



**ARTICLE NO: 1**

**LICENSING & APPEALS  
COMMITTEE**

**MEMBERS UPDATE 2013/14  
Issue: 1**

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**Article of: Assistant Director Community Services**

**Relevant Managing Director: Managing Director (People and Places)**

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**SUBJECT: PROPOSED REFORM OF THE HACKNEY CARRIAGE AND PRIVATE  
HIRE LICENSING REGIME**

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Wards affected: Borough wide

## **1.0 PURPOSE OF ARTICLE**

- 1.1 To provide Members with an update on the proposed reforms of the Hackney Carriage and Private Hire licensing regime.

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## **2.0 BACKGROUND**

- 2.1 Following a proposal by the Department for Transport in July 2011, the Law Commission (LC) agreed to undertake an independent reform project on the Hackney Carriage (HC) and Private Hire (PH) licensing regime, which included a period of public consultation to obtain views on the proposed changes.
- 2.2 Members will recall the report submitted to the Licensing and Appeals Committee on 17 July 2012, which detailed these proposed changes and requested approval of a response to the public consultation. Members approved this response, which was submitted to the LC on 23 July 2012.

## **3.0 CURRENT POSITION**

- 3.1 The consultation attracted over 3000 written responses from a wide range of stakeholders, including drivers and operators, local authorities, disability groups, specialist consultants, trade unions and the police. Whilst it is not normal practice for the LC to publish any indication of its preferred policy prior to a final report, the LC recognised that many stakeholders had expressed concern about possible changes to the HC and PH licensing laws. This prompted the LC to publish an interim statement on 9 April 2013 as a means to give an indication of its final recommendations.

- 3.2 Accordingly, the interim statement has been kept deliberately short. The LC has stressed that the interim statement is not a further consultation, nor is it the analysis of responses to the consultation. The LC will continue to work with Parliamentary counsel until the end of the year, and therefore the final recommendations might differ from those published in the interim statement.
- 3.3 The LC aim to publish a final report alongside a proposed draft Bill by late 2013, but it stresses that these recommendations cannot change the law and the decision whether to accept the proposed policy rests with Government.

#### **4.0 ISSUES**

4.1 The full LC interim statement is attached at Appendix 1 to this Article. The following provides a summary of the key decisions:

- Retention of 2 tier licensing regime with HC and PH remaining distinct and separately licensed.
- Limitation policies to remain within the discretion of licensing authorities although some thought to be given on how to prevent transfer of licences (exceptions for areas with existing limitation policies) to remove the commercial value of licences.
- Pedicabs (pedal operated vehicles) and stretch limousines to be brought clearly within the scope of licensing.
- Retention of exemption for wedding and funeral cars.
- Provision of national safety standards for both HC and PH vehicles (set by Secretary of State / Welsh Ministers).
- Local authority discretion to set local standards for HC (but not for PH).
- Operators able to use drivers and vehicles from outside their own area and to invite/accept bookings within that same licensing area, so long as this has been pre-booked. (The implications of this item are currently unclear and will be clarified in future reports as more information becomes available).
- Tighter definition for PH operators to cover dispatch functions only.
- Clarifying 'compellability' to tackle the problem of drivers failing to stop for disabled passengers.
- All drivers to undergo disability awareness training.
- Tougher enforcement powers for licensing officers (such powers to be equally valid for out of area vehicle enforcement).
- Appeals to Magistrates' Court with a simplified Judicial Review process to County Court to enable easier challenge to local taxi conditions.

4.2 Given that the current HC and PH licensing regime is fragmented, complex and largely out of date, it is disappointing that the interim statement does not take the opportunity to update the legislative framework in the way the Licensing Act 2003 or Gambling Act 2005 addressed similarly antiquated previous legislation. The proposed retention of two-tier licensing, quantity controls, and the ability for any PH driver or PH to work anywhere in the country have the potential for continued and increasing problems for local authorities and the trade. However, as no definitive change in the law is expected until after 2013, further reports will be submitted to Members as more information becomes available.

## **5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 5.1 There are no significant sustainability impacts associated with this article at this time and, in particular, no significant impact on crime and disorder. The article has no significant links with the Sustainable Community Strategy.

## **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 6.1 There are no significant financial or resource implications arising from this article at this time.

## **7.0 RISK ASSESSMENT**

- 7.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers as a result of this article.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Article.

### **Equality Impact Assessment**

The article is for information only and does not have any direct impact on members of the public, employees, elected members and/ or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices**

1. Taxi and Private Hire - Law Commission Interim Statement: 9 April 2013



## **TAXI AND PRIVATE HIRE LAW COMMISSION INTERIM STATEMENT**

### **INTRODUCTION**

1. In July 2011 the Law Commission started working on the project to review of the law relating to the regulation of taxis and private hire vehicles. We opened a four month consultation period in May 2012, outlining provisional proposals and questions, with a view to publishing a final report and draft Bill at the end of this year. Once we publish the draft Bill, it is up to government whether to accept our recommendations. We will publish our final report and a draft Bill at the end of 2013.
2. This is not a further consultation nor does this document include our analysis of the responses received. Our discussion of the responses and our reasoning will be published in the final report. This is an interim document outlining the key decisions we have reached. It is not normal practice for the Law Commission to publish any indication of its preferred policy at this point; however, we recognise that many stakeholders are concerned about possible changes to taxi and private hire licensing laws. We appreciate that waiting until the end of this year for our conclusions to be published is a long time. That is why we have decided to depart from our usual procedure and publish our thinking at this interim stage.
3. This deliberately short paper gives an indication of what will be contained in the proposed Law Commission draft Bill. We publish this alongside the responses we received during consultation. It should be stressed that this document is an interim statement and not our final report, and we will continue working on developing policy alongside Parliamentary counsel until the end of the year. It is important to be aware that our final recommendations might differ as a result of that process from those set out here. We continue to work to the government's deadline of December 2013 for our final report and draft Bill, but we would take this opportunity to stress that our recommendations cannot change the law, and the decision whether to accept the proposed policy rests with the government.

### **THE CONSULTATION**

4. The consultation attracted over 3000 written responses from a wide range of stakeholders, including taxi drivers and private hire operators, licensing officers, disability groups, specialist consultants, trade unions and the police. We attended consultation meetings and events over a period of four months. We attended 84 meetings across England and Wales, many of which attracted large-scale attendance, including conferences and meetings organised by taxi associations and trades unions representing taxi drivers, the Institute of Licensing and the National Association of Licensing and Enforcement Officers, trade associations and councillors, as well as a two day road show at an exhibition event, organised by the National Private Hire Association. The Private Hire and Taxi Monthly magazine undertook a significant survey based on our provisional proposals, with over 800 responses. We were also assisted by some very helpful discussions with experts in the field, including an advisory group and an expert legal panel on plying for hire.

## **REFORM TO TAXI AND PRIVATE HIRE LAW**

### **Retaining a two-tier system**

5. The two-tier system, distinguishing between taxis on the one hand, and private hire vehicles on the other, should remain. Only taxis should be allowed to pick passengers up from hails or at ranks. Private hire vehicles should only be able to pick up passengers if pre-booked through a licensed operator. When requested, operators should be required to give passengers the price of the journey up-front, as is already the case in London. London should be covered by the reforms, which we think give enough flexibility to allow for the significant differences in its taxi and private hire markets. We suggest moving away from the out-dated concept of plying for hire and use instead a more modern definition of the limits to the way private hire services may be offered, using the concept of pre-booking (which would be statutorily defined) through a licensed operator.

### **Quantity controls**

6. We no longer recommend abolishing quantity controls. We initially proposed that local authorities should lose the ability to limit the number of taxis licensed in their area on the basis of economic theory, whereby the market could be left to determine the appropriate number of vehicles. The weight of evidence received during consultation and further comparative research have led us to change this key recommendation in order to allow licensing authorities to limit taxi numbers should they wish to do so.
7. We propose that in any areas where the licensing authority chooses to implement new quantity restrictions, vehicle licences would not be transferrable, meaning that licences would not have a saleable value. In areas that already have quantity restrictions, transfers would continue (and therefore licences could still have a value), but we will recommend that the Secretary of State and Welsh Ministers should consider the future of licence transfers.

### **Who and what would be covered by licensing?**

8. During consultation many stakeholders complained about vehicles operating at the fringes of licensing, or outside of licensing altogether. Pedicabs and stretch limousines are two examples that we recommend bringing clearly within the scope of taxi and private hire regulation, such that they may be controlled as necessary.
9. We recommend that wedding and funeral cars should continue to be exempted from licensing. Our provisional recommendation in respect of the wedding and funeral car exemption raised unparalleled concern among members of these trades, although licensing authorities and the police agreed that the current exemption could cause problems. On balance, we have concluded that there are valid arguments to keep the exclusion from licensing in primary legislation.

### **Standard-setting**

10. Our provisional proposals for national safety standards for both taxi and private hire services proved popular and we maintain this recommendation. We think that the Secretary of State and Welsh Ministers should have the power to set standards in relation to safety, accessibility and enforcement.

### **Local standards for taxis**

11. We also suggested that in respect of taxis, local authorities should retain their ability to impose additional conditions on top of national standards, and this too proved uncontroversial. Taxis would continue to only be able to be flagged down and use ranks in their licensing area, but would still be free to take pre-bookings elsewhere.

### **National standards for private hire services**

12. We continue to recommend that only national standards should apply to private hire services. We appreciate the concerns of those who thought that local knowledge tests and signage should be retained, but think that appropriate national standards, including driver training, and vehicle signage, can address these concerns, alongside added customer protection through up-front pricing requirements for private hire journeys.

### **Cross-border**

13. It would remain the case that taxis would only be allowed to pick up passengers in their own area (unless they had a pre-booking). However, we will recommend freeing up cross-border working for private hire services. Operators would no longer be limited to using drivers and vehicles from their own area; nor would they be restricted to only inviting or accepting bookings within that same licensing area. Under no circumstances would a private hire vehicle be allowed to pick up a passenger without a pre-booking with a valid operator.

### **Operators, taxi radio circuits and intermediaries**

14. We support the retention of private hire operator licensing, but recommend a tighter definition that would only cover dispatch functions. We suggest that requiring a licence for the mere acceptance or invitation of bookings (as under current law) is unnecessary and creates grey areas around smartphone applications, aggregator websites and other intermediaries. We recommend that intermediaries should only be liable if acting in the course of business, and if they assist in the provision of an unlicensed journey. We do not propose to extend licensing to taxi radio circuits.

### **Equality and accessibility**

15. We regard the Secretary of State and Welsh Ministers' powers to set standards to promote accessibility as striking the right balance between local and national control.
16. Stakeholders highlighted the problem of drivers avoiding disabled passengers through ignoring their hails. In order to help address this problem, we recommend clarifying compellability, combining it with a new duty to stop in certain circumstances. In addition, taxi legislation should make it clear that drivers are not allowed to charge passengers more for the time it takes them to board the vehicle, reflecting the Department for Transport best practice guidance. Provisions to make complaints procedures more accessible can also be particularly valuable to empower disabled users. We will continue to recommend that all drivers should undergo disability awareness training.

### **Enforcement**

17. Consultees were very concerned about enforcement – both that the current system was being insufficiently enforced, and that our proposals for opening up

crossborder activities of private hire vehicles would increase the practical difficulties in information sharing and licence fee allocation. We recommend introducing a range of tougher powers for licensing officers, including the ability to stop licensed vehicles, impounding and fixed penalty schemes. We also recommend that such powers should apply in respect of out-of-area vehicles. We also recommend clarifying the scope of the touting offence and reinforcing licensing officers' powers in dealing with it.

### **Hearings and appeals**

18. Magistrates' courts would continue to hear appeals in respect of licensing decisions. We think it should be easier to challenge local taxi conditions. We therefore recommend a simplified judicial review procedure in the County Court, akin to procedures that exist in relation to some housing challenges.

Law Commission  
9 April 2013