

Mr V Stone

Circular No. 25/1986



SCOTTISH DEVELOPMENT DEPARTMENT

New St Andrew's House
Edinburgh EH1 3SZ

Telephone 031-556 8400 ext 4949

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Please reply to *The Secretary*

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The Chief Executive
District and Islands Councils

CIVIC GOVERNMENT (SCOTLAND) ACT 1982 TRANSPORT ACT 1985 LICENSING OF TAXIS AND PRIVATE HIRE CARS

Introduction

1. This Circular replaces SDD Circular 24/1983. It informs local authorities of the new regulations which the Secretary of State has made under section 20(1) of the Civic Government (Scotland) Act 1982 ("the 1982 Act") and of those which he has made under section 12(10) of the Transport Act 1985 ("the 1985 Act"). It also commends a new set (Annex B) of model licensing conditions to all local authorities who resolve to adopt the taxi and private hire licensing provisions of the 1982 Act. These model licensing conditions may serve local authorities as a basis for the preparation of their own local licensing conditions: they replace those annexed to Circular 24/1983, and take account of the changes in the hire car provisions which have been introduced by the 1985 Act. It should be noted, however, that as a result of the new regulations made under the 1982 Act, conditions having the same effect as model conditions 14 and 22 for taxi licences will now have to be contained in all taxi licences: see paragraph 6 of this circular. Finally, it brings to local authorities' attention a guidance paper on fare scales for shared taxis (Annex C).
2. SDD Circular 6/1983 outlined the content of the Civic Government (Scotland) Act 1982. Annex A to this circular gives the paragraphs which should be substituted for paragraphs 2.14 to 2.59 of Appendix A to that circular, in the light of the changes introduced by the 1985 Act.

2.33 Notwithstanding the above exemptions it is of course open to operators and drivers of Scottish taxis and private hire cars to apply for licences to operate in England and Wales under the 1976 Act and for English operators and drivers to seek to be licensed under the Civic Government (Scotland) Act 1982.

Taxi Fares

2.34 As mentioned in paragraph 2.30, sections 17 and 18 do not apply to taxi-buses. Subject to that, section 17 makes it the duty of the licensing authority to fix scales for fares and all other charges (for example for luggage and waiting times) in connection with the hire of a taxi. It also provides that the licensing authority must review these scales at intervals not exceeding 18 months from the date on which the scales came into effect. This 18-month period is a maximum period and authorities will require to begin consultation (outlined later) on a review an adequate time before the final date for decision. Authorities are of course free to carry out reviews at any interval within this 18-month period. A review of scales which results in a decision by the licensing authority not to make any change to the scales is treated in exactly the same manner as one in which it decides to change the scales and the provisions of section 18 for the taxi trade to appeal to the Traffic Commissioner apply equally.

2.35 Before fixing any scales or carrying out any review the licensing authority is required to undertake consultations with the taxi trade and the public and to take into account any representations received. As regards the taxi trade, consultation must be with persons or organisations appearing to the licensing authority to be, or be representative of, the operators of taxis within their area. It is open to the licensing authority to decide who are so representative but as it is open to any taxi operator to appeal under section 18 against the decision it is likely to be in authorities' interests to try to reduce appeals by as full and early consultation as possible. Public consultation must be by public notice.

2.36 Following any decision by the licensing authority on the fixing of scales or the carrying out of any reviews, the authority is required forthwith to notify its decision in writing to those representatives of the trade it previously consulted. Once the scales for taxi fares and charges

have been fixed by the licensing authority - or after appeal by the Traffic Commissioner under section 18 - the fares and charges so fixed are the maximum which can be charged (the offence provision is in section 21(5)) although it is of course open to any taxi driver to negotiate a lesser fare if he so wishes.

2.37 The Secretary of State expects that in fixing fares authorities will want to pay primary regard to the costs incurred by the trade, having regard to the capital costs (including interest payments) of the vehicles, the costs of maintaining and replacing them to the standards required by the licensing authority, the costs of employing drivers, and the prevailing levels of wages and costs in related road transport industries. In the Secretary of State's view the public interest is better served by ensuring the maintenance of an adequate taxi service by giving the trade a fair return than by depressing fares for social reasons, however understandable. If fares are fixed at a level higher than the market can stand, the trade is free to reduce them.

Appeals in respect of Taxi Fares

2.38 Section 18 provides a right of appeal by any taxi operator to the Traffic Commissioner for the Scottish Traffic Area against the scales for fares and charges for taxis or against the result of any review by the licensing authority of these scales. Any appeal to the Traffic Commissioner must be made within 14 days of the decision of the licensing authority appealed against, though the Traffic Commissioner has discretion to hear appeals after the 14-day period has expired.

2.39 There are two grounds on which the Traffic Commissioner may decline, at any stage, to proceed with an appeal. The first is where the Commissioner considers that the appeal is not representative of the view of a substantial proportion of the operators of taxis in the area. As the coming into effect of the scales is delayed while an appeal is being dealt with, an appeal by an unrepresentative minority would mean that the rest of the trade was denied charging fares with which it was content. While "substantial proportion" is not defined, it is assumed that it will be more than one-third of operators. The second is where less than two years has elapsed since deciding an appeal and the Commissioner considers it