

CHESHIRE EAST COUNCIL

Licensing Committee

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

1.0 Report Summary

- 1.1 The report provides background to the existing private hire vehicle conditions together with options for the review of certain of the conditions.

2.0 Recommendations

- 2.1 The Licensing Committee is requested:
- 2.1.1 to consider the options in relation to the proposed review of the specified private hire vehicle conditions which apply within the Borough and, subject to consultation, to determine whether to approve changes to these conditions;
 - 2.1.2 subject to the decisions made pursuant to 2.1.1 above, to approve a set of vehicle test guidelines in relation to private hire 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 any proposed amendments to the conditions and in relation to accompanying vehicle test guidelines; and
 - 2.1.4 to resolve that if no objections are received within the consultation period, or if any objections that are received are withdrawn, that the amended conditions (as per 2.1.1 above) and vehicle test guidelines (as per 2.1.2) will come into operation throughout the Borough on the day after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 If objections are received and not withdrawn, these will be reported to a subsequent meeting of the Licensing Committee for consideration.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 13th March 2009 the Licensing Committee approved a set of private hire vehicle conditions to take effect across the Borough of Cheshire East from 1st April 2009 (i.e. 'vesting day'). These conditions, a copy of which is attached as Appendix A, have been in operation since 1st April 2009 (subject to a minor amendment to condition 1.5 in relation to the configuration of doors).

3.2 On 7th March 2011 the Licensing Committee heard representations from a private hire vehicle operator in relation to condition 4, to the effect that an exemption should be made to the requirement for six-monthly tests for vehicles with low mileage. The Licensing Section is also aware that requests have been made by the trade to review the position in relation to the prohibition on tow bars (and therefore the use of trailers) and tinted windows.

3.3 The Licensing Committee are asked to consider the issues highlighted above and to determine whether to consult on changes to these conditions.

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 private hire vehicles. Full details are set out within the body of the report.

7.0 Financial Implications 2011/12 and beyond (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 £550 for postage (if send second class) and £200 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 48(1) of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') provides that a local authority shall not grant a licence to a private hire vehicle unless it is satisfied that the vehicle is (i) suitable in type, size and design for use as a private hire vehicle; (ii) not of such a design and appearance as to lead any person to believe that the vehicle is a hackney carriage; (iii) in a suitable mechanical condition; (iv) safe; and (v) comfortable. Section 48(2) of the 1976 provides local authorities with the power to attach to private hire licences such conditions as they may consider 'reasonably necessary.' The imposition of conditions on a private hire 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.”

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 set out above, the existing conditions in relation to private hire vehicles (attached at Appendix A) were originally approved by the Licensing Committee on 13th March 2009. The Licensing Committee is requested to consider the following issues as a result of trade representations (a) tow bars (condition 2.5); (b) tinted windows (condition 2.7); and (c) vehicle testing (condition 4).

10.2 Tow bars (condition 2.5)

The existing condition at 2.5 expressly prohibits tow bars on licensed vehicles. The original reasoning behind this condition was 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 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 B 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 maintain the existing position and continue to expressly prohibit tow bars (and therefore prevent the use of trailers with private hire vehicles);
- (b) to include conditions which permit for the use of trailers with private hire vehicles (see below for suggested conditions); or
- (c) 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, members are asked to consider the following conditions relating to the regulation of the use of trailers:

- (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 Tinted windows (condition 2.7)

The existing private hire vehicle conditions include the following in relation 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 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 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 is aware of concerns 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. The Licensing Committee will also be aware that a number of applications have been received from private hire vehicle proprietors for waiver from condition 2.7 based on the use of the vehicle for 'executive hire.'

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;
- (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 minimum level of light transmission in windows which is lower than the current requirement.

10.4 Vehicle Testing (condition 4)

At present condition 4 of the Private Hire Vehicle Conditions 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 condition states:

- 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.

On 7th March 2009 the Licensing Committee heard representations from a member of the private hire trade to the effect that vehicles which, whilst over seven years of age, have low mileage should be exempted from the requirements within condition 4 in relation to six-monthly testing.

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.

The options that are option to members in relation to the condition 4.2, subject to consultation, are:

- (a) not to amend the existing condition (i.e. vehicles over seven years old to be tested every six months);
- (b) to introduce an exception for vehicles with low mileage;
- (c) to introduce an age limit for private hire 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 If Members resolve to make amendments to the existing private hire vehicle conditions the proposed amendments 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 amendments 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.

- 10.6 Members are also requested to consider a proposed set of vehicle test guidelines to apply to the testing of private hire vehicles across the Borough. A draft set of guidelines are attached as Appendix C and will be subject to the decisions the Committee makes in relation to conditions 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 10.5 above.

Access to Information

Appendix A – Existing Private Hire Vehicle Conditions

Appendix B – Trailer inspection sheet (drafted by the Hackney Carriage and Private Hire Inspection Technical Officer Group)

Appendix C – Proposed Private Hire Vehicle Test Guidelines

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

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