

Licensing Committee

Exception to Licensed Vehicle Policy – Head of Service Guidelines

9 December 2010

Report of Head of Safer Communities, Urban & Rural Services

PURPOSE OF REPORT

To advise the Licensing Committee of the consideration given by the Head of Safer Communities, Urban & Rural Services (SCURS) when exercising his delegated powers in determining an application for exception to Licensed Vehicle Policy.

This report is public

Recommendations

The Licensing Committee is recommended to:

- (1) Note and endorse the consideration given by the Head of Safer Communities, Urban and Rural Services when determining applications for exception to Policy as detailed in the contents of this report.

Executive Summary

Introduction

- 1.1 When applying for Hackney Carriage Vehicle (HCV) or Private Hire Vehicle (PHV) Licences applicants must ensure that the vehicle they use meets the requirements of the Cherwell District Council Specification for Licensed Vehicles.
- 1.2 The Head of SCURS has delegated authority in the Councils Constitution to make decisions on any Hackney Carriage or Private Hire Licence application.
- 1.3 The Councils specification normally covers the majority of applications received by the Council for HCV and PHV licences. Although there is a Policy in place, it is acknowledged by this Committee that Policy cannot cover every possible vehicle type or use that may fall under the licensing regime and therefore have given delegated authority to the Head of SCURS to make determination of applications for exceptions to Policy.
- 1.4 Where an applicant considers they have a case for exception to Policy they do so by submitting a normal licence application along with a business case

detailing the grounds for their request. The request could concern any element of the vehicle specification for example; age of vehicle, configuration of seats or access provision etc.

- 1.5 To ensure that the decision making process is consistent the Head of SCURS considers each application against certain factors. Details of which are below.

- **Nature of use**

An example of this would be a contract vehicle used for specific activities that were previously exempt under Section 75 of the Local Government (Miscellaneous Provisions) Act 1976 (LG(MP)A 1976) (see 2.3 below) and provides a specific public service – e.g. Schools Transport contracts with County Council or specialist vehicles for accessible transport contracts.

Applicants would be expected to provide details of such contracts to support the application for exception to Policy. Absence of such evidence is likely to lead to the application being refused.

- **Mileage**

Such vehicles would normally have a low annual mileage due to their only being used in connection with contracts and not as a “traditional” HCV or PHV. Low mileage would normally be expected to be less than 12,000 miles per year.

Applicants would be expected to provide details of vehicle mileage to support the application for exception to Policy. Absence of such evidence is likely to lead to the application being refused.

- **Condition of Vehicle**

Vehicles presented for licensing along with a request for exception to Policy, would be expected to be in an exceptionally well maintained condition. In addition applicants would be expected to show a full and complete service history for the vehicle.

Absence of such evidence is likely to lead to the application being refused.

- 1.6 If the Head of SCURS is minded to grant an exception to the Policy he may apply specific conditions to ensure that the licence does not permit the use of the vehicle as a “traditional” HCV or PHV. Examples would include conditions to limit the mileage of the vehicle, or specify more frequent servicing intervals with all mechanical paperwork submitted to the Council. It is also possible for the Head of SCURS to issue short term licences (any period less than standard 12 month licence) if appropriate.

Background Information

- 2.1 The legislation used for the licensing of PHV and HCV vehicles is the LG(MP)A 1976. Section 75 of this act provides for a number of exemptions from licensing requirements.
- 2.2 Until 28 January 2008 LG(MP)A 1976 S75(1)(b) was in force. This was

repealed as a result of the introduction of the Road Safety Act 2006 S53.

2.3 Section 75 (1)(b) stated:

75(1) Nothing in this part of this Act shall –

....

(b) apply to a vehicle used only for carrying passengers for hire or reward under a contract for the hire of the vehicle for a period of not less than 7 days;....

2.4 Case law applied prior to the S75 repeal made it clear that in order to fall within the exemption it was necessary for there to be a specified vehicle; a defined length of contract (not less than 7 days); and a specified notice period for termination of the contract.

2.5 The S75 repeal was to ensure that all passenger vehicles were brought into the licensing regime and regularly monitored in the interests of public safety. By applying the Council's current specification (save for specific Policy exceptions made), these vehicles will still be licensed and subject to the same checks and enforcement action as any other licensed vehicle.

Key Issues for Consideration/Reasons for Decision and Options

3.1 The Head of SCURS has a duty of care to the public and so any determination will always be made in the interested of public safety as well as service provision to the public that use licensed vehicle.

3.2 Each application must be considered on its own merits but by applying the factors above and by securing Licensing Committee endorsement, the Head of SCURS can ensure that a consistent approach is taken.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

Option One To note the contents of this report and acknowledge that when determining an application for exception the Head of SCURS considers it against the considerations outlined above.

Option Two No other options have been considered as this is already a delegated responsibility and report is brought for information only.

Consultations

Not Applicable The contents of this report are to advise the Committee of the considerations considered by the Head of Safer Communities, Urban & Rural Services. They do not affect existing Policy.

Implications

Financial: There are no financial implications arising from this report.
Comments checked by Denise Taylor, Service Accountant, 01295 221982.

Legal: Where an application for a Hackney Carriage Vehicle Licence or Private hire Vehicle Licence is refused, the applicant has a right of appeal to the Magistrates Court. The existing specification and use of an acknowledged framework for exception to Policy requests will help to prevent such challenges.
In addition all applications of this type are taken through Legal for opinion prior to the Head of SCURS making a determination
Comments checked by Paul Manning, Solicitor 01295 221691

Risk Management: As detailed in the legal implications, applicants may challenge the decision of the Head of Safer Communities, Urban & Rural Services, the use of existing Policy as well as an acknowledged framework for exception to Policy requests and seeking legal input prior to determination mean the risk of this is low.
Comments checked by Claire Taylor, Corporate Strategy and Performance Manager 01295 221563

Wards Affected

All

Document Information

| Appendix No | Title |
|--|---|
| N/A | N/A |
| Background Papers | |
| Cherwell District Council Specification for Licensed Vehicles. | |
| Report Author | Natasha Barnes, Licensing & Vehicle Parks Manager |
| Contact Information | 01295 753738 natasha.barnes@Cherwell-dc.gov.uk |