

Cheltenham Borough Council
Council – 12 December 2011
Adoption of Hackney Carriage Byelaws

Accountable member	Cabinet Member Housing and Safety - Councillor Klara Sudbury
Accountable officer	Director of Operations - Rob Bell
Accountable scrutiny committee	Social & Community Overview and Scrutiny Committee
Ward(s) affected	All
Key Decision	No
Executive summary	
Recommendations	That Council RESOLVE to the Hackney Carriage byelaws dated 22nd November 1951 be repealed and the revised model byelaws attached as Appendix 2 be adopted.

Financial implications	There are no financial implications relevant to this report. Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125
Legal implications	As contained in the report Contact officer: Martin Aylett, martin.aylett@teWKesbury.gov.uk, 01684 27 2015
HR implications (including learning and organisational development)	No direct HR implications arising from this report Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 26 4355
Key risks	As outlined in Appendix 1
Corporate and community plan Implications	None

1. Background

- 1.1 On the 7th of October 2011 the Licensing Committee resolved to recommend to Full Council the adoption of new byelaws for Hackney Carriages (for the avoidance of doubt a Hackney Carriage is also known as a Taxi).
- 1.2 The Council's constitution delegates the power to make and revoke byelaws to Full Council on the recommendation of the Licensing Committee the Council is therefore asked to consider the adoption new model byelaws for Hackney Carriages.

Power to set Hackney Carriage Conditions & Byelaws

- 1.3 Cheltenham Borough Council is responsible for the licensing of Hackney Carriage drivers and vehicles and Private Hire drivers, vehicles and operators.
- 1.4 The Council has powers under Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 to attach to the grant of a licence such conditions as it considers reasonably necessary.
- 1.5 However, the power to attach conditions to the granting of a licence under Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 does not extend to the issue of Hackney Carriage driver's licences.
- 1.6 The only means of conditioning a Hackney Carriage driver's licence is by way of adopted bylaws made under the section 68 of the Town Police Clauses Act 1847 and section 171 of the Public Health Act 1875.
- 1.7 Section 68 of the Town Police Clauses Act 1847 states that byelaws can be used for:-
 - (a) regulating the conduct of proprietors and drivers of hackney carriages plying for hire within the Borough of Cheltenham, determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their duty,
 - (b) regulating the manner in which the number of each carriage shall be displayed,
 - (c) regulating the number of persons to be carried by hackney carriages, and in what manner such number is to be shown on vehicles,
 - (d) fixing the stands of such hackney carriages, and the distance to which they may be compelled to take passengers,
 - (e) fixing the rates or fares and for securing the due publication of such fares,
 - (f) securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

Current Hackney Carriage Byelaws

- 1.8 The Council's current Hackney Carriage byelaws date back to November 1951.
- 1.9 Clearly since then there have been significant changes and improvements across the board affecting vehicle manufacture, taxi meter technology, law, regulations and general licensing approaches.
- 1.10 Given that byelaws are the only means by which the Council can condition the issue of a Hackney Carriage driver's licence, it is important that these are correct and up to date in order to make them practical and enforceable.

The Department for Transport Model Byelaws for Hackney Carriages

- 1.11** The Department for Transport (“DfT” hereafter) has developed a set of model byelaws for Hackney Carriages. These model byelaws are attached at **Appendix 2**.
- 1.12** The model byelaws were contained in the DfT’s Hackney Carriage Byelaws Guidance Notes issued in July 2005 and have been brought up to date and is a nationally accepted set of byelaws.

Relevant Considerations when setting Hackney Carriage Byelaws

- 1.13** When considering making hackney carriage byelaws the DfT suggests that as a first step, licensing authorities will want to consider whether their regulatory objectives - in terms of exerting controls over taxi owners and drivers - can best be achieved by attaching conditions to licences or by making byelaws.
- 1.14** Having considered the matter carefully, the DfT takes the view that the byelaw making power in the 1847 Act should be considered in the context of local authorities' wider responsibilities in relation to hackney carriage licensing i.e. that the purpose of the power is to enable local licensing authorities to regulate hackney carriage drivers and proprietors in such a way as to ensure that they are fit and proper persons and in order to ensure the safety of the travelling public.

Additional Control Measures, Omissions or Amendments to Byelaws

- 1.15** The updated model byelaws introduced a number of additional control measures, omissions and amendments to the Council's current Hackney Carriage byelaws. The additional control measures, omissions and amendments are listed in **Appendix 3** with officer comments.
- 1.16** To ensure effective control of Hackney Carriage licensing in the borough, it is important that the Council adopts the additional control measures.

Deviations from the Model Byelaws

- 1.17** As already mentioned, the DfT would expect local authorities to base their byelaws on the model.
- 1.18** Regardless of this however, there is scope for the Council to deviate from the model. Reasons for deviating from the model will normally be based on achieving certain policy objectives not addressed in the model.
- 1.19** Where the Council wishes to introduce a new byelaw which deviates from the model, the DfT expects the Council to take a rigorous approach in drafting to ensure that the tests of legal validity are met. The 4 elements essential to validity are:
- byelaws must be within the powers of the local authority which makes them;
 - byelaws must not be repugnant to the general law;
 - byelaws must be certain and positive in their terms; and
 - byelaws must be reasonable.
- 1.20** Any request for provisional approval of byelaws which deviate from the model should be accompanied by an explanation of the policy objective, a justification of their validity and confirmation that the byelaws have been approved by legal advisers.
- 1.21** The Local Government Act 1972 gives the Secretary of State power to confirm or refuse byelaws which are submitted to him and confirmation depends on validity.

- 1.22 The principal element of the Secretary of State’s approval and confirmation process will involve consideration of the policy issues, mainly whether the objective is reasonable and the byelaw appropriate to achieve it.
- 1.23 Although there is scope for the Council to deviate from the model, officers do not consider this to be necessary. The Council adopted a comprehensive Taxi and Private Hire policy that took effect on the 1st of December 2010. This policy together with the model byelaws is considered sufficient to ensure applicants are fit and proper persons and to ensure the safety of the travelling public. It is therefore considered that the model bye laws provide a pragmatic solution to Cheltenham Borough Council’s current out of date bye laws.

2. Reasons for recommendations

- 2.1 To ensure that the Council can effectively discharge its licensing function under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

3. Alternative options considered

- 3.1 The Council can resolve not to adopt the updated DfT model byelaws. However, this is not a desirable outcome and could pose a number of risks to the Council as outlined in **Appendix 1**.
- 3.2 Alternatively, the Council can resolve that certain policy objectives are not addressed in the model and can seek to add additional byelaws although again officers do not consider this to be necessary.

4. Consultation and feedback

- 4.1 On the 13th of May 2011 the Licensing Committee approved the proposed DfT model byelaws for the purpose of consultation.
- 4.2 In line with Cabinet Office recommendations a 12 week consultation was undertaken with the Hackney Carriage trade between May and August 2011 on the adoption of new model Hackney Carriage byelaws.
- 4.3 During the consultation, one response from Mr Dave Heather (HCD101) was received. A copy of his comments and officer response that was submitted to the Licensing Committee for consideration is attached at **Appendix 4**.
- 4.4 On the 7th of October 2011 the Licensing Committee resolved to recommend the adoption of the model byelaws by Full Council.

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<p>Appendices</p>	<ol style="list-style-type: none"> 1. Risk Assessment 2. DfT Model Hackney Carriage Byelaws 3. Additional Control Measures, Omissions or Amendments to Byelaws 4. Consultation Comments
<p>Background information</p>	<ol style="list-style-type: none"> 1. Report "Review of Hackney Carriage Byelaws" and minutes for the Licensing Committee hearing on the 13th of May 2011. 2. Report "Hackney Carriage Byelaws" and minutes for the Licensing Committee hearing on the 7th of October 2011. 3. DfT Hackney Carriage Byelaws – Guidance and Model Byelaws, July 2005.

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-4	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the Council does not resolve to adopt the updated byelaws there is a risk that it cannot effectively discharge its licensing function under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.	Senior Licensing Officer	December 2011	3	4	12	Adoption	Adoption of the Updated Hackney Carriage Byelaws	No Statutory Deadline	Senior Licensing Officer	No
	If the Council does not resolve to adopt the updated byelaws there is a risk that public safety could be comprised by out of date control measures.	Senior Licensing Officer	December 2011	2	3	6	Adoption	Adoption of the Updated Hackney Carriage Byelaws	No Statutory Deadline	Senior Licensing Officer	No
	If the Council does not resolve to adopt the updated byelaws there is a risk that the Council could be subject to legal challenge for not enforcing its own adopted byelaws.	Senior Licensing Officer	December 2011	1	2	2	Adoption	Adoption of the Updated Hackney Carriage Byelaws	No Statutory Deadline	Senior Licensing Officer	No