

Report to Licensing committee
4 June 2015
Report of Head of citywide services
Subject Deregulation Act 2015 - amendments to the Local Government (Miscellaneous Provisions) Act 1976

Item

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Purpose

To inform members of amendments to the Local Government (Miscellaneous Provisions) Act 1976 concerning hackney carriage and private hire drivers and private hire vehicle operators.

Recommendation

That members resolve to:

1. note the legislative changes.
2. extend the current term for the grant or renewal of a hackney carriage drivers licence from one year to three years.
3. extend the current term for the grant or renewal of a private hire drivers licence from one year to three years.
4. delete the three month private hire driver's licence from the council's licensing portfolio.
5. require applicants seeking to renew their licence to only produce a medical certificate and a Disclosure and Barring Service enhanced certificate on a three yearly basis in line with the expiry date of their licence.
6. delegate to officers authorisation to set a revised licence fee for the grant and renewal of a hackney carriage and private hire drivers licence .

Corporate and service priorities

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

If members are minded to extend the duration of hackney carriage and private hire drivers licences then the current licence fee will need to be reviewed to ensure that the costs of administering the licensing system is met.

Ward/s: All wards

Cabinet member: Councillor Driver – Neighbourhoods and community safety

Contact officers

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Background documents

Deregulation Act 2015

Background

1. The Deregulation Act 2015 (The 2015 Act) will amend from the 1 October 2015 sections 53 and 55 of the Local Government (Miscellaneous) Provisions Act 1976 (The 1976 Act), which relate to hackney carriage and private hire drivers and private hire vehicle operators.

2. Attached at appendix A to the report are the existing sections 53 and 55 of The 1976 Act, which are immediately followed by the amendments / additions set out in The 2015 Act.

Hackney carriage and private hire drivers and private hire operators: duration of licence

3. The 2015 Act changes the law in such a way as to establish a standard duration of three years for a hackney carriage and private hire vehicle driver's licence and five years for a private hire vehicle operator's licence. The amendments specify that a licence may be granted for a period of less than three / five years but only in the circumstances of an individual case, not because of a blanket policy.

Private hire operators: sub-contracting

4. In the new section 55A, subsection (1) allows an operator who accepts a booking for a private hire vehicle to sub-contract it to four types of operator - (a) an operator licensed and located in the same district as the initial operator; (b) an operator licensed and located in a different district from the initial operator (a different district but one which is still governed by the same legislation – in practice this means a district in England or Wales but outside London or Plymouth); (c) an operator licensed and located in London; or (d) a person located in Scotland. Scenario (a) constitutes a re-statement of existing law – it is already lawful for a private hire vehicle operator to sub-contract a booking to another operator licensed in the same licensing district. Scenario (a) has been included because it is not currently expressly stated on the face of the Act and stating all four scenarios where an operator can sub-contract a booking in this amendment makes the law clearer and easier to follow.

5. Subsection (2) of new section 55A clarifies that the new provision affects the legal position in respect of PHV operation under the 1976 Act; it is immaterial if the agreement between the passenger making the booking and the initial operator permits sub-contracting.

6. Subsection (3) covers the scenario where an operator holds licences under section 55 of the 1976 Act for more than one licensing district. Subsection (4) covers the scenario where an operator holds a licence under section 55 of the 1976 Act and also holds a private hire vehicle operator licence issued by Transport for London in respect of London. Subsection (5) covers the scenario where an operator holds a licence under section 55 of the 1976 Act and also operates private hire cars or taxis in Scotland. Together, these subsections clarify that operators may sub-contract bookings effectively to themselves in the other districts or areas in exactly the same way that an operator can sub-contract to different operators by virtue of subsection (1).

7. The new section 55B deals with operator liability in connection with sub-contracting. Subsection (1) simply draws a distinction between the operator who accepts the original

booking and the operator who accepts the sub-contract (labelling them the first operator and the second operator respectively).

8. Subsection (2) of new section 55B establishes that an initial operator who sub-contracts a booking to an operator based in a different district or area in accordance with section 55A (1) does not breach the requirement in section 46(1)(e) of the 1976 Act (the requirement being that the driver and vehicle used to fulfil the booking must be licensed by the same licensing authority as granted the operator's licence).

9. Subsection (3) applies to an operator licensed under section 55 of the 1976 Act who sub-contracts to an operator also licensed under section 55 of the 1976 Act (whether in the same or a different district). The subsection introduces criminal liability for the first operator if the second operator breaches the requirement in section 46(1)(e) in relation to the booking and the first operator knew the second operator would do so (i.e. knew the second operator would use a driver or vehicle that was not licensed in the same district as the second operator).

Summary

10. The council's current licensing arrangements provide for the renewal of hackney carriage and private hire drivers licences to be for a period of twelve months. The grant of a hackney carriage driver licence is also for a twelve month period and the grant of a private hire drivers licence can be for either three or twelve months. Private hire operator's licences are granted and renewed on a twelve month basis.

11. From the 1 October 2015 legislation will prescribe that the standard duration of a hackney carriage or private hire driver's licence (grant or renewal) will be for three years and a private hire operator's licence for five years. A licence may be granted for a shorter period but this will only be in individual circumstances and not as a matter of policy. Accordingly, the council's existing policy of granting driver's licences for either a twelve or three month period and private hire operator's licence for twelve months must change and licences should only be issued for a standard period of three years for drivers and five years for operators. In effect, this will remove the current three month private hire driver's licence offered by the council. From the 1 October all driver's licence grant applications will be for a period of three years and the criteria for existing grant applications will apply. In other words, applicants will have to pass a knowledge test before being granted a private hire driver's licence, which is currently not the case in respect of three month applications.

12. Existing holders of drivers licence are required to produce on a three yearly basis at renewal a medical certificate and an enhanced certificate from the Disclosure and Barring Service (DBS). Where an existing licence holder has recently produced medical and DBS certificates, after 1 October 2015 when their licence will be renewed for three years the period in which further certification will be required will extend beyond the current three year period.

13. The fees for the grant and renewal of hackney carriage and private hire driver's licence and private hire vehicle operator's licence are based on a twelve month period. These will need to be reviewed in light of the extended duration of the licence to take account of any additional administrative or enforcement costs that may be incurred over the additional two years of the licence.

14. Currently, it is lawful for a private hire vehicle operator to sub-contract a booking to another operator licensed in the same licensing district. From 1 October 2015 operators will be able to sub-contract bookings to operators licensed outside their licensing district.

APPENDIX A

Section 53 Local Government (Miscellaneous) Provisions Act 1976: Drivers' licences for hackney carriages and private hire vehicles.

(1) (a) Every licence granted by a district council under the provisions of this Part of this Act to any person to drive a private hire vehicle shall remain in force for three years from the date of such licence or for such lesser period as the district council may specify in such licence.

(b) Notwithstanding the provisions of the Public Health Act 1875 and the Town Police Clauses Act 1889, every licence granted by a district council under the provisions of the Act of 1847 to any person to drive a hackney carriage shall remain in force for three years from the date of such licence or for such lesser period as they may specify in such licence.

Section 10 Deregulation Act 2015 Taxis and private hire vehicles: duration of licences

(1) The Local Government (Miscellaneous Provisions) Act 1976 is amended as follows.

(2) In section 53 (drivers' licences for hackney carriages and private hire vehicles)—

(a) in subsection (1)(a), for “for such lesser period as the district council may specify in such licence” substitute “for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case”;

(b) in subsection (1)(b), for “for such lesser period as they may specify in such licence” substitute “for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case”.

Section 55 Local Government (Miscellaneous) Provisions Act 1976: Licensing of operators of private hire vehicles.

(2) Every licence granted under this section shall remain in force for such period, not being longer than five years, as a district council may specify in the licence.

Section 10 Deregulation Act 2015 Taxis and private hire vehicles: duration of licences

(3) In section 55 (licensing of operators of private hire vehicles), for subsection (2) substitute—

“(2) Every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.”

Section 11 Deregulation Act 2015

Private hire vehicles: sub-contracting

In the Local Government (Miscellaneous Provisions) Act 1976, after section 55 insert—

“55A Sub-contracting by operators

(1) A person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle may arrange for another person to provide a vehicle to carry out the booking if—

(a) the other person is licensed under section 55 in respect of the same controlled district and the sub-contracted booking is accepted in that district;

(b) the other person is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted in that district;

(c) the other person is a London PHV operator and the sub-contracted booking is accepted at an operating centre in London; or

(d) the other person accepts the sub-contracted booking in Scotland.

(2) It is immaterial for the purposes of subsection (1) whether or not sub-contracting is permitted by the contract between the person licensed under section 55 who accepted the booking and the person who made the booking.

(3) Where a person licensed under section 55 in respect of a controlled district is also licensed under that section in respect of another controlled district, subsection (1) (so far as relating to paragraph (b) of that subsection) and section 55B(1) and (2) apply as if each licence were held by a separate person.

(4) Where a person licensed under section 55 in respect of a controlled district is also a London PHV operator, subsection (1) (so far as relating to paragraph (c) of that subsection) and section 55B(1) and (2) apply as if the person holding the licence under section 55 and the London PHV operator were separate persons.

(5) Where a person licensed under section 55 in respect of a controlled district also makes provision in the course of a business for the invitation or acceptance of bookings for a private hire car or taxi in Scotland, subsection (1) (so far as relating to paragraph (d) of that subsection) and section 55B(1) and (2) apply as if the person holding the licence under section 55 and the person making the provision in Scotland were separate persons.

In this subsection, “private hire car” and “taxi” have the same meaning as in sections 10 to 22 of the Civic Government (Scotland) Act 1982.

(6) In this section, “London PHV operator” and “operating centre” have the same meaning as in the Private Hire Vehicles (London) Act 1998.

55B Sub-contracting by operators: criminal liability

(1) In this section—

“the first operator” means a person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle and then made arrangements for another person to provide a vehicle to carry out the booking in accordance with section 55A(1);

“the second operator” means the person with whom the first operator made the arrangements (and, accordingly, the person who accepted the sub-contracted booking).

(2) The first operator is not to be treated for the purposes of section 46(1)(e) as operating a private hire vehicle by virtue of having invited or accepted the booking.

(3) The first operator is guilty of an offence if—

(a) the second operator is a person mentioned in section 55A(1)(a) or (b),

(b) the second operator contravenes section 46(1)(e) in respect of the sub-contracted booking, and

(c) the first operator knew that the second operator would contravene section 46(1)(e) in respect of the booking.”