

Committee: LICENSING COMMITTEE

Agenda Item

Date: January 24, 2007

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Title: DELEGATED POWERS

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Item for decision

Summary

1. This report is to inform members of a forthcoming change in law relating to the suspension or revocation of licences for drivers of private hire vehicles and hackney carriages and seeking extension of the delegated powers of the Assistant Chief Executive in connection therewith.

Recommendations

2. The Assistant Chief Executive have delegated power to suspend the licences of drivers of private hire vehicles and hackney carriages under section 61 Local Government (Miscellaneous Provisions) Act 1976 (as amended) immediately if in his or her opinion it is in the interest of public safety that the suspension has immediate effect, such suspension to last until the day after the next ordinary meeting of the Licensing Committee. This delegated power will come into effect upon the date that section 52 Road Safety Act 2006 comes into force.

Background Papers

3. None.

Impact

- 4.

Communication/Consultation	None
Community Safety	Permitting drivers to continue to drive when they are unfit to do so could place the public at risk.
Equalities	None.
Finance	None.
Human Rights	The suspension or revocation of a licence is an interference with an individual's possessions which engages Article 1 of the

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	First Protocol of the European Convention on Human Rights. Interference with that right is permissible if in accordance with the law and for the general good. I consider that the delegated powers sought satisfy the requirements of the Human Rights Act 1998.
Legal Implications	Although the driver could not drive pending appeal the right of appeal to the magistrates' court remains.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

5. Licences for drivers of private hire vehicles and hackney carriages are renewed on an annual basis. During the continuance of the licence circumstances may arise whereby the licence is suspended for a period or revoked.
6. Generally such decisions are made by the Licensing Committee. I only have delegated authority to suspend a licence for up to 2 weeks where there has been a breach of condition or the commission of an offence when I consider that a prosecution would be disproportionate. I may only revoke a licence where its grant was procured by a false statutory declaration made by the driver.
7. Where a decision is taken to suspend or revoke a licence (whether by the committee or myself) the driver has a right of appeal to the magistrates' court. The decision does not take effect for 21 days, which is the time allowed for an appeal. Where an appeal is lodged, the effect of the decision is suspended until such time as the appeal has been determined or abandoned. If the appeal is dismissed the driver has a further right of appeal to the Crown Court. The decision of the magistrates does not take effect for the appeal period (21 days) and if an appeal is lodged within that time then the decision does not take effect until such time as the appeal has been disposed of or abandoned. It follows that where a decision is taken to suspend or revoke a licence, the driver may continue to drive for a considerable period before the decision takes effect.
8. There are some circumstances where this may be inappropriate. Where for instance the decision to revoke or suspend is taken on medical grounds, it may be inappropriate for the driver to continue to drive but nevertheless

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under the legislation as it now stands he may do so by using the appeal procedure.

9. The Government have now recognised this fact and have provided for an amendment to the Local Government (Miscellaneous Provisions) Act 1976 in section 52 Road Safety Act 2006. The effect of the amendment is that where it appears in the interest of public safety that a suspension or revocation should have immediate effect and the notice of the suspension or revocation to the driver includes a statement that this is the case and gives an explanation as to why, the suspension takes effect from the time the notice is served on the driver. Whilst the right of appeal to the magistrates' court and beyond is retained, the driver may not drive whilst pursuing an appeal.
10. Clearly this power should only be used in extreme circumstances. It follows from that however that the use of the power should be immediate and not await a meeting of the committee for a decision to be taken.
11. The revocation of a licence is a very serious step. I do not therefore believe that it is appropriate for that decision to be taken under delegated powers. The suggestion is therefore that I should be given the power to suspend a licence with immediate effect on the basis that the suspension would expire the day after the next meeting of the committee. The intention would be that at the committee meeting the committee would consider the driver's position and determine whether or not the licence should then be revoked. In the event that I decide to suspend a licence after the agenda for a meeting has been published, I consider that the chairman would be justified in accepting the consideration of a revocation of the licence as urgent business rather than wait until the next meeting of the committee given the importance of the matter to the driver.