

## STATUTORY GUIDANCE ISSUED BY THE SECRETARY OF STATE FOR TRANSPORT TO PROTECT CHILDREN AND VULNERABLE INDIVIDUALS

### Licensing Committee - 22 September 2020

Report of Chief Officer, Planning & Regulatory Services

Status For Consideration and decision

Also considered by Council - 17 November 2020

Key Decision No

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**Executive Summary:** This report provides information on changes to be considered and implemented in process and Policy as a result of Statutory guidance issued by the Secretary of State for Transport in June 2020, and other matters

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**Portfolio Holder** Cllr. Margot McArthur

**Contact Officer** Susan Lindsey Ext. 7491

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#### **Recommendation to Licensing Committee:** That

- (a) in response to the guidance, the proposed implementation of changes in process be noted;
  - (b) Members decide whether Officers should implement the provisions of section 165, 166 and 167 of the Equality Act 2010, or maintain current procedures;
  - (b) the draft policy in respect of NR3 at Appendix B, be approved for public consultation and if no unresolved objections are received, the Head of the Licensing Partnership be granted delegated authority to adopt the policy; and
  - (c) Council be recommended to approve the amendments to the Statement of Hackney Carriage and Private Hire Policy 2020-2023 as set out at paragraphs 20, 30, 51-52, 61, 65, 68, 77 and 80-81 of the report.
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**Recommendation to Council:** That the amendments to the Statement of Hackney Carriage and Private Hire Policy 2020-2023 set out at paragraphs 20, 30, 51-52, 77 and 80-81 of the report, be approved

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## Introduction and Background

- 1 The Secretary of State for Transport has issued new Statutory Guidance to Local Authorities on the exercising of taxi and private hire licensing functions. **(Appendix A)**
- 2 There is evidence to support the view that taxis and private hire vehicles are a high-risk environment. In terms of risks to passengers, this can be seen in abuse and exploitation of children and vulnerable adults facilitated and in some cases perpetrated by the trade and the number of sexual crimes reported which involve taxi and private hire vehicle drivers.
- 3 It is expected the recommendations contained within this Guidance be implemented unless there is a compelling local reason not to.
- 4 The Guidance sets out a framework of policies that, under section 177(4), of the Policing and Crime Act 2017, licensing authorities **must have regard** to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire licensing regimes. 'Having regard' is more than having a cursory glance at a document before arriving at a preconceived conclusion.
- 5 'Having regard' to these standards requires public authorities, in formulating a policy, to give considerations and weight which is proportionate in the circumstances. **Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area the importance of thoroughly considering these standards cannot be overstated.** It is not a question of box ticking; the standards must be considered rigorously and with an open mind.
- 6 Key points to take forward from this Guidance are listed below:
- 7 Licensing policies
- 8 **Licensing authorities should review their licensing policies every five years, but should also consider interim reviews should there be significant issues arising in their area, and their performance annually.**
- 9 The Sevenoaks Hackney Carriage and Private Hire Licensing Policy is reviewed every 3 years during which time it is kept under review and revised as appropriate or after any significant legislative change.
- 10 Whistleblowing
- 11 **Licensing Authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.**
- 12 Sevenoaks District Council has a comprehensive Whistleblowing Policy which is regularly reviewed. This can be accessed via the Council's intranet, Insite.

- 13 Consultation at a local level
- 14 **Licensing authorities should engage with these areas to identify any concerns and issues that might arise from a proposed change**
- 15 Sevenoaks District Council are keen to hear the views of persons affected by its Licensing Policy and have identified people and organisations within its Hackney Carriage and Private Hire licensing policy which reflect those used as examples in item 3.12 of the new Statutory Guidance.
- 16 Changing licensing policy and requirements
- 17 **Any changes in licensing requirements should be followed by a review of the licences already issued**
- 18 Implementation of any changes that affect current licence holders will be clearly communicated to all licence holders with further information accessible via the Sevenoaks District Council website.
- 19 In order to expedite minor amendments to Policy without the need for consultation or a full licensing committee decision it is requested Members consider the inclusion of the following statement in Policy:
- 20 *Minor amendments to this Policy required, for example, by virtue of legislative change or administrative procedural change, may be made by the Head of Licensing following consultation with the Chair of the Licensing Committee and the Cabinet Member with responsibility for Licensing.*
- 21 Common Law Police Disclosure
- 22 **Licensing authorities should maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.**
- 23 A joint Licensing Compliance and Enforcement Protocol is in place covering all relevant licensing functions and all related topics, in as much as it applies to each individual organisation in Kent and Medway. These include, but are not exclusive to; Kent Police, Kent Fire & Rescue Service, Kent County Council Trading Standards, Gambling Commission, Securities Industry Authority, Public Health, Social Services, Licensing Operations at the Local Authorities in Kent and Medway.
- 24 Licensee self-reporting
- 25 **Licence holders should be required to notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence.**
- 26 Current Sevenoaks District Council Policy states : A licence holder or applicant shall immediately notify the Council of any

charges/convictions/cautions (including motoring offences) imposed during the term of their current licence or application.

27 Referrals to the Disclosure and Barring Service and the Police

28 **A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS**

29 This matter is not covered in the current Sevenoaks District Council Policy and Members are requested to consider including the following statement:

30 *Following a decision to refuse or revoke a licence by Sevenoaks District Council as the individual is thought to present a risk of harm to a child or vulnerable adult, the authority may consider a referral to the DBS under the Safeguarding Vulnerable Groups Act 2006.*

31 Sharing licensing information with other licensing authorities

32 **Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants**

33 The Local Government Association commissioned the National Anti-Fraud Network (NAFN) to develop a national register of taxi and private hire vehicle driver licence refusals and revocations (the register is known as NR3).

34 It is requested Members consider the implementation of the use by Sevenoaks District Council of this register in order to check new applicants refusal or revocation history with other authorities.

35 Prior to adopting use of the NR3 register, local authorities are required to consult with the trade, and Member approval to commence this consultation is requested.

36 Can Members also consider that, if no adverse comments are received to the implementation of this register, that this matter need not be brought back to the Licensing Committee for approval, and that this can be carried out by the Head of the Licensing Partnership

37 Should adverse comments be received, then this matter will be brought back to the Licensing Committee for further consideration.

38 A Draft Policy is at **Appendix B** (the Council's Officers have considered the Data Protection implications and have informed us that we may proceed with its next steps).

39 Complaints against licensees

- 40 **All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees.**
- 41 All complaints received are logged and investigated. The Sevenoaks Licensing Team are upgrading the current Uniform platform to 'Enterprise' which will allow better linking of individual records against investigative files.
- 42 Details of how to log a complaint against a licensed driver can be found on the website. This information is also provided within each licensed vehicle
- 43 Sevenoaks District Council has implemented a Penalty Points system in order to regulate enforcement and any action required.
- 44 Overseas convictions
- 45 **Licensing Authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas to properly assess risk and support the decision-making process.**
- 46 Prior to consideration of any new application, overseas applicants who have lived in the UK for a continuous period of less than five years are required to provide a certificate of good conduct from their previous country or countries of residence (within the previous 5 years) in addition to an Enhanced Certificate from the Disclosure & Barring Service.
- 47 Criminality checks for drivers
- 48 **All licensed drivers should be required to evidence continuous registration with the Disclosure & Barring Service (DBS) update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe up to the Update Service should still be subject to a check every six months.**
- 49 This is an increase on current checks (currently undertaken upon application; and every 3 years subsequent to the issue of the licence)
- 50 It is requested Members consider mandating the requirement for all drivers to sign up to the online DBS update service, and to include an administrative fee of £40 in addition to the cost of the DBS application on any manual Enhanced checks that need to be carried out.
- 51 *It will be a mandatory requirement for all drivers to sign up to the online Disclosure & Barring Service update service and to give Sevenoaks District Council authority to access records.*
- 52 *6 monthly DBS checks will be carried out throughout the duration of a licence : should the Authority not be able to access online records, a driver will still be required to undertake an Enhanced Check, at an additional cost*

*to the driver. If no check is undertaken within 2 months of the 6 month requirement; the licence will be suspended.*

- 53 For Members information: in future, it will also be a requirement to have all licensed vehicle proprietors (that are not licensed drivers), and all Private Hire Operators licensed with the Authority to undertake Basic Disclosures on an annual basis.
- 54 Safeguarding awareness
- 55 Sevenoaks District Council provide Safeguarding Awareness Training as part of the application process and knowledge test.
- 56 Language proficiency
- 57 **A licensing authority's test of a driver's proficiency should cover both oral and written English language skills.**
- 58 Subject to the comments of Members, Officers intend to investigate external providers of oral and written English courses with a view to apply this for all new, and renewal of driver applications across the Licensing Partnership.
- 59 Booking and dispatch Staff
- 60 **Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept.**
- 61 Subject to the comments of Members Officers intend to add the following condition to all Private Hire Operator Licences
- 62 *A register of all staff that will take bookings or dispatch vehicles under the authority of the Private Hire Operator will be kept.*
- 63 *The Private Hire Operator will evidence they have had sight of a Basic DBS check on all individuals listed on that register and ensure that Basic DBS checks are undertaken on any individuals added to the register*
- 64 *The Private Hire Operator will evidence comparable protections are applied by other companies to which they outsource booking and dispatch functions*
- 65 Subject to the comments of Members, Officers intend that all new Private Hire Operator applicants must provide their policy on employing ex-offenders in roles that would be on the register above.
- 66 Use of passengers carrying vehicles (PCV) licensed drivers
- 67 **The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such as a minibus to undertake a private hire vehicle booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.**

68 **Subject to the comments of Members, Officers intend to add the following condition to all Private Hire Operator Licences**

69 *Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than 8 passenger seats are required or to accommodate luggage, the booker should be informed that a PSV is necessary, and that a PCV licensed driver will be used who is subject to different checks and not required to have an enhanced DBS check.*

70 **Other Matters**

71 **Provision of Wheelchair accessible vehicle list**

72 The Government introduced in April 2017 sections 165 and 167 of the Equality Act 2010 in relation to the assistance of passengers in wheelchairs using designated taxis and private hire vehicles.

73 These allow the licensing authority to create a list of ‘designated vehicles’ which are capable of carrying passengers in wheelchairs (section 167) and then require drivers of those vehicles to provide mobility assistance (section 165) unless the local authority grant exemptions from the duties to individual drivers (section 166). Relevant sections of the Equality Act 2010 are at **Appendix C, D and E**

74 It is recommended that members consider points 72 and 73 and make a decision regarding whether to implement the provisions of section 165, 166 and 167 of the Equality Act 2010, or to maintain current procedures to provide this information upon request.

75 **Driver Group II Medicals**

76 Following feedback from the Trade of difficulties in accessing their own GP for Group II medicals to be undertaken, it is requested Members consider and approve the following amendment to Policy:

77 *All applicants will be required to obtain a Group 2 Medical standards certificate signed by their own GP, or another practitioner who has access to at least 2 years medical records.*

78 **Officer Discretion - maximum age of vehicles**

79 It is requested Members consider allowing officer discretion in exceptional circumstances to renew licences where vehicles have reached their upper age limit, but are still in pristine condition.

80 *The Authority will not license a vehicle, for the first time, if it is more than 6 years old and/or has travelled greater than 100,000 miles (apart from in exceptional circumstances at the discretion of an authorised officer)*

81 *The Authority will not re-licence a vehicle if it is more than 10 years old (15 years for wheelchair accessible vehicles) - apart from in exceptional circumstances at the discretion of an authorised officer.*

## **Key Implications**

### Financial

None directly arising from this report

### Legal Implications and Risk Assessment Statement

The Legal implications are as set out previously in this report

### Equality Assessment

Except where otherwise stated in the report, the decisions recommended through this paper have a remote or low relevant to the substance of the Equality Act. There is no perceived impact on end users.

## **Appendices**

Appendix A - Statutory Guidance  
Appendix B - NR3 Draft Policy  
Appendix C - Equality Act 2010 s165  
Appendix D - Equality Act 2010 s166  
Appendix E - Equality Act 2010 s167

## **Background Papers**

[Sevenoaks District Council Hackney Carriage & Private Hire Policy](#)  
[DoT Best Practice Guidance](#)

**Richard Morris**

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