

INTENDED USE POLICY FOR THE LICENSING OF HACKNEY CARRIAGES

1. Introduction

1.1 The purpose of this policy is to set out how the Council will deal with the licensing, renewal and transfer of hackney carriage vehicles following the High Court Judgement – Newcastle City Council v Berwick upon Tweed [2008] EWHC 2369 (Admin). The council when considering new applications for hackney carriage proprietors licences will determine those applications in accordance with the principles contained within the judgement of the above case (see 7.1 below).

1.2 The Council will determine each application on its merits, but will place public safety above all other considerations.

2. Applications for the new grant of a hackney carriage licence

2.1 Applicants for new licences will be expected to demonstrate a bona fide intention to operate predominantly within the administrative area of Carmarthenshire County Council under the terms of the licence for which application is being made. There will be a presumption that applicants who do not intend to predominantly operate within the administrative area of Carmarthenshire County Council will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.

2.2 Even where the applicant intends to operate predominantly in Carmarthenshire, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

3. Applications for the renewal of a hackney carriage licence

3.1 Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to operate predominantly within the administrative area of Carmarthenshire County Council under the terms of the licence for which application is being made. There will be a presumption that applicants who do not intend to predominantly operate within the administrative area of Carmarthenshire County Council will not be granted a hackney carriage licence authorising them to do so. Section 60 of Local Government Miscellaneous Provisions Act 1976 gives the Council a broad discretion to refuse to renew a licence for any reasonable cause. Each application will be decided on its merits.

3.2 Even where the applicant intends to operate predominantly in Carmarthenshire, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

4. Transfer of ownership – when vehicle is transferred from one person to another

4.1 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who transfers his interest to another must, within 14 days of the transfer, give written notice to the Council of the name and address of the transferee of the hackney carriage. The Council has no power to refuse to register the new proprietor: see *R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd* [1947] KB 583. Provided requisite notice has been given in accordance with section 49 of the Local Government (Miscellaneous Provisions) Act 1976 the Council will register the transferee of a licensed hackney carriage as the new proprietor. This is a legal requirement.

4.2 The transferee of a licensed hackney carriage will be asked to inform the Council whether he has a bona fide intention to operate the vehicle predominantly in the administrative area of Carmarthenshire County Council. Transferees should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information; the Council will give serious consideration to exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming, in addition to its powers under section 73.

4.3 Transferees of existing licences will be expected to have a bona fide intention to predominantly operate within the administrative area of Carmarthenshire County Council under the terms of the licence in respect of the vehicle being transferred.

4.4 Where the transferee of a licensed hackney carriage is found to have no intention to operate predominantly within the administrative area of Carmarthenshire County Council and/or intends to trade in another authority's area also for a substantial amount of time and it appears that the purpose of the legislation and public safety will be compromised then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under section 60 of the 1976 Act. Where the transferee proposes to operate remotely from the administrative area of Carmarthenshire County Council there will be a presumption that his licence will be revoked. Each case will be decided on its merits.

5. Revocation of licence

5.1 Where a licence has been granted under the terms that the applicant intends to operate predominantly within the administrative area of Carmarthenshire County Council but is subsequently found not to be operating predominantly in Carmarthenshire and to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) there will be a presumption that the licence will be revoked.

6. Exceptional circumstances

6.1 Each application will be decided on its merits. However the presumptions that intended use is to operate predominantly within the administrative area of Carmarthenshire County Council will be rebuttable in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not compromise the purposes of the legislation or compromise public safety if the licence were granted, renewed or if were not suspended or revoked as the case may be.

7. Reasons for Policy

7.1 The Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgement in the case of Newcastle City Council v Berwick upon Tweed Council [2008]. The following statements were made in this judgement - a) "It was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used" b) "A licensing authority, properly directing itself, is entitled and indeed obliged to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area" c) "It must be desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licence to proprietors and drivers which are intending to ply for hire in that authority's area" d) "While I cannot at the moment conceive of it being rational to grant a licence to those who intend to operate their hackney carriages remotely from [the local authority's area] I am not prepared to say that it is bound to be unlawful") "There will be proprietors who wish to use their vehicles in a number of different authorities' areas and in that case no doubt there will be flexibility in the exercising of the discretion. Matters such as where the proprietor is based and where most of the business comes from will be material matters to consider"

7.2 The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court, unless precautionary steps are taken. Section 4 is intended to put the Council in a position to respond responsibly to the transfer of a Carmarthenshire

hackney carriage into the name of someone who operates outside Carmarthenshire or remotely from it.