

Report of Head of Elections, Licensing and Registration

Report to Licensing Committee

Date: 17 November 2015

Subject: De-Regulation Act 2015 and delegation of enforcement powers across authorities.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Licensing Committee received a report in September 2015 explaining the effect of the introduction of the Deregulation Act 2015 and in particular concerns about the ability from 1 October 2015 for private hire operators to sub-contract to firms outside of the Leeds district. This report highlights some of the potential consequences and seeks approval for the Licensing Committee to recommend to full council delegation of enforcement functions across West Yorkshire authorities to help to minimise concerns across the region.

Recommendations

2. That Members recommend to the General Purposes Committee and full council that the Taxi and private hire enforcement powers as set out in paragraph 3.5 of this report be delegated by Leeds City Council to the to the other West Yorkshire authorities as well as being retained by Leeds City Council as licensing authority. To agree to Leeds City Council receiving similar delegated enforcement powers from the other West Yorkshire authorities.
3. That Members recommend to the Executive that the council's licensing policies are amended to reflect and enable the effective delegation of enforcement functions to other authorities.

1 Purpose of this report

- 1.1 The Licensing Committee received a report in September 2015 explaining the effect of the introduction of the Deregulation Act 2015 and in particular concerns about the ability for private hire operators to sub-contract to firms outside of the Leeds district. This report highlights some of the potential consequences and seeks approval for the Licensing Committee to recommend to the General Purposes Committee and full council delegation of enforcement functions across West Yorkshire authorities to help to minimise concerns. To agree to other authorities' enforcement powers to be delegated to this authority and to recommend to the Executive changes to the council's licensing's polices as required to enable the effective delegation of enforcement powers
- 1.2 This report sets out the background to the changes and how they will affect this Authority, particularly issues of general public safety, safeguarding and enforcement capability.

2 Background information

- 2.1 The Licensing Committee has previously been significantly involved in discussing the earlier recommendations of the Law Commission and Taxi & Private Hire licensing reform proposals and putting forward objections to some of the changes which it was felt would dilute the professional standards of licensed drivers working in Leeds or present potential increased safety risks to Leeds residents from licensed drivers (not licensed by this Authority) or the unlicensed drivers of licensed vehicles.
- 2.2 On 26 March 2015, the Deregulation Act 2015 received royal assent. This was followed by The Deregulation Act 2015 (Commencement No. 1 and Transitional and Saving Provisions) Order 2015 which set out the commencement date for taxi and private hire deregulation measures. These provisions came into force on 1 October 2015. From the 1st October 2015 the Deregulation Act 2015 removes the strict control of sub-contracting a Private Hire journey from within a licensing district only to enable sub-contracting to take place on a national basis.
- 2.3 Section 11 (private hire vehicles: sub-contracting) inserts two new sections (55A and 55B) into the Local Government (Miscellaneous Provisions) Act 1976 in relation to the sub-contracting of bookings from one private hire vehicle operator to another.
- 2.4 The above is a major amendment to the 1976 Act affecting taxi and private hire drivers and operators and will have far reaching implications for private hire operators in relation to the sub-contracting of bookings from one private hire vehicle operator to another.
- 2.5 There is currently no detailed information or operational guidance on these deregulation measures available from the Government, Department for Transport or other organisations.

3 Main issues

3.1 The individual changes mean that:

3.2 Sub-contracting

This presents significant difficulties for the Council in conducting its enforcement activities and to the public in terms of service standards and potentially public safety as it means:-

- Currently officers in this authority have no powers to conduct any enforcement activity on Private Hire Vehicles not licensed by this Authority.
- Significant difficulties in verifying whether a pre booking was in place when investigating plying for hire concerns
- Potential confusion for the public who may not recognise the vehicle which turns up and cannot readily verify the credentials of the driver
- Investigations may become protracted and on a national basis.
- Timescales for summary prosecutions (6 months) would be extremely tight
- Operators could pick the least challenging authorities in which to be licensed to set up base there and simply transfer bookings from the Leeds district to that operating base
- Licensed vehicles from other licensed authorities may have minimal exterior identification potentially creating opportunities for criminals, unlicensed drivers or sexual predators to more easily slip under the radar on opportunist illegal journeys.
- Leeds City Council is reliant on other authorities having an enforcement capacity dedicated to taxi & Private Hire Licensing.
- Risk to the Section funding is that a significant percentage of drivers migrate to other less regulated authorities.

In effect this part of the Act could virtually put enforcement capability out of reach of the licensing authority.

3.3 These concerns are shared across many leading authorities but the effects are more likely to be significant in areas such as Leeds, Manchester, Birmingham and other large cities but not exclusively so. Leeds is working within the remit of the West Yorkshire Combined Authority to try and establish some common licensing standards and enforcement compatibility across the West Yorkshire area. Some of the key issues being considered by the Combined Authority are the following:-

- Safeguarding- child sexual exploitation- human trafficking– a common minimum training standard for the trade
- Driver application process– improved common minimum standards

- English comprehension - common minimum standards for new applicants, It would only apply to existing licence holders where there was an identified need with the focus being on training and development within an agreeable timeframe.
- Convictions Policy and Convictions Criteria— a standard criteria be adopted.
- Decision making-scheme of delegation - All local Authorities introduce a scheme of delegation to Officers for decision making
- Private Hire Operator Conditions – a common standard across the Combined Authority
- Private Hire Vehicle Conditions - All West Yorkshire licensed vehicles have similar recognisable door livery which deforms when removed.
- Common Byelaws— Hackney Carriages— a common standard across the Combined Authority
- West Yorkshire Centralised Licensing Database— maintaining a centralised record of licence applications, suspensions, revocations to enable greater checking at the point of revocation.
- Enforcement Capability - That each Authority sets out a clear ring-fenced budget and produces annual accounts to demonstrate to the licence holders that all money is being used lawfully and appropriately for that Taxi & Private Hire licensing function. Officers to prepare information sharing protocol and implement.
- Authorised Officer status - Licensing and Enforcement Officers able to carry out inspection and suspension powers on a vehicle licensed by any WY Authority through the scheme of delegation of powers being co-ordinated across all WY Authorities to enable more efficient enforcement action

3.4 Key Licensing officers in all West Yorkshire authorities met on 15th October 2015 to agree an approach going forward to minimise concerns. The outcome of this meeting was that it was agreed that all officers would consider whether there should be cross authority delegation of taxi and private hire licensing enforcement functions. The intention would be to work towards all authorities having this in place as soon as possible but no later than by 1st April 2016

3.5 The current functions which are delegated to licensing officers in this authority are set out in the ACE sub-delegation scheme and include the functions set out in the paragraph below: The intention would be that Leeds Licensing officers would

retain the sub-delegation of these functions but they would also be delegated to the other West Yorkshire authorities.

- Local Government (Miscellaneous Provisions) Act 1976
- Section 53(3) (a) Driver to produce his licence for inspection
- Section 58 Return of identification plate or disc on revocation etc.
- Section 60 to suspend and revoke vehicle licenses
- Section 61 to suspend and revoke driver licences
- Section 68 Fitness of private hire vehicles
- Section 73 – Obstruction of Authorised Officers
- Town and Police Clauses Act 1847
- Section 45 prosecution for plying for hire
- Road traffic Act 1988
- Section 143 (no insurance)
- All criminal matters

3.7 Each authority would retain the ability to grant and renew licenses; those functions will not be delegated. The enforcement functions would be delegated. The ability to prosecute will rest as at present with the district within which the alleged offence occurred. Officers in each West Yorkshire authority will agree to provide evidence where necessary to support prosecutions by the other West Yorkshire authorities where they have been involved in investigating the alleged offence. How this will work in practice including recompense for each authority will be set out in an agreement between all of the West Yorkshire authorities.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Consultation with the Hackney Carriage Associations and the Private Hire Trade is not a legal requirement in these circumstances but is still being undertaken to identify any issues and maintain relationships with the trades. The closure date for consultation responses is Friday 13 November 2015, and the feedback would form part of a late item application to the Licensing Committee to approve presentation of the results to the licensing committee on 17 November 2015 when this proposal is discussed.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Impact Screening Assessment is being conducted for this authority and will be available as a background document to the Licensing Committee report. The

requirements of the Scheme of Delegation in respect of the necessary skills and experience for officers taking decisions under the scheme along with the intended programme of training for officers from other authorities indicate there will be no adverse impact.

4.3 Council policies and Best Council Plan

4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan 2013 -17

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – Improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs,
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

4.3.4 Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot

be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

4.4.1 Leeds City Council Taxi & Private Hire Licensing has a ring-fenced budget with all fees be retained solely for licensing purposes. There may be financial challenges which cannot be evaluated at the moment but the expenditure is closely monitored and any emerging needs would have to be met from the reserve fund or fee variations. The opportunities to seek costs from defendants will be strongly pursued by solicitors representing the Council at court.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The functions subject of this report are council functions. The local Government Act 1972 section 101(1) (b) permits delegations of council functions from one authority to another. Section 101(3) of the same Act permits that other authority to arrange for discharge of those functions by a committee, sub-committee or officer of that authority, effectively as though the function had always been theirs. The function would need to be delegated by full council (rather than by an officer or the licensing committee) and should be captured in the constitution so the delegation across authority is clear.

4.5.2 Officers in this authority would still have the delegated authority to carry out the same functions. All of this should also be captured in the relevant sub -delegation schemes of officers.

4.5.3 If policies need to be altered to reflect the above then aside from minor variations changes to policies would be on recommendation from the Licensing Committee for an Executive decision to be taken.

4.5.4 Changes to Parts 1 and 2 of the Constitution can only be approved by full council after consideration of the proposal by the General Purposes Committee and following advice from the council's Monitoring Officer (Article 15.2 of the Constitution).

4.6 Risk Management

4.6.1 If the steps outlined in paragraph 4.5 of this report are taken the risk to this authority would be low.

5 Conclusions

5.1 The recommendations are intended to facilitate Taxi and Private Hire enforcement activities across the West Yorkshire authorities.

6 Recommendations

6.1 That Members recommend to the General Purposes Committee and full council that the Taxi and Private Hire enforcement powers as set out in paragraph 3.5 of this report be delegated by Leeds City Council to the to the other West Yorkshire

authorities as well as being retained by Leeds City Council as licensing authority. To agree to Leeds receiving similar delegated enforcement powers from the other West Yorkshire authorities.

6.2 That Members recommend to the Executive that the council's licensing policies are amended to reflect and enable the effective delegation of enforcement functions to other authorities.

7 Background documents¹

7.1 De-Regulation Act 2015

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.