

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 conditions for converted vehicles to ensure they are safe and fit for the use as a licensed vehicle and to bring the conditions into line with the current procedures being used under provisions of section 68 of the Act 1976.

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.

4. Fitness of hackney carriages and private hire vehicles

Section 68. Any authorised officer of the council in question or any constable shall have power at all reasonable times to inspect and test, for the purpose of ascertaining its fitness, any hackney carriage or private hire vehicle licensed by a district council, or any taximeter affixed to such a vehicle, any if he is not satisfied as to the fitness of the hackney carriage or private hire vehicle or as to the accuracy of its taximeter he may by notice in writing require the proprietor of the hackney carriage or private hire vehicle to make it or its taximeter available for further inspection and testing as such reasonable time and place as may be specified in the notice and suspend the vehicle licence until such a time as such authorised officer or constable is so satisfied:

Provided that, if the authorised officer or constable is not so satisfied before the expiration of a period of two months, the said licence shall, by virtue of this section, be deemed to have been revoked and subsections (2) and (3) of section 60 of this Act shall apply with any necessary modifications.

5. Appeal

Section 77. - (1) Sections 300 to 302 of the Act of 1936, which relate to appeals, shall have effect as if this part of this Act were part of that act.

(2) If any requirement, refusal or other decision of a district council against which a right of appeal is conferred by this Act –

(a) involves the execution of any work or the taking of any action; or

(b) makes it unlawful for any person to carry on a business which he was lawfully carrying on up to the time of the requirement, refusal or decision;

then, until the time for appealing has expired, or, when an appeal is lodged, until the appeal is disposed of or withdrawn or fails for wants of prosecution-

- (i) no proceedings shall be taken in respect of any failure to execute the work, or take the action; and
- (ii) that person may carry on that business.

Sections 300 to 302 of the Public Health Act 1936 see Notes below.

Background

6. On 18 December 2008 the Regulatory Committee heard details about the concerns relating to converted vans and wheelchair access hackney carriage and private hire vehicles. Appendix 1 reports and minutes of agenda items - notifying committee of action to be taken and amending the proposed conditions.
7. The wheelchair access vehicles manufactured to the M1 standard were asked either to produce evidence from the manufacturer to show that vehicle was safe and fit for use or to obtain a VOSA single Vehicle (Standard) approval test certificate, by the end of February.
8. Vehicle proprietors of vehicles that had been manufactured with wheelchair access submitted European type approval and low volume type approval certificates to demonstrate the vehicles were fit for the road and met the standards required for M1 status for –passenger use. However the Vehicle Certification Agency (VCA) advised Herefordshire Council that the M1 status did not apply to any wheelchair access facilities installed into any vehicle due to there being no European standards governing the safety of the installations.
9. Some manufacturers have produced test certificate for tests on wheelchair access of a prototype vehicle to demonstrate the vehicles were safe, however when asked by the licensing section to demonstrate that each vehicle produced by them conformed to the prototype no evidence was provided. The licensing service will continue to work with the manufacturers on this matter.
10. Therefore the European Type approvals and Low Volume type approvals could not be relied upon to demonstrate the wheelchair access facilities had been installed to a standard that was fit for purpose. The service has not received documentation to show consistency of manufacturer to a prototype (but is still working with manufacturers), Consequently Herefordshire Council has been using powers under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976 and have asked for the VOSA Voluntary single vehicle Approval test (standard) to demonstrate fitness.
11. Herefordshire council sought advice on the matter from a leading solicitor in the field of taxi legislation James Button whose response confirmed Herefordshire Councils position. See Appendix 2.
12. Additionally advice was also sought from the Department of trade who confirmed that the VOSA test would provide assurances that the vehicles were fit for the road, they did not provide any advice on alternative action. See Appendix 3
13. The licensing service and senior management have had a number of meetings with the trade who are unhappy with the request the response to the meeting on the 15 March can be found in appendix 4.
14. The licensing service has extended the deadline to have the tests to 30 June 2008 to enable Amey Rotherwas to test minor VOSA failures.
15. The vehicles proprietors with wheelchair access facilities installed have all received another notice to have the vehicle tested under Section 68 of the act which includes their rights of appeal to a Magistrates Court, also they have been sent a summary of why the action is being taken by Herefordshire Council. Appendix 5.

Issues

16. Due to the discovering the M1 standard does not cover the safety of the installation of wheelchair access facilities the Regulatory committee are asked to amend the

- licence conditions they approved on 18 December 2007 in line with the current requested for test made by the service under Section 68 above.
17. The trade would have a right of appeal in the Magistrate's court to appeal conditions.
 18. On the date of publishing this report there have been no appeals logged to the Magistrate's court relating to this matter
 19. If the tests are not carried out the Council has the power to suspend or revoke the licenses under Section 60 of the Act as above.
 20. The main objective to this exercise is to ensure all road users including wheelchair users have the right to be safely transported around the county in vehicles that Herefordshire Council has assurances are fit for use as a licensed vehicle.

Proposal

For the Committee to consider updating the Vehicle licence conditions 17.6 and 17.7

Current Conditions:

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.

17.7 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.

Proposed conditions:-

17.6 No new vehicle other than a vehicle that was originally manufactured as an M1 passenger use vehicle listed on the V5 registration document will be accepted as part of an application for a new hackney carriage/private hire vehicle licence.

17.7 Passenger vehicles that are fitted with wheelchair access at the time of initial manufacture may applying for a new vehicle licence if the vehicle has a VOSA single vehicle (standard) test certificate; or for vehicles manufactured by a manufacturer approved by the regulatory committee for being able to demonstrate to their satisfaction that all their vehicles are consistently manufactured to a standard complying with the appropriate available safety standards and to the VOSA single vehicle (standard) approval test. The committee may review any such approval at any time when considered necessary to fulfil their statutory duties.

17.7 Modified passenger vehicles

- a) If a passenger vehicle applying for a new vehicle licence has been modified to provide wheelchair access facilities after manufacturer, the vehicle must have a have a VOSA Voluntary Single Vehicle Approval (enhanced) certificate.
- b) Any modification must be notified to DVLA and the registration document amended accordingly prior to making an application for a licence.

17.7 All vehicles licensed for the first time before 18 December 2007 that are either wheelchair access or converted vehicles will be reviewed by the regulatory committee. The committee will consider their fitness for use and only those vehicles that can demonstrate fitness use will have the consent of the regulatory committee will be permitted to continue as licensed hackney carriage or private hire vehicles.

Options

- A) to adopt the revised conditions**
- B) not to adopt the revised conditions**
- C) to come to some other conclusion.**

Notes:**Appeals and applications to court of summary jurisdiction**

300. - (1) Where any enactment in this Act provides –

(a) for an appeal to a court of summary jurisdiction against a requirement, refusal or other decision of a council; or

(b) for any matter to be determined by, or an application in respect of any matter to be made to, a court of summary jurisdiction,

the procedure shall be by way of complaint for an order, and the Summary Jurisdiction Act shall apply to the proceedings.

(2) The time within which any such appeal may be brought shall be twenty-one days from which the date on which notice of the council's requirement, refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.

(3) In the case where such appeal lies, the document notifying to the person concerned the decision of the council in the matter shall state the right of appeal to a court of summary jurisdiction and the time within which such an appeal may be brought.

APPEALS TO [CROWN COURT] AGAINST DECISIONS OF JUSTICES

301. Subject as hereinafter provided, where a person aggrieved by any order, determination or other decision of a court of summary jurisdiction under this Act is not by any other enactment authorised to appeal to [Crown Court], he may appeal to such a court:

Provided that nothing in this section shall be construed as conferring a right of appeal from the decision of a court of summary jurisdiction in any case if each of the parties concerned might under this Act have required that the dispute should be determined by arbitration instead of by such a court.

[*Substituted by the courts Act 1971.*]

“person aggrieved”; see 22.009 and *Cook v. Southend borough Council* [1990] 2 W.L.R. 61. In that case, the Court of Appeal held that a licensing authority, ordered by magistrates to pay the costs of a taxi-driver's successful appeal against his licence revocation, was a “person aggrieved” within the meaning of this section. The effect of this was that the authority was entitled to appeal to the Crown Court, not merely against the order for costs, but also on the merits of the magistrates' decision. The Court of Appeal further clarified the position of confirming that the Council had been entitled to appeal to the Crown Court irrespective of the order of costs made against it by the justices.

EFFECT OF DECISION OF COURT UPON AN APPEAL

302. Where upon an appeal under this Act a court varies or reverses any decision of a council, it shall be the duty of the council to give effect to the order of the court and, in particular, to grant or issue any necessary consent, certificate or other document, and to make any necessary entry in any register.

For appeal to magistrates' courts and Crown Courts generally, see 2.001.

Subsection (2) of section 77 enables an unsuccessful applicant or a licensee who has had his licence suspended, revoked or not renewed to carry on his business until such a time as an appeal is disposed of or withdrawn or fails for want of prosecution.