function had always been theirs. The function would need to be delegated by Full Council (rather than by an officer or the Gambling, Licensing and Regulatory Committee) and should be captured in the constitution so the delegation across the authority is clear.

Officers in this authority would still have the delegated authority to carry out the same functions. All of this should also be captured in the relevant sub-delegation scheme of officers.

If policies need to be altered to reflect the above, then aside from minor variations changes to policies would be a decision for the Gambling, Licensing and Regulatory Committee.

(e) **Crime and Disorder** – There are no crime and disorder implications.

(f) **Information Technology (IT)** - There are no IT implications.

(g) **Property** - There are no property implications.

(h) **Other** - There are no other implications.

Risk Management

22. There are no known risks associated with this report.

Contact Details

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	Report Approved	√	Date 1 st July 2016
Specialist Implications Officer(s) Senior Solicitor Ext:			
Wards Affected:		All	√
For further information please contact the author of the report			

Background papers

Deregulation Act 2015