

HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES – PROVISIONS RELATING TO DRIVERS

People who provide a vehicle for the purposes of transporting others have been regulated since, it is believed, the 15th century when Thames boatmen had to obtain permission to ply their trade in London. Since then, various Acts of Parliament have been passed by which those intending to provide a vehicle for hire or reward have been required to obtain various permissions in order to do so. Unfortunately, the rules often do not reflect the passage of time to the extent that the primary legislation controlling Hackney Carriages is the Town Police Clauses Act 1847 (some years before the car was invented)! This required that any person using a carriage plying for hire and picking up in the street would require not only a licence for the carriage itself but for the driver. The object of this requirement was to ensure that the person taking the gentry to their club, home or business was able to handle the behaviour of the horse, pick up its by-products and also the carriage would be maintained in a clean and tidy manner befitting the status of the passengers, ie. people who could afford to travel in this way. It was enshrined in this process that the only person therefore able to drive a Hackney Carriage was the holder of an appropriate Licence and the carriage never had another use. In other words, it could never be used by the driver for taking his family on outings or driven by his wife. Such actions would be well above their station in life. If a Hackney Carriage was on the road, it was available for hire, a situation which persists until this day. Consequently, if a policeman or Council Enforcement Officer sees an unlicensed driver in a Hackney Carriage, it is clear that the law has been broken.

In 1976, the Local Government (Miscellaneous Provisions) Act introduced a licensing regime for Private Hire vehicles. These are cars used ONLY by prior booking made either by telephone or by calling at an office. The legislation required the operator to obtain Vehicle and Drivers licences as well as an Operators' Licence. As there was no ability to pick up passengers in the street, there was no stipulation that, when the vehicle was not being used for hire, it could not be used for private purposes. So most authorities had no difficulty with the car being driven by a spouse, father or anyone else to go shopping or on holiday.

Some confusion has arisen in recent years, particularly from a change to the law and a notable court case this year. There was clearly a difficulty caused by the provisions with regard to mechanics and other vehicle examiners who could not take a vehicle out on to the road to test it unless the Council had issued them with a Drivers' Licence. This was addressed by the Paragraph 3 of Schedule 7 to the Transport Act 1985, which states:-

Section 46 of the Town Police Clauses Act 1847 (drivers not to act without first obtaining a Licence) shall not apply to a person driving a hackney carriage licensed under the Act for the purpose of or in connection with-

- (a) any test of the mechanical condition or fitness of the Hackney Carriage or its equipment carried out for the purposes of Section 43 of the Road Traffic Act 1972 (tests of satisfactory condition of vehicles other than goods vehicles) or for the purposes of any requirements with respect to such condition or fitness imposed by or under any other enactment; or*
- (b) any test of that person's competence to drive a Hackney Carriage carried out for the purposes of any application made by him for a Licence to drive a Hackney Carriage.*

The fact that the Act did not make a similar provision for Private Hire Vehicles suggests that the Government also had the view that such vehicles could have a private use and be driven by those who did not hold appropriate Licences.

In 1997, a prosecution was undertaken which involved a Private Hire Vehicle being driven by a person who was not authorised to do so by the Local Authority. The case has become famous as ***Benson v. Boyce*** and the judgement in that case had the effect of establishing in law that a Private Hire Vehicle had such status at all times. Consequently, no person is able to drive a Private Hire Vehicle without an appropriate Licence issued by the Local Authority. This led to a large number of

enquiries and applications being made to Council Licensing Departments by wives, sons and garage mechanics for Private Hire Drivers' Licences which, in turn, created a number of difficulties as the Council has a responsibility to ensure that no Licence is issued unless the applicant is shown to be a "fit and proper person". The necessary Police vetting procedure caused considerable delays to applications and there were also unacceptable resource and cost implications. As a result, representations were made through various sources for clarification from the Department of Transport or for the law to be changed to provide a similar status to that of Hackney Carriages, at least for mechanics and testers. After some 3 years of consideration, evaluation, consultation and confusing statements by Ministers, it appears that the only confirmation provided by the Department of Transport is that the finding in *Benson v. Boyce* stands and only the holders of Council Private Hire Drivers Licences can legally drive such vehicles.

This situation has led to a great deal of confusion in a number of areas and some insurance companies have issued notifications to garages to say that their insurance cover is not valid unless the mechanic driving a vehicle holds a valid Licence. As the distinction between Hackney Carriages and Private Hire Vehicles is not always understood, enquiries are being directed to Council Licensing Sections for clarification.

By way of summary, the rules (currently) are:-

Vehicles licensed by the Local Authority for hire or reward (Hackney Carriages and Private Hire Vehicles) do not have any other use.

In general, they must only be driven by people who have applied to the Local Authority, paid the appropriate fee and been confirmed to be a "fit and proper person" evidenced by the issue of a Drivers' Licence (and a badge).

However, a vehicle which is licensed as a Hackney Carriage may be driven for the purposes of testing and establishing

- the fitness of the vehicle
- the fitness of its equipment
- the competence of a driver

by someone who does not hold a Local Authority Hackney Carriage Drivers Licence.

A vehicle which is licensed as a Private Hire Vehicle may only be driven by the holder of a Private Hire Drivers' Licence issued by the Local Authority regardless of the purpose of the journey.

To drive such vehicles without the necessary Licences in force is an offence and may invalidate the insurance cover.

Some Local Authorities issue Drivers' Licences to cover the use of both types of vehicle.

Where a garage is being asked to service the vehicle, it would be prudent, if there is any doubt regarding its status, to ask to see a copy of the Licence. An indication should also be provided on a plate attached to, and showing to, the rear of the vehicle.

This information has been prepared by the Licensing Section of Torbay Council solely to assist those wishing to clarify how the law relating to the use of Hackney Carriages and Private Hire Vehicles applies to them and their businesses. It seeks to answer some of the more common questions posed by enquirers to Council Officers. These notes are meant to serve as brief information only and should not be taken as a definitive or complete account of current legislation or regulations. Before acting upon any information provided, individuals may therefore need to obtain their own independent legal advice.