

LICENSING COMMITTEE

Thursday, 14th June, 2018
6.30 pm





LICENSING COMMITTEE

BURNLEY TOWN HALL

Thursday, 14th June, 2018 at 6.30 pm

Members are reminded that if they have detailed questions on individual reports, they are advised to contact the report authors in advance of the meeting.

Members of the public may ask a question, make a statement, or present a petition relating to any agenda item or any matter falling within the remit of the committee.

Notice in writing of the subject matter must be given to the Head of Governance, Law & Regulation by 5.00pm on the day before the meeting. Forms can be obtained for this purpose from the reception desk at Burnley Town Hall or the Contact Centre, Parker Lane, Burnley. Forms are also available on the Council's website www.burnley.gov.uk/meetings.

AGENDA

1) *Apologies*

To receive any apologies for absence.

2) *Minutes*

5 - 6

To approve as a correct record the Minutes of the last meeting as enclosed.

3) *Additional Items of Business*

To determine whether there are any additional items of business which, by reason of special circumstances, the Chair decides should be considered at the meeting as a matter of urgency

4) *Declaration of Interest*

5) *Exclusion of the Public*

To determine during which items, if any, the public are to be excluded from the meeting.

6) *Public Question Time*

To consider questions, statements or petitions from members of the public.

7) Introduction of new Taxi and Private Hire Policy required to enable compliance with the Equalities Act 2010 7 - 14

To consider the introduction of a new policy required under the Equalities Act 2010.

8) Appointments to Licensing Sub Committees 15 - 16

To obtain approval of the Licensing Committee for sub delegation of functions to a Licensing Act 2003 Sub Committee and to Taxi Licensing Sub Committees, and for the appointment of Licensing Committee members to these sub committees on a rotational basis and subject to their availability.

MEMBERSHIP OF COMMITTEE

Councillor Ann Royle (Chair)
Councillor Frank Cant (Vice-Chair)
Councillor Bill Brindle
Councillor Ida Carmichael
Councillor Saeed Chaudhary
Councillor Ivor Emo
Councillor Danny Fleming
Councillor Shah Hussain

Councillor Anne Kelly
Councillor Arif Khan
Councillor Sobia Malik
Councillor Elizabeth Monk
Councillor Paul Reynolds
Councillor Jeff Sumner
Councillor Christine White

PUBLISHED

Wednesday, 6 June 2018

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LICENSING COMMITTEE

BURNLEY TOWN HALL

Thursday, 22nd February, 2018 at 6.30 pm

PRESENT

MEMBERS

Councillors A Royle (Chair), B Brindle, F Cant, I Carmichael, S Chaudhary, J Cunningham, D Fleming, A Kelly and S Malik

OFFICERS

Karen Davies	– Environmental Health and Licensing Manager
Emma Barker	– Principal Legal Officer - Litigation & Regulation
Eric Dickinson	– Democracy Officer

11. Apologies

Apologies for absence were received for Councillors Shah Hussain, Mohammed Ishtiaq, and Elizabeth Monk.

12. Minutes

The minutes of the meeting held on 26th October 2017 were approved as a correct record and signed by the Chair.

13. Local Government (Miscellaneous Provisions) Act 1982 - Amendments to Street Trading Consent Conditions

Members gave consideration to the adoption of new conditions relating to the hours of trading, duration of consent and Disclosure and Barring Service (DBS) checks in relation to the grant of Street Trading Consent with the Borough under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

Members discussed an amendment regarding an added condition to be added within the guidance, to be inserted as a new Paragraph 2.3.3

RESOLVED

- (1) That approval be given to the following conditions for Street Trading Consents:-
- (a) Amend permitted trading hours to between 0630 hours and 2300 hours, with only street traders who hold a late night refreshment premises licence under the Licensing Act 2003 being permitted to trade beyond this time in accordance with that licence;
 - (b) Introduce consents in the circumstances, and for the durations outlined at Appendix A to the report;
 - (c) Require a basis Disclosure and Barring Service (DBS) disclosure, not less than one calendar month old, to accompany any new application for a consent. The applicant must also sign up to the DBS update service for the duration of the consent, and any subsequently renewed consent, so that the Council is able to monitor any change in circumstances. Where an applicant intends to employ any other person in the course of the business, then similar arrangements must be in place for each such employee.
 - (d) Require all existing consent holders to meet the DBS requirements within 2 months of the conditions coming into effect
 - (e) No person shall be permitted to hold a street trading consent, or be employed in a business to which the consent relates where they have unspent convictions for sexual, violence, dishonesty or drugs offences as detailed in Appendix B to the report;
- (2) That delegated authority be given to the Head of Streetscene the power to revoke street trading consents where the conditions relating to DBS requirements are not met or where a licence holder has an unspent conviction for an offence involving dishonesty, indecency or violence or for an offence that is drugs-related;and
- (3) That a condition be added within the guidance, to be inserted as a new Paragraph 2.3.3 as follows;

“That the consent holder must, within 14 days, disclose to the Council in writing, details of any convictions for criminal offences and any pending prosecutions for such types of offences since the issue of his consent”.

14. Minor Amendment to Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information.

Members gave consideration to a minor amendment to the existing policy guidelines to fitness and propriety including convictions and other relevant information in order to provide clarity to applicants and decision makers should further applications be made by those persons previously refused. The amendment would be to add the following words to Paragraph 7 – “Further applications from the same person will not normally be granted within 6 months of the date of the initial refusal”.

RESOLVED

That the amendment as detailed be approved.

REPORT TO LICENSING COMMITTEE



DATE	14th June 2018
PORTFOLIO	Environment
REPORT AUTHOR	Peter Henderson
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EMAIL	phenderson@burnley.gov.uk

Introduction of new Taxi and Private Hire Policy required to enable compliance with the Equalities Act 2010

PURPOSE

1. To consider the adoption of a new policy required under the Equalities Act 2010

RECOMMENDATION

2. That Licensing Committee approves the new policy at appendix 'A'

REASONS FOR RECOMMENDATION

3. To ensure that, by implementing the requirements of the Equalities Act, the Council is able to meet its legal obligations and in addition, to enable the council to prosecute those who offend against the Act

SUMMARY OF KEY POINTS

4. Owners of assistance dogs are already protected by provisions in the Equality Act 2010 which make it unlawful for taxi and private hire drivers to refuse to convey them or to charge them extra. In order for similar protections to apply to wheelchair users, the government has commenced the remaining parts of sections 165 and 167 of the Act, which makes it a criminal offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance or to charge them extra.
5. The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows Councils to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with those

duties. However, in order for the Council to be able to enforce these new provisions they are required to have a policy in place to deal with requests for medical exemptions from this part of the Act.

6. Once this policy is approved the Council will prepare a draft list of wheelchair accessible vehicles, write to each vehicle owner to advise them that their vehicle is on the list and make them aware of their upcoming responsibilities. Drivers may then apply for exemptions.
7. On completion of this process the Council will publish the list of designated wheelchair accessible vehicles and the duties placed on drivers will take effect. Any driver who subsequently offends against the Act may then be prosecuted.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

8. None

POLICY IMPLICATIONS

- 9 Adoption of Taxi and Private Hire policies is the responsibility of the Licensing Committee

DETAILS OF CONSULTATION

- 10 David Talbot, Senior Solicitor

BACKGROUND PAPERS

- 11 None

FURTHER INFORMATION

PLEASE CONTACT:

Peter Henderson

ALSO:

Karen Davies

Taxis and Private Hire Drivers

Equality Act 2010

Medical Exemption Policy

Contents

1. Introduction
2. Published List of Designated Wheelchair Accessible Vehicles
3. Equality Act 2010
4. Exemption Certificates
5. Outcome
6. Dispute Resolution

Appendices

1. Application form for an exemption certificate

1. Introduction

To provide better services for disabled people, the Council endorses the provisions of the Equality Act 2010. We want to ensure that passengers with assistance dogs or wheelchair users receive lawful treatment and have the same access to public transport services, confident of receiving the assistance they need to travel safely.

This policy applies to all drivers who possess a current hackney carriage (taxi) or private hire driver's licence. The policy applies where a licensed driver wishes to be exempt from the requirements placed upon them under the Equality Act 2010 with respect to the carriage of passengers in wheelchairs and assistance dogs.

2. Published List of Designated Wheelchair Accessible Taxi and Private Hire Vehicles

The Council wants to ensure that wheelchair passengers are better informed about the accessibility of the taxi and private hire vehicle fleet within the Burnley District. In order to do this, the Council provides a list of designated taxis or private hire vehicles which are able to take passengers in their wheelchairs should they prefer. To be placed on the designated list, vehicles must be capable of carrying some, but not necessarily all, types of occupied wheelchairs. Vehicles shall only be included if it is possible for a wheelchair passenger to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair. There is a right of appeal against a decision to place a vehicle on the designated list to the magistrates' court within 28 days of being included in the list.

3. Equality Act 2010

3.1 Wheelchair Users

The Act places duties on drivers of designated wheelchair accessible taxis and private hire vehicles to:-

- carry the passenger while in the wheelchair;
- carry their wheelchair should the passenger choose to sit in a passenger seat;
- not make any additional charge for doing so;
- take such necessary steps to ensure that the passenger is carried in safety and reasonable comfort;
- give the passenger such mobility assistance as is reasonably required to:-
 - enable the passenger to get into or out of the vehicle, including in the wheelchair if they wish to remain in it;
 - load the passenger's luggage into or out of the vehicle;
 - load the wheelchair into or out of the vehicle if the passenger does not wish to remain in the wheelchair.

3.2 Assistance Dogs

The Act places duties on drivers of taxis and private hire vehicles to:-

- carry a passenger's (guide, hearing or assistance) dog, allowing the dog to remain with the passenger;
- not make any additional charge for doing so.

3.3 Exemption Certificates and Notices

If satisfied that it is appropriate to do so, the Act allows the Council to exempt taxi and private hire drivers from their duties on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with their duties.

3.4 Offences

It is an offence for a driver of a designated wheelchair accessible taxi or private hire vehicle to refuse to carry a passenger in a wheelchair if that taxi or private hire vehicle is on the Council's published designated list. It is also an offence not to comply with any of the duties placed upon them as set out in section 3.1 above.

It is an offence for a taxi driver hired by or on behalf of a disabled person who is accompanied by an assistance dog (or by another person who wishes to be accompanied by a disabled person with an assistance dog) to refuse to carry the assistance dog. It is also an offence not to comply with the duties placed upon them as set out in section 3.2 above.

It is an offence for the operator of a private hire vehicle to refuse to accept a booking for the vehicle if the booking is requested by or on behalf of a disabled person with an assistance dog (or by another person who wishes to be accompanied by a disabled person with an assistance dog) and the reason for the refusal is that the disabled person will be accompanied by an assistance dog. The operator also commits an offence if they make an additional charge for carrying an assistance dog which is accompanying a disabled person.

It is an offence for the driver of a private hire vehicle to refuse to carry out a booking accepted by the operator if the booking is made by or on behalf of a disabled person (or by another person who wishes to be accompanied by a disabled person) and the reason for the refusal is that the disabled person is accompanied by an assistance dog.

3.5 Defences

It is a defence if a driver has a valid exemption certificate and is displaying a valid exemption notice. It is also a defence if the vehicle can't carry larger or heavier wheelchairs safely. Religious or cultural beliefs cannot be cited as a reason for refusal to carry assistance dogs. If a complaint of discrimination is substantiated, the Council may suspend or revoke a driver's licence.

4. Exemption certificates

4.1 Medical

In some circumstances, a taxi or private hire driver may be unable to fulfil the requirements of the Equality Act 2010 for medical reasons (in the short or long term).

The Council can grant an exemption to drivers from the duties to assist passengers in wheelchairs or to transport assistance dogs if they are satisfied that it is appropriate to do so on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with their duties. There are no exemptions, medical or otherwise, for a driver in respect of conveying a reasonable quantity of luggage or providing reasonable assistance in the loading and unloading of luggage.

4.2 Obtaining an Exemption Certificate

Drivers considering applying for an exemption in relation to the carriage of passengers in wheelchairs may wish to first determine whether the vehicle they drive (or may drive in the future) has been designated as wheelchair accessible. To check which vehicles have been designated as wheelchair accessible, please refer to the published list on the Council's website.

The licensed driver must obtain and supply a letter from their own General Practitioner (G.P) explaining what duties the driver:

- cannot undertake;
- why the duties cannot be undertaken; and
- for how long the duties cannot be undertaken for.

The letter must be accompanied by an application (Appendix 1) which must be submitted to the Council. There is no fee attached to this process, however, the cost (if any) of obtaining the letter from the driver's G.P. must be paid for by the applicant.

If the G.P.'s letter states that the driver is unfit to carry passengers in wheelchairs and / or assistance dogs for a specified period of time (up to a maximum of 3 months), a temporary 'Exemption Notice' will be issued by the Council with an expiry date in line with the information provided on the G.P.'s letter.

If the applicant's G.P. does not specify a period of time, then the Council will reject the application.

If the G.P.'s letter is not clear or is ambiguous in any way, the matter will be referred to the Council's Licensing Sub-Committee for consideration. If a Committee is convened, the applicant will be invited to attend and explain the nature of the exemption request and the matter will be determined.

Upon the expiry of the Exemption Notice, drivers will be deemed fit to undertake all duties and the Exemption Notice must be returned to the Council within 7 days. If it is not returned within this period, the driver's licence could be suspended until such time as the Notice is returned and the matter will be referred to the Council's Licensing Sub-Committee.

If the driver expects that the temporary Exemption Notice will be extended beyond 3 months, then prior to the expiry date of the notice, the driver will need to contact the Council to discuss the next steps and timescales. The driver is strongly advised to make contact at the earliest opportunity: it will not be possible to extend the temporary Exemption Notice outside of this process.

During the period of the temporary Exemption Notice, the driver will be required to contact their own G.P. to arrange for an in-depth medical report to be compiled (the cost for which must be paid for by the driver) and following receipt of this, will then be required to make an appointment with the Council's approved medical practitioner to present the report from their own G.P. and to undergo an examination / consultation where the practitioner will complete the 'Statement of Fitness' on the applicant's capability to undertake the duties in terms of their medical grounds and / or physical condition, and for how long. The driver will be required to pay for the statement of fitness supplied by the Council's approved medical practitioner. The driver will need to submit the 'Statement of Fitness' to the Council for determination.

5. Outcome

If the statement confirms that the driver is able to undertake the duties and is fit for work, the temporary Exemption Notice must be returned to the Council and the driver will be expected to resume normal duties. If the temporary Exemption Notice is not returned to the Council, the driver's licence could be suspended until such time as the Notice is returned and driver will be referred to the Licensing Sub-Committee.

If the statement of fitness confirms that the driver is able to undertake duties, with reasonable adjustments, a further temporary Exemption Notice of up to 3 months may be issued. It is expected that within those 3 months, the driver will undertake the reasonable adjustments to allow a return to full duties. At the end of 3 months, the temporary Exemption Notice must be returned to the Council and the driver will be expected to resume normal duties. If the temporary Exemption Notice is not returned to the Council, the driver's licence could be suspended until such time as the Notice is returned and the driver will be referred to the Licensing Sub-Committee.

If the statement of fitness confirms that the driver is temporarily unfit to carry passengers in wheelchairs and / or assistance dogs, a temporary Exemption Notice will be granted for the length of time as determined by the approved practitioner. The driver will then be expected to attend a further assessment / consultation with the approved practitioner prior to the expiry date of the temporary Exemption Notice.

If the driver is declared permanently unfit to carry passengers in wheelchairs and / or assistance dogs, an Exemption Notice will be issued. The Exemption Notice must be displayed prominently in the vehicle for public viewing. The exemption may be reviewed every 5 years, with reference to expert medical evidence / advice and each case will be determined on an individual basis. This could include a further referral to the approved practitioner.

If the driver disagrees with the medical recommendation and subsequent determination by the Council, the matter will be referred to the Licensing Sub-Committee for consideration.

6. Dispute Resolution

If a driver does not agree with the decision of the Licensing Sub-Committee, he / she is able to appeal the decision through the Magistrates' Court. The driver has 28 days from the date of refusal to appeal

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Appointment to Licensing Sub Committees

REPORT TO LICENSING COMMITTEE



DATE	14/06/2018
PORTFOLIO	Community and Environmental Services
REPORT AUTHOR	Imelda Grady
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EMAIL	igrady@burnley.gov.uk

PURPOSE

1. To obtain approval of the Licensing Committee for sub delegation of functions to a Licensing Act 2003 Sub Committee and to Taxi Licensing Sub Committees and for the appointment of Licensing Committee members to these sub committees.

RECOMMENDATION

2. (1) That a Licensing Act 2003 Sub Committee be established for the sub delegation of functions under the Licensing Act 2003 for a final hearing procedure.
- (2) That two Taxi Licensing Sub Committees be established for sub delegation of functions vested in the Licensing Committee relating to taxi licensing functions as set out in Part 3 of the Council's Constitution
- (3) That members be appointed to the sub committees on a rotational basis subject to their availability.

REASONS FOR RECOMMENDATION

3. For the efficient and effective discharge of the Council's Licensing Authority functions.

SUMMARY OF KEY POINTS

4. The Licensing and Gambling Acts do not require these sub committees to be politically balanced but it is the Council's current practise to apply the political balance calculation to all statutory and non-statutory groups wherever possible. Other forms of licensing are subject to the political balance rules. Seats on all sub committees will be allocated on a rotational basis between members subject to their availability.

Licensing Act 2003 Sub Committee

5. Section 10 of the Licensing Act 2003 allows for the powers vested in the Council to be discharged by sub committees of the Licensing Committee and the Council has previously passed a resolution to enable this function to be discharged in this way.
6. In 2008 two Licensing Act 2003 Sub Committees were established each comprising three members plus one substitute member and alternating between daytime and evening meetings. Since 2008 there has been a decline in the number of hearings required under this Act and in 2016 only one hearing was held. Due to the decline in the workload of this

committee only one sub-committee needs to be established and because the hearings under this Act can lengthy and require attendance by the applicants legal representative(s) it is proposed that the committee meets during office hours..

Taxi Licensing Sub Committees

7. In 2014 Council allowed for the provisions with respect to taxis as set out in Part 3 of the Constitution and vested in the Licensing Committee, to be delegated to a Sub Committee comprising 7 members. Two 7 members sub committees were formed, one to meet during the daytime and one to meet in the evenings.
8. During 2016/17 it has been found that daytime meetings (usually at 10 a.m.) are the most convenient for officers. Also an increasing number of meetings are held to determine applications for renewal of private hire vehicle licences where the vehicles have exceed the upper age limit of 8 years as defined in the Council's vehicle age limit policy. This requires Committee members to inspect the vehicles and this is best done during daylight hours.
9. Taxi licensing hearings can be lengthy, often going beyond 2 hours and in the evening this requires the town hall to remain open beyond 8 pm. Evening meetings also incur time off in lieu for officers and this can have a significant impact on office cover during the working day especially where departments face reduced staffing levels.
10. However holding only daytime meetings results in a greater workload for some members whilst others i.e. those that can only attend evening meetings do not gain the experience of sitting on hearings.
11. To try and balance this out and after consultation with the Head of Governance Law Property and Regulation and the Chair of the Licensing Committee, it is proposed that evening meetings continue but on a reduced basis of 1:3 and that they start at 5.30 pm. Where there are vehicle licence renewal applications these would continue to be held during the day.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

12. None arising from this report

POLICY IMPLICATIONS

13. None

DETAILS OF CONSULTATION

14. Internal

BACKGROUND PAPERS

15. None

FURTHER INFORMATION

PLEASE CONTACT:

ALSO: