

To: Regulatory Functions Board

On: 29th March 2018

Report by: Director of Finance and Resources

Heading: Taxi and Private Hire Car Drivers' Licences: Medical Evidence

1. Summary

- 1.1 The purpose of this report is to seek a review of the Council's current policies and practices requiring certain applicants for, and holders of, taxi and private hire car drivers' licences to produce medical evidence confirming their fitness to drive.
 - 1.2 The report also identifies a number of related issues in relation to those current practices and policies and recommends a proposal for consultation.
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2. Recommendations

- 2.1 It is requested that the Board:-
 - 2.1.1 Approve the terms of the proposal set out at Appendix 1 and the terms of the proposed letter at Appendix 2, relating to requests for medical evidence, as suitable for the purposes of consultation;
 - 2.1.2 Authorise officers to consult on those proposals with: all taxi and private hire car drivers; representatives of the medical profession, and the Council's occupational health advisers; and to report the responses to the consultation to the Board thereafter;
 - 2.1.3 Otherwise note the contents of the report.

3. Background

3.1 The Council's current standard conditions of taxi drivers' and private hire car drivers' licences require drivers of these vehicles who are aged 65 or over to produce a medical certificate annually within 14 days of each birthday to confirm their fitness to hold a taxi or private hire car driver's licence. The terms of standard condition 21 (which relates to taxi drivers' licences) and standard condition 19 (which relates to private hire car drivers' licences) are respectively as follows:-

3.1.1 "21. The holder of a taxi driver's licence shall be 21 years of age or older when first licensed and all drivers aged 65 years or over shall produce a medical certificate annually within 14 days of their birthday to confirm their continued fitness to hold a taxi driver's licence."

"19. You must be at least 21 to get a licence. If you are 65 or over, within 14 days of each birthday you must provide us with a medical certificate to confirm you are fit to hold a private hire car driver's licence."

3.2 The Council also has an established practice of asking applicants on their applications for grant or renewal of their licence to confirm whether they have a medical condition that could affect their ability to drive. Where an applicant declares such a medical condition, the Council's practice has been to ask applicants to provide a medical certificate in similar terms. The cost of these medical certificates, if any, is currently met by the driver/ applicant. Where medical evidence cannot be obtained, or is in equivocal terms, the Council arranges a referral of the person to the Council's independent occupational health advisers. The Council meets the cost of this referral.

3.3 The Council has received correspondence from medical practitioners raising concerns about the above procedures. While most General Practitioners appear to be content to provide a medical report to their patients setting out whether they have any concerns which may be relevant to a driver's fitness to drive a taxi or private hire car, a small number of complaints have stated that it is not appropriate for a General Practitioner to confirm a taxi or private hire car driver's fitness to drive these vehicles. Further to receipt of this correspondence, officers have undertaken a review in relation to the above practices.

3.4 The requirement that licensed drivers provide an annual medical certificate after they attain the age of 65 years has applied in Renfrewshire for many years. The Council is not legally obliged to request medical evidence from applicants under the terms of the Civic Government (Scotland) Act 1982 ("the 1982 Act"). Officers have considered the terms of the Scottish Government's "Taxi and Private Hire Car Licensing: Best Practice Guidance for Licensing Authorities" which was last published in 2012. This Guidance states that an age limit may not be necessary for drivers provided that regular medical checks are made. The Guidance does not provide any suggestion as to from what age such checks may be appropriate. Officers have considered whether there should be an age specified at all at which further medical checks should

be required and, if so, whether those checks should continue to be carried out from age 65, as at present, or whether a different age should be specified.

4. Legal Background

- 4.1 Section 13(4) of the 1982 Act gives the Council the power, at any time, to require an applicant for or holder of a taxi driver's licence or private hire car driver's licence to submit to a medical examination at the Council's expense by a medical practitioner nominated by them. There must however be a reason for such a request. The purpose of invoking this power is for the Council as licensing authority to satisfy itself that the driver is fit to drive a taxi or private hire car.
- 4.2 The Equality Act 2010 ("the 2010 Act") prohibits discrimination against people based on a number of specified protected characteristics, including age. Direct discrimination is not permissible, except on the basis of age where it can be objectively justified.
- 4.3 The Board will therefore wish to consider whether the existing approach can be objectively justified. The vast majority of licensed drivers are likely to be fit to drive. The question which arises is whether any age can be objectively justified, and if so, at what age should any such limit be set?
- 4.4 The State Retirement Age ("SRA") was historically 65, and therefore an indicator of an anticipated end to a person's normal working life. This was the position when the above licensing conditions and practices were introduced. However State Retirement Age has now increased and indeed varies with a person's date of birth. It is possible that the SRA will continue to increase in line with increases in life expectancy. It is also the case that working patterns have changed with more flexible approaches being taken to retirement.

5. DVLA Position

- 5.1 The current position in the United Kingdom is that when a driver reaches the age of 70 his DVLA driving licence expires and he requires to submit an application for renewal to the DVLA. The renewed licence is normally valid for a period of three years. The driver must disclose any medical conditions on the DVLA application form. The DVLA may then write to the driver's GP, making further enquiries with regard to the medical condition.
- 5.2 In other circumstances, including where a driver suffers from a relevant medical condition but is under age 70, DVLA may issue a licence for a shorter period, or may revoke a licence. Other rules apply in relation to the age at which DVLA licences require to be renewed where the licence issued is a Group 2 driving licence (to drive lorries and small buses), as further set out at Paragraph 7.1 to 7.3 of this report.

6. Options

- 6.1 Given the information set out above and given the concerns expressed by members of the medical profession about the current terms of medical requests sent to drivers, the following options could be considered:-

6.1.1 Abolish the current age/ medical check requirement

The Board may abolish the current practice and assess on a case by case basis to determine whether a driver who has declared a medical condition is fit to drive. This largely reflects the Council's existing practice in relation to drivers aged below 65 who have declared a medical condition at the time of applying for grant or renewal of their licence. In those cases, the Council asks the driver to produce medical evidence in the first instance and will refer the driver to its independent occupational health advisers where the medical evidence cannot be produced or is unclear. All applicants, irrespective of their age, could be asked to comply with these requirements alone, without additional checks based only on drivers' age. Alternatively, it would be possible for the Council as licensing authority to refer all drivers declaring a medical condition to its independent occupational health advisers. However, the volume of referrals required could have a significant impact on processing times for all applications and could have a result of preventing drivers operating while medical assessments were awaited. Additionally, the cost of referral of applicants would be significant and would require a substantial increase in licence application fees; under the terms of the 1982 Act the cost of the licensing system should be covered by the fees charged.

- 6.1.2 If the Board were to decide to remove the current requirements, there are existing safeguards already in place with regards to ascertaining the medical fitness of a driver. The application form for the grant or renewal of a taxi or private hire car driver's licence currently asks whether the applicant has a medical condition and asks the applicant to specify this. This should result in pre-existing medical conditions being brought to the attention of the Council as the licensing authority.

- 6.1.3 Further, as noted above, those who reach the age of 70 years require to renew their driver's licence with the DVLA and disclose pre-existing medical conditions. As the DVLA have deemed those between 65 and 70 fit to drive a vehicle, in terms of their Group 1 standards, it is reasonable to assume that the driver is fit to drive. Should the DVLA revoke, or refuse to renew, a driver's DVLA licence, any taxi or private hire car driver's licence issued by the Council will automatically cease to have effect in terms of Section 13(6) of the 1982 Act.

- 6.1.4 However, if the Board agrees to adopt this option, the Board may wish to give consideration to the Council's procedures in relation to grant and renewal of taxi and private hire car drivers' licences which are applied for shortly prior to and after attaining age 70. Given the normal duration of licences issued under the 1982 Act, where a driver seeks grant or renewal of a licence shortly before his 70th birthday a resulting licence would in the normal course expire after

expiry of the DVLA licence. This situation would then likely repeat at the stage of subsequent renewals under the 1982 Act. As a result, these licences are either granted under delegated powers, with the agreement of the applicant, until the date of expiry of the DVLA licence or, otherwise, for the normal duration of a licence under the 1982 Act if the applicant gives an undertaking to the Board to provide evidence that his DVLA licence has been renewed.

- 6.1.5 There is at present no formal policy regulating this and applications are considered, where appropriate, by the Regulatory Functions Board. The Board may wish to address this by way of a new condition of licence in the following terms-

“Should your DVLA driving licence fall to be renewed during the period of this licence, you require to exhibit evidence to the Council, within 14 days of expiry of your DVLA licence renewal date, that you have obtained a new driving licence from DVLA to cover the duration of your [taxi/ private hire car] driver’s licence.”

- 6.1.6 It is recommended that the Council consult with taxi and private hire car drivers, its independent occupational health advisers and representatives of the medical profession on the proposal set out at Appendix 1. Further, it is recommended, given the concerns raised by members of the medical profession, that the Board agree the terms of Appendix 2, which contains style correspondence for future requests for medical evidence, as suitable for consultation. The consultation proposal also envisages that the terms of the existing licence condition for drivers, which at present covers drivers over the age of 65, is amended accordingly. The proposed amended condition would require all drivers with a medical condition capable of affecting their ability to drive to disclose this medical condition to the Council immediately, which would allow the Council to monitor the fitness of drivers during the currency of their licences.

6.2 Abolish current policy practice and adopt another age limit

- 6.2.1 The Board could, alternatively, retain an age other than 65 at which medical checks are required.
- 6.2.2 As stated above, any age set would require to be objectively justified. In this regard, the state retirement age may no longer be seen as an appropriate choice given that the state retirement age now differs, according to the date on which a person was born.
- 6.2.3 Should the Board wish to adopt a policy providing that medical evidence should be produced or obtained on attainment of another age, it is therefore the view of officers that it would be preferable to do so with reference to age 70. This would then coincide with the age at which DVLA licences normally fall to be renewed, usually for three yearly periods. It is the view of officers that this age could more easily be objectively justified on that basis. The Board may however take the view that simply linking medical checks to age is not an

appropriate policy and could be seen as a duplication of the licensing system operated by DVLA.

- 6.2.4 Should the Board prefer to consult on the introduction of a new age limit, it is the view of officers that the additional condition set out at Paragraph 6.1.5 and the changes proposed to the terms of current licence conditions and correspondence set out at Paragraph 6.1.6 be considered during that consultation.

6.3 Retain the status quo with amendment of the requirements

- 6.3.1 Should the Board, notwithstanding the issues set out at Paragraphs 4.1 to 4.4 above, decide to retain the current practice of requiring applicants to provide medical evidence in the first instance, either on declaration of a medical condition or annually after age 65, it is the view of officers that the terms of the current request, and the condition applying to drivers over 65, should be amended to require an applicant to produce a medical certificate confirming whether their doctor is aware of any medical condition which could render them unfit to drive a private hire car, as set out in the correspondence at Appendix 2. This would address some of the concerns raised by the medical profession about the current practice and would continue, as at present, to allow the Council to obtain a report from its independent occupational health advisers in the event of a report being received which raises potential concerns as to fitness to drive.

7. Driving Standards

- 7.1 The information above, particularly in relation to DVLA renewals at age 70, reflects the procedure in relation to the DVLA Group 1 standard of fitness to drive, which relates to cars and similar vehicles (which may be used as taxis and private hire cars). However, in relation to drivers of lorries and small buses, a DVLA Group 2 standard applies. This can involve more stringent standards of assessing driver fitness. In the case of Group 2 drivers, renewal of licences is first required at an earlier age than with Group 1 licences and at regular intervals thereafter.
- 7.2 The Scottish Government's Taxi and Private Hire Car Licensing: Best Practice Guidance for Licensing Authorities (Second Edition, April 2012) states in this regard that it is common for licensing authorities to apply the Group 2 standards to applicants for taxi and private hire car drivers' licences. The practices of local licensing authorities vary across the country with some authorities asking applicants for licences (or licence holders) to provide medical evidence as to their fitness to drive in the first instance and other authorities sending those with declared medical conditions (or who have reached a certain age) to their occupational health providers. Some other authorities, who apply a Group 2 standard, require completion by the driver's General Practitioner of a DVLA form (D4) and may subsequently seek an opinion from their occupational health advisers.

- 7.3 While the adoption of a Group 2 standard of fitness to drive could lead to more stringent assessment of drivers' fitness, it should be noted that these standards have not previously been applied to taxi or private hire car drivers in Renfrewshire. Accordingly, a new Group 2 standard, if introduced for all taxi and private hire car drivers in Renfrewshire, could result in a significant number of drivers no longer meeting the policy standard, despite them having been licensed for many years without issue. The introduction of a new Group 2 standard could therefore result in existing drivers being refused renewal of their licence, or in having their licences suspended or revoked. It would be open to those drivers to appeal such a decision to the sheriff court. As any assessment by occupational health advisers requires to be met at the Council's expense, cost considerations would arise in the event of such a change of policy. As such, it is not recommended that any change be made to the current standard in the absence of a full consultation with the taxi and private hire car trades on the issue and a detailed equality impact assessment.

8. Recommended Option

- 8.1 It is recommended that the Board agree to consult with taxi and private hire car drivers, representatives of the local medical profession and the Council's occupational health advisers on the consultation proposal at Appendix 1 and the proposed style correspondence at Appendix 2.
- 8.2 The Council has existing procedures in relation to medical reports in respect of requests for exemption from assisting wheelchair passengers. It should be noted that there are no recommendations within this report to change those practices. A further report may be submitted to the Board in relation to requirements to assist disabled passengers.

Implications of the Report

1. **Financial** – None at this stage. Following consultation, should the Board decide to adopt a policy which may a higher number of drivers to be independently assessed by the Council's occupational health advisers, there could be potential considerable additional costs which may have to be met from an increase in licence application fees.
2. **HR & Organisational Development**- None
3. **Community/Council Planning** –

Building strong, safe and resilient communities – The improvement of the licensing regime will help contribute to safer communities.
4. **Legal**- As detailed in the report.

5. **Property/Assets-** None
6. **Information Technology-** None
7. **Equality & Human Rights –**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report, as the report at this stage outlines a proposal for consultation, which should ensure that applicants and licence holders are treated similarly. Following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored if required.

8. **Health & Safety-** None
9. **Procurement-** None
10. **Risk-** None
11. **Privacy Impact-**None
12. **Cosla Policy Position-** None

List of Background Papers

- (a) Background Paper - none

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APPENDIX 1

Proposal for Consultation

The Council as licensing authority is reviewing its existing practices in relation to the obtaining of medical evidence from applicants for, or holders of, taxi and private hire car driving licences.

The Regulatory Functions Board in this regard considered a report setting out a number of options at its meeting on 29th March 2018. A link to this report, setting out these options, is provided below.

[link to be inserted]

The Board's preferred option at this stage, upon which your views are sought, is that the current requirement that drivers of these vehicles automatically provide a medical certificate at age 65 and annually thereafter be removed. Instead, the position for those drivers would reflect the existing practice that any of those drivers who have declared a medical condition would be asked to provide a medical report from a medical practitioner. The terms of a letter which is proposed to be sent to applicants for a licence/ licence holders in these circumstances is attached [Appendix 2 to this report]

It is proposed however that the Council will in consequence of this change adjust its procedures in relation to the grant and renewal of licences where a driver is about to reach, or has reached, the age of 70, when DVLA licences require to be renewed and for shorter periods. It is proposed that this would be achieved by attaching the following condition to taxi and private hire car drivers' licences-

"Should your DVLA driving licence fall to be renewed during the period of this licence, you require to exhibit evidence to the Council, within 14 days of expiry of your DVLA licence renewal date, that you have obtained a new driving licence from DVLA to cover the duration of your [taxi/ private hire car] driver's licence."

It is also proposed that the existing conditions of taxi and private hire car drivers' licences be amended as follows-

Taxi Drivers

"21. The holder of a taxi driver's licence shall be 21 years of age or older when first licensed. All drivers with a medical condition capable of affecting their ability to drive shall immediately disclose this condition to the Council and may be called upon to produce a medical certificate to confirm whether their doctor is aware of any medical condition which could render them unfit to drive a taxi"

Private Hire Car Drivers

"19. You must be at least 21 to get a licence. All drivers with a medical condition capable of affecting their ability to drive shall immediately disclose this condition to the Council and may be called upon to produce a medical certificate to confirm whether their doctor is aware of any medical condition which could render them unfit to drive a private hire car."

APPENDIX 2

Dear Sir

CIVIC GOVERNMENT (SCOTLAND) ACT 1982 GRANT/ RENEWAL OF A PRIVATE HIRE CAR DRIVER LICENCE

I refer to the above application which you lodged at this office on [date].

As you have declared a relevant medical condition I would advise that I require sight of a letter from a medical practitioner, such as your GP, confirming whether s/he is aware of you having any medical condition which would cause them to advise you that it could affect your fitness to drive.

Please arrange to exhibit a doctor's letter including the information requested above to this office within 21 days from the date of this letter. Please note that the progress of your application will depend on the outstanding documentation being produced.

Yours faithfully,