

NORTH WARWICKSHIRE BOROUGH COUNCIL

**INTENDED USE POLICY FOR THE
LICENSING OF HACKNEY CARRIAGES**

**TOWN POLICE CLAUSES ACT 1847
LOCAL GOVERNMENT (MISCELLANEOUS
PROVISIONS) ACT 1976**



North Warwickshire
Borough Council





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Introduction

1.1 This policy has been written in response to the High Court Judgement and Declaration made in the case of Newcastle City Council v Berwick – Upon – Tweed Borough Council 2008 concerning the use of hackney carriages licensed by one authority being used wholly, or for a substantial period of time as private hire vehicles in the areas of other local authorities.

1.2 The major purpose behind the 1847 Act and the 1976 Act is the safety of the public. Thus the scheme of legislation is directed towards having safe vehicles, fit and proper drivers and appropriate conditions of hire. It was decided by Parliament that licensing should be dealt with locally rather than nationally.

1.3 If hackney carriages are working remote from their licensing authority a number of potentially undesirable consequences follow. The licensing authority will not easily keep their licensed fleet under observation. It will be carrying out its enforcement powers from a distance. The licensing authority where the hackney carriage has chosen to operate will have no enforcement powers over the vehicle although it is being used in their area.

1.4 It is therefore normally desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licences to proprietors and drivers which are intending to ply for hire in that authority's area. Similarly it is desirable to be able to refuse to issue a licence to proprietors and drivers who do not intend to ply for hire, to a material extent, in the area of the licence grantor.

2. Applications for the New Grant and Renewal of a Hackney Carriage Licence

2.1 Applicants for new licences and renewals of licences will be expected to demonstrate a bona fide intention to ply for hire within the administrative area of North Warwickshire Borough Council (The Council) under the terms of the licence for which application is being made.

2.2 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of The Council will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.

2.3 Even where the applicant intends to ply for hire to a material extent in the Council area, 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 frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

3. Transfer of Ownership – When a Licensed Vehicle is Transferred from One Person to Another

3.1 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] KB583.

3.2 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.

3.3 The transferee of a licensed hackney carriage will be asked to inform the Council whether he has a bona fide intention to use the vehicle to ply for hire within the administrative area of the 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.

3.4 Transferees of existing licences will be expected to have a bona fide intention to ply for hire within the administrative area of the Council under the terms of the licence in respect of the vehicle being transferred.

3.5 Where the transferee of a licensed hackney carriage is found to have no intention to ply for hire to a material extent within the administrative area of the 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 frustrated) 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 the Council there will be a presumption that his licence will be revoked. Each case will be decided on its merits.

4. Change of Vehicle – When a Proprietor Replaces a Licensed Vehicle

4.1 Applicants seeking the grant of hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire to a material extent within the administrative area of the Council will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire to a material extent in the area of the Council, 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 frustrated) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.

5. Revocation of Licence

5.1 Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within the administrative area of the Council but is subsequently found not to be plying for hire to a material extent in the Council area and/or 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 frustrated) 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 ply for hire to a material extent within the administrative area of the 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 frustrate 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, and the Declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].

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 3 is intended to put the Council in a position to respond responsibly to the transfer of a North Warwickshire hackney carriage into the name of someone who operates outside the Council zone or remotely from it.

7.3 Unless there has been a change in the proprietor's intentions with regard to plying for hire within the administrative area of the Council, there should be no reason why he should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained his first licence on the expressed intention of plying for hire to a material extent within the administrative area of the Council, and who on application to replace that vehicle with another discloses that he no longer so intends, effectively engages the presumption against grant that is mentioned earlier.