

DEPARTMENT OF ENVIRONMENT HOUSING AND NEIGHBOURHOODS**ORIGINATING SECTION: PUBLIC PROTECTION SERVICE****REPORT TO: LICENSING COMMITTEE****17:06:2014****TITLE : LICENSING UPDATE REPORT – TAXI LAW REFORM****1. PURPOSE**

To provide Members with an update of the current position on the Taxi Law Reform that is being undertaken at the moment.

2. RECOMMENDATIONS

That the contents of the report are noted

3. KEY ISSUES

The Law Commission for England and Wales is an independent non- governmental body that reviews the law and recommends reform.

In 2012 a consultation was undertaken and the results have just been published in a report - *Taxi and Private Hire Services*. The report recommends wholesale reform of the law

A summary of the report can be found at appendix 1

The report is accompanied by a draft Taxis and Private Hire Bill, which would give effect to those of the recommendations which would require legislative change. Copies of the Bill will be placed in the members room for reading.

4. RATIONALE

The laws on taxis and private hire vehicles are fragmented, complex and outdated. The oldest taxi legislation that is still applicable dates back to 1831. The licensing regime has been extended amended and adapted ever since.

Safety is the key justification for the licensing system as a whole, yet there are no national minimum safety standards for drivers and vehicles. Licensing officers have limited enforcement powers which makes it difficult for them to make sure laws are complied with.

5. POLICY IMPLICATIONS

At time of the report there are non-applicable

6. FINANCIAL IMPLICATIONS

At time of the report there are non-applicable

7. LEGAL IMPLICATIONS

Any legislative changes must be implemented by the Council.

8. RESOURCE IMPLICATIONS

If all of the proposals are introduced, there may be some resource implications enforcing the new regulations

9. CONSULTATIONS

At time of the report there are non-applicable

10 . CONTACT OFFICER

Donna Riding – Principal Licensing Officer
Telephone 01254 585004

TAXI AND PRIVATE HIRE SERVICES

SUMMARY

INTRODUCTION

- 1.1 The Law Commission for England and Wales is an independent, non-governmental body which reviews the law and recommends reform. Our report *Taxi and Private Hire Services* presents our recommendations for wholesale reform of the law. Our remit did not extend to making recommendations about the regulation of public service vehicles, or bus services, except to the extent that there is an overlap with taxi and private hire services. The report is accompanied by a draft Taxis and Private Hire Vehicles Bill, which would give effect to those of our recommendations which would require legislative change, and an impact assessment containing the costs and benefits of our proposals.¹

BACKGROUND TO THE REPORT

- 1.2 The current law on taxis and private hire vehicles has evolved piecemeal since taxis in London were first regulated in 1630, primarily as a means of reducing congestion. The regulation of private hire vehicles developed in the latter part of the twentieth century in response to the growing demand for pre-booked services and concerns about the potential dangers associated with unregulated providers.
- 1.3 The law is to be found in numerous pieces of legislation, with different laws applying in London, Plymouth, and the rest of England and Wales. Detailed requirements are determined by individual local licensing authorities, and there is a lack of consistency in the standards applied. This is potentially harmful to public safety, and has a restrictive effect on business. There are overlaps with the regulation of some public service vehicles, in particular those with fewer than nine passenger seats, and there is confusion as to the proper licensing regime for vehicles such as stretch limousines and other novelty vehicles which do not necessarily sit comfortably in any regime. The current law also includes some restrictions which we think impose unnecessary burdens on business, and which we recommend for removal.
- 1.4 The report considers the current law in detail and makes recommendations which would result in the repeal of much of the existing legislation and its replacement with a single legislative framework to regulate both taxi and private hire services.

¹ The full report, draft Bill and impact assessment are available on our website: <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>.

This would consist of a new Act of Parliament, underpinned by secondary legislation and guidance. The new regime would see the introduction of national standards for all taxis and private hire vehicles, set by the Secretary of State, with the power for local licensing authorities to set additional standards for taxi services only. Local authorities would, however, remain responsible for issuing licences and enforcement in relation to both taxis and private hire vehicles.

- 1.5 The terms of reference for this project required us to consider the potential advantages of deregulation. We took this into account in the formulation of our recommendations, scrutinising each aspect of the regulatory system to determine whether the level of regulation it imposed could be justified. This approach underpins the recommendations made in the Report. In particular we have considered how a lighter-touch and more flexible regulatory regime for private hire services may benefit an industry which is more susceptible to the standard-raising effect of competitive forces than the taxi trade.
- 1.6 In formulating the appropriate level of regulation we concluded that regulatory intervention could only be justified if it promoted one or more of four defined purposes; namely public safety, accessibility, enforcement of the legislation and environmental protection. Our recommendations mean that standards relating to more peripheral issues, such as vehicle types and colours, could only be imposed locally in respect of taxi services.
- 1.7 The recommendations in this Report have been formulated following a wide-ranging consultation with representatives of the taxi and private hire services industries and the regulators, including local licensing authorities, the Traffic Commissioners and the Driver and Vehicle Standards Agency (formally the Vehicle and Operator Services Agency). We also consulted groups representing disabled persons, trades unions, and the police, and welcomed input from specialist consultants. We published a detailed consultation paper in May 2012 to support a consultation during which we received more than 3,000 written responses and attended more than 85 consultation meetings with stakeholders across England and Wales. We have also examined the regulatory structures in different parts of the world, for example, New York, Queensland, Australia, Ireland and parts of the European Union.

THE TWO-TIER SYSTEM

- 1.8 The current regulatory regime differentiates between taxis, which can be hailed in the street or hired at ranks, and private hire services which must be pre-booked.

We considered whether the continuation of this two-tier system was beneficial, or whether it should be replaced by an alternative regime which would permit any licensed vehicle to be used by a licensed driver to pick up passengers in response to hails or at ranks. Although strong arguments were put forward in support of a new “one-tier” system, we recommend that the present two-tier system should be retained, albeit with important changes to the way in which the distinction between the two types of service is drawn. It is our view that the two-tier structure promotes consumer choice and the provision of a wide range of services. Furthermore, the different ways in which taxis and private hire vehicles are engaged make different levels of regulation appropriate, so that a single system would lead to over or under-regulation.

DEFINING TAXI AND PRIVATE HIRE SERVICES

- 1.9 Although we recommend retaining the two-tier system, we also propose significant changes to the way in which the legal distinction between the tiers should be drawn. The current system relies heavily on the imprecise concept of “plying for hire”, which performs the very important function of defining what taxis alone are allowed to do in undertaking rank and hail work. However, the meaning of the concept is not set out in statute and has become the subject of a body of case-law that is not wholly consistent. The advent of new technology such as mobile phone applications which enable the customer to hire a vehicle almost instantaneously has helped to blur the distinction between the two types of service.
- 1.10 The core recommendation which forms the basis of the new framework we propose in this area is the creation of an offence of using a vehicle on a road to carry passengers, where both the vehicle and the driver have been hired for that purpose, without the appropriate licences. A further offence would differentiate between the different types of service by prohibiting anyone other than a licensed taxi driver, in a licensed taxi, from agreeing to use a vehicle for hire for a journey that starts “there and then”. This means that the holders of private hire licences would be prohibited from accepting a “there and then” hiring. Instead all journeys would have to be pre-booked through a licensed dispatcher,² and we recommend that statute should define this term.
- 1.11 Our draft Bill makes a lawful private hire booking one for which records meeting prescribed requirements are kept, and where advance price information is

² The term our draft Bill uses in place of the current “operator”.

available on request. By contrast, customers would continue to be able to approach or hail a taxi for a journey beginning there and then with no need for any arrangements in advance.

- 1.12 Under current law the operator is defined as the person who, in the course of business, makes provision for the “invitation or acceptance” of bookings for private hire vehicles. We think this definition is unnecessarily broad, and brings within its remit intermediaries who may arrange a booking through another intermediary and have no responsibility for selecting the car or driver. We recommend that operator licensing should only cover the functions of dispatching the vehicle and driver to fulfil a pre-booking, and not the functions of inviting and accepting bookings, which in themselves would no longer require a licence. As a result, we recommend that such licensees should be known as dispatchers and should be responsible for ensuring that the booking is fulfilled by a licensed driver using a licensed vehicle, that the appropriate information has been provided to the passenger, and that the required records are made and retained. It would be a criminal offence to carry out the functions of a dispatcher without holding an appropriate licence.

CROSS-BORDER WORKING

- 1.13 We recommend freeing up cross-border working for private hire services. Operators should no longer be limited to using drivers and vehicles from their own licensing area; nor should they be restricted to only inviting or accepting bookings within that licensing area. Under our recommended regulatory framework, licensing district boundaries lose much of their importance in relation to private hire vehicles. National standards for private hire, set by the Secretary of State following consultation, will ensure uniform standards across England and Wales. This will allow consumers to expect, as a minimum, the same level of safety and quality wherever they are, and will remove the incentive for applicants (both taxi and private hire) to seek licences in an area with less exacting standards.
- 1.14 Although local authorities will continue to administer licences applied for in their area, they will do so on the basis of national standards, which they will have no discretion to vary for private hire vehicles and drivers. Once licensed, providers will be able to work across England and Wales and be subject to enforcement action by officers of any licensing authority.
- 1.15 We do not propose any changes to the geographical aspects of the way taxis

work: they will still only be allowed to stand at ranks and accept hails within the area in which they are licensed and they will continue to be allowed to undertake a pre-booked journey starting within or outside that area.

- 1.16 We have heard complaints of problems with taxis seeking licences in an area known for lower standards or lower licensing fees with a view to undertaking pre-booked work elsewhere, sometimes in areas whose standards the vehicle or driver does not meet. Whilst this is within the law, it undermines aspects of the regulatory system. Our recommendations will remove the incentive to engage in this practice as the same or similar minimum standards will apply to both the taxi and private hire sectors; we expect these to govern the most important aspects of driver and vehicle standards. In respect of those standards, taxis will be subject to the enforcement jurisdiction of enforcement officers anywhere.

DEFINITIONS AND SCOPE

- 1.17 Under current law, different legislation applies to London, Plymouth and the remainder of England and Wales. We recommend that the new legislation should apply throughout England and Wales, including London. There has been general support for this, subject to the proviso that the framework is sufficiently flexible to account for the significantly different features of London.
- 1.18 The terminology used in current taxi legislation is outdated and archaic references to stage coaches and stage carriages have led to confusion as to whether pedicabs can be regulated as taxis. Private hire legislation covers vehicles provided for hire with the services of a driver for the purpose of carrying passengers, but there is uncertainty as to whether the provision of transport as part of a wider service, such as childminding, falls within the scope of private hire vehicle licensing.
- 1.19 Uncertainty over the borderline between private hire regulation and the regulation of public service vehicles (which generally covers larger vehicles such as buses and minibuses), has also led to difficulties over the regulation of limousines and novelty vehicles. The issues relate both to which regime these vehicles should currently be regulated under, as this is not always clear and has led to some services escaping regulation altogether, and which regime would be more appropriate under a reformed system. We propose a clear boundary between the two regimes.
- 1.20 As a deregulatory measure, we also recommend a change in the law to enable the providers of taxi and private hire services to use vehicles with the capacity to

carry up to 16 passengers in particular circumstances under their existing licence. This would provide more flexibility for operators to use larger vehicles where it suits their business model without the additional burden of having to obtain a separate public service vehicle operator licence.

- 1.21 We recommend that taxi and private hire regulation should cover the use of a vehicle to carry one or more passengers, where the vehicle and driver have been hired for that purpose. The draft Bill provides an exception for transport provided as part of a wider service, such as that provided in hotel courtesy cars or by carers, and of transport provided in connection with weddings and funerals, which is already exempted from regulation. Significantly, we propose bringing stretch limousines and other novelty vehicles clearly within private hire regulation. The same is true of pedicabs, which are already regulated as taxis outside London, but will fall within taxi licensing in London for the first time, pursuant to our reforms.
- 1.22 We also make recommendations to clarify what vehicles and services should be subject to licensing obligations. The reference to “hire” in our Bill limits the regulation to commercial activities, thus excluding informal car sharing arrangements where any financial contribution is limited to a share of expenses. We also recommend that the Secretary of State should have the power to exempt particular vehicles or services from licensing.

COMMON NATIONAL STANDARDS FOR VEHICLES, DRIVERS AND DISPATCHERS

- 1.23 Currently, standards for taxis, private hire vehicles, drivers and private hire operators are set by local authorities, which are responsible for the administration of the licensing system. This leads to substantial regional variation, even in such critical areas as the treatment of past criminal convictions and medical conditions. It can have a very restrictive effect on business, by making it difficult to be licensed in more than one area as a means of expanding one’s business.
- 1.24 A key innovation in our recommended framework is the introduction of national standards for taxi and private hire vehicle licensing. These standards would relate to drivers, vehicles and dispatchers (as our draft Bill calls operators). The content of national standards would be determined by the Secretary of State further to a statutory consultation with specified stakeholders including the trades, regulators and disability groups. We are recommending that national standards should be limited to defined purposes, namely public safety, accessibility, matters relevant

to the enforcement of the legislation and environmental protection. In respect of private hire services, national standards should entirely replace locally-set conditions. In respect of taxi services, by contrast, we recommend that national standards should be capable of being supplemented at local level.

CRIMINAL OFFENCES SPECIFIC TO THE TRADES

- 1.25 We propose the abolition of a number of out of date offences; in place of them we propose a more streamlined set of offences contained in our draft Bill together with reliance on the general criminal law or on licence conditions. We propose that the Secretary of State have the power to designate the most important nationally set standards so that breach of them will be a criminal offence.

LOCAL TAXI STANDARDS AND TAXI FARE REGULATION

- 1.26 The continuing ability of licensing authorities to set additional conditions would be subject to procedural requirements relating to consultation and publication. Our recommendations also retain the current system of leaving fares to the discretion of the local authority. Drivers would continue to be able to charge more than the metered fare where a journey begins inside the licensing area but ends beyond the compellable distance, provided the fare is agreed and recorded in advance. However, we recommend that licensing authorities should not have power to regulate third party booking fees which are agreed in advance, as these represent a genuinely competitive aspect of taxis working in the pre-booked market.

ADMINISTRATION OF THE LICENSING SYSTEM

- 1.27 Administration of the licensing regime and enforcement should continue to be carried out at local level by licensing authorities. Taxi licence fees should continue to be set on a cost recovery basis, with a uniform licence fee for private hire services to discourage applicants (who would now be subject to the same requirements across England and Wales) applying to an authority for purely financial reasons. We recommend procedural steps to improve co-operation between licensing authorities, to assist with administration and enforcement. We also recommend a more flexible power to create, remove and modify taxi zones, which would be subject to a public interest test.

QUANTITY RESTRICTIONS

- 1.28 We recommend allowing licensing authorities to continue to limit taxi numbers. We do not regard the current statutory criterion of "unmet demand" as appropriate and instead suggest a test based on the public interest, combined

with procedural requirements such as a review every three years and a duty to consult.

- 1.29 Whilst we accept that quantity controls can be a positive regulatory tool for licensing authorities, when exercised in accordance with the public interest and appropriate safeguards, they have the undesirable side-effect of creating inflated plate values (effectively transfer fees for vehicle licenses) which act as a barrier to entry. We recommend that there should be no changes to the transferability of licence plates in areas that currently have quantity restrictions, so that licence holders who may have invested a considerable amount of money to purchase the licence, or otherwise reasonably expected their plate to have accrued substantial value, would not be negatively impacted by our reforms. On the other hand, taxi licences in areas which first introduce quantity restrictions only after our reforms come into force should not be tradeable. This would prevent new plate values from arising in areas which introduce quantity restrictions only after implementation of our reforms.

EQUALITY AND ACCESSIBILITY

- 1.30 Although the general provisions of the Equality Act 2010 applicable to service providers apply to taxi and private hire services, it is clear that disabled passengers continue to suffer difficulties in obtaining and using these services. Furthermore, variable standards in relation to driver training and vehicle specifications mean that passengers may have very different experiences from one area to another.
- 1.31 We recommend that taxi and private hire drivers, both new and existing, should be required to undergo disability awareness training as a pre-condition of the grant or renewal of a licence. Our proposals give licensing authorities the power to introduce a new duty to stop when hailed, associated with compellability to help address the problem of drivers ignoring disabled passengers. Our recommendations to make complaints procedures more accessible can also be particularly valuable to empower disabled users.

ENFORCEMENT

- 1.32 Under our recommendations, enforcement would remain the responsibility of licensing authorities. However, under current law, licensing officers are only able to take action against their own licensees. Furthermore, many licensing enforcement officers told us that their powers were not sufficient to tackle the breaches of conditions and licensing law they encountered.

- 1.33 Many of the problems with enforcement derive from the lack of adequate resources and a perceived lack of interest in enforcing existing rules. These are not issues that legal reform is apt to address. On the other hand, we make a range of recommendations to enhance licensing officers' powers, including granting them powers to stop a licensed vehicle on a road, without the need for a police officer to be present; to impound vehicles for touting; and to issue a fixed penalty notice to a person whom they have reason to believe has breached any provision in national standards.
- 1.34 We also recommend that such powers should apply in respect of out-of-area vehicles. Our proposed reforms will make it possible for licence conditions prescribed as part of national standards (which will form the entirety of private hire licence conditions as well as the core of taxi conditions) to be enforced by any licensing officer against any licensee, across England and Wales.

HEARINGS AND APPEALS

- 1.35 The current law is characterised by inconsistency and complexity. We propose a simplified, uniform system. We recommend that the procedure for statutory appeals should be standardised across England and Wales (including London) for all forms of licence and irrespective of whether the decision challenged is a refusal of an application for a licence, a suspension or a revocation. In line with the current London model, applicants should be able to require the licensing authority to reconsider its original decision, the second stage in the statutory appeal process being an appeal to the magistrates' court, with a further right of appeal to the Crown Court. Further, we recommend that local taxi conditions should be amenable to a streamlined judicial review procedure in the County Court.

23 May 2014