



Report of the: Assistant Chief Executive (Corporate Governance)

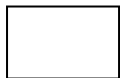
To the: Licensing and Regulatory Panel

Date: 6th November 2007

Subject: THE ROAD SAFETY ACT 2006 – THE EFFECTS ON COUNCIL POLICY AND CONDITIONS IN RESPECT OF PRIVATE HIRE VEHICLES

Electoral Wards Affected:

ALL



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

Leeds City Council has a statutory responsibility for the licensing of Private Hire Operators, drivers and vehicles within the District of Leeds. The Council has established Conditions for each of these areas of responsibility. The Road Safety Act 2006 introduced an amendment to part of the Local Government (Miscellaneous Provisions) Act, 1976, which empowers the Council in its licensing function. The amendment removed an exemption for the need to be licensed for certain classes of 'vehicle with the driver' services.

Additionally, the Department for Transport (DfT) has issued best practice guidance to LA's in respect of Stretched Limousines. These vehicles and their drivers have largely operated outside of any licensing regime but the DfT advice now draws them into some form of regulation.

This report sets out in detail the background to the issues, the public safety considerations and proposals for licensing policy and Conditions.

1.0 Purpose Of This Report

- 1.1 To inform Members of changes to primary legislation which will effect Private Hire Licensing in Leeds, identify key issues and present proposals in respect of policies and Conditions on a previously unlicensed market.

2.0 Background Information

- 2.1 Section 75(1) of the Local Government (Miscellaneous Provisions) Act, 1976, (LGMP Act) has historically provided an exemption for vehicles to be licensed as Private Hire Vehicles with driver, provided that a vehicle is only used on a contract of hire for a period of not less than seven days. This enabled vehicles being used for services other than day to day private hire work to avoid the need to be licensed. The natural consequence of that is that if the vehicle did not need to be licensed under the LGMP Act, then neither did the driver.
 - 2.1.1 Wedding and funeral cars were specifically exempted, and remain so, providing that use of the vehicle is predominantly for that type of service.
 - 2.1.2 There has been an abuse of the contract exemption rule nationally which has raised public safety concerns at Government level, resulting in these changes to legislation, which this report deals with at a local level.
 - 2.1.3 Section 53 of the Road Safety Act, 2006, 'Abolition of contract exemptions' has removed the contract exemption clause and as such all vehicles that are used for hire or reward with a driver, now need to be licensed as a Private Hire Vehicle and the driver as a licensed Private Hire driver with effect from January 2008.
 - 2.1.4 There are still some areas of impact which need clarification, particularly in respect of vehicles used as 'Voluntary Hospital Transport' and possibly some child minder services. For the purpose of expediency it is proposed to deal with the key groups identified in this report now, and the remaining groups later when central government advice has been clarified and consultation and assessment carried out.
 - 2.1.5 The position with stretched limousines is also the subject of DfT advice. That advice promotes the licensing of such vehicles by Local Authorities. Historically these vehicles have fallen between two chairs; The Vehicle Operator & Standards Agency (VOSA) and Local Authorities. There have been protracted negotiations at a national level to resolve the many practical and legal issues around the legislation and vehicle issues. The DfT advice now removes any doubt that an Operator of such vehicles may have had, and in effect they have to sit within the VOSA licensing regime if it has more than 8 passenger seats, or be licensed by a LA if they have less than 9 passenger seats.
 - 2.1.6 Consultation (which is explained in more detail at Appendix 1) has revealed some main categories of vehicles and service suppliers which are currently unlicensed as set out below:

2.2 **Stretched limousines**

- 2.2.1 Stretched limousines are imported from the United States, where they are converted from saloon cars by the insertion of a new middle section. Typically they have rear facing seats immediately behind the front seats, a side facing bench seat along one side, a drinks cabinet along the other side, and a row of forward facing seats at the back. The main saloon can carry eight adults and usually there is seating space for more. These vehicles have left-hand drive and tinted windows.
- 2.2.2 Concerns about the use of stretch limousines, often hired for events such as children's birthday parties, hen parties etc, include uncertainty about the quality of construction, and maintenance and the suitability of the driver.
- 2.2.3 In the DfT's 'Taxi and Private Hire Vehicles – Consultation on Draft Best Practice Guidance' - it was noted that local Licensing Authorities are sometimes asked to licence stretch limousines as Private Hire vehicles. The DfT's document suggests Local Authorities should approach such requests on the basis that these vehicles have a legitimate role to play in the Private Hire trade, meeting a particular public demand. The document further suggests that licence applications should not be automatically rejected for example, just because the vehicles may be left-hand drive.

2.3 **Novelty Vehicles**

There are a wide range of potential vehicles in this category and in fact Members have heard an application from a 'Pedi cab' owner. The range is much wider than that however, and may extend to armoured personnel carriers and fire engines. There are many different issues around these vehicles and whilst they do not form the basis of any specific Conditions in this report they will be highlighted in future policy recommendations

2.4 **Executive Vehicles/Chauffeur Vehicles/ Corporate business**

- 2.4.1 Such currently unregulated services are widely advertised and are, in effect, within a legal context, exactly the same transport facility offered by the Private Hire trade. Individual circumstances may exist in terms of the style of vehicle or the service offered, but in principle, it is the same function as the existing licensed trade. A typical dictionary description of a chauffeur is 'a person employed to drive a car', which is exactly the role of the Private Hire driver.
- 2.4.2 This group has never been closely defined in legal licensing terms and there is very cloudy water over the defined boundaries of each service. It is the view of Officers that essentially they all amount to the same type of service. It is not uncommon for a particular business proprietor to advertise across all the headings and to describe their vehicles in a way which may exceed the normal public perception of the vehicles status or facilities, in the way some vehicles are described as 'executive'. The remainder of the report will identify the variously described services as 'Executive Travel' with a single set of proposals.

2.5 **Airport Transfers**

- 2.5.1 There is also an unregulated market with this advertised service, and, where the service provided is with a vehicle of not more than 8 passengers, then it is, in essence, the same service as the services offered by the PH or Taxi trades. Where

there are more than 8 passenger seats it is outside the remit of the Local Authority to licence them.

2.5.2 Even before the change in legislation many service suppliers were operating outside the law and driving vehicles without appropriate insurance. The providers of these types of services use small ads in newspapers or shops, word of mouth or more widely on the internet.

2.5.3 This type of service is extensively fulfilled by the existing licenced trades. It is anticipated there are unlicensed services currently being offered which are no different to the existing licensed trades. Whilst each case would be considered on its own merits there would have to be exceptional reason for the existing Private Hire vehicle, driver and Operator Conditions not to apply.

2.6 **Vintage Cars**

Consultation has not drawn in providers of this form of service but it is considered to be a particularly low risk category and one which can be dealt with as the new licensing regime progresses. The vehicles are quite exclusive and easily subject to control providing the hirer is aware of the additional attendant risks with vehicles of this age group

2.7 **Drivers**

Whilst there may be differences between the types or level of services offered within the various licensed or unlicensed categories, in legal terms there is no such distinction. Public safety considerations are a statutory obligation for the Council and the role of driver must be licensed. The issues around the individual roles of drivers (for example uniforms) are a separate issue and may be accommodated within Conditions. There are existing pre-Conditions and Conditions on a licence in place for Private Hire drivers.

2.8 **Operators**

Similarly, there are existing Conditions for Operators but specific additional Conditions may need to be introduced for the Operators of the new categories or exceptions may need to be made to the existing policy and Conditions to accommodate very different categories of operating practices.

3.0 **Main Issues**

3.1 For Members to consider existing policy and Conditions and then further consider, appropriately and proportionately, regulating those drivers, vehicles and Operators effected by the new legislation. This can be achieved within policy statements setting out pre-conditions to the issuing of a licence and also determining what Conditions should be placed upon different types of licenses.

3.1.1 In essence this will create distinct categories of vehicle licenses, with their own appropriate Conditions, and corresponding driver and operator Conditions. By creating distinct categories of vehicle licenses simpler processes can be set out benefiting the trade, the public, partners and Officers. It also simplifies matters should the policy or Conditions be tested before the Courts.

- 3.1.2 In terms of public safety it is of paramount importance that the categories of licences are distinct. The current PHV Conditions, especially those concerning window tints or livery, are vital for the personal safety of women in particular and the prevention of crime. It is strongly recommended to Members that only in the most exceptional circumstances should these be diluted. The opportunity for individuals to use vehicles for 'every day' private hire work which avoid the existing safety Conditions should be wholly resisted. It cannot be overstated that certain elements of the trade will take any opportunity to rid them selves of Conditions designed for the safety of the public and which enable them to be more easily identified.

3.2 **Licensing of Vehicles – Policy and Conditions**

Existing pre-conditions leading to the grant of a standard Private Hire vehicle licence are set out in the policy document at Appendix 2. Existing Private Hire vehicle Conditions upon a standard Private Hire saloon or 'people carrier' vehicle are at Appendix 3. Neither the existing policy, of the existing Conditions can accommodate the very different types of vehicles and services which may seek to be licensed and it is recommended that there are changes to the standard Private Hire saloon & People Carrier policy and Conditions as follows:-

3.3 **Stretched Limousines**

- 3.3.1 A proposed policy setting out the pre-conditions is set out at Appendix 5 and proposed Conditions to be placed upon a vehicle licence as set out at Appendix 6.
- 3.3.2 In view of the DfT 'Best Practice Guidance', it is considered reasonable to exempt stretched limousines from the requirement for door livery, windscreen visor information and tinted windows.
- 3.3.3 It is a requirement of primary legislation that a licensed Private Hire vehicle must exhibit upon the vehicle, in a manner prescribed by the Council, the licence plate. Therefore, there can be no exemption to the display of such a licence as has been sought by some consultees.
- 3.3.4 A voluntary condition proposed by the existing trade that the number of advance booking should not exceed three, per vehicle, per day, and the minimum charge recommendations of £45 pr vehicle hire minimum charge are difficult to justify within a legal frame work. The basis of qualification for this category of licence must lie with the exceptional executive quality of the vehicle and an exceptionally high standard of business and chauffeur service.
- 3.3.5 The sale pitch of some motor manufacturers in describing some family saloons or middle management style of cars does not really hold water when considering an exceptional class of vehicle.

3.4 **Executive Travel**

- 3.4.1 A proposed policy setting out the pre-conditions is set out at Appendix 7 and proposed Conditions to be placed upon a vehicle licence as set out at Appendix 8.
- 3.4.2 The legal issues in respect of licence plates on executive travel vehicles is exactly the same as those for stretched limousines but because of the very distinct role

there may be an opportunity for the more discreet type of licence design to be produced by the Council.

3.5 **Airport Transfers – Trailers**

Occasionally these vehicles draw trailers which can present additional hazards. Such vehicles may be able to use a boxed trailer of a type and specification approved by Officers. This is unlikely to have much impact and it is suggested this can be dealt with under 'Delegated Powers' when more is known about the unlicensed market.

3.6 **Vintage Cars**

These vehicles are quite exclusive and easily subject to control providing the hirer is aware of the additional attendant risks with vehicles of this age group. This is unlikely to have much impact and it is suggested this can be dealt with under 'Delegated Powers' when more is known about the unlicensed market.

3.7 **Licensing of Drivers – Policy and Conditions**

3.7.1 Existing standard Private Hire driver Conditions are at Appendix 4. Generally these are adequate but it is recommended that there are additions to the standard policy for applicant drivers of saloons and 'People Carriers', as indicated:-

3.7.2 **Stretched Limousines**

Key additional pre-conditions are :-

- Undertake and pass an additional driving assessment in a stretched limousine with a testing / training body approved by the Council (Please note that the DSA are currently examining the feasibility of this)
- Pass a Group 2 medical as described by the DVLA

3.7.3 Justification for these requirements are that stretched limousines require significantly more driving skills, particularly in negotiating roundabouts, junctions, manoeuvres within a town or city centre or when reversing. Increased dangers are caused to, and by, a variety of road users particularly pedestrians in a city centre evening environment.

3.7.4 In terms of medical fitness the issues are that the vehicle is significantly heavier and presents problems which are akin to those of public service vehicles or heavy goods vehicles, where a group 2 medical is required. Additionally, drivers of such vehicles may undertake exceptionally long hours as trips are taken to the capital city. (The requirement for a Group 2 medical in this case is also a precursor to a change to Conditions for applicants for all Private Hire driver licenses .) A group 2 medical is particularly relative to professional drivers of heavy good vehicles and public service vehicles.

3.7.5 As a distinct service for special occasions or executive hire the driver should be set apart from everyday Private Hire drivers and be distinctive for the role. An appearance typifying an executive type chauffeur would be appropriate.

3.7.6 The full proposed policy and pre-conditions are at Appendix 8 and the proposed Conditions upon the licence are at Appendix 10.

3.8 **Executive Vehicle Drivers**

3.8.1 Key additional pre-conditions are : -

- Pass a Group 2 medical as described by the DVLA
- Wear an appropriate formal business suit and tie or a driver uniform throughout the duration of a booking

3.8.2 Justification for this requirement is that the driver of this type of vehicle may be asked to undertake lengthy trips or work hours which cause conflict with the body clock.

3.8.3 The very nature of the service is synonymous with a standard of deportment and appearance which sets it aside from everyday private hire work.

3.8.4 The full proposed policy and pre-conditions are at Appendix 12 and the proposed Conditions upon the licence are at Appendix 14.

3.8.5 **Additional Pre-conditions for both Stretched Limousine / Executive Vehicle Drivers**

3.8.6 Additionally, a licence will not be granted to an applicant who has in excess of 9 penalty points on their DVLA licence. In the event of a licensed driver exceeding 9 penalty points the Private Hire driver licence may be suspended and consideration given to its revocation.

3.8.7 Where an applicant has a conviction upon their DVLA licence for one of the offences identified below, a Private Hire driver Licence would not normally be granted until the conviction is expired within the terms of the Rehabilitation of Offenders Act, 1974.

- DD30 Reckless driving
- DD60 Manslaughter or culpable homicide while driving a vehicle
- DD70 Causing death by reckless driving

To receive a conviction for such offences identified under D30, D60 and D90 indicates that a person has driven a vehicle in such a manner that to grant a licence would seriously undermine public confidence in the Council's licensing policy and create potential risks to the public.

3.8.8 **DRIVE A MOTOR VEHICLE UNDER THE INFLUENCE OF DRINK OR DRUGS**

A serious view is taken of convictions of driving or being in charge of a vehicle while under the influence of drink or drugs.

3.8.9 **OFFENCES COVERED UNDER THIS SECTION INCLUDE: -**

- DR10 Driving or attempting to drive with alcohol level above limit
- DR20 Driving or attempting to drive while unfit through drink or drugs

- DR30 Driving or attempting to drive then refusing to supply a specimen for analysis
- DR40 In charge of a vehicle while alcohol level above limit
- DR50 In charge of a vehicle while unfit through drink or drugs
- DR60 In charge of a vehicle then refuses to supply a specimen for analysis
- DR70 Failing to provide a specimen for breath test

3.8.10 The effects of alcohol and drug abuse, even the 'day after' can seriously impair a drivers ability to safely transport the public. The Council has no tolerance of such behaviour and requires that existing drivers or applicants can demonstrate total evidence of such serious offences.

3.9 **Airport Transfer Vehicles**

Members may feel that the existing Private Hire driver Conditions adequately and necessarily cover the role of a driver who conducts this type of service. The consultation process has not revealed any exceptions to the view that this type of licence is in nothing more than straight forward private hire work.

3.10 **Licensing Of Operators – Policy and Conditions**

The full proposed policy and pre-conditions are at Appendix 9 and the proposed Conditions upon the licence are at Appendix 10

Key points of change from standard Private Hire Operator Conditions concern the: -

- sale and supply of alcohol
- Entertainment and conduct of passengers
- Restricted opportunity for transfer of bookings

4.0 **Implications For Council Policy And Governance**

4.1 There is little guiding case law, best practice or indeed experience across the country in relation to the effects of the imposition of policy or Conditions. There will be a significant effect on some parts of the currently unlicensed trade but this might be mitigated by appropriate lead-in periods proposed in the recommendations. The imposition of existing pre-conditions and Conditions upon a drivers licence have stood the test of reasonableness and present minimum risk to the Council in respect of legal challenge.

5.0 **Legal And Resource Implications**

5.1 Section 48 (1) of the Local Government (Miscellaneous Provisions) Act, 1976, places a statutory obligation on a District Council not to grant a vehicle licence unless they are 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
- v) comfortable

Section 48 (2) enables a Council to attach Conditions to such a licence they consider reasonably necessary.

5.2 Section 51 (1) places a statutory obligation on a District Council not to grant a driver licence unless they are satisfied: -

- i) the applicant is a 'fit and proper' person to hold a driver's licence.

Section 51 (2) enables a Council to attach Conditions to such a licence they consider reasonably necessary.

5.3 The same obligations exist in respect of Private Hire Operators at Sections 55 (1) and 55 (3) of the Local Government (Miscellaneous Provisions) Act, 1976, as they do for drivers.

5.4 There appear to be no significant resource implications but this will be monitored throughout the year.

6.0 Conclusions

6.1 In essence the general tone of the changes relate to necessary service, safety and enforcement improvements for the public and the Council, and are considered to be reasonable measures which also meet the Council's statutory function in ensuring levels of safety.

7.0 Recommendations

7.1 That Members approve the following distinct categories of Private Hire vehicle licenses: -

- Standard Private Hire Vehicle saloons and 'People Carriers'.
- Novelty Vehicles
- Stretched Limousines
- Executive Travel
- Vintage Vehicles

7.2 That Members approve the policy and Conditions for each area of licensing as follows:-

- I. Stretched Limousine vehicle licence applications are subject to the relevant policy and pre-conditions at Appendix 5 and conditions upon a licence at Appendix 6 with immediate effect if they are not currently exempt under Section 75 (1) LGMP Act. If they are currently exempt applicants wishing to be licensed at an earlier time will be accommodated on a voluntary but binding basis at the point of application. Otherwise, Conditions will apply on the commencement date of Section 53 of the Road Safety Act, 2006.

- II. Executive Travel vehicle licence applications are subject to the relevant policy and pre-conditions at Appendix 7 and conditions upon a licence at Appendix 8 with immediate effect if they are not currently exempt under Section 75 (1) LGMP Act. If they are exempt applicants wishing to be licensed at an earlier time will be accommodated on a voluntary but binding basis at the point of application. Otherwise, Conditions will apply on the commencement date of Section of the 53 Road Safety Act, 2006.
- III. Airport Transfer Vehicles vehicle licence applications are subject to the policy, pre-conditions and conditions upon a licence which currently apply to existing licensed Private Hire vehicle saloon and 'people carrier' vehicles and not the subject of a distinct category of vehicles and that Officers continue to deal with all the attendant policy and Conditions under 'Delegated Powers'.
- IV. That Members direct Officers to deal with the policy and attendant Conditions involving trailers used with any form of licensed Private Hire vehicles by way of 'Delegated Powers'.
- V. That Members direct Officers to deal with the policy and attendant Conditions involving 'Vintage Vehicles' by way of 'Delegated Powers'.
- VI. Operators of Stretched Limousine vehicles be subject to the relevant policy and pre-conditions at Appendix 9 and conditions upon a licence at Appendix 10 with immediate effect if they are not currently exempt under Section 75 (1) LGMP Act. If they are exempt applicants wishing to be licensed at an earlier time will be accommodated on a voluntary but binding basis at the point of application. Otherwise, Conditions will apply on the commencement date of Section of the 53 Road Safety Act, 2006.
- VII. That drivers of Stretched Limousines be subject to the standard Private Hire policy and pre-conditions with additional requirement to undertake an appropriate driving assessment in a stretched limousine and also undertake a group 2 medical. Additionally, that such drivers be subject to the Conditions upon a driving licence as proposed at Appendix 11 with immediate effect if they are not currently exempt under Section 75 (1) LGMP Act. If they are exempt applicants wishing to be licensed at an earlier time will be accommodated on a voluntary but binding basis at the point of application. Otherwise, Conditions will apply on the commencement date of Section of the 53 Road Safety Act, 2006.
- VIII. That the proposed lead in period set out below in respect of the age criteria of Stretched Limousine vehicles would only apply to those vehicles which were recorded on the V5 document as being owned by the applicant operator prior to 7th November 2007.
 - The age at which a vehicle can be licensed for the first time will not be the subject of the age criteria set out in the Stretched Limousine Vehicle Conditions until 7th November 2009. This lead in period will only apply to those vehicles that

were converted under the 'Ford QVM' or 'Cadillac CMC' schemes.

- The exceptions to this lead in period would be that it ceases at the point of transfer of a vehicle or if the mechanical condition or appearance of the vehicle, including its interior, is such that it discredits the purpose of the stretched limousine vehicle category.
- IX. Operators of Executive vehicles be subject to the relevant policy and pre-conditions at Appendix 12 and Conditions upon a licence at Appendix 13 with immediate effect if they are not currently exempt under Section 75 (1) LGMP Act. If they are exempt applicants wishing to be licensed at an earlier time will be accommodated on a voluntary but binding basis at the point of application. Otherwise, Conditions will apply on the commencement date of Section of the 53 Road Safety Act, 2006.
- X. That drivers of Executive vehicles be subject to the Conditions upon a licence at Appendix 14 with immediate effect if they are not currently exempt under Section 75 (1) LGMP Act. If they are exempt applicants wishing to be licensed at an earlier time will be accommodated on a voluntary but binding basis at the point of application. Otherwise, Conditions will apply on the commencement date of Section of the 53 Road Safety Act, 2006.
- XI. That the proposed lead in period set out below in respect of the age criteria of Executive Hire vehicles would only apply to those vehicles which were recorded on the V5 document as being owned by the applicant operator prior to 7th November 2007.
- The age at which a vehicle can be licensed for the first time may be extended beyond the 2 year Condition providing it does not exceed 8 years of age from the date of first registration.
 - That no vehicle be affected by the maximum age Condition until 7th November 2009.
 - The exceptions to this lead in period would be that it ceases at the point of transfer of a vehicle or if the mechanical condition or appearance of the vehicle, including its interior, is such that it discredits the purpose of the executive vehicle category.
- XII. That Members direct Officers to deal with future changes to policy or Conditions in respect of all the approved issues by way of 'Delegated Powers'.

- Appendix 1** Consultation summary
- Appendix 2** Existing standard Private Hire vehicle policy document
- Appendix 3** Existing standard Private Hire vehicle Conditions attached to a saloon or 'people carrier' vehicle
- Appendix 4** Existing standard Private Hire Driver Conditions
- Appendix 5** Proposed policy and pre-conditions - Stretched Limousine vehicles
- Appendix 6** Proposed Conditions upon a Stretched Limousine vehicle licence
- Appendix 7** Proposed policy and pre-conditions – Executive Travel vehicles
- Appendix 8** Proposed Conditions upon an Executive Travel vehicle licence
- Appendix 9** Proposed policy and pre-conditions – Stretched limousine Operator
- Appendix 10** Proposed Conditions upon a Operator of Stretched Limousine vehicles licence
- Appendix 11** Proposed Conditions upon a Stretched Limousine driver licence
- Appendix 12** Proposed policy and pre-conditions – Executive Travel Operators
- Appendix 13** Proposed Conditions upon an Executive Travel Operator licence
- Appendix 14** Proposed Conditions upon an Executive driver licence