

2004 No. 88

LICENCES AND LICENSING

The Private Hire Car Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2004

Made - - - - - *4th March 2004*

Laid before the Scottish Parliament *9th March 2004*

Coming into force - - - *31st March 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 20(2AA) of the Civic Government (Scotland) Act 1982(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Private Hire Car Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2004 and shall come into force on 31st March 2004.

Prescribed condition

2. The condition specified in regulation 3 below is hereby prescribed as a condition which a licensing authority shall impose in relation to private hire drivers' licences, but only in relation to those licences for which an application is made to a licensing authority on or after 31st March 2004.

3. The condition referred to in regulation 2 above is that where the private hire car which the private hire car driver is driving or otherwise has charge of has been hired—

- (a) by or for a disabled person who is accompanied by a guide dog, a hearing dog or an assistance dog(b) of that person; or
- (b) by a person who wishes such a disabled person to accompany that person in the private hire car,

and the circumstances specified in regulation 4 below do not apply, the driver of the private hire car shall carry the disabled person's dog and allow it to remain with the disabled person and shall not make any additional charge for doing so.

4. The circumstances referred to in regulation 3 above are that—

(a) 1982 c.45; subsection (2AA) of section 20 was inserted by the Private Hire Vehicles (Carriage of Guide Dogs etc.) Act 2002 (c.37), section 2.
(b) "Assistance dog" is prescribed as an other category of dog for the purposes of section 20(2A) of the 1982 Act by virtue of the Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations 2003 (S.S.I. 2003/73). That meaning applies for the purposes of these Regulations by virtue of section 20(2AA) of the 1982 Act as read with section 20(2A) of that Act.

- (a) a notice of exemption in the form set out in the Schedule to these Regulations has been issued to the private hire car driver in accordance with the procedure set out in regulation 5 below and is in force; and
- (b) that notice is exhibited either by—
 - (i) affixing it in a prominent position on the dashboard of the private hire car facing upwards; or
 - (ii) affixing it to the windscreen of the private hire car, facing outwards.

Notices of exemption

5.—(1) The licensing authority shall issue to a person such a notice of exemption as is referred to in regulation 4(a) above (with such deletions as it considers appropriate) if the authority is satisfied that it is appropriate on medical grounds to exempt that person from the condition specified in regulation 3 above.

(2) In determining whether to issue such a notice of exemption to a person, the licensing authority shall, in particular, have regard to the physical characteristics of the private hire car which that person drives.

(3) A notice of exemption shall be issued for such period as may be specified in it.

(4) If a licensing authority requires a person to undergo a medical examination for the purpose of enabling that licensing authority to be satisfied as mentioned in paragraph (1) above, that licensing authority shall meet the cost of that medical examination.

(5) For the purpose of the discharge of their functions under this regulation, every licensing authority shall reach a final decision within 3 months of receipt of an application for a notice of exemption.

Notification of decisions and giving of reasons

6.—(1) A licensing authority shall, within the period of 7 days beginning with the day on which the decision was made under regulation 5(5) above, send written notice of their decision to the person seeking a notice of exemption.

(2) Reasons for a decision referred to in paragraph (1) above shall be given by the licensing authority on a request being made to the authority by the person seeking a notice of exemption within the period of 28 days beginning with the day on which that decision was made.

(3) A licensing authority shall, within the period of 10 days beginning with the day on which a request is received by them under paragraph (2) above, give reasons in writing for that decision.

(4) Nothing in this regulation affects the power of the sheriff under regulation 7 below to require a licensing authority to give reasons for a decision of the authority—

- (a) which is being appealed to the sheriff under that regulation; and
- (b) for which reasons have not been given under this regulation.

(5) For the purposes of this regulation any reference to anything done in writing shall include communication by electronic means.

Appeals

7.—(1) A person who may, under regulation 6 above, require a licensing authority to give reasons for their decision may appeal to the sheriff against a decision under regulation 5 above.

(2) A licensing authority may be a party to an appeal under this regulation.

(3) An appeal under this regulation shall be made by way of summary application and shall be lodged with the sheriff clerk within the period of 28 days beginning with the day on which the decision was made.

(4) On good cause being shown, the sheriff may hear an appeal under this regulation notwithstanding that it was not lodged within the time mentioned in paragraph (3) above.

(5) For the purposes of an appeal under this regulation, the sheriff may, in the case of a decision of a licensing authority for which reasons have not been given by the authority under regulation 6 above, require the authority to give reasons for that decision, and the authority shall comply with such a requirement.

(6) The sheriff may uphold an appeal under this regulation only if the sheriff considers that the licensing authority, in arriving at their decision—

- (a) erred in law;
- (b) based their decision on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

(7) In considering an appeal under this regulation, the sheriff may hear evidence by or on behalf of any party to the appeal.

(8) On upholding an appeal under this regulation, the sheriff may—

- (a) remit the case with the reasons for such decision to the licensing authority for reconsideration of their decision; or
- (b) reverse or modify the decision of the authority.

(9) On remitting a case under paragraph (8)(a) above, the sheriff may—

- (a) specify a date by which the reconsideration by the authority must take place;
- (b) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including these Regulations).

(10) The sheriff may include in the decision on an appeal under this regulation such order as to the expenses of the appeal as the sheriff thinks proper.

(11) Any party to an appeal to the sheriff under this regulation may appeal on a point of law from the sheriff's decision to the Court of Session within the period of 28 days beginning with the day on which the decision was made.

TAVISH SCOTT

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
4th March 2004

SCHEDULE

Regulation 4(a)

FORM OF NOTICE OF EXEMPTION

[Name of Licensing authority]

[Full name of driver], the holder of private hire car driver's licence No. [number of licence], is, during the period [insert dates of beginning and end of period of exemption], exempt from the duty to carry guide dogs, hearing dogs and assistance dogs–

- (a) in the private hire car having registration mark [registration mark of private hire car] and licence number [licence number of private hire car]*;
- (b) in private hire cars with fixed partition segregating the driver from the passenger compartment*;
- (c) in private hire cars without fixed partition segregating the driver from the passenger compartment*.

* delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations place a duty on private hire car drivers, through the imposition of a condition in a private hire car driver's licence, to carry a disabled passenger's guide dog, hearing dog or assistance dog. The Regulations provide that the private hire car driver must allow the dog to remain with the disabled person and not make any additional charge for carrying the dog.

An assistance dog is a dog which is trained by a charity to assist a disabled person with a physical impairment for the purposes of section 1 of the Disability Discrimination Act 1995 which consists of epilepsy or which otherwise affects the mobility, manual dexterity, physical co-ordination of that person or the ability of that person to lift, carry or otherwise move every day objects and which at the time the disabled person hires the private hire car is wearing a jacket inscribed with the name of the charity.

The Regulations further provide that a private hire car driver may be exempted from the obligation to carry a disabled passenger's guide dog, hearing dog or assistance dog on medical grounds. They prescribe the form of the exemption notice which must, in those circumstances, be displayed and the manner of its display in the private hire car. They also provide for the giving of reasons for, and appeals against, decisions of licensing authorities on applications for exemption.

A regulatory impact assessment has been prepared and copies can be obtained from the Scottish Executive Finance and Central Services Department, Local Government Constitution and Governance Division, Area 3-H, Victoria Quay, Edinburgh EH6 6QQ.

2004 No. 88

LICENCES AND LICENSING

**The Private Hire Car Drivers' Licences (Carrying of Guide Dogs
and Hearing Dogs) (Scotland) Regulations 2004**

£3.00

© Crown Copyright 2004

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
140 03/04 19593

