

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel	<u>LICENSING COMMITTEE</u>	Date	<u>17/10/2012</u>
Originating Service Group(s)	<u>EDUCATION AND ENTERPRISE</u>		
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Telephone Number(s)	<u>0105</u>		
Title/Subject Matter	<u>CONSULTATION RESPONSE TO LAW COMMISSION PROVISIONAL REFORM PROPOSALS FOR TAXI LICENSING</u>		

RECOMMENDATIONS

Councillors should note the response sent to Law Commission following their consultation over the summer regarding proposed reforms to Hackney Carriage and Private Hire licensing arrangements.

CONSULTATION RESPONSE TO LAW COMMISSION PROVISIONAL REFORM PROPOSALS FOR TAXI LICENSING

1. PURPOSE

1.1 The purpose of this report is to:

- (i) Advise Councillors of the details of the Council's response sent to Law Commission following their consultation over the summer regarding proposed reforms to Hackney Carriage and Private Hire licensing arrangements.

2. BACKGROUND

2.1 Over the summer the Law Commission published proposals to reform the licensing regime for Hackney Carriage and Private Hire services. In total 72 separate reform proposals were put forward for consultation by the Law Commission.

2.2 Officers from the Law Commission attended a session in Wolverhampton on 6 July 2012 to discuss the proposals with various stakeholders including;

- Chair and Vice-Chair
- Employees from Licensing Services, Legal Services, Environmental Health and Fleet Services
- Representatives from both local Hackney Carriage Associations
- 6 Private Hire Operators
- Representatives from the Private Hire Drivers Association
- Employees from Worcestershire County Council's Vehicle Safety Team (Training Provider)
- Employees from neighbouring Licensing Authorities

2.3 At this session the Law Commission outlined the rationale behind their proposals and all parties were encouraged to submit responses to the consultation.

2.4 Due to the timing of the Law Commission's visit and the closing date of the consultation falling prior to September's Licensing Committee meeting, it has not been possible to present the response in draft format to the full Licensing Committee. As such the response, which is attached at Appendix A, is presented to Councillors for information.

2.5 The Law Commission is expected to publish their response to the consultation in spring 2013, this will be presented to the Licensing Committee when available.

3. FINANCIAL IMPLICATIONS

3.1 There are no direct financial implications arising from this report (ES/04102012/S).

4. LEGAL IMPLICATIONS

4.1 There are no direct legal implications arising from this report (SH/04102012/J).

5. EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no direct equal opportunities implications arising from this report.

6. ENVIRONMENTAL IMPLICATIONS

6.1 There are no direct environmental implications arising from this report.

Consultation Response

From Colin Parr,
Licensing Manager

To The Law Commission

cc Councillor John Reynolds,
Cabinet Member, City Services

Tel. No. (01902) 55 01 05

Councillor Bishan Dass,
Licensing Committee, Chair

Date 06/09/12

All Licensing Committee Members

Nick Edwards,
Assistant Director, Regeneration

Andy Jervis,
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CONSULTATION RESPONSE TO LAW COMMISSION PROVISIONAL REFORM PROPOSALS FOR TAXI LICENSING

This consultation response is sent from Wolverhampton City Council in its capacity as a Licensing Authority.

Provisional proposal 1

Regulation should continue to distinguish between taxis, which can accept pre-booked fares, be hailed on the street and wait at ranks, and private hire vehicles, which can only accept pre-booked fares. (Page 160)

Maintaining a two tier system differentiated by 'plying for hire' and 'ranking' is unnecessary, offers little consumer confidence, will not alleviate the problems of night time economy violence associated with city/town centre dispersal and will represent an unnecessary burden on the trade and licensing authorities as the significant costs of enforcing the border between the two tiers of vehicle will remain.

These issues and a response to some of the justification for the proposal are explored in more detail below.

Consumer Confusion

Evidence collected from various sources over several years in Wolverhampton indicates that customer demand in the night time economy for transportation services is split about approximately 75% to 25% in favour of flagged down vehicles. Many customers are unaware of the distinction between taxis and private hire vehicles, this is aggravated by the differing standards of taxis licensed from area to area. Hackneys from neighbouring rural boroughs are primarily saloon vehicles (which is quite appropriate in such areas) however these vehicles often come to metropolitan areas and illegally ply for hire.

An opportunity is being missed to provide a simplistic system whereby all vehicles are able to complete both hailed and pre-booked work. This is already the case for Hackney Carriages and the proposals are not suggesting to remove this. This draws into question the logic of maintaining a two tier system which already confuses customers, whereby one vehicle (which will continue to differ in type from area to area) is free to complete all work and another is restricted in the type work it may take.

Regulation of Fares

It has been argued that the pre-booked market is a relatively complete market and that there is little need for regulation beyond a 'light touch' approach (see response to proposal 27), whereas taxi services because of the nature of the transaction require a higher level of regulation.

If this argument were to be accepted, then the solution put forward to it (maintain the existing two tier system) is at best weak. A simpler solution and one that would create a far more competitive market would be to allow all licensed vehicles accept flag down and rank (see further suggestion below) work, subject to a regulated fare being charged. This fare could be set at a local/regional or sub-regional level. This would not restrict vehicles from doing pre-booked work at whatever rate they deemed fit.

The enforcement of this approach would differ little from the current enforcement of Hackney Carriages, which can already take both types of fares. In any event the enforcement of the above would represent a significant step forward from the current system, in which the enforcement of illegal plying for hire is a continual burden on the Council and in turn a burden on the trade as their fees are used to support this enforcement.

It was stated at a session with representatives of the Law Commission that it was argued during the development of the proposals that the system outlined above would be too difficult to enforce, The Council challenges this subjective view and asks for further evidence of this and highlight again the burden already created by the current system which it is proposed to maintain.

Illegal Plying for Hire

The enforcement of this offence has been a local enforcement priority in Wolverhampton for over ten years. The Council has one of the highest levels of prosecutions for drivers committing this offence in the country. When convicted drivers are reviewed by the Council and normally face a six month suspension in the first instance and then revocation of their licence if they commit the offence again.

The Council delivers 36 overt and covert operations targeting this single offence every year. Two full time officers work exclusively on tackling the issue and with the support they receive from other officers, staffing costs alone are in excess of £100,000 per annum, this is charged directly back to the trade through licence fees. In the last five years the Council has prosecuted over 150 drivers for plying for hire offences.

Despite this level of enforcement activity the problem persists, the Hackney Carriage trade demand more enforcement, whilst the police request less as the drivers illegally plying for hire are helping to clear the city centre and reduce violent crime.

Again an opportunity is being missed to consign this offence to the history books and allow customers to access vehicles without the risk of being uninsured, with a regulated fare and with a driver that is not breaking the law. At the same time this will free up resources to focus on less frequent, but much higher risk issues such as totally unregulated vehicles and drivers.

Rank Spaces

An argument that national trade groups have put forward is that too many vehicles being allowed to ply will lead to congestion and argument on and around ranks. Notwithstanding the fact that if this were true a much more competitive market will exist, discrediting some of the rationale for maintaining a two tier approach. If this is the case then a simple solution would be to allow licensing authorities far greater control over the vehicles that can use ranks.

For example ranks in city centre locations could be restricted to wheelchair accessible vehicles or vehicles no older than three years. This will allow councils to control access to ranks and manage driver expectations.

REFORM OF DEFINITIONS AND SCOPE

Provisional proposal 2

London should be included, with appropriate modifications, within the scope of reform. (Page 162)

Wolverhampton City Council has no view as to whether the proposal should apply to vehicles operating in London.

Provisional proposal 3

The regulation of taxi and private hire vehicles should not be restricted to any particular type of vehicle but should rather focus on road transport services provided for hire with the services of a driver. (Page 164)

Wolverhampton City Council agrees with this element of the proposals.

Question 4

Would there be (and if so what) advantages to restricting licensing to motor vehicles that require a driving licence? (Page 164)

Whilst this would provide clarity, any exceptions would be likely to be exploited, particularly in areas where there exists developed tourist trades.

Provisional proposal 5

Public service vehicles should be expressly excluded from the definition of taxi and private hire vehicles; and taxi and private hire vehicles should only cover vehicles adapted to seat eight or fewer passengers. (Page 165)

Agree.

Provisional proposal 6

References to stage coaches charging separate fares should no-longer feature as an exclusion from the definition of taxis. (Page 166)

Agree.

Provisional proposal 7

The Secretary of State should consider issuing statutory guidance to the Senior Traffic Commissioner about the licensing of limousines and other novelty vehicles to assist consistency. *(Page 167)*

Agree.

Provisional proposal 8

The concept of “in the course of a business of carrying passengers” should be used to limit the scope of taxi and private hire licensing so as to exclude genuine volunteers as well as activities where transport is ancillary to the overall service. *(Page 168)*

Agree. However, clear guidance is required on this definition.

Question 9

How, if at all, should the regulation of taxis and private hire deal with:

- (a) carpooling; and
- (b) members clubs? *(Page 170)*

(a) Not at all.
(b) Not at all.

Provisional proposal 10

The power of the Secretary of State and Welsh Ministers to set national standards should be flexible enough to allow them to make exclusions from the taxi and private hire licensing regimes. *(Page 171)*

Yes.

Provisional proposal 11

Weddings and funerals should no-longer be expressly excluded from private hire licensing through primary legislation. *(Page 172)*

Agree.

Question 12

Would there be merits in reintroducing the contract exemption, by means of the Secretary of State and Welsh Ministers' exercise of the power to set national standards? If so, what modifications could be made to help avoid abuse? (Page 174)

No merits in this approach. Would inevitably be abused, as was the case before the loophole was closed and conflicts with proposal 3.

Provisional proposal 13

Regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to "streets". (Page 175)

Agree.

Question 14

Is there a case for making special provision in respect of taxi and private hire regulation at airports? In particular, where concessionary agreements are in place should airports be obliged to allow a shuttle service for passengers who have pre-booked with other providers, or to the closest taxi rank? (Page 177)

No view.

Provisional proposal 15

The defining feature of taxis, the concept of "plying for hire", should be placed on a statutory footing and include:

- (a) references to ranking and hailing;
- (b) a non-exhaustive list of factors indicating plying for hire; and
- (c) appropriate accommodation of the legitimate activities of private hire vehicles. (Page 181)

The offence should become obsolete.

In the absence of this a statutory definition could be introduced, however again this will need to be comprehensive and robust enough to ensure that no potential loopholes remain that could be exploited.

Provisional proposal 16

The concepts of hailing and ranking should not cover technological means of engaging taxi services. (Page 181)

Does this make any difference as taxis can carry out pre-booked work without an operator anyway?

Question 17

Would there be advantages to adopting the Scottish approach to defining taxis in respect of “arrangements made in a public place” instead of “plying for hire”? (Page 182)

Potentially, however should remove the distinction. See response to proposal 1.

Provisional proposal 18

The concept of compellability, which applies exclusively to taxis, should be retained. (Page 182)

Agree this should remain for rank and hailed work.

Provisional proposal 19

Pre-booking would continue to be the only way of engaging a private hire vehicle and cover all technological modes of engaging cars. This is without prejudice to the continued ability of taxis to be pre-booked. (Page 183)

Agree, however prefer one tier system, see proposal 1 response.

Provisional proposal 20

Leisure and non-professional use of taxis and private hire vehicles should be permitted. There would however be a presumption that the vehicle is being used for professional purposes at any time unless the contrary can be proved. (Page 184)

Agree, however guidance is required in relation to display of signage etc.

Provisional proposal 21

The Secretary of State and Welsh Ministers should have the power to issue statutory guidance in respect of taxi and private hire licensing requirements. (Page 185)

Agree.

Provisional proposal 22

Reformed legislation should refer to “taxis” and “private hire vehicles” respectively. References to “hackney carriages” should be abandoned. (Page 185)

Agree.

Question 23

Should private hire vehicles be able to use terms such as “taxi” or “cab” in advertising provided they are only used in combination with terms like “pre-booked” and did not otherwise lead to customer confusion? (Page 186)

The retention of a two tier system will be the cause of customer confusion not the signage displayed.

A REFORMED REGULATORY FRAMEWORK

Provisional proposal 24

Taxi and private hire services should each be subject to national safety requirements. (Page 188)

Agree.

National MINIMUM standards would be welcomed.

Provisional proposal 25

National safety standards, as applied to taxi services, should only be minimum standards. (Page 189)

Agree, local discretion should remain.

Provisional proposal 26

National safety standards, as applied to private hire services, should be mandatory standards. (Page 189)

Disagree.

National MINIMUM standards would be welcomed however local discretion should remain for licensing authorities to determine what is appropriate in their area.

Provisional proposal 27

Private hire services would not be subject to standards except those related to safety. Requirements such as topographical knowledge would no longer apply to private hire drivers. (Page 190)

Disagree.

Private hire drivers should have a knowledge of the area in which they are working, they should be able to communicate effectively with passengers. Private Hire vehicles should be to a standard that is appropriate to the local area. To argue that market forces will control this is a nonsense and will penalise those most vulnerable in society that often rely heavily on such services.

Question 28

Should local standard-setting for private hire services be specifically retained in respect of vehicle signage? Are there other areas where local standards for private hire vehicles are valuable? (Page 190)

Yes, standards on signage, CCTV, vehicle standards, and many other factors should remain to be determined locally. However, this would appear to conflict with proposals that vehicles, drivers and operators can operate in any area, not just where licensed.

Question 29

What practical obstacles might there be to setting common national safety standards for both taxis and private hire vehicles? (Page 191)

Few, provided these are MINIMUM standards and local controls can still be applied.

Foreign vehicles (particularly from non-EU countries) and consistency/enforcement of testing regime may present some issues.

Question 30

Should national conditions in respect of driver safety be different for taxi services compared with private hire services? (Page 192)

No. Protection of the public is paramount and the standard of drivers should be as high as possible for all such services, both taxis and private hire vehicles will continue to work closely with the most vulnerable groups in society.

Provisional proposal 31

The powers of the Secretary of State and Welsh Ministers to set standards for taxis and private hire vehicles should *only* cover conditions relating to safety. (Page 192)

Agree.

Provisional proposal 32

The powers of the Secretary of State and Welsh Ministers to set national safety standards should be subject to a statutory consultation requirement. *(Page 193)*

Agree.

Question 33

What would be the best approach for determining the content of national safety standards? In particular should the statutory requirement to consult refer to a technical advisory panel? *(Page 193)*

Agree a technical advisory panel should be established.

Provisional proposal 34

Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards. *(Page 193)*

Agree.

Question 35

Should there be statutory limits to licensing authorities' ability to set local taxi standards? *(Page 194)*

Yes.

Question 36

Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators? *(Page 194)*

Yes, however again this is closely linked to the proposal to allow drivers, vehicles and operators to work across all areas, which would render such conditions pointless.

Question 37

Should the powers and duties of licensing authorities to co-operate be on a statutory footing or is it best left to local arrangements? (Page 195)

A statutory footing would assist, particularly when dealing with drivers from other areas operating illegally in a 'host' authority area, the 'host' authority should be able to review the drivers licence and suspend/revoke.

Provisional proposal 38

Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting. (Page 196)

Disagree, local variations will be made as appropriate to an area, as determined by elected members. If authorities wish to harmonise standards, then they may, there is no need to establish a statutory process for this.

Provisional proposal 39

Licensing authorities should have the option to create, or remove, taxi zones within their area. (Page 196)

Agree.

Question 40

Would it be useful for licensing authorities to have the power to issue peak time licences which may only be used at certain times of day as prescribed by the licensing authority? (Page 197)

Strongly agree.

If a two tier system remains then a 'plying for hire' permit system should be introduced to allow Private Hire to ply during specific times within a designated area. Enforcement of this system would be no more difficult than the current approach and covered by the revenue from the permits. Vehicles permitted could have a 'lit roof sign' or other livery specified by the Local Authority to identify them to the public and enforcement officers.

The provision of taxis services is a key contributory factor to night time crime and disorder, this approach would potentially solve many of these problems.

Provisional proposal 41

Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by a particular licensing authority. (Page 198)

Disagree. This will significantly reduce the control of Local Authorities over Private Hire services. Also a requirement for where drivers and vehicles are licensed would be needed, either where you work or where you live (address vehicle registered at).

This has worked with personal licences under the LA03.

Provisional proposal 42

We do not propose to introduce a “return to area” requirement in respect of out-of-area drop offs. (Page 199)

Agree.

Provisional proposal 43

Licensing authorities should retain the ability to regulate maximum taxi fares. Licensing authorities should not have the power to regulate private hire fares. (Page 200)

Agree. This is not necessarily the primary factor in not having a one tier fleet as it could be a statutory requirement that all rank/hailed work was on a meter and pre-booked fares were unregulated.

Again enforcement of this would be less onerous than establishing ‘plying for hire’.

Question 44

Should taxis be allowed to charge a fare that is higher than the metered fare for pre-booked journeys? (Page 200)

Yes.

REFORM OF DRIVER, VEHICLE AND OPERATOR LICENSING

Question 45

Should national driver safety standards such as the requirement to be a “fit and proper person” be either:

- (a) set out in primary legislation; or
- (b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? (Page 203)

No. Each case on own merits, however statutory guidance would be welcomed.

Provisional proposal 46

Vehicle owners should not be subject to “fit and proper” tests and the criteria applied would relate solely to the vehicle itself. (Page 204)

Agree.

Question 47

Should national vehicle safety standards be either:

- (a) set out in primary legislation; or
- (b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? (Page 205)

Yes. If introduced.

Provisional proposal 48

Operator licensing should be retained as mandatory in respect of private hire vehicles. (Page 206)

Yes. However issues will be created by the geographic freedom these proposals would provide to operators.

Question 49

Should operator licensing be extended to cover taxi radio circuits and if so on what basis? (Page 208)

Yes. All pre-booked work even when carried out by a ‘taxi’ should be booked through an operator.

Provisional proposal 50

The definition of operators should not be extended in order to include intermediaries. (Page 209)

No view.

Question 51

Should “fit and proper” criteria in respect of operators be retained? (Page 209)

Yes. However the geographical freedom could make this a non-issue.

Provisional proposal 52

Operators should be expressly permitted to sub-contract services. (Page 210)

Yes, within a framework outlined in statutory guidance.

Question 53

Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply? (Page 210)

See question 49.

REFORMING QUANTITY CONTROLS

Provisional proposal 54

Licensing authorities should no longer have the power to restrict taxi numbers. (*Page 213*)

Agree.

Question 55

What problems (temporary or permanent) might arise if licensing authorities lost the ability to restrict numbers? (*Page 213*)

None.

Question 56

Should transitional measures be put in place, such as staggered entry to the taxi trade over a scheduled period of time, if quantity restrictions are removed? (*Page 215*)

No view.

TAXI AND PRIVATE HIRE REFORM AND EQUALITY

Question 57

Should there be a separate licence category for wheelchair accessible vehicles?

This could involve:

- (1) a duty on the licensee to give priority to disabled passengers; and
- (2) a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles. (Page 217)

No. However LAs should be able to give priority for ranks to wheelchair accessible taxis, over other vehicle types.

Question 58

Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards? (Page 217)

Yes, or other incentives, such as outlined in question 57.

Question 59

Do you have any other suggestions for increasing the availability of accessible vehicles, and catering for the different needs of disabled passengers? (Page 217)

See Question 57.

Provisional proposal 60

We do not propose to introduce national quotas of wheelchair accessible vehicles. (Page 218)

Agree.

Provisional proposal 61

National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training. (Page 219)

Agree.

Provisional proposal 62

In order to better address concerns about discrimination, taxis and private hire vehicles should be required to display information about how to complain to the licensing authority. (*Page 219*)

Agree.

Question 63

What would be the best way of addressing the problem of taxis ignoring disabled passengers seeking to hail them? Could an obligation to stop, if reasonable and safe to do so, in specified circumstances, help? (*Page 220*)

Yes. A separate offence should also be created for such circumstances.

REFORMING ENFORCEMENT

Question 64

Should authorised licensing officers have the power to stop licensed vehicles? (Page 222)

Yes. However this creates potential safety and practical issues.

Question 65

What more could be done to address touting? Touting refers to the offence “in a public place, to solicit persons to hire vehicles to carry them as passengers”. (Page 223)

Use of FPN’s and short term suspensions as a sanction from the LA. A low evidential threshold should also be specified in guidance.

Question 66

Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules? (Page 223)

Yes. The full cost of this should also be met by the proprietor of the vehicle.

Question 67

Should licensing authorities make greater use of fixed penalty schemes and if so how? (Page 225)

FPNs to cover the following:

- **Private Hires on ranks**
- **Unattended Taxis on ranks**
- **Plying for Hire**
- **No badge/plates/other livery**
- **Non-compliance with conditions**
- **Other circumstances deemed appropriate**

Provisional proposal 68

Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas. (Page 225)

Yes.

However controls are needed to ensure that LAs still bring in enough revenue to pay for enforcement, i.e. a requirement to licence where you primarily work or where you live.

Question 69

Should cross-border enforcement powers extend to suspensions and revocation of licences? If so what would be the best way of achieving this? (Page 226)

Yes.

Should also go as far as to allow councils to review driver licences if they issue an FPN to their own and out of town drivers.

REFORM OF HEARINGS AND APPEALS

Provisional proposal 70

The right to appeal against decisions to refuse to grant or renew, suspend or revoke a taxi or private hire licence should be limited to the applicant or, as appropriate, holder of the relevant licence. (Page 230)

Agree.

Provisional proposal 71

The first stage in the appeal process throughout England and Wales, in respect of refusals, suspensions or revocations should be to require the local licensing authority to reconsider its decision. (Page 231)

Disagree.

Provisional proposal 72

Appeals should continue to be heard in the magistrates' court. (Page 232)

Agree.

Question 73

Should there be an onward right of appeal to the Crown Court? (Page 233)

Disagree.

This completes the response to the consultation from Wolverhampton City Council in its capacity as a Licensing Authority.

C. Parr

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Wolverhampton City Council**