

CHESHIRE EAST COUNCIL

Licensing Committee

Date of Meeting: 12th September 2011
Report of: Head of Safer & Stronger Communities
Subject/Title: Hackney Carriage Vehicle Conditions

1.0 Report Summary

- 1.1 The report provides background to the existing hackney carriage vehicle conditions and presents a draft set of conditions for consultation purposes.

2.0 Recommendations

- 2.1 The Licensing Committee is requested:

- 2.1.1 to consider the draft hackney carriage conditions appended to the report together with the information within the report about the options relating to specified conditions and, subject to consultation, approve a set of hackney carriage vehicle conditions to apply in each of the three hackney carriage zones;
- 2.1.2 subject to the decisions made pursuant to 2.1.1 above relating to the content of the draft conditions, to approve a set of vehicle test guidelines in relation to hackney carriage vehicles, subject to consultation;
- 2.1.3 pursuant to 2.1.1 and 2.1.2 above, to authorise officers to carry out a consultation exercise in relation to the draft conditions and vehicle test guidelines;
- 2.1.3 to resolve that if no objections are received within the consultation period, or if any objections that are received are withdrawn, that the conditions and vehicle test guidelines will come into operation in each of the three zones on the day after the last day of the consultation period. If objections are received and not withdrawn, these will be reported to a subsequent meeting of the Licensing Committee for consideration.

3.0 Reasons for Recommendations

- 3.1 On 7th March 2011 the Licensing Committee resolved as follows:
- 3.1.1 That officers be requested to produce a draft set of hackney carriage vehicle conditions for each of the three zones, based on the existing private hire vehicle specification, to include a requirement that all new hackney carriages be wheelchair accessible and provision for the increased testing of vehicles

rather than an age limit for vehicles. The draft conditions, together with information on the testing of trailers and tinted windows, to be considered at a future meeting of the Committee; and

- 3.1.2 That officers be requested to draft vehicle test guidelines which reflect the requirements of the draft conditions, for consideration at a future meeting of the Committee.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications, including Carbon reduction/Health

- 6.1 The report suggests a review of a number of issues relating to the Council's existing policy on the licensing of hackney carriages. Full details are set out within the body of the report.

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 There would be a cost implication associated with printing and postage of consultation documentation relating to amended vehicle conditions. These costs are estimated to be in the region of £850 for postage (if send second class) and £300 for printing.
- 7.2 The costs in paragraphs 7.1 would be met from existing budget provision within the Licensing Service's budget.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Section 47(1) of the 1976 Act provides local authorities with the power to attach to hackney carriage licences such conditions as they may consider 'reasonably necessary.' Section 47(2) states that without prejudice to the generality of section 47(1), a council may require vehicles to be "of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage." The imposition of conditions on a hackney carriage vehicle licence is subject to a right of appeal to the Magistrates' Court.
- 8.2 The law governing consultation was laid down by the Court of Appeal in the case of R v North and East Devon HA ex parte Coghlan [2001] which states:

"It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for

particular proposals to allow those consulted to give intelligent consideration and intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

8.3 Further legal implications are set out within the body of the report.

9.0 Risk Management

9.1 Full consideration of any consultation responses received will mitigate any risk of challenge to any subsequent decision.

10.0 Background and Options

10.1 As Members are aware, at the present time different hackney carriage vehicle conditions are in operation in each of the three hackney carriage zones. The existing conditions are attached as Appendices A, B and C for information. On 7th March 2011 the Licensing Committee resolved that officers be requested to produce a set of harmonised conditions based on the existing private hire vehicle conditions. Attached as Appendix D is a set of draft hackney carriage vehicle conditions which are intended to be applicable in each of the three hackney carriage zones. Members will note that certain of the draft conditions currently refer back to specific paragraphs of this report; in these cases Members are asked to consider the information below and to determine the content of the draft conditions so that the conditions may be subject to consultation.

10.2 Vehicle specification

10.2.1 As set out above, the Committee requested that a set of conditions be drafted on the basis of the existing specification within the Private Hire Vehicle conditions. With the exception of conditions 1.3 and 1.4, the conditions within paragraph 1 of Appendix D follow the vehicle specification with the private hire vehicle conditions.

10.2.2 Paragraphs 26 to 29 of the Best Practice Guidance deals with the specification of vehicles. Paragraph 27 states: “Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible...” Paragraph 28 continues: “It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicles or prescribes only one type or a small number of types of vehicle...”

10.2.3 Condition 1.3 – Wheelchair accessibility

As Members will note, condition 3 of the zone 1 (Congleton zone) requires that “the minimum standard for all new licensed vehicle licences issued shall be: (a) a purpose built wheelchair accessible four door passenger saloon/estate or hatchback with minimum seating space of 16” per person.”

The conditions within zone 2 (Crewe) sets out the specification for wheelchair accessible vehicles; it is a policy requirement within the Crewe zone that new hackney carriages are wheelchair accessible.

The conditions which relate to zone 3 (Macclesfield) include requirements for wheelchair accessible vehicles, but do not require that all new vehicle licences will only be issued to wheelchair accessible vehicles.

As Members may be aware, section 32 of the Disability Discrimination Act provides the Secretary of State for Transport the power to make taxi accessibility regulations covering the design and construction of new taxis. The introduction of accessibility regulations has been under consideration for a number of years, however in October 2009 the Minister for State for Transport announced that the Department would be undertaking demonstrations in three licensing authority areas to “research the needs of disabled people when using taxis and private hire vehicles, how to tailor the fleet to demand and use patterns and how driver training can assist disabled passengers. The demonstration schemes will provide the basis on which the Department will be able to issue comprehensive guidance to licensing authorities to assist them with improving the availability of taxis and private hire vehicles for disabled passengers.”

Section 161 of the Equality Act 2010 qualifies section 16 of the Transport Act 1985 so that licensing authorities may not refuse a hackney carriage application on the basis of numbers if that vehicle fulfils prescribed requirements in relation to wheelchair accessibility and if the number of wheelchair accessible vehicles in the district is less than the proportion prescribed by the Secretary of State. For this section to have effect regulations would need to be made specifying the dimensions of a wheelchair that a wheelchair accessible vehicle must be capable of carrying in order for it to fall within the provisions. These regulations have yet to be made.

Paragraph 14 of the Best Practice Guidance states:

Different accessibility considerations apply between taxis and PHVs. Taxis can be hired on the spot, in the street or at a rank, by the customer dealing directly with a driver. PHVs can only be booked through an operator. It is important that a disabled person should be able to hire a taxi on the spot with the minimum delay or inconvenience, and having accessible taxis available helps to make that possible. For PHVs, it may be more appropriate for a local authority to license any type of saloon car, noting that some PHV operators offer accessible vehicles in their fleet.

It may therefore be argued that a policy of requiring all new hackney carriage vehicles to be wheelchair accessible would be advantageous for wheelchair users within the Borough. However, counter-arguments may include the suggestion that certain passengers (for example the elderly) find non-wheelchair accessible saloon vehicles easier to get in and out of. It should also be noted that there would be cost implications for members of the trade

when purchasing new vehicles if a requirement for wheelchair accessible vehicles were to be imposed in zone 3.

On 7th March 2011, Members of the Committee indicated a preferred option in relation to the introduction of a condition about wheelchair accessibility; however, the options that are option to members in relation to the proposed condition 1.3, subject to consultation, are as follows:

- (a) to introduce a condition which requires that all vehicles presented for a new hackney carriage vehicle licence are purpose-built wheelchair accessible vehicles. This would mean that the current position in Congleton and Crewe would continue and that, if implemented following consultation, any new hackney carriage vehicle in the Macclesfield zone would also have to be wheelchair accessible. It is suggested that existing hackney carriage vehicles which are not wheelchair accessible could continue to be used for the duration of their existence as a licensed vehicle.
- (b) not to include a condition requiring all new hackney carriage vehicles to be wheelchair accessible. If implemented following consultation this would continue the existing position within the Macclesfield zone but would fundamentally alter the position in the Congleton and Crewe zones. Any such decision could potentially have an impact on the number of licensed vehicles within these zones. In particular it should be highlighted that whilst the number of hackney carriages which may be licensed within the Congleton zone is 42, the number of vehicle licensed currently issued is 38 (it is understood that the fact that the limit has not been reached is due to the requirement that new hackney carriages are wheelchair accessible).
- (c) to preserve the current position, i.e. a requirement for wheelchair accessible vehicles in the Congleton and Crewe zones but not in the Macclesfield zone. Members may wish to consider this option in the light of the fact that further guidance is due from the Department of Transport on accessibility requirements, however this approach could be open to criticism on the basis that it would not produce a 'level playing field' across the Borough. In response to this point, it should be highlighted that whilst the differing policies about quantity restrictions remain in place the issues within the zones do differ and can be distinguished.

10.2.4 Condition 1.4

The draft condition states: "The vehicle shall be a manufacturer's right hand drive model with a minimum of four wheels and a minimum of four passenger seats and shall be finished in a production colour of the manufacturer for the model."

This condition varies from the content of the Private Hire Vehicle specification by the inclusion of a requirement that the vehicle shall have a minimum of four passenger seats. This condition follows the requirements within the existing Crewe conditions and is suggested due to the difference between the

nature of the work undertaken by hackney carriages and private hire vehicles. The condition seeks to ensure that passengers hiring hackney carriages from a rank or flagging down a hackney carriage vehicle in the street can be certain of hiring a vehicle with capacity for at least four passengers.

10.3 Condition and Maintenance of the Vehicle

10.3.1 Condition 2.5 - Tow bars

The existing zone 3 (Macclesfield zone) conditions explicitly prohibit tow bars; this condition was originally imposed in the interests of safety (due to the additional risks inherent in towing trailers). In addition there are concerns about difficulties in testing and certifying trailers given the lack of a nationally recognised testing standard which would be equivalent to the MOT test for vehicles. A trailer inspection sheet has been produced by the Hackney Carriage and Private Hire Inspection Technical Officer Group and a copy is attached as Appendix E for information. Arguments in favour of permitting the use of trailers include the suggestion that problems currently arise in relation to the volume of luggage which needs to be transported, for example when a family wishes to be taken to the airport. It may also be suggested that some luggage is too heavy to be safely lifted into a roof rack or roof pod.

It is suggested that the options which are open to the Council, subject to consultation, are:

- (a) to adopt the approach taken by the former Macclesfield Borough Council and expressly prohibit tow bars (and therefore prevent the use of trailers with hackney carriage vehicles);
- (b) to include conditions which permit for the use of trailers with hackney carriage vehicles (see below for suggested conditions);
- (c) to impose a condition which prevents trailers being used whilst a hackney carriage vehicle is standing or plying for hire, but permits the use of trailers (see below for suggested conditions) when undertaking pre-booked work. This approach would meet the needs of proprietors who wish to use a trailer to carry luggage when undertaking pre-booked work whilst ensuring that problems are not caused as a result of trailers being used whilst a vehicle is standing for hire on a taxi rank; or
- (d) to remove the condition in relation to tow bars and not to impose any additional conditions regulating the use of trailers. (This approach would mean that the use of trailers with hackney carriage vehicles would be unregulated by the Council).

If tow bars and, by implication, trailers are to be permitted by virtue of either option (b) or (c) above, the Committee is asked to consider the following conditions which seek to regulate the use of trailers and to ensure the security of luggage and safety of road users.

- (i) The proprietor shall present the trailer for inspection by a Licensing Officer prior to its use and again at each inspection of the vehicle on which the trailer is to be towed;
- (ii) The trailer must comply with all aspects of current road traffic legislation and be of a type recommended by the vehicle manufacturer as being suitable for the intended towing vehicle;
- (iii) The trailer shall be in good condition and no more than [x] years old; (Members would be required to consider the age to be inserted here if this condition were to be imposed);
- (iv) The trailer shall be purpose built and manufactured for the purpose for which it is to be used;
- (v) No advertising shall be permitted on the trailer;
- (vi) The trailer shall be fitted with securely fastened covers, which may be of the hardtop or canvas tarpaulin type;
- (vii) When the trailer is used with the vehicle, the licence plate issued by the Council specifically for the trailer shall be clearly displayed on the rear of the trailer, with the licence plate for the towing vehicle remaining in place.
- (viii) The tow bar must be of a type approved by the manufacturer of the vehicle and fitted by an approved agent;
- (ix) The vehicle must be insured to tow a trailer and proof of this cover must be supplied on the request of an officer of the Licensing Authority;
- (x) The gross weight of the trailer and the luggage load must be less than 750kg and be less than half the weight of the towing vehicle. (With a gross weight of less than 750kg no braking system is required to be fitted and the driver of the vehicle will not require any special categories on his/her DVLA driving licence).

10.3.2 Condition 2.7 - Tinted windows

The existing hackney carriage vehicle conditions within zone 3 (Macclesfield) include the following condition relating to tinted windows:

With the exception of the rear window of a vehicle, heavily tinted glazing and tinted films applied to vehicle windows are not permitted. All glazing shall comply with the Motor Vehicles (Construction and Use) Regulations 1986 (as amended), with regard to the level of tint. A minimum light transmission value of 70% shall be maintained in all side windows; windscreens shall have a minimum light transmission value of 75%.

The conditions within zone 2 (Crewe & Nantwich) state as follows in relation to tinted windows:

The vehicle shall comply with the Construction and Use Regulations 1986 (No. 1078) with respect to the fitting of tinted (i.e. opaque, darkened or privacy glass) windows. For any vehicle which is fitted with windows which are exempt from the provisions of the Construction and Use Regulations, the visual transmission of light through those windows shall not be less than 70%

when measured in accordance with the manner prescribed in the Construction and Use Regulations.

The conditions within zone 1 (Congleton zone) do not make any provision in relation to tinted windows.

The requirements of the Construction and Use Regulations (enforced by VOSA) are that the light transmitted through the windscreen must allow at least 75% whilst the side windows (to the front of the 'B' pillar) must transmit at least 70%.

The Macclesfield zone conditions apply the same light transmission value to windows to the rear of the 'B' pillar (with the exception of the rear window) as is applied by law to windows to the front of the 'B' pillar, i.e. a minimum of 70%. The drafting of the Crewe and Congleton conditions mean that whilst vehicles must comply with the VOSA requirements about tint to the front of the 'B' pillar, there are no prescribed requirements to vehicles to the rear of the 'B' pillar.

The justification for the imposition of a condition which restricts the tint in windows to the rear of the 'B' pillar include the following:

- (a) enforcement officers need to see into the vehicle to ensure that the maximum number of passengers is not being exceeded and to ensure that there is no breach of the smoking regulations;
- (b) the Police need to be able to see into the vehicle to ensure that passengers are wearing seatbelts;
- (c) to ensure that the interior of the vehicle is visible to ensure the safety of passengers and drivers;
- (d) vulnerable passengers will feel safer in a vehicle where they can be seen;
- (e) in the event of an accident the emergency services can easily check if there are passengers are inside.

The Licensing Section has received complaints from hackney carriage proprietors about the tinted windows condition within the Macclesfield zone. Complaints centre on the fact that certain vehicles are produced by manufacturers with tinted windows as a standard feature and that there are cost implications to replacing these windows with clear glass.

Paragraph 30 of the DfT Best Practice Guidance states as follows in relation to tinted windows:

The minimum light transmission for glass in front of, and to the side of, the driver is 70%. Vehicles may be manufactured with glass that is darker than this fitted to windows rearward of the driver, especially in estate and people carrier style vehicles. When licensing vehicles, authorities should be mindful of this as well as the large costs and inconvenience associated with changing glass that conforms to both Type Approval and Construction and Use Regulations.

The options in relation to tinted windows, subject to consultation, are as follows:

- (a) to determine that the conditions will not impose a restriction on the tint in windows to the rear of the 'B' pillar (thereby the requirements within the Construction and Use Regulations would apply alone);
- (b) to determine that the current condition in relation to tinted windows within the current zone 3 conditions shall be adopted and apply in each of the three zones; or
- (c) to determine that an amended condition in relation to tinted windows be adopted, for example a condition which specifies a different level of light transmission in windows to the rear of the 'B' pillar.

10.4 Vehicle Testing (condition 4)

At present the conditions in the Macclesfield zone require that vehicles over seven years of age must be submitted for testing twice annually. The reasoning behind this condition is that as a vehicle gets older it is more likely to develop faults. The increased frequency of testing is therefore imposed in order to ensure the safety and comfort of passengers being carried in the vehicle. The Congleton zone and Crewe zone conditions do not impose a requirement for more frequent testing for older vehicles, however the condition has been included in the Council's Private Hire Vehicle Conditions, i.e.:

- 4.2 Vehicles which are over seven years old shall be tested every six months. The age of the vehicle shall be calculated by reference to the date of first registration recorded in the Vehicle Registration Document (Form V5) unless the vehicle was not new at the date of first registration in the UK.

The Licensing Section has received a suggestion from the trade that the hackney carriage vehicle conditions should be amended to remove any reference to increased testing and rather to impose an age limit, i.e. to ensure that any new application for a hackney carriage vehicle must relate to a vehicle under eight years of age, and that no vehicle may remain licensed once it is over twelve years old. However, the Section have also received representations in relation to private hire vehicles that the condition should be amended to take account of vehicles which, whilst over seven years of age, have low mileage.

Paragraph 32 of the Best Practice Guidance states as follows in relation to age limits: "it is perfectly possible for an older vehicle to be in good condition. So the setting of an age limit beyond which a local authority will not license vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be appropriate for older vehicles – for example, twice yearly tests for vehicles more than five years old.

On 7th March 2011, Members of the Committee indicated a preferred option in relation to this issue, however, the options that are option to members in relation to the proposed condition 4.2, subject to consultation, are:

- (a) to include condition 4.2 of the Private Hire Vehicle Conditions (i.e. vehicles over seven years old to be tested every six months);
- (b) to introduce condition 4.2 of the Private Hire Vehicle Conditions (i.e. vehicles over seven years old to be tested every six months) subject to an exception for vehicles with low mileage;
- (c) to introduce an age limit for hackney carriage vehicles to ensure that any new application for a hackney carriage vehicle must relate to a vehicle under [x] years of age and/or and that no vehicle may remain licensed once it is over [y] years old. (Members would be required to consider the ages to be inserted into this condition); or
- (d) that the only requirement in relation to vehicle testing are those within condition 4.1 (i.e. annual testing) and that no age limit is imposed.

- 10.5 It is suggested that if any amendments to the hackney carriage conditions which relate to the specification and structure of the vehicle would only be imposed from the date the new conditions take effect in relation to new hackney carriage vehicles. Existing licensed vehicles would therefore benefit from 'grandfather rights,' however, if a requirement for six monthly testing were to be introduced it is suggested that this should apply to all vehicles over seven years old.
- 10.6 The proposed hackney carriage vehicle conditions will be subject to a twelve week consultation with the trade and other interested parties. It is suggested that, if no objections are received (or if any objections which are received are subsequently withdrawn), the proposed conditions will take effect at the end of the consultation period. If objections are received these will be reported back to the Licensing Committee for consideration at a future meeting.
- 10.7 Members are also requested to consider a proposed set of vehicle test guidelines to apply to the testing of hackney carriage vehicles within each of the hackney carriage zones. A draft set of guidelines are attached as Appendix F and will be subject to the decisions the Committee makes in relation to conditions 1.3, 1.4, 2.5, 2.7 and 4. It is suggested that formalising a set of vehicle test guidelines will be beneficial by ensuring transparency and consistency in the way that vehicles are tested. It is suggested that the draft guidelines are subject to consultation in the same manner described in 10.6 above.

Access to Information

- Appendix A – Hackney carriage vehicle conditions – zone 1 (Congleton)
- Appendix B – Hackney carriage vehicle conditions – zone 2 (Crewe & Nantwich)
- Appendix C – Hackney carriage vehicle conditions – zone 3 (Macclesfield)
- Appendix D – Draft hackney carriage vehicle conditions – zones 1, 2 & 3
- Appendix E – Trailer inspection sheet (drafted by the Hackney Carriage and Private Hire Inspection Technical Officer Group)
- Appendix F – Draft Hackney Carriage Vehicle Test Guidelines – zones 1, 2 & 3

The background papers relating to this report can be inspected by contacting the report writer:

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