

Regulatory Committee

1.30pm, Monday, 22 October 2018

Taxi and Private Hire Car Drivers Disqualified From Driving or Who Otherwise Cease To Hold A Valid Driving Licence

Item number	7.5
Report number	
Executive/routine	
Wards	Citywide
Council Commitments	N/A

Executive Summary

The report clarifies the Council's position with regard to Sections 13(3) and (6) of the Civic Government (Scotland) Act 1982 specifically with regard to the to the status of a Taxi or Private Hire Car (PHC) Driver's licence in circumstances where licence holders are disqualified or otherwise cease to hold a valid driving licence.

This position will have a direct impact on any licence holder whose driving licence is revoked or suspended by DVLA or who is banned from driving by the courts.

Taxi and Private Hire Car Drivers Disqualified From Driving or Who Otherwise Cease To Hold A Valid Driving Licence

1. Recommendations

The Regulatory Committee is asked to note:

- 1.1 In accordance with the requirements of Section 13(3) of the Civic Government (Scotland) Act 1982 ('the 1982 Act') in relation to taxi and private hire car drivers' licences, as a Licensing Authority, the Council cannot grant any new licence unless the applicant has held their driving licence continuously for the 12 months immediately prior to the date of application;
- 1.2 There is no discretion under the legislation, and therefore any application which does not meet this requirement will be refused under existing delegated powers; and
- 1.3 The current approach of the Council in interpreting the legislation and considering applications for licence is as set out in this report.

2. Background

- 2.1 Section 13(3) of the 1982 Act requires drivers to have continuously held a driving licence for 12 months prior to the date of application for a taxi or private hire car ('PHC') driver's licence
- 2.2 An amendment to the 1982 Act by the Criminal Justice and Licensing (Scotland) Act 2010 clarified that the 12 month period had to be immediately prior to the date of the application and not a continuous period of 12 months at any time. This came into effect on 1 November 2011.
- 2.3 Where an existing licensed taxi or PHC driver is disqualified from driving or otherwise loses their driving licence, section 13(6) of the 1982 Act applies. This states that "If a person holding a licence [Taxi or PHC Driver] ceases for any reason to be authorised by law to drive on a road the vehicle to which the licence relates, the licence [Taxi or Private Hire Driver] shall cease to have effect."
- 2.4 "Ceasing to be authorised by law..." would include disqualification from driving (e.g. in relation to criminal matters). Importantly this would also apply in a

situation where a licence had been revoked by the DVLA because of medical or other reasons

- 2.5 The provisions of section 13(6) confirm that any existing taxi or PHC driver who ceases to be authorised in law to drive will no longer have a valid Taxi or PHC driver's licence. Reinstatement of a DVLA driving licence does not reinstate a Taxi or PHC driver's licence. It is the Council's view that those individuals wishing to resume that licensed activity are required in terms of section 13(3) of the 1982 Act to wait a minimum of 12 months from the date their DVLA driving licence is restored before they can submit an application to the Council for a new licence.
- 2.6 The change to legislation and guidance were previously reported to the Regulatory Committee on 20 June 2014.

3. Main report

Current Legislation

- 3.1 Section 13 (6) of the 1982 Act states that where a person ceases for any reason to be authorised to drive on the road a vehicle to which the licence relates, the licence shall cease to have effect.
- 3.2 Generally, there are three reasons why a driver may cease to be authorised:
 - 3.2.1 Disqualified by the Courts because of a driving ban or totting up of penalty points endorsed on the licence;
 - 3.2.2 Medical Suspension; or
 - 3.2.3 Failure to renew a licence.
- 3.3 In the Council's current Taxi and PHC licensing conditions there is a requirement of licensed drivers to advise the Council of any material change in circumstances, current practice is that the department views a loss of DVLA driving licence as such a material change in circumstances.
- 3.4 The Council currently grants a taxi or PHC Driver's licence for either one or three years.
- 3.5 There have been a number of recent cases where a driver banned from driving by the Courts has failed to advise the Council of this. Drivers in these circumstances had not notified or returned their licence to the Council and upon the completion of the ban have resumed driving a taxi or private hire car.
- 3.6 These cases are typically picked up when Police Scotland is consulted upon receipt of a renewal application at some point after the ban. Questions have been raised by the trade about what the Council's approach is.

- 3.7 It is the view of Council officers that if a licensed taxi or PHC driver is banned from driving then:
- 3.7.1 The Taxi/PHC Driver's licence ceases to have effect in terms of section 13(6) of the 1982 Act;
 - 3.7.2 The licence holder loses the right to drive a Taxi/PHC vehicle;
 - 3.7.3 The licence holder is required to advise the Council of the loss of the driving licence in terms of standard licence conditions 164 and 241 and to return the Taxi/PHC Driver's licence and badge immediately;
 - 3.7.4 The 1982 Act contains no provision which would allow a licence which 'ceases to have effect' to be brought back into effect e.g. at the end of a driving ban. Therefore to all intents and purposes the Taxi/PHC Driver's licence no longer exists and cannot be renewed as it ceases to have effect;
 - 3.7.5 Any application for a renewal of a licence within this period will require to be refused unless the applicant has held a DVLA driver's licence 12 months immediately prior to the date of application.

Consequences for Licenced Taxi/PHC Drivers

- 3.8 Where a licensed taxi or PHC driver loses their licence as a result of a medical issue and a new application for licence is made, the Council must consider whether DVLA confirms that in the 12 months immediately prior to the date of application the applicant has held a DVLA driver's licence. Where a driver is unsure of the effect of surrendering their driver's licence to DVLA the advice to the driver remains that they should seek their own legal advice immediately because if the DVLA states that a driver has not held their driving licence for a continuous period of 12 months immediately prior to making the application for licence then in terms of section 13(3) of the 1982 Act the Council has no discretion to grant a licence.
- 3.9 It is important to note that, where a licence holder loses their driving licence on medical grounds, and then regains it, this rule also applies. There will be a 12 month gap before the licence holder can apply to the Council to resume operating as a taxi or PHC driver. As the Council considers that it has no discretion on this issue in terms of the legislation, a committee hearing for an application that otherwise attracted no objections or representations would be unnecessary. Any relevant application will be determined under existing delegated powers.
- 3.10 Similarly where a DVLA licence has expired then again this will prevent renewal unless DVLA confirms that the licence has been held for a continuous 12 month period immediately prior to an application for licence being made.

- 3.11 The view of Council officers is that although Section 13(6) of the 1982 Act uses the words "ceases to have effect" rather than "expire", when the driving disqualification ends, the taxi or PHC driver's licence does not then come back into effect. The 1982 Act does not set out any limitation to the period for which a licence will cease to have effect under section 13(6) and there is no statutory provision for bringing a licence back into effect. The Council's view is therefore that the cessation of effect of the licence under section 13(6) is permanent and there is no statutory basis on which the licence can be revived.
- 3.12 There is no case law directly relevant to this area. The only case where the courts have dealt with a similar point is *Datelock Ltd v Bain 1998 SLT 381* where a licence that is in existence is distinguished from and a licence that had effect. That was, however, in the context of the Licensing (Scotland) Act 1976, which is now repealed. Whilst appearing similar in nature the Council's position is that this case is not directly relevant, as the holding of a liquor licence under that Act also involved issues of ownership and occupancy to property and landlords were sometimes tenants of the brewery.
- 3.13 Upon completion of a driving ban, it is the Council's view that a driver who wishes to resume driving a Taxi or a PHC must submit an application for a new licence and must satisfy the requirements of Section 13(3) to have held their driver's licence for a continuous 12 months immediately prior to the date of application.
- 3.14 It must be noted, notwithstanding the right to make an application the Council will must determine any valid application in accordance with the 1982 Act
- 3.15 The application process requires the Council to carry out statutory consultation with Police Scotland and allows the Council to make such reasonable enquiries as it sees fit with Council Services and the Council's Medical Provider in relation to a driver's fitness to hold a licence. Any previous driving ban may be a relevant factor for the committee to consider, should there be an objection to the application on the grounds the application may not be 'fit and proper'.
- 3.16 The Committee is asked to note the Council's interpretation of sections 13(3) and (6) of the 1982 Act based on the Council's duty to have regard to public safety in carrying out its licensing function and the fact that 1982 Act affords the licensing authority no discretion in these matters.

4. Measures of success

- 4.1 That the Council deals with any licence application according to the relevant statutory provisions and which places public safety at the centre of its determination process.

5. Financial impact

- 5.1 The Council's scale of fees for licensing applications was approved with effect from 1 April 2018. Any costs associated with this report will be contained within the current ring-fenced income generated from licence application fees.

6. Risk, policy, compliance and governance impact

- 6.1 This report is intended to clarify the Council's view on this aspect of the Civic Government (Scotland) Act 1982. All applicants have a right of appeal to the Sheriff if their applications are refused. The application considerations outlined in this report are within the scope of the existing scheme of delegation for officers.
- 6.2 Legal risk of challenge to the Council's stated interpretation of the legislation is possible, given that all licence applicants have a right of appeal. The Council considers that there is also a risk that the council could be challenged if it did not take this approach, on the grounds that it would be acting beyond its statutory powers if it granted licences in contravention of section 13(3) of the 1982 Act. Where an application is not accepted because it is not valid, any aggrieved party could seek judicial review.
- 6.3 The Council notes that interpretation of the sections of the legislation referred to in this report is untested by the courts, and if necessary would intend to defend any challenge with the aim of obtaining a decision through the appeals process. This would bring further clarity on this issue.

7. Equalities impact

- 7.1 The contents and recommendations described in this report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them.

8. Sustainability impact

- 8.1 There is no environmental impact arising from the contents of this report.

9. Consultation and engagement

- 9.1 If the Committee agrees, steps will be taken to communicate the position outlined in this report to affected licence holders.

10. Background reading/external references

10.1 [Scottish Government Guidance on Taxi and Private Hire Cars](#)

10.2 [City of Edinburgh Council Taxi and PHC Driver and Vehicle Licensing Conditions](#)

11. Appendices

Appendix 1 – Section 13 Civic Government (Scotland) Act 1982

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Appendix 1 – Section 13 Civic Government (Scotland) Act 1982

13 Taxi and private hire car driving licences.

- (1) A licence, to be known as a “taxi driver’s licence” or, as the case may be, a “private hire car driver’s licence”, shall, subject to subsection (2) below, be required for driving or otherwise having charge of a taxi or private hire car.
- (2) A private hire car driver’s licence shall not be required by the holder of a taxi driver’s licence for driving or otherwise having charge of a private hire car whilst in operation as such.
- (3) A licensing authority shall not grant a licence to any person under this section unless that person has held, throughout the period of 12 months immediately prior to the date of his application, a licence authorising him to drive a motor car issued under Part III of the Road Traffic Act 1972 or a licence which would at the time of his application entitle him to such a licence without taking a test, not being a provisional licence.
- (3A) licensing authority shall not grant a licence to any person under this section unless the authority is satisfied that the person is not disqualified by reason of the person's immigration status from driving a taxi or private hire car.
- (3B) Section 13A makes provision for the purposes of subsection (3A) about the circumstances in which a person is disqualified by reason of the person's immigration status from driving a taxi or private hire car.
- (3C) In determining for the purposes of subsection (3A) whether a person is disqualified by reason of the person's immigration status from driving a taxi or private hire car, a licensing authority must have regard to any guidance issued by the Secretary of State.
- (4) A licensing authority may, at any time, for the purposes of satisfying themselves that he is physically fit to drive a taxi or, as the case may be, private hire car, require an applicant for or holder of a taxi driver’s licence or private hire car driver’s licence to submit to medical examination, at their expense, by a medical practitioner nominated by them.
- (5) A licensing authority may require an applicant for a taxi driver’s licence a private hire car driver's licence to take a test of his knowledge of the area to which the licence is to relate, of the layout of roads in that area and such other matters relating to the operation of a taxi or, as the case may be, private hire car as the authority consider desirable, and the authority may refuse to grant a licence to a person who does not satisfy them that he has adequate knowledge of any of these matters.
- (6) If a person holding a licence under this section ceases for any reason to be authorised by law to drive on a road the vehicle to which the licence relates, the licence shall cease to have effect.