

Civic Government (Scotland) Act 1982**Private Hire Cars – Assessment of Overprovision****Report by Legal Services Manager****1. Purpose of the Report**

The purpose of this report is to ask Members to decide if they wish to undertake an overprovision assessment of a Private Hire Car licences in Midlothian overall or any individual locality within Midlothian.

2. Background

Members will all have received a petition in January from members of the taxi and private hire trade requesting “that there is an immediate cap on new private hire vehicles being licenced and being issued by Midlothian Council or at the very least a cap for the short term of 18 months whilst consultation takes place”. For reasons outlined below, an immediate cap is not legally competent. The petitioners were advised accordingly and an undertaking given that the matter would be referred to the General Purposes Committee to determine if they wished to undertake an overprovision assessment.

The Air Weapons and Licensing (Scotland) Act 2015 introduced a power from May 2017 to allow Councils to refuse to grant new private hire car licences on the grounds of overprovision.

In terms of the Act, “in satisfying themselves as to whether there is or would be overprovision in any locality, the licensing authority must have regard to:-

- (a) The number of private hire cars operating in the locality, and
- (b) The demand for private hire car services in the locality.

Due to those two tests, any immediate cap as requested in the petition would not be legally competent and the refusal of any private hire car on the basis of overprovision could be successfully appealed.

In October 2019, the Scottish Government published guidance to local authorities on implementation of the power to restrict private hire car numbers on the grounds of overprovision. This Guidance is attached as Appendix 1 to this report.

The Guidance notes that this is a discretionary power and states that as a first step, the Council will have to determine if they wish to undertake an assessment of overprovision of private hire cars. In order to determine this the guidance suggest the Council take into account factors such as:

- Whether they already restrict taxi vehicle numbers
- Views from the trade, both taxis and private hire car numbers
- Overall trends in vehicle numbers, are private hire car numbers increasing
- Churn, with licence holders failing to renew vehicle licences

The Council has previously imposed a cap on taxi licence numbers at 52 of which 48 are currently in operation, two are currently the subject of new applications and two are available for entrants to the trade.

The petitioners were able to gather 43 signatures in support of a cap over a very short period in January. I have however also been approached by other members of the private hire trade who have advised they are not in favour of a cap as it would prevent them from expanding and developing their existing businesses.

There are currently 146 private hire car licences in Midlothian. This reflects a marginal decrease in the number of licence holders from 153 in 2018 and 155 in 2017. It does however show that the level of churn ie owners not renewing their licences is exceeding the number of new entrants to the trade.

The Scottish Government suggests that local licensing authorities who decide that they wish to use the overprovision power should develop and consult on a formal overprovision policy. This may take account of:

- evidence of churn in applications, with private hire car vehicle licences not being renewed, which could suggest that there is insufficient trade available
- evidence from meetings with relevant trade bodies, both taxis and private hire cars, as well as other businesses with an interest
- evidence from consultation or engagement
- overall trends in private hire car numbers
- evidence of poor compliance by private hire cars, seeking to use taxis ranks or be hailed, which may suggest that there is insufficient trade available
- evidence of private hire car driver hours, drivers working excessive hours in order to make a living or evidence of excess demand
- overall ratio between the numbers of taxis and private hire car vehicles, many consumers are reliant on taxis to provide accessible vehicles etc. and an overprovision of private hire cars could endanger this
- evidence of an adverse impact on viability of taxis which provide a vital service to many consumers
- overall ratio between vehicle numbers and overall population within the area
- any other additional factors that they consider useful.

As a matter of good practice, any evidence gathered in a survey, together with an explanation of what conclusions have been drawn from it (and why) should be published. If private hire car quantity restrictions are to be established, their benefits to consumers and the reason for the particular level at which the number is set should be explained.

This level of work is required as if any refusal on the grounds of overprovision is appealed to the Sheriff Court, the Council will be required to prove to the satisfaction of the Court that it had satisfied itself that there was overprovision and such a policy would evidence this.

The Scottish Government commissioned an independent report in October 2019 advising how to carry out this exercise. The Report is attached as Appendix 2 to this Report. Failure to carry out a suitable assessment exercise in terms of this report would leave the Council vulnerable to successful challenge in the Courts.

The Licensing section essentially provides an administrative and legislative function and there is neither the skillset nor capacity to carry out such an assessment in-house. This work would require to be outsourced and discussions in the SOLAR Licensing Group have suggested an indicative cost for a Council the size of Midlothian of £15,000 to £20,000. There is no provision within the Licensing budget for such a sum which would have to be met from licensing fees.

3. Report Implications

3.1 Resource

As indicated above, the indicative cost of carrying out an assessment would be £15,000 to £20,000. This sum would have to be met from licensing fees which would require an increase in fees over a number of years.

3.2 Risk

If there is an unchecked overprovision of private hire car licences, existing owners may seek alternative employment whilst new entrants will be discouraged from applying for licences. If there are insufficient vehicles within Midlothian, customers will be deprived of a reliable service.

3.3 Single Midlothian Plan

Themes addressed in this report:

- ☐ Community safety
- ☐ Adult health, care and housing
- ☐ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value

☒ None of the above

3.4 Key Priorities within the Single Midlothian Plan

Not applicable.

3.5 Impact on Performance and Outcomes

Not applicable

3.6 Adopting a Preventative Approach

Not applicable

3.7 Involving Communities and Other Stakeholders

Should the Committee wish to carry out an assessment of overprovision, there would be full consultation not only with the taxi and private hire trades but also with the wider Midlothian Community

3.8 Ensuring Equalities

There are no equalities issues with regard to this report.

3.9 Supporting Sustainable Development

There are no sustainability issues with regard to this report.

3.10 IT Issues

There are no IT issues with regard to this report.

4. Recommendations

The Committee is requested to determine if it wishes to undertake an overprovision assessment of Private Hire Car licences in Midlothian overall or any individual locality within Midlothian

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