

Wards Affected:

All Wards

ITEM 6

REGULATORY COMMITTEE

12 DECEMBER 2018

AMENDMENT OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING POLICY

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Executive Summary

Milton Keynes Council adopted a Taxi Licensing Policy in 2014 to aid decision making and set appropriate criteria for the protection of the public. The Policy has been revised to enable better clarity as to the functions of the Council.

The Policy has been split into two documents - 1) Policy and 2) Taxi Licensing Conditions and Procedures.

1. Recommendation(s)

- 1.1 That the revised Taxi Licensing Policy attached at **Annex A** to this report is recommended to Cabinet to be approved.
- 1.2 That the revised Taxi Licensing Conditions and Procedures document attached at **Annex B** is approved by the Regulatory Committee.

2. Issues

- 2.1 Milton Keynes Council ("the Council") grants "Taxi" licences under the Town and Police clauses Act 1847 ("1847 Act") and the Local Government (Miscellaneous Provisions) Act 1976 ("1976 Act").
- 2.2 The Local Government Act 2000 and The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the regulations") sets out how local authorities discharge their functions.
- 2.3 The approval of the Taxi Licensing is undertaken by the Executive Cabinet of Milton Keynes Council.
- 2.4 The Regulations makes clear that the granting of licences, the imposition of conditions and the determination of any other terms to which such approval or licence is subject, cannot be carried out by the Executive. Milton Keynes Council has delegated this authority to the Regulatory Committee and Officers.
- 2.5 The split in these functions are not easy to reconcile in respect to the practical aspects of Taxi Licensing. Council Policy will often result in the

consideration of “terms of approval” and the imposition of conditions. A decision incorrectly made would be ultra-vires¹ and may be challenged.

- 2.6 Elements of policy, procedure, conditions and guidance were interwoven within the original Policy and its appendices. Due to this the decision making process to adopt the Policy was more complex than necessary. This is not necessarily good for making efficient decisions when public safety or the requirements of the trade may be at stake.
- 2.7 The Policy has been revised to improve this. A refreshed Policy is at **Annex A** and is the responsibility of the Cabinet to approve. However Cabinet cannot set terms of approval or conditions and the Policy must therefore express global aims and desires to be achieved. The Regulatory Committee sets the terms of approval and through the Taxi Licensing Conditions and Procedures document. The documents have been revised to be clearly separate from each other.

3. **Annex A - Policy**

- 3.1 Significantly revised wording to the Policy is highlighted in grey to make clear a change has occurred. Attached at Annex C is a detailed list of changes to ensure this process is transparent to the Committee, Cabinet and the trade. Except for the one matter stated below there is no change in Council Policy, although some of it has been reworded. All Policies can be traced back to the previous approvals of both the Regulatory Committee and Cabinet.
- 3.2 The layout of the Policy document has changed due to revising it into two separate documents:
- (a) Some paragraphs provided information, guidance and explanation which, unless it assisted with the overall understanding of the Policy, have been removed.
 - (b) Some paragraphs in the Policy were considered better to be placed together (i.e. equalities and safeguarding).
 - (c) The Policy on convictions had to be removed from the previous appendices and it was felt that the layout of the Policy flowed better if the Vehicle, Operator and Driver policies were moved to the end to be with convictions Policy.
 - (d) Some elements of Policy were removed from the old appendices into the Policy, and finally, some wording was elaborated on to better express the Policy aims.

¹ As the Regulatory Committee approved all parts of the Policy and recommended adoption to Cabinet, who adopted, there is no risk of any previous decision being ultra vires.

3.3 Suitability of Licensed Individuals Policy (formerly Appendix E).

The previous Appendix E set the Policy on how the Council assessed the suitability of individuals with convictions etc. As this is clearly Policy it has been included in the Policy document and consequently renamed. The ordering of offences has been revised to start with the more concerning. The description of the offence of “drink driving” has been revised to also include “driving whilst under the influence of drugs”.

3.4 Change to Policy - Foreign Criminal Record Certificates

The Policy has one proposed change. Currently an applicant must produce a foreign criminal record if they have lived in another Country in the last 20 years. This is proposed to be reduced in line with Home Office requirements for obtaining work permits and the Government recruitment standards for Police Officers and Nurses etc.

The Council adopted the 20 year requirement in 2014 and all drivers currently licensed have provided these checks. Over the last 4 years no evidence has been obtained that this level of check increases public safety².

To be licensed to work as a Taxi driver and individual must have the right to work in the UK as a self-employed person and this right is checked by the Council. An individual must either have a) a British Passport, B) Residents permit or C) be a citizen of a Country with an automatic right to work in the UK (i.e. EU citizen).

Checks of individuals are carried out by Government agencies upon entering the UK. The Home Office consider convictions as either spent after 10 years or, never spent if an individual has served a prison sentence of 30 months (or more). Those with serious (i.e. never spent) convictions are not able to enter the UK.

For this reason the Home Office require overseas criminal record checks to only go back as far as 10 years. The longest rehabilitation period (i.e. the period of a time someone must be conviction free to be considered suitable for a licence) given in the Council Policy is 10 years.

Checking the “foreign” criminal record of anyone who has lived in the UK for more than 10 years is only relevant to the Council Policy in respect to serious sexual and violent offences where the Council will not grant a licence. As individuals will not be permitted to enter the UK, this check is not necessary.

Any Policy or condition must be reasonably necessary and officers consider that the only reason this requirement can be viewed as necessary is if a relevant government agency makes a mistake. A Policy based on the potential failing of another organisation cannot be justified as reasonable.

² It is cited as one of the reasons drivers obtain licences elsewhere, and since other Councils only check for 5 or 3 years, public safety is arguably increased.

3.5 Procedures and Conditions (Annex B)

This document includes all the matters that were originally contained within the appendices (except Appendix E) to the Policy. It sets out the terms for the individual approvals and conditions to be imposed. These documents have been regularly reviewed by the Regulatory committee. There are no changes to these documents except for an alteration to the Operator licence conditions.

Operator licence conditions have been revised to remove some conditions that are now incompatible with the High Court Appeal case of last year and to improve the information operators are required to report to the Council.

4. Options

4.1 **Recommended:** That the revised draft Policy is recommended to Cabinet to be approved.

4.2 **Recommended:** That the revised Taxi Licensing Conditions and Procedures document is approved.

4.3 **Not Recommended:** That the Regulatory Committee do not approve the above documents. This is not recommended as the current document is no longer suitable to aid Council decision making.

5. Implications

5.1 Policy

The Taxi Licensing Policy and Procedures and Conditions are of equal importance in terms of the consideration of applications and grant of licences. It is therefore appropriate that the decision making requirements are done correctly.

5.2 Resource and Risk

N	Capital	Y	Revenue	N	Accommodation
N	IT	N	Medium Term Plan	N	Asset Management

5.3 Carbon and Energy Management

None.

5.4 Legal

The powers to grant licences to hackney carriage, private hire vehicles and their drivers and operators is permitted by the Town and Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976.

5.5 Other Implications

Y	Equalities/Diversity	N	Sustainability	Y	Human Rights
N	E-Government	Y	Stakeholders	Y	Crime and Disorder

Background Papers: None