

Regulatory Committee

Date: **Tuesday, 18th December, 2007**

Time: **2.00 p.m.**

Place: **The Council Chamber, Brockington, 35
Hafod Road, Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

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**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Regulatory Committee

To: Councillor P Jones CBE (Chairman)
Councillor JW Hope MBE (Vice-Chairman)

Councillors CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, SPA Daniels,
JHR Goodwin, R Mills, A Seldon and DC Taylor

	Pages
1. APOLOGIES FOR ABSENCE To receive apologies for absence.	
2. NAMED SUBSTITUTES (IF ANY) To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
3. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the Agenda.	
4. MINUTES To approve and sign the Minutes of the meeting held on 20th November, 2007.	1 - 6
5. BRIEFING ON STREET TRADING To receive a presentation from the Officers dealing with Street Trading Licenses.	
6. PROCEDURAL ARRANGEMENTS To note the procedural arrangements for the meeting.	7 - 8
7. HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING - DEVIATION BY DIANA KAY KINSEY FROM VEHICLE LICENCE CONDITION NUMBER 2.1 To consider a report to licence a vehicle older than that which is allowed by the Council's licensing conditions.	9 - 10

8. **TO REVIEW LICENSED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES THAT HAVE BEEN MODIFIED: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847** 11 - 12

To consider a report about vehicles converted to taxis which do not meet the required standards.

9. **AMENDMENT HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS IN RELATION TO MODIFIED VEHICLES: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847** 13 - 14

To consider implementing revised vehicle licence conditions due to trade members converting vans to private hire and hackney carriage vehicle.

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below

10. **DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976** 15 - 18

To consider an application for a hackney carriage/private hire driver's licence.

11. **DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976** 19 - 22

To consider an application for a hackney carriage/private hire driver's licence.

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday, 20th November, 2007 at 2.00 p.m.

Present: Councillor P Jones CBE (Chairman)
Councillor JW Hope MBE (Vice Chairman)

Councillors: CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, JHR Goodwin, R Mills, A Seldon and DC Taylor

57. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Mrs SPA Daniels

58. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting.

59. DECLARATIONS OF INTEREST

Councillor A Seldon declared a prejudicial interest in respect of Agenda item 11 (minute No.67) and left the meeting for the duration of this item.

60. MINUTES

RESOLVED: That the Minutes of the meeting held on 23rd October, 2007 be approved as a correct record and signed by the Chairman

61. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATHS SP19 (PART) AND SP20 (PART) IN THE PARISH OF STOKE PRIOR.

The Rights of Way Manager presented a report and explained the circumstances surrounding an application for the making of a Public Path Diversion Order for part of Footpaths SP19 and SP20, Stoke Prior, under Section 119 of the Highways Act 1980. He also outlined the pre consultation work that had been undertaken by the applicant and provided the results of those consultations. The Local Member and the parish council had also been consulted and were agreeable to the proposals. The applicant had agreed to meet the costs of the Order, confirmation and associated adverts. The proposed diversion met the specified criteria as set out in section 119 of the Highways Act 1980 in that it would be of greater convenience to users.

The Committee agreed with the course of action suggested by the Rights of Way Manager that the Diversion Order should be made.

RESOLVED:
that a Public Path Diversion Order be made under Section 119 of the Highways Act 1980 in respect of parts of footpaths SP19 and SP20 as illustrated on drawing number D264/361 – 19/20.

62. HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER TO DIVERT PART OF FOOTPATH HN6 IN THE PARISH OF HENTLAND

The Rights of Way Manager presented a report and explained the circumstances surrounding previous attempts to make a Diversion Order under the provisions of the Town & Country Planning Act 1990 in respect of part of Footpath HN6, Hentland by the former Council. Although some progress had been made with it, there was no evidence to show that the Order had been confirmed or certified. The applicant was under the impression that it had been dealt with and had carried out the diversion works on site. The statutory consultees had raised no objections to the diversion at the time, and the Local Member and the parish council were happy with it. The applicant had previously paid for the order, confirmation and associated adverts and the proposals met the necessary criteria. The Diversion was in place and being used by the public with no problems having been encountered. The Rights of Way Manager explained why the Order could not be completed under the provisions of the Town and Country Planning Act 1990 but that it could be dealt with under Section 119 of the Highways Act 1980 at no further cost to the applicant.

The Committee agreed with the course of action suggested by the Rights of Way Manager that the Diversion Order should be made.

RESOLVED:

that a Public Path Diversion Order be made under Section 119 of the Highways Act 1980 in respect of footpath HN6, Hentland as illustrated on drawing number: D378/177-6, at the Council's expense.

63. AMENDMENT AND ADDITION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS

The Licensing Manager presented a report suggesting the implementation of revised vehicle licence conditions following abuse of the current; private hire and hackney carriage vehicle conditions by some of the trade. She said that the Licensing Section had received a number of complaints from members of the trade regarding the following matters:-

- (a) Operators are purchasing Wheel Chair accessible vehicles which are under five years of age. They are then replacing these vehicles with much older vehicles very soon after. The original vehicle is then being sold or used again to purchase another plate;
- (b) there used to be a condition where any replacement vehicle had to be the same or higher standard both in age and vehicle type, this was removed following the consultation at the recommendation of the Licensing Steering Group; which felt that it was too restrictive. The Licensing Section agreed to do this but advised the Group that if the system was abused the condition would need to be reconsidered; and
- (c) wheelchair accessible vehicles are being tested with a full capacity of eight seats, which means that the rear row of seats have to be removed to accommodate a wheelchair. Only wheelchair accessible vehicles, which are under 5 years of age, can get a new hackney carriage plate. The increase in numbers was made to provide a better service to disabled users. Many of these vehicles are not being used with disabled access, but are being used predominantly for larger groups of passengers, mainly for migrant farm workers based around the County. This is impacting on the rest of the trade who are running their vehicles with a reduced number of seats as they are maintaining the wheelchair accessibility and is causing unfair advantage to parts of the trade. The newer vehicles are being replaced in some cases with significantly older and poorer conditions vehicles, which reduce the quality of the fleet. It is clear

from government guidance that older vehicles tend to be more polluting than newer ones, and this has been proven by air quality modelling undertaken for the Council. Therefore, as many taxis and private hire vehicles frequent the air quality management areas in Hereford City, Bargates in Leominster and the A40 near Ross-on-Wye it is essential to encourage less polluting vehicles.

The Licensing Manager presented revised conditions which she felt would help to overcome the problems which had been encountered. The Committee considered the proposals and agreed that they should be introduced. The Licensing Manager said that needs assessment survey work would be undertaken in due course in respect of the trade and the public to determine the demand for wheelchair accessible vehicles. This would enable her to determine the provision of such vehicles which would be needed to comply with the requirements of the 1995 Disability Discrimination Act.

RESOLVED THAT the following amendments be made to the licensing conditions in respect of hackney carriage and private hire vehicles licensed by the Council:-

Current Condition	New Condition
1.2 New condition to be added	1.2 Once a vehicle has been issued with a hackney carriage licence the vehicle cannot be re-used to get a new licence plate within Herefordshire.
2.3 New condition to be added	2.3 Once a vehicle has been issued with a private hire licence the vehicle cannot be re-used to get another licence plate within Herefordshire.
3.3b The replacement vehicle shall be less than 8 years of age for a non wheel chair access vehicle and less than 15 years old for a disabled access vehicle.	3.3b The replacement vehicle shall be no more than 2 years older than the outgoing vehicle, and have at least 30,000 less miles on the clock. All vehicles must be replaced at 8 years for non wheel chair and 15 years for wheel chair access vehicles.
20.11 Wheelchair accessible hackney carriages must remain wheelchair accessible at all times when plying for hire.	20.11 Wheelchair accessible hackney carriages must remain wheelchair accessible at all times.
20.12 New condition	20.12 Any wheelchair provision will be counted as a permanent passenger seat and this will be marked on the licence plate.

64. AMENDMENT TO FEES FOR SPARE AND REPLACEMENT VEHICLE APPLICATIONS

The Licensing Manager presented a report about a proposed amendment of licence fees for spare and replacement hackney carriage vehicles. She advised that since the fees were increased in April 2007, it had become evident that two of the application fees needed adjustment. Complaints have been received from the trade because they were finding that if they needed to keep a backup vehicle or replace a

vehicle, the fee was too much of a financial burden, particularly if they had recently re-licensed the vehicle being replaced. She therefore proposed that the fees be reduced to cover the administrative costs to the Council and be more realistic. The Committee agreed with her proposal that the adjustment to the fees should take immediate effect and that appropriate refunds should be given for applicants who had paid the higher price since April 2007.

RESOLVED THAT the changes to the fees set out below be implemented with immediate effect and that appropriate refunds issued to existing applicants who have paid the higher charge since April 2007:-

Application to licence a spare vehicle	Current fee £210 + £42 (test fee) = £252	Proposed fee £120 + £42 (test fee) = £162
Change of vehicle on plate	Current fee £210 + £42 (test fee) = £252	Proposed fee 3 months or less left on licence = £190 + £42 = £232 6 months or less left on licence = £155 + £42 = £197 9 months or less left on licence = £120 + £42 = £162

65. GUIDANCE POLICY ON CONVICTIONS

A report was presented by the Licensing Manager about a proposed policy for the way in which applications for hackney carriage and private hire licences are dealt with from those who have relevant criminal convictions. She explained the relevant legislation and guidelines about determining whether an applicant for a licence was a fit and fit and proper person and said that the Committee had previously requested a report about the relevance of convictions regarding issuing and retaining dual drivers licences. She advised that as part of the process, applicants must undertake an enhanced criminal records bureau (CRB) check at the time of application and thereafter at least every three years. The guidance has been based upon advice from the DOT Circular 2/92, HO Circular 123/92 and CRB guidance. She outlined the rights of appeal to the Magistrates Court in the event of an application being refused or a licence being suspended or revoked. She also said that during the period allowed for an appeal to be lodged, and up to the time the appeal is determined, a licensee has a statutory right to continue working as a dual driver. This however was due to change in January when the right would be removed and a refusal, suspension or revocation would take immediate effect. She had prepared guidelines for the way in which these issues could be dealt with by the Committee and suggested that the Head of Legal and Democratic Services and the Police should be consulted. The Committee was agreeable to this approach and also that the results could then be considered further at the next meeting.

RECOMMENDATION

THAT the draft guidance be noted and that the arrangements for the consultation process

66. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for hearing appeals to ensure that the laws of natural justice were followed to give a fair hearing for applicants and to the Licensing Officers.

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time they are considered.

RESOLVED: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below.

These items disclose information relating to any particular applicant for or recipient of or former recipient of, any service provided by the authority.

67. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE – TO REVIEW A SUSPENSION NOTICE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Manager referred to agenda item No. 11 and provided the Committee with the circumstances which had given rise to the suspension of a dual Hackney Carriage/Private Hire driver's licence. The applicant provided the Committee with details of the circumstances which had given rise to him receiving a conviction and the reasons why he felt that he should be allowed to continue to hold the licence.

Having considered all of the facts put forward by the Licensing Officer and the applicant, the Committee decided that the applicant had given sufficient evidence that he was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his dual driver's licence could be reinstated.

68. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Manager referred to agenda item No. 12 and provided the Committee with the circumstances which had given rise to the need for an application for a dual Hackney Carriage/Private Hire driver's licence being referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to him receiving a conviction and the reasons why he felt that he should be allowed to become a licence holder.

Having considered all of the facts put forward by the Licensing Officer and the applicant, the Committee was satisfied that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that he should be granted a licence.

The meeting ended at 3.23 p.m.

CHAIRMAN

REGULATORY COMMITTEE
LICENSING APPEAL PROCEDURE

1. Introduction by Clerk to the Panel.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. Questions asked by the Panel or Licensing Officer or Applicant.
5. Applicant (or his solicitor) asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so, Chairman defers application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Clerk to the Panel, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Panel. When the additional information has been furnished, they should all be asked to leave again.
8. The Panel can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is a refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second application the same way.

HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING DEVIATION BY DIANA KAY KINSEY FROM VEHICLE LICENCE CONDITION NUMBER 2.1

REPORT BY: Head of Environmental Health and Trading Standards

Purpose

1. The report introduces an application made by Mrs Kinsey to deviate from the standard condition number 2.1 (for a new application for a private hire vehicle licence, the vehicle shall not be more than two years old, the age of the vehicle will be determined by the date of first registration on the registration document).

Legal Background

2. Under the terms of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 local authorities may make reasonable conditions for the regulation of both hackney carriages and private hire vehicles, drivers and operators.
3. The standard licence conditions were approved at Regulatory Committee on the 20th March 2007 following a full consultation period.

Issues

4. Mrs Kinsey made an application for a new vehicle licence on the 15th November 2007 (Appendix 1). The application contains a request for a vehicle which does not comply fully with the standard conditions and policy of Herefordshire Council. The mini bus vehicle was two years old on 27th July 2007.
5. In light of this application the licence has not been issued, instead referred to this Regulatory Committee for consideration and determination whether to grant a licence outside the standard conditions.

Officers Comments

The applicant is applying for this licence as a result of a change in legislation and has been fully cooperative. DK Travel is an established local business, which provides a transfer service to Airports as an additional service to their Travel Agent activities. All other necessary applications have been made.

Options

It is for the Regulatory Committee to decide whether the vehicle licence: -

- Can be granted outside of the standard conditions and or policy.
- Cannot be granted and the licence be refused.
- Deferred decision in order to get more information.
- or reach some other decision.

TO REVIEW LICENSED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES THAT HAVE BEEN MODIFIED: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847

REPORT BY: Head of Environmental Health and Trading Standards

Purpose

1. To Review Hackney carriage and private hire vehicles that have been modified to ensure they are safe and the modifications have been notified to the DVLA.

Legal Background

2. Under section 60 of the local government (Miscellaneous Provisions) Act 1976 the local authority has the power to suspend or revoke a hackney carriage or private hire vehicle licence under the following grounds:-
 - a) That the Hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
 - b) Any offence under, or non-compliance with the provisions of the Town and Police clauses Act 1847 or of Part of this Act by the operator or driver; or
 - c) Any other reasonable cause.
3. Any proprietor aggrieved by a decision of a district council under this section may appeal to the Magistrates Court.

Background

4. It has been brought to the attention of the licensing service that some of the licensed hackney carriages and private hire were originally manufactured as panel vans and have subsequently been converted to Hackney Carriage / private hire vehicles
5. The Registration documents still specify the vehicle as a panel van but there are no test certificates to establish whether the conversion has been safely carried out.
6. The DVLA have been asked to clarify the matter concerning notifications of modifications. (a response has not been received at the date of the print of this document)
7. Some of the vehicles that are manufactured as passenger vehicles have had disabled facilities installed. The standard conditions require that they should meet the M1 standard but the M1 standard is a destructive test and only applies to vehicles at manufacture.

Issues

8. To ensure the vehicles are safe the local authority should consider requiring all those vehicles that are modified to notify the DVLA of the modification and to have the vehicle tested in accordance with the Voluntary Single Vehicle (enhanced) Approval.
9. Some of the vehicles have the disabled facilities installed during manufacture but were installed prior to the M1 Standard consequently the registration certificate does not specify that the vehicle is to the M1 standard.

Options

It is for the Regulatory Committee to decide whether: -

Question 1 – in relation to modified vehicles.

- a) **To suspend all vehicles that have not notified DVLA of the modification until such time the registration has been issued with the modification added and to require the vehicle is tested and passes the vehicle tested in accordance with the Voluntary Single Vehicle (enhanced) Approval.**
- b) **To give the vehicles a specified time to prove the DVLA has been notified of the change and has been safely converted (proof equivalent to the Voluntary Single Vehicle (enhanced) Approval).**

Question 2 – In relation to Factory manufactured wheelchair vehicles without M1 standard.

- a) **Require the vehicle proprietors to provide evidence that the wheelchair accessible facilities are safe.**
- b) **The local authority to arrange for the test centre to carry out checks of the operation, security and condition of the disabled access facilities.**

**AMENDMENT HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE
CONDITIONS IN RELATION TO MODIFIED VEHICLES: LOCAL GOVERNMENT
(MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT
1847**

REPORT BY: Head of Environmental Health and Trading Standards

Purpose

1. To consider implementing revised vehicle licence conditions due to trade members converting vans to private hire and hackney carriage vehicle.

Legal Background

2. Under the terms of the Local Government (Miscellaneous Provisions) Act 1976 s 47 (Private Hire Vehicle), Town Police Clauses Act 1847 s 42 (Hackney Carriage), local authorities may make reasonable conditions for the regulation of both hackney carriages and private hire vehicles.
3. Any person aggrieved by any conditions, which have been imposed, has a right of appeal to the Magistrates Court.

Background

4. The licence conditions were last reviewed in April 2007 following full consultation.
5. It has been brought to the Council's attention that vehicle proprietors are converting vans into hackney carriage vehicles.
6. The conditions require new vehicles to have wheelchair access and conform to the M1 standard of the European Whole Type Approval 70/156/EEC as amended. Also to comply with the Road Traffic (Construction and Use) Regulations 1986.
7. The M1 Standard is a destructive test therefore only applies to vehicles manufactured to carry passengers, when alterations such as adding wheelchair facilities are added the test is destroyed.
8. Currently there is no condition that covers provisions for vehicles that are converted from a van to a hackney carriage/private hire vehicle or for the installation of wheelchair access facilities in to a vehicle manufactured without such facilities.

Current conditions

5. Section 20 of the vehicle licence conditions refers to wheelchair access.
6. Section 17 deals with Vehicle Inspections

Proposed Conditions

Option A

17.6 For vehicles that have been modified

- a) In order to accept an application to licence the vehicle any modification must be listed on the Registration Document in accordance with Road Traffic Legislation.

- b) The vehicles must be registered as a passenger vehicle.
- c) If there is a structural modification to the vehicle, the vehicle shall have satisfactory test certificate issued by DVLA to show the vehicle complies with the Road traffic (construction and use) Regulations 1986 or have a Voluntary Single Vehicle Approval (enhanced) certificate tested by VOSA or an equivalent test certificate as agreed by the Licensing Authority.
- d) Any modification must be notified to DVLA and the registration document amended accordingly prior to submission for a licence.

Option B

17.6 No vehicle other than a vehicle that was originally manufactured for the purpose of carrying people will be accepted as part of an application as a new vehicle for a hackney carriage/private hire vehicle.

Issues

6. There are no provisions within the council currently conditions to require test certificates for modified vehicles.
7. If vehicles are modified the authority has to be satisfied that the vehicle is safe and legal to be used as a hackney carriage or private hire vehicle.
8. The requirement to provide test certificates will increase the cost and time required to licence a modified vehicles including vehicles installed with wheelchair access facilities. The applicant will pay the additional cost.
9. These conditions have not been consulted with the trade but in light of recent applications to licence modified vans as hackney carriages/ private hire vehicles it is felt the matter is serious enough for the council to consider adopting without consultation.

Options

It is for the Regulatory Committee to decide whether the new conditions can be added and the amendments made: -

- To adopt option A
- To adopt option B
- or reach some other decision.

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