

Agenda Item:

Originator: Gill Marshall

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Report of the City Solicitor

To: Licensing Committee

Date: 16 October 2012

Subject: Hackney Carriage and Private Hire Driver's Petition for Equal Rights and Alleged unlawful application of Immediate Suspension Powers.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of Main Issues

- 1 On 14 August 2012 the Licensing Committee considered a petition from the Alpha Hire and Hackney Welfare Society requesting that the council pass a resolution relating to the use of immediate suspension and revocation powers for drivers under s61(2B) Local Government (Miscellaneous Provisions) Act 1976.
- 2 Members resolved to reject the petition but to request that officers prepare draft guidelines on the use of immediate suspension powers for consideration by the Committee. This report presents the draft guidelines for consideration and comment.
- 3 Members further resolved that a full review be undertaken of the existing policy and processes and that a report be presented in due course setting out the findings of the review for discussion, to include wider discussions on the issues of public safety in respect of the PH and HC trade. That review will be commenced later.

Recommendations

- 4 That Members consider the attached draft guidelines and provide their comments before consultation is undertaken with the trade.

1. Purpose of this Report

- 1.1 This report provides draft guidelines on immediate suspension powers for Members to consider prior to trade consultation. These draft guidelines were requested by Members when considering, but ultimately rejecting, a petition for an equality resolution signed by a proportion of licensed drivers.

2. Background Information

- 2.1 Members will recall that that the petition requested that

‘This council resolves that in the determination of whether to suspend or revoke the licence of a HACKNEY CARRIAGE driver under its powers in the Local Government (Miscellaneous) Provisions Act 1976, Section 61 (2B), such determination to revoke a licence with immediate effect shall only be undertaken if there has been a conviction, an ongoing police investigation, or prosecution against the driver for an indictable only offence’.

- 2.2 The statutory provision giving rise to the concern of the signatories is Section 61(2B) of the Local Government (Miscellaneous) Provisions Act 1976. This provision was inserted into the legislation by the Road Traffic Act 2006 effective from 17 March 2007. That section provides that

‘ if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2) (a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.’

The general powers of revocation and suspension are set out in section 61 of the Act summarized below and the reference to subsection (2) (a) is to the notice that must always be given to the driver setting out the reasons for suspension.

- 2.3 Prior to this section coming into force the position was that a suspension or revocation decision did not take effect for 21 days. It could be appealed to the Magistrates Court. The effect of the appeal was to stay the decision which would not then come into effect until the appeal had been heard. Concern was expressed nationally that outside London drivers were allowed to continue working through that period even though they may pose a risk of danger to the public. Under the new provisions, where it is in the interest of public safety to do so, the suspension can take immediate effect and will remain in place until the appeal is heard. This brought the rest of the country into line with the legislation applicable in London.
- 2.4 Members resolved to reject the petition as the proposed resolution did not reflect the legal position and unduly restricts the powers of the council but to direct officers to prepare draft guidelines on the use of the powers of immediate suspension for consideration by the Licensing Committee at its October meeting prior to consultation with HC and PH trades on the guidelines and to request a full review be undertaken of the existing Policy and processes and that a report be presented in due course setting out the findings of the review for discussion, to include wider discussions on the issues of public safety in respect of the PH and HC trade.

3. Main Issues

- 3.1 Draft Guidelines on the use of immediate suspension and revocation powers are attached as **Appendix 1**. These guidelines reflect the legal position as outlined in the report of August 2012 in that the trigger for use of the power is the interests of public safety rather than the offence or allegation in question.
- 3.2 A series of examples is given in the guidelines of situations in which the powers may be exercised. These examples reflect previous decisions of the council as to what impacts on public safety as well as drawing on examples given by the Minister when discussing the powers in Parliament and the Transport for London Guidelines referred to in the petition.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Members will be aware that the proposed guidelines are to be the subject of trade consultation prior to being approved.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The draft guidelines have been subject to equality screening.

4.3 Council policies and City Priorities

- 4.3.1 The guidelines take account of city priorities relating to transport and crime and disorder.

4.4 Resources and value for money

- 4.4.1 There are no resource implications arising from this report.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 No implications

4.6 Risk Management

- 4.6.1 No implications

5. Conclusions

- 5.1 That Members consider the attached draft guidelines and provide comments and feedback prior to consultation with the trade.

6 Recommendations

- 6.1 That Members consider the attached draft guidelines and provide comments and feedback prior to consultation with the trade.

7 Background documents¹

- 7.1 The Local Government (Miscellaneous Provisions) Act 1976 Section 61 as amended by the Road Safety Act 2006
- 7.2 Records of Parliamentary Debate – Hansard 9 October 2006 Column 55 and 56 – Speech of the Minister Dr Ladyman.
- 7.3 Transport for London guidelines on immediate suspension powers.

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.