

# Report of the Chief Licensing Officer and Head of Licensing to the Licensing Committee on 17<sup>th</sup> September 2015

## Deregulation Bill 2015

### Private Hire Operator Licences

#### 1.0 Purpose

- 1.1 To review the Councils Policy in relation to the duration of a Private Hire Operators Licence.
- 1.2 To determine the fees payable on application for the grant / renewal of a Private Hire Operators Licence.

#### 2.0 The Legal Situation

- 2.1 Section 10 and 11 of The Deregulation Bill 2015 comes into force on the 1<sup>st</sup> October 2015. The sections amend Section 53 and 55 of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.2 The Government have introduced the Deregulation Bill as part of their commitment to cut bureaucracy in business. One of the main changes that it has introduced is with regards to Private Hire Operators and their Licences and amends Section 55 as follows;

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

55 A (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) or the other person accepts the sub-contracted booking in Scotland.

#### 3.0 Background

- 3.1 Members should note that licences for Private Hire Operators have always generally been issued for 12 months
- 3.4 The deregulation bill that was enacted within the last parliament will affect the way that operators in England and Wales can run their business.

- 3.5 Section 11 of the Deregulation Act 2015, will allow any licensed private hire operator within England and Wales to subcontract any job booking they receive to any other licensed private hire operator in the country.
- 3.6 There are also the current problems that have arisen from private hire operators taking advantage of using licensed hackney carriages (wherever they are licensed) as private hire vehicles.

#### **4.0 Consultation**

- 4.1 A draft of this report was circulated to representatives of the trades associations on the 28<sup>th</sup> August 2015 and was discussed at a consultation meeting with the representatives of the trade associations on the 2<sup>nd</sup> and 10<sup>th</sup> September 2015
- 4.2 Representatives of the trades associations have been invited to attend this meeting and advised that, subject to the consent of the Chair, they may address the meeting.
- 4.3 Any written representations received will be made available at the meeting.

#### **5.0 Financial Implications**

- 5.1 There are significant financial implications to the Council arising from this report. If members determine to move to a five year licence this would see a negative financial impact for four years following the next twelve months renewals.
- 5.2 The initial impact would commence around October 2016 when we would have a significantly reduced number of renewals, if all licences are granted for five years. The reduction in income would continue for four years until the existing licences come back around for renewal.
- 5.3 The service will have to consider the impact from these changes in legislation each year as it determines the new budget and fees.
- 5.4 Section 70, Sub-section (1) Subject to the provisions of sub-section (2) of this section, a district council may charge such fees for the grant of vehicle and operators' licences as may be resolved by them from time to time and as sufficient in the aggregate to recover in whole or in part –
- (a) The reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose determining whether any such licence should be granted or renewed;
  - (b) The reasonable cost of providing hackney carriage stands; and
  - (c) Any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.
- 5.5 A schedule of the current fees and proposed fees is attached at "Appendix A".

## **6.0 Fair Charging Policy**

- 6.1 It is agreed that fees and charges should be set in a consistent way across the Council and that we are transparent about the fees we expect people to pay.
- 6.2 Licence fees must also be set in accordance with the relevant individual piece of legislation; the Provision of Services Regulations 2009; and any other associated legislation / regulations.
- 6.3 The fees have been set so that they enable the service and the Council to deliver on our priorities and also on the principle of the polluter pays where it is appropriate.
- 6.4 The Council intends to recover its reasonable costs of the Licensing Service with regards to the administration and enforcement of the terms and conditions of each of the above individual licensing systems. Each licensing system has its fee calculated separately to ensure we are only recovering the costs in relation to that individual system.

## **7.0 Case Law**

- 7.1 It is clear from R v Manchester City Council Ex p. King, The Times, April 3, 1991 that the power to set fees does not permit the Council to raise revenue generally.
- 7.2 It has also been established in many cases such as R-v-The Greater London Council Ex Parte The Rank Organisation Limited where it was stated “the level of fees was a matter of policy and as long as the total fee income did not exceed the cost of the licensing system the court should not and could not see to interfere”.
- 7.3 The case of R (Hemmings and Others) v Westminster City Council has changed the way we must consider setting fees and what legitimate costs we can recover.

Keith J upheld that the procedures the costs of which could be recharged to licensees are;

“..... the steps which an applicant for a licence has to take if he wishes to be granted a licence or to have his licence renewed, and when you talk about the cost of those procedures, you are talking about the administrative costs of vetting the application and the costs of investigating their compliance with the terms of the licence. There is simply no room for the costs of authorisation procedures to include costs which are significantly in excess of those costs ....”.

- 7.4 Members should note that the Council can only recover the actual costs of delivering each individual system from the fees it charges applicants/licensees. It cannot make surplus from fees and must not use fees to subsidise any other licensing system or to offset other budgets or raise income generally.
- 7.5 The overarching principle and starting point for the setting of fees is that the Local Authority must only recover its reasonable costs of administering that individual system and enforcing the terms and conditions of those licences where applicable and that no irrelevant factors are taken into account when setting such fees.

## **8.0 Recommendations**

- 8.1 That the licensing committee instruct the Chief Licensing Officer & Head of Service to make arrangements for the grant of a five year licence as from 1<sup>st</sup> October except in cases where licensing committee determine otherwise.
- 8.2 To approve the fees as set out in "Appendix A"

## **9.0 Options**

- 9.1 To instruct the Chief Licensing Officer & Head of Service to grant 5 year licences as from the 1<sup>st</sup> October 2015 except in circumstances where shorter term licences are thought appropriate on a case by case basis.
- 9.2 To consider the proposed fees set out at "Appendix A" and determine the appropriate level of fees to be charged as from 1<sup>st</sup> October 2015.

Steven Lonnia  
Chief Licensing Officer & Head of Licensing  
Licensing Service  
Staniforth Road Depot  
Sheffield  
S9 3HD