

Standing Order 58 - Urgent Decisions by Chief Executive

Powers to suspend and revoke Private Hire and Hackney Carriage Licences

Supporting Papers

- Current scheme of delegation
- Template letter (driver's licences)
- Template Notice (interim measures - private hire driver's licence)

Current Delegation

The current provision for delegation of powers to officers to make decisions in relation to private hire and hackney carriage licensing is attached to this document.

There are currently no delegations in place for officers to revoke licences for non-payment of fees or failure to provide documentation in respect of driver, vehicle and private hire operator licences.

Whilst there is current provision to suspend driver licences, there is no delegation for revocation of driver licences except in the exceptional circumstances where it is in the "interests of public safety" to do so.

Draft Delegation Proposal

Having regard to the current Government restrictions due to the coronavirus outbreak, and in order to ensure that the statutory functions relating to hackney carriage and private hire licensing are administered efficiently and in accordance with the legislation, it is considered necessary and proportionate to temporarily extend current delegations to officers so as to enable the suspension or revocation of licences for non-payment of fees or failure to provide documentation under the following provisions of the Local Government (Miscellaneous Provisions) Act 1976 (namely for "any other reasonable cause"):

- Section 60(1)(c) in respect of hackney and private hire vehicles
- Section 61(1)(b) in respect of hackney and private hire drivers
- Section 62(1)(d) in respect of private hire operators

and that where it appears the interests of public safety require, in relation to the provision of documentation or payment of fees, officers be able to revoke or suspend driver's licences with immediate effect in accordance with s.61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976 when exercising these powers.

This delegation will automatically expire on 31 August 2020.

Justification

The licensing service, in consultation with legal services, have implemented a flexible approach to enable rolling renewal of licences, despite a current inability to process fully, or the applicant's inability to provide certain documentation that would normally be a pre-requisite. These interim arrangements have been put in place so as not to disadvantage the trade and allowing them to continue to work with

insurance etc. (being properly licensed). However, this approach creates some difficulty in so far as renewal would normally require proof of various matters and payment of a fee *before* grant of the renewed licence.

Due to the current Government advice and restrictions, "automatic" renewal of licences has been undertaken subject to express requirement for later provision of the relevant proofs and fee, when demanded. This obviously needs an effective means of enforcement as and when the time comes for compliance.

Officers are not currently able to revoke a licence - this power is reserved as a function of the Licensing Committee sitting as a Sub-Committee in order for them to consider all the facts.

Whilst there is existing power to suspend a driver's licence under delegated powers, legal services do not advocate use of that power for an unreasonable failure to promptly comply with a request for information or fee. This is because the use of suspension is controversial following in particular the case of *R (on the application of Singh) v Cardiff City Council* as applied in the case of *Reigate and Banstead Borough Council v Pawlowski*.

In this case it was held that a suspension is a sanction, the same as revocation, and should be an "ultimate" sanction and NOT an interim measure - as it used to be used to suspend pending e.g. the outcome of a criminal investigation or prosecution. There is academic debate about this position and the validity of the case law.

As a result the advice of legal services is that the full suite of revocation powers as referred to above be temporarily delegated to officers to allow for the timely revocation of licences as and when there are failures to comply, without the need for hearings on every occasion.

This clearly fits the definition of use of emergency powers, given all the circumstances, and when granted, can be limited to use in these circumstances specifically so that the position reverts to usual as and when the crisis eases back to normality. Officers shall exercise reasonable discretion to ensure that deadlines for relevant demands are proportionate in the circumstances of each case - e.g. where there are real barriers to prompt reply that are related to the current disruption.

It is also relevant to note that there has been some recent criticism of relatively trivial hearings by members recently - e.g. where drivers are referred to Committee simply because of points build up, so it is anticipated that due to the current circumstances, members will be understanding of the reasons for requesting the temporary delegation in the interests of efficiency and in order to facilitate the continued operation of the trade.

Whilst revocation might appear harsh at first blush it is important to stress that the licence renewal would not have been granted in the first instance under normal circumstances if the fee or relevant documentation proofs are not provided. So the reality is this process has been implemented to assist the trade, as far as possible, to keep functioning at this time - without providing considerable subsidy, which would be difficult for the general fund.

The renewal notice (PH attached but the HC is ostensibly the same at relevant parts and cover letter - *vice versa* applies) does make it expressly clear that the fee and documentation will be needed and that revocation will ensue if not provided. These notices have been distributed to those licence holders whose licence was/is due for renewal, private hire/hackney trade representatives and all private hire operators/lease garages and there has been no objection to this process.

Whilst the Licensing Team is doing all it can to assist the trade at these times the current economic impact is likely to be severe and it is anticipated that non-compliance may be commonplace for a variety of reasons. There is a very real possibility that if the emergency delegation is not granted that a large number of hearings would be required in a very short space of time and to determine a very straightforward matter. This, it I suggested, would be a wholly disproportionate use of resources - particularly given the physical limitations and difficulties that committee hearings can entail.

There is a statutory right of appeal to the Magistrates' Court where a licence is suspended or revoked. This right is unaffected by the delegation and licence-holders may still exercise that right. Use of delegated powers is not considered likely to increase risk in relation to defending decisions on appeal.