

Report to Environment and Licensing Committee

Subject: Immigration Act 2016

Date: 17th January 2017

Author: Corporate Director

Wards Affected

All wards

Purpose of the Report

To inform Members of changes to the taxi licensing regime as a result of the Immigration Act 2016 which came into force on 1st December 2016.

To obtain Members' approval of amendments to the Statement of Policy and Guidelines for the Licensing of Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators ("the Policy") which incorporate the changes introduced by the Immigration Act 2016.

To seek delegation to the Director to approve private hire/hackney carriage ("taxi drivers) driver's licences and operator's licences for a period of less than 3 or 5 years respectively or 1 year where the applicant only has leave to remain in the United Kingdom for a period less than 3, 5 or 1 year and there are no other convictions or circumstances which would make them unsuitable for a 3, 5 or 1 year licence.

To obtain Member's approval for minor amendments to the Drivers and Operators' licence conditions to reflect changes brought in by the Immigration Act 2016.

Key Decision

This is not a Key Decision.

Background

- 1.1 On 1st December 2016, the Immigration Act 2016 came into effect and introduced changes to the Local Government (Miscellaneous Provisions) Act 1976 (“The Act”) in respect of taxi driver’s and operator’s licences.
- 1.2 The Act provides that the Licensing Authority shall grant a taxi driver’s licence where the applicant is a fit and proper person to hold such a licence and has held a DVLA driver’s licence for a period of at least 12 months. The Act also now provides that where an applicant for a taxi driver’s licence is a fit and proper person to hold a licence, they may only have a licence if they are not disqualified by reason of their immigration status from holding a taxi driver’s licence. The same applies to operator’s licences, they cannot be granted where the applicant is disqualified by reason of their immigration status from operating a private hire vehicle. An applicant is disqualified by reason of their immigration status if they do not have leave to enter or remain in the United Kingdom, their leave is invalid or has expired or they are subject to conditions which prevent them from carrying on licensable activities such as operating private hire vehicles or carrying on business as a taxi driver.
- 1.3 In addition, the Act now provides that where an applicant for a taxi driver’s licence has been granted leave to enter or remain in the United Kingdom for a limited period (“the leave period”) and that period has not been extended by virtue of s.3C of the Immigration Act 1971 (continuation of leave pending variation decision), the Authority must specify a period in the licence as the period for which it remains in force; and that period must end at or before the end of the leave period. The same applies to applicants for operator’s licences who have a limited leave period which has not been extended.
- 1.4 If the applicant has been granted leave to enter or remain in the UK for a limited period and this has been extended by virtue of s.3C of the Immigration Act 1971, the Authority must specify a period in the licence as the period for which it remains in force, and that period must not exceed 6 months. Again the same applies to applicants for operator’s licences who have had their leave extended.
- 1.5 Once the licences have expired on the date indicated in the licence, the individual must return the licence to the Authority within 7 days. Similarly if during the period of the licence, the licence holder’s immigration status changes and they are no longer entitled to remain or work in the United Kingdom, the licences must be surrendered within 7 days of that change. Once the applicant’s immigration status changes and they no longer have

the right to work or remain in the United Kingdom, the licence will cease to be in force, there is no requirement to revoke the licences in those circumstances. Failure to surrender the licences within 7 days is an offence for which the licence holder can be prosecuted.

- 1.6 In addition the Act has now introduced an extra ground for revocation and suspension of taxi driver and operator's licences, this ground is if the licence holder has, since the grant of the licence been convicted of an immigration offence or been required to pay an immigration penalty. Again, the licence holder must surrender the licence within 7 days of the decision to revoke or suspend, and failure to do so is an offence which can be prosecuted summarily.
- 1.7 The Act provides that taxi driver licences, once granted, remain in force for a period of 3 years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case. In respect of operator's licences the period is five years or for such lesser period as the district council think appropriate in the circumstances of the case. Currently, applicants can apply to this Council for a joint hackney carriage/private hire driver's licence for 3 years or one year. The Policy provides that on application for a three year licence a licence will be granted for 3 years, unless the decision maker considers that in the particular circumstances of the applicant, the licence should be granted for a lesser period namely 1 year. In relation to operator's licences the same applies, the licence can be issued for a period of 5 years, however, if the Council consider it appropriate in the circumstances of the case that the licence should be for a lesser period, the licence will be issued for a 1 year period. The circumstances which may make issuing a licence for a shorter period appropriate include things such as driving history, convictions, driving experience and compliance with licence conditions.
- 1.8 There is currently a delegation to the Director to grant licences for a period of less than 3 years (1 year) in the case of drivers and less than five years (1 year) in the case of operators. There is no delegation to the Director to grant licences for other than 5, 3 or 1 year. At present then, any decision to grant a licence for less than 5, 3 or 1 year would have to be taken by the Committee, and there is no reference in the Policy to the changes in licence periods brought about by the Immigration Act 2016.

Proposal

- 2.1 In light of the changes brought about by the Immigration Act 2016, it is proposed that the Council's amended policy document at Appendix 1 be approved by Members. The amendments to the Policy reflect the changes to the duration of taxi driver and operator's licences, where the applicant's leave to enter or remain in the United Kingdom is limited or has been

extended by virtue of s.3C of the Immigration Act 1971. It is proposed that Members approve the draft amended Policy at Appendix 1. Whilst usually, changes to the Policy would be circulated to the trade for consultation, the changes introduced by the Immigration Act are legislative requirements and are not changes the Council are imposing on the trade, the Policy requires updating to remain fit for purpose.

- 2.2 It is also proposed that Authority be delegated to Director level, to determine the length of licences issued where the immigration status of the applicant for taxi driver's licences and operator's licences does not permit the grant of a licence for a 3 (driver's), 5 (operator's), or 1 (both) year period. If there are any other circumstances that would mean a three or five year licence would not be appropriate, for example the applicant has a poor driving record or previous breaches of licence condition in addition to a limited leave to remain, then the Director or Committee may choose to grant a licence for only a one year period (provided the leave to remain is over 1 year). The position in respect of an applicant with previous convictions who has a limited leave period in the United Kingdom remains the same, if the applicant has convictions which mean the application would come to Committee, the Committee will determine if the applicant is a fit and proper person and then the length of any licence granted, such length not to exceed the applicants leave period in the United Kingdom, if their leave entitlement is limited.
- 2.3 It is also proposed that amendments are made to Driver's and Operator's licence conditions. Currently driver's conditions require licencees holding a 3 or 5 year licence to provide an annual declaration to the Licensing Authority detailing all convictions, cautions, reprimands, warnings and fixed penalty notices, and any other changes of circumstance. As the Immigration Act 2016 introduces licences for a lesser period than 5 or 3 years the Authority need to ensure that there is still a requirement on those shorter licences which are over 1 year but below 3 or 5 to produce a declaration every 12 months. The changes to the drivers and operators conditions to clarify this are only minor changes to the wording and do not materially affect the condition itself. As such it is proposed that the amended conditions shown at Appendix 2 be approved.

Alternative Options

- 3.1 An alternative option is that Members do not approve the amended policy document at Appendix 1, or amend it differently. The changes brought about by the Immigration Act 2016 came into force on 1st December 2016 and already apply to the Authority, without an amended Policy the Policy document would not be up to date or fit for purpose. Members could decide to only permit licences to be granted for 1 or 3 years (drivers) or 5 and 1 year (operators). This however would leave applicants whose leave

entitlement is less than 5 or 3 or 1 year in a situation where they are deprived of a licence simply due to the fact that the Council only allows a 1 year licence. Such cases could be brought before Committee for a decision to be taken which departs from the current Policy but this would create an unnecessary burden for the Committee. The Policy is a guidance document and Members are entitled to depart from it but the delegation requested permits officers to take these decisions in straight forward immigration cases as explained below.

- 3.2 Members could decide not to delegate authority to the Director to grant licences for lesser periods than 5,3, or 1 years where there are issues with the immigration status of the applicants. However, this would mean all applications where leave to remain is limited would have to come before Committee which would slow down the licensing process. If the only question around the applicant is the length of their leave to remain, the applicant may still be deemed fit and proper, it is merely the length of the licence which is to be determined, in line with the applicants ability to remain in the United Kingdom. This is essentially an administrative decision in line with the legislation and is considered suitable to be delegated to officer level.

Financial Implications

Appendices

Appendix 1 – Amended Statement of Policy and Guidelines for the Licensing of Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators.

Appendix 2 – Private Hire/Hackney Carriage driver's Conditions and Operator's Conditions

Background Papers

None identified.

Recommendations

THAT:

- (a) Members approve the amended Statement of Policy and Guidelines for the Licensing of Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators at Appendix 1 to this report.
- (b) Members approve both the driver's and operator's amended conditions at Appendix 2 to this report.
- (c) Members delegate authority to Director level to grant Private Hire/Hackney Carriage driver's licences for a period of less than 3

years or one year where required to do so under the Local Government Miscellaneous Provisions Act 1976 as amended by the Immigration Act 2016.

- (d) Members delegate authority to Director level to grant Operator's licences for a period of less than 5 years or one year where required to do so by the Local Government Miscellaneous Provisions Act 1976 as amended by the Immigration Act 2016.

Reasons for Recommendations

- (a) To ensure that the Council's Policy in relation to taxi licensing remains up to date and fit for purpose.
- (b) To ensure that the 12 month declaration is enforceable regardless of the length of the licence.
- (c) and (d) To ensure that the Committee does not become overburdened with applications for operator's and drivers which could be dealt with more efficiently at an operational level.