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## Taxi and Private Hire Services



Law Commission

Taxi and Private Hire Services

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# **The Law Commission**

(LAW COM No 347)

## **TAXI AND PRIVATE HIRE SERVICES**

Presented to Parliament by the Lord Chancellor and Secretary of  
State for Justice  
by Command of Her Majesty

May 2014

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The Law Commissioners are:

The Right Honourable Lord Justice Lloyd Jones, *Chairman*  
Professor Elizabeth Cooke  
David Hertzell  
Professor David Ormerod QC  
Nicholas Paines QC

The Chief Executive of the Law Commission is Elaine Lorimer.

The Law Commission is located at 1st Floor, Tower, 52 Queen Anne's Gate, London SW1H 9AG.

The terms of this report were agreed on 19 May 2014.

**The text of this report is available on the Law Commission's website at <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>.**

# THE LAW COMMISSION

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# THE LAW COMMISSION

## TAXI AND PRIVATE HIRE SERVICES

*To the Right Honourable Chris Grayling, MP, Lord Chancellor and Secretary of State for Justice*

### CHAPTER 1 INTRODUCTION

#### THE RATIONALE FOR REGULATING TAXI AND PRIVATE HIRE SERVICES

- 1.1 Taxi and private hire services are an essential aspect of the transport network in England and Wales. They are essential for many passengers with disabilities and residents of rural communities, and play an important social role in enhancing the public transport system and facilitating social inclusion. The taxi and private hire sectors are also an important part of the British economy. In 2012, UK households spent about £2.7 billion on taxi and private hire journeys.<sup>1</sup> London's taxis are consistently ranked as the best in the world and have become an international benchmark in excellence.<sup>2</sup>
- 1.2 As at the end of March 2013, there were approximately 78,000 taxis and 153,000 private hire vehicles in England and Wales, and nearly 300,000 licensed taxi and private vehicle drivers.<sup>3</sup> An estimated 138,000 people used taxis or minicabs in 2011 to travel to work,<sup>4</sup> with much higher usage evident outside London.
- 1.3 Notwithstanding the growth and evolution of the taxi industry since the first regulation of hackney carriages in the 1600s, the main legal framework governing taxi services has not undergone any significant reform for nearly 200 years. Private hire services legislation is more recent, dating from 1976 in most of England and Wales and 1998 in London. Nevertheless, even this comparatively modern legislation struggles to keep up with the radical changes which the internet has introduced in the way customers book private hire services. Although

<sup>1</sup> We estimate that £2.72 billion was spent by UK households on taxi journeys in 2012 based on ONS estimates of household expenditure on transport services of £7.78 billion for the same period. The £7.78 billion covers transport by bus, coach, taxi and hire car with driver). See <http://www.ons.gov.uk/ons/datasets-and-tables/data-selector.html?cdid=ADWI&dataset=ct&table-id=07.CN> (last visited 19 May 2014). The ONS no longer segregates the data relating to expenditure on taxi fares. Our estimate relating to the share of expenditure relating to taxi fares is consistent with the ONS 2010 estimate of £2.585 billion in UK household expenditure on taxi fares. For detailed consideration of the taxi and private hire industry revenue, see our impact assessment, available from our project page at <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>.

<sup>2</sup> See <http://www.london-taxis.co.uk/jsp/index.jsp?id=164&lnk=710> (last visited 19 May 2014).

<sup>3</sup> Department for Transport, Taxi and Private Hire Statistics 2013, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226355/taxi-private-hire-statistics-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226355/taxi-private-hire-statistics-2013.pdf) (last visited 19 May 2014).

<sup>4</sup> [http://www.ons.gov.uk/ons/dcp171766\\_299766.pdf](http://www.ons.gov.uk/ons/dcp171766_299766.pdf), p 3 (last visited 19 May 2014).

there are over 340 licensing areas across England and Wales and many taxi and private hire journeys cross their borders, licensing officers have no cross-border enforcement powers. Nor are there any common national standards. Key matters, such as whether drivers have disability awareness training, or what types of criminal convictions should disqualify a person from working as a driver, are left purely to local decision-making, resulting in a very variable national picture.

- 1.4 The piecemeal evolution of the regulation of taxi and private hire services has, moreover, resulted in a complex and fragmented licensing system. The relationship between taxi and private hire services is not clearly defined. The balance struck between national and local rules lacks an overarching rationale, resulting in duplication, inconsistencies and considerable difficulties in cross-border enforcement. Mobile phones and the internet have revolutionised both the taxi and private hire trades, yet regulation has failed to keep pace. The outdated legislative framework has become too extensive in some respects, imposing unnecessary burdens on business and artificially restricting the range of services available to consumers; and insufficiently comprehensive in other ways, undermining the fundamental goal of protecting the travelling public.
- 1.5 In this report we make recommendations for the reform of the law relating to taxis and private hire services in England and Wales. This report is published alongside a draft Taxi and Private Hire Services Bill which gives effect to many of our recommendations,<sup>5</sup> and an impact assessment setting out the costs and benefits of our recommendations.<sup>6</sup>

## **THE BACKGROUND TO THIS PROJECT**

- 1.6 Work on this project started in the summer of 2011, as part of the Law Commission's Eleventh Programme of law reform. The project had originally been proposed by the Department for Transport, which has policy responsibility in this area. Members of the Law Commission team have met regularly at each stage of the project with Department for Transport officials.
- 1.7 Our terms of reference were to review the law relating to the regulation of taxis and private hire vehicles with a view to its modernisation and simplification, having due regard to the potential advantages of deregulation in reducing the burdens on business and increasing economic efficiency.

## **THE CONSULTATION**

- 1.8 At the beginning of the project we held an advisory group meeting with key stakeholders giving us practical and technical insights, to assist us in preparing our provisional proposals for consultation.<sup>7</sup> In May 2012 we published a

<sup>5</sup> The draft Taxis and Private Hire Vehicles Bill is contained in Appendix A to this report. Some of our recommendations do not require legislative changes and instead relate to the exercise of powers granted to the Secretary of State in setting national standards, for example, or they invite certain courses of action to be considered further (as in respect of systems to pool licensing fees, or in respect of information sharing for example).

<sup>6</sup> See [www.lawcom.gov.uk/areas/taxi-and-private-hire-services.htm](http://www.lawcom.gov.uk/areas/taxi-and-private-hire-services.htm).

<sup>7</sup> See Appendix C for a list of members of the Advisory Group and of the Expert Panel on Plying for Hire.

consultation paper setting out our provisional proposals.<sup>8</sup> We undertook a very thorough consultation between May and October 2012, although we continued to accept responses after this date. We received over 3000 written responses, including over 800 replies to a survey undertaken by the Private Hire and Taxi Monthly magazine based on our provisional proposals. Respondents ranged from individuals to representative organisations, including taxi and private hire drivers and private hire operators, licensing officers, disability groups, specialist consultants, trade unions and the police.<sup>9</sup>

- 1.9 We attended 85 consultation meetings across England and Wales, meeting thousands of stakeholders. These ranged from small meetings to large-scale conferences, at which we met drivers, operators, licensing officers, local authorities, transport users and the police. Following consultation we were also assisted by some very helpful discussions with experts in the field, including a legal panel on plying for hire.<sup>10</sup>
- 1.10 Disabled access groups were also very involved in our consultation. We participated in various Disabled Persons Transport Advisory Committee (a governmental advisory body) meetings throughout the project, as well as focus groups telling us about local issues. The project team participated in a demonstration of loading and unloading a wheelchair, and visited several locations with poor accessibility in the company of local disability organisations, enabling us to see examples of the difficulties faced by disabled passengers on a daily basis.
- 1.11 We also recognised the importance of public service vehicle licensing regulation to our work, and held meetings with Traffic Commissioners and the Driver and Vehicle Standards Agency<sup>11</sup> at different stages of the project.
- 1.12 We undertook various site visits, including at major taxi radio circuits and private hire operators' headquarters. We toured with the taxi and private hire trades both inside and outside London, observing ranks and entertainment venues with a history of enforcement difficulties. This also impressed upon us the very local and case-specific nature of the problems encountered.
- 1.13 In order better to understand the realities of enforcement, we participated in licensing officer training sessions, as well as a vehicle inspection workshop at Knowsley Community College arranged by Liverpool City Council. We also observed night enforcement operations in Liverpool during the University's "Freshers' Week" (at the start of the academic year, and a notoriously busy enforcement period) and in London, accompanying Transport for London's Taxi and Private Hire licensing enforcement officers. We also observed a Metropolitan Police enforcement operation with a focus on touting. We were also shown night time enforcement issues (such as touting and unofficial ranks) in Birmingham by

<sup>8</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, available at [http://lawcommission.justice.gov.uk/docs/cp203\\_taxi-and-private-hire-services.pdf](http://lawcommission.justice.gov.uk/docs/cp203_taxi-and-private-hire-services.pdf).

<sup>9</sup> The written responses we received are available online at <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>.

<sup>10</sup> See Appendix C for a list of members of the Expert Panel on Plying for Hire.

<sup>11</sup> Formerly the Vehicle and Operator Services Agency.

the trades and a licensing officer.

- 1.14 We are extremely grateful for the high degree of involvement and interest in our project, which has put our ideas, formal and informal, through rigorous scrutiny and challenge, and made an invaluable contribution to shaping this report. We were particularly fortunate in having so many taxi and private hire drivers talk to us about their work and share their ideas for change and practical insights. We also had very informative exchanges through participating in online forums, such as Taxi Driver Online.<sup>12</sup>

## **WALES**

- 1.15 In the consultation paper, we set out our view that legislative competence in respect of the regulation of taxis and private hire vehicles was devolved under the Government of Wales Act 2006.<sup>13</sup> That view was reflected in our preliminary proposals. However, since that time it has become apparent that Welsh Ministers consider the legal position to be too unclear to support that conclusion. In light of that, we proceed for the purposes of this report on the basis that legislative competence in respect of the regulation of taxis and private hire vehicles is not devolved and that the relevant functions will be exercised by the Secretary of State in relation to all of England and Wales.

## **THE STRUCTURE OF THIS REPORT**

- 1.16 We have taken a root and branch approach to recasting the current law of taxi and private hire services, introducing a single new statutory regulatory framework covering both taxi and private hire services throughout England and Wales, but at the same time maintaining the fundamental characteristics of both trades. Our Consultation Paper described the current law and background to the project in some detail.<sup>14</sup> In this Report, we set out the key elements of the new proposed scheme, and describe how it compares to existing law.

## **SUMMARY OF PRINCIPAL RECOMMENDATIONS**

- 1.17 Our recommendations include significant changes to the current law, but in most areas they would have the effect of consolidating and simplifying existing rules. The purpose of the reforms is to achieve a single legal framework covering both taxis and private hire services, while maintaining important differences in the way they are regulated. Our reformed framework would continue to be administered by local authorities, as is currently the case. We discuss this in Chapter 10.

### **Retaining the two tier system (Chapter 2)**

- 1.18 We recommend retaining the current two tier system of regulation. This distinguishes between taxis, which can be hailed or can use taxi ranks, as well as undertaking pre-booked journeys, and private hire vehicles, which can only be engaged by way of a pre-booking. It is our view that this structure promotes

<sup>12</sup> See <http://www.taxi-driver.co.uk/> (last visited 19 May 2014).

<sup>13</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, para 1.60.

<sup>14</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203.

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 (Chapter 3)**

- 1.19 Although we recommend retaining the two tier system, we also propose significant changes to the way in which the legal distinction between the two 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. Technological developments increasing the possibility of near-immediate bookings have made it even less practicable to apply. Furthermore, there is no statutory definition of a pre-booking.
- 1.20 The growing number of grey areas led many stakeholders to question the continuing viability of a two-tier system of separate regulation of taxis and private hire vehicles. We convened a panel of legal experts including barristers, solicitors and licensing officers, to help us consider reform options in respect of “plying for hire”; we have concluded that the law should move away from using plying for hire as a key concept.
- 1.21 Although the legal terminology that we propose is different, none of our recommendations are intended either to restrict the ability of a taxi to carry out the activity known as plying for hire, or to open it up to the private hire trade. Instead, in Chapter 3, we propose stating more precisely the requirements for lawful private hire activity: private hire services should continue only to be available on a pre-booked basis, dispatched by a licensed operator. Our draft Bill defines a lawful private hire booking as one for which records meeting prescribed requirements are kept, and where advance price information is 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.
- 1.22 We recommend retaining the concept of compellability (the obligation to carry a passenger), but extending it such that a taxi may be compellable to a distance of seven miles past the boundary of its licensing area. We also recommend that where a taxi signals its availability it should be subject to a duty to stop when hailed if safe to do so.

### **Cross-border working (Chapter 3)**

- 1.23 Cross-border working was a major issue during consultation. Although many stakeholders believed that private hire vehicles could not pick up passengers outside the area in which they hold a licence, this is not the case. There are only two geographical restrictions on how private hire services can work. First, the driver, vehicle and operator must all be licensed in the same area: provided that this condition is satisfied, the journey can begin and/or end elsewhere. Second, the operator can only invite and accept bookings within that licensing area. This hampers them expanding their business to have offices in neighbouring areas, and is increasingly difficult to police given the rise in internet bookings.



- 1.24 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. 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. Once licensed, providers will be able to work across England and Wales and subject to enforcement action by officers of any licensing authority.
- 1.25 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; they will continue to be allowed to undertake a pre-booked journey starting within or outside that area. Our proposed reforms address a cross-border issue that arises in relation to taxis, in that 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.
- 1.26 Our recommendations will reduce the incentive to engage in this practice because a common core of minimum standards for taxis will exist at national level; 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 (Chapter 4)**

- 1.27 Under current law, different legislation applies to London, Plymouth and the remainder of England and Wales respectively. 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.
- 1.28 The terminology used in current taxi legislation is outdated and archaic references to the stage coaches and stage carriages have led to confusion as to whether pedicabs can be regulated as taxis.<sup>15</sup> Private hire legislation covers vehicles provided for hire with the services of a driver for the purpose of carrying passengers,<sup>16</sup> 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.
- 1.29 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

<sup>15</sup> Pedicabs, steered and propelled like a bicycle but having passenger seats in addition, have become increasingly common in London, where it has been held that they constitute stage carriage outside the scope of taxi regulation: see Chapter 4 below, para 4.16.

<sup>16</sup> Local Government Act 1976, s 80(1); Private Hire Vehicles (London) Act 1998, s1(1)(a).

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.

- 1.30 As regards the substantive scope of the legislation, we propose that taxi and private hire regulation and licensing 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.
- 1.31 We also make recommendations to clarify what vehicles and services should be subject to licensing obligations. We do this both by clarifying the boundaries of the regulated activity and by providing a system for exempting certain vehicles and services. 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.

#### **Common national standards for vehicles, drivers and dispatchers (Chapter 5 and 7)**

- 1.32 Currently, standards for taxis and private hire vehicles and 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.
- 1.33 Under our recommended reforms, licensing authorities would retain responsibility for issuing licences and for enforcement. However, a key innovation that we propose 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 should 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 promote 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 (Chapter 6)**

- 1.34 In this chapter we propose the reform of the often outdated legislation creating criminal offences committed in the course of taxi and private hire work. 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 (Chapters 8 and 9)**

- 1.35 In Chapter 8 we discuss how standards could continue to be set locally in respect of taxi services. In Chapter 9 we make recommendations in respect of taxi fare regulation. In general these retain the current system of leaving fares to the discretion of the local authority, with taxi drivers able to charge more than the metered fare where a journey begins inside the licensing area but ends beyond the compellable distance, provided the higher 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 (Chapter 10)**

- 1.36 In this Chapter we outline our proposal that the administration of the licensing regime and enforcement should continue to be carried out at local level by licensing authorities. We make a number of proposals for streamlining enforcement and improving co-operation between licensing authorities.

#### **Quantity restrictions (Chapter 11)**

- 1.37 Local authorities currently have the power to limit the number of taxi vehicle licences issued in their area. In doing so, they must not leave significant unmet demand for taxis within the area.<sup>17</sup>
- 1.38 Quantity controls have been another particularly controversial issue within the project. We initially provisionally proposed that local authorities should lose the ability to limit the number of taxis licensed in their area on the basis that it could be left to the market to determine the appropriate number of vehicles. The majority of evidence received during consultation and further comparative research have led us to change this key recommendation so as to allow 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.
- 1.39 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 a barrier to entry. The vehicle licence can be transferred with the vehicle, giving licensed vehicles an inflated value. In areas where quantity restrictions exist, the value of licences traded in this way varies but can be as high as £120,000, a considerable sum for an incoming driver to fund. 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 themselves

<sup>17</sup> Transport Act 1985, s 16.

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 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 (Chapter 12)**

- 1.40 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 severe difficulties in obtaining and using these services. Furthermore, variable national standards in relation to driver training and vehicle specifications mean that passengers may have very different experiences from one area to another.
- 1.41 One of our key provisional proposals to promote equality and accessibility was that private hire and taxi drivers should be required to undergo recognised disability awareness training. This received unanimous support, and statistics published by the Department for Transport show that it is far from a universal requirement in current local licensing conditions. Lack of such training means that some drivers may be less likely to be aware of the needs and rights of disabled passengers; this can contribute to unacceptable practices, for example ignoring their attempts to hail a vehicle, carrying them in an unsafe manner, refusing to carry them at all or charging extra for the service. 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 (Chapter 13)**

- 1.42 As with the administration of the licensing system, enforcement is carried out by licensing authorities. However, most of their powers only extend to 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.
- 1.43 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.

- 1.44 We also recommend that such powers should apply in respect of out-of-area vehicles. Under current law this is not possible because, apart from bringing criminal prosecutions, licensing officers can only take action against vehicles licensed in their own area. 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 minimum core of taxi conditions) to be enforced by any licensing officer against any licensee.

#### **Hearings and appeals (Chapter 14)**

- 1.45 The current law is characterised by inconsistency and complexity. For example, due to an historic anomaly, taxi vehicle owners in England and Wales have a right of appeal against a decision of the licensing authority directly to the Crown Court, whereas private hire vehicle owners can only make such an appeal to the magistrates' court in the first instance. Overall, our main contribution in respect of appeals procedures is simplification through adopting a more 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, akin to a procedure that already exists, for challenges to a local authority's homelessness decisions.<sup>18</sup>

#### **ACKNOWLEDGEMENTS**

- 1.46 As we noted in respect of our consultation, producing this report would not have been possible without the wealth of experience that our stakeholders shared with us. We are grateful for the time and effort so many individuals spent in giving us practical insight into the taxi and private hire trades. We are very grateful to all those who responded to our consultation, and met us at different stages of the project. In particular, we would like to thank the members of our Advisory Group and Expert Panel on Plying for Hire.<sup>19</sup>

<sup>18</sup> Housing Act 1996, Part VII, ss 202 to 204.

<sup>19</sup> Details of membership can be found at Appendix C.

# CHAPTER 2

## RETAINING THE TWO-TIER SYSTEM

### INTRODUCTION

- 2.1 In our consultation paper we suggested public safety as a key justification for regulating both taxi and private hire services. We also noted the important differences in the way that the taxi and private hire markets work and suggested that these warrant different economic regulation of the two trades. Consultation reinforced this.
- 2.2 We proposed that certain standards, particularly relating to safety, should apply for the protection of passengers wherever in England and Wales they happen to be and whether they hailed the vehicle or pre-booked it. The starting point for our proposed reforms therefore rests on a common regulated activity of carrying passengers. Identifying the common ground shared by taxi and private hire services is important in determining the scope of regulation, as well as the appropriate minimum protections for passengers. After identifying that common ground we shall proceed to consider the distinctive features of the taxi and private hire markets, and how the new scheme should reflect these.

### THE COMMON REGULATED ACTIVITY: CARRYING PASSENGERS IN A VEHICLE HIRED WITH A DRIVER

- 2.3 Current statutes do not define a regulated activity common to both taxi and private hire services. In fact, there is no statutory definition at all of what a taxi does. The meaning of “plying for hire”, which is what taxis are licensed to do,<sup>1</sup> is not defined and can only properly be understood through case law.<sup>2</sup> In addition, plying for hire only relates to how vehicles are engaged – it covers hailing and ranking (which only taxis are allowed to do) but does not define the legitimate activities of a taxi once the journey has begun.
- 2.4 The statutory definition of a private hire vehicle is somewhat fuller: it is “a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purpose of carrying passengers”.<sup>3</sup> In London, the definition is substantially the same, but the vehicle is described as “made available” rather than “provided”; and the exception refers to a licensed taxi rather than a hackney carriage.<sup>4</sup>
- 2.5 Under current law, both taxi and private hire legislation only covers transport services provided “for hire”,<sup>5</sup> excluding transport provided gratuitously. This

<sup>1</sup> See Town Police Clauses Act 1847, s 37 and Metropolitan Public Carriage Act 1869, s 4.

<sup>2</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, paras 3.17 to 3.32.

<sup>3</sup> Local Government (Miscellaneous Provisions) Act 1976, s 80(1).

<sup>4</sup> Private Hire Vehicles (London) Act 1998, s 1(1)(a).

<sup>5</sup> Town Police Clauses Act 1947, s 37; Metropolitan Public Carriage Act 1869, s 4; Local Government (Miscellaneous Provisions) Act 1976, s 80; Private Hire Vehicles (London) Act 1998, s 1.

excludes, for example, hitchhiking.

- 2.6 The common aspect of the way taxis and private hire vehicles work which justifies regulation is the carriage of passengers in a vehicle provided for hire together with the services of a driver.<sup>6</sup> Regulation should aim at ensuring that the vehicle is of an appropriate standard and the driver competent and reliable, and govern other matters related to the quality and safety of the journey.
- 2.7 These core elements of protection of the travelling public are much the same whether the journey is in a taxi or a private hire vehicle.<sup>7</sup> Therefore, the scope of taxi and private hire licensing protection should be broadly the same for both trades. Under the current law, however, protection differs depending on whether the journey happens to be in a taxi or a private hire vehicle, as well as varying significantly from one area to another.
- 2.8 Our view is that certain uniform standards, determined at a national level, should apply to the regulated activity (common to both taxis and private hire vehicles) described in our draft Bill as using a vehicle as a hire vehicle. A hire vehicle is defined in the draft Bill as a vehicle that is used on a road to carry a passenger in circumstances where the vehicle, together with the services of the driver, have been hired for that purpose.<sup>8</sup> This common regulated activity also provides a basis for clarifying and rationalising the scope of taxi and private hire licensing which we will discuss in the next Chapter.
- 2.9 Under our recommendations, it will be an offence to perform the regulated activity unless the vehicle and driver either:
- (1) hold taxi vehicle and driver licences. In addition, taxis collecting a passenger outside their licensing area will need to show they have been lawfully “pre-booked”; or
  - (2) hold private hire vehicle and driver licences. Two additional statutory requirements will also have to be met. First, the journey must have been lawfully “pre-booked”; secondly, this must have been done through a licensed dispatcher.

## **THE RATIONALE FOR A TWO-TIER SYSTEM**

- 2.10 In England and Wales, the activity of carrying passengers in a vehicle hired together with a driver is shared by taxi and private hire services. Taxis can pick passengers up at ranks and be hailed. In legal terms, these activities are currently referred to as “plying for hire” and only taxis can engage with passengers in these ways. Private hire vehicles, on the other hand, can only be pre-booked through a licensed operator, and are not allowed to “ply for hire”.

<sup>6</sup> It may be added, for completeness, that the starting and end points of a taxi and private hire journey, as well as the identity of other passengers, are determined by the hirer in respect of each journey. This is given expression by saying that the vehicle and driver are hired, and is a point of distinction from, for example, bus and coach transport.

<sup>7</sup> Although the different methods of engagement also have an impact on safety, what we are discussing here is what happens once the journey has begun. We discuss modes of engagement fully in Chapter 3 on the reformed two-tier system.

<sup>8</sup> See draft Taxis and Private Hire Vehicles Bill, clause 1(2).

- 2.11 The regulatory distinction between taxi and private hire services both reflects and creates different markets. On the one hand, there is what we call the “rank and hail” market, which is reserved exclusively for taxis. On the other hand, there is the market in pre-booked services where competition works reasonably well, which can be accessed by both taxis and private hire services, but which is the only market open to the latter.
- 2.12 Competitive forces do not work fully in the ranking and hailing markets. Although not legally required to do so, consumers will generally take the first available taxi at a rank or hail the first taxi to pass in the street. They are unable to make comparisons as to price and quality. Therefore, in the rank and hail market there is a legitimate reason for regulation to go further than for private hire services: not only ensuring an adequate level of safety, but also promoting quality and regulating fares. The type and degree of regulation for taxis is therefore designed to deal with the specific features of ranking and hailing.
- 2.13 A customer pre-booking a private hire vehicle has more opportunity to shop around, comparing factors such as price, reliability and availability. The customer may also have a choice between relatively cheap (but still safe) services, or luxury, executive services. This justifies light-touch regulation, although the licensing system must still ensure an appropriate level of safety.
- 2.14 This two-tier system comes at a cost. The public often lack understanding of the difference between a taxi and private hire vehicle, which can undermine the usefulness of regulating them differently. Some taxis, particularly in rural areas, may do little rank and hail work. Further, as the pre-booking market expands, with ever quicker and simpler technology, the interchangeability of taxi and private hire services also increases, placing a strain on the different modes of regulation applicable to each.
- 2.15 Our provisional view in the consultation paper was nevertheless that 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 work.<sup>9</sup>

### **Consultation**

- 2.16 Generally speaking, those within the trades supported the retention of the two-tier system. Those who did so tended to argue that the two systems offered different types of service which were both in demand and so should remain distinct. For example, the London Taxi Company, which supplies the iconic “London cab”, described taxis as “inherently a public transport service” whereas it saw private hire “as a creation of the market”. The National Association of Licensing and Enforcement Officers (NALEO) pointed to the different passenger needs which the two trades cater for, with the private hire trade servicing “pre-planned requirements” whereas taxis service more immediate needs. Many consultees pointed out that taxis were currently subject to higher regulatory standards because passengers needed to be assured that the vehicle they took at random from a rank or pursuant to a street hail would meet high and consistent

<sup>9</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 1.



standards. On the other hand, there was scope for the private hire market to be more varied as customers had a much larger element of choice when pre-planning a journey. Private hire driver Chris Jordan also commented that private hire services could be more sophisticated than taxi services and therefore needed greater flexibility.

- 2.17 Thirdly, strong arguments were made concerning the regulatory impact of the introduction of a one-tier system. For example, Transport for London expressed concern that, if the current high standards imposed on taxis were extended to private hire vehicles, this would exclude many drivers from the market and create a larger unlicensed, illegal market. By contrast, the Institute of Licensing argued that a one-tier system would allow licensing authorities to focus their resources on illegal operators rather than expending scarce resources on policing the boundary between the two trades.
- 2.18 Our consultation considered the option of moving to a one-tier system. This option found particular support among licensing authorities. The Welsh Government and those Welsh local authorities who contributed to a joint response were also in favour of a one-tier system, arguing that the current system was outdated and that the distinction was purely historical.
- 2.19 Another argument made in favour of one-tier licensing was that it would improve enforcement, since a single set of rules would be easier to apply, with less duplication and bureaucracy. One licensing officer believed that in a one-tier system there would be no need to license operators as well as drivers. It was also said that a shift to a one-tier system would reduce loopholes and grey areas, thus reducing enforcement costs. One councillor from Nottingham felt that many drivers did not understand the system, leading to increased rates of offending. Many consultees pointed to the growing role of technology in the provision of passenger transport services, and the difficulties it poses as regards the definition of plying for hire. The National Association of Taxi Users noted that the speed with which consumers can book vehicles was blurring the distinction between the hail and rank sector and the pre-booked sector, and argued that soon the distinction would no longer be tenable.
- 2.20 Many consultees disagreed with our assessment of the differences between the taxi and private hire markets. We received evidence about competition in the taxi sector, often through discounting of fares. We learned that there is generally greater competition between taxis in more rural areas, where consumers at railway and bus stations are said to be willing to negotiate fares with taxis on the rank. It was also suggested that competition may not be as healthy in the private hire market as we thought: prices are often set at just below the regulated taxi tariff for that area, with little variation between providers. One consultee argued that “consumers do not actively compare prices, but do so by trial and error and as a result of experience”.
- 2.21 During consultation we asked for examples of what a one-tier system might look like. The Institute of Licensing Taxi Consultation Panel gave us a detailed description of a one-tier system in which all vehicles would be able to ply for hire within their licensing districts whilst taking pre-booked journeys anywhere. A key feature of this approach would be that price regulation would apply to all services, including private hire vehicles (which are currently not regulated). All vehicles

would be subject to the same standards, which would be a mixture of national minimum standards and local authority “top up” conditions. To ensure disabled access, only wheelchair accessible vehicles would be able to use ranks, although local authorities would have the power to introduce permit schemes to allow non-wheelchair accessible vehicles to use specified ranks.

## **Discussion**

- 2.22 Consultation highlighted a number of important issues, and we were particularly interested to learn more about the nature of competition in the taxi and private hire industries, and to record the strength of support for a one-tier system, especially amongst licensing authorities. However, we maintain our view that competition in the pre-booked market works well in most situations (although market forces may not always work perfectly in the private hire industry, particularly in respect of tourists or late at night when customers may have no practical alternative).
- 2.23 A number of persuasive arguments were made in favour of a one-tier system, including the lack of public understanding of the two-tier system. It is hard to dispute the claim that, in general, the public neither knows nor cares about the distinction, and indeed even those who work in the industry may well refer to a private hire vehicle as a taxi for the sake of ease. This ties in with the fact that both types of service may be said to do the same task, of transporting passengers for a fee. That said, it is perhaps superficial to suggest that lack of consumer understanding necessitates a change in the law – after all, members of the public often find themselves affected by regulatory regimes they do not understand, but which may nevertheless benefit them.
- 2.24 Overall, separate regulation of private hire vehicles means that most areas enjoy a good range of provision, including specialist providers such as those who focus primarily on airport runs. Taxis have their own place in this spectrum, offering a more uniform service with regulated prices and quality controls. Although we agree that there are strong arguments for common safety regulation of both trades, we think considerations about price and quality controls are very different. We are wary of over-regulating quality and the price of the journey for all vehicles. This would risk narrowing the overall range of provision and potentially increasing costs for providers, which would then be passed on to consumers. There are also concerns that requiring the private hire sector to meet higher quality standards (which are arguably not necessary) will push providers into the unlicensed market as there will still be demand for their services. An example of this can be seen in the experience of London prior to the introduction of private hire licensing: taxi standards and prices were high but a market clearly existed for lower-priced services of a more basic nature. This manifested itself through the growth of a large unregulated minicab industry. Regulating private hire services fares might also mean that high-end services would be limited in what they could charge and no longer be viable.
- 2.25 It seems particularly difficult to reconcile the different approaches currently taken to fares in the two sectors. On the one hand, we recognise that it is important for taxi fares to remain regulated. This provides an important element of consumer protection when accessing a taxi at a rank or in the street. On the other hand, the fact that private hire operators have the freedom to set fares is a benefit to the

consumer, as it allows competition. It seems disproportionate to impose fare regulation on all journeys.

- 2.26 We also question whether a one-tier system could be in practice as simple as some consultees suggested: it would require separate licensing categories and regulations for non-standard vehicles such as limousines and novelty vehicles; ensuring disabled access and an appropriate level of fare regulation could be problematic. Finally, we note that many foreign jurisdictions operate the same distinction between taxis - that can use ranks and be hailed - and pre-booked only vehicles.<sup>10</sup> The two-tier system is not merely a quirk of the history of the trades in England and Wales but also stems from differences in the markets they serve.
- 2.27 On the other hand, we recognise that in areas where rank and hail work is only marginal, a one-tier system can work better. The licensing system that we suggest is therefore flexible enough to allow authorities that wish to do so to implement what would be very close to a one-tier system locally. Under our reforms, a local authority could choose – for example in a rural area where ranking and hailing were uncommon – to apply only the minimum national standards and national licensing fee, without any additional local conditions, to its taxi fleet. It could choose not to regulate fares at all. In such an area, there would be no reason to be licensed as a private hire vehicle rather than a taxi and very little difference in the regulations applicable to each.
- 2.28 In urban areas, by contrast, taxi ranks and the ability to hail a passing taxi are matters of considerable convenience to the travelling public. Their utility would be undermined by an absence of, in particular, fare regulation. On the other hand, fare regulation should not be imposed on providers that confine their activities to accepting pre-bookings in circumstances giving customers more bargaining power. For those reasons, we favour continuation of the two-tier system. Whilst we recognise that technology is making enforcement of the distinction between plying for hire and pre-booking more difficult, it does not make the distinction meaningless. The legal definitions should be flexible enough to accommodate technological bookings, such as those made through smartphone applications.

**Recommendation 1**

**We recommend retaining the two-tier system. Regulation should continue to distinguish between taxis, which can be hailed or use ranks, and private hire vehicles, which can only be pre-booked.**

- 2.29 However, we recommend significant changes to the way the legal line between the two tiers should be drawn. This is discussed in the next chapter.

<sup>10</sup> This is the case, among other numerous examples, in Scotland (taxis and private hire cars), Ireland (taxis or public hire vehicles and private hire vehicles or hackneys), New South Wales and Victoria (taxi-cab and private hire vehicle), New York (taxi-cab and for-hire vehicle) and France (taxis and “voitures de tourisme avec chauffeur”).

# CHAPTER 3

## REDEFINING TAXI AND PRIVATE HIRE SERVICES

### INTRODUCTION

- 3.1 Although we have found merit in the distinction between taxis and private hire vehicles, the current way in which this distinction is achieved is problematic and needs reform. We make recommendations aimed at a clearer distinction between the permitted activities of the two trades.
- 3.2 Currently the distinction between taxis and private hire vehicles is focussed on the difficult concept of “plying for hire”. Though not defined in the legislation, it describes the activity reserved to taxis. A non-lawyer would probably define it as driving around looking to be hailed or waiting for custom at a taxi rank. The concept as developed in case law is inevitably more complex than that and, as we concluded in our consultation paper, leaves considerable grey areas, particularly in the interface with licensed private hire vehicles;<sup>1</sup> the existence of the offence of unlicensed plying for hire also calls into question the legitimacy of new ways of providing services, especially those using technology such as mobile phones and smartphone applications.
- 3.3 Our reforms approach the demarcation of the two-tiers from a more practical perspective, focussing on the dispatch and pre-booking requirements that must be fulfilled by a lawful private hire journey, coupled with a more workable alternative to the plying for hire offence, based on the Scottish offence of accepting a “there and then” hiring.
- 3.4 In this chapter we discuss the key elements of the revised two-tier system. We begin by explaining our recommendation to move away from the concept of plying for hire. After doing so, we discuss a variety of matters relevant to the distinction between taxi services and private hire services. These are:
- (1) terminology and advertising;
  - (2) the reinforced obligation, applying to private hire services of a documented pre-booking and the obligation of a private hire dispatcher to give certain information to the customer;
  - (3) the problem of taxis working in effect as private hire vehicles, predominantly or exclusively outside their licensing area and the rules that should apply to out-of-area taxi work;
  - (4) unofficial ranks;
  - (5) our proposed new “there and then” offence;
  - (6) certain rules relating only to taxis;

<sup>1</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, para 3.31.

- (7) the position of intermediaries in bookings;
- (8) taxi radio circuits;
- (9) private hire operator licensing;
- (10) our proposed new definition of a private hire operator (called a “dispatcher” in our draft Bill); and
- (11) how the regulatory regime should apply to the new, internet-based methods of obtaining taxi and private hire services.

3.5 We set out the main obligations that we propose should apply in providing taxi and private hire services in the form of a flowchart at paragraph 3.146 below.

### **PLYING FOR HIRE**

3.6 Taxis are referred to in the legislation as “hackney carriages”.<sup>2</sup> A hackney carriage is defined by section 38 of the Town Police Clauses Act 1847 in the following terms:

Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance ... shall be deemed to be a hackney carriage within the meaning of this Act.

3.7 The legislation applying to London uses broadly similar terminology.<sup>3</sup> Their exclusive right to ply for hire is thus made the defining characteristic of taxis under the current law, although the term is not defined in the legislation. Picking up passengers at ranks and in response to hailing is generally understood to be at the core of plying for hire, but these activities do not feature in the legislation. Instead, the case law refers to factors such as the “exhibition” of the vehicle,<sup>4</sup> which may indicate plying for hire, its availability to the general public and the “immediacy” of its availability.<sup>5</sup> Parking a vehicle in a public place may or may not amount to plying for hire, depending on an assessment of these factors. The case law is often inconsistent and unclear.<sup>6</sup> Technology has highlighted the

<sup>2</sup> The term “taxi” is relatively modern. It was first used in legislation in the Transport Act 1980, where a taxi is defined in the same terms as a “hackney carriage”. Most of the legislation and case law still refers to taxis as “hackney carriages”. We will consider terminology, and use of words such as “taxi” specifically from para 3.24 below.

<sup>3</sup> See the Metropolitan Public Carriage Act 1869, s 4.

<sup>4</sup> This is a particularly problematic criterion. The vehicle itself, by definition, cannot look like a hackney carriage (Local Government (Miscellaneous Provisions) Act 1976, s 48(1)(a)(ii)). This means that the appearance of the vehicle itself cannot be interpreted as an offer for immediate hire. As for the driver, it cannot be assumed that he or she would be willing to break the law and accept a passenger without a pre-booking; thus prosecution in effect requires more than simple exhibition of the vehicle.

<sup>5</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, paras 3.19 to 3.32; and in particular *Cogley v Sherwood* [1959] 2 QB 311 and *Case v Storey* (1868-69) LR 4 Ex 319.

<sup>6</sup> In *Cogley v Sherwood* [1959] 2 QB 311 at 323 Lord Chief Justice Parker described the prior case law as not easy to reconcile nor yielding any comprehensive and authoritative definition of the term.

indeterminacy of some of these factors by adding new ways for consumers to engage services. Internet bookings for example can be virtually immediate, suggesting taxi-like behaviour, and yet have all the characteristics of a pre-booking, making them compliant with private hire requirements.

- 3.8 Plying for hire without a taxi licence is a criminal offence and is therefore critical in defining what private hire vehicles<sup>7</sup> are not allowed to do. Yet there is no statutory definition of plying for hire. In our consultation paper we therefore suggested that the definition of plying for hire should be placed on a statutory footing in order to be more accessible and better reflect modern understandings of what taxis do. We provisionally proposed that the definition should refer to ranks and hailing and contain a non-exhaustive list of factors indicating plying for hire; it should not extend to technological means of engaging taxi services.<sup>8</sup>

### **Consultation**

- 3.9 There was near-unanimous support for this proposal, with widespread dissatisfaction with the lack of clarity surrounding the concept of plying for hire. However, whereas ranking and hailing were recognised as useful to describe some of the exclusive activities of taxis, there was less support for a statutory list of factors. Stakeholders were worried that in practice any list would be used inflexibly, and be potentially under or over-inclusive. Clarity, the main advantage of a statutory definition, would be undermined by the non-exhaustive nature of such a list. The expert panel we convened to discuss the issue also agreed that a definition of plying for hire that relied on a list of factors would not be practical.
- 3.10 A number of licensing authorities and their officers welcomed the idea of a statutory definition on the grounds that it would be far clearer in terms of enforcement. Doug Thorogood of GPS Taxi said that such a definition would allow drivers to know exactly the scope of what they were permitted to do. ComCab Liverpool told us that it:

Recognises [that] the current lack of definition allows for large scale “plying for hire” and “touting” by private hire vehicles, an issue that places the public at risk and adds to a lack of clear understanding as to the key differences between taxis and private hire vehicles.

- 3.11 The strength of support for the notion of a statutory definition was not, however, matched by any strength of opinion on how the statutory definition should be couched. The difficulty of drawing one up is perhaps evidenced by the very small number of responses we received which positively suggested a way of defining plying for hire.
- 3.12 The London Branch of the RMT suggested that:

A vehicle that is on view to attract custom and available for immediate hire is illegally plying for hire ... A vehicle ... waiting outside a venue

<sup>7</sup> And, of course, completely unlicensed vehicles.

<sup>8</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposals 15 and 16.

... waiting to be booked is plying for hire.<sup>9</sup>

- 3.13 Some respondents, including Chris Wildman and the United Cabbies Group, suggested that there should be a time-lapse requirement for a pre-booking.
- 3.14 Moreover, not everyone agreed with the benefits of a statutory definition of plying for hire. For example, Watford Borough Council commented that:

We are concerned that, whilst a statutory definition would be useful, a non-exhaustive list of factors describing “plying for hire” could lead to stated cases<sup>10</sup> that replicate the current muddled position.

### **Discussion**

- 3.15 We have come to the view that a statutory definition of plying for hire would not be a practical improvement on the current position. This accords with the advice we received from an expert panel composed of distinguished licensing lawyers that we set up specifically for the purpose of discussing reform of “plying for hire”.<sup>11</sup> The main reason for this conclusion is that whether a vehicle is plying for hire in particular circumstances is, as the courts have noted, a matter of fact and degree.<sup>12</sup> No statutory list of factors could be sufficiently determinative to give clear guidance, leaving many of the current grey areas unresolved.
- 3.16 It is also a major problem that the definition of plying for hire arose before the emergence of an organised and regulated private hire trade. Much of the activity that has been criminalised as “plying for hire” was originally aimed at prohibiting completely unlicensed drivers from picking up passengers without any controls. In other words, the concept of plying for hire was part of a piece of legislation directed at those who ought not to be carrying passengers for hire at all. Reliance on plying for hire is a prime example of why taxi legislation can be regarded as outdated, through failure to reflect such a fundamental change to the licensing landscape.
- 3.17 Moreover, respondents highlighted the practical difficulties of enforcing plying for hire offences. In practice, we understand that prosecutions are typically only brought pursuant to test purchase operations where the undercover licensing officer is actually offered a journey. Plying for hire effectively criminalises the preparatory steps to doing something that only taxis should be allowed to do; that is, to accept a passenger without a pre-booking. The offence of touting already criminalises those actively soliciting taxi and private hire work. If plying for hire is meant to catch any broader behaviour than touting, it must necessarily be an inchoate offence, involving an implicit intention to offer services; convictions will frequently depend on circumstantial evidence, with all the attendant difficulties.

<sup>9</sup> The response also pointed to the definition suggested in the Hindley Report of 1939: “A vehicle is plying for hire if it is offered or available for hire, whilst in any street, public place, or place where it is, at the time of the offer or at the time when it is made available, open to the view of the public”.

<sup>10</sup> This refers to appeals from magistrates’ courts to the High Court on a point of law.

<sup>11</sup> A list of members of the panel is at Appendix C.

<sup>12</sup> See for example *Cogley v Sherwood* [1959] 2 QB 311 at 323 to 324.

- 3.18 Our proposal is therefore to approach the problem of demarcation from the opposite direction: rather than attempting to define the things that taxis alone are permitted to do, we focus upon the precondition for lawful transport of a passenger in a private hire vehicle – namely pre-booking – and upon improving its enforceability through record-keeping obligations imposed on private hire operators (“dispatchers” as they are called in our draft Bill).<sup>13</sup> We propose to buttress this with a new offence of accepting a “there and then” hiring.<sup>14</sup>
- 3.19 Some stakeholders suggested placing a time-lapse requirement on pre-bookings (for example, a mandatory 30 minute waiting period between the booking and the pick up), as is the case in certain jurisdictions.<sup>15</sup> This would have the benefit of clarity, but would be very restrictive on businesses, and result in a poorer service to consumers. It would artificially increase passenger waiting times and potentially play into the hands of completely unlicensed providers. We therefore do not recommend this. Provided that private hire vehicles comply with the regulatory requirements regarding (among other things) dispatch, pre-booking and price disclosure on request, we believe that they should be free to provide customers with as fast and effective service as they are able to.
- 3.20 In summary, our proposed recommendation is that taxis should continue to be unrestricted in the manner in which they pick up passengers within their licensing area.<sup>16</sup> Taxis alone should continue to be able to use ranks and to respond to hails within their licensing area. The holding of a taxi licence for the area will mean that they commit no offence of unlicensed provision; nor an offence of picking up a passenger there and then, which will not apply to taxis within their licensing area.<sup>17</sup> These reforms would replace the terminology of “plying for hire” in area, but without impacting upon how taxis work. An added advantage would be the removal of reference to plying for hire in the street,<sup>18</sup> which currently means that an unlicensed vehicle can freely ply for hire on private land. In our consultation paper we proposed that the regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to “streets”.<sup>19</sup> A large majority of stakeholders agreed with this approach. Our proposals to move away from plying for hire largely remove the relevance of “streets”. As we shall discuss below, the same is true in respect of compellability.
- 3.21 Owners of private land have extensive control over who has access to their premises, including taxis and private hire vehicles and we do not wish to alter this

<sup>13</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 8, 39 and 42.

<sup>14</sup> Draft Taxis and Private Hire Vehicles Bill, clause 6.

<sup>15</sup> For example in Seattle job requests must be made at least 30 minutes prior to required time; in France, a Decree of 27 December 2013 required a 15-minute waiting period between the booking and the boarding of private hire cars; the Decree was, however, suspended by the Conseil d’Etat on the ground that it undermined freedom of trade, See <http://www.conseil-etat.fr/fr/communiqués-de-presse/decret-vc.html> (last visited 19May 2014).

<sup>16</sup> Subject to the offence of touting, which can be committed by a licensed taxi driver. We discuss touting in Chapter 13.

<sup>17</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 4, 5 and 6.

<sup>18</sup> Town Police Clauses Act 1847, s38; London Hackney Carriage Act 1853, s35.

<sup>19</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 13.



position. We think that if the carriage for hire is to take place entirely within private land, there is no need to regulate it. However, if at any point the journey should go outside private land, then it falls within the scope of the regulated activity, requiring licensing; other incidents of regulation, such as compellability, should likewise apply.

- 3.22 Under the reformed system, the offence of plying for hire will no longer exist. The focus of the distinction between taxis and private hire vehicles will become the statutory requirement of a documented pre-booking. Only where a valid pre-booking exists can a private hire journey lawfully take place. (Such a journey would also have to involve a driver, vehicle and dispatcher holding the relevant licence). Taxis picking up passengers outside their licensing area would also be subject to new statutory booking requirements, but without the need to be dispatched by a licensed dispatcher.<sup>20</sup>

**Recommendation 2**

**We recommend that the offences relating to plying for hire should be abolished. We propose replacing the concept of plying for hire with a new scheme of offences, resting on the principal prohibition of carrying passengers for hire without a licence, alongside a new offence making it unlawful for anyone other than a local taxi driver to accept a journey starting “there and then”.**

**Recommendation 3**

**We recommend a statutory definition of pre-booking in order to create a clear distinction between the work of a taxi in its licensing area and the work of a private hire vehicle.**

- 3.23 These recommendations are given effect by clauses 4, 5, 6 and 8 of our draft Bill.

## **TERMINOLOGY AND ADVERTISING**

- 3.24 Having a two-tier system requires clear rules regarding the way in which the respective taxi and private hire services should be permitted to describe themselves. Under current law, private hire vehicles are not permitted to be “of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage”.<sup>21</sup> For example, the use of a roof-sign which displays the word “taxi” or “cab”, or any other feature which might suggest the vehicle is a taxi, on any vehicle which is not a taxi is prohibited.<sup>22</sup> In London, advertisements including the words “taxi” or “cab”, or words so closely resembling them that they

<sup>20</sup> We discuss these below from para 3.44.

<sup>21</sup> Local Government (Miscellaneous Provisions) Act 1976, s48(1)(a)(ii). Legislation requires all licensed vehicles to carry a plate which distinguishes the vehicle as either a hackney carriage or a private hire vehicle. In respect of taxis see Town Police Clauses Act 1847, s 38; London Cab Order 1934, paras 16 and 18; and in respect of private hire vehicles see Local Government (Miscellaneous Provisions) Act 1976, s 48(3)(b) and (6)(a); Private Hire Vehicles (London) Act 1998, s 10(1) and (2).

<sup>22</sup> Transport Act 1980, s 64(1); Private Hire Vehicles (London PHV Licences) Regulations 2004, reg 8.

are likely to be mistaken for them, are prohibited on vehicles other than London cabs.<sup>23</sup> The word “minicab” is, however, permitted.<sup>24</sup>

- 3.25 In our consultation paper we proposed removing references to “hackney carriages” from the statute book.<sup>25</sup> We also asked whether private hire services should be allowed to describe themselves as “pre-booked taxis” in some circumstances.<sup>26</sup>

### **Consultation**

- 3.26 There was general support for removing references to “hackney carriages,”<sup>27</sup> particularly amongst the private hire trade. The question of pre-booked taxis was much more controversial.
- 3.27 A large majority of respondents were not in favour of allowing private hire firms to describe themselves as taxis, even if this were qualified with the term “pre-booked”. Chief amongst their concerns was what they perceived to be the already endangered distinction between taxis and private hire vehicles. Other consultees were concerned about public confusion and the potential to undermine any progress in educating the public as to the distinction between taxis and private hire vehicles. This was felt to be particularly true in areas where saloon cars could be licensed as taxis or private hire vehicles.
- 3.28 During consultation we did some site visits with taxi and private hire providers. Private hire providers told us on more than one occasion that their inability to use the term “taxi” in any form was hampering their business. One example we saw during a site visit was the private hire concession stand within Victoria bus station, London. Passengers alighting here in search of a taxi often came from overseas and would not appreciate the nature of the service offered at the private hire stand. This would also be true at airports for example.
- 3.29 Licensing authorities can also impose specific licensing conditions prohibiting the use of certain words in respect of private hire vehicles. For example East Devon District Council provides that no use shall be made of the words “taxi”, “cab” or “kab” or any phonetically or visually similar words or names on the vehicle or on any advertisements attached to it. Moreover, the names of all private hire firms must be agreed by the council before a licence is issued.<sup>28</sup>
- 3.30 Transport for London argued that current restrictions on use of the word “taxi” (or “cab”) by private hire vehicles should be extended. They said that they would like

<sup>23</sup> Private Hire Vehicles (London) Act 1998, s 31(2).

<sup>24</sup> Private Hire Vehicles (London) Act 1998, s 31(3).

<sup>25</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 22.

<sup>26</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 23.

<sup>27</sup> 265 agreed; 55 disagreed; 15 made other comments.

<sup>28</sup> East Devon District Council, available at: <http://www.eastdevon.gov.uk/bookletph-04web.pdf> (para 2.15) (last visited 19 May 2014). These powers will no longer exist if our recommendations are accepted; avoidance of misleading terminology will be a matter for the new legislation, supplemented if necessary by national private hire vehicle standards.

to prevent private hire operators from using such language in any form of advertising, on their website or as part of website addresses.

### **Discussion**

- 3.31 We will continue to recommend that the statutory language be changed to “taxi” for hackney carriages. The use of “hackney carriage” is an historic anomaly. “Private hire”, on the other hand, is a modern term which, although it may not receive much public usage, accurately describes the service it relates to.
- 3.32 We recognise that there is a significant depth of feeling in relation to the use of the term “taxi”, in any form, by private hire firms. Given the growth of online marketing it seems that only an outright prohibition on these terms would be effective. We acknowledge that the term “private hire” is not well-known amongst the general public, and the term “minicab” is only used to any great extent in London. Yet if private hire vehicles are to be prohibited from using signage including the word “taxi” it appears inevitable that this restriction should also apply to advertising. It could be argued that allowing private hire firms to advertise as taxis might encourage the public to try to hail private hire vehicles. On the other hand, private hire vehicles should continue to be allowed to advertise as “cabs”.
- 3.33 Finally, we note that national standards regarding signage, as may be set by the Secretary of State under our reforms, will also be very important in helping to identify legitimate providers and in differentiating between taxi and private hire services.<sup>29</sup>

#### **Recommendation 4**

**We recommend that the term “hackney carriage” should be replaced in legislation with the word “taxi”. The term “private hire vehicle” should remain unchanged.**

- 3.34 This recommendation is given effect in the draft Bill by the use of the terms “taxi driver’s licence” and “taxi licence” in clause 68.

#### **Recommendation 5**

**We recommend that only the providers of licensed taxi services should be allowed to describe themselves using the term “taxi” on vehicles or in advertising materials.**

- 3.35 This recommendation is given effect in the draft Bill by provisions regulating signage and advertising in clause 69.

### **STATUTORY PRE-BOOKING AND INFORMATION OBLIGATIONS FOR PRIVATE HIRE SERVICES**

- 3.36 Private hire operators play a pivotal role in the provision of private hire services, and will continue to do so under our reforms.<sup>30</sup> Under the current law, operators

<sup>29</sup> See Chapter 7 below, para 7.36 onwards.

<sup>30</sup> We will discuss their role within our reformed system in detail below from para 3.129.

are subject to record-keeping obligations in respect of private hire bookings accepted in accordance with the requirements set down by their licensing authority,<sup>31</sup> with the result that there is considerable variation in respect of content and level of detail across the country.

- 3.37 In giving our reasons for abandoning the concept of plying for hire, we placed emphasis on pre-booking in distinguishing the competitive market in for-hire services from rank and hail provision. We have also referred in this Report to the ability of customers wishing to book a private hire journey to shop around for lower prices and better offerings and have noted in addition that where a provider disappoints a customer, they risk losing repeat business. Buyer power in these situations can be strong.
- 3.38 In summary, we recommend maintaining the current legal position in England and Wales, including London, in which a private hire journey must be booked, before the journey begins and the booking must be made through a licensed private hire operator (which, further to our reforms, will be redefined as a “dispatcher” as discussed below).<sup>32</sup> We propose that, in order for the pre-booking to be effective to make the journey lawful, the operator must make a record of the booking and provide a price or an estimate up front, if requested. The same obligations would be imposed on taxi drivers taking pre-booked work out-of-area, save that taxi drivers will continue to be able to take bookings themselves and will not need to be dispatched by a separately licensed operator. We describe our proposed pre-booking obligations further below.<sup>33</sup> We also recommend that the Secretary of State should have the power to prescribe further the form and content of private hire and out-of-area taxi pre-bookings.
- 3.39 Under current law, London private hire operators are under a duty to provide passengers with a price or estimate up front on request.<sup>34</sup> This does not apply outside London.
- 3.40 We recommend two key changes to the law in this regard. First, we recommend that private hire operators (which will be referred to as “dispatchers” under our reforms) should be under a duty to give the hirer an estimate<sup>35</sup> up front, if requested, and to maintain a record of it, before the journey begins.<sup>36</sup> The duty will only be fulfilled if the information given is given in good faith. Secondly, the operator’s disclosure and record-keeping obligations would apply in respect of all jobs dispatched by that operator. This would include taxi journeys in cases where, as currently happens, a private hire operator dispatches a taxi rather than

<sup>31</sup> Local Government (Miscellaneous Provisions) Act 1976, s 56(2); and Private Hire Vehicles (London) Act 1998, s 4(3).

<sup>32</sup> See Recommendation 16 and para 3.135 onwards.

<sup>33</sup> See from paras 3.135 to 3.143.

<sup>34</sup> See Private Hire Vehicles (London) Act 1998, s 3(4); and Private Hire Vehicles (London) (Operators’ Licences) Regulations 2000, SI 2000 No 3146, reg 9(3).

<sup>35</sup> The purpose of the estimate is to provide the hirer with an idea of the cost of the journey. Whereas this would usually be the overall cost of the journey, in certain circumstances providing a per mile estimate may also be reasonable.

<sup>36</sup> Draft Taxis and Private Hire Vehicles, clause 34.

a licensed private hire vehicle.<sup>37</sup> This will be without prejudice to the continued ability of a taxi driver to accept a pre-booking without the need to go through a licensed dispatcher, provided they keep appropriate records and give necessary information to customers on request.<sup>38</sup> Taxi drivers themselves will not be obliged to keep records where they are dispatched by a licensed private hire operator.

- 3.41 This policy is aimed at promoting transparency in pricing, which is an important part of enabling customers meaningfully to compare the services of different private hire companies and thus promoting competition in the private hire market. This, in turn, promotes the continuance of a two-tier system. It also gives the right incentives to operators to plan journeys properly and ensure that drivers have the information they need to provide an efficient service so that operators can correctly price their products. This is all the more important as we recommend that private hire drivers should no longer be required to satisfy topographical knowledge requirements.
- 3.42 The provisions applying to private hire operators in London require an estimate, rather than a specific price, and we understand that this has not caused any significant problems. We therefore propose to require no more than an estimate as part of our reforms. This is without prejudice to the ability of customers to agree a price for the journey as a matter of contract law.

**Recommendation 6**

**Operators across England and Wales (dispatchers under our Bill) should be under a duty to provide a price or an estimate of the fare on request, as is already the case in London.**

- 3.43 This recommendation is given effect in the draft Bill by clause 39.

**TAXIS WORKING OUT OF AREA**

- 3.44 Taxis should continue to be allowed to do “hail and rank” work only if the journey begins in their licensing area. This is because outside the licensing area there is no price protection, a driver operating outside their licensing area may well not have local topographical knowledge, and the standards of the taxi vehicle might be lower than those of local ones, undermining the utility of the local taxi standards that we recommend licensing authorities should be able to impose. Under our reforms, taxis would continue to be able to pick up passengers outside their licensing area, but only pursuant to a pre-booking.

**The problem of taxis working systematically as private hire vehicles out of area**

- 3.45 The problem of out of town taxis working almost exclusively outside their

<sup>37</sup> This gives rise to the anomaly that a taxi radio circuit or other intermediary working only with taxis does not have any record-keeping and information obligations whereas a licensed private hire operator doing the same thing does. This difference in treatment is, however, justified by the fact that taxi journeys booked through radio circuits will remain subject to fare regulation under our recommendations, whereas journeys booked through private hire operators are not. Hence the need for records to prove that the journey was arranged through pre-booking, so that the customer had the opportunity to compare different offerings.

<sup>38</sup> Draft Taxicab and Private Hire Vehicles, clause 34.

licensing area, carrying out pre-booked work (and sometimes unlawfully plying for hire) has escalated in recent years. Indeed this formed the main focus of the 2011 Transport Select Committee review of taxi and private hire licensing.<sup>39</sup>

- 3.46 Taxis do not require a private hire licence in order to undertake pre-booked work of any description.<sup>40</sup> As we noted in our consultation paper, however, the law in this area is confusing and at times inconsistent.<sup>41</sup> The current position has paved the way for a significant number of taxis to work as private hire vehicles outside the area for which they hold a hackney carriage licence.<sup>42</sup> The tensions this creates are most apparent at the boundaries of large urban areas, which typically have more demanding standards than their surrounding areas. For example, since consultation we have heard this has become an even more prominent issue on the boundary between Manchester and surrounding local authorities.<sup>43</sup>
- 3.47 This issue has arisen most prominently in the case of Newcastle City Council's largely unsuccessful challenge to Berwick-upon-Tweed Borough Council's preparedness to license taxis not based in the Borough, with the consequence of enabling them to work as private hire vehicles in other parts of the country.<sup>44</sup> It was alleged that applicants were choosing to obtain hackney carriage licences in Berwick-upon-Tweed, owing to the lower costs and less burdensome conditions attaching to those licences, and subsequently operating as private hire vehicles exclusively in other licensing areas.<sup>45</sup> Although the court was not prepared to say that Berwick's actions were unlawful, the judge voiced serious concern about Berwick's licensing practices, particularly the lack of control over vehicles working

<sup>39</sup> Taxis and private hire vehicles: the road to reform, Report of the Select Committee on Transport, (2010-12) HC 720. Out of area taxis were also a significant focus of many stakeholder meetings we attended, in particular the Meeting of Minds in Bolton on 15 April 2014.

<sup>40</sup> See *Britain v ABC Cabs (Camberley) Ltd* [1981] RTR 395; *Brentwood Borough Council v Gladden* [2004] EWHC 2500 (Admin). In these cases, however, the *booking* had been accepted in the taxi's licensing area. But this fact was not considered determinant, see *Stockton-on-Tees Borough Council v Fidler* [2010] [2010] EWHC 2430 (Admin), discussed below.

<sup>41</sup> See Mr Christopher Symons QC in *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin) paras 42 and 57: "... I am not prepared to do other than follow *Gladden* which is a decision of this Court which I am certainly not prepared to say is obviously wrong" - hardly a ringing endorsement. See also *Kingston-upon-Hull City Council v Wilson* (unreported, 29 June 1995) but which Lord Justice Munby refused to follow in *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin).

<sup>42</sup> *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin) by Mr Christopher Symons QC at para 42.

<sup>43</sup> Stakeholders informed us of considerable cross-border activity into Manchester and beyond from Rochdale and Rossendale licensing authorities for example. We subsequently attended a large meeting convened by the National Association of Licensing and Enforcement Officers in Bolton to discuss the problem of "out of town taxis", on 15 April 2014.

<sup>44</sup> *R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council* [2008] EWHC 2369 (Admin).

<sup>45</sup> In *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin), note 5, the judge noted (and was critical of the fact) that Berwick had testing stations in Newcastle, Alnwick and as far afield as Birmingham.

remotely.<sup>46</sup> The matter was felt sufficiently serious to merit investigation by the Transport Select Committee in 2011,<sup>47</sup> which suggests that the decision had not had the restrictive effect intended. The Select Committee recommended that local authorities should impose conditions to the effect that taxis, private hire vehicles and their drivers must work principally in district by which they are licensed.<sup>48</sup>

### **New national standards and a more level playing field**

- 3.48 Our reforms seek to address the root causes of the problems associated with out of area taxis working as private hire vehicles. We propose introducing national standards which should remove any incentives to obtain a licence outside the area in which a driver proposes to work to take advantage of lower standards, for example. Because national standards for private hire vehicles would be aligned, under our recommendations, with the minimum standards that we propose should be set nationally for taxis, there would be little point in obtaining a taxi licence in order to undertake remote private hire work. Nothing in our proposals would prevent a licensing authority from imposing as a condition of a taxi licence that the applicant must work primarily within the local area. Indeed local authorities already impose a variety of conditions on both taxi drivers and private hire operators to try to combat this.<sup>49</sup> We additionally propose a nationally prescribed private hire licence fee, which would also be a minimum level below which taxi licence fees could not be set. This would reduce the scope for lower fees to provide similar incentives. Moreover, we propose new cross-border enforcement powers, which empower local licensing officers to deal more effectively with unlawful behaviour or breaches of national standards by vehicles licensed outside the area.<sup>50</sup>

### **A return to area requirement?**

- 3.49 In response to the out of area working problem that we have described above,

<sup>46</sup> *R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council* [2008] EWHC 2369 (Admin) at para 34. The judge noted that Berwick operated testing stations in Newcastle, Alnwick and as far afield as Birmingham. The outcome of this case was affirmed in *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin).

<sup>47</sup> Taxis and private hire vehicles, Report of the Select Committee on Transport, (2010-12) HC 720.

<sup>48</sup> Taxis and Private Hire Vehicles: the road to reform, Report of the Select Committee on Transport (2010 – 12) HC 720, para 30.

<sup>49</sup> Derby City Council requires operators to inform customers where the vehicle dispatched to them is not licensed by Derby City Council. It also prohibits vehicles licensed outside the area from displaying the livery of a private hire operator licensed by Derby City Council. See <http://www.derby.gov.uk/transport-and-streets/taxis-and-minicabs/licence-private-hire-operators/> (last visited 16 May 2014). Pendle Borough Council has an as yet unimplemented policy of requiring hackney carriage licence applicants to demonstrate a bona fide intention to ply for hire within the local authority area of Pendle. Monmouthshire County Council is currently consulting on a similar policy: <http://www.monmouthshire.gov.uk/wp-content/uploads/2013/06/11th-February-2014-Monmouthshire-intended-use-policy.doc> (last visited 16 May 2014).

<sup>50</sup> See Chapter 13 below.

the Transport Select Committee in 2011<sup>51</sup> suggested that local authorities should require taxis, private hire vehicles and their drivers to work principally in the area in which they are licensed, including a new requirement for drivers to return to their licensing area within a reasonable time of dropping off passengers outside the area. This was proposed for both taxis and private hire vehicles.

- 3.50 In the consultation paper we did not support a return to area requirement, on the basis that it could damage consumer interests through increased prices and reduced flexibility of provision, as well as having adverse environmental consequences through requiring drivers to return to their area without a passenger when they might have been able to obtain a pre-booking, or a dispatch by a private hire operator, for a journey in their homeward direction.<sup>52</sup>

### ***Consultation***

- 3.51 This received very mixed responses. Most respondents disagreed with our view, and supported a return to area requirement. Most of those who disagreed were taxi drivers and regulators. We note that a number of those who responded were under the impression that a return to area requirement already applied; this is not the case, and the introduction of any such restriction would represent an increase in regulation.
- 3.52 The private hire operators we spoke with during consultation maintained that a return to area requirement would be a significant burden and also have an unnecessary, negative environmental impact. Regardless of how far away it is from its licensing area, they suggested, if a vehicle can pick up a pre-booking in an area in which it has just dropped off a passenger, it makes economic and environmental sense to do so.
- 3.53 GMB highlighted the enforcement difficulties associated with vehicles working outside their licensing area, and consequent risk to customer safety.

### ***Discussion***

- 3.54 We do not recommend a “return to area” requirement for taxis (or private hire vehicles). Such a requirement does not form part of the current system and would constitute an added burden. It would also be difficult to enforce, and might operate unfairly, because it would apply whether or not the driver had any intention of taking a passenger illegally whilst in the other licensing area.
- 3.55 As regards private hire vehicles, such a requirement would be at odds with our proposed scheme which aims to create a national market for private hire and to minimise geographical constraints. Further, we suggest that our recommendations as to obligations on licensing authorities to publish information about the vehicles, drivers and operators they license,<sup>53</sup> as well as those requiring vehicle licence holders, drivers and operators to each maintain records

<sup>51</sup> Taxis and private hire vehicles, Report of the Select Committee on Transport, (2010-12) HC 720.

<sup>52</sup> The question covered both taxis and private hire services. Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 42.

<sup>53</sup> See Chapter 10 below.



of licensees they work with,<sup>54</sup> would go some way towards making enforcement against private hire drivers acting illegally out of area easier.

- 3.56 Evidence from consultation highlighted various valid concerns relating to cross-border work; we do not, however, regard a return to area requirement as an effective solution. If a driver is minded to pick up an unbooked passenger illegally outside their area, they are likely to delay their return to their area in order to do so, whether or not they are additionally in breach of a return to area requirement. We therefore do not recommend introducing such a requirement.
- 3.57 In the following chapters we shall consider how new cross-border enforcement powers and the introduction of national minimum standards might eradicate many of the concerns associated with cross-border private hire, and out-of-area taxi work. Below, we explain how our proposed reforms clarify the requirements applicable to taxis seeking to pick up passengers out of area.

#### **New statutory record-keeping requirements for pre-booked taxis working out of area**

- 3.58 Where a taxi is being used outside its licensed area, there need to be clear rules about the circumstances and conditions under which it should be allowed to pick up passengers. We shared many of the concerns raised by stakeholders who supported a return to area requirement.
- 3.59 In our consultation paper, we asked a general question as to whether taxis should be required to hold records of pre-booked journeys.<sup>55</sup>

#### **Consultation**

- 3.60 Most consultees were in favour of taxi record-keeping obligations. Those who agreed felt that records would be very useful in the event of an incident. For example, James Button (a solicitor and academic) said that:

Drivers should be allowed to accept bookings in their vehicles however a log or record should be maintained in case of incident or complaint so that there is evidence for the investigation.

- 3.61 Leeds City Council expressed a similar view. Some consultees thought that a record should only be kept of a taxi pre-booking if the charge was to be higher than the metered fare. For example, Cornwall Council said that taxi drivers:

Should only be required to keep a record if it is decided that they can charge a fare for pre-booked journeys which are not required to conform to the table of fares set by the Council.

- 3.62 This view was also expressed by the Justices' Clerks' Society. On the other hand, a large number of consultees disagreed entirely with the idea of requiring taxi drivers to make records of pre-bookings. These consultees tended to regard

<sup>54</sup> See Chapter 10, para 10.33 to 10.39, in relation to operators, and Chapter 5, para 5.76 to para 5.79 in relation to driver and vehicle licences.

<sup>55</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 53.

such a requirement as unnecessary given that taxis are already highly regulated and can pick up passengers from the street with no need for a pre-booking. The United Cabbies Group made the following points:

The UCG cannot see any good reason that this should be the case. A Taxi driver takes numerous passengers on a hail or rank basis and there is no reason these should be recorded as the taxi trade is regulated. How would these bookings be scrutinised and by whom? How would keeping a specific record of these pre arranged rides affect the safety of a passenger? The fare a passenger pays? It is not obvious what the advantages are. We fail to see the case for taxi drivers recording their pre arranged work when the majority of the work done by taxis is not required to be kept as a record.

### ***Discussion***

- 3.63 Our question concerned a general record-keeping requirement for pre-booked taxi journeys. Stakeholders have pointed to the advantages of keeping records, for example in regard to lost property and in resolving complaints. On the other hand, we have considered some sound arguments against the introduction of generalised record-keeping requirements for taxis. Requiring drivers to keep records, where taxis are already subjected to additional local regulatory requirements compared with private hire vehicles, may be regarded as an unnecessary additional burden.
- 3.64 On balance, we think that imposing the burden of new record-keeping obligations on taxis is only justified in the limited circumstances where this is necessary to control the activities of taxis working out-of-area. The lawfulness of a taxi picking up a passenger outside its licensing area depends entirely on the existence of a valid pre-booking. As was noted by Cornwall Council and the Justices' Clerks' Society, such taxis are also outside fare regulation (and will remain so under our recommendations), meaning that passengers may be at risk of exploitation. We therefore recommend that record-keeping requirements should apply, in respect of taxis picking up passengers outside their area.
- 3.65 As discussed below, taxis picking up out of area are not subject to local price regulation or compellability. It is important to the integrity of the localism policy of taxi regulation<sup>56</sup> that out-of-area pick ups should be effectively controlled, and subject to a uniform approach. We therefore recommend that taxis working out of area (as well as private hire dispatchers)<sup>57</sup> should be subject to pre-booking requirements, so that a record of the journey must be kept and of the price and/or estimate.<sup>58</sup> The hirer would also have a right to be provided with an estimate of the cost of the journey, if requested. Regulations may specify how the above requirements may be fulfilled and any further features a valid taxi pre-booking may be required to have, as part of national standards.

<sup>56</sup> The policy that taxis should be subject to local standards.

<sup>57</sup> We discuss the requirements to be imposed on dispatchers in Chapter 7 below.

<sup>58</sup> As we shall discuss in the section on dispatchers from para 3.134 below, different rules would apply where taxis were dispatched by a licensed operator. In these circumstances, the taxi driver would be relieved of their record-keeping obligations and the requirements above would apply to the licensed dispatcher instead.

- 3.66 This treatment both provides a means of ensuring that taxi out-of-area work is undertaken lawfully and recognises that a taxi working out-of-area is working within the same market as a private hire vehicle rather than the rank and hail vehicles in that area.

**Recommendation 7**

**We recommend that taxis picking up passengers outside their licensing area should be subject to a pre-booking requirement, which would be statutorily defined for the first time. This would require provision of an estimate of the price for the journey in advance, if requested, and record-keeping obligations. These requirements could be further refined through national standards as set by the Secretary of State.**

- 3.67 This recommendation is given effect in the draft Bill by clauses 34, 35 and 36.

**Recommendation 8**

**We do not recommend the introduction of record-keeping requirements in respect of taxis except where they are picking up passengers outside their licensing area.**

**UNOFFICIAL RANKS**

- 3.68 During consultation stakeholders were very concerned about so-called unofficial ranks: where private hire vehicles (or, indeed, out of area taxis) might park in a line, or in the proximity of official ranks for local taxis, and take work from the local taxi trade. Whereas such behaviour could amount to plying for hire under current law, pursuant to our reforms this offence would no longer be available to licensing officers wishing to discourage such behaviour. If any of these vehicles actually carried or attempted to carry a passenger, they would be guilty of an offence, but not before that point. Although prosecutions without an actual hiring are, in practice, very rare (licensing officers typically only prosecute for plying for hire following test purchase operations) it may be that the threat of prosecution for plying for hire is a factor in deterring unofficial ranks.
- 3.69 The draft Bill provides licensing officers with a new power to require a vehicle to move on in specified circumstances, which we consider will be more effective than threatening prosecution for a plying for hire offence.<sup>59</sup> The power would be available to licensing officers who have been appropriately trained and, accredited, and would be exercised in compliance with such requirements as may be prescribed by the Secretary of State.<sup>60</sup> Failure to comply with the direction to move on would be an offence, and liable to a fine of up to £1,000.<sup>61</sup> Importantly, it could lead to suspension or revocation of licence.

<sup>59</sup> Draft Taxis and Private Hire Vehicles Bill, clause 53.

<sup>60</sup> We will discuss these new powers in more detail in Chapter 13 below.

<sup>61</sup> This is a level 3 fine on the current standard scale of fines for summary offences, see s 37 of the Criminal Justice Act 1982.

### **Recommendation 9**

**We recommend that local authority stopping officers should have a new enforcement power to require licensed vehicles to move on where the officer considers that:**

- (a) there is a reasonable likelihood that the public may believe the vehicle is available for immediate hire;**
- (b) the vehicle is causing an obstruction to traffic flow; or**
- (c) the driver is attempting to take work away from ranked taxis.**

3.70 This recommendation is given effect in the draft Bill by clause 53.

### **A NEW OFFENCE OF ACCEPTING A BOOKING “THERE AND THEN”**

3.71 In our consultation paper, we asked whether there would be advantages to adopting the Scottish approach to defining taxis by reference to “arrangements made in a public place” instead of “plying for hire”.<sup>62</sup> The response was mixed but in general there was not a great deal of enthusiasm for this, and those who did express some agreement were tentative. It was felt that defining concepts such as a “public place” would not be any easier than defining plying for hire.

3.72 The Scottish definition has an important advantage over plying for hire in the area of clarity and certainty: it only criminalises actual engagement with the passenger (or a person acting for them), something that is relatively easy to prove. Plying for hire, by contrast, involves making the vehicle available for immediate hire, giving rise to scope for dispute over whether the defendant did so (with the result that prosecutions are only in practice brought where the defendant’s conduct has gone beyond mere plying for hire. We regard the provision used in Scotland as a useful starting point to define a new offence making it unlawful for drivers to accept an immediate hire. We provide for this in the draft Bill, at clause {aw 03}. This makes it an offence for a driver to agree to use a vehicle as a hire vehicle on a journey beginning there and then. It will be capable of being committed by drivers other than taxi drivers licensed in the area where the pick up occurs, thus covering private hire drivers and out of area taxi drivers as well as wholly unlicensed vehicles.

3.73 Whether the journey was to start “there and then” would be a question of fact, which we recognise may be difficult to prove other than by test purchasing. The merit that we see in introducing the new offence is that it will be committed even where the formalities of a statutory pre-booking are complied with, catching cases where a driver goes through the motions of contacting an operator and setting up a duly documented “pre-booking” only after the prospective passenger has approached the driver. This is undesirable because the customer is already captured before price information can be given; the lack of ability to compare prices that characterises ranking and hailing, and justifies fare regulation, is just as strong.

<sup>62</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 17.

### **Recommendation 10**

**We recommend introducing a new offence which makes it unlawful for anyone other than a locally licensed taxi driver to accept a booking for a journey starting there and then.**

#### **TAXI-ONLY REGULATORY RULES**

3.74 The main characteristics of the regulatory framework which distinguish the way in which taxis work compared to private hire services are:

- (1) compellability;
- (2) fare regulation; and
- (3) ranks.

3.75 We discuss each in turn, except fare regulation, which we address in Chapter 9 below.

#### **Compellability**

3.76 Compellability is a key aspect of the regulatory framework for taxis. It ensures that those taking short journeys or travelling to unpopular destinations are able to travel. Where a taxi is waiting at a taxi rank or stops pursuant to a hail, the driver is under a duty to take a passenger anywhere they might wish to go, within a prescribed distance unless they have a reasonable excuse.<sup>63</sup>

3.77 In England and Wales outside London the “prescribed distance” is up to but not beyond the boundaries of the licensing area.<sup>64</sup> The licensing authority can prescribe a smaller distance using bye laws.<sup>65</sup> In London, the legislation instead describes the extent of compellability as a distance:

not exceeding twelve miles from the place where the same shall have been hired, or for any time not exceeding one hour from the time when hired.<sup>66</sup>

3.78 Special provision is made for Heathrow Airport, where the relevant distance is

<sup>63</sup> See Town Police Clauses Act 1847, s 53; and in London the London Cab Order 1934, para 34. Reasonable excuse could cover situations where the prospective passenger was smoking, drunk, or carrying hot food; by contrast, refusing to take a fare because the distance is too short is unlawful.

<sup>64</sup> Under the Town Police Clauses Act 1847 the “prescribed” distance was the area specified in a “special Act” as being that in which the taxi provisions applied. Section 171 of the Public Health Act 1875 incorporated the provisions of the Town Police Clauses Act 1847, applying it throughout urban areas. Section 15 of the Transport Act 1985 extended the taxi provisions throughout England and Wales so they came to cover any part of a local authority area where the provisions were not already in force. At that point the “prescribed distance” effectively became the whole of the local authority area.

<sup>65</sup> Town Police Clauses Act, 1847, s 53.

<sup>66</sup> London Hackney Carriage Act 1853, ss 7 and 17(2).

extended to 20 miles.<sup>67</sup>

- 3.79 Whereas many users believe taxis are required to stop when hailed if they are free, there is currently no such requirement; and compellability only applies where a taxi is at a rank or has stopped pursuant to a hail.

### **Consultation**

- 3.80 During consultation it became apparent that the exact scope of compellability is not clear. We were aware that many passengers wrongly believed taxis to be under a duty to stop when hailed. Compellability is currently subject to exceptions if the taxi is already hired or if the driver has a reasonable excuse.<sup>68</sup> Consultees agreed that this should be retained but clarified. One taxi driver suggested that exceptions should apply where the passenger has no money or where the passenger is unfit to carry as they would soil the vehicle (for example if they are wet or muddy). Others felt drivers should be able to refuse fares where they felt that to take the passenger would endanger either driver or passenger. It was also felt important that legislation clarify the point in time when compellability takes effect (only upon having stopped for a passenger). There is clearly confusion regarding the meaning of this important concept.
- 3.81 One respondent suggested that compellability should be extended to take account of longer journeys. His suggestion was 50 miles from the point of pick-up. He added that the fare for a journey ending beyond the compellable distance should be on the meter until that point and negotiable thereafter. Another suggested that compellability should apply equally to private hire vehicles. Transport for London noted that the fact that compellability is restricted to journeys within the licensing district causes problems at Heathrow Airport, where drivers sometimes refuse journeys which would take them away from London. They noted that “there is an argument that drivers must accept any journey within the compellable distance regardless of the destination.”
- 3.82 Consultees tended to agree with the proposal that compellability should no longer depend upon whether or not a vehicle is on the street. Concerns were raised that retaining this term would allow private hire vehicles to effectively take immediate work from areas of private land such as car parks.
- 3.83 Consultation highlighted a significant problem in respect of drivers discriminating between passengers. The issue is particularly serious in relation to disabled passengers.<sup>69</sup> Although taxi drivers, as providers of a service, are under an obligation not to discriminate in the provision of that service,<sup>70</sup> we heard of many instances of disabled passengers being ignored or refused carriage by taxi drivers. This applies particularly to people in wheelchairs, blind people and those

<sup>67</sup> London Cab Order 1972, SI 1972 No 1047.

<sup>68</sup> Town Police Clauses Act 1847, s 53; London Hackney Carriage Act 1853, ss 7 and 17(2).

<sup>69</sup> See this recent example <http://www.dailymail.co.uk/news/article-2286553/Taxi-driver-fined-refusing-pick-blind-couple-dogs-didnt-want-leather-seats.html> (last visited 16 May 2014). Although this related to a pre-booking, we have heard many examples of taxi drivers refusing to stop or accept a fare at a rank if a passenger is disabled. Refusing to take an assistance dog in a taxi or private hire vehicle is already an offence under the Equality Act 2010, ss 168 to 171.

with assistance dogs. We have been told of incidents where disabled people have had to wait around corners whilst their non-disabled friends hailed taxis for them; have felt obliged to hide their white stick when hailing a taxi; where taxis have driven away from the front of the rank to avoid taking them; or disabled people have been left stranded because available taxis have not stopped for them. These incidents are clearly very upsetting. There is very little the passenger can do in this situation: a moving vehicle is likely to be going too fast for them to note any details which might assist in making a complaint.

## **Discussion**

### THE EXTENT OF COMPELLABILITY

- 3.84 Compellability is clearly a very important concept and should be retained. As with current law, under our recommendations the extent of compellability should, as a default position, extend to the entire licensing area.<sup>71</sup> The licensing authority would have the power to issue rules locally (but without the need to use bye laws) to express compellability as either a time or a distance from the point of hire, or to the boundaries of a licensing zone for example.<sup>72</sup> This approach could be used to preserve the current position in London, with compellability extending to twelve miles from the point of hire. In order to address the problems that can arise where journeys occur at the borders of licensing areas we propose that licensing authorities should also have the power to set the compellable distance at up to seven miles beyond the boundaries of the licensing area,<sup>73</sup> and 20 miles in the case of Transport for London (building on its current powers in respect of journeys originating at Heathrow airport).<sup>74</sup>
- 3.85 We considered the different situations in which drivers may be justified in refusing to take a passenger, and the current formulation used in England and Wales including London, such that drivers can avoid compellability for “reasonable excuse” is appropriate and should be retained.
- 3.86 It is important that the extent of compellability should coincide with fare regulation, because otherwise a passenger could be effectively denied a journey simply by a driver requesting a very high price for it. We discuss how our recommendations ensure appropriate consumer protection by aligning compellability and fare regulation in Chapter 9 below.

<sup>70</sup> Equality Act 2010, Part 3.

<sup>71</sup> Draft Taxis and Private Hire Vehicles Bill, clause 30.

<sup>72</sup> We discuss zoning in Chapter 10.

<sup>73</sup> This is a change in England and Wales outside London, where the prescribed distance has been limited to the licensing area.

<sup>74</sup> Under the London Cab Order 1972, SI 1972 No 1047, the distance is expressed as 20 miles from the point of hire for journeys originating in Heathrow. The power in the draft Bill is drafted in broader terms but would allow at least the same outcome to be achieved.

### **Recommendation 11**

**We recommend that compellability should be retained in its current form. It should be open to licensing authorities to express compellability as a time or distance from the point of hire, or as extending to the boundaries of a licensing zone. Licensing authorities should also be able to extend the compellable distance up to seven miles beyond the boundary of the licensing area, or twenty miles in the case of Transport for London.**

3.87 This is achieved by clause 30 of our draft Bill.

#### DUTY TO STOP WHEN HAILED

3.88 We recommend that compellability be complemented by a duty to stop, where a hailed taxi is displaying its availability for hire (for example, through a lit roof sign) in accordance with taxi standards that may apply either as part of national standards or as part of local conditions of licence.

3.89 A taxi driver should be under a duty to stop for passengers if it is safe to do so. This means that if a passenger hails a cab at a junction where it would be dangerous to stop, or if the person is drunk and disorderly, there would be no obligation to stop.

3.90 A duty to stop can only be meaningful if the relevant vehicle has a means of displaying its availability. Under our reforms, in areas where a taxi is required to signal its availability for hire (whether by national standards or by local conditions) licensing authorities will have the power to make a determination that in their areas, taxis should be under a duty to stop when hailed.<sup>75</sup> In such areas, it would be an offence for a taxi driver to ignore a hail without reasonable excuse.<sup>76</sup> In London, taxis that are available for hire are currently required to keep their light on in hours of darkness;<sup>77</sup> national standards and local standard-setting powers will be broad enough to apply a condition that vehicles must display their availability throughout the day. Further, the requirement to display a taxi's availability could be part of the national minimum standards for taxis, as part of the Secretary of State's remit to promote accessibility.<sup>78</sup>

3.91 We recognise that the duty to stop may be difficult to enforce, for the same reasons that it is currently difficult for a passenger to provide evidence to support a complaint that they have been discriminated against. On the other hand, "mystery shopper" operations by enforcement officers could be effective in this

<sup>75</sup> Draft Taxis and Private Hire Vehicles Bill, clause 29(1)(d).

<sup>76</sup> Draft Taxis and Private Hire Vehicles Bill, clause 29(2).

<sup>77</sup> London Cab Order 1934, para 38(3).

<sup>78</sup> The requirement to make it clear that a taxi is not in service can be very valuable as an enforcement tool in respect of out of area taxis (being used as private hire vehicles), or if a taxi is returning from an out of area drop-off. If a taxi had its light on out of area, for example, it would be hard to deny that it was illegally seeking work.



context. Furthermore, we think that this modification could help to change attitudes towards the provision of services for disabled persons. It would also be reinforced by our recommendation that all drivers of both taxis and private hire vehicles should undergo disability awareness training. We deal further with accessibility of taxis and private hire vehicles to disabled passengers in Chapter 12 below.

**Recommendation 12**

**Licensing authorities should have the power to make a determination that in their areas, taxis should be under a duty to stop when hailed. In such areas, it would be an offence for a taxi driver in a vehicle displaying a “for hire” sign to fail to stop in response to a hail, without reasonable excuse.**

3.92 This recommendation is achieved by clause 29 of our draft Bill.

**Ranks**

3.93 The use of official ranks is a privilege exclusive to taxis, and it is an offence for any other vehicle to use them.<sup>79</sup> Local licensing authorities have the power to create taxi ranks (also known as “hackney carriage stands”) in their area,<sup>80</sup> subject to a number of procedural requirements.

3.94 Licensing fees can be used to provide ranks, with the important restriction in England and Wales (outside London) that only the fees from taxi vehicle, private hire vehicle and operator licences, as opposed to driver licensing fees, can be used.<sup>81</sup> By contrast, Transport for London has a broad discretion as to the purposes to which licence fees for all types of taxi vehicle and driver licences can be put.

3.95 During consultation, the trades highlighted problems in getting new ranks designated in areas where they felt these were needed. We have therefore reviewed the rules relating to the designation of ranks to consider whether changes might be necessary.

3.96 We propose largely to retain the current law relating to the procedures for the appointment of ranks. However, we consider that licensing authorities should be under a duty to consider whether new ranks should be appointed, or current ones moved or removed, on a periodic basis not exceeding every three years. This should be combined with a duty to consult on the need to alter rank provision, but leaving the form of consultation flexible, and to be determined at a local level.

3.97 We have also concluded that it would be beneficial to remove the limits existing outside London on the uses to which driver licence fees may be devoted, so that these too may be used in respect of ranks if desired. The changes we

<sup>79</sup> Local Government (Miscellaneous Provisions) Act 1976, s 64.

<sup>80</sup> Local Government (Miscellaneous Provisions) Act 1976, s 63. In London, Transport for London has the power to appoint ranks under the London Hackney Carriages Act 1850, s 4.

<sup>81</sup> Local Government (Miscellaneous Provisions) Act 1976, ss 70(1)(b) and s 53(2).

recommend in respect of licensing fees, discussed in Chapter 9, would permit this.

**Recommendation 13**

**Licensing authorities should be under a duty to consult on the need to alter rank provision and to consider whether new ranks should be appointed, or current ones moved or removed, on a periodic basis not exceeding every three years.**

3.98 Clause 26 of our draft Bill gives effect to this recommendation.

**INTERMEDIARIES**

3.99 In respect of private hire vehicles, the interposition of a licensed operator, so that customers do not deal directly with private hire drivers in arranging bookings, is mandatory under the current law. This will remain the case under our recommendations. However, as regards both taxi and private hire services, a number of third parties other than a licensed operator may be involved in booking a pre-arranged journey. Customers frequently rely on third parties to arrange their journeys. The levels of involvement of the intermediary and the degree of formality in the arrangement may vary, ranging from an aggregator website providing information about different taxi and private hire companies<sup>82</sup> to a hotel concierge offering to arrange a journey for a customer. Events management companies and travel agents may play a part in arranging taxi or private hire journeys.

3.100 Taxi radio circuits represent an important means through which pre-booked taxi journeys can be arranged. Many companies hold accounts with such circuits and rely on them to transport their employees, for example. In recent years, smartphone applications such as Hailo<sup>83</sup> have also become popular ways of pre-arranging taxi journeys. Customers can request a taxi by opening the app on their phone, which then displays a map of the customer's current location. The customer can select the pick up point, and whether to pay by cash or card. If there is an available taxi using Hailo which accepts the job, the customer can track the taxi's approach in real time.

3.101 Some of these intermediaries, and smartphone applications in particular, do not always occupy a clear space within the regulatory framework, sometimes leading to confusion about the proper reach of licensing, and the extent to which taxi and private hire licensing rules might cover their activities.

3.102 In the consultation paper, we suggested that operator licensing should not be extended to cover intermediaries more generally than at present. This was because we felt that there was sufficient protection in the fact that customers who choose to use the services of an intermediary can protect themselves through contractual arrangements. In addition, the operator or driver ultimately engaged would remain both liable to the customer and subject to regulation. Moreover,

<sup>82</sup> See for example Kabbee, at <https://www.kabbee.com/Default.aspx> (last visited 19 May 2014).

“intermediaries” who in fact dispatched private hire vehicles directly, without being licensed, would be in breach of our proposed scheme of operator regulation.

### **Consultation**

- 3.103 This proposal proved popular with a majority of consultees who felt that it would be over-regulatory to extend operator licensing to further categories of intermediaries, provided that they did not put consumers at risk. These consultees tended to clarify that by “intermediary” they meant someone who does not provide any services beyond communicating with a licensed operator. For example, Birmingham City Council said that:

Where the intermediaries are merely contacting a licensed operator and in effect acting only as the “agent” of the customer, then this is not an activity worthy of regulation.

- 3.104 The London Taxi Company similarly saw no reason to include intermediaries within the definition of operators, so long as they remained “middlemen” and did not provide private hire services themselves.

- 3.105 Some consultees noted that the current definition of an operator is ambiguous as to how far it covers intermediaries. Transport for London raised this in the context of the Private Hire Vehicles (London) Act 1998, and explained that it had chosen not to require licensing where an intermediary (such as a website or app) merely “puts passengers in direct contact with a licensed operator who accepts the booking”. However, it felt that:

It is often unclear as to whether the contract is being made with the intermediary who then effectively sub-contracts the booking, or directly with the licensed operator.

- 3.106 Transport for London therefore proposed the following overriding principle:

The licence structure should allow the passenger to know exactly who is responsible for providing their journey and in this context the audit trail from the passenger through intermediaries to the service provider must be wholly transparent.

- 3.107 Birmingham City Council also agreed that records should be transparent, to assist with enforcement. The National Association of Licensing Enforcement Officers felt that operator licensing should not be extended to cover all intermediaries.

- 3.108 A number of consultees disagreed, and considered that intermediaries should be licensed. The United Cabbies Group was concerned about the effect which price competition promoted by applications and other innovative intermediaries, unburdened by licensing requirements, might have on the market - they feared

<sup>83</sup> At the time of writing, Hailo is available in London, but not other parts of England and Wales. Hailo is also present in cities abroad, including Dublin and New York.

that this might drive down standards.<sup>84</sup> The National Taxi Association was concerned that intermediaries might misuse passengers' personal data.

### **Discussion**

- 3.109 Third parties arranging a booking play a very important role in delivering for-hire services to the public. Although we have suggested that persons merely accepting, inviting or placing bookings (but not involved in dispatching the driver) should not require an operator licence, this does not mean they should have no responsibility at all. We think persons inviting, accepting or placing bookings in the course of business should be criminally liable if they knew or had reason to suspect that the person to whom they passed the booking would use unlicensed drivers, vehicles or operators.<sup>85</sup> There should be no liability where the booking was passed on to someone who reasonably appeared to be licensed.
- 3.110 If the booking is passed on to another intermediary (other than a licensed operator or a driver) the first intermediary accepting, inviting or placing the booking might still be liable for this offence.<sup>86</sup> Moreover, we do not wish to prejudice any other rights the hirer may have against that third party, including contractual remedies
- 3.111 The offence should only apply to things done in the course of business. Some seemingly informal interactions should be covered, such as where a waiter or doorman places a booking on behalf of a client.<sup>87</sup>
- 3.112 We recommend that national standards set by the Secretary of State should impose a duty on licensing authorities to publish a list of licensed operators, drivers and vehicles for their area so they may be verified. Many licensing authorities already make details of licensed operators available on their websites.

#### **Recommendation 14**

**We recommend that those acting in the course of a business who pass taxi or private hire bookings to providers who they know or suspect to be unlicensed should be guilty of an offence.**

- 3.113 This is achieved by clause 12 of our draft Bill.

### **TAXI RADIO CIRCUITS**

- 3.114 Third parties inviting, accepting or making provision specifically for taxi bookings

<sup>84</sup> The Private Hire Board expressed similar concerns.

<sup>85</sup> If the intermediary passed on the booking directly to a driver they would need a dispatcher licence, unless the driver held a taxi licence.

<sup>86</sup> In London, where sub-contracting is permitted, Private Hire Vehicles (London) Act 1998, s 5(5) expressly provides that even where work is sub-contracted, the operator who took the booking remains liable.

<sup>87</sup> We recommend that if an employee, such as a waiter in a restaurant, made such arrangements, criminal responsibility should attach to them personally, although their employer may be liable in civil damages, for example for negligent performance of the task.

are referred to in the trade as “radio circuits”.<sup>88</sup> Radio circuits do not require a licence under current law. In the consultation paper we asked in particular whether licensing should be extended to cover them.<sup>89</sup>

### **Consultation**

- 3.115 Responses to this question were somewhat mixed, although a majority were in favour of adding some regulatory requirements. Some consultees who thought that taxi radio circuit operators should be licensed noted that they have a public-facing role and so can affect the quality of service a person receives. Mrs J Lumley, a disabled taxi user, was concerned that:

If a taxi booking office takes a dislike to a caller they can decide not to broadcast the request. Thus leaving the customer waiting ages and not knowing what is going on and being stranded. That customer could well be somebody with learning difficulties.

- 3.116 One consultee, All Night Cars (a mixed taxi and private hire operator) felt that taxi radio circuits should be licensed because the consumer has no choice over the car which is sent to them, whereas they can decide not to take the first taxi in a rank. They also felt that a record should be kept in case of disputes.

- 3.117 Some regulators considered that they currently had insufficient powers to deal with radio circuit operators. Both Rushmoor Borough Council and City of York Council noted that the lack of a requirement to keep records causes enforcement problems. Even where taxi radio circuits keep records, there is no obligation on them to provide these to licensing authorities. Birmingham City Council saw this absence of a licensing requirement as an anomaly, given that where a private hire operator runs a mixed fleet of private hire and hackney carriage vehicles it is legally required to maintain records pertaining to bookings undertaken by all their vehicles.

- 3.118 On the other hand, many consultees regarded regulating taxi radio circuit operators as unnecessary, as taxis are already highly regulated and the radio circuit operator has much less control than a private hire operator over the car sent. These consultees tended to view the radio operator as more akin to an agent. ComCab Liverpool expressed this view as follows:

Taxi circuits are acting solely as agencies in passing working taxi drivers selected trips which they can choose to cover, or not. As the regulation surrounding taxis, especially in London, is robust and covers not only the drivers, vehicles but also the fares, and the drivers are receiving comparatively little of their work from the circuits, there appears to be no great need nor benefit of requiring those circuits to meet the same requirements as private hire operators.

- 3.119 The London Taxi Company (manufacturer of the London “black cab”) expressed

<sup>88</sup> Notwithstanding the name, modern radio circuits use booking systems based on internet and GPS technology.

<sup>89</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 49.

a similar view:

Radio circuits only account for less than 30% of a taxi driver's daily workload which cannot compare to the 100% a private hire driver's workload. Radio circuits operate more like agencies that offer work to driver who can decide to accept or refuse that work, while private hire operators have a degree of compellability over a driver who will not earn anything if they don't accept the job. We also feel that, as taxi drivers will be subject to a stricter licensing regime, radio circuits will not need to assume the same degree of responsibility as private hire operators.

- 3.120 ComCab Liverpool also argued that most taxi radio circuits are self-regulating, with good systems in place already:

In any case most taxi circuits, ComCab Liverpool included, maintain strong and auditable systems to manage the drivers and vehicles that subscribe to their circuit. Job details are equally well maintained, so it is difficult to see what benefits would be gained from additional bureaucracy. Circuits have existed for 50 years with compliance, management and service to the public perfectly well served by the current structure of the circuits.

- 3.121 Transport for London also argued against licensing taxi radio circuits, feeling that this would be over-burdensome as well as unnecessary.

### **Discussion**

- 3.122 We do not recommend introducing a requirement for taxi radio circuits to be licensed. It is true that, functionally, the role of radio circuits (and, more recently, smartphone applications working with taxis) is very similar to that fulfilled by operators in respect of private hire vehicles. Under the current system, both take bookings from the public and both dispatch vehicles.
- 3.123 There are two key rationales for licensing private hire operators discussed further in the next section. First, their dispatch role is key to maintaining the distinction between taxis and private hire vehicles. Second, operators play an important role in enforcing private hire licensing requirements. They can only dispatch appropriately licensed vehicles and drivers, and there needs to be an incentive for them to ensure that regulatory requirements are met. In a regime of licensing this incentive is heightened by the fact that an operator's entire business operation could be affected by a failure to ensure compliance. Their role also provides a helpful economy of scale for those charged with enforcement: through operators, licensing officers have access to the details of numerous drivers, vehicles and the jobs they have undertaken.
- 3.124 Neither of these rationales applies in the same way to providers that only work with licensed taxis. This is because radio circuits have much less control over their fleet, as taxi drivers are free to take bookings independently and pick up off the street. Customers could contact a taxi driver directly without breaking any legal requirement. When a radio circuit dispatches a vehicle it is therefore doing no more than passengers could do themselves and thus acting as an agent. This is unlike the situation with private hire vehicles where it would be illegal for the

passenger to contact the driver directly, and the involvement of the private hire operator is necessary to make the journey a lawful one.

- 3.125 As with private hire operators, there is a legitimate concern that taxi radio circuit operators have access to individuals' personal data. However, their obligations not to misuse such data are covered by the criminal law and data protection legislation. Similarly, the new approach to operators, under which they would be defined as "dispatchers",<sup>90</sup> would no longer directly cover the collection of bookings from passengers, and they too would no longer be regulated by licensing authorities in that regard.
- 3.126 Overall, we suggest the services of radio taxi circuits and private hire operators are only superficially similar and that no specific provision relating specifically to radio circuits is required. Although in the private hire scenario, the customer is relying on the booking agent to provide critical information necessary to make the journey legal (details of the licensed operator, and the up front price information), the same is not true for a taxi. Any local taxi could legally take the passenger for the journey, without qualifications regarding the mode of engagement. Furthermore we recognise that taxis are generally regulated to a higher level.
- 3.127 Although licensing authorities have highlighted the potential usefulness of being able to require radio circuits to disclose their records when investigating complaints, we do not regard this as a sufficient justification for imposing a new record-keeping obligation.

**Recommendation 15**

**We do not propose to require intermediaries working solely with licensed taxis (which we refer to as "radio circuits") to be licensed.**

**PRIVATE HIRE OPERATOR LICENSING**

- 3.128 In our consultation paper, we provisionally proposed that operator licensing should be retained as mandatory in respect of private hire vehicles.<sup>91</sup> We acknowledged, however, that operators do not come into direct (physical) contact with the public; and that both the driver and vehicle are separately regulated. The scope and rationale for operator licensing therefore needs to be carefully considered. Further, it is important to match the rationale for licensing operators with the scope of their legal definition.

**Consultation**

- 3.129 An overwhelming majority of respondents agreed with our proposal. In general, they favoured high operator standards and many argued that the current standards were not sufficiently stringent. Most of those who agreed with the

<sup>90</sup> See from para 3.134 below.

<sup>91</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 48.

proposal did not make substantive comments. They perhaps felt the reasons to be self-evident. However, those who did make comments noted that operators have many important responsibilities, such as record-keeping, and that operators are a vital point of contact in the event of an incident involving one of their drivers. Transport for London endorsed what we said in the consultation paper, and emphasised the importance of operator licensing for crime prevention. David Wilson, a licensing consultant, said that licensing should take into account the amount of personal information to which operators and their staff have access.

- 3.130 One consultee, Entirely Airports (a private hire operator), felt that operator licensing was unduly burdensome, since drivers themselves had to undergo tests similar to those imposed on taxi drivers, while operators were not required for taxi drivers. Along the same lines, Daventry District Council felt that it was illogical to require private hire operators to be licensed, as a licence is not required to take pre-bookings for taxis.
- 3.131 Some of those who supported removal of the operator licensing requirement did so as part of more general support for a one-tier system.

### **Discussion**

- 3.132 The more general point which emerged from consultation is that it is not possible to have a workable two-tier system without operator licensing. We remain strongly of the view that operator licensing should be retained as mandatory in respect of private hire services. We have noted above the important role of operators in ensuring compliance; something that should be incentivised by their being subjected to regulatory enforcement and the sanction of possible loss of their licence. Operators can make sure drivers and vehicles are properly licensed and safe; their premises provide a permanent, traceable base which is also useful for enforcement. Operators are also one of the key differences between taxi services and private hire services. Operators control the provision of the pre-booked service through recording passenger and journey details, and selecting the driver and vehicle.<sup>92</sup> Overall, we were persuaded that operators are an essential feature of the two-tier system and we have recommended that they should continue to be subject to licensing.
- 3.133 We propose that dispatch by a licensed operator should continue to be a necessary feature of any private hire journey. Consequently, it would be an offence for a private hire driver<sup>93</sup> to accept a hiring to undertake a journey from anyone else, such as by accepting a job directly from passengers or unlicensed third parties. For the reasons we give next, we consider the range of functions requiring a licence should be reduced; for that reason our draft Bill refers to “dispatchers”.

<sup>92</sup> We discussed the justifications for operator licensing more fully in our consultation paper, at paras 16.25 to 16.29.

<sup>93</sup> This is without prejudice to the possibility of a private hire driver also holding an operator licence. In this case, no offence would be committed provided other requirements were complied with.



## **Recommendation 16**

**We recommend that licensed operators (in future to be referred to in legislation as “dispatchers”) should be retained as a necessary element of the regulation of private hire services.**

### **A NEW OPERATOR DEFINITION BASED ON DISPATCH FUNCTIONS**

- 3.134 Having established that in principle we support the licensing of private hire operators, we now consider the appropriate scope of their regulated functions.
- 3.135 Under current law, private hire operators are defined very widely: “operate” means “in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle”. This is true throughout England and Wales, including London.<sup>94</sup> It is an offence to “operate” (as so defined) any vehicle as a private hire vehicle without an operator’s licence from the relevant licensing authority.<sup>95</sup>
- 3.136 The breadth of the current definition has created numerous grey areas, as there is a lack of clarity over whether some services should be licensed. It is also problematic in that it brings within the scope of licensing many individuals and organisations whose actions do not conform with the rationale for licensing. The justifications for operator licensing relate to their supply-side function of dispatching licensed drivers and vehicles. The operator has discretion over which vehicle and driver is used, and is responsible for ensuring the driver and vehicle are licensed and that there is a valid private hire pre-booking. By contrast, the fact of “accepting or inviting” the original booking, without actually dispatching the vehicle, does not appear to correlate with any meaningful control over the fleet.
- 3.137 Recent years have seen the development and expansion of technological methods of booking, such as internet aggregators, which retrieve quotes from many providers, and smartphone applications. These often only take bookings and pass them on to an operator, and have no involvement or responsibility for dispatching a vehicle and driver. It is over-burdensome to subject businesses only involved in accepting bookings to the same level of regulation as “dispatch” operators who have responsibilities in relation to exclusively using licensed vehicles and drivers.
- 3.138 The operator definition should therefore be narrower than the current definition to identify more accurately the function which needs to be regulated. It will now relate solely to the act of dispatching a driver and vehicle to carry out the regulated activity, rather than the fact of merely “inviting or accepting” a booking.
- 3.139 “Dispatching” occurs where a person acting in the course of business, requests a driver to fulfil a hire-vehicle booking; and the driver accepts. As is already the case under current law, it would be an offence to dispatch an unlicensed vehicle

<sup>94</sup> Local Government (Miscellaneous Provisions) Act 1976, s 80(1); and Private Hire Vehicles (London) Act 1998, s 1(1)(b). Indeed, London goes further, and includes the actual acceptance of bookings (in addition to making provision for it) within the definition of operators’ licensed activities.

<sup>95</sup> Local Government (Miscellaneous Provisions) Act 1976, s 46(1)(d) and 80(1); and Private Hire Vehicles (London) Act 1998, s 2.

or driver.<sup>96</sup> It would also be an offence to dispatch a private hire vehicle<sup>97</sup> unless the person held a dispatcher's licence.<sup>98</sup> As we noted above in respect of taxi radio circuits, dispatching a licensed taxi<sup>99</sup> would continue to be an unregulated activity.<sup>100</sup>

- 3.140 We note that the revised definition of operators as "dispatchers" no longer covers the acceptance and invitation of bookings. Where the person that accepts the booking does not dispatch the driver, no dispatcher licence is required. However, if a person acting in the course of business accepts a hire vehicle booking, and the booking is fulfilled, a presumption will arise that the individual or company accepting the booking dispatched the driver.<sup>101</sup> The presumption ensures that those who accept bookings are held accountable because, unless they can show that they passed on the booking to a licensed dispatcher or taxi driver, they will be presumed to be the "dispatcher" in respect of the relevant journey.
- 3.141 The licensing status of the providers of smartphone applications offering private hire services to the public would depend on how they work. If the application does no more than accept a booking, and then passes it on to a licensed dispatcher, no additional dispatcher licence is needed for the application providers. If instead, the application has responsibility for the dispatch of a driver and vehicle, the providers of the application would be required to hold a dispatcher licence.
- 3.142 Intermediaries such as smartphone applications which may accept hire vehicle bookings and pass them on to dispatchers will be subject to certain obligations under our reforms. Any person accepting a booking in respect of a private hire journey will be under a duty to provide information to the hirer about who they passed the booking on to.<sup>102</sup> This duty, alongside the presumption that persons accepting hire vehicle bookings also dispatched the driver,<sup>103</sup> help ensure that the dispatcher for any particular journey can be identified.

<sup>96</sup> Draft Taxis and Private Hire Vehicles Bill, clause 10.

<sup>97</sup> And licensed private hire driver.

<sup>98</sup> Draft Taxis and Private Hire Vehicles Bill, clause 9. If the dispatcher reasonably believed the driver and vehicle to be appropriately licensed as private hire services, that would be a defence: see clause 10(2)(b).

<sup>99</sup> And appropriately licensed taxi driver.

<sup>100</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 9(3) and 10(2).

<sup>101</sup> The prosecution would have to prove both that the person accepted the booking, and that the booking was fulfilled.

<sup>102</sup> Draft Taxis and Private Hire Vehicles Bill, clause 43.

<sup>103</sup> Draft Taxis and Private Hire Vehicles Bill, clause 11.

#### **Recommendation 17**

**We recommend that operator licensing should only cover dispatch functions, and no longer apply to the invitation or acceptance of bookings as such. However, if it is shown that an individual or company accepted a hire vehicle booking, a presumption should arise that that person also “dispatched” the driver. This ensures the continued accountability of those who, in the course of business, accept hire vehicle bookings from the public.**

#### **Recommendation 18**

**It should be an offence, in the course of business, to dispatch an unlicensed vehicle or driver. It would also be an offence for a person to dispatch a private hire vehicle and driver unless that person holds a dispatcher’s licence. It would be a defence if the driver and vehicle were reasonably believed to hold appropriate taxi licences.**

3.143 This is achieved by clauses 9, 10 and 11 of the draft Bill.

#### **Recommendation 19**

**Persons accepting a hire vehicle booking in the course of business should be under a duty to provide information to the hirer in respect of any person to whom they passed the booking.**

3.144 This is given effect by clause 43 of the draft Bill.

3.145 An accompanying diagram setting out the requirements to be complied with in providing taxi and private hire services, in flowchart form, can be found on our website.<sup>104</sup>

### **TECHNOLOGY**

3.146 It has become common to refer to “electronic hails”, where customers use smartphone applications to engage a taxi or private hire vehicle.<sup>105</sup> Over half of London’s cabs can be booked using smartphone applications.<sup>106</sup> Electronic pre-bookings can be very fast, and the vehicle could be described as being immediately available for hire. We have referred to the taxi application, Hailo, above. Private hire services also use the internet and smartphone technology, ranging from more traditional private hire firms that also have telephone booking services, such as Addison Lee,<sup>107</sup> Delta<sup>108</sup> and Blueline,<sup>109</sup> to those that only

<sup>104</sup> <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>.

<sup>105</sup> Transport for London now provides information about apps – see <http://www.tfl.gov.uk/gettingaround/taxisandminicabs/taxis/26182.aspx> (last visited 19 May 2014).

<sup>106</sup> See for example <http://www.standard.co.uk/lifestyle/esmagazine/fare-fight-its-uber-v-hailo-v-addison-lee-in-the-londons-taxi-wars-9064289.html> (last visited 19 May 2014).

<sup>107</sup> <http://www.addisonlee.com/> (last visited 19 May 2014).

operate online booking facilities, such as Uber.<sup>110</sup>

- 3.147 Some types of application allow the user to book with a specified provider, inputting their route and receiving a price estimate and pick up time. Such applications often allow the customer to rate their experience following the journey. This can be contrasted with comparison applications such as Kabbee. Someone using this application would input the details of their journey and be given a number of quotes from different providers, as well as estimates of how quickly a vehicle could pick them up. The user can then access the provider directly through the application, in order to book. Often users will already know the providers available, and so be able to form their own judgment as to the quality of service offered.
- 3.148 A further addition to the marketplace allows customers to make ad hoc ridesharing arrangements with other users using smartphone applications such as SideCar. This can take place very quickly. We consider the place of car pooling in our reformed framework in Chapter 4.
- 3.149 Because of the speed with which smartphone applications can work, it may seem that the distinction between pre-booking (a required characteristic of private hire work) and hailing (the exclusive preserve of the taxi trade) is being eroded. While the customer experience may be similar at the point of use, our view is that the regulatory context remains distinct.

### **Consultation**

- 3.150 Most stakeholders agreed with our provisional proposal that technological means of engaging passengers should not be assimilated to hailing and ranking.<sup>111</sup> This general support seemed to stem from an acceptance that legislation should be updated to take account of modern technology.
- 3.151 However, some respondents (mainly taxi drivers) had concerns about precisely what technology was capable of. Manchester Cab Committee argued that:
- If an app merely alerts the user to a nearby or approaching vehicle and allows the customer to engage it, that is a hail.
- 3.152 This view was shared by the United Cabbies Group, for example, who felt that technology could replicate the visual presence and illuminated light of a taxi. They noted examples such as Bluetooth technology which “pushes” messages about the availability of vehicles to anyone connected to Bluetooth in the vicinity, as well as quick response code readers which, when the code is used, immediately summon a vehicle to that spot. Some stakeholders considered that there should be an imposed time-lapse before a private hire operator could dispatch a vehicle.

<sup>108</sup> <http://www.deltataxis.net/> (last visited 19 May 2014).

<sup>109</sup> <http://www.bluelinetaxis.com/> (last visited 19 May 2014).

<sup>110</sup> <https://www.uber.com/cities/london> (last visited 19 May 2014).

<sup>111</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 16.

## Discussion

- 3.153 In the above examples the consumer may not feel that there is much difference between tapping a finger on a screen and raising a hand to hail a cab.<sup>112</sup> However, from an economic perspective, the buying power of the consumer in the two situations (line of sight hailing versus technologically-assisted hailing) can be significantly different.
- 3.154 The first point to note is that a customer choosing to use a smartphone application has a choice amongst several providers on the internet. If the customer were to have an unsatisfactory experience they may select a different provider the next time. That is different from hailing a taxi or waiting at a rank, where the customer exercises no choice in respect of the vehicle they use. In contrast to traditional hailing, the consumer using the internet has strong consumer choice.
- 3.155 We consider that the principles that we have already outlined should apply to the use of internet technology and that no special reference to internet-based methods of engaging taxi and private hire services is required in our draft Bill.
- 3.156 In short, fare regulation and restriction of the activity to local licensed taxis should apply where there is no practical scope for price and quality comparisons but not otherwise. Conversely, where fare regulation does not apply, pre-booking and advance price information should be required both as a tool of enforcement and to give an opportunity for meaningful price comparisons to be made. These principles should apply equally where the means of communication involves the internet as where it does not.
- 3.157 We agree with the point made by consultees that an application that alerts the user to a nearby or approaching vehicle, using Bluetooth push notifications for example, offering the vehicle for hire, is comparable to manual hailing. Indeed, depending how the notifications worked, and whether the customer had consented to receiving such notifications in advance, this might amount to unlawful touting, an offence which is preserved under our reforms.<sup>113</sup> Under the current law, such behaviour would probably amount to plying for hire, and be restricted to local taxis. This would continue to be true pursuant to our recommendations. This is because although we abandon the concept of plying for hire, a lawful private hire journey must involve a request to fulfil the journey by a licensed dispatcher (and not directly from the customer).<sup>114</sup> Further, it must comply with statutory pre-booking requirements. This means that the licensed dispatcher must make appropriate records before the journey begins (including of the estimated price of the journey and the identity of the hirer, in such form as the Secretary of State may prescribe). Moreover, private hire drivers are prohibited

<sup>112</sup> See, for example, references to so-called “e-hails” in the media <http://www.reuters.com/article/2013/03/08/us-usa-newyork-taxis-idUSBRE9270YK20130308> (last visited 19 May 2014).

<sup>113</sup> We discuss touting in Chapter 13 below.

<sup>114</sup> Draft Taxis and Private Hire Vehicles Bill, clause 8.

from accepting a hiring “there and then”.<sup>115</sup>

- 3.158 The result of our approach is that an application or other intermediary is bound by the regulatory system we have established. The application must choose whether to use the taxi market or the private hire market. If they use the former, there will be no obligation to be licensed as a dispatcher or to use a dispatcher to fulfil a booking, but fare regulation and other conditions will apply to the vehicle. Any record-keeping obligations would be those appropriate to taxis, not private hire vehicles. If the choice is to use private hire, then fare regulation and local taxi conditions do not apply, but the regulatory apparatus of private hire is engaged.
- 3.159 We have suggested that the critical legal factor distinguishing taxis from private hire services should relate to the involvement of a licensed operator/dispatcher, together with the pre-booking requirements that such dispatchers should comply with, as discussed above. Provided these conditions are met, and the driver does not take an active part in the booking (contrary to our new offence of accepting a booking there and then), the purported grey areas currently occupied by “e-hailing” in respect of plying for hire would no longer exist.

<sup>115</sup> If the vehicle or driver were wholly unlicensed, the even more serious offence of undertaking a for hire journey without licences would apply, see draft Taxis and Private Hire Vehicles Bill, clause 4.

# CHAPTER 4

## DEFINITIONS AND SCOPE

### INTRODUCTION

- 4.1 In this chapter we discuss our recommendations regarding the scope of regulation of taxis and private hire vehicles. In it we cover the geographical extent of the legislation and the types of vehicles covered, including the interface with public service vehicle licensing. We also make recommendations about the role of licensing where transport is offered in connection with other services, such as by child minders or in courtesy cars. Finally, we make recommendations about how to deal with exemptions from the taxi and private hire licensing system.<sup>1</sup>

### GEOGRAPHICAL SCOPE

- 4.2 Under current law, London has its own legislation governing taxis and private hire services, administered by Transport for London.<sup>2</sup> This is separate from the legislation applying elsewhere in England and Wales, with the exception of Plymouth, which also has its own legislation.<sup>3</sup>
- 4.3 London has important unique characteristics by virtue of its size, economic affluence and population density. London has the largest taxi and private hire market in England and Wales, with nearly one third of all taxi and private hire vehicles in England and Wales being licensed in London.<sup>4</sup> Unlike the rest of England and Wales, where licensing is administered by local borough or district councils and unitary authorities, taxi and private hire licensing in London is centrally administered by Transport for London.
- 4.4 From the outset it has been clear that Plymouth should be included within any new legislation.<sup>5</sup> Plymouth City Council has told us that it would be happy to be included. However, the issue of whether London should be included within a reformed framework was much more controversial. Most of the substantive

<sup>1</sup> A diagram setting out the effect of our recommendations in respect of the scope of taxi, private hire and public service vehicle licensing, in flowchart form, is available on our website: <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>.

<sup>2</sup> See, in particular, Metropolitan Public Carriage Act 1869; London Hackney Carriage Acts 1831, 1842, 1850 and 1853; London Cab and Stage Carriage Act 1907; Transport for London 2008; Private Hire Vehicles (London) Act 1998.

<sup>3</sup> In Plymouth taxi and private hire services are governed by the Plymouth City Council Act 1975. The remainder of England and Wales is governed by the same taxi and private hire statutes (the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976).

<sup>4</sup> London is home to 31% of the 231,000 licensed vehicles of England and Wales (Department for Transport, Taxi and Private Hire Statistics 2013, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226355/taxi-private-hire-statistics-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226355/taxi-private-hire-statistics-2013.pdf) (last visited 19 May 2014)). According to the latest statistics published by Transport for London, there are currently 25,597 licensed taxi drivers in London of whom 21,914 can ply for hire anywhere in London ("All London" drivers) and 3,683 are licensed to ply for hire in certain suburban areas only.

<sup>5</sup> The exclusion of Plymouth was a result of historical anomaly rather than a deliberate decision. The Local Government (Miscellaneous Provisions) Act 1976 (which applies elsewhere in England and Wales) was modelled on the Plymouth City Council Act 1975.

responses on geographical scope focussed on the merits and detriments of including London within a national reformed licensing framework.

- 4.5 Our provisional view in the consultation paper was that the licensing framework for taxi and private hire licensing should be the same across England and Wales. Whilst we recognised important local differences, we suggested these should be accommodated within a flexible national system. In the consultation paper, we therefore proposed that London should be included, with appropriate modifications, within the scope of reform.<sup>6</sup>

### **Consultation**

- 4.6 The majority agreed with this proposal, although many highlighted that future legislation should take into account the unique position of the capital. Many disagreed on account of that unique position.
- 4.7 Many respondents considered that London's unique features meant that regulation there should continue as it is. Taxi and private hire regulation in the capital was seen as more modern and the enforcement more efficient. On this basis, a number of London taxi drivers were concerned that standards would fall. Some conceded that limited reform was needed, but maintained that the regulatory structure should remain as at present and should be contained within a separate Act of Parliament.
- 4.8 Others, like the private hire trade in London, felt that London regulation should be used as a point of reference, but regarded the inclusion of London within the scope of the reform as the best way to roll out its high standards across the country.
- 4.9 Other stakeholders expressed the concern that the standards in force in London would become the de facto national standard, and were concerned that this could have a negative impact on standards in their licensing area.
- 4.10 In their joint response, Transport for London and the Metropolitan Police were supportive of some reform, acknowledging the need to update the legislation. However, they made it clear that they would only support changes to the extent that the proposed reforms demonstrate a clear benefit to London. Chief Superintendent Sultan Taylor, Commander of the Safer Transport Command, argued that greater control was needed in London to respond to the difficulties of regulating such a significant fleet and the unique situations which may arise in London. Roy Ellis, former head of the Public Carriage Office and the London Taxi Company, took the same view.

### **Discussion**

- 4.11 We remain of the view that reform should cover London. A reformed licensing framework for taxi and private hire extending across all of England and Wales, including London and Plymouth, would be far simpler and a more modern and coherent approach. In addition, this would not be a significant step to take, since the current legislation is often substantively very similar, if not the same, in all

<sup>6</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 2.



areas.

- 4.12 Our view is that the proposed regulatory framework should be flexible enough to accommodate legitimate London differences, in the same way as it should be capable of dealing with the variations between other urban areas and remote rural communities. It would be for the Secretary of State to take a view as to the appropriate level of standards.
- 4.13 Our reforms would maintain local control of taxi standards, and thus would not threaten the distinctive appearance of London black cabs nor deprive Transport for London of the ability to impose additional requirements on the taxi fleet on top of national standards, such as the Knowledge of London.<sup>7</sup> However, we believe that there are areas where maintaining variations across the country has an adverse impact on business and consumers. For example, we are of the view that private hire services should not be obliged to meet an overly high standard, but rather that the law should allow competition to promote quality. The London private hire market is an excellent example of how competition can do this, with offerings ranging from luxury vehicles with uniformed chauffeurs to basic, yet importantly safe, minicabs.
- 4.14 As regards Plymouth, we were told that having separate legislation came with a considerable cost. It has resulted in undesirable inconsistencies in private hire regulation where Plymouth has been left behind while changes have been made to the Local Government (Miscellaneous Provisions) Act 1976. For example, unlike the position in the rest of the country, private hire vehicles in Plymouth are not allowed to provide taxibus services.<sup>8</sup> In addition, Plymouth's licensing officers do not have the power to issue immediate suspensions of taxi and private hire licences in cases where there is a danger to public safety.<sup>9</sup>
- 4.15 We recommend moving to a single regime for taxi and private hire licensing. We see no need to regard Plymouth as requiring specific provisions. London has certain significant administrative differences which we intend to preserve under the reformed system; for example, the role of Transport for London as the competent licensing authority. The proposed regulatory structure will be sufficiently flexible to allow for the considerable differences that exist between London and the rest of England and Wales, and indeed, between the many and varied areas across the countries. This recommendation is given effect in the structure of our Bill.

<sup>7</sup> The extensive topographical knowledge test London taxi drivers must take before being granted a licence. The full version, required for those wishing to work in central London, can take up to four years to complete and requires the applicant to memorise over 300 routes.

<sup>8</sup> This is because the definition of licensed hire cars that can be permitted to offer taxibus services in s 13(3) of the Transport Act 1985 does not cover vehicles licensed in Plymouth, but only those licensed under the 1976 Act, the London private hire legislation, or indeed in Scotland.

<sup>9</sup> This is because s 52(1) of the Road Safety Act 2006 only amends the 1976 Act (London legislation achieves a similar result of immediate suspension through ss 6 and 8 of the Metropolitan Public Carriages Act 1869 and under s 17(2) of the Private Hire Vehicles (London) Act 1998).

## **Recommendation 20**

**We recommend that our proposed reforms should extend to all of England and Wales, including London and Plymouth.**

### **VEHICLES COVERED BY TAXI AND PRIVATE HIRE LICENSING**

- 4.16 Under current law, taxi licensing applies to a different category of vehicles compared to private hire licensing. Taxi licensing covers “every wheeled carriage, whatever may be its form or construction” used in standing or plying for hire.<sup>10</sup> By contrast, private hire licensing only covers motorised vehicles (or, in London, mechanically propelled vehicles) constructed or adapted to seat fewer than nine passengers, which are provided for hire with the services of a driver for the purpose of carrying passengers.<sup>11</sup> The archaic category of “stage coaches”<sup>12</sup> adds a further layer of complexity. “Stage coaches” are defined as any vehicle which plies for hire and charges passengers separate fares;<sup>13</sup> they are exempted from taxi licensing. In London, the courts have taken the view that a pedicab is a “stage carriage”<sup>14</sup> and is, therefore, excluded from taxi licensing or any other form of regulation.<sup>15</sup> The opposite view was taken outside London.<sup>16</sup> As pedicabs are not motorised, they also fall outside the scope of private hire licensing.
- 4.17 In our consultation paper, we provisionally proposed that the regulation of taxi and private hire vehicles should not be restricted to any particular type of vehicle but should rather turn on the service being provided to the public (hire of the vehicle, with the services of a driver, to carry passengers).<sup>17</sup> This is because the main risks which justify licensing as a means of protecting the public do not change depending on the construction of the vehicle involved. We therefore suggested that the current limitations to motorised vehicles<sup>18</sup> (in private hire legislation) and the carving out of stage coaches and stage carriages<sup>19</sup> (in taxi legislation) should be abandoned.

<sup>10</sup> Town Police Clauses Act 1847, s 38. In London, the Metropolitan Public Carriage Act 1869, s 4 refers to “any carriage for the conveyance of passengers” which plies for hire. Although no seating limit is specified, in practice, licensing authorities do not licence motorised vehicles adapted to seat more than eight passengers as such vehicles fall within the public service vehicle regime, discussed in more detail below.

<sup>11</sup> Local Government (Miscellaneous Provisions) Act 1976, s 46; Private Hire Vehicles (London) Act 1998, s 1(1)(a).

<sup>12</sup> “Stage carriages” in London.

<sup>13</sup> Metropolitan Public Carriage Act 1869, s 4.

<sup>14</sup> This term is found in the London legislation: Metropolitan Public Carriage Act 1869, s 4.

<sup>15</sup> *Oddy v Bugbugs Ltd* [2003] EWHN 2865 (Admin); [2003] All ER (D) 156.

<sup>16</sup> *R v Cambridge City Council ex parte Lane* [1999] RTR 182.

<sup>17</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 3.

<sup>18</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 4.

<sup>19</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 6.

## Consultation

- 4.18 Most consultees agreed with the proposal that taxi and private hire licensing should not be restricted to any particular type of vehicle. Many respondents shared our view that the definitions of taxis and private hire vehicles should be broad enough to ensure that all those providing passenger transport in this way meet certain safety standards, whether they use a car, motorcycle, pedicab or horse-drawn carriage. For example, members of the Institute of Licensing argued that, on grounds of public safety, all vehicles provided for hire with a driver should be controlled. Claire Burrige, a licensed taxi driver, suggested that anyone who carries any member of public in any mode of transport should be required to have a criminal record check.
- 4.19 The legislative gap in respect of London pedicabs raised particular concerns. Unite the Union was concerned that our proposal would legitimise pedicabs plying for hire in London. The Association of Chief Police Officers agreed, however, that extending control to vehicles such as pedicabs would be a positive development, as their number was increasing and they raised road safety issues.
- 4.20 We received further evidence on pedicabs after the consultation period from Westminster City Council, Transport for London and the Metropolitan Police.<sup>20</sup> They told us that pedicabs raised significant safety and traffic-related issues, including contravention of restrictions on one-way streets, riding on the footway, parking in bus lanes, impeding traffic in central London and generating anti-social behaviour such as aggressive touting and playing loud music. Many pedicabs did not have working brakes, lighting or seat belts. Further, the high turnover of employees limited the long-term effects of enforcement. There were more than 650 incidents reported in 2013 and 20 collisions resulting in injury were recorded over the three year period to March 2013. These issues give rise to substantial enforcement costs. From 2010 to January 2014, Transport for London has funded or part-funded over 160 operations against pedicabs, at the cost of almost £65,000.
- 4.21 The Blackpool Landau Owners' Association were keen to see horse-drawn vehicles kept within the scope of regulation. A large majority of consultees were also in agreement with the proposal to remove the archaic concept of stage coaches from the statute book.
- 4.22 Wyre Council recognised that, in order to be future-proof, the definition of the regulated activity had to be broad enough, which meant that legislation must not be restricted to those types of vehicles currently on the roads.
- 4.23 Others were in favour of restricting licensing to vehicles whose drivers require a licence issued by with the Driver and Vehicle Licensing Agency. Among those consultees favouring this option, Unite argued that a broader approach would legitimise unsafe, non-motorised vehicles. Others, such as Oxford City Council, opposed a broader system of regulation on the grounds that the licensing regime could not be the same for both motor vehicles and non-motorised vehicle.

<sup>20</sup> A meeting took place on the issue of pedicabs on 6 December 2013 with Westminster City Council, the Metropolitan Police and Transport for London.

Cornwall Council, suggested, however, that any vehicles which do not fall within scope of national licensing should be subject to local discretion to prevent any loopholes.

### **Discussion**

- 4.24 We have come to the view that all services of hiring a vehicle with a driver share a common rationale for regulation, which is to protect the travelling public. It follows that passengers should be entitled to a comparable degree of safety regardless of the number of wheels on the vehicle, or whether it is motorised or not.
- 4.25 Giving regulation a broad scope does not amount to applying the same standards to all vehicles; we believe that standards should be flexible enough to accommodate different categories of vehicles. Nor does a broad scope of regulation equate to legitimising any vehicle; the mere fact of its coming within the regulatory framework would not alone make a vehicle eligible to be licensed, as it would also have to meet the standards set for that form of vehicle. Under rules having a broader scope than current legislation, regulators would be empowered to take action to stop unsafe or otherwise non-compliant services.<sup>21</sup> The result is that London pedicabs would fall within taxi and private hire licensing for the first time. Outside London, pedicabs already fall within the scope of taxi licensing, and in some areas this has resulted in their being banned. The Secretary of State will have power to decide at a national level whether pedicabs should be licensable as taxis or private hire vehicles and, if so, subject to what conditions. Licensing authorities would retain the power to impose additional standards governing their use as taxis and could, where appropriate, prevent such vehicles from working as taxis in their area, or in particular zones within their area.

#### **Recommendation 21**

**Taxi and private hire licensing should cover vehicles regardless of their form or construction, including non-motorised vehicles.**

### **LIMITS TO THE SCOPE OF LICENSING**

- 4.26 Our recommendations allow for future-proof and comprehensive regulation of for-hire services on public safety grounds. However, by definition this approach can sometimes be over-inclusive, and the licensing system needs to have clear mechanisms to determine what types of vehicles or services may yet fall outside its scope.
- 4.27 In this section we consider four possible limits on that scope. First, whether taxi and private hire licensing should only apply to providers acting in the course of a business. Second, whether licensing should cover activities where transport is only an ancillary element of the overall service. Third, we consider the appropriate boundary between taxi and private hire regulation and public service vehicle licensing, given that there should be only minimal overlap between these licensing systems, and never any inconsistency; the licensing of stretch

<sup>21</sup> For example, horse-drawn carriages and other non-motorised vehicles (already subject to taxi licensing) would become subject to private hire licensing for the first time.

limousines is a particularly difficult aspect of this relationship, and one we address specifically. Finally, we look at services or vehicles that may fall within the scope of taxi and private hire licensing yet, for reasons of policy, may be exempted from the need to hold a licence by the Secretary of State.<sup>22</sup>

### **Services provided “in the course of a business of carrying passengers”**

- 4.28 The element of “hire” is a common feature of both taxi and private hire legislation and implies that the service involves commercial gain. Many important and socially useful activities lie close to the boundary of licensing requirements. During consultation stakeholders told us of the problems that could arise due to the uncertain position of volunteers, car pooling arrangements and members’ clubs providing private hire services. Another set of issues arise where transport is provided in a commercial context but as part of a wider package of services (including the provision of hotel courtesy lifts, tour guide services, or by carers).
- 4.29 In our consultation paper we proposed that the regulated activity of providing taxi and private hire services should not cover genuine volunteers. We also suggested that licensing should not extend to activities where transport is ancillary to a wider overall service.<sup>23</sup> This latter issue is related to the question of the “contract exemption”: until 2006, transport services provided under contracts lasting seven or more days were exempt from the requirements of private hire licensing.<sup>24</sup> This precluded the legislation applying, for example, to most carers or child minders, whose services are typically provided under arrangements lasting seven days or more. When this exemption was removed,<sup>25</sup> perceived loopholes were closed; but it also meant that licensing requirements were confusingly extended to a number of services bearing little resemblance to traditional private hire services. These included care services, childminders and externally sourced prison transport and ambulances.<sup>26</sup> This attracted much criticism.<sup>27</sup>
- 4.30 In the consultation paper we asked an open question about whether there would be merit in reintroducing the contract exemption.<sup>28</sup> We also asked consultees

<sup>22</sup> The counterpart of the power to exempt is the power to ban, and our framework will allow the Secretary of State to ban certain types of taxi and private hire provision; with the same power resting with licensing authorities in respect of their local taxi fleets.

<sup>23</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 8.

<sup>24</sup> Local Government (Miscellaneous Provisions) Act 1976, s 75(1)(b).

<sup>25</sup> See the Private Hire Vehicles (London) Act 1998, s 1(1)(a), as amended by the Road Safety Act 2006, ss 54, 57 and sch 7. The same Act removed the provisions which in London restricted the private hire licensing provisions to the services “made available to the public”, with the same effect.

<sup>26</sup> The Department’s best practice guidance states that the private hire licensing regime should apply to a service the main part of which is the carriage of passengers for commercial gain. Occupations which require drivers to be subject to additional vetting or training (for example paramedics or teachers), or include the imposition of additional obligations over and above driving (carers and child minders), are not intended to be subject to the private hire vehicle licensing regime.

<sup>27</sup> J Rogers and S Ridley, *Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption* (2009) p 4.

<sup>28</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 12.

whether and how the regulation of taxis and private hire should deal with car pooling and members clubs.<sup>29</sup>

### **Consultation**

- 4.31 Most consultees agreed that licensing should be restricted to those acting in the course of business. However, there was much debate as to precisely which services should be licensed; many consultees commented that exceptions should be carefully and clearly defined.

### **Volunteers**

- 4.32 Our consultation proposed that volunteer drivers should be excluded from the scope of taxi and private hire licensing.<sup>30</sup>
- 4.33 Many volunteers in this area are involved in community transport.<sup>31</sup> Such services can include school buses and services for older people or the disabled, and cannot be used to transport passengers with a view to a profit. Many of the drivers are volunteers, though it is permissible for a driver with a taxi, private hire or public service vehicle licence to be paid.<sup>32</sup>
- 4.34 During consultation many taxi drivers complained that services provided on a voluntary basis were in effect competing for the same contracts (with schools for example) but without the burden of licensing. They felt the taxi trade was losing out to community transport services.<sup>33</sup> Community transport legislation exempts the use of vehicles operated in particular circumstances from the public service vehicle licensing requirement, but not from the private hire or taxi regimes. However, the legal requirement that community services must not be provided with a view to profit or be linked to a profitable activity effectively takes them outside the private hire and taxi regimes, as there is no “hiring” involved.<sup>34</sup>
- 4.35 Another category is the wide range of volunteer drivers who use their own cars to transport people who have limited access to other forms of transport. The services provided are wide ranging, but may include transport to and from medical or educational facilities and religious or social events. Many such services are organised by local authorities.
- 4.36 Some stakeholders thought that such volunteers should be subject to licensing, especially if claiming expenses, or when crossing particular mileage thresholds. One person in the taxi and private hire trade said that:

<sup>29</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 9.

<sup>30</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 8.

<sup>31</sup> See Transport Act 1985, ss19 to 23A. The purpose of this regime is to exempt certain bodies carrying passengers in a public service vehicle (including a vehicle with fewer than nine passenger seats) from the public service vehicle licensing regime.

<sup>32</sup> See the Section 19 Permit Regulations 2009, SI 2009/365 and The Community Bus Regulations 2009, SI 2009/366.

<sup>33</sup> See, for example, complaints against the Fenland Association for Community Transport on Taxi Driver Online <http://www.taxi-driver.co.uk/?p=2629> (last visited 19 May 2014).

<sup>34</sup> Transport Act 1985, s 19(2).

Volunteer drivers should be enhanced CRB checked and have the necessary insurance to protect the people they are transporting. Strict regulation of total mileage [is] needed to prevent income generation (which may exist even within the limited maximum mileage rate allowed).

#### ***Car pools and members clubs***

- 4.37 Overall, car pooling was felt to be a private and informal arrangement, not designed to make a profit and ultimately beneficial to individuals and the environment. Most consultees who replied individually to the main consultation were not in favour of subjecting it to regulation. However, the response from within the taxi and private hire trades, as evidenced by the Private Hire and Taxi Monthly survey results, was markedly different and in favour of covering it.
- 4.38 Licensing officers felt that a lack of clarity in the current legislation led to the impression that car pools should be licensed, although as a matter of policy it would be preferable for them to be exempt. Stakeholders also noted that the use of technology to facilitate ad hoc ride sharing among unlicensed drivers could significantly change the landscape.<sup>35</sup>
- 4.39 Many stakeholders took a different approach to members' clubs. They were often seen as mechanisms designed to avoid the restraints of licensing, so that there was greater support for subjecting them to licensing. The Warrington-based "Pink Ladies" club, set up with a view to providing transport services only to women club-members and with all female drivers, was frequently cited as an example of the type of operation that should be licensed.<sup>36</sup> However, a large number of consultees were in favour of leaving this type of activity, along with car pooling, outside the licensing regime, so long as clear definitions were formulated and the activity did not produce any profit.

#### ***Transport provided as part of a wider service and the contract exemption***

- 4.40 As regards the contract exemption, discussed above,<sup>37</sup> our stakeholders almost unanimously disagreed with reintroducing it. Many respondents spoke of loopholes and the opportunity for abuse. One licensing authority noted that the exemption would likely be subject to litigation regarding the precise content of the exemption, leading to greater cost and less clarity. One consultee questioned why the duration of the contract should matter.
- 4.41 Of those respondents who agreed with the suggestion that it could be useful, Liverpool City Council said that too many "ancillary" activities have fallen within the current definition of private hire activity following the repeal of the contract exemption and that improvement should focus on enforcement.

<sup>35</sup> See, for example, ride sharing models gaining popularity in the United States, including Lyft, <https://www.lyft.me/> or Sidecar <https://www.side.cr/> (last visited 19 May 2014).

<sup>36</sup> Pink Ladies was a Warrington-based company that initially operated under the private hire vehicle licensing regime. When the licences expired they operated subject to the contract exemption. When the contract exemption was repealed, the district council took successful enforcement action against the company for breach of the private hire vehicle licensing requirements.

<sup>37</sup> See para 4.29 above.

- 4.42 Transport for London also recognised the problems that removing the contract exemption had caused, but did not support its reintroduction. Another local authority suggested that the contract exemption could be reinstated purely for high-end, chauffeur work using luxury cars. Others suggested that it might be possible to create a contract exemption for public sector work only, for example school and hospital transport, on the basis that local authorities would carry out their own checks as part of the tendering process.
- 4.43 A number of consultees thought that hotels and other businesses should not be able to provide “free” unlicensed chauffeur services. However, we received a number of submissions from hotel owners expressing strong support for the proposed scope of licensing. We also received responses from chauffeur companies noting the increased costs they faced since the removal of the contract exemption. However, some of these consultees, such as Haywards Airport Travel Services Limited, agreed that it would be appropriate to require drivers to undergo a criminal record check and medical assessment.
- 4.44 The Institute of Licensing noted that licensing authorities did not have the resources to check individual service providers. It suggested that these services could be licensed, but that fees could be waived.

## **Discussion**

### ***Volunteers***

- 4.45 Although the safety concerns arising from the carriage of passengers in a vehicle with a driver are in principle the same regardless of whether the service is paid for, it would be excessively regulatory, and impracticable, to cover all circumstances where this occurs. For example, hitchhiking should continue to be outside regulation, as should lifts arranged between private individuals.
- 4.46 Volunteers provide valuable services to the community and it is highly undesirable that they should be deterred from such activities through the expense of having a licence. Further, most of the complaints regarding volunteers are about the veracity of the declared mileage and income. This is an enforcement matter and guidance from Her Majesty’s Revenue and Customs appears detailed and sufficiently flexible.<sup>38</sup> Therefore, we do not think this is an area in which the law needs to change, although the application of the rules, and identifying bogus volunteers, may be an issue.
- 4.47 We have concluded that transport services provided in a commercial context should be covered. Both taxi and private hire law refer to services “for hire” and we do not propose to change this. We do not recommend re-introduction of the contract exemption, for reasons that we return to below.

### ***Car sharing***

- 4.48 Arrangements such as car pooling or sharing, where only running costs are recovered and there is no element of commercial advantage, should not in our view be regulated. We do not recommend that car pools should be specifically dealt with in taxi and private hire legislation. This is in line with the views of the

<sup>38</sup> See <http://www.hmrc.gov.uk/mileage/volunteer-drivers.htm> (last visited 19 May 2014).



majority of consultees. If the amount the passengers are expected to pay exceeds running costs, the journey will properly be classified as a “for hire” journey. The question whether there has been commercial advantage is a question of fact. We recommend that best practice guidance should be provided by the Department for Transport to ensure consistency of approach.

#### ***Profit making arrangements***

- 4.49 On the other hand, clubs and groups operated commercially should not in our view be exempt from the licensing requirements simply on the basis that they provide transport services to a subset of the general public. Stakeholders raised concerns about the possibility of (for example) a nightclub or casino asking guests to join a “club” in order to provide unlicensed homeward transport. A “club” that arranges such transport on a commercial basis is appropriately regarded as acting as a commercial intermediary or an operator and appropriately made subject to the private hire regime. Its activities will, we consider, fall within the scope of “dispatching” as defined in clause 8 of our draft Bill, and will require a dispatcher’s licence.

#### ***Transport that is ancillary or incidental to a wider service***

- 4.50 The position of persons providing transport as part of a broader package of services is more complex. We have concluded that taxi and private hire licensing should not extend to cover transporting passengers for hire as an ancillary or incidental part of a wider service. This is in line with the approach taken by the Department of Transport’s current Guidance.<sup>39</sup> Where the main aspect of the services provided to the customer does not relate to the transport, the customer’s choice is made on the basis of trusting a particular service provider to deliver the main service. Moreover, the service provider, unlike a taxi or private hire driver, will typically only spend a minority of their time providing transport. The business has every incentive to provide a good quality service (including in respect of the ancillary transport part) in order to safeguard its goodwill. The imposition of taxi and private hire regulation in such situations would, in our view, be disproportionate (and probably ineffective, as currently a significant group of persons are technically covered by licensing requirements but are simply not enforced against). For example, we do not think that regulation should cover courtesy lifts which are part of how garage or hotel services run their business; nor indeed transport provided by carers or child minders.

#### ***The contract exemption***

- 4.51 It is our view that the proposed reforms we have set out create a system that is sufficiently flexible to obviate the need for reintroduction of the contract exemption; our system will exclude services for which licensing is inappropriate which were (perhaps inadvertently) brought within the scope of private hire licensing by its removal, such as those of childminders and carers. The other main group covered by the contract exemption was companies providing vehicles and chauffeurs on a medium to long-term basis. It is our view that such a service ought properly to fall within the definition of a private hire service. However, it

<sup>39</sup> Department for Transport, *Private Hire Vehicle Licensing, a note for guidance from the Department for Transport* (2011).

would remain open to the Secretary of State to exclude such a service,<sup>40</sup> or to apply conditions specifically tailored to its specific features.

- 4.52 Clause 1(3) of our draft Bill therefore excludes ancillary and incidental services from the definition of use of a vehicle “as a hire vehicle” requirements. Whether transport is ancillary or incidental will be a question of fact in each case. It is open to the Secretary of State to provide guidance on the scope of the exclusion.

**Recommendation 22**

**We recommend that taxi and private hire licensing requirements should only cover services provided for commercial gain.**

**Recommendation 23**

**We recommend that taxi and private hire licensing should not cover the carriage of a passenger as an ancillary or incidental part of another service.**

### **THE INTERFACE WITH PUBLIC SERVICE VEHICLES**

- 4.53 Buses, coaches and minibuses are referred to in legislation as “public service vehicles” and are subject to a separate licensing system.<sup>41</sup> As with taxis and private hire vehicles, public service vehicle regulation relates to the carriage of persons for hire. However, public service vehicles are licensed by Traffic Commissioners (rather than local licensing authorities) in accordance with rules contained in separate legislation, which are heavily influenced by EU law requirements and apply with no local variation, in contrast to the primarily local nature of taxi and private hire regulation under current law.<sup>42</sup>
- 4.54 Significantly, whilst taxi and private hire drivers, vehicles and operators must be licensed, public service vehicle licensing only imposes licensing requirements on operators. Drivers and vehicles are not separately licensed, albeit that specific requirements relating to them are imposed via the operator.<sup>43</sup> This more lighter touch regulation is appropriate and workable in the light of the nature of bus services, where passengers are typically not alone with the driver, and also given the much smaller number of bus operators, which are therefore easier to police. Finally, public service licensing applies only to motorised vehicles.
- 4.55 We have no doubt that separate regimes for public service vehicles and for taxi

<sup>40</sup> See paras 4.81 onwards below.

<sup>41</sup> Public Passenger Vehicles Act 1981, s 1.

<sup>42</sup> We provide an overview of the public service vehicle regime in our consultation paper from para 3.58 onwards.

<sup>43</sup> For examples, drivers of buses and coaches, referred to as “passenger carrier vehicles”, need to have the appropriate category of DVLA licence for the weight of the vehicle (for example a vehicle exceeding 7.5 tonnes requires a group D licence). Such drivers also need to have a Driver Certificate of Professional Competence; and pass medical fitness “group 2” criteria. See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/275982/aag\\_v1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275982/aag_v1.pdf) (last visited 19 May 2014).

and private hire vehicles are appropriate; but there are issues as to how to draw the borderline appropriately

- 4.56 Under current law, the dividing line between taxis and private hire vehicles and public service vehicles depends both on how the service is provided and on the type of vehicle used. In general, vehicles constructed or adapted to carry nine or more passengers for hire or reward can only be licensed as public service vehicles.<sup>44</sup> Vehicles adapted to carry eight or fewer passengers typically fall to be licensed as taxi or private hire vehicles unless passengers are charged separate fares, in which case they are subject to public service vehicle licensing and are sometimes referred to as “small public service vehicles”. Stretch limousines have proved problematic in this regard, some being licensed as private hire vehicles, some as public service vehicles and some slipping through the net.
- 4.57 Public service vehicles are already expressly excluded from private hire licensing requirements.<sup>45</sup> Taxi legislation also excludes them (albeit using the outdated concept of “stage coaches”<sup>46</sup> to which we have referred above). In the consultation paper we suggested that public service vehicles should be expressly excluded from the definition both of taxis and of private hire vehicles. We also suggested that the number of passenger seats in the vehicle should continue to be the main dividing criterion between the two regimes, such that taxi and private hire regulation should continue to extend only to vehicles constructed or adapted to carry fewer than nine passengers.<sup>47</sup> We also suggested that the Secretary of State should consider issuing statutory guidance to the Senior Traffic Commissioner about the licensing of “stretch limousines” and other novelty vehicles to assist consistency.<sup>48</sup>

### **Consultation**

- 4.58 The majority of those who responded to these proposals agreed with our suggestions. All stakeholders agreed that more clarity was needed regarding which licensing regime should properly apply in any particular case. Regulators in particular worried that the current system made it too easy for service providers seeking to evade the requirements and controls associated with taxi and private hire licensing to obtain public service vehicle licences instead.
- 4.59 The Traffic Commissioners highlighted that clarity was needed so that the public understands the difference between the two licensing regimes. They commented that some who think they will be refused a private hire licence by their local

<sup>44</sup> There is no limit to the passenger carrying capacity of taxis under current law, but in practice, no licensing authority issues taxi licences in respect of vehicles that also fall within the public service vehicle regime. There is therefore no practical overlap in regulation of larger motorised vehicles.

<sup>45</sup> Local Government (Miscellaneous Provisions) Act 1976, s 80(1); Private Hire Vehicles (London) Act 1998, s 1(1)(a).

<sup>46</sup> See definitions in Town Police Clauses Act 1847, s 38 (which refers to a “stage coach”, the forerunner of the modern PSV); Metropolitan Public Carriage Act 1869, s 4 (which refers to a “stage carriage”, another earlier name for a PSV).

<sup>47</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 5.

<sup>48</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 7.

authority apply for a public service vehicle licence instead, subject to lighter checks. The category of “small public service vehicle” was a particularly grey area, as the same vehicle can potentially fall both into the categories of small public service vehicle and of taxi or private hire vehicle.<sup>49</sup>

4.60 The vast majority of consultees believed that guidance would be useful. However, many of them also felt that further changes were needed. Some suggested the creation of a specific regime for dealing with limousines, including a specific licensing structure. Several consultees thought that limousines should be licensed as private hire vehicles regardless of size. Others felt that guidance, statutory or otherwise, gave local authorities too much discretion and led to inconsistency, or were concerned that guidance would fall short of the legislative reform needed to ensure that limousines and novelty vehicles are properly licensed.

4.61 The Traffic Commissioners recommended that licences for the use of vehicles with eight or fewer passenger seats be granted exclusively by local authorities, with the Traffic Commissioners responsible solely for vehicles with nine or more passenger seats, in order to:

Provide clarity, improve safety, facilitate effective enforcement and improve public confidence.

4.62 Some in the private hire trade also argued that more flexibility on maximum seating capacity would enable them to expand their business without the need for a separate public service vehicle licence. For example, one operator of taxis and private hire vehicles suggested the seating capacity of private hire vehicles should be increased to 14 passenger seats, but with a maximum gross vehicle weight of 3.5 tonnes.<sup>50</sup>

4.63 Watford Borough Council said that:

We can see no real rationale why taxi and private hire vehicles should be limited to eight or fewer passengers, and in some areas it may be advantageous to license vehicles for perhaps up to sixteen passengers. In our view, it is the way in which the vehicle is operated rather than the size of the vehicle that is the issue.

## **Discussion**

4.64 Public service vehicle regulation clearly occupies an important role in passenger transport, and taxi and private hire services regulation needs to fit alongside it. Nearly all stakeholders agreed that it should be clear under which regime a service should properly fall. Below we consider the main public service vehicle issues raised during consultation. We no longer pursue our provisional proposal that the Secretary of State issue statutory guidance to the Senior Traffic Commissioner on the licensing of limousines and other novelty vehicles. This is

<sup>49</sup> See the discussion from para 4.67 below.

<sup>50</sup> One respondent, Jeff Ellis of Appely Bridge and Shevington Carz, suggested that only vehicles weighing less than 3.5 tonnes should be able to be licensed as private hire. The suggested 3.5 tonne cut-off coincides with the maximum authorised mass for a category B DVLA licence for vehicles with up to eight passenger seats.

because our proposals for reform address the complexities in this area and should provide sufficient clarity.

### ***Passenger carrying capacity***

- 4.65 We agree that the passenger carrying capacity of a vehicle should remain the starting point, with the main boundary lying at whether the vehicle is adapted to carrying more than eight passengers.<sup>51</sup> To this end, clause 2(2) of our draft Bill defines a regulated vehicle as one constructed or adapted to carry no more than eight passengers. It will therefore remain the case that vehicles constructed or adapted to carry nine or more passengers and used for hire or reward will generally continue to fall within the public service vehicle regime administered by the Traffic Commissioners. Discussions with stakeholders have led us to propose the introduction of two significant exceptions to this general rule. First, a stretch limousine or other “novelty vehicle” (to be further defined in Regulations) will fall to be licensed as a private hire vehicle, if at all.<sup>52</sup> Second, if the vehicle complies with licensing criteria and can carry no more than sixteen passengers, applicants may seek to have the vehicle licensed as an “opt in” private hire or taxi vehicle (instead of obtaining a public service vehicle licence).<sup>53</sup>
- 4.66 The mandatory inclusion of stretch limousines and novelty vehicles within the scope of taxi and private hire licensing will resolve problems that have arisen in determining their licensing status.<sup>54</sup> In addition, given the role that passenger carrying capacity will play in determining whether other types of vehicle fall within taxi and private hire licensing on the one hand or public service vehicle licensing on the other, we recommend clarifying the concept in legislation. The draft Bill refers to the number of people a vehicle can carry (either seated or standing), including a front passenger seat, whether or not separated from the rest of the vehicle by a partition.<sup>55</sup> The aim of introducing a statutory definition is to provide clarity as to how the concept of passenger carrying capacity is applied.

#### **Recommendation 24**

**We recommend that, for the purposes of taxi, private hire and public service vehicle legislation, all passenger seats and spaces capable of carrying a standing passenger should be included when assessing vehicle carrying capacity.**

### **SMALL PUBLIC SERVICE VEHICLES**

- 4.67 Where a vehicle is constructed or adapted to carry fewer than nine passengers, we think the current exception to taxi and private hire licensing in respect of what are known as “small public service vehicles” should be retained. This is a

<sup>51</sup> The *Clayton* case shows that limos have bench seating and it is a matter of judgment how many passengers one is “adapted” to carry.

<sup>52</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 2(3) and 2(9).

<sup>53</sup> We discuss our suggestion for an opt-in to taxi and private hire licensing for larger vehicles from para 4.75 below. See also draft Taxis and Private Hire Vehicles Bill, clauses 2(6), 2(7) and 13.

<sup>54</sup> See, for example, *Clayton Car Sales Ltd* [2012] UKUT 473 (AAC).

<sup>55</sup> See draft Taxis and Private Hire Vehicles Bill, clause 2(11).

category of public service licensing applying to vehicles with fewer than nine passenger seats which charge separate fares.<sup>56</sup> This form of licensing tends to apply to services such as post buses and other services in rural areas. We consider, however, that the borderline between public service vehicle licensing and private hire vehicle licensing should be made clearer. We agree with stakeholders that payment of separate fares is an insufficient reason for taking a service out of taxi and private hire licensing; it allows such licensing to be avoided too readily.

- 4.68 Reform of the public service vehicle legislation is outside the scope of this project and we only recommend a limited number of amendments. We recommend, however, that the Department for Transport give consideration to introducing a further requirement (in addition to or in place of charging separate fares) that would need to be satisfied before a vehicle could escape taxi or private hire licensing by virtue of being licensed as a public service vehicle. We suggest that the definition could be based on the current definition of a local bus service. Local bus services lie at the core of what genuine small public service vehicles do, and the fact that local bus routes must be registered with Traffic Commissioners provides a more objective and easily enforceable parameter for enforcement.<sup>57</sup> This could further reduce avoidance of the taxi and private hire licensing regimes in respect of vehicles with fewer than nine passenger seats.<sup>58</sup> Our recommendation below, in respect of stretch limousines and novelty vehicles, brings such vehicles within the private hire licensing regime. It applies both to smaller and to larger vehicles adapted to carry up to 16 passengers. Current “small public service vehicles” which match the specified stretch limousine or novelty vehicle criteria would no-longer be subject to public service vehicle licensing, and instead require to be licensed as private hire vehicles.

**Recommendation 25**

**We recommend that consideration be given to revising the criteria for licensing a vehicle as a “small public service vehicle”, making them more clearly centred on local bus services.**

**LARGER VEHICLES**

- 4.69 We noted above that vehicles adapted to carry nine or more passengers generally fall within the public service vehicle regime.<sup>59</sup> Below, we describe two respects in which we recommend a departure from this general rule. First, we recommend a mandatory departure in respect of what our draft Bill calls “novelty vehicles”. Secondly, we recommend an option into the more onerous taxi or private hire regime in respect of larger vehicles.

<sup>56</sup> Public Passenger Vehicles Act 1981, s 1(1)(b).

<sup>57</sup> Local bus services are defined by the Transport Act 1985, s 2. For registration requirements and exemptions, see Transport Act 1985, ss 6, 19 and 22.

<sup>58</sup> This recommendation is without prejudice to community transport carried out by smaller vehicles, as provided under Transport Act 1985, section 19 permits, which we recognise is critical to many communities, including for example those in isolated rural areas.

<sup>59</sup> Public Passenger Vehicles Act 1981, s 1(1)(a).

### **Stretch limousines and novelty vehicles**

- 4.70 Stretch limousines and other “novelty” vehicles are often used to transport potentially vulnerable passengers, for example on special occasions involving the consumption of alcohol, or to take unaccompanied minors to school prom nights or birthday parties. In addition, the fact that the vehicles are typically heavily modified means that they are potentially more dangerous and need closer continued inspection.<sup>60</sup> These factors militate in favour of having careful regulatory oversight both of vehicles and drivers; this is lacking in the public service vehicle regime, where only the operator is licensed.
- 4.71 We regard private hire licensing as best suited to regulating novelty vehicles and stretch limousines. Taxi and private hire licensing provides for independent licensing of drivers and vehicles, in addition to operators. It also has a strong local enforcement infrastructure compared to the Traffic Commissioners’ looser regulatory oversight.
- 4.72 The above considerations apply regardless of the number of seats the vehicle may have. We have therefore provided that the Secretary of State should have the power to make regulations defining the stretch limousines and novelty vehicles to which the draft Bill will apply.<sup>61</sup> These regulations may cover vehicles adapted to carry up to 16 passengers, and could usefully do so where the vehicle is used:
- (1) in connection with entertainment purposes or special events; or
  - (2) where the vehicle is modified.
- 4.73 We recommend that the regulations should include technical specifications in accordance with guidance from the Driver and Vehicle Standard’s Agency, including lists specifying the more common car models (currently, as imported from the United States, including the popular “Lincolns”); factors such as side-ways seating or entertainment features like mini-bars; as well as weight and dimensions. This is more appropriate for secondary legislation, so that it may be updated from time to time.
- 4.74 Such vehicles could also be covered by a separate category of national standards prescribed by the Secretary of State, in accordance with the procedures discussed in the following chapter. This would help overcome current difficulties arising from the disparate approaches taken to regulating such vehicles by different licensing authorities under current law. We heard for example that some licensing authorities take a hostile approach to limousines and set conditions which indirectly ban them, for example excluding vehicles with tinted windows, sideways seating or left-hand drive. A more transparent and consistent approach is clearly desirable.

<sup>60</sup> High profile limousine accidents include the case of a group of teenage girls travelling in a defective limousine which caught fire. The vehicle lacked a certificate of initial fitness, a test certificate and appropriate insurance cover.

<sup>61</sup> Draft Taxis and Private Hire Vehicles Bill, clause 2(9).

## **A new “opt-in” allowing the use of larger vehicles as taxis and private hire vehicles**

- 4.75 During consultation, some stakeholders suggested that it would be beneficial to give taxi and private hire services the ability to use larger vehicles to deliver their services. Larger vehicles can be particularly advantageous to disabled users with motorised wheelchairs or when travelling as part of larger groups.
- 4.76 Under current law, vehicles adapted to carry nine or more passengers for hire or reward fall to be licensed as public service vehicles.<sup>62</sup> Although we agree that passenger carrying capacity should remain the crucial distinguishing feature, we recommended that novelty vehicles (discussed above) should be an important exception to this. In addition, we think that in certain circumstances, it should be possible for applicants wishing to use larger vehicles as taxis or private hire vehicles to do so.
- 4.77 This option would be subject to compliance with existing European law requirements applicable to all vehicles having nine or more passenger seats. These cover aspects such as driver working hours,<sup>63</sup> vehicle fitness,<sup>64</sup> and operator qualifications.<sup>65</sup> Furthermore, we recommend the following additional safeguards:
- (1) Traffic Commissioners should have a power of veto in respect of the issue of opt-in vehicle licences, on the grounds that the service is more suitable for public service vehicle licensing;<sup>66</sup> and
  - (2) additional criteria which the Secretary of State may prescribe as part of national standards for such opt-in larger vehicles; or, if the vehicle is intended for taxi use, such additional local conditions that a licensing authority may impose on such vehicles.
- 4.78 This possibility, provided for in clauses 2(6) and 2(7) of our draft Bill, might enable some operators who currently have dual licensing (because they operate both private hire vehicles and small coaches) to license all their vehicles under one regime.
- 4.79 Ultimately, whether or not to allow larger vehicles within a taxi fleet would remain a local decision. It would be open to a licensing authority to refuse to licence vehicles having more than eight passenger seats as part of their local standards.

<sup>62</sup> Public Passenger Vehicles Act 1981, s 1(1)(a).

<sup>63</sup> Regulation 561/2006 on the harmonisation of certain social legislation relating to road transport.

<sup>64</sup> Directive 2007/46/EC (known as the Framework Directive), providing the European legislation for the approval of vehicles which are mass produced, built in small numbers, or built as individual vehicles. It requires them to meet certain safety, security and environmental standards before they can be used on the road. The Directive is implemented by the Road Vehicles (Approvals) Regulations 2009 (SI 2009/717).

<sup>65</sup> Regulation (EC) No 1071/2009, art 2.

<sup>66</sup> As this would effectively be the determination of a licensing application by a different body, we have proposed an amended appeal process. For further information, see Chapter 14. It is fair that Traffic Commissioners should have the last word on the matter, as but for the applicant's choice, the vehicle would have fallen to be used under the public service vehicle regime.



### **Recommendation 26**

**We recommend extending the reach of taxi and private hire licensing to larger vehicles in two circumstances:**

**(a) on a mandatory basis, in respect of stretch limousines and novelty vehicles; and**

**(b) on an optional basis, where providers want to use larger vehicles in a taxi or private hire business.**

4.80 These recommendations are given effect by clauses 2(6) and (7) in our draft Bill.

### **EXEMPTIONS FROM TAXI AND PRIVATE HIRE LICENSING**

4.81 In the consultation paper, we suggested that the power of the Secretary of State to set national standards should be flexible enough to allow them to grant exemptions from the taxi and private hire licensing regimes.<sup>67</sup>

#### **The power to grant exemptions from licensing**

4.82 The starting point of having a wide scope of licensing, resulting from the broad description of the activity and vehicles covered by regulation, is necessary to ensure that the regulatory scheme can achieve its purpose of protecting the public. However, inevitably, it may be over-inclusive. Licensing should no longer cover situations where transport is ancillary to the provision of another service, but, inevitably, some services or types of vehicle may yet be covered which, on proper consideration, might be better left outside the scope of regulation. For example, it may be desirable to waive licensing requirements in respect of certain categories of drivers or vehicles where there are alternative structures already in place to ensure safety and quality controls are met.

#### **Consultation**

4.83 A significant majority of consultees agreed with our proposal. Transport for London expressed concern, however, that exemptions should not be based on professional accreditation, for example that of Blue Badge guides, as this is no measure of vehicle or driver safety. During consultation we also heard different views about the propriety of licensing less conventional forms of taxi and private hire transport, such as motorcycles or party buses for example.

4.84 A handful of local authorities disagreed on the basis that exemptions, particularly as regards taxi licensing, should be within the remit of the licensing authority. The Local Government Association argued that councils should be able to consider an applicant on an individual basis, according to what they feel is best for their area.

4.85 Other respondents simply disagreed with exemptions. The Private Hire Reform Campaign proposed a system whereby all providers of transport would be licensed but ancillary services would be subject to less onerous requirements.

<sup>67</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 10.

Unite the Union shared the view that there should be no exemptions.

### **Discussion**

- 4.86 Our provisional proposal was that the Secretary of State should have the express power to exempt particular categories of vehicle.<sup>68</sup> We think that the concerns raised by some consultees that professional accreditation may not be a sufficient guarantee in terms of public safety to exempt them from the licensing regime is a legitimate and sensible one. However, we think that it is for the Secretary of State to decide on the scope of the exemptions and we do not make any recommendation as to the content of any exemption.
- 4.87 The draft Bill provides two exemptions from taxi and private hire licensing. First, a vehicle is exempt from the prohibition on using a vehicle as a hire vehicle (and thus exempt from both private hire and taxi licensing) if the Secretary of State exercises the power under clause 4(4). Secondly, a service is exempt from the prohibition on accepting a there and then hiring if the Secretary of State exercises the power under clause 6(2), but this is subject to the power of a licensing authority to determine at local level, pursuant to clause 6(3), that this exemption should not apply in their area. The effect of that would be that the vehicle would not be exempt from the requirement to hold a taxi licence if it was used to accept there and then hirings.
- 4.88 In respect of private hire services, the decision to exempt any category of service would be only for the Secretary of State. For example, the Secretary of State might determine that ambulances or prison transport should be exempt from private hire licensing requirements, as such services are already subject to alternative controls to ensure safety. It would then not be possible for a local licensing authority to require such vehicles to be licensed.
- 4.89 The converse of exemptions is the ability to exclude certain vehicles and services from taxi and private hire licensing. Views may differ markedly about the suitability of vehicles such as motorcycles and pedicabs for example, in providing for hire transport. Further to our reforms, the power to prohibit vehicles could be exercised by the Secretary of State through standard setting. Vehicles prohibited at a national level would not meet national standards, and could not be licensed locally, whether as a taxi or private hire vehicle. Independently of the view taken at a national level, local licensing authorities would have a further power to ban vehicles locally from being used as taxis using their standard setting powers. We discuss this in Chapters 5 and 8 below.

#### **Recommendation 27**

**We recommend that the Secretary of State should have the power to exempt certain categories of vehicle or services used to carry passengers for hire from the requirement to hold a taxi or private hire licence. Licensing authorities would, however, retain the power to impose licensing requirements on vehicles used as taxis within their local licensing area.**

<sup>68</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 10.

4.90 This is achieved by clauses 4(4) and 6(2) in our draft Bill.

### **EXPRESS STATUTORY EXEMPTION FOR WEDDING AND FUNERAL CARS**

4.91 Vehicles used wholly or mainly in connection with weddings or funerals are currently exempt from private hire licensing.<sup>69</sup>

4.92 In our consultation paper we noted that this exemption could appear arbitrary, as safety-related regulation would be no less justified in respect of these sectors compared with any other ceremony or event. Concerns had also arisen regarding wedding cars which were used for other events, such as school proms, stag nights and parties.

4.93 Our provisional view was that these particular instances of vehicles used for hire should be included within the broad scope of the regulatory regime; and that the Secretary of State should exercise a discretion either to exempt such vehicles from licensing or to impose such light touch requirements as might be suitable to the circumstances of weddings and funerals.

### **Consultation**

4.94 We received almost 1300 responses on this issue, far more than on any other aspect of our consultation, in addition to a significant volume of correspondence from Members of Parliament. Almost all respondents read our proposal as meaning that wedding and funeral cars would immediately come within regulation.

4.95 The vast majority of respondents disagreed with this. Many did so on the basis that the licensing requirements would be disproportionate and would adversely impact upon the businesses operating in this sector. For example, Sue and Mike Evans of Premier Wedding Car Hire listed the series of new requirements they would have to comply with, and concluded that it would make it impossible to run their business.

4.96 The National Association of Wedding Car Professionals also stressed the highly detrimental impact of such an inclusion on a variety of businesses:

[This] inclusion ... is likely to eliminate some 1500 plus businesses "overnight" from the UK cadre of small and medium sized enterprises (SMEs), and from the wedding service provider industry in particular. Furthermore, such action would impact severely on those specialist industries, e.g. maintenance, engineering and restoration, supporting the business use of historic and specialist cars.

4.97 The Cross Party Group for Funerals and Bereavement in the National Assembly for Wales argued that there was no support for removing the exemption for funeral services and added that the bereaved would ultimately bear the consequences of the increased licensing cost.

4.98 Many respondents highlighted the nature of the work undertaken by these vehicles, which is very different from that of taxis and private hire vehicles. The

<sup>69</sup> Local Government (Miscellaneous Provisions) Act 1976, s 75(1)(c) and (cc).

National Association of Funeral Directors argued that:

Funeral vehicles collect mourners from a pre-arranged address and are driven in a dignified way... Funeral staff... act as a team, mainly operating during daylight hours.

- 4.99 On the other hand, some stakeholders took the view that these services should be included within the scope of regulation and subjected to licensing requirements. This was primarily the case in relation to wedding cars. A small majority of licensing authorities supported licensing wedding cars. There were two main arguments: firstly, that wedding cars should be licensed even for wedding work, and secondly, that regulation should be stricter as to when these vehicles were exempt, so that unlicensed wedding cars should not be used for school proms, hen parties and the like, as well as for journeys loosely connected to a wedding, such as transport to an airport following the reception.
- 4.100 Consultees pointed out that those travelling to a wedding or funeral had just as much right to a safe vehicle and driver as a passenger in a taxi or private hire vehicle. Even some wedding and funeral car providers accepted that there were arguments in favour of drivers having criminal records checks. Deputy Chief Constable Suzette Davenport, Association of Chief Police Officers lead for roads policing, cited the example of a stretch Ferrari being used for wedding purposes, which she said was both dangerous and prohibited by the Driver and Vehicle Standards Agency. She also noted that the exemption seemed arbitrary, but suggested that the Secretary of State should have flexibility as to how to deal with these vehicles.

### **Discussion**

- 4.101 The issues in this area are finely balanced. In principle is it not clear why passengers should be guaranteed any less safety when hiring a vehicle in connection with a funeral or wedding than in other hire situations. However, we acknowledge that this concern is counterbalanced by the way the funeral and wedding hire sectors have developed: for example, the popularity of vintage vehicles, often of high quality manufacture, that cannot easily be adapted to meet taxi or private hire standards. Furthermore, the hirer is likely to have researched their choice of provider more thoroughly than a consumer selecting a taxi or private hire vehicle.
- 4.102 Consultation has persuaded us of the desirability of preserving the exemption at the level of the primary legislation. We recognise that to require licensing would have a substantial economic impact on funeral and wedding transport providers, and indeed on the classic car world as a whole. We accept that these vehicles are used in a very different way from standard private hire vehicles, justifying different treatment. For these reasons we now recommend a continued exemption for wedding and funeral transport services pursuant to our draft Bill on the grounds that certainty for the small businesses affected outweighs the need for the flexibility afforded by secondary legislation.<sup>70</sup>

<sup>70</sup> Draft Taxis and Private Hire Vehicles Bill, clause 1(4).

### **Recommendation 28**

**We recommend that wedding and funeral cars should continue to be exempt from taxi and private hire licensing while the vehicle is being used in connection with a wedding or a funeral.**

4.103 This is achieved by clause 1(4) in our draft Bill.

### **AIRPORTS**

4.104 Airports are private land and their owners have discretion as to who to admit to their property. Some use byelaws to restrict access either to the airport as a whole or to parts of it.<sup>71</sup> Some contract with individual taxi or private hire companies to provide services and restrict access for all other providers. Such actions may limit consumer choice, particularly for vulnerable customers such as tourists or disabled persons, and make it difficult for travellers to use their provider of choice.

4.105 Our consultation asked whether there was a case for making special provision in respect of taxi and private hire regulation at airports. In particular we asked whether, where airports restrict access, there should be a requirement to assist passengers in accessing a taxi rank or their provider of choice.<sup>72</sup>

### **Consultation**

4.106 The majority of those who responded agreed with our proposal. Of those who commented the overwhelming majority thought that taxis should have guaranteed, equal access to airports. Many felt there should not be monopolies at airports or stations, nor should taxi drivers have to pay to work in these areas.

4.107 The response from Cardiff City Council was as follows

Restrictions on taxi access to private land can lead to problems outside the area of obstruction and confusion for the public. It would be beneficial for the requirements to extend to airports, however this could be difficult for some airports due to space and infrastructure. It is understandable therefore that some airports have a contract with one company in order to specify conditions of contract on levels of service. This is more of a commercial matter rather than a licensing one.

4.108 The Civil Aviation Authority and airports did not respond to this consultation. We have therefore decided that it would be inappropriate to make recommendations without specific input from these key stakeholders; however, evidence received during consultation suggests the government should consider the specific problems raised by stakeholders in connection with taxi and private hire provision at airports.

<sup>71</sup> Made under the Airports Act 1986, ss 63 and 64.

<sup>72</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 14.

## LEISURE USE

- 4.109 In London, taxis and private hire vehicles can be used privately as well as to provide transport services.<sup>73</sup> This is not the case, however, elsewhere in England and Wales, where the vehicle must always be driven by a licensed driver.<sup>74</sup> This excludes family and friends from using it, and often means drivers must have two vehicles: one for work, another for private use by, for example, a spouse or partner.<sup>75</sup>
- 4.110 In our consultation paper we proposed that leisure and non-trade use of licensed taxis and private hire vehicles should be permitted. This applied both private use by a licensed driver, as well as use by someone who does not hold a taxi or private hire driver's licence. We added, however, that there should be a presumption that a vehicle was being used for trade purposes, which could be rebutted with evidence.<sup>76</sup>

## Consultation

- 4.111 Of those who commented on this provisional proposal, a large majority agreed. Transport for London (which, as we noted, currently allows leisure use of both taxis and private hire vehicles) saw it as "entirely reasonable that personal use is permitted", but pointed out the challenges this also gave rise to, noting that it regularly came across unlicensed drivers using licensed private hire vehicles to tout, but claiming that their actions were simply personal use. Bedford Borough Council also agreed with this proposal, describing the current prohibition as "perverse" and noting that requiring records to be kept of all journeys (both immediate hirings and pre-booked) would provide a safeguard. Taxi driver Anthony Osborn pointed to the economic benefit of not having to maintain two vehicles. The London Private Hire Care Association also pointed to the economic benefits, noting that the situation in London made part-time driving far more feasible economically. A number of stakeholders, including the police, licensing officers and trade associations, noted the importance of vehicles being fitted with a means of displaying their availability.<sup>77</sup>
- 4.112 Some respondents felt that the ability to use a licensed vehicle privately should only extend to licensed drivers. These included the National Taxi Association, the Institute of Licensing and the Manchester Cab Committee. Others were concerned about the enforcement difficulties to which our proposal might give

<sup>73</sup> Metropolitan Public Carriage Act 1869, s 28; Private Hire Vehicles (London) Act 1998, s 12(1).

<sup>74</sup> This stems from the maxim "once a taxi, always a taxi", established in *Hawkins v Edwards* [1901] 2 KB 169 and *Yates v Gates* [1970] 2 QB 27. For private hire vehicles, see *Benson v Boyce* [1997] RTR 226. Consequently, driving of the vehicle by an unlicensed person is an offence even if it is unrelated to any hiring.

<sup>75</sup> It is also not entirely clear what the legal position is when a licensed driver uses their vehicle privately but with passengers; for example, where he or she offers a lift to a family member or friend. On the one hand, one might expect this to be entirely lawful as both driver and vehicle are licensed. However, complications arise in relation to enforcement – for example, it is feasible that a driver could use the "private use" excuse where they have in illegally picked up a customer without a pre-booking.

<sup>76</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 20.

<sup>77</sup> We discuss vehicles displaying their availability in Chapter 3, at para 3.90.

rise. This view was dominant amongst licensing officers, who were often concerned about abuse of the system and enforcement difficulties. The Institute of Licensing recognised these difficulties but thought that a power to stop vehicles would assist. Babergh District Council was concerned that this would encourage the use of unlicensed drivers, for example to cover sick leave. The North Tyneside Hackney Carriage Association felt that private hire operators would not be able to control this, as technology meant they often did not see the vehicle nor know who was driving it.

### **Discussion**

- 4.113 Since our consultation, and independently of it, the Department for Transport has proposed an amendment to the Deregulation Bill to insert a provision allowing leisure use of private hire vehicles by anyone with an ordinary driving licence.<sup>78</sup> This measure, alongside amendments in respect of the duration of licences, and sub-contracting for operators, was proposed, in isolation from anything that we might recommend, as part of the government's drive to reduce the overall burden of regulation on business and individuals and cut "red tape".<sup>79</sup> We note that the debate about the government's proposals included concerns about safety and effective enforcement.
- 4.114 We continue to recommend that leisure use of taxis as well as private hire vehicles should be permitted. Our draft Bill achieves this by limiting the restriction on use of a regulated vehicle to use as a hire vehicle.<sup>80</sup> In doing so we recognise that allowing non-trade use of vehicles by unlicensed drivers will complicate enforcement to the extent that it provides an opportunity to pass off unlicensed trade use as leisure use. This will mainly apply to touting or plying for hire; where passengers are on board, it will generally be possible to discover whether they are paying passengers or not. Paying passengers will have little incentive to claim falsely that they are being carried socially. However, we note that these evidentiary difficulties are the same as those currently complained of by the police and licensing authorities, who often stop unlicensed vehicles, the drivers and passengers of which claiming that the journey is purely social. Both our draft Bill and the Deregulation Bill reinforce this with a presumption that someone carrying passengers in a licensed taxi or private hire vehicle is doing so by way of trade, placing the onus on the driver to rebut this presumption.<sup>81</sup>
- 4.115 Our proposal will not add to the difficulty of identifying an unlicensed driver. In cases where an unlicensed driver is suspected of touting or plying for hire, we would anticipate a false claim of leisure use to be capable of being defeated in many cases. We also propose new enforcement powers for licensing officers to

<sup>78</sup> Deregulation Bill 2013-14, clause 8. See <http://services.parliament.uk/bills/2013-14/deregulation.html> (last visited 19 May 2014).

<sup>79</sup> See Public Bill Committee, Tuesday 25 March 2014, col 559.

<sup>80</sup> Draft Taxis and Private Hire Vehicles Bill, clause 4.

<sup>81</sup> Draft Taxis and Private Hire Vehicles Bill, clause 5(5). We have considered the human rights implications of reverse burdens and considered that the use can be justified as a proportionate measure. What the defendant needs to show is that the vehicle was not being used for hire. In most cases the passenger would be an acquaintance; and the presumption would not apply at all if no passenger was in the vehicle.

stop licensed vehicles,<sup>82</sup> which will assist in detecting unlicensed trade use, as well as and tougher sanctions such as impounding where a vehicle is used in connection with touting.

- 4.116 We have previously discussed the ability of the Secretary of State to introduce vehicle signage requirements requiring a taxi or private hire vehicle to indicate its availability or otherwise for hire.<sup>83</sup> Indicating availability would be an almost conclusive indicator of trade use, whilst failure to indicate availability would not conclusively disprove unlicensed trade use.
- 4.117 Finally we note that if permitting leisure use proved to provided an excessive loophole in respect of enforcing taxi and private hire licensing, it would be within the power of the Secretary of State to introduce licence conditions limiting the use of a vehicle to professional use or limiting the people allowed to drive licensed vehicles, such as to partners for example.<sup>84</sup>

**Recommendation 29**

**Non-professional use of licensed taxi and private hire vehicles, including by non-professional drivers, should be permitted, subject to a rebuttable presumption that such vehicles are being used professionally when they are carrying passengers.**

- 4.118 This is achieved by clause 5(5) in our draft Bill.

<sup>82</sup> See discussion in Chapter 13 below, and draft Taxis and Private Hire Vehicles Bill, clause 50.

<sup>83</sup> See Chapter 3, at para 3.90.

<sup>84</sup> We recommend that the standard-setting powers of the Secretary of State and Welsh Ministers should extend to standards related to safety, enforcement and accessibility. See Chapter 4 for further discussion.



# **CHAPTER 5**

## **COMMON NATIONAL STANDARDS FOR VEHICLES AND DRIVERS**

### **INTRODUCTION**

- 5.1 In this chapter we discuss the reasons for introducing national standards for taxi and private hire services and the areas that national standards should cover for both taxi and private hire vehicles and drivers. In our consultation paper we proposed that national standards should apply differently to taxi services compared with private hire. For private hire services, we suggested that only a uniform set of national standards should apply. For taxi services we suggested instead that it should remain possible for local licensing authorities to impose additional local standards.
- 5.2 We use the term “standards” to refer to the criteria for obtaining a taxi or private hire licence and the conditions to which the licence is made subject. We have concluded, for the reasons explained in this chapter, that such standards should be set at national level in regulations made by the Secretary of State. In this chapter we explain our reasons for that conclusion and explore the areas that should be covered by such standards and the procedures for setting them.
- 5.3 Chapter 6 then discusses the related topic of criminal offences specific to the taxi and private hire trades, an area in which we recommend overdue simplification and modernisation.
- 5.4 Chapter 7 returns to the topic of national standards for the private hire trade, with particular reference to operators, who are called “dispatchers” in the draft Bill. It recommends that standards applying to the private hire trade should be set entirely at national level. Chapter 8 sets out our recommendations relating to additional local standards which we recommend should be possible in the taxi trade, and chapter 9 our recommendations on the related topic of local fare regulation.
- 5.5 Nothing in our recommendations departs from the current system of local administration of licensing for both taxi and private hire services. Chapter 10 discusses the continued role of licensing authorities in administering the licensing system. Although we recommend nationally set standards, the delivery of licensing functions under our reforms remains firmly at a local level.<sup>1</sup>

### **THE RATIONALE FOR INTRODUCING COMMON NATIONAL STANDARDS**

- 5.6 Our consultation paper suggested that taxi and private hire services should each be subject to national safety standards.<sup>2</sup> Currently all standard-setting for taxi and private hire services is left to local licensing authorities. There are over 300

<sup>1</sup> Our consultation was conducted on this important premise. See Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, para 15.4.

<sup>2</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 24.

different sets of standards across England and Wales.<sup>3</sup> This means that passengers in some areas may be put at unnecessary risk because standards are too low, whilst licence-holders in other areas may be subjected to unduly burdensome requirements. It can also have a restrictive effect on business; for example, a provider seeking to expand into a neighbouring area will have to apply for separate additional licences; and drivers, vehicles and private hire operators may well have to meet different standards. Introducing certain common standards also provides the foundations for better enforcement of the licensing system across borders, also promoting passenger safety.

### **Consultation**

- 5.7 There was widespread support for the introduction of national safety standards. Those who agreed felt that consistent national standards would be beneficial to all involved: the trades, licensing authorities, enforcement authorities, customers and trade suppliers. The National Association of Taxi Users emphasised the benefits to consumers:

Standards should be set nationally both to eliminate the problems with boundaries and to introduce national standards which taxi users can more easily understand. We live in a small country with an increasing propensity to travel and people expect a universal level of quality, safety and service.

- 5.8 Stakeholders noted the need for greater consistency in respect of important matters like previous convictions, criminal records checks and training.
- 5.9 Bryan Roland of the National Private Hire Association was strongly in favour of a more consistent approach to standards. He noted the striking inconsistencies currently seen across the country, as well as the divergent approaches to signage, vehicle colour, and vehicle specifications more generally. He provided us with various examples of local authorities bringing in new policies at short notice, with significant financial impact on the trade.
- 5.10 We note, however, that many stakeholders' support was conditional upon what such national standards might be, and whether they would be appropriate. The small number of consultees who disagreed with the proposal felt that safety standards were best determined at a local level.

### **Discussion**

- 5.11 For the reasons we discuss in the next chapter, we accept that in respect of taxi services local authorities should be able to make determinations regarding standards, including safety standards, on the basis of local preferences. However, we suggest there should be a common nationally set level below which no provider of a "for hire" service should be allowed to go. The public have a right to expect a certain level of safety no matter where they are.<sup>4</sup>

<sup>3</sup> The National Private Hire Association survey collected data in respect of 336 licensing areas as of May 2014. At the time our Consultation Paper had been written, in 2012, there had been 342 licensing areas. The difference is accounted for by County Durham abolishing its six licensing areas when it became a Unitary Authority.

<sup>4</sup> We discuss the implications of this proposal as regards fees in Chapter 10.

### **Recommendation 30**

**We recommend the introduction of national standards for taxi and private hire services.**

#### **SAFETY AND NATIONAL STANDARDS**

- 5.12 In our consultation paper, we suggested that the standard-setting powers of the Secretary of State should only cover standards necessary to promote safety.<sup>5</sup> Safety standards are of high importance because consumers have no means of verifying the safety of a vehicle or its driver. We also asked whether setting common national safety standards for taxis and private hire vehicles might prove problematic, as taxis and private hire vehicles have different ways of working.<sup>6</sup>

#### **Consultation**

- 5.13 A large majority of respondents in the taxi trade agreed that national standards should relate only to safety. By contrast, regulators were nearly evenly split on the issue, and a slight majority of disabled users disagreed with limiting national standards to safety considerations.
- 5.14 The stakeholders who did not agree with limiting national standards to only safety considerations pointed to the difficulty of separating safety considerations from other issues which might influence licensing. MerseyTravel told us that:

In contemporary society we suggest that issues such as a knowledge of the legal frameworks involved in taxi services, equality and diversity, conflict management, tourism, topographical knowledge and other areas all contribute to the safety of the trade and satisfaction of the passengers.

- 5.15 Some respondents maintained the view that quality standards should also be covered. Accessibility was also put forward as a crucial component of national standards. The Disabled Persons Transport Advisory Committee said that:

It is very important for disabled people to expect a similar (good) standard of service across the country. Taxis are a crucial part of the transport network for disabled people using public transport. A consistent standard of provision is vital if they are to travel freely throughout the country. Confidence that every local area will have vehicles of a consistent good standard and an adequate proportion of WAVs<sup>7</sup> is essential.

- 5.16 London TravelWatch and the London Taxi Company also argued that national standards should cover accessibility.

- 5.17 Some respondents to the online survey conducted by the Institute of

<sup>5</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 31.

<sup>6</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 29.

<sup>7</sup> Wheelchair-accessible vehicles.

Licensing suggested that national standards should cover the appearance and design of the vehicle.

- 5.18 A number of local authorities and Unite the Union agreed with the proposal that safety standards should be set at national level, with local authorities imposing additional standards for taxis locally. By contrast, other local authorities disagreed on the basis that standard-setting should be left entirely to them. The London Taxi Company also argued that the Mayor of London should retain standard-setting powers over London taxis and private hire vehicles.
- 5.19 The second question, relating to the practical feasibility of setting common national standards for both trades, attracted mixed responses, although most stakeholders felt that it would be possible to set such common standards.
- 5.20 The United Cabbies Group was of the view that common standards would not be possible, given that some areas require taxis to be purpose-built vehicles. The Licensing Committee of Scarborough Borough Council noted that the bringing in of new standards could cause expense for licence-holders. Whilst this is true, licence-holders already face this risk in a system which gives local authorities total discretion over standards. Any short-term expense would be offset by the benefit of transparent national standards set with the benefit of consultation and, for those in the private hire trade, immunity from having to comply with varying local requirements.

### **Discussion**

- 5.21 We remain of the view that the core safety requirements imposed upon a driver, vehicle and operator should be the same across the country. Consumers have the right to expect a minimum level of safety wherever they are and whichever kind of vehicle they travel in.
- 5.22 Responses to our provisional proposals, however, highlighted the diversity of matters that might appropriately be dealt with in national standards are, ranging from the environmental impact of vehicles, to operator record-keeping requirements. During consultation it became clear to us that the effectiveness of the licensing framework for taxi and private hire services also requires national standards in relation to accessibility, protection of the environment and matters relevant to enforcement.
- 5.23 Consultation did not disclose any significant obstacles to the setting of common national standards for both trades. We have concluded that taxis should be subject to standards that are comparable but not necessarily identical to those imposed on private hire vehicles. The observation made by the United Cabbies Group presupposes that a particular type of vehicle would be required in order to meet the standards. We propose, however, that the Secretary of State should have the ability to set standards for different categories of vehicle, as further discussed below. For example, we recognise that non-standard “novelty” vehicles will require different safety standards, but do not see this as an obstacle to our proposals. Wheelchair accessible vehicles deserve specific consideration and we discuss these in Chapter 12 below.

**Recommendation 31**

**National standards should promote enforcement, protection of the environment and accessibility, in addition to safety.**

**Recommendation 32**

**National standards for taxi services should be comparable but not necessarily identical to national standards for private hire services.**

**DRIVER AND VEHICLE STANDARDS****Statute or regulations?**

- 5.24 In consultation we asked whether national driver and vehicle safety standards should be set out in primary legislation or in regulations made under delegated legislative powers.<sup>8</sup>
- 5.25 Under current law, the broad, overarching requirement of driver suitability is sometimes set out in primary legislation: for example, the requirement for an applicant to be a “fit and proper person”, which applies to taxi and private hire drivers outside London and to private hire drivers in London.<sup>9</sup> It is also found in secondary legislation, such as the requirement to be of “good character and fit to act as a cab-driver” which applies to London taxi drivers.<sup>10</sup> In all cases licensing authorities currently have a broad discretion to spell out specific requirements for drivers through local conditions. Criteria such as medical fitness<sup>11</sup> and disclosure and barring checks<sup>12</sup> are set by most licensing authorities, though there is considerable variation in what is required. Guidance issued by the Department for Transport addresses these issues but is not binding.<sup>13</sup>
- 5.26 Local authorities also stipulate the standards to be met by vehicles.<sup>14</sup> These may include conditions as to the design or appearance of the vehicle, or a description of any distinguishing marks required in order to identify the vehicle as a taxi.<sup>15</sup> In London, applicants for a taxi licence are required to comply with the conditions of

<sup>8</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, questions 45 and 47.

<sup>9</sup> Local Government (Miscellaneous Provisions) Act 1976, ss 51(1)(a) (private hire) and 59(1)(a) (taxis); Private Hire Vehicles (London) Act 1998, s 13(2).

<sup>10</sup> London Cab Order 1934, para 25.

<sup>11</sup> For example, many licensing authorities require drivers to satisfy more onerous Group 2 criteria which apply to professional public service vehicle drivers, see Road Traffic Act 1988, s 92(2) and (3).

<sup>12</sup> Driving taxi and private hire vehicles is a listed occupation; see Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Moreover, licensing authorities are entitled to require enhanced checks for taxi drivers in certain circumstances under the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002 No 233, as amended by SI 2013 No 2669).

<sup>13</sup> Department for Transport *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010).

<sup>14</sup> See Local Government (Miscellaneous Provisions) Act 1976, s47(1).

<sup>15</sup> Local Government (Miscellaneous Provisions) Act 1976, s47(2).

fitness issued by Transport for London.<sup>16</sup> These are very prescriptive, requiring all vehicles to be wheelchair accessible, to have a turning circle of 7.62 metres and a partition separating the driver from the passengers, and to meet certain size requirements.<sup>17</sup> A small number of other local authorities in England and Wales adopt these conditions as the prescribed standards for their local taxis.<sup>18</sup>

- 5.27 Before granting a private hire vehicle licence the local authority (outside London) must be satisfied that the vehicle is suitable in size, type and design, and is safe, comfortable and in a suitable mechanical condition, and is not of such a design and appearance as would lead any person to believe that it was a taxi.<sup>19</sup> A local authority outside London may attach to a licence “such conditions as they may consider reasonably necessary”.<sup>20</sup> Although the power is general, specific reference is made to the fact that the power to attach conditions includes conditions “requiring or prohibiting the display of signs on or from the vehicle to which the licence relates”.<sup>21</sup> In London the licence may be granted “subject to such conditions as may be prescribed and such other conditions as the licensing authority may think fit.”<sup>22</sup>

### Consultation

- 5.28 Most consultees took the view that safety standards should be set out in primary legislation as this would help to emphasise the importance of the standards and ensure that they were consistently applied. The Welsh Government also felt that this would be beneficial to the public:

Safety standards for drivers, including the requirement that s/he must be a “fit and proper” person should be set out in primary legislation, ensuring common standards throughout the country. That would guarantee reassurance for consumers.

- 5.29 South Bucks District Council thought it desirable to supplement the standards through guidance.
- 5.30 A significant group of consultees, however, considered that although the main

<sup>16</sup> Metropolitan Police Carriage Act 1869, s6, the London Cab Order 1934, para 7(3)(a) and Transport for London, *Construction and Licensing of Motor Taxis for Use in London, Conditions of Fitness* (1 January 2007) <http://www.tfl.gov.uk/assets/downloads/businessandpartners/taxi-conditions-of-fitness.pdf> (last visited 30 April 2013).

<sup>17</sup> These include a requirement for the overall length not to exceed five meters, and for vehicles to have a flat floor in the passenger compartment for which there are minimum heights.

<sup>18</sup> However, we note that there has recently been a trend for authorities to move away from this policy: for example, Chichester Council (see <http://www.chichester.co.uk/news/top-stories/latest/chichester-cabbies-unhappy-at-change-to-taxi-rules-1-3624425?commentspage=0>) and Swindon Borough Council (see <http://www.cabdirect.com/news/news.cfm/e7-taxi-go-ahead-swindon>) (last visited 19 May 2014).

<sup>19</sup> Local Government (Miscellaneous Provisions) Act 1976, s 48(1)(ii).

<sup>20</sup> Local Government (Miscellaneous Provisions) Act 1976, s48(2).

<sup>21</sup> Local Government (Miscellaneous Provisions) Act 1976, s 48(2).

<sup>22</sup> Private Hire Vehicles (London) Act 1998, s7(4). “Prescribed” means prescribed in regulations, although no regulations have been made relevant to this provision.

safety standards for drivers should be set out in primary legislation, there should be a mechanism for other standards to be added at a later stage by statutory instrument to allow greater flexibility. For example, John Murphy, the managing director of a chauffeur car firm, asked:

Is it possible that if the standards are set in statute they may be restrictive and difficult to amend?

- 5.31 The London Taxi Company felt that the standards should be very widely framed in primary legislation, with details added through secondary legislation. This would allow the standard to have a degree of flexibility.
- 5.32 Delta Taxis took a similar view, highlighting the need for legislation to be capable of dealing with future technological developments. Robin Riley of Nottinghamshire County Council noted the practical difficulties of passing new legislation every time standards need to be amended. These arguments were echoed by a number of taxi and private hire drivers.

### **Discussion**

- 5.33 We agree with consultees that it is essential both that safety standards are clear and that their application cannot be avoided. We also agree that the standard-setting power should be flexible, so that standards can be amended or added to if necessary. This is much more straightforward if the standards are contained within secondary legislation. Consultees were rightly preoccupied with consistency of standards, which is achieved whether the standards are set in primary or in secondary legislation.
- 5.34 We have concluded that, rather than dividing the standards between primary and secondary legislation, it is for the most part preferable to leave them to be set out in a statutory instrument by the Secretary of State. This will mean that they are all found in one document, and will avoid the risk of tying the Secretary of State's hands by making provision in the Bill that might be or become inappropriate. The single exception to this is a requirement for disability awareness training, as a core aspect of promoting equality considerations, and therefore a core feature of ensuring taxi and private hire services are suitable. We recommend this requirement should be reflected directly in primary legislation and discuss this further in Chapter 12.

### **Recommendation 33**

**We recommend that driver and vehicle standards should be set in secondary legislation by the Secretary of State.**

- 5.35 This recommendation is given effect by clauses 14, 15, 19 and 20 of our draft Bill.
- 5.36 We turn to a discussion of some aspects of the content of proposed national standards.

### **Fit and proper person requirements on drivers and criminal records checks**

- 5.37 A consequence of our recommendation that disqualifying criteria for taxi and

private hire drivers should be set through national standards rather than in our draft Bill<sup>23</sup> is that the “fit and proper person” requirements will disappear from primary legislation. Secondary legislation should instead specify the suitability requirements which must be met before a driver’s licence can be granted. The same approach should apply to vehicle licensing, as it would be necessary to set standards which cater for a wide variety of vehicles and services.

- 5.38 A potentially very serious example of undesirable variation in driver standards relates to the treatment of drivers’ criminal records. The Rehabilitation of Offenders Act 1974 generally provides that spent convictions do not have to be disclosed.<sup>24</sup> However, applicants for taxi or private hire driver licences are expressly excluded from these provisions, and may therefore still be asked to disclose convictions, both spent and unspent.<sup>25</sup> Authorities may (but are not obliged to) require applicants to apply for Disclosure and Barring Service (formerly known as Criminal Records Bureau) checks.<sup>26</sup> These may disclose other elements of an applicant’s history, such as police cautions.
- 5.39 Currently, the extent to which previous convictions disqualify a licence-holder is left to individual licensing authorities to determine. A significant number of licensing officers told us that they would like to see a more consistent, national approach to convictions policy. Past criminality is plainly a matter that should be taken into account in determining suitability to be a taxi or private hire driver, and something that we expect will be covered by national standards if our recommendations are followed. Their formulation will need to take into account Article 8 of the European Convention on Human Rights, which has recently given rise to a successful challenge in the Court of Appeal to some aspects of the current approach to revealing old and/or minor convictions and cautions.<sup>27</sup> National standards on the appropriate approach to criminal records in taxi and private hire licensing will assist with compliance with the complex and changing law in this area and will be an important safety measure.
- 5.40 We also suggest that the Secretary of State make it a condition of a licence to inform the licensing authority where a licensee is arrested for, charged with or convicted of a disqualifying offence.

### **Driver safety**

- 5.41 Both prior to and during consultation it was highlighted to us that taxi and private hire drivers are themselves vulnerable. Few occupations require an individual to be locked inside a confined space with a stranger. Whereas this is

<sup>23</sup> With the option of supplementing these with local conditions for taxi drivers, discussed in chapter 8).

<sup>24</sup> With the exception of the most serious offences, convictions become spent after a period of time which varies depending on the level of sentence imposed. A similar regime applies to cautions.

<sup>25</sup> Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975 No 1023, Sch 2, para 4.

<sup>26</sup> Under Part 5 of the Police Act 1997. The vast majority of licensing authorities do require checks before a licence is granted.



more commonly seen as a potential danger for passengers, drivers can also be at risk. Furthermore, the taxi and private hire trades are cash businesses and as such may be perceived as easy targets. We asked whether national conditions in respect of driver safety might need to be different for taxis compared with private hire services.<sup>28</sup>

### **Consultation**

- 5.42 Stakeholders agreed that driver safety was a major concern, and it was widely regarded as not appropriately addressed or given adequate consideration under the current regulatory framework.
- 5.43 Many stakeholders told us of harassment, robberies and assaults. Serious attacks are often reported in the press, and the murders of taxi and private hire drivers in disputes stemming from their work are, sadly, not rare.<sup>29</sup>
- 5.44 Of those respondents who argued in favour of different approaches to taxis and private hire vehicles, many such as Birmingham ComCab pointed to the absence of any recording requirements in the taxi trade, providing less driver safety in taxis.
- 5.45 Colin Biggar from Manchester pointed out that taxis are often purpose-built vehicles with partitions, and thus different considerations would need to be taken into account. Conversely, not many saloon cars used as taxis have partitions, even though these are available. He regarded this as illustrating not only the different ways of tackling driver safety, but also that mandating one element could restrict choice of vehicle.
- 5.46 Consultees who thought the standards should be the same between taxi and private hire drivers, often took this view because they feared that one group would not be sufficiently protected. Philip Mephram of Hambleton and Richmondshire District Councils pointed out that many individuals work as both taxi and private hire drivers.
- 5.47 A number of stakeholders, particularly within the taxi trade, were strongly in favour of a mandatory CCTV requirement. Many of these respondents thought that drivers and owners of vehicles should have access to the images and sound recordings obtained. Other consultees regarded recording devices as obtrusive and were concerned that passengers would lack control over when the devices were switched on and who would have access to the material.
- 5.48 On 31 October 2013 Richard Fuller MP introduced a Bill into the House of

<sup>27</sup> *R. (T) v Chief Constable of Greater Manchester Police and others (Liberty and another intervening)* [2013] EWCA Civ 25, [2013] 1 WLR 2515. The decision is currently under appeal to the Supreme Court.

<sup>28</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 30.

<sup>29</sup> For examples of incidents see <http://www.thisisgloucestershire.co.uk/Robbers-slashed-taxidriverson-face-large/story-18181476-detail/story.html#ixzz2LExeXo6F> (last visited 19 May 2014) and <http://www.nwemail.co.uk/news/barrow/assaulted-taxi-driver-calls-for-cctvcameras-in-cabs-1.1034404?referrerPath=home> (last visited 19 May 2014).

Commons which would require taxis to install CCTV systems.<sup>30</sup> Mr Fuller provided us with a very thorough response dedicated to this issue, following the murder of one of his constituents whilst working as a taxi driver. He presented evidence that CCTV would reduce crime rates in taxis, against both drivers and passengers.<sup>31</sup>

### **Discussion**

- 5.49 Respondents did not agree on the appropriate approach. Most respondents from the taxi trade considered that standards should be different as between taxi drivers and private hire drivers, whereas a large majority of regulators and private hire representatives took the opposite view. We regard this as a question which should be considered in greater detail by a panel with technical expertise as part of national standard-setting. We have come to the conclusion that the power to set national standards which cover driver safety should be flexible enough to allow the Secretary of State to impose different requirements in respect of taxis and private hire vehicles respectively. As regards taxis, local authorities would have the power to impose additional driver safety requirements.<sup>32</sup>
- 5.50 We make this recommendation on the grounds that the risks faced by drivers of each can be quite different. A taxi driver responding to a hail or standing at a rank is subject to compellability; reducing their control over where they go. As some of our stakeholders noted, there is no record of the journey and limited possibilities of identifying passengers known to be abusive or violent, as a private hire operator might be able to do.
- 5.51 The evidence we collected during consultation suggests that safety concerns for drivers are best dealt with by requiring safety equipment in vehicles, such as CCTV and vehicle partitions. Furthermore, purpose-built vehicles with in-built safety features are more common in the taxi industry, and regulation should be capable of taking account of this.
- 5.52 CCTV raises difficult issues in relation to protection of personal data and proportionality. The Information Commissioner has issued guidance on the use of CCTV which highlights this.<sup>33</sup> Consideration should be given to the extent to which national standards should require, or conversely prohibit, the installation and/or use of CCTV and how they should ensure that any use of it is in accordance with the Code of Practice issued by the Office of the Information Commissioner.<sup>34</sup> It would be for the Secretary of State to set out whether CCTV was permissible, and under what conditions, in private hire vehicles. The approach to CCTV in taxis would be more nuanced: whilst it would be open to the Secretary of State to prohibit its use, if this were not done local authorities would

<sup>30</sup> <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131029/debtext/131029-0001.htm> (last visited 19 May 2014).

<sup>31</sup> This kind of argument is supported by a recent study sponsored by the US National Institute for Occupational Safety and Health showing that while there was no clear evidence that partitions reduced homicide rates, security cameras did reduce homicide rates.

<sup>32</sup> See Chapter 8 below.

<sup>33</sup> Information Commissioner's Office, *CCTV Code of Practice* (2008).

<sup>34</sup> Information Commissioner's Office, *CCTV Code of Practice* (2008).

retain discretion as to whether or not it should be permissible. We consider this to be an area in which guidance would be extremely useful, in order to encourage a consistent approach between local authorities.<sup>35</sup>

### **Standard-setting and the power to ban vehicles and services**

- 5.53 Some “for hire” transport services or types of vehicle may not be regarded as suitable to be licensed at all and should be prohibited. Under current law, the only means of doing so is through the setting of local policies and conditions which exclude certain vehicles, generally by virtue of particular design features or specifications. For example, a number of authorities which do not wish to license pedicabs do so via a requirement that the vehicle have four wheels or be motorised. Under our recommended framework, licensing authorities would retain the ability to exclude vehicles or services from gaining taxi licences. They would not, however, have this ability in relation to private hire, for which standards would be set nationally, with any such exclusion put in place by the Secretary of State.
- 5.54 A number of consultees agreed that there should be an ability to exclude vehicles or services at a national level. It is our view that the power of the Secretary of State to set national standards is sufficient to allow particular vehicles or services to be excluded from taxi and private hire licensing. Where this is the case, the Secretary of State’s assessment, made following the rigorous consultation process we set out above,<sup>36</sup> should not be open to variation by local authorities. Where the Secretary of State has taken the view that, for reasons of safety, accessibility, enforcement or environmental protection, a particular vehicle or service should be prohibited from the taxi and private hire sectors, local authorities should not be able to take a more lenient view.

### **Vehicle age limits**

- 5.55 Vehicle age limits were a matter on which significant concern was expressed during consultation, and in respect of which views varied significantly. It is significant that under our reforms, whereas it would still be possible for licensing authorities to set local vehicle age limits on taxis, this would no longer be possible in respect of private hire vehicles. Under our recommendations, vehicle age limits associated with private hire vehicles would be determined by the Secretary of State and applied at a national level.
- 5.56 We accept that vehicle age limits can impose a significant financial burden, and can arbitrarily rule out cars that are perfectly safe and roadworthy. The purpose of national standards relating to vehicles is to prevent unsafe vehicles from continuing to operate as taxis or private hire vehicles. Whilst such standards might include age limits in respect of both taxis and private hire vehicles, such determinations should be made by the Secretary of State on the basis of advice

<sup>35</sup> In 2013 Southampton County Council lost its appeal against a determination by the Information Commissioner that its purported policy of requiring CCTV with audio recording in all taxis was in breach of both the Data Protection Act 1998 and Article 8(2) of the European Convention on Human Rights, which protects the right to respect for one’s private life. The Council has now issued a revised policy requiring CCTV systems which allow audio recording for a maximum of five minutes when triggered by a panic button.

<sup>36</sup> See from para 5.63 below.

from the technical panel.

- 5.57 We also note that private hire encompasses a particularly wide variety of services, ranging from limousines and standard saloon cars to classic cars. Age limits might be appropriate in respect of some categories but not others. Different standards might also apply to accessible vehicles. The power to set national standards should afford sufficient flexibility to cater for such differences.
- 5.58 Transport for London made it clear that it wishes to continue its policy of applying age limits to private hire vehicles for environmental reasons. It told us that the current age limits are designed to improve air quality in London, as newer vehicles produce lower volumes of harmful emissions. Under our recommendations, Transport for London would not be able to vary a nationally set age limit on private hire vehicles, or impose one if the Secretary of State chose not to do so. During consultation, we received evidence suggesting that it is in fact taxis that have the greater environmental impact in London.<sup>37</sup>
- 5.59 Transport for London also imposes age limits on taxis, but our recommendations do not limit this power. If a national age limit were imposed on taxis, London could have a lower age limit. It would not, however, be possible to license older (and less environmentally friendly) vehicles. We discuss local taxi conditions in Chapter 8 below.

#### **Tailoring standards to vehicles and services**

- 5.60 Given the varied nature of services within the taxi and private hire market it would not be desirable to attempt to apply identical requirements across the board. The overall aim that vehicles should be in a suitable mechanical condition may be reflected in very different standards for different categories of vehicle.
- 5.61 We envisage that it should be possible for different sets of standards to apply to different types of service or vehicle, both as regards taxi and private hire services or for there to be a generally applicable standard with exceptions for particular categories.

#### **Taximeters in private hire vehicles**

- 5.62 During consultation, it became clear that the use of taximeters in private hire vehicles can be controversial. Outside London, private hire vehicles are not required to have taximeters, but have the option of installing one.<sup>38</sup> By contrast, London legislation prohibits private hire vehicles from being equipped with a taximeter,<sup>39</sup> the rationale being that the ability to charge a metered price undermines the advance pricing requirement. We do not recommend banning taximeters from use in private hire vehicles, as we consider that metered pricing may be useful for estimates; and we have heard evidence that consumers may prefer the use of a taximeter where they are not in a position to judge whether the

<sup>37</sup> Transport for London, *Travel in London: Key Trends and Developments: Report Number 1* (2009), ch 6. Available online at: <http://www.tfl.gov.uk/cdn/static/cms/documents/Travel-in-London-report-1.pdf> (last visited 19 May 2014).

<sup>38</sup> Local Government (Miscellaneous Provisions) Act 1976, s 71.

<sup>39</sup> Private Hire Vehicles (London) Act 1998, s 11(1).

price quoted is fair.<sup>40</sup>

### **STATUTORY CONSULTATION ON NATIONAL STANDARDS**

- 5.63 In our consultation paper we proposed that the Secretary of State should be obliged to enter into consultation with interested parties prior to setting any national standards.<sup>41</sup> We also asked what the best way of doing this might be, and in particular sought views on whether a technical advisory panel should be formed.<sup>42</sup>
- 5.64 Consultation yielded overwhelming support for a statutory duty to consult, with only a handful of disagreements. A majority were also in favour of a technical advisory panel.
- 5.65 Many stakeholders suggested that consultation should involve a wide range of interested parties. These included drivers, vehicle owners, operators, passenger groups, disability groups, licensing officers and authorities, the Vehicle and Operator Services Agency (now the Driver and Vehicle Standards Agency), manufacturers and the police. We were given positive examples of areas in which local authorities have facilitated consultation and engagement along those lines. For example, Burnley Licensed Private Hire Owners Association told us that they had a Taxi Task Group consisting of taxi and private hire services trade representatives, local authority officers, County Council officers, an MoT station manager and councillors, who meet on a regular basis to improve the services provided to the public.
- 5.66 We saw examples of this for ourselves during consultation, including the Sefton Taxi Trade Forum and meetings in Stevenage and Hemel Hempstead involving a broad cross-section of those involved in the trade.
- 5.67 Other respondents suggested a more restrictive approach involving only the trades or licensing authorities. Some suggested that the Secretary of State could seek assistance from specific groups such as the Institute of Licensing or National Association of Licensing and Enforcement Officers (NALEO).
- 5.68 Our draft Bill requires the Secretary of State to appoint a panel of individuals or groups representing the following categories of people:
- (1) the taxi and private hire trades;
  - (2) licensing authorities;
  - (3) consumers;
  - (4) disabled consumers;

<sup>40</sup> This would, of course, be a matter on which the Secretary of State should consult in setting national standards for private hire vehicles. For further discussion of the consultation obligation, see from para 5.63.

<sup>41</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 32.

<sup>42</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 33.

- (5) the police; and
- (6) highways authorities.<sup>43</sup>

- 5.69 The above is not an exhaustive list of who the Secretary of State may consult. The input of Traffic Commissioners, the Mayor of London and other special interest groups may be helpful on particular matters, and the Bill is drafted flexibly enough to allow this.
- 5.70 The draft Bill does not contain specific requirements as to the size, structure or financing of the panel, or the procedure to be used to select members. These matters are best left to the discretion of the Secretary of State, who has experience of using similar powers in numerous different areas.
- 5.71 The Secretary of State will be required to have regard to the recommendations of the expert panel when setting the standards for taxi and private hire services. He will be obliged to give the panel a statement in writing of the reasons for any disagreement with the panel's recommendations,<sup>44</sup> but will be able to depart from the recommendations of the panel if he sees fit.
- 5.72 The draft Bill requires the Secretary of State to convene an expert panel prior to making the initial set of regulations containing the national standards and to reconvene the panel before making any significant changes to the standards, leaving him with the power to reconvene the panel at any point at which he considers it necessary.

**Recommendation 34**

**The standard setting power of the Secretary of State should be subject to a statutory consultation requirement.**

- 5.73 This is given effect by clause 73 of our draft Bill.

**DUTY ON LICENSEES TO PROVIDE INFORMATION**

- 5.74 The effective functioning of the licensing system depends upon licensees providing accurate and relevant information, whether in a licence application or pursuant to a request for information, for example in respect of records. The current licensing framework creates a number of separate offences of providing false or misleading information in particular circumstances.<sup>45</sup> The draft Bill imposes a duty on licensees to provide information and documents as may be prescribed in national standards, or in respect of taxis, local conditions. Further, it would be an offence to knowingly provide false or misleading information to licensing authorities.<sup>46</sup>

<sup>43</sup> Draft Taxis and Private Hire Vehicles Bill, clause 73(7).

<sup>44</sup> Draft Taxis and Private Hire Vehicles Bill, clause 73(4)(d). For a similar approach, see Financial Services and Markets Act 2000, s 1R.

<sup>45</sup> See Local Government (Miscellaneous Provisions) Act 1976, ss 57(3) and 73(2); and the London Hackney Carriage Act 1843, s 14, and the Private Hire Vehicles (London) Act 1998, s 28.

<sup>46</sup> Draft Taxis and Private Hire Vehicles Bill, clause 47.

- 5.75 We also recommend that the Secretary of State make it a condition of licence to inform the licensing authority where a licensee is arrested or convicted of offences of a certain seriousness or nature.

### **Record-keeping by licensees**

- 5.76 During consultation we were told that the difficulty in connecting vehicles with drivers and operators in respect of investigating particular incidents was a significant problem.
- 5.77 Police officers told us that linking the different licences (for example, in order to trace the driver where the victim can only remember details of the vehicle) can be particularly difficult and is a major drain on resources, leading to investigations being prolonged and often left unresolved. This can apply both in respect of taxi and private hire drivers.
- 5.78 A problem of particular concern related to private hire drivers working without an operator. Such drivers have the appearance of legitimacy, and their vehicle also may be licensed, yet they are working unlawfully and can be very dangerous. The Metropolitan Police told us anecdotally that a large proportion of complaints relating to sexual assaults by drivers of hired vehicles were made against licensed private hire drivers.
- 5.79 We suggest that the Secretary of State should exercise the standard-setting powers to require taxi and private hire drivers to record or provide information regarding the licensed vehicles they used over a period as may be prescribed. Private hire drivers should be required to record or provide information regarding the dispatchers they undertook journeys for, reducing the scope for their working (unlawfully) without dispatchers for example.<sup>47</sup> We think that a similar requirement should be imposed on vehicle licence holders to record or provide information in respect of the drivers and dispatchers using their vehicle over a prescribed period.<sup>48</sup> Dispatchers are directly subject to broad record-keeping obligations under the draft Bill, and failure to comply would be an offence.<sup>49</sup>

### **WHO SHOULD BE ABLE TO APPLY FOR A VEHICLE LICENCE?**

- 5.80 In England and Wales, including London, only the owner or part owner of a vehicle is entitled to apply for a vehicle licence.<sup>50</sup> Our draft Bill removes this requirement. Any person who is able to comply with the obligations associated with holding a vehicle licence (such as presenting the vehicle for inspection) can apply. This includes, for example, persons leasing a vehicle.

<sup>47</sup> The Transport Committee of the London Assembly made a similar recommendation in order to reduce touting in its report, Tackling taxi touting in London (March 2008) p 5, see recommendations 2 and 3 of <http://legacy.london.gov.uk/assembly/reports/transport/taxi-touting.rtf>

<sup>48</sup> We also discuss the relevance of licensee record-keeping obligations in the context of our move away from the so-called “triple licensing” requirement, in Chapter 7 below.

<sup>49</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 33 – 36.

<sup>50</sup> In respect of taxis see Town Police Clauses Act 1847, s 40, Metropolitan Public Carriage Act 1869, s 6. In respect of private hire vehicles see the Local Government (Miscellaneous Provisions) Act 1976, s 48(1), and the Private Hire Vehicles (London) Act s 7(1).

- 5.81 If any requirement of an appropriate link between the vehicle licence holder and the vehicle owner is necessary, we anticipate that it can be provided as part of national standards. The current law already requires vehicle licence applicants to provide information about the vehicle owner, part owners and persons involved in hiring or letting the vehicle. We think this is sensible and envisage that it would continue to be required as part of national standards.

**Recommendation 35**

**We recommend that the ability to apply for a vehicle licence should no longer be restricted to vehicle owners.**

- 5.82 This recommendation is given effect by clause 13 of our draft Bill.

**SUITABILITY TO HOLD A VEHICLE LICENCE**

- 5.83 In England and Wales, outside London, taxi and private hire vehicle owners are not subject to fit and proper person requirements; conditions of licence relate to the vehicle itself.<sup>51</sup> Local authorities can issue bye-laws “regulating the conduct of proprietors”<sup>52</sup> of licensed vehicles but we are not aware of any who are using this power to impose good character requirements. The same is true for private hire vehicle owners in London.<sup>53</sup>
- 5.84 In London, Transport for London can refuse to grant a taxi vehicle licence if it is not satisfied that the applicant is a fit and proper person to hold such a licence,<sup>54</sup> but no similar requirement applies to applicants for London private hire vehicle licences. Currently, only London taxi vehicle owners can be subject to personal suitability requirements.<sup>55</sup>
- 5.85 In our consultation paper, we suggested that the imposition of suitability requirements on taxi and private hire vehicle owners was too remote from passenger safety considerations. We proposed the removal of the fit and proper person requirement which currently only applies to London taxi vehicle owners.<sup>56</sup>

**Consultation**

- 5.86 A significant majority of respondents were unhappy with our proposal to remove suitability requirements applicable to the vehicle’s owner. They felt that “fit and proper” tests for vehicle owners would be a very helpful way of controlling criminality within the taxi and private hire trades. They raised concerns that vehicle owners currently contribute to organised crime; for example, the Welsh local authorities told us that:

Examples exist of taxi proprietors convicted of operating

<sup>51</sup> Local Government (Miscellaneous Provisions) Act 1976, ss 47 and 48.

<sup>52</sup> See Town Police Clauses Act 1847, s 68.

<sup>53</sup> Private Hire Vehicles (London) Act 1998, s 13(2)(a).

<sup>54</sup> London Cab Order 1934, para 7.

<sup>55</sup> London Cab Order 1934, para 7.

<sup>56</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 46.



cannabis factories in Wales who because of poor legislation are not required to be vetted. These “licensed” vehicles are therefore an ideal outlet to deliver and transport goods and for the laundering of money.

- 5.87 The United Cabbies Group saw owner licensing as a very important element of the good reputation of the London taxi trade:

As people inherently trust the London Taxi as a sign of safety, then the availability of these vehicles must be strictly controlled as it is now in London. By requiring fleet owners to also meet the requirement of a fit and proper person should ensure that the rental of these vehicles is controlled by way of ensuring only people of good character control these vehicles.

- 5.88 Those who agreed with the proposal felt that the current situation, in which owners are in general not subject to “fit and proper person” tests<sup>57</sup>, worked satisfactorily.

- 5.89 Some consultees were in favour of limited measures, but not of introducing a “fit and proper” test for owners as a general requirement. David Wilson of a2z Licensing felt that any serious problems concerning vehicle owners were best dealt with by the police, although scope could be left open for legislative change in the future. We find this a sensible suggestion, given that the problems stakeholders cite to justify a “fit and proper” requirement for vehicle owners are often linked to criminal behaviour. Bedford Borough Council similarly suggested that in principle, owners should not need to satisfy “fit and proper” criteria, but that in exceptional circumstances it might be necessary for a licensing authority to take an owner’s conduct into account; for example, any previous convictions.

### **Discussion**

- 5.90 We continue to recommend that applicants for vehicle licences should not be subject to a fit and proper person test. Vehicle licence holders have no contact with the travelling public at all, unless they are drivers, in which case fit and proper tests would apply on that basis.<sup>58</sup>

- 5.91 Less than ten percent of licensed taxi and private hire vehicles across England and Wales are currently subject to fit and proper requirements for their owners,<sup>59</sup> and we think it an unnecessary burden to extend such a requirement to the remaining 90% of vehicle licensees. National standards can ensure that the vehicle is safe and appropriate. Passengers will not have meaningful contact with the vehicle owner, unless of course the owner is also the driver in which case he or she will be required to meet driver standards. Any problems associated with criminality of vehicle owners are best dealt with through the criminal law, and through the enforcement measures discussed in Chapter 13 below.

<sup>57</sup> Except as regards taxis in London.

<sup>58</sup> We note that only taxi and private hire drivers, (not operators nor vehicle owners) can be subject to enhanced criminal records checks under the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002 No 233, amended by the SI 2013 No 2669).

<sup>59</sup> The latest statistics issued by the National Private Hire Association in April 2014 indicate there is a total fleet of 237,679 licensed taxi and private hire vehicles, of which 22,732 are London taxis. The Department for Transport’s 2013 statistics indicated a total of 231,000 licensed taxi and private hire vehicles, of which 22,000 were London taxis.

- 5.92 This recommendation is without prejudice to vehicle licence holders' responsibilities in respect of persons driving their vehicles and requiring the vehicle to be available for inspection.<sup>60</sup> These obligations provide a strong incentive on vehicle owners to keep adequate records of the drivers using their vehicles.<sup>61</sup>

**Recommendation 36**

**Applicants for vehicle licences should not be subject to a fit and proper person test.**

**CRIMINAL OFFENCES AND LICENCE CONDITIONS**

- 5.93 Chapter 6 below discusses the criminal offences that exist under the current law in relation to the taxi and private hire trades. We make a number of recommendations, including that certain of the more minor existing offences should be either repealed completely, or replaced by national standards. Under our recommendations the Secretary of State would have the power to designate the breach of certain licence conditions as criminal offences.

**INDIVIDUAL CONDITIONS**

- 5.94 Taxi and private hire legislation generally allows the licensing authority to attach to the grant of a taxi or private hire licence "such conditions as they may consider reasonably necessary". This applies in respect of private hire vehicles, operators, and drivers.<sup>62</sup> The ability to attach conditions is similarly broad in respect of taxi vehicles outside London.<sup>63</sup> The powers to impose conditions on London taxis, and taxi drivers both and inside and outside London are instead framed in terms of powers to issue byelaws;<sup>64</sup> or in London, to issue London Cab Orders.<sup>65</sup> A power to impose individual conditions in taxi drivers' licences may also be

<sup>60</sup> Under existing law, proprietors of private hire vehicles must not employ an unlicensed driver, Local Government (Miscellaneous Provisions) Act 1976, s46(1)(c). Proprietors of hackney carriages are also responsible for drivers in their employ, see Town Police Clauses Act 1847, ss 47 to 49. Further to our reforms, the same obligations would arise: draft Taxis and Private Hire Vehicles Bill, clause 5(3).

<sup>61</sup> During consultation it was impressed upon us that vehicle information will often be the only details a passenger or enforcement officer may remember from an incident. Vehicle owners' records are therefore important in ensuring accountability when things go wrong. Taxis can be operated without any record-keeping at all. Having effective means for joining up vehicle information with relevant driver details is essential.

<sup>62</sup> In England and Wales, see for private hire drivers, s 51(2) of the Local Government (Miscellaneous Provisions) Act 1976; for private hire vehicles, s 48(2) of the Local Government (Miscellaneous Provisions) Act 1976; for operators, s 55(3) of the Local Government (Miscellaneous Provisions) Act 1976. In London, see for private hire drivers, ss 13(2)(3) of the Private Hire Vehicles (London) Act 1998; for private hire vehicles, s 7(4) of the Private Hire Vehicles (London) Act 1998; and for operators, s 3(4) of the Private Hire Vehicles (London) Act 1998.

<sup>63</sup> See s 47(1) of the Local Government (Miscellaneous Provisions) Act 1976.

<sup>64</sup> Town Police Clauses Act 1847, s 68.

<sup>65</sup> Metropolitan Public Carriage Act 1869, s 9.

implied.<sup>66</sup>

- 5.95 Under the current law licensing authorities can set conditions that apply to particular licensees, rather than being of general application. The content of individual conditions varies considerably.
- 5.96 Examples of currently imposed individual conditions were given to us by Transport for London and include:
- (1) restrictions on an area a taxi driver is licensed for;
  - (2) a restriction to working 20 hours per week (in accordance with Home Office restrictions);
  - (3) the holder being subject to an annual medical check; and
  - (4) a restriction imposed on a private hire operator prohibiting public access to their premises.

### **Consultation**

- 5.97 In our consultation paper we asked whether local authorities should still have the power to impose individual licence conditions on taxi and private hire drivers.<sup>67</sup>
- 5.98 Reflecting their approach of favouring local discretion, the vast majority of consultees took the view that individual conditions should be retained. Consultees who agreed regarded the power of local authorities to impose individual conditions as an important tool which enabled the licensing system to respond to particular circumstances to an extent that might not be possible under a system of uniform licence conditions.
- 5.99 Transport for London expressed a similar view:
- While general conditions are preferable as they ensure equality, provide consistency and transparency in the licensing system and aid compliance, in some cases it is necessary to add specific conditions on individual licences. This could be where individuals fail to meet generic standards but the licensing authority has exercised discretion to license or where the licensing authority wishes to impose standards over and above the generic standards.
- 5.100 Examples of conditions considered useful by consultees included (from Transport for London) limits on working hours in accordance with Home Office restrictions and “pending planning permission” requirements on operators, and (from an Institute of Licensing member) a restriction on the routes to be taken by

<sup>66</sup> *Wathan v Neath and Port Talbot CBC* [2002] EWHC 1634 (Admin) found that section 57 of the Local Government (Miscellaneous Provisions) Act 1976 did not grant a power to impose conditions on taxi driver licences. However, s 46 of the Town Police Clauses Act 1847 may be interpreted as implying such a power, and the Department for Transport for example takes this view. See Department for Transport, Guidance note and model byelaws (2005) paras 3 to 9. The matter has not been resolved by the courts.

<sup>67</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 36.

the driver of a wheelchair accessible private hire vehicle who had not passed her topographical knowledge test.

- 5.101 Some consultees suggested that individual conditions would be a good way of monitoring individuals about whom regulators had concerns. For example, the National Association of Licensing Enforcement Officers suggested that:

A residual power to impose disciplinary conditions on licensees having previously failed to comply with the Act is probably a good idea.

- 5.102 Consultees who disagreed with retaining individual conditions tended to feel that they led to an inconsistent system, with too much discretion for individual licensing authorities. The Licensed Private Hire Car Association was particularly strongly opposed to the idea.

### **Discussion**

- 5.103 We are concerned that the use of individual conditions adds an extra layer of regulation and detracts from the uniformity and transparency of the licensing system. In principle, an individual who satisfies national standards should be permitted to work in the trade without being hampered by restrictions imposed in the form of additional individual licence conditions. A power to impose individual conditions on drivers in the private hire sector would cut across our proposed system of purely national standards.
- 5.104 It has struck us that the examples of individual conditions given to us often related to matters already covered by existing regulation or which are more appropriate as policies of general application. Under our reforms it will be possible, for example, to limit the zones within a licensing area for which a driver is licensed by virtue of our proposed more flexible system of zoning.<sup>68</sup>
- 5.105 We also question the appropriateness of using national standards to enforce other areas of the law unrelated to the quality or safety of a taxi or private hire service, such as immigration or planning control requirements. Stakeholders told us of individual conditions being used to “keep an eye” on licence holders where there were concerns about whether they ought properly to hold a licence. This does not seem to us to be an appropriate use of licensing conditions.
- 5.106 We see no difficulty in national or local standards of general application containing rules that apply only apply to particular categories of licence holders, for example disabled drivers who use specifically adapted vehicles or those with particular medical conditions. Standards having general application to such individuals, formulated following consultation, are more likely to be set appropriately and to produce equality of treatment as between individuals in those categories than will be produced by a variety of individually imposed conditions.
- 5.107 We appreciate that individual conditions currently offer a measure of flexibility to depart in individual cases from a licensing authority’s standard conditions in a

<sup>68</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 7 and 21.

way which may make the difference between an applicant being granted a licence and being refused. For example, one local authority reported using an individual licence condition to ensure that an applicant only drove an automatic vehicle. This was necessary due to a medical condition and without a specifically tailored condition the applicant would not have been able to work safely as a driver.

5.108 To the extent that such flexibility is desirable, we consider that, rather than affording licensing authorities a general power to set individual conditions, the national licence conditions themselves might, in a small number of appropriately circumscribed cases, require a licensee to comply with locally imposed conditions relating, for example, to their medical condition. National standards could be framed in this way if it were not practicable to make sufficiently comprehensive provision for all cases in the national standards, which we would regard as the preferable course.

5.109 One of the current uses of individual conditions in private hire licensing is their imposition on operators. Some licensing authorities impose conditions prescribing how operators may accept bookings, as in London's satellite offices. This could continue to be controlled under our reforms by virtue of new powers we grant to licensing authorities in the context of our amended touting offence.<sup>69</sup> The Bill provides that local authorities may designate places in which it is not an offence to solicit a person to hire a taxi or private hire vehicle, provided that conditions specified in the designation are complied with.

**Recommendation 37**

**We recommend that licensing authorities should not have a general power to impose individual conditions on the holders of taxi or private hire licences.**

<sup>69</sup> See Chapter 13 below.

# **CHAPTER 6**

## **CRIMINAL OFFENCES SPECIFIC TO THE TAXI AND PRIVATE HIRE TRADES**

### **INTRODUCTION**

- 6.1 The current law contains a broad and often confusing array of offences that are capable of being committed by those working in the taxi and private hire trades. We propose reform in five areas:
- (1) behaviour which it is appropriate to sanction with a criminal penalty or an obligation to provide compensation, but where modern offences and civil claims have overtaken those provided in taxi and private hire legislation;
  - (2) criminal activity which is not directly linked to taxi and private hire licensing, but which ought to give rise to licensing repercussions;
  - (3) behaviour which is currently criminalised but which could more appropriately be dealt with through the mechanism of national standards;
  - (4) behaviour which amounts to a breach of national standards but which is so serious that it ought also to give rise to criminal sanctions; and
- 6.2 There are also a number of offences the substance of which needs to be retained, but which can be simplified; simplification will in any event result from our proposed replacement of four main pieces of governing legislation by one.
- 6.3 The next five sections explain our recommendations in each of those areas. We do not discuss touting in this section, as we consider it in Chapter 13 below.

### **OUTDATED OFFENCES AND COMPENSATION PROVISIONS IN TAXI AND PRIVATE HIRE LEGISLATION**

- 6.4 The current law contains many examples of outdated offences which have lost their relevance. For example, section 61 of the Town Police Clauses Act 1847 provides that—

If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding level 1 on the standard scale.

- 6.5 Not only does this overlap considerably with the existing criminal offences of drinking and driving and of dangerous, careless and inconsiderate driving;<sup>1</sup> in addition, the maximum penalty is far lower, suggesting that the offences had fallen into disuse before the standard scale of fines was introduced.<sup>2</sup>
- 6.6 Other outdated provisions include provision for compensation to be recovered from the proprietor of a vehicle for loss or damage caused by a driver,<sup>3</sup> and for a fine at level 1 on the standard scale for the offence of leaving “a carriage ... unattended in a place of public resort.”<sup>4</sup> This provision also provides a power to take the horses harnessed to the carriage to a livery stable. The outdated provisions often duplicate existing road traffic offences or general principles of modern civil law, such as the law of negligence.
- 6.7 We have concluded that, where trade-specific offences and related provisions duplicate other existing offences or breaches of civil law, the duplicative provisions should be repealed in favour of reliance on the general criminal and civil law. Provisions creating offences in the new legislation should be confined to acts or omissions specific to the use of vehicles for hire; for example, failure to have the relevant licence.
- 6.8 This is in line with the approach we took in our consultation paper “Criminal Law in Regulatory Contexts”, which has led to the government gateway for new offences. The gateway is aimed at preventing a proliferation of new criminal offences, and assesses proposed new offences against a number of criteria such as whether the behaviour is sufficiently serious to merit the stigma associated with a criminal conviction, and what effective alternatives are available.<sup>5</sup>

#### **POWERS TO REVOKE LICENCES FOR NON-LICENSING OFFENCES**

- 6.9 Whilst current civil and criminal law is capable of dealing with much of that which is criminalised in outdated taxi and private hire legislation, it is also important that licensing authorities have adequate enforcement powers in relation to offences that impinge upon a person’s suitability to be a licence holder. The current provisions governing sanctions against licensees who have committed a criminal offence or a serious breach of licensing requirements are complex.

<sup>1</sup> Drinking and driving: Road Traffic Act 1988, s 4; dangerous driving: Road Traffic Act 1988, ss 2 and 2A; careless and inconsideration driving: Road Traffic Act 1988, ss 3 and 3ZA.

<sup>2</sup> The standard scale of fines was introduced by s 37 of the Criminal Justice Act 1982. Level 1 on the scale currently corresponds to a fine of £200 and level 3 to a fine of £1,000. Level 5 currently corresponds to a fine of £5,000. From a date to be appointed, a fine at level 5 will be replaced by a fine of any amount, and power will be created to amend levels 1 to 4, by ss 85 and 87 of the legal Aid, Sentencing and Punishment of Offenders Act 2012. Our Bill has been drafted on the assumption that ss 85 and 87 will be in force by the time the Bill is enacted.

<sup>3</sup> Town Police Clauses Act 1847, s 63.

<sup>4</sup> Town Police Clauses Act 1847, s 62.

<sup>5</sup> Criminal Law in Regulatory Contexts (2010) Law Commission Consultation Paper No 195. See also Ministry of Justice, “Criminal Offences Gateway Guidance” (2011), <http://www.justice.gov.uk/downloads/legislation/criminal-offences-gateway-guidance.pdf> (last visited 19 May 2014).

- 6.10 Licensing authorities can suspend, revoke or refuse to renew a private hire or taxi driver's licence if the licence holder has been guilty of an offence involving dishonesty, indecency or violence, or a breach of a statutory licensing requirement, or for any other reasonable cause.<sup>6</sup> The authority can also suspend, revoke or refuse to renew a vehicle or operator licence in certain other circumstances.<sup>7</sup> In London, Transport for London can suspend or revoke a private hire licence "for any reasonable cause" and taxi licences can be revoked on certain grounds.<sup>8</sup> Taxi driver licences in London may also be revoked or suspended.<sup>9</sup> Certain offences are triggered by a failure to provide information.<sup>10</sup>
- 6.11 We recommend that the provisions referred to in the preceding paragraph should be repealed, and that the Secretary of State should make it a condition of licence not to commit certain criminal offences. These could include driving offences, apart from very minor offences such as parking and congestion charge offences, as well as offences not directly linked to taxi and private hire work that impinge upon a person's suitability to hold a licence. We take a similar approach to breaches of the Equality Act 2010, which we discuss in Chapter 12 below.
- 6.12 The Secretary of State's power to set criteria of eligibility for a driver's licence under clause 14 of our draft Bill is wide enough to include criteria relating to past criminal convictions.

**Recommendation 38**

**We recommend that the Secretary of State should exercise the standard setting power to provide that a conviction for specified offences is a breach of a licensing condition, or incompatible with eligibility to hold a licence.**

**REPLACING CRIMINAL OFFENCES WITH NATIONAL STANDARDS**

- 6.13 Current law creates a number of minor offences relating to conduct which would be more appropriately prohibited by a licence condition, breach of which would result in licensing enforcement action. These are, perhaps unsurprisingly, most common in the 19th century taxi legislation, but are found in more modern legislation as well.

<sup>6</sup> Local Government (Miscellaneous Provisions) Act 1976, s 61 (drivers).

<sup>7</sup> Under the Local Government (Miscellaneous Provisions) Act 1976, s 60, if the vehicle is unfit for use as a taxi or private hire vehicle, in response to an offence of non-compliance with taxi/private hire legislation, or for any other reasonable cause. Under the Local Government (Miscellaneous Provisions) Act 1976, s 62, in response to an offence of non-compliance with the Act, conduct which appears to render operator unfit to hold a licence or a material change in circumstances of the operator, or for any other reasonable cause.

<sup>8</sup> Under the Private Hire Vehicles (London) Act 1998, s 16, where specific examples of reasons for such action are provided, without prejudice to the generality of the power. Under the London Cab Order 1934, article 19. The grounds include: that the licence has been obtained through misrepresentation, fraud, or any concealment of information; that TfL is satisfied, on receipt of new information, that the licence would not be granted if the holder were a new applicant; or for failure to comply with licence provisions or conditions.

<sup>9</sup> London Hackney Carriages Act 1843, s 25.

<sup>10</sup> For example, London Cab Order 1934, para 32 requires a taxi licence holder to notify the authority of a change of address.



- 6.14 Examples include the failure of a taxi proprietor to hold a copy of the licence of a driver employed by him, punishable by a fine at level 1 on the standard scale,<sup>11</sup> and offences punishable by a fine at level 3 on the standard scale, of plying for hire with a carriage or horse that is unfit for public use,<sup>12</sup> and failing without reasonable excuse to present the vehicle for testing when required.<sup>13</sup>

#### **CRIMINALISING BREACHES OF NATIONAL STANDARDS**

- 6.15 Although our general approach is one of reducing the possible number of available criminal offences, the general criminal law being capable of dealing with most issues, we recognise that there are certain situations in which conduct that is in breach of a licensing standard can be very serious. In this situation a separate criminal offence is needed.
- 6.16 The draft Bill empowers the Secretary of State to designate specified national standards, with the consequence that breach of them will be a criminal offence punishable by a fine of up to level 3 on the standard scale (currently £1000).<sup>14</sup> Whereas we think that in most cases enforcement against the licence would be most effective, in other cases, criminal sanctions may be more suitable. This is particularly the case where vehicles work at a distance from their home licensing authority. Such designation will be appropriate where, for example, the conduct prohibited by a national standard is sufficiently detrimental to the interests of passengers to warrant the deterrent of potential criminal liability. It should not, however, be possible for breach of local taxi licence conditions to attract criminal sanctions, since those conditions will deal with matters that are not sufficiently serious to warrant being dealt with in national standards.
- 6.17 Examples of breaches of standards which might appropriately be reinforced by criminal sanctions might include breaches involving dishonesty, such as the use of a badge that the wearer is not entitled to use or a licence plate that does not relate to the vehicle to which it is attached, or breaches that endanger the public, such as using a vehicle whose test certificate is out of date.

#### **Recommendation 39**

**The Secretary of State should have the power to designate specific licence conditions, breach of which will amount to a criminal offence.**

<sup>11</sup> Currently set at £100. See the Town Police Clauses Act 1847, s 48.

<sup>12</sup> London Hackney Carriages Act 1843, s 17.

<sup>13</sup> Local Government (Miscellaneous Provisions) Act 1976, s 50.

<sup>14</sup> Draft Taxis and Private Hire Vehicles Bill, clause 20(2) of our draft Bill.

# CHAPTER 7

## NATIONAL STANDARDS FOR PRIVATE HIRE

### INTRODUCTION

- 7.1 In Chapter 5 we recommended that the Secretary of State should have the power to set national standards relating to both taxi and private hire services, so far as these promoted safety, accessibility, enforcement and protection of the environment. In this Chapter, we consider how these standards would apply in respect of private hire services, and operator/dispatchers in particular.
- 7.2 Though we proposed that local licensing authorities would remain responsible for administering private hire licences, in our consultation paper we proposed that local licensing authorities should no longer have the power to vary standards locally. We suggested that only standards as set by the Secretary of State should apply to private hire services.<sup>1</sup>

### NATIONAL STANDARDS FOR PRIVATE HIRE

#### Consultation

- 7.3 The proposal in favour of a uniform set of mandatory standards for private hire vehicles met with approval from a majority of consultees, although a significant number disagreed.
- 7.4 Those who agreed, such as the London Taxi Company, tended to support our view that the market could be relied upon to set standards for private hire services beyond the mandatory standards. The National Association of Licensing Enforcement Officers also agreed with our proposal, but stressed the need to ensure consistency between taxis and private hire standards.
- 7.5 Those who disagreed believed that it would be necessary for additional standards to be applied to private hire services. For example, Transport for London strongly opposed our proposal. It said that local standard-setting was necessary, particularly in London, to ensure that customers receive a service that is both of high quality and safe. It added that customer choice can be illusory, especially when the customer books online or through an app, with no real knowledge about the particular firm. Other concerns raised by Transport for London included the risk that tourists could have a negative experience when travelling in London and that our proposed policy would hinder initiatives such as the Mayor of London's Air Quality Strategy, part of which involves imposing vehicle age specifications on private hire vehicles

#### Discussion

- 7.6 We have, naturally, given careful consideration to Transport for London's concerns. We are nevertheless not persuaded that London's status as the national capital city and an international tourist destination requires higher local standards for private hire vehicles than are appropriately set in national standards for the country as a whole. There should be no question of national standards falling short of what is

<sup>1</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 26.

required for safety or failing to stipulate an acceptable minimum level of quality. Beyond that, we consider that private hire providers should be free to decide on the levels of quality and price at which they choose to operate, subject to the usual discipline of market forces.

- 7.7 As all lawful private hire journeys are necessarily pre-booked, customers have an opportunity to compare prices and, to some extent, quality offerings (if so minded, they can enquire about the models of vehicle a provider uses, for example). Whilst we accept that the ability to make an informed choice is not perfect, we do not consider that the solution lies in additional layers of regulation that could only tend to make private hire journeys more expensive for less well off residents of the capital, who may depend on affordable private hire services in circumstances where other forms of public transport are not practicable. The same goes for any other locality.

**Recommendation 40**

**Private hire services should only be subject to national standards. Licensing authorities should no longer have the power to impose local conditions.**

**OPERATOR/DISPATCHER STANDARDS**

- 7.8 Operators (“dispatchers” under our proposed system)<sup>2</sup> are responsible for keeping records of journeys and keeping a degree of control over their fleet. This is important for safety and assists in other aspects of enforcement. It not only permits licensing authorities to monitor compliance with the pre-booking requirement; current operator conditions require licence holders to ensure that the vehicles they dispatch are licensed and insured and that they carry the appropriate signage or identifiers.
- 7.9 Currently, operators can only be granted a licence if they are “fit and proper persons”.<sup>3</sup> They can also be made subject to such conditions as the licensing authority deems “reasonably necessary”.<sup>4</sup> We asked consultees whether operators should remain subject to “fit and proper person” tests.<sup>5</sup>

**Consultation**

- 7.10 The retention of “fit and proper” standards for operators was very popular. Consultees who supported this tended to emphasise that operators have important responsibilities in two main areas: in managing customers’ personal data and in ensuring that they provide a safe fleet of fully licensed drivers and vehicles. James Button, an academic and solicitor specialising in taxi and private hire regulation, expressed the former point as follows:

<sup>2</sup> We discuss the differences between the range of activities currently covered by operator licensing and those of “dispatchers” in our draft Taxis and Private Hire Vehicles Bill, in Chapter 3, from para 3.134.

<sup>3</sup> Local Government (Miscellaneous Provisions) Act 1976, s 55(1); Private Hire Vehicles (London) Act 1998, s 3(3)(a).

<sup>4</sup> Local Government (Miscellaneous Provisions) Act 1976, s 55; Private Hire Vehicles (London) Act 1998, s 3(3).

<sup>5</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 51.

The nature of their work gives them access to personal information including knowledge of customers' holidays/absences etc. All staff working for a licensed operator should also be vetted for the same reasons.

7.11 The London Taxi Company stressed the influence operators have over their drivers:

They will be the guardians of standards for their trade and it would not be productive if they did not need to meet this standard. Operators have considerable influence over their drivers and, as we have seen recently in London, can encourage their drivers to operate in an illegal manner.

7.12 Stakeholders told us that a major concern related to persons whose operator licence had previously been revoked for non-compliance with conditions. Many such persons continued to run private hire operator businesses, simply by having a family member re-apply for the licence and featuring as the (nominal) holder of the operator licence. This is clearly a serious problem and highly undesirable.

### **Discussion**

7.13 Operators (or dispatchers, under our new system) play a key role in respect of private hire licensing. The justifications for imposing fit and proper person criteria on operators are not as strong as in respect of drivers and vehicles as the latter are directly involved in providing the transport services. However, we appreciate the important and legitimate concerns that stakeholders raised about access to the industry.

7.14 We would expect that suitability criteria imposed by the Secretary of State would be closely tailored to the ability to carry on an effective dispatcher business, including having appropriate premises and record-keeping facilities, for example.

7.15 We suggest that the problem of people whose operator/dispatcher licence has been revoked continuing to run such businesses under a licence issued in the name of another might appropriately be addressed by a national standard prohibiting the involvement in a dispatcher business of a former holder of an operator's or dispatcher's licence that was revoked on grounds of non-compliance with conditions. We recognise that these situations present enforcement difficulties, as licensing officers may not be aware that such a person has anything to do with a business, but where licensing authorities are able to discover this, there should be clear sanctions available to them.

### **Recommendation 41**

**We recommend that dispatchers should continue to be subject to fit and proper person requirements as part of national standards.**

### **RECORD- KEEPING**

7.16 Record-keeping is vital to enforcement. First, records of bookings and of the driver dispatched are important to monitoring compliance with the pre-booking requirement that characterises a lawful private hire journey. Secondly, in the event of a

passenger complaint, properly kept records ought to enable the dispatcher to identify the driver and vehicle that performed the journey complained about, facilitating investigation of the complaint and the taking of any necessary disciplinary action. Records are also often passed to the police to assist in their enquiries.

7.17 Under current law operators are subject to record-keeping obligations specified in primary legislation;<sup>6</sup> however, the content and form of such records is prescribed by the licensing authorities.<sup>7</sup> The draft Bill empowers the Secretary of State to specify in Regulations the information that must be recorded and the form of the record.<sup>8</sup> The information about booking which can be required under Regulations includes, amongst other things:

- (1) the identity of the hirer, the person who made the booking or a person liable to pay the fare;
- (2) the identity of the passenger;
- (3) the identity of the driver;
- (4) the place at which the journey is to start and/or end;
- (5) any applicable booking fee (however described);
- (6) the agreed price for the hiring (if any);
- (7) the method of determining the fare (if no fare is agreed before the start of the journey); and
- (8) an estimate of the fare made in good faith (if no fare is agreed before the start of the journey).<sup>9</sup>

7.18 Under our reforms, record-keeping requirements would apply to dispatchers before the beginning of any journey falling within the scope of regulation.

7.19 The information which may be required by Regulations reflects the Department for Transport's Best Practice Guidance in setting national standards for record-keeping requirements for dispatchers. The guidance states that operator records should include the name of the passenger, the destination, details of the driver and vehicle and any fare quoted.<sup>10</sup> The period for which records should be held for should also

<sup>6</sup> Local Government (Miscellaneous Provisions) Act 1976, s 56(2); in London, Private Hire Vehicles (London) Act 1998, s 4(3)(c).

<sup>7</sup> This can be by means of local licensing conditions or in London, under regulations such as the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146.

<sup>8</sup> Draft Taxis and Private Hire Vehicles Bill, clause 38(3).

<sup>9</sup> For the complete, non-exhaustive list, see Draft Taxis and Private Hire Vehicles Bill, clause 38(2).

<sup>10</sup> Department for Transport Taxi and Private Hire Vehicle Licensing: Best Practice Guidance March 2010, para 32.

be specified in the Regulations.<sup>11</sup>

- 7.20 The power to set national standards is also flexible enough to allow the Secretary of State to provide for different record-keeping requirements in respect of different categories of service provision, such as contracts for regular repeat journeys. The use of national standards also allows the flexibility to “future-proof” the provisions, permitting their adaptation, for example, to advances in information technology.

**Recommendation 42**

**We recommend that dispatchers should be subject to a statutory duty to maintain records in such form as may be prescribed by the Secretary of State.**

**REMOVING LOCAL TOPOGRAPHICAL KNOWLEDGE REQUIREMENTS IN RESPECT OF PRIVATE HIRE DRIVERS**

- 7.21 An important consequence of moving away from local standard-setting for private hire services is that private hire drivers would no longer be subject to locally imposed topographical knowledge tests. We asked consultees for views on this proposal.<sup>12</sup> We gave four main reasons for this proposed approach. First, private hire journeys are, by definition, pre-planned.<sup>13</sup> Second, whilst having a driver who knows the best route is desirable, it did not appear to us specifically to promote safety. Thirdly, private hire drivers already have the ability to work across wide geographical areas, which would be increased under our proposals, as they would no longer be restricted to accepting work from operators or dispatchers licensed in the same area. Fourthly, satellite navigation technology is widely if not universally used. Local topographical knowledge tests for private hire drivers struck us as an unnecessary regulatory requirement, and we saw no need for licensing authorities to require them.

**Consultation**

- 7.22 This provisional proposal was very unpopular with both regulators and the taxi trade. Conversely it was generally supported by the private hire trade. Although we had phrased the question so that it did not just refer to knowledge tests, in practice this was what most consultees discussed.
- 7.23 Some consultees considered that knowledge tests should be regarded as a safety feature. They suggested that a driver who gets lost may be distracted by trying to find the right way and risk having an accident. In addition, a passenger may feel threatened if driven through an unfamiliar area for no apparent reason. During consultation we heard a number of stories like this both from passengers and licensing officers. In these situations the passenger might, moreover, be over-charged. Cheltenham Borough Council said that:

<sup>11</sup> The necessary power is conferred by the draft Taxis and Private Hire Vehicles Bill, clause 42.

<sup>12</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 27.

<sup>13</sup> Our recommendations have reinforced this aspect through a more stringent requirements as to private hire “pre-booking”: See Chapter 3, from para 3.36.

A knowledge test is essential to ensure public safety and confidence in the licensing regime. Despite the use of technology today, we consider the need for local knowledge to be vital nonetheless. We have numerous examples and complaints where technology has not worked, failed, drivers distracted by them and been misguided which renders the driver unable to find the desired location.

- 7.24 Some private hire users were concerned that they would be particularly vulnerable if they found themselves in a vehicle with a driver who did not know where he or she was going. For example, Better Days (a group for adults with learning disabilities based in Newcastle upon Tyne) told us that:

We are very worried about this. Already some of the taxi drivers who we have do not know where they are going. They can get lost or take you to the wrong place. This is very frightening for us... It can be dangerous if we are dropped off at the wrong place and left. We could be assaulted or get lost or have an accident.

- 7.25 In addition, many consultees were sceptical of the argument that the market would eliminate incompetent operators in the long-run, because of the significant volume of “one-off” journeys by transient customers. This was a particular concern in tourist destinations where passengers might rarely book the vehicle themselves, but instead rely on a hotel, restaurant or other agent to arrange their travel. Blackpool Council, for example, took the view that even one bad experience by a customer was not acceptable, and that requiring knowledge tests was the best way to protect customers.
- 7.26 A not insignificant minority of consultees agreed with the proposal, however. Many accepted our view that the market would regulate quality. For example, Chichester District Council said that “the need for a mandatory standard is less in the case of private hire as market forces are very likely to ‘drive up’ and maintain standards.”
- 7.27 Many consultees who agreed with the proposal felt that topographical knowledge tests for private hire drivers were no longer useful given that there is sophisticated navigation technology available. A number of consultees, such as NALEO or the private hire firm Entirely Airports, also noted that many journeys take the driver further afield than the bounds of the licensing district.
- 7.28 The United Cabbies Group made a similar point, pointing out that “this would be difficult to expect a PHV driver to hold a topographical knowledge of the different areas they may work in.”

### **Discussion**

- 7.29 There are a number of reasons why topographical knowledge tests are much less important for private hire drivers than for taxi drivers. Taxi drivers are bound closely to a specific locality and, due to the requirement of compellability,<sup>14</sup> must be ready to take the passenger immediately to his or her chosen destination. Private hire drivers, on the other hand, must receive the booking from a licensed

<sup>14</sup> See Chapter 3, from para 3.76.

operator in advance of the journey. The fact that the journey is planned in advance, and with the support of the operator, takes the emphasis away from the knowledge of the driver. Moreover, we suggest that national driver standards could include training of drivers in navigational and map-reading skills.

- 7.30 In addition, we have recommended that private hire operators should be required to give customers price information in advance of the journey, similar to the current position in London.<sup>15</sup> This creates an incentive to investigate the route before embarking on the journey. Operators also have a financial interest in ensuring that their drivers have good knowledge of the area and navigational skills, to avoid dissatisfied customers and a consequent loss of business and reputation. We are aware that it is already common practice for operators to provide their own navigation and customer-handling training for drivers, illustrating how market forces can drive standards.
- 7.31 Third, as was pointed out by a number of consultees, private hire vehicles are not restricted to working within their licensing district, and cross-border working is likely to become more frequent under our recommendations. Local topographical knowledge tests are of little practical benefit in such a context.
- 7.32 We appreciate the concerns of some consultees that customers who make a one-off journey with a firm booked for them by someone else may lack control over the firm chosen and the car and driver sent. This might even sometimes be the case for customers who book for themselves, for example in an area where only one or two firms operate. We also appreciate the concerns of disabled users. However, so long as the customer is kept safe, concerns as to quality, though important, are less pressing. There is good reason to regulate the former but regulatory intervention in relation to the latter calls for justification. Customers have the option of complaining to the private hire dispatcher or the licensing authority. Furthermore, where operators are selected by restaurants or hotels on behalf of their customers, such intermediaries have an interest in providing a high quality transport service for patrons, so market forces operate at that level.
- 7.33 We suggest that topographical knowledge tests are not the most suitable way of addressing unsafe practices by private hire drivers. Drivers who are given the opportunity to plan the journey, and have received training in navigation skills and disability awareness should be able to provide a service which meets the needs of disabled passengers. We discuss our proposed measures to promote equality for disabled users in Chapter 12 below.
- 7.34 We have considered very carefully the views of consultees who see topographical knowledge tests as an aspect of safety. They maintain that drivers who do not know where they are going might put passengers at risk, for example by becoming distracted by navigational equipment while driving, or by driving the passenger into an unsafe area. However, driving in an unfamiliar area is already often required of private hire drivers, as they may frequently undertake journeys which take them beyond their own licensing area. A topographical knowledge test covering that area would not prevent them from getting lost elsewhere.
- 7.35 We appreciate that some very strong concerns have been raised about

<sup>15</sup> See Recommendation 6.



this provisional proposal. However, while this will be a matter for the Secretary of State under our draft Bill, we see no sufficient justification for requiring local topographical knowledge tests for private hire drivers.

### **PRIVATE HIRE VEHICLE SIGNAGE**

- 7.36 Though our consultation paper suggested that most standards for private hire services should either be part of national safety standards or left to the market, we asked whether vehicle signage or other aspects of standard-setting might need to be set at a local level.<sup>16</sup>
- 7.37 Two views can be distinguished in this area: firstly, that signage is an important safety feature as it demonstrates the licensed status of a vehicle, and secondly, that signage is potentially dangerous as it can be used to attract customers to vehicles which are in fact unlicensed. As an example, the “pre-booked only” identifiers issued for private hire vehicles by Transport for London have been criticised on the grounds that they are easily counterfeited and are used to entice users into unlicensed vehicles.

### **Consultation**

- 7.38 Most consultees considered that local standard-setting should be retained in respect of private hire vehicle signage. Among those consultees, Gateshead Council said that there should be a possibility for local standards to be imposed, for example where there is a vehicle colour policy for taxis or private hire vehicles
- 7.39 On the other hand, a significant minority of consultees argued strongly that signage for private hire vehicles should be a matter of national policy. Many argued that appropriate national standards would increase public awareness of the differences between taxis and private hire vehicles, which would avoid confusion and promote safety. For example, the London Private Hire Car Association said that:

Many of the problems for the travelling public are caused by hundreds of differing signage regimes. Local Authorities have failed to be consistent and confusion reigns.... [S]ome form of number plate based signage and screen disc system (linked to a national database for enforcement) would be good for private hire, enforcement and the travelling public.

- 7.40 We were shown examples of standardised signage designed to be both obvious and subtle, universal and regional: for example, the London Private Hire Car Association demonstrated a specimen licensing plate which would simply carry the letter “T” or “P” to indicate that the vehicle was a for-hire vehicle.
- 7.41 Reading Borough Council felt that avoiding public confusion would be particularly important in the context of our recommended relaxation of the rules on cross-border private hire work. The Disabled Persons Transport Advisory Committee felt that clear identification for private hire vehicles would be very useful for disabled users, in particular those with learning difficulties.

<sup>16</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 28.

7.42 Several consultees maintained that local authorities currently impose onerous demands in respect of signage, which do not improve the quality or safety of services but impose a financial burden on drivers.

7.43 Consultees differed as to the content of any national signage standards. Some thought that private hire vehicles should carry conspicuous and obvious signage to warn passengers that such vehicles had to be pre-booked. NALEO told us that:

We believe that the signage standard formats nationally should be set by statutory instruments, including name of authority, "private hire only" or "pre-booked" as determined by consultation [and] operator name and telephone number. This produces clarity for customers nationwide whilst allowing firms to effectively advertise their business.

7.44 On the other hand, The London Taxi Company argued that private hire vehicles should not be able to carry any overt signage at all, on the basis that they are more likely to tout and be hailed illegally.

7.45 Others suggested that, depending on the nature of their work, there should be a scale of signage requirements, with some private hire vehicles (for example, luxury vehicles) being allowed minimal signage and some required to have more.

7.46 Other consultees supported a mixture of national and local standards. For example, the Institute of Licensing suggested that local authorities be allowed discretion, for example to exempt "executive" vehicles from requirements to display external plates or to add their crest to the plate. Likewise, the Welsh Local Authorities favoured the idea of a national standard with the ability for licensing authorities to add their own branding.

7.47 Some consultees also mentioned advertising – many, including the Welsh Local Authorities, felt that this should remain a local issue. However, some members of the trades complained about inconsistencies between the policies of different (sometimes neighbouring) local authorities on this.<sup>17</sup>

### **Discussion**

7.48 We believe it is important that passengers are able to distinguish easily between a taxi and a private hire vehicle no matter where they are in the country, to avoid the risk that they will take a private hire vehicle without a pre-booking. We believe that signage is an element of safety and enforcement, so that setting standards in relation to it naturally falls within the powers of the Secretary of State. A number of consultees, such as the trade union RMT, emphasised the importance of taxis and private hire vehicles being distinguishable from one another. This is essential to the two-tier system. The importance of signage in distinguishing taxis from private hire vehicles applies across England and Wales; potential requirements, such as banning roof signs on private hire vehicles to avoid them being mistaken for taxis, would work most effectively if they had nationwide application.

7.49 We appreciate the argument made by some consultees that, if taxi signage can (as

we propose) be determined at a local level, local standards might not be coherent with the national private hire signage standards – for example, one area’s taxis might end up resembling private hire vehicles too closely. We would expect licensing authorities to devise their local taxi standards with a view to avoiding this, and consider that any risk of it could be mitigated through national standards. For example, these could require taxis to have a roof light, or ban private hire vehicles from having a roof light; or indeed both.

- 7.50 There was no clear consensus about the best approach to vehicle signage, even within licensing areas (most notably, London). However some areas of agreement were found. For example, vehicle signage requirements could usefully cover the appearance of licence plates, and could prescribe identifiers following the Transport for London model. We think that a useful approach could be a template, as suggested by Welsh local authorities, with licensing authorities able to add their name and/or crest or other identifying symbol. Within this model it would also be possible for standards to take into account the calls by operators of executive and chauffeur services for more discreet or even no visible signage or licence plates. Our proposed model would allow for different requirements to be set nationally for different categories of vehicle or service, allowing, for example, luxury chauffeur-driven vehicles to carry minimal, discreet or even no visible signage.
- 7.51 Finally, we envisage that national standards could incorporate rules on advertising – for example, a requirement that any advertisement for private hire services should make it clear that a pre-booking is necessary.

**Recommendation 43**

**Signage requirements for private hire vehicles should form part of the national standards determined by the Secretary of State. The Secretary of State should impose requirements that aim to ensure that the public are able to distinguish easily between taxis and private hire vehicles.**

**CROSS BORDER WORKING FOR PRIVATE HIRE SERVICES**

- 7.52 Under current law, a licensed private hire driver can already undertake journeys starting or ending anywhere in England and Wales.<sup>17</sup> Operators are also allowed to accept jobs where the pick up and drop off are both outside the operator’s licensing

<sup>17</sup> We discuss advertising in more detail in Chapter 3, from para 3.24, Recommendation 5.

<sup>18</sup> See also *Adur District Council v Fry* [1997] RTR 257 by Lord Justice Leggatt at p 262; and Local Government (Miscellaneous Provisions) Act 1976, s 75(2). Reciprocal provisions provide that vehicles licensed under the Local Government (Miscellaneous Provisions) Act 1976 and the Private Hire Vehicles (London) Act 1998 can work cross-border. See: Local Government (Miscellaneous Provisions) Act 1976, s 75(2B) which allows drivers and vehicles licensed in London to pick up and drop off anywhere in England and Wales; and Private Hire Vehicles (London) Act 1998, s 6(6)(b), which allows vehicles licensed under the 1976 Act to work in London. The 1998 Act goes further and also clarifies that if a vehicle and driver are only passing through Greater London they are of no concern to London’s licensing regime. See Private Hire Vehicles (London) Act 1998, ss 6(7) and 12(7) exempting journeys beginning outside London and in areas not subject to the 1976 Act (which was originally adoptive) from the requirement for a London private hire vehicle driver and vehicle licences.

district.<sup>19</sup> However, current law is very restrictive in respect of how such cross-border jobs can be undertaken, in that operators are only allowed to work with drivers and vehicles licensed in the same licensing area.

- 7.53 It is important to recognise that the cross-border issue is different as between taxis and private hire vehicles: in the case of taxis, the licensing area determines where they can ply for hire, whilst private hire vehicles can pursue their trade (always limited to pre-booked journeys) without any geographical restriction.<sup>20</sup> Any change to the law on how cross-border services may be booked does not therefore change the fundamental feature that operators are, and will continue to be, allowed to offer their services to customers being picked up and dropped off outside the operator's licensing area.
- 7.54 Our reforms have the more limited role of removing certain barriers to the way such cross-border work (which is already lawful) can be undertaken. We next discuss how our proposed reforms impact on the current triple licensing requirement.

### **THE TRIPLE LICENSING REQUIREMENT**

- 7.55 Under current law it is a requirement of private hire regulation that the driver, vehicle and operator be licensed by the same authority.<sup>21</sup> The same requirement applies in London.<sup>22</sup> It is generally referred to as the "triple licensing" requirement.
- 7.56 In our consultation paper we proposed moving away from the current system of "triple licensing". This was closely linked with our recommendations relating to national standards, as the private hire industry would, under our proposed regime, be subject to a single set of national rules. We therefore favoured moving to a system where private hire drivers, vehicles and operators could work anywhere in the country regardless of where their licences were issued.<sup>23</sup>

### **Consultation**

- 7.57 This proposal received mixed responses, with a majority disagreeing. The disagreement came primarily from taxi drivers; those in the private hire trade were generally in favour and regulators were quite evenly split.
- 7.58 Cross-border issues in general proved very controversial. Taxi drivers in particular were afraid of the creation of a "free for all", with drivers who had not had to meet such high standards as taxi drivers coming into "their" areas. Unite the Union also

<sup>19</sup> *Adur v Fry* [1997] RTR 257. This is the case provided that the requirement that all three licenses be granted by the same authority is fulfilled. Here the operator was licensed in Hove and used drivers and vehicles also licensed in Hove, thus it did not matter that the relevant journey took place entirely in the Adur area.

<sup>20</sup> We discuss taxis working out-of-area in Chapter 3, from para 3.44.

<sup>21</sup> See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356. This follows from the definition of a "licence" under the Local Government (Miscellaneous Provisions) Act 1976, which ties it to the controlled district where it was issued (under s 80(2) of the 1976 Act) combined with the requirement that operators only work with such "licensed" vehicles and drivers (under section 46(1)(e) of the 1976 Act).

<sup>22</sup> Private Hire Vehicles (London) Act 1998, s 4 requires London operators to use London-licensed drivers and vehicles.

<sup>23</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 41.

expressed concerns about the maintenance of standards; however, the concerns they raised relating to standards presupposed that licensing authorities would still have the ability to set private hire licensing standards, contrary to our recommendation above.<sup>24</sup>

7.59 Concerns were also expressed over how relaxation of cross-border hiring would interact with the removal of quantity restrictions. Our revised recommendation, permitting the continuance of quantity controls, removes those concerns.

7.60 The Private Hire Board welcomed greater mobility for drivers, going along with greater competition and cost savings to the public.

7.61 The London-based private hire provider Addison Lee told us that:

Cross border pick-up is one area where the need for reform is irresistible. We believe that the current system is inefficient and keeps willing providers out of the market unnecessarily. Regardless of how far away it is from its sponsoring licensing authority, if a car can pick up a pre-booking in an area that it has just dropped off a passenger, it makes economic and environmental sense for them to do so.

7.62 Licensing authorities worried about the potential complexities in enforcement where three different licensing authorities might be involved in a single journey. The National Association of Licensing Enforcement Officers emphasised the high cost of policing the system and suggested an alternative requirement to have “driver-vehicle teams” that would be licensed by the same authority. This would have the advantage of reducing the number of authorities that might be involved in any particular incident. However we can also think of reasons why “operator-vehicle” teams may sometimes be a better combination; for example, in delivering a brand, for larger operators working across different authorities.

7.63 Transport for London was worried that the possibility for drivers to work for operators that are not licensed in London would result in growing numbers of providers entering London, with consequent enforcement issues, in particular the inability of enforcement officers to visit the operator and establish whether the driver does have a pre-booking. They suggested that it would be better to concentrate on strengthening the link between operators, drivers and vehicles in order to discourage drivers from acting independently.

7.64 Concerns about funding were also widespread. Unite the Union noted:

The inherent unfairness of cross border hiring, in that the taxi and private hire drivers (and the other licence payers) from authority “A” are funding the licensing section. Whereas the taxi and private drivers from authority “B” are predominately working in authority “A” and effectively using the facilities without paying the subscription fees.

7.65 As an illustration of this issue, Unite noted that a major private hire operator was

<sup>24</sup> Recommendation 40 above.

licensed in Sefton, as were its drivers and vehicles, whilst significant numbers of the drivers and vehicles work in Liverpool; this resulted in depriving Liverpool City Council of income from licensing fees which could fund enforcement against these drivers and vehicles.

### **Discussion**

- 7.66 Stakeholders pointed to the difficulties in ensuring that standards are maintained where more than one licensing authority might be involved in a journey. However we note that, under the reformed system, all private hire drivers and vehicles would be held to the same standards. We suggest clear protocols in respect of cross-border enforcement and information sharing.<sup>25</sup> We accept that a new funding system may have to be introduced, with private hire licensing fees set nationally and provision for redistributing them according to enforcement need.<sup>26</sup>
- 7.67 Stakeholders raised arguments highlighting the importance of knowledge of the local trade in order to provide adequate enforcement. We agree with Transport for London's suggestion that the link between the vehicle, operator and driver should be strengthened, and we have recommended that national standards should require drivers and vehicle owners to keep records of the vehicles and dispatchers they use or have available to them.<sup>27</sup> This is in addition to the record-keeping requirements of dispatchers set out above.<sup>28</sup> However, even under current law, out of town drivers can work in London provided they are pre-booked through an operator who is also based outside London. The triple licensing requirement cannot guarantee that drivers and vehicles picking up and dropping off passengers in London are working for London-licensed operators.
- 7.68 We accept that the current triple licensing requirement facilitates enforcement. It can provide licensing officers with a better knowledge of the private hire drivers and vehicles working in their area. However, this has a cost, restricting competition and hampering operators by artificially restricting the pool of drivers and vehicles they may work with.

#### **Recommendation 44**

**We recommend that operator/dispatchers should no longer be restricted to working only with drivers and vehicles whose licences are issued by the same licensing authority as the dispatcher.**

### **SUB-CONTRACTING PRIVATE HIRE DISPATCH SERVICES**

- 7.69 There are many circumstances in which an operator may be unable to fulfil a customer's booking. For example, they may have no availability at the time at which the customer makes a booking, or no vehicle available in the area. Additionally, if

<sup>25</sup> See Chapter 10, from para 10.33.

<sup>26</sup> Local authorities would retain discretion over taxi licensing fees, as standard-setting for taxis would remain in part a local function. See draft Taxis and Private Hire Vehicles Bill, clause 25(2).

<sup>27</sup> See Chapter 5, from para 5.76.

<sup>28</sup> Draft Taxis and Private Hire Vehicles Bill, clause 41.

the dispatched vehicle breaks down on the way to the customer, the operator may wish to sub-contract the booking to another licensed operator. In each of the above examples sub-contracting is beneficial to the customer, who still gets a car; to the first operator, who retains the customer's goodwill and perhaps some commission for arranging the transaction; and to the operator who fulfils the booking.

- 7.70 Currently, operators in England and Wales can only subcontract within their own licensing district, with the exception of operators licensed in London, who can subcontract anywhere.<sup>29</sup> We suggested in consultation that the London system should be extended throughout England and Wales.<sup>30</sup> We also suggested there should be no prohibition on an operator/dispatcher passing on a booking to another licensed dispatcher. In such cases the original operator/dispatcher should remain liable to the passenger for the fulfilment of the booking, in addition to any liability which the sub-contractor may incur directly to the passenger.

### **Consultation**

- 7.71 Consultees were fairly evenly divided on this issue. Those who agreed with the proposal felt that sub-contracting was a sensible way of facilitating co-operation between firms and providing the most convenient, efficient service to the customer.
- 7.72 Transport for London noted that sub-contracting in London had been beneficial, as:

It allows operators to work in partnership with companies in other authorities as well as meeting unexpected eventualities. Extending the ability to sub-contract could be an opportunity to address some of the cross border hiring issues affecting licensing authorities elsewhere in England and Wales.

- 7.73 Liverpool City Council was concerned about adequate records being made. It disagreed with the proposal, but added that:

If the Law Commission chooses to pursue this proposal it is essential in the authority's view that the original operator is placed under an express legal duty to (1) obtain the hirer's consent to the sub-contract and (2) continue to be accountable for the booking and have robust measures in place to ensure clarity of record keeping so that the authority is easily able to scrutinise a sub-contracted booking at the original operator's office.

- 7.74 Wayne Casey of the Carlisle Taxi Owners Association highlighted the potential for fraud and the danger to the public of a process he referred to as "sub sub-contracting" whereby a contractor tenders for work, then sub contracts it to another party who in turn sub-contracts it to another party at a fraction of the original price.

<sup>29</sup> For the prohibition on sub-contracting outside the licensing area see *Dittah v Birmingham City Council* [1993] RTR 356; for the position in London see Private Hire Vehicles (London) Act 1998, s 5(1).

<sup>30</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 52.

## Discussion

- 7.75 We have noted that sub-contracting is already allowed in London. Even in the rest of England and Wales, outside London, the policy of the current law is not to prohibit subcontracting within the same licensing area. The current restriction is related to the fact that different standards can apply to private hire licensees from different licensing areas, with no common national standards. Current law also does not provide adequate cross-border enforcement powers. Our reforms address these concerns, such that the same rules would apply and bind private hire service providers regardless of which licensing area issued their licence.
- 7.76 More fundamentally, our suggested changes to the definition of operators, such that it would only cover dispatch functions rather than the mere acceptance of bookings, resolves the issue of out of area sub-contracting. Our new definition of dispatcher only applies to the person who instructs or requests a driver to use a vehicle to fulfil a hire vehicle booking.<sup>31</sup> By contrast, someone merely accepting a booking, and passing it on to a dispatcher (and thus having no dealing with a driver) will be performing an unregulated activity of accepting taking a booking. We consider this result to be desirable.
- 7.77 This has the result of requiring only the end dispatcher to hold a record of the booking.<sup>32</sup> This is a sensible outcome, as it is only this dispatcher who will have some of the information which we suggest might be required; for example, details of the driver and vehicle dispatched. However, in order to ensure that the end dispatcher can be identified, we have proposed the creation of a duty of any person accepting a hire vehicle booking to inform the hirer, in response to a request made within three months of the journey, of the identity of any person on to whom the booking was passed.<sup>33</sup>
- 7.78 Some private hire operators highlighted the absurdities which can follow from the prohibition: an operator who is unable to fulfil a booking request cannot pass it to a nearby operator with capacity simply because that operator is based in a different licensing area. Our reforms would no longer hinder this, resulting in a more efficient outcome for passengers.
- 7.79 We noted that the Deregulation Bill includes certain isolated measures relating to taxi and private hire. These include an amendment which would expressly allow sub-contracting within the current legal framework, removing the current restriction which prevents sub-contracting other than to an operator licensed in the same district.<sup>34</sup>

### **Recommendation 45**

**Dispatchers should have the ability to sub-contract bookings to any dispatcher in England and Wales.**

<sup>31</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 1(6) and 9.

<sup>32</sup> Draft Taxis and Private Hire Vehicles Bill, clause 40.

<sup>33</sup> Draft Taxis and Private Hire Vehicles Bill, clause 43, and recommendation 19.

<sup>34</sup> See Deregulation Bill 2013-14, clause 10, introduced on 13 March 2014. The Bill is at the Committee stage at the time of writing. See <http://services.parliament.uk/bills/2013-14/deregulation.html> (last visited 19 May 2014).



# CHAPTER 8

## LOCAL TAXI STANDARDS

### INTRODUCTION – LOCAL TAXI STANDARDS

- 8.1 Under current law, taxi driver and vehicle licence conditions are set at local level. This means that matters such as the accessibility of a vehicle, its colour and any age limits are determined by the relevant licensing authority. For drivers, matters such as acceptable levels of medical fitness, disqualifying criminal records and topographical knowledge requirements are likewise set locally.
- 8.2 In respect of private hire services, we have suggested that local standard-setting is not appropriate, given the competitive and de-localised nature of the services provided. We are therefore recommending that only national standards should apply to private hire services.<sup>1</sup> By contrast, the strongly local nature of taxi service provision, anchored to licensing areas through ranking and hailing privileges, supports a local approach to standard setting. We are therefore recommending that local standards should continue to apply on top of core national standards.
- 8.3 In our consultation paper, we provisionally proposed that licensing authorities should continue to have the ability to impose local conditions on taxis, whether relating to safety or otherwise, over and above what we referred to as “minimum” national standards.<sup>2</sup> This was in contrast to our proposal in respect of private hire vehicles,<sup>3</sup> which was for a single set of what we referred to as “mandatory” standards, set nationally.

### Consultation

- 8.4 The proposal that taxis should be covered both by national standards and local conditions found favour with a majority of consultees, although a significant number disagreed. However, it is important to note that many respondents were misled by the language of “minimum” and “mandatory”, understanding “minimum” to mean that the standards would be low, and “mandatory” to mean that the standards would have to be complied with, suggesting that minimum standards would not be obligatory. What we intended to convey by referring to “minimum” standards was that the national standards for taxis could be supplemented by the addition of further standards at a local level. In describing the national standards for private hire vehicles as “mandatory”, we meant that they could not be added to at local level.

<sup>1</sup> See Chapter 7 above.

<sup>2</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 34.

<sup>3</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 26; discussed in Chapter 6 above.

- 8.5 We appreciate that it is a matter of legitimate concern that national standards should not be set too low. During consultation we discussed at length with stakeholders the possible content of these standards. As we initially proposed that standards should relate only to safety, much of this concerned the key question of what is, and what is not, a safety feature.
- 8.6 Those who agreed with minimum national standards for taxis regarded them as a sensible measure, allowing local authorities to respond to specific local issues.
- 8.7 Nottinghamshire County Council considered that local standards would “enhance” national standards by tailoring them to local circumstances, allowing for local variations on issues such as “vehicle specifications/designs and colours and signage.”
- 8.8 Licensing authorities were very much in favour of their having a discretion to impose local conditions on taxis. Many of them were keen to ensure that standards did not fall below the level they currently imposed on taxis. Other licensing authorities, however, felt that if national standards were to be introduced it would be best not to allow any local variation. Birmingham City Council took this view. Sandwell Metropolitan Borough Council was of the opinion that it should retain the power to set fares and to require all vehicles to be wheelchair accessible, but no more.
- 8.9 Others tended to feel that standards should be consistent, and that additional local standards would be unnecessary or unduly onerous. For example, Wellingborough Borough Council said that national standards would provide a “level playing field” for the trade, which would “represent the standard we want our vehicles to meet”. However, it took the view that local conditions should be allowed if there was “an evidenced need for them”. Other consultees were more adamant that local standards should not be allowed. West Berkshire Hackney and Private Hire Association said that “it seems, and indeed is, wrong that different areas have different safety standards.”
- 8.10 Some respondents were concerned that local authorities would use their powers in an arbitrary way. Those in the taxi industry were concerned that licensing authorities would retain the power to impose vehicle age policies and colour conditions, two of the standards most widely complained about. Peter Brown, a taxi driver from Morecambe, said:
- If you can guarantee a totally neutral licensing authority then fine, but in my 31 years driving this has not always been the case.
- 8.11 A number of stakeholders commented that licensing authorities would be enabled to continue what were perceived to be restrictive practices in relation to the types of vehicle which they will licence. Particular examples were given of London, with its stringent Conditions of Fitness and emphasis on the turning circle, and cities such as Coventry and Manchester, which have adopted the London Conditions of Fitness or conditions similar to these.

## Discussion

- 8.12 This provisional proposal, which would involve minimal change to the current position in respect of taxis, attracted much support and forms a key plank of our suggested regulatory framework. We recommend that those local licensing authorities that wish to should be able to supplement our proposed national standards with additional standards set locally. We envisage that the most important standards, such as those relevant to passenger safety, will be set by the Secretary of State, and that local standards will not necessarily be very extensive, though we do not see a need for any statutory circumscription of local authorities' powers in this area for the reasons given in the next section of this chapter. Local standards could be used, for example, by those licensing authorities that wish to prescribe vehicle colours.

### **Recommendation 46**

**We recommend that licensing authorities should retain the power to set local taxi standards over and above national standards.**

- 8.13 This recommendation is given effect by clause 19(2) of our draft Bill.

## **LIMITS ON LICENSING AUTHORITY POWERS?**

- 8.14 From the outset of the project, stakeholders in both the taxi and private hire trades expressed concerns about the ability of licensing authorities to impose what were sometimes perceived to be arbitrary or unnecessary conditions. Moreover, the terms of reference for our project require us to consider removal of unnecessary burdens on business as an important overall objective of reform.<sup>4</sup>
- 8.15 We asked consultation respondents whether there would be benefits to placing statutory limits on licensing authorities' discretion to set taxi conditions.<sup>5</sup> We noted that in Scotland, Ministers have the power to prohibit certain conditions.<sup>6</sup>

## **Consultation**

- 8.16 Although some consultees were strongly in favour of limits, arguing for example that local standards were costly to comply with (the United Cabbies Group) and that limits upon them would aid consistency (Delta Taxis), a majority of respondents disagreed with the idea of statutory limits. They felt that local authorities were best placed to assess local conditions. The London Taxi Network added that such a provision "may restrict a local authority's ability to react to changes in marketplace, population or other requirements in future." Most of the respondents who supported limits were from the taxi industry. Regulators were more evenly divided.

<sup>4</sup> See also Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, para 1.7.

<sup>5</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 35.

<sup>6</sup> Civic Government (Scotland) Act 1982, s 20; Licensing and Regulation of Taxis and Private Hire Cars and their Drivers (Prohibited and Required Conditions) (Scotland) Regulations 1986, SI 1986 No 1238.

## **Discussion**

- 8.17 Rather than placing a restriction on licensing authorities' powers, we recommend that the current duty to consult before new local taxi standards are introduced should be retained. It can be a powerful safeguard. We suggest, however, discarding outmoded publication requirements and replacing them with a more modern approach ensuring appropriate engagement with the trades and the public.
- 8.18 We have decided not to recommend limiting the powers of licensing authorities to set local conditions for taxis. The main concern with imposing limits is finding the right balance between allowing local discretion to regulators, whilst protecting the trade from what may be costly conditions. We believe that this balance can be reached without limiting the powers of licensing authorities and by relying on the current consultation requirements which apply when setting conditions, as well as general principles of public law and good governance. In Chapter 14 we recommend the creation of a streamlined judicial review procedure which would allow challenges to be brought against local authority conditions in a quicker and more efficient manner.<sup>7</sup>

### **Recommendation 47**

**Licensing authorities should be required to consult on additional licensing conditions for taxi drivers and vehicles.**

- 8.19 This recommendation is given effect by clauses 15(6) and 20(4) of our draft Bill.

<sup>7</sup> See Chapter 14 below, from para 14.50.

# CHAPTER 9

## TAXI FARE REGULATION

### INTRODUCTION

- 9.1 This chapter considers the issue of fare regulation for taxis. We did not address this in detail in our consultation paper, as we were not aware of it being problematic. However, during consultation it became apparent that this was an important area in which some reform could be useful. Further need for reform became apparent as we developed the framework we recommend for taxi licensing.

### MAXIMUM TAXI FARES

- 9.2 Fare regulation is a very important aspect of local standard setting. In our consultation paper we proposed that licensing authorities should retain the ability to regulate maximum taxi fares.<sup>1</sup> We regarded this as an essential element of consumer protection. This role seems best left to local authorities as the appropriate scale of fares will depend to a great extent upon economic conditions within the area. We proposed that private hire fares should remain unregulated.

### Consultation

- 9.3 There was significant support for this provisional proposal. As regards private hire fares, most respondents agreed that there was no need for regulation. Some consultees such as Transport for London underlined that the private hire market provides a very wide range of services, to which should correspond a wide flexibility in charging for them by operators. However some, such as the National Association of Licensing Enforcement Officers, suggested that private hire operators should be required to provide more information about how they set their fares. Our recommendations have already moved in this direction, requiring operators to quote a price or estimate for a journey where a customer requests this.<sup>2</sup>
- 9.4 Interestingly, some regulators did not wish to continue regulating taxi fares. One Institute of Licensing member said:

We believe that the setting of fares should not be the responsibility of the regulator. The parallel would be the licensing of premises under the Licensing Act 2003: the licensing authority regulates the premises but does not fix the price of alcohol. Why not allow market forces to determine fares for taxis as currently happens for private hire vehicles?

- 9.5 By contrast, Transport for London argued that retaining the ability to cap taxi fares was crucial:

As it protects the travelling public from being charged high fares when

<sup>1</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 43.

<sup>2</sup> See Chapter 3, Recommendation 6.

they are hailing a taxi on street and there may be little choice of other services available... Taxis provide a universal service and this includes transparent and standard fares.

- 9.6 The National Taxi Association and some others argued that, where a meter is used in a private hire vehicle, it should be regulated in the same way as a taximeter, applying the regulated tariff.

### **Discussion**

- 9.7 Our proposal met with almost no resistance from consultees. It follows on from our views on the differences between taxis and private hire vehicles: customers have little or no choice when taking a taxi on the street, and so should be guaranteed a fair price, whereas private hire journeys have to be pre-booked and the customer can “shop around”.
- 9.8 Concerns about passengers being taken advantage of in respect of private hire journeys will be largely addressed by requiring the provision of price information in pre-booking.<sup>3</sup>
- 9.9 Regulation of taxi fares would of course remain a power rather than a duty. We are aware that at least one licensing district, South Oxfordshire, does not regulate taxi fares.
- 9.10 We do not propose extending the power to regulate fares to include private hire vehicles which use taximeters. Meters must comply with European requirements relating to the way in which they are calibrated,<sup>4</sup> but we do not see any justification for requiring operators who dispatch private hire vehicles equipped with them to set prices in any particular way whilst other operators have freedom over their fares. We have already recommended that the requirement to give price information in advance should include disclosing the rate applied by a taximeter.<sup>5</sup>
- 9.11 However, we consider it desirable to bring more clarity and coherence to the rules about taxi fare regulation, and how they relate to where the journey starts and ends. We consider that, instead of limiting the power of licensing authorities to set fares to journeys within their licensing area (as is the case in England and Wales outside London), or not to limit that power at all (as is currently the case in respect of London), the better approach is to make fare regulation powers extend to any journeys within the compellable distance. This could be beyond the licensing area boundaries.

<sup>3</sup> See Chapter 3 above, from para 3.36.

<sup>4</sup> See the Measuring Instruments Directive (MID) 2004/33/EC (implemented by the Measuring Instruments (Taximeters) Regulations 2006, SI 2006/2304). It established the essential requirements that the measuring instruments will have to satisfy if they are subject to legal metrological control in a Member State and the conformity assessment that they have to undergo prior to their placing on the market and putting into use.

<sup>5</sup> See Chapter 3 above, Recommendation 6.

- 9.12 In overview, we think that for any journey ending within the compellable distance,<sup>6</sup> it should not be possible for the driver to agree to charge more than the metered fare (or such fare as may be set using fare tables). Any agreement to pay more will not be enforceable.<sup>7</sup>
- 9.13 During consultation, many taxi drivers expressed their frustration at what they perceived to be regulated fares set at too low a level, making it difficult for them to make a living. On the other hand, we also heard evidence of areas in which the fares are set so high as to restrict demand. The levels at which maximum fares are set is a not a matter for us to comment on. As we understand it, it is good practice amongst licensing authorities to consult on proposed changes to fare regulation and our draft Bill requires review and consultation every three years.<sup>8</sup>
- 9.14 We consider that, as is the case currently, a taxi driver should continue to be allowed to charge more than the metered fare for journeys starting inside the licensing area and ending beyond the compellable distance;<sup>9</sup> the metered fare set for journeys within the licensing district may be inadequate for a journey ending a considerable distance beyond the area in which the driver can lawfully resume plying for hire.
- 9.15 A higher than metered fare must, however, have been agreed in advance. In default of agreement, the metered fare should apply. This is a more powerful protection than requiring the driver to inform the passenger of the price on request, as we recommend in respect of pre-booked private hire journeys and taxi journeys starting outside the licensing area. Agreement of a price self-evidently requires stating the price before the journey begins, whether or not this has been requested. The obligation to agree the price in advance for journeys starting in but ending outside the compellable area is, however, justified by the fact that the hirer would expect the fare charged to be on the usual metered basis unless alerted otherwise.
- 9.16 Journeys that begin outside the licensing area (which, to be lawful, must be pre-booked) are always outside the scope of compellability, and it appropriately follows that their fares be unregulated. We recommend this should continue to be the case. We have already recommended that such journeys should be subject to record-keeping requirements, with the record made before the journey commences.<sup>10</sup> The price or an estimate should be given on request and, if so, recorded.

<sup>6</sup> Which will generally be the licensing authority borders or, at the licensing authority's option, up to 7 miles beyond the licensing area boundaries; see Chapter 3 above, from para 3.76.

<sup>7</sup> Draft Taxis and Private Hire Vehicles Bill, clause 32.

<sup>8</sup> Draft Taxis and Private Hire Vehicles Bill, clause 31(6).

<sup>9</sup> Local Government (Miscellaneous Provisions) Act 1976, s 66.

<sup>10</sup> See Chapter 3 above, Recommendation 7.

9.17 Finally, we have noted a difference between London and the rest of England and Wales in respect of when the meter can be started. In London, primary legislation does not prescribe when this can be done: there is a power to regulate fares in general but no stipulation as to the point from which a metered fare is to be calculated.<sup>11</sup> The London Cab Order goes on to specify that the meter can only be started at the moment of hiring.<sup>12</sup> Outside London, fare-setting powers are extremely broad;<sup>13</sup> however, the overcharging offences in primary legislation expressly provide that charges can only be calculated from the point at which the journey starts.<sup>14</sup> This effectively excludes charging the customer for the distance the taxi needs to travel to reach the customer, referred to as “run in” fees. This approach can cause hardship to drivers, particularly in rural areas where the “dead” mileage may be considerable, and can discourage undertaking such journeys at all. Our reforms adopt the London approach and leave any restrictions on when the meter may be started to local decision-making.

**Recommendation 48**

**Licensing authorities should retain the ability to regulate taxi fares, in respect of any journey within the compellable distance.**

9.18 This recommendation is given effect by clause 31 of our draft Bill.

**Recommendation 49**

**A taxi driver should be allowed to charge more than the metered fare for journeys starting inside the licensing area and ending beyond the compellable distance only if this is agreed in advance. In the case of pre-booked journeys starting outside the compellable distance the price or an estimate should be given on request and, if so, recorded.**

9.19 This recommendation is given effect by clause 32 of our draft Bill.

## **PRE-BOOKED TAXI FARES AND BOOKING FEES**

9.20 In our consultation paper, we asked whether taxi drivers should be allowed to charge more than the metered fare for pre-booked journeys on the same basis as private hire vehicles, whose prices are unregulated.<sup>15</sup>

<sup>11</sup> London Cab and Stage Carriage Act 1907, s 1.

<sup>12</sup> London Cab Order 1934, para 39.

<sup>13</sup> Local Government (Miscellaneous Provisions) Act 1976, s 65(1); and the Town Police Clauses Act 1847, s 68 (providing for the same power but through the use of byelaws).

<sup>14</sup> Local Government (Miscellaneous Provisions) Act 1976, s 67(1).

<sup>15</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 44.



- 9.21 In England and Wales, including London, licensing authorities have very broad powers to regulate all charges in connection with the hire of a taxi or with the arrangements for the hire.<sup>16</sup> Pre-booked taxi journeys are regulated on the same basis as hail and rank journeys. Case law has confirmed that fare regulation and overcharging offences also cover how much can be charged as a booking fee.<sup>17</sup> This is significant because it means that it is unlawful to charge a booking fee unless the relevant licensing authority has expressly authorised it; or to charge any more than the licensing authority has allowed.<sup>18</sup>
- 9.22 Booking fees have gained additional significance with the increased market presence of smartphone apps being used to arrange taxi services. The pricing models of these new apps often do not fit clearly within the current regulated fare structure.<sup>19</sup> For example, at the time of writing, the London Cab Order refers to a maximum booking fee for “telephone bookings” but is silent on internet bookings.<sup>20</sup> Transport for London has decided to extend its £2.00 telephone booking surcharge to cover bookings made using mobile phones, smartphones apps and online services in its annual revision of taxi fares and tariffs for 2014/2015.<sup>21</sup>
- 9.23 There are also some significant differences between the overcharging offences in London compared to the rest of England and Wales. In London, “every driver of a hackney carriage who shall demand or take more than the proper fare” (which covers any payment in relation to the hire, therefore including booking fees) commits an offence. The absence in London of an overcharging offence by intermediaries means that payments in excess of the permitted maximum paid directly to smartphone apps, for example, could not be prosecuted; however, payments to drivers clearly could be.

<sup>16</sup> Local Government (Miscellaneous Provisions) Act 1976, s 65 for England and Wales; and London Cab and Stage Carriage Act 1907, s 1 for London. Only journeys ending beyond the licensing areas fall outside the scope of regulation.

<sup>17</sup> See *House v Reynolds* [1977] WLR 88 and, for London, *Bassam v Green* [1981] RTR 362.

<sup>18</sup> The treatment of booking fees varies across licensing authorities. For England and Wales, outside London, we have used data compiled by the National Private Hire Association in 2011. Of the 337 authorities surveyed, 44 expressly regulated booking fees capping them between £20 at Alnwick DC down to 20p in Brighton and Hove for a telephone booking. Other authorities allow a booking fee that varies depending how far from the rank the taxi was at the time of the booking; others also require the passenger to be informed or for there to be an agreement to charge such fee; others allow a charge per mile up to a maximum distance from the passenger. Only two authorities expressly prohibit booking fees. The London Cab Order 1934 caps telephone booking fees at £2.00.

<sup>19</sup> See, for example, Hailo’s minimum fare requirement: <https://hailocab.com/blog/2014/01/03/Minimum-fares-reduced-by-20%25> (last visited 19 May 2014).

<sup>20</sup> London Cab Order 1934, para 40(4)(b).

<sup>21</sup> <http://www.tfl.gov.uk/info-for/media/press-releases/2014/february/tfl-board-agrees-lowest-taxi-fares-rise-in-more-than-10-years> (last visited 19 May 2014)

- 9.24 By contrast, outside London, any person charging a “rate of fares or charges” greater than the maximum allowed by the licensing authority can be prosecuted.<sup>22</sup> Both drivers and smartphone apps are therefore prohibited from receiving payments beyond the regulated amounts.

### **Consultation**

- 9.25 Most stakeholders disagreed with removing price controls on pre-booked taxi journeys, though a significant number agreed. Those who disagreed felt that pricing freedom would be open to abuse and that customers deserved the security of metered payment. However, some argued that in this capacity taxis were no different from private hire vehicles and should have the same market advantages.

- 9.26 The National Association of Licensing Enforcement Officers disagreed with our suggestion, arguing that:

It is open to tariffs to include a “booking fee” but if taxis truly wish to compete with a market force driven service like private hire they should not then be on time and distance calculation but should be on distance only like the majority of private hire services nationwide.

- 9.27 One Institute of Licensing member took a similar view, recommending permitting booking fees but no more. The member also suggested that these should be displayed on the tariff card rather than simply added at the end of the journey.

- 9.28 Even where stakeholders agreed, many felt there should be limitations. For example, the National Taxi Association felt that any additional charge should only cover dead mileage. Transport for London suggested that only companies approved by Transport for London (and presumably other licensing authorities) should have the ability to charge unregulated fares, and that they should be subject to the following stringent requirements:

- (1) publishing details of the fares charged;
- (2) keeping, in accordance with appropriate processes, a record of all bookings, including passenger details, date of booking, date of journey, destination, fare charged, and the driver and vehicle used, for a minimum of six months;
- (3) being a limited company or registered/friendly society;
- (4) having structures in place to check the licence status of participating drivers, the vehicles they use and to ensure that any restrictions on plying for hire are complied with; and
- (5) dealing with complaints.

<sup>22</sup> Local Government (Miscellaneous Provisions) Act 1976, s 67(2). Owners are also liable to a penalty outside London, although the scope of their liability is not exactly the same as that of the drivers. Proprietors can be prosecuted if the demand relates to an excessive fare, but only in respect of amounts charged “as a fare” rather than payments made in respect of collateral agreements. By contrast, proprietors in London are not liable for overcharging offences.

- 9.29 Welsh local authorities, in their joint response, felt that charging above the metered fare should only be allowed where agreed in advance. The GMB agreed with this suggestion. The United Cabbies Group felt that:

It would be anticompetitive and unfair to require taxis to have regulated pre-booked fares whilst private hire vehicles use unregulated pre-booked fares.

- 9.30 As we noted above, since the close of consultation, regulators and stakeholders have highlighted the problems of extra charges by smartphone apps. Trade representatives worried that taxi drivers might unwittingly be committing overcharging offences if they requested payment in respect of internet booking fees that had not been authorised by their local licensing authority.

### **Discussion**

- 9.31 We accept that any departure from the maximum price allowed by a meter or fare table could undermine the protections which price controls are intended to provide in taxi regulation. Any modification of this position needs both to have a strong justification and to be tightly framed.
- 9.32 The justifications for imposing both quality standards and fare regulation on taxis relate to problems of inequalities of bargaining power in the way rank and hail markets work. Unlike quality standards, price controls can be journey-specific and are capable of being lifted in respect of (competitive) pre-booked work. However, we accept stakeholders' concerns regarding the severe difficulties this could give rise to as a matter of enforcement. Moreover, it could undermine compellability, and provide scope for abuse of vulnerable customers if passengers who for practical reasons need to pre-book could be required to pay above the regulated fare for a journey within the compellable distance.
- 9.33 In light of the above, we think that it would not be practicable to de-regulate completely the fares charged by taxis working on a pre-booked basis. To do so would be too disruptive of the two tier system, and would undermine the important differences which mark the way taxis are regulated compared to private hire services.
- 9.34 As regards journeys commencing in the licensing area but ending beyond the compellable distance, we have already recommended that departure from the metered fare must be the subject of agreement in advance. We consider that that must equally be the case when the journey is pre-booked.
- 9.35 Taxi journeys commencing outside the licensing area (which, to be lawful, must be pre-booked) are not currently subject to fare regulation. We do not propose disturbing that position. We recommend, however, that taxi drivers be under a duty, broadly corresponding to that of private hire operators, to state a price or a price estimate on request and to make a record of any such price information given.

### **Booking charges**

- 9.36 The regulation of pre-booked taxi charges creates an imbalance of regulation between taxis and private hire vehicles in a market where they are both competing for the same work, potentially placing taxis at a disadvantage. We have therefore considered whether aspects of taxi charging for pre-booked journeys, and in particular booking charges collected by or on behalf of a third party intermediary, might be de-regulated without undermining the two tier system and the important consumer protections which fare controls provide. We were particularly concerned with finding a proper place for smartphone apps within the pricing structure for taxi journeys.
- 9.37 Unlike other “extra” charges relating to the hire (which may relate to things such as excess baggage, soiling charges or road tolls for example), fees charged to customers for finding them an available taxi are an aspect of a more competitive market being opened up by the new technology. We consider that there are strong consumer benefits in allowing third party arrangement fees to be outside fare regulation, opening up competition within the taxi market and with private hire services.
- 9.38 The draft Bill provides that third party arrangement fees will only be unregulated if agreed in advance,<sup>23</sup> this only applies to fees agreed with third parties: fees charged by taxi drivers for taking bookings will continue to be capable of being regulated, so as to avoid the risks of abuse or evidential difficulties that could arise if drivers were allowed to take elements of remuneration for themselves that were unregulated.
- 9.39 Booking fees received by intermediaries directly from the passenger (such as where the user of an app pays by credit card) ought not to give rise to problems of distinguishing them from unlawful additions to the regulated fare. We recommend that they be unregulated.
- 9.40 Indeed, a number of licensing authorities already allow third party arrangement fees to be charged provided they are agreed with the customer in advance.<sup>24</sup> As is already the position outside London, the new overcharging offence in our draft Bill can be committed by any person that demands more than the proper charge, and not just the driver.<sup>25</sup>
- 9.41 We have also considered whether taxi drivers should be permitted to collect unregulated booking charges on behalf of intermediaries, an arrangement that can be convenient to the passenger who prefers to make one payment at the conclusion of the journey. We have concluded that they should.

<sup>23</sup> Draft Taxis and Private Hire Vehicles Bill clause 31(8) and (9).

<sup>24</sup> We noted such requirements in Sunderland, Berwick-upon-Tweed, North Norfolk and Elmbridge for example.

<sup>25</sup> Draft Taxis and Private Hire Vehicles Bill, clause 32(5).

9.42 As with other unregulated booking fees charged by intermediaries, those that are to be collected by the driver on behalf of the intermediary will have to have been agreed in advance between the intermediary and the passenger, who will be in a position to know whether the amount subsequently demanded by the driver corresponds to what was agreed. The intermediary can be expected to have made a record of the booking and to have an interest in collecting payment of the booking fee from the driver. We do not rule out the possibility of abuse, particularly where bookings are accepted by telephone, but we do not consider that the risk of it is sufficiently great to justify regulating booking fees charged by third parties or outlawing this flexible method of collecting them.

**Recommendation 50**

**We recommend that licensing authorities should retain the power to regulate fares charged for pre-booked taxi journeys. However, there should be no power to regulate third party booking fees, provided these are agreed in advance.**

9.43 This recommendation is given effect by clause 31 of our draft Bill.

# CHAPTER 10

## ADMINISTRATION OF THE LICENSING SYSTEM

### INTRODUCTION

- 10.1 As we noted in Chapter 5, the delivery of licensing functions would remain at a local level under our reformed system.<sup>1</sup> Licensing authorities remain central to the administration and enforcement of the licensing system under our reforms. In this chapter, we look more closely at the role of licensing authorities within the reformed system, and in particular in respect of issuing licences, licensing fees, cooperation among different licensing authorities and zoning powers.
- 10.2 Under current law day-to-day responsibility for taxi and private hire licensing lies with local authorities.<sup>2</sup> This covers aspects such as issuing licences and enforcement. It is for individual local authorities to determine how to exercise their powers. Some authorities have a licensing committee, and perhaps sub-committees, with general responsibility for all licensing functions or for delegating decisions to licensing officers, whilst others may have a mixed committee and member structure. Councils can lay down licensing policies. They can also determine the application procedure and the circumstances in which a licence may or may not be granted.<sup>3</sup>
- 10.3 London has unique governance arrangements, with a dedicated authority for transport, and the Mayor has a direct role in setting transport policy.<sup>4</sup> The legislation provides that the licensing authority is Transport for London<sup>5</sup> and the licensing functions are devolved to London Taxi and Private Hire, which is part of Transport for London. Transport for London also has powers to make secondary legislation.

<sup>1</sup> See Chapter 5 above, para 5.5.

<sup>2</sup> In England, these may be district councils, metropolitan district councils or unitary authorities. In Wales, all authorities are unitary and are referred to as county councils or county borough councils.

<sup>3</sup> See initiatives such as MerseyTravel which coordinate public transport in partnership with bus and rail operators but also cover taxi and private hire, <http://www.merseytravel.gov.uk/Pages/Welcome.aspx> (last visited 19 May 2014). See also the South Yorkshire Integrated Transport Authority: <http://www.sypte.co.uk/default.aspx> (last visited 19 May 2014).

<sup>4</sup> Greater London was excluded from the general reorganisation of local government in England and Wales effected by the Local Government Act 1972. The more recent reorganisation of London government under the Greater London Authority Act 1999 created a new type of organisation that has no parallel elsewhere, the Greater London Authority. This Act places the Mayor under a general duty to develop and implement policies for the promotion of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London (s 141) and to publish a transport strategy (s 142).

<sup>5</sup> Metropolitan Public Carriage Act 1869, s 6 (amended by the Greater London Authority Act 1999).

- 10.4 The Traffic Commissioners are responsible for licensing public service vehicles.<sup>6</sup> Where such vehicles have fewer than nine passenger seats, there is some overlap with private hire licensing functions, to which we have referred in Chapter 4 above.<sup>7</sup>
- 10.5 The Secretary of State for Transport has responsibility for taxi and private hire legislation in England (with the exception of certain secondary legislation relating to London, which is now made by Transport for London).<sup>8</sup> The Department for Transport and its executive agencies issue guidance to local authorities and other relevant stakeholders on the application of the legislation, both specifically in relation to taxis and private hire services, and more generally in relation to motor vehicles.

### ISSUING LICENCES

- 10.6 The draft Bill provides that licensing authorities retain responsibility for issuing both taxi and private hire licences.<sup>9</sup>
- 10.7 Under current law, the maximum duration of licences in England and Wales (including London) is as follows:
- (1) driver licences, three years;<sup>10</sup>
  - (2) operator licences, five years;<sup>11</sup> and
  - (3) vehicle licences, one year.<sup>12</sup>
- 10.8 Amendments made to the Deregulation Bill on 13 March 2014 will, if enacted, introduce a uniform duration of three years for taxi and private hire driver licences, five years for operator licences, and one year for vehicle licences. Local authorities will only have the power to issue licences of a shorter duration where

<sup>6</sup> See Public Passenger Vehicles Act 1981, ss 3 to 5, amended by the Local Transport Act 2008. The Traffic Commissioners for England and Wales cover six traffic areas: eastern; north eastern; north western; West Midlands and Wales (two traffic areas with one Commissioner); western; and south eastern and the Metropolitan area.  
<http://www.dft.gov.uk/topics/tpm/traffic-commissioners/profiles/> (last visited 19 May 2014).

<sup>7</sup> See Chapter 4 above, from para 4.53.

<sup>8</sup> See, for example, the power to make regulations under s 32 of the Private Hire Vehicles (London) Act 1998, which vests in the licensing authority (defined in section 36 of that Act as Transport for London). This change was made by the Greater London Authority Act 1999, s 254 and Schedule 21, paras 1 and 2.

<sup>9</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 3 and 13.

<sup>10</sup> Local Government (Miscellaneous Provisions) Act 1976, s 53(1)(a) and (b); Metropolitan Public Carriage Act 1869, s 8(7) and the London Cab Order 1934, para 27; Private Hire Vehicles (London) Act 1998, s 13(5)(c).

<sup>11</sup> Local Government (Miscellaneous Provisions) Act 1976, s 55(2); Private Hire Vehicles (London) Act 1998, s 3(5).

<sup>12</sup> In England and Wales excluding London, see Town Police Clauses Act 1847, s 43 (taxis) and Local Government (Miscellaneous Provisions) Act 1976 and s 48(4)(c) (private hire). In London, see Metropolitan Public Carriage Act 1869 s 6(4) and London Cab Order 1934, para 14 (taxis) and Private Hire Vehicles (London) Act 1998, s 7(6) (private hire).

this was justified on the circumstances of the case.<sup>13</sup> The change is aimed at reducing the financial and administrative burden associated with shorter licence periods.<sup>14</sup> At the time of writing, the Deregulation Bill was at report stage.<sup>15</sup>

- 10.9 Our draft Bill restates those uniform durations for private hire licences, subject to the ability of the Secretary of State to specify shorter durations in prescribed circumstances.<sup>16</sup> This would allow, for example, shorter licence periods for a vehicle temporarily replacing a vehicle damaged in an accident.<sup>17</sup> This flexibility can also be valuable in order to cater for seasonal variations in fleet sizes. In respect of taxi services, the duration of licence would remain a local matter, subject only to the statutory maximum.

### **LICENSING FEES**

- 10.10 Funding is critical to effective enforcement. Under current law taxi and private hire licensing is self-funding.<sup>18</sup> This means that revenue from taxi and private hire licensing cannot be devoted to unrelated purposes.
- 10.11 In our consultation paper we noted certain gaps in the current system. For example the Local Government (Miscellaneous Provision) Act 1976, which governs licensing fees in England and Wales (outside London), does not expressly allow fee revenue to be applied to cover enforcement costs in respect of drivers and operators, although it does allow it to be applied to enforcement against vehicles.<sup>19</sup> This may be regarded as an anomaly.<sup>20</sup> In London, the statutory provisions in respect of licensing fees are broader and do not give rise

<sup>13</sup> Deregulation Bill, clause NC10, available at <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0162/amend/psc1621303a.57-60.html> (last visited 19 May 2014).

<sup>14</sup> Letter from Department for Transport to taxi and private hire stakeholders, 14 March 2014. Available at [www.naleo.org.uk/Uploads/documents/website\\_forms/2014.03.14 James Padden DFT Letter to taxi and PHV stakeholders.pdf](http://www.naleo.org.uk/Uploads/documents/website_forms/2014.03.14%20James%20Padden%20DFT%20Letter%20to%20taxi%20and%20PHV%20stakeholders.pdf) (last visited 19 May 2014).

<sup>15</sup> See <http://services.parliament.uk/bills/2013-14/deregulation.html> (last visited 19 May 2014).

<sup>16</sup> Draft Taxis and Private Hire Vehicles Bill, clause 22(2).

<sup>17</sup> Stakeholders told us about problems that arise where a substitute vehicle needs to be used as a result, for example, of damage to the licensed vehicle in an accident. Different licensing authorities take different approaches. It is preferable in our view that local authorities should, in these circumstances, issue a temporary licence. However, this should remain at the discretion of the authority, which ought in any event to have in place an appropriate procedure for permitting the temporary use of a suitable substitute vehicle.

<sup>18</sup> In England and Wales see the Local Government (Miscellaneous Provisions) Act 1976, ss 53(2) and 70; in London see the Metropolitan Public Carriage Act 1869, ss 6 and 8 and the Private Hire Vehicles (London) Act 1998, s 20.

<sup>19</sup> See Local Government (Miscellaneous Provisions) Act 1976, s 53; and the Audit Commission's decision in respect of Guildford Borough Council at [www.guildford.gov.uk/cHttpHandler.ashx?id=6647&p=0](http://www.guildford.gov.uk/cHttpHandler.ashx?id=6647&p=0) (last visited 19 May 2014).

<sup>20</sup> See J Button, *Button on Taxis: Licensing Law and Practice* (3rd ed 2009) para 4.17: In relation to drivers, the costs of issue and administration can be covered; in relation to vehicles, the costs of inspection, ranks, control and supervision (including enforcement), the administration connected with it, can be covered; and, in relation to operators' licences, it appears that only the costs of administration can be covered.



to such problems.<sup>21</sup> Licensing authorities can also arrange joint enforcement operations with the police, which is an added cost.<sup>22</sup>

- 10.12 We think that the current principle that taxi and private hire licensing is to be self-funded should be maintained. Although cross-funding between taxi and private hire and between different types of licences should be permitted, taxi and private hire licensing revenue should be ring-fenced from other licensing authority revenue.<sup>23</sup>

**Recommendation 51**

**The principle of cost recovery should continue to apply in respect of taxi and private hire licensing fees.**

- 10.13 This is given effect by clause 25 of our draft Bill.

**Recommendation 52**

**Licensing authorities should be able to collect and use licensing fees from taxi and private hire licensing only for the following purposes:**

**(1) administration of the licensing system (including but not limited to processing applications for granting or renewing licences and carrying out inspections and tests);**

**(2) statutorily required reviews of fare levels, rank provision, accessibility and existing quantity restrictions at least every three years;**

**(3) enforcement of the licensing system including but not limited to the control and supervision of taxi and private hire services (whether licensed or unlicensed) and activities associated with suspending or revoking licences; and**

**(4) providing taxi ranks.**

**The level of licensing fees**

- 10.14 It is important to the proper functioning of the licensing system that the purposes for which licensing fees can be used should be appropriately framed. We have noted that under current law licensing authorities set their own licensing fees on

<sup>21</sup> Metropolitan Public Carriage Act 1869, ss 6 and 8; and Private Hire Vehicles (London) Act 1998, s 20 and Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146.

<sup>22</sup> Transport for London works closely with the Safer Transport Command MPS and City of London Police. Transport for London also has the power to appoint officers of the Metropolitan Police to assist with enforcement. See Metropolitan Public Carriage Act 1869, s 12.

<sup>23</sup> See HM Treasury, *Managing Public Money* (July 2013), para 6.2.

the basis of cost recovery.<sup>24</sup> There are considerable variations across licensing authorities.

- 10.15 Our reforms include the introduction of uniform national standards for private hire services across all licensing authorities in England and Wales. National taxi and private hire vehicle standards would be comparable, reducing the incentive to obtain a taxi licence in one licensing area with a view to performing private hire work in another, but it is also necessary that taxi licensing fees should be no lower than the national private hire fee, to avoid applicants choosing to obtain a licence from the cheapest authority.
- 10.16 Our recommendations therefore include the introduction of a mandatory private hire licensing fee which could not be varied locally. Taxi licensing fees should be set locally, but at a level no lower than the national private hire fee.<sup>25</sup>

**Recommendation 53**

**We recommend that the Secretary of State should set a private hire licensing fee which could not be varied locally. Taxi licensing fees should continue to be set locally, but at a level no lower than the national private hire fee.**

- 10.17 The setting of a uniform licensing fee for private hire (which would act as a minimum for taxi licensing) may result in certain authorities collecting more revenue from fees than they are able to spend on enforcement. Funding also has a particularly strong impact on the effectiveness of cross-border enforcement. We noted in our consultation paper that locally licensed drivers, proprietors and operators often feel resentful at seeing their licence fees spent on enforcement against out of area vehicles. During evidence to the Transport Select Committee, it was pointed out that:

We end up paying more money to enforce [against drivers from other authorities] or trying to enforce those drivers. Even if, for example, a driver is found plying for hire, the local authority never gets back the full costs of taking that driver to court. In turn, this puts up our costs, while these other operators carry on working for free.<sup>26</sup>

- 10.18 The licensing officers of busy city centres typically need to undertake a considerable amount of enforcement activity against vehicles, drivers and operators from other licensing areas. Liverpool experiences a strong influx of cars from Merseyside, as does Manchester from Rossendale and Rochdale for example. Such out of area vehicles, drivers and operators do not contribute to the licensing revenue of the areas in which they may predominantly work, and this can lead to imbalances between revenue and spending, and undermine the ring-

<sup>24</sup> Local Government (Miscellaneous Provisions) Act 1976, ss 53(2) and 70; Town Police Clauses Act 1847, s 46.

<sup>25</sup> Draft Taxis and Private Hire Vehicles Bill, clause 25(5).

<sup>26</sup> Taxis and private hire vehicles: the road to reform, Report of the Select Committee on Transport, (2010-12) HC 720, Ev 3 Q15.

fencing principle noted above.<sup>27</sup>

- 10.19 Much cross-border working is lawful. Private hire vehicles are entitled to pick up passengers outside of their licensing area and the same is true in respect of taxis working out area on a pre-booked basis. However, our recommendations remove significant barriers to cross-border working that exist under the current system. Apart from the introduction of national standards, replacing the existing concept of operator with “dispatchers” will considerably liberalise cross-border working. This is because dispatchers will no longer be restricted to accepting and inviting bookings only in the particular licensing area which issued the dispatcher’s licence. Further, abolishing the triple licensing requirement will enable dispatchers to work with vehicles and drivers from different areas. For these reasons, licensing authorities may need to enforce against licensees from different areas to a greater extent than is currently the case.
- 10.20 Whereas cross-border activity already occurs and brings advantages in terms of flexibility for business and consumer choice, it poses challenges in appropriately funding enforcement. It is noteworthy that completely unlicensed vehicles and drivers (the most dangerous providers) do not pay anything into the system at all, and yet are rightly regarded as a top enforcement priority. This is true under current law, and will remain the case further to our reforms.
- 10.21 In order to address the above problems, we consider that the Secretary of State should have the power to establish a system for pooling and redistributing receipts from private hire licence fees on a national basis, or to allow licensing authorities to carry over any excess revenue for the following year. It should be for the Secretary of State to determine the appropriate basis for redistribution, if any. This could, for example, use both general data such as population and more specific measures such as traffic flows and information on private hire pick up locations from operators’ records as a measure of the need for enforcement activity for that area.<sup>28</sup> We discuss cross-border enforcement in detail in Chapter 13 below.

**Recommendation 54**

**We recommend that the Secretary of State should have the power to set up a system of pooling private hire licence fees nationally, for the purposes of redistributing these to reflect enforcement needs, in accordance with such a scheme as may be prescribed.**

- 10.22 This recommendation is given effect by clause 25(9) of our draft Bill.

**COOPERATION BETWEEN LICENSING AUTHORITIES**

- 10.23 In our consultation paper we asked whether statute should mandate cooperation

<sup>27</sup> For example, the problem of out of area taxis was a main theme of the taxi and private hire stakeholder meeting organised by the National Association of Licensing Enforcement Officers, referred to as the Meeting of Minds, held in Bolton on 15 April 2014.

<sup>28</sup> The merits of instituting a redistribution system, and the appropriate metrics that may be used, depend on complex questions of economics and are not within the expertise of lawyers to determine.

between licensing authorities, or whether it should be left to informal local arrangements, as is currently the case.<sup>29</sup>

### **Consultation**

- 10.24 This question received mixed responses, although there was general support among stakeholders for greater cooperation between different licensing authorities. A majority of respondents were in favour of a statutory basis for cooperation arrangements. For example, the Private Hire Board felt this would be useful in creating consistency and efficiency, and that authorities should be able to pool their budgets. One Institute of Licensing member felt that a statutory basis was a necessity flowing from the removal of geographical licensing requirements for private hire services, otherwise one local authority undertaking no enforcement would “become the authority where applicants go for licences leaving the other authority where the work is to fund and undertake all the enforcement.”
- 10.25 Those that disagreed seemed to be in favour of the ability to work together but felt that this should not be a requirement. Many consultees, such as Liverpool City Council and the London Taxi Company, highlighted the need for the cooperation to remain flexible and at the discretion of the authorities concerned. Welsh Local Authorities shared this view, noting that: “It may be useful for small local authorities but county councils with large geographical areas may find ... costs prohibitive.” Some stakeholders noted how certain existing government-owned technology could assist in better data sharing. We discuss information sharing from paragraph 10.33 below.

### **Discussion**

- 10.26 During consultation many stakeholders expressed concern that national standards could not work unless there was robust enforcement, including in respect of cross-border vehicles. We agree that a clear allocation of responsibility in respect of cross-border journeys is key to appropriate enforcement, and we discuss the relevant statutory duties that we recommend should apply in such cases in Chapter 13 below.
- 10.27 We take the view that a statutory duty to cooperate outside the context of specific cross border enforcement procedures would be over-regulatory and prescriptive. Cooperation between licensing authorities needs to be implemented according to the different local governance structures and needs to be flexible enough to allow authorities to proceed in the way which best suits the needs of their local area.

### **COMBINING LICENSING AREAS**

- 10.28 In our consultation paper we also suggested that licensing authorities should have the ability to combine their licensing areas for the purpose of standard-setting.<sup>30</sup> We understand that in some areas this already happens on an informal basis, with positive results.

<sup>29</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 37.

<sup>30</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 38.

## **Consultation**

- 10.29 This proposal received significant support. The Welsh Government suggested that use of this power might be appropriate where it may lead to efficiency savings.
- 10.30 Transport for London's perspective was very useful, as it already has knowledge of regulating taxis and private hire vehicles across a large area. Transport for London identified a number of benefits in having a regional or sub-regional licensing authority: consistent licensing standards for operators, vehicles and drivers; a consistent approach to compliance and enforcement; absence of cross border hiring problems; and economies of scale in the administration of licensing.

## **Discussion**

- 10.31 A large majority of respondents agreed with this provisional proposal and we confirm our recommendation to include this power within the reformed licensing framework. Two or more licensing authorities should be able to choose to combine their licensing areas and allow taxis to be used at ranks and to accept hails within their combined areas. As standards will necessarily be the same across all licensing authorities in respect of private hire services, combining licensing areas may also create greater efficiency in respect of issuing private hire licences. It could provide scope for pooling resources, data and expertise between licensing authorities. This would not involve any formal change to the structure of participating authorities and would be entirely optional. Licensing authorities opting to do this would agree to treat a licence issued by any other participating licensing authority on the same basis as its own. Overall, reducing the number of licensing borders can deliver considerable savings and improved efficiencies.

### **Recommendation 55**

**Licensing authorities should have the power to combine their taxi and private hire licensing areas.**

- 10.32 This recommendation is given effect by clause 71 of our draft Bill.

## **SHARING INFORMATION**

- 10.33 It was a major concern among licensing authorities that they had no way of checking whether a driver requesting a licence had previously had an application refused or a licence revoked by another authority. Current law requires licensing authorities to make licensing information available free of charge at reasonable times on request.<sup>31</sup> This is a helpful requirement, but is not sufficient to allow licensing authorities to detect applicants that have been rejected as unsuitable by another licensing authority. National standards can help reduce the scope for this happening, as all authorities will apply the same standards, without the significant regional variation which can exist at the moment, particularly as regards crucial matters such as the treatment of applicants with a criminal record. However, sharing information is vital, and lack of provision for it is a major gap in the current system.

<sup>31</sup> Town Police Clauses Act 1847, s 42.

- 10.34 As regards the practicalities of how to achieve such a system, in particular with a view to ascertaining whether a licence has been revoked or suspended, the Mid-Sussex District Council suggested setting up a national database of licences, funded and supported by the Government. Where licensed operators, drivers or vehicle proprietors do not comply with their licensing obligations such a national database would be helpful in ensuring better traceability and accountability. It is worth noting that the advantages of a national database would be equally relevant to the current system.
- 10.35 Shared Service Implementation and Policy Advisors (S<sup>2</sup>IPA) made a submission to us setting out how work they have conducted for the Foreign and Commonwealth Office might usefully be deployed within the taxi and private hire licensing setting. Technology could be used to give public authorities, such as the police and licensing officers, access to secure data centres containing taxi and private hire licensing information from all authorities sharing such technology. Importantly for street level enforcement, it could also be available to officers through smartphones.<sup>32</sup> Furthermore, certain licensing authorities have been identified to participate in pilot programs using this information sharing technology, for example, in the West Midlands and in London.
- 10.36 Better use of technology as part of enforcement can also aid more efficient and targeted enforcement spending. We note that other information sharing initiatives, such as the Electoral Registration Transformation Programme,<sup>33</sup> may also provide valuable lessons for information sharing in the taxi and private hire context.
- 10.37 Global Business Register told us about their systems to allow passengers to check the status of drivers through quick response codes using a scanning function in their mobile phones.
- 10.38 It is not within our remit to comment on the merits of switching from licensing authorities' current data handling systems to some of the systems which were brought to our attention during consultation. We stress that our proposals are not contingent upon having a national database; the delays and difficulties in developing a national database for the Licensing Act 2003 warn against this.<sup>34</sup> The draft Bill therefore creates a simple duty on licensing authorities to publish their licensing data and gives the Secretary of State the power to make regulations prescribing the contents of the data, any information which must not be published and the manner of publication.<sup>35</sup>
- 10.39 We suggest that the Secretary of State should consider a requirement to publish such data online, such that the public, and other providers, may verify a provider's status. This obligation would be particularly valuable in aiding cross-border enforcement. However, we note that the sharing of other data, which may

<sup>32</sup> Since consultation, S<sup>2</sup>IPA, through its sister company Tangent Securities, has engaged with Lockheed Martin UK (LM), the defence and intelligence business, which has conducted an evaluation of the technology and is now technically verifying the architecture of the capability.

<sup>33</sup> See <https://www.gov.uk/transformation/register-to-vote> (last visited 16 May 2014).

<sup>34</sup> See Culture, Media and Sports Committee, *The Licensing Act 2003* (2008 – 09), HC 492.

<sup>35</sup> Draft Taxis and Private Hire Vehicles Bill, clause 23.

not be suitable for the public domain, may be very useful for enforcement.<sup>36</sup> Information sharing technology could be an important aid to enforcement in taxi and private hire licensing.

**Recommendation 56**

**We recommend that licensing authorities should be under a duty to publish their driver, vehicle and operator licensing data in such form as the Secretary of State may require.**

**ZONING WITHIN A LICENSING AREA**

- 10.40 A small number of licensing areas outside London are divided into zones for the purposes of taxi licensing. A taxi licensed by such authorities is only permitted to use ranks and accept hails within the designated zone, and not elsewhere in within the licensing area. Such zones are the result of local authority reorganisation. Most recently, a number of unitary authorities have been created, some of which involved the amalgamation of districts.<sup>37</sup> The powers of the former district councils in respect of taxi and private hire vehicle licensing have transferred to the new unitary authorities; however, because the licensing policies and practices of the various district authorities differed, sometimes quite markedly, the new local authority areas can comprise a number of taxi zones based on the boundaries of the former district councils.<sup>38</sup> This enables the status quo to be maintained in each former district council area until such time as the new authority decides how it wishes to organise its licensing functions in the future. Where a council proposes to amalgamate zones, it can consult on the policies that should newly apply across its entire area.
- 10.41 Zones within a licensing area can only be modified by removing them all at the same time, and there is no ability to reinstate them or create new zones. Furthermore, there are no provisions to allow for zones to be phased in or out; nor to modify their boundaries.
- 10.42 Taxi licensing in London also makes use of zones, which are based upon the licence conditions imposed on drivers by the London Cab Order 1934. London taxi drivers either have an “All London” licence (known as a green badge) or a “Suburban” licence (known as a yellow badge).<sup>39</sup> The All London licence permits the driver to work anywhere in London, including central London and Heathrow Airport. Suburban taxi drivers can only accept hirings within their designated

<sup>36</sup> The Law Commission is currently undertaking a project on data sharing between public bodies. For the scoping consultation see Data Sharing Between Public Bodies (2013) Law Commission Consultation Paper No 214.

<sup>37</sup> Local Government and Public Involvement in Health Act 2007.

<sup>38</sup> For example, following the creation of the new Cheshire East and Cheshire West Councils, Cheshire East decided to have three zones mirroring the former district council areas. See [http://www.cheshireeast.gov.uk/business/licensing/taxi\\_and\\_private\\_hire/hackney\\_carriage\\_licence.aspx](http://www.cheshireeast.gov.uk/business/licensing/taxi_and_private_hire/hackney_carriage_licence.aspx) (last visited 19 May 2014).

<sup>39</sup> London Cab Order 1934, para 27(1)(b) gives Transport for London the power to restrict a licence by means of condition prohibiting the licensee from plying for hire in an area where they have not shown themselves to have adequate knowledge. Drivers must complete the full “Knowledge of London” to obtain an all London licence, but can alternatively choose to undertake a less onerous knowledge test for one or more suburban areas.

sector; they can, however, be licensed in more than one sector.<sup>40</sup>

- 10.43 In our consultation paper we suggested a more flexible power for licensing authorities to create and remove taxi zones anywhere within their area.<sup>41</sup>

### **Consultation**

- 10.44 Again, a significant majority of respondents agreed with this proposal. In general, those in favour noted the inflexibility of the current regime, which can have unintended consequences. A number of stakeholders suggested that any such power should be accompanied by a consultation requirement.

- 10.45 Unite the Union agreed with our proposal, noting that:

Currently licensing authorities cannot create but only remove. For example in Durham they removed taxi zones and city centre was flooded with taxis, with no taxi provision for the public anywhere else. Therefore it is sensible to now give licensing authorities the option to create as well.

- 10.46 Transport for London, which operates a significant zoning policy, although on a different basis to unitary authorities, also agreed. It pointed to the types of problems which could arise if the ability to maintain zones was lost.

Any removal of the ability to define taxi zones would likely result in fewer drivers working in suburban areas as drivers are attracted to the city centre “honey pot”, creating an imbalance of supply and demand throughout London.

- 10.47 Cornwall Council gave us an interesting example of how this power might be used in practice:

Cornwall Council consulted on whether it should amalgamate its six taxi zones when it became a new unitary authority. This resulted in the retention of the six taxi zones. Part of the consideration was that once amalgamated the zones could never be re-instated. Consultation responses also suggested creating different zones within the County and may well have been considered if that was permissible.

- 10.48 However, a number of stakeholders disagreed. This was primarily on the basis that zones were restrictive. A number of those involved in the taxi industry in Cornwall told us that zones restricted their ability to expand their business, particularly where the zones also operated quantity restrictions. Others told us that zones exacerbated the problems they experience with cross-border hiring restrictions. Philip Routledge, a taxi operator in Cornwall, questioned how

<sup>40</sup> We note that Transport for London has made proposals for significant change in suburban taxi licensing. See Transport for London, Suburban Taxi Licensing Consultation (February 2014), available at <https://consultations.tfl.gov.uk/tph/suburbantaxis> (last visited 19 May 2014). The consultation closed on 11 April 2014.

<sup>41</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 39.



eight zones could all operate different standards and yet be governed and enforced by one licensing committee.

- 10.49 The London Taxi Company felt that taxi zones were simply an historical hangover which no longer serve any purpose:

[This issue] is largely a legal anomaly caused by the unification of areas and as such does not make sense other than as an administrative compromise during the unification process. In most cases it was envisaged that the zones would disappear and a common taxi policy would emerge. As far as possible there should be a common taxi standard throughout the areas as this is the only way to ensure a standard service for all residents.

The London Taxi Company is aware of the fact that taxi services in rural areas are usually only viable within the limits of the local town or centre and as such that is where drivers congregate. Experience has shown that zoning does not prevent this but rather creates enforcement problems for local authorities. However, if after consultation and engagement with the community it is found that new zones are desired or it is felt old ones should be modified then licensing authorities should be able to do so.

### **Discussion**

- 10.50 We recognise that the current system of zoning is inflexible and liable to cause difficulties. Although we received a number of responses from suburban drivers in London who felt that they were treated unfairly and discriminatorily by Transport for London, most remained generally supportive of the green and yellow badge system. Furthermore, although some felt that their licence should entitle them to ply for hire across the capital, we recognise that the additional vehicles could not be sustained within the city centre, and that London would be particularly susceptible to the “honeypot” effect.
- 10.51 On the other hand, zones can also have a considerable negative impact on taxi services, and the Department for Transport’s Best Practice Guidance recommends they be abolished on the basis that they are of little benefit to the public, require much enforcement and lead to inefficiency and dead mileage.<sup>42</sup>
- 10.52 On balance, we consider that zones can play a useful role in local taxi regulation; however, they present very serious downsides that may not be sufficiently addressed through general public law constraints on standard-setting. We therefore suggest that the power to use zones should be subject to a public interest test, on the same basis as we propose in respect of quantity restrictions.<sup>43</sup> This requires the local authority to take into account the interests of consumers, provision for disabled passengers, the impact on congestion and the environment, and the sustainability of the industry. We discuss the elements of

<sup>42</sup> Department for Transport, *Taxi and Private hire vehicle licensing: best practice guidance* (2010) para 90.

<sup>43</sup> See Chapter 11 below.

this public interest test in the next chapter. This reflects the fact that zoning appears to be most sensibly used in conjunction with quantity restrictions, as a tool to encourage provision in outlying areas. For example, an authority may want to introduce a taxi zone with quantity restrictions covering their city centre, but to leave the more rural areas of their district without zones or quantity restrictions. This allows a more nuanced approach to what could otherwise be a restrictive policy.

**Recommendation 57**

**Licensing authorities should have a more flexible power to introduce and remove taxi licensing zones. This power would permit removal or introduction of zones within a licensing district. The power should be subject to consultation and a statutory public interest test.**

10.53 This recommendation is given effect by clause 7 of our draft Bill.

# CHAPTER 11

## QUANTITY RESTRICTIONS

### INTRODUCTION

- 11.1 Local authorities in England and Wales currently have the power to restrict the number of taxis licensed in their area.<sup>1</sup> This power can only be exercised where it can be shown that there is no significant unmet demand for taxis in the area.<sup>2</sup> There is, however, no power to limit the number of taxis working in London.<sup>3</sup> In the consultation paper we referred to such limits as quantity restrictions, and we continue to do so.
- 11.2 The number of quantity restricted areas has been stable in recent years. Since 2011, seven areas have removed restrictions and seven areas have introduced them.<sup>4</sup>
- 11.3 Although fewer than a third of all licensing authorities adopt quantity restrictions,<sup>5</sup> these areas include almost all of England and Wales's major cities (including Birmingham, Bradford, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle and Sheffield, for example).
- 11.4 Stakeholders have pointed to the negative experiences of several licensing authorities which removed quantity controls, and then decided to re-introduce them, as evidence that derestriction does not work. Areas where quantity restrictions have been reintroduced following derestriction include Chesterfield, Watford, Welwyn Hatfield and the Wirral.
- 11.5 Local authorities' current power to control taxi numbers is qualified: quantity restrictions can only be maintained if the relevant licensing authority is satisfied that there is no significant demand for taxis services which is unmet.<sup>6</sup> Best practice guidance by the Department for Transport advises against the use of quantity restrictions and urges authorities to reconsider such policies on a regular

<sup>1</sup> Town Police Clauses Act 1847, s 37.

<sup>2</sup> Town Police Clauses Act 1847 as modified by Transport Act 1985, s 16.

<sup>3</sup> Although London has no limits on taxi vehicle numbers, the general view is that the stringent knowledge tests imposed on London taxi drivers, together with the high cost of purchasing a vehicle which satisfies the London Conditions of Fitness, together constitute a significant barrier to entry to the market. In addition, Transport for London has set licensing policies which directly relate to the control of taxi numbers. For example, in 2011, Transport for London gave notice that it would no longer process new applications for suburban licenses in some areas due to significant increases in numbers and long waiting lists for licences (see <https://www.tfl.gov.uk/cdn/static/cms/documents/13-11-suburban-taxi-driver-licence-applications.pdf> (last visited 16 May 2014)).

<sup>4</sup> Department for Transport, Taxi and Private Hire Statistics 2013, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226355/taxi-private-hire-statistics-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226355/taxi-private-hire-statistics-2013.pdf) (last visited 19 May 2014).

<sup>5</sup> 88 of 313 licensing areas at the time of the National Private Hire Association's 2014 survey.

<sup>6</sup> A requirement introduced by s 16 of the Transport Act 1985.

basis.<sup>7</sup>

- 11.6 Considering the drawbacks which might be predicted to flow from quantity restrictions, which could include fewer taxis, longer waiting periods for the public, and restricted access to the trade for prospective taxi drivers, in our consultation paper we provisionally proposed abolishing the power to impose quantity restrictions on taxis.<sup>8</sup> We suggested that entry into the industry should depend on standards-based criteria with appropriate quality controls rather than the blunt tool of numerical caps. We also asked consultees what problems, temporary or permanent, might arise from abolishing quantity restrictions.
- 11.7 This provisional proposal generated a great number of consultation responses, and the most concern among the trades during consultation meetings. Overall we received about 1500 responses on this topic; the vast majority disagreed with lifting restrictions.
- 11.8 We noted in our consultation paper that the economic literature is generally hostile to quantity controls.<sup>9</sup> The economic arguments are, broadly speaking, that the free market is the best means of determining the necessary level of taxi provision; that unmet demand surveys may not be capable of registering the true level of demand, both patent and latent; that quantity restrictions may have a negative effect on waiting times and fares; and that they are a blunt instrument for controlling entry to the market.<sup>10</sup>
- 11.9 On the other hand, it was impressed upon us during consultation that economic models, albeit diverse and sophisticated,<sup>11</sup> are not reliable in predicting the effect of removing quantity controls in the field. The explanation may be that particular features of this highly regulated market distort the normal effect of competitive forces.

<sup>7</sup> See Department for Transport, *Taxi and Private Hire Vehicle Best Practice Guidance* (March 2010) paras 45 – 51.

<sup>8</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 54.

<sup>9</sup> See A T Moore and T Balaker's review in "Do Economists Reach a Conclusion on Taxi Deregulation?" (January 2006) 3(1) *Econ Journal Watch* pp 117 to 118: of the 28 articles reviewed, 19 conclude that deregulation is beneficial (on net), two conclude that the results are mixed, seven conclude that the net effects of deregulation are harmful; Katrina Wyman, "Problematic Private Property: The Case of New York Taxicab Medallions", Volume 30 *Yale Journal on Regulation*, 125; OECD policy roundtable, *Taxi services: competition and regulation* (2007) p 37. For a contrasting view, see Roger F Teal and Mary Berglund "The Impacts of Taxicab Deregulation in the USA" (1987) 21(1) *Journal of Transport Economics and Policy*, p 37 to 56.

<sup>10</sup> For further developments on the benefits derived from deregulation, see M W Frankena, and P A Pautler, *An Economic Analysis of Taxicab Regulation* (1984). Benefits are broadly expected to be as follows: lower fares, as a result of an increased number of operators; lower operating costs, due to competitive incentives; improved service quality, as competition puts the stress on reputation; innovations and special services for the disabled; and increased demand for taxi services, as prices fall and quality improves.

<sup>11</sup> For a review of such models, from the first studies in the early 1970s to the more recent models able to simulate congestion, elasticity of demand, different user classes, external congestion, non linear costs and different market configurations, J M Salanova "A review of modelling of taxi services" (2011) p 152, at <http://www.sciencedirect.com/science/article/pii/S1877042811014005> (last visited 19 May 2014).

- 11.10 This chapter is split into two main sections. The first considers the merits of and justifications for quantity controls as a barrier to entry into the taxi industry. The second looks at the values which licence plates acquire in areas with quantity restrictions, and how these should be managed within the regulatory system. Whilst these two aspects are connected and overlap, they also raise very different policy problems and we discuss each in turn.<sup>12</sup>

### **ARGUMENTS IN FAVOUR OF REMOVING QUANTITY RESTRICTIONS**

- 11.11 Although the overwhelming majority of respondents to our consultation did not support the removal of quantity restrictions, a small number of respondents did. One taxi driver in Cornwall argued that it would allow him to expand his business into neighbouring zones which are subject to quantity restrictions. Others objected to quantity restrictions on the basis that they have given rise to a trade in taxi plates. Taxi plates in quantity-restricted areas can be very expensive when traded privately, and act as a considerable barrier to entry to working as a taxi driver. We give separate consideration to this issue below.<sup>13</sup>
- 11.12 Private hire drivers who responded to the consultation tended to be in favour of the removal of quantity restrictions, as this would give them the opportunity to acquire a taxi vehicle licence, giving them increased flexibility in their work. On the other hand, operators expressed concern that opening up the taxi market would loosen the control they have over private hire drivers. For example, a driver on their circuit who had obtained a taxi licence would be able to pick up a hail or a job from a rank, disrupting his presence on the circuit. Taxi radio circuits suffer from this problem and they have told us that their survival depends on access to very high driver numbers, usually in the thousands. Clearly, few private hire operators would be capable of sustaining this.
- 11.13 The majority of local authorities responding to our consultation paper were in favour of the removal of quantity restrictions and of the power to impose them. This included many authorities which currently operate restrictions, generally on the basis that the mechanisms for deciding whether to introduce or maintain quantity restrictions were susceptible to bias, lack of transparency and too much influence from incumbents. Indeed, some licensing officers in authorities which do not have a numerical limit told us that they would like to see the power removed in order to prevent pressure from the trade to impose a limit. There was a clear preference for retaining quantity restrictions amongst licensing authorities in more urban areas.
- 11.14 Would-be entrants into the taxi and private hire markets are another group significantly affected by quantity restrictions who, like consumers, do not have a strong voice. We heard from a number of private hire and taxi drivers who would like to apply for taxi vehicle licences, but who are unable or have difficulty in affording to do so in their preferred area or would have difficulty in affording it. We

<sup>12</sup> We note that private hire vehicles are not currently subject to numerical regulation. A number of responses have suggested that they should be. The relationship between taxi and private hire numbers is indeed significant, and an important consideration in policy development. However there was no significant body of opinion advocating this course of action; nor are pre-booked only vehicles subject to numerical caps abroad. We have not pursued this option further.

<sup>13</sup> See from paragraph 11.93 below.

think it safe to assume that a number of people would be interested in joining the taxi trade as a vehicle owner if it were made possible by derestriction.

- 11.15 Taxi drivers unable to acquire their own vehicle licences in areas where quantity restrictions are in place complained of feeling exploited. One taxi driver in the South West told us that the shifts he was able to get did not allow him to make a sufficient living, the rent he paid for the vehicle was in the region of £200 per month, and he was expected to take responsibility for upkeep and maintenance. Although owning a licensed taxi would not necessarily reduce any of those costs, it would at least give him greater economic freedom.

### **ARGUMENTS AGAINST REMOVING QUANTITY RESTRICTIONS**

- 11.16 In our consultation paper we asked stakeholders what problems, temporary or permanent, might arise if licensing authorities lost the ability to restrict numbers.<sup>14</sup> We consider below the key themes emerging from stakeholders that opposed the removal of quantity restrictions.

#### **Impact on taxi licence holders**

- 11.17 Current taxi plate holders in restricted areas told us they would be severely affected by the removal of quantity restrictions. Increased taxi numbers means increased competition for work, so that each individual driver has a thinner slice of the travelling public's spend. The economic downturn in recent years has had a similar effect. One consequence has been that, whilst customer waiting times for a cab have fallen, driver waiting times (the time between jobs) have risen, leading to an overall decrease in productive efficiency in the industry.<sup>15</sup>
- 11.18 One taxi driver in Manchester (which maintains quantity restrictions) told us:
- I currently sit for approximately one hour between fares. I generally work around a sixty hour week. In the last three years our fleet has increased by around 120 cabs. My takings have significantly dropped causing me huge financial difficulties and I now evermore rely on tax credits to survive. My working hours put strain on my family life.
- 11.19 This is representative of a large number of responses we received, some of which told us that a number of taxi drivers now rely on the welfare state to supplement their income.
- 11.20 Many stakeholders cited the example of Ireland, which deregulated taxi numbers in 2000. Many within the industry experienced severe financial hardship, with licence holders losing out both in terms of licence value and revenue.<sup>16</sup> Customers also experienced a significant drop in standards. The severe impact deregulation had in Ireland was in many ways due to the unmanaged removal of

<sup>14</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation paper No 203, question 55.

<sup>15</sup> See Europe Economics, *Evaluating the impact of the taxis market study, a report for the OFT* (October 2007) OFT 956.

<sup>16</sup> S D Barrett, "The Sustained Impacts of Taxi Deregulation" (March 2010) 30 *Economic Affairs* 61.

quantity restrictions, along with inadequate standards. However, a significant increase in vehicle numbers could still have a negative impact on the existing taxi trade, which is already struggling in some areas.

### **Impact on the public generally**

- 11.21 Policy must also take into account the effect on the public at large (including non-taxi users) through congestion and air and noise pollution, for example. When the Wirral derestricted vehicle numbers in 2002, the impact on residents in terms of lower standards and the presence of more vehicles on the streets was felt so strongly that a campaign group was set up specifically to tackle this issue. Taxi number limits were restored in 2012.
- 11.22 On the other hand, limiting taxi numbers carries the risk of creating unmet demand, since even under the current law licensing authorities may not gauge demand accurately. There can be hidden unmet demand, where potential taxi users do not even attempt to use taxis because of past experiences of insufficient availability. The general public have very little representation, both in our consultation and in local licensing decisions more generally. This is therefore a very difficult risk to quantify.

### **Safety concerns**

- 11.23 A large number of stakeholders were concerned that in a derestricted market drivers would not make enough money to maintain their vehicles properly, and the incentive to invest in new vehicles would be reduced. Almost all of the taxi drivers and owners who responded on this question held this view, as well as a number of local authorities, including Birmingham City Council and the licensing committee of Scarborough Borough Council. The National Association of Licensing Enforcement Officers also took this view:

As can be seen, for example in Dublin, deregulation can lead to too many cabs chasing too few fares and a possible danger from this could be a lessening of vehicle maintenance standards as drivers, due to economic pressure, could cut corners.

- 11.24 Other stakeholders stressed that if drivers felt it necessary to work longer hours or have second jobs this too would threaten safety standards. This concern often ranked first in the list of concerns relating to deregulation of taxis. For example, the union GMB said that:

The driver needs to work in an economic climate that allows the drivers to earn an income which allows for very high standards of maintenance and a working week that does not consist of 70 to 80 hours. Therefore to ensure customer safety local authorities must be allowed to restrict the number of taxi numbers in a controlled economy if they so choose.

- 11.25 Watford is said to have experienced such issues when it removed the limit on taxi numbers. Vehicle owners often have a significant investment in the market, which means they are reluctant or even unable to leave it; a fall in income may lead to reductions in safety and quality. Driver hours are a matter of significant concern. Although we have heard of long and often dangerous driver hours in both

numerically limited and unlimited areas, the argument that when faced with greater competition and lower earnings drivers will simply work longer hours clearly has force.

- 11.26 Unite the Union described the detrimental impact of the removal (subsequently reversed) of a numerical limit in the Wirral:

It is however the shift pattern at the weekend that causes the most concern, in that drivers will usually start at 8am Friday, but work through to 4-5am Saturday morning. With the Saturday shift pattern being more of the same, except the drivers will usually start around midday and work until 5am Sunday morning. ...

We take the view that these suicidal long shift patterns are the “negative externalities” (to continue with the economic jargon) of removing numerical control, and it is difficult to make a case that it benefits the consumer.

- 11.27 More generally, it seems, a key element to securing quality standards is providing sufficient incentives for drivers to maintain them. Ensuring some level of financial security can assist in maintaining standards.

#### **Congestion and over-ranking**

- 11.28 Many local authorities, particularly those responsible for urban areas, seem to suffer from limited rank space. During consultation we received much evidence of over-ranking: where taxis queue for access to the rank in such a way that they overhang the rank, often causing congestion and obstruction to the highway. We were taken on tours of city centres to see examples of this at first hand. Over-ranking is a problem which arises both in restricted and unrestricted areas.<sup>17</sup> It may, however, worsen if quantity restrictions are removed. An increase in the number of vehicles at ranks may even exceed the global increase in the number of vehicles; this is because where taxi drivers need to work longer to secure the same level of earnings, it can be a more economical option for taxi drivers to wait at taxi ranks rather than driving around, which uses more fuel.<sup>18</sup>

- 11.29 A large number of consultees used the term “free-for-all” to describe the impact of derestriction. Some consultees also pointed to noise pollution caused by over-ranking. Numerous stakeholders referred to the recent experience of Durham County Council, which removed both quantity restrictions and zones at the same time and is currently said to suffer from extreme problems of over-ranking and congestion. Unite the Union described the Liverpool experience as follows:

Liverpool took the decision to remove the numerical limit on taxis in 1974... . However by 1983 over ranking had become a serious traffic and public order issue, which led to the then Chief Constable, Sir Kenneth Oxford, in his annual address to Liverpool City Council to articulate his frustrations about the amount of police resources that

<sup>17</sup> For the same reason, taxi numbers at airport ranks are typically limited.



were being used to combat the problem.

He stated that relations between the police and the taxi trade was fractious, and commented that many of the issues “are a result of too many taxis seeking to stand on any one rank at the same time”. Sir Kenneth concluded “One cannot escape the fact that there are currently over 1,250 licensed hackney carriages in Liverpool (the figure is now 1,417), for which there are only 370 spaces available on designated ranks. It is equally apparent that no matter what level of enforcement is pursued, the problems associated with over-ranking will remain until such time as this imbalance is redressed.”

The Chief Constable of Merseyside’s report to Liverpool City Council is seen by many as the reason that in passing the Transport Act in 1985, the government of the day stopped short of outright abolition of numerical controls on taxis.

- 11.30 The Meeting of Minds group<sup>19</sup> commissioned a report on quantity restrictions as part of their response to our consultation. The report was in favour of retaining quantity restrictions on the basis of available road space. The report noted that in Cambridge, which removed quantity restrictions, overuse of the central rank has led to consideration of removing it due to the negative effect on pedestrians, cyclists and buses. There was concern that creating feeder ranks<sup>20</sup> could worsen the problem by attracting more vehicles to the industry. The report indicated that Cambridge City Council is considering reintroducing quantity restriction, which the authors of the report believed would be beneficial, especially as changing ranking arrangements would take some time.

### **Environmental impact**

- 11.31 A related concern is that of congestion and pollution associated with taxis searching for hail work. This is an area in which there is a lack of economic studies looking at the impact of deregulation.<sup>21</sup> Taxis tend to circulate, adding to traffic levels and impacting on air quality. This is a particular concern since licensing authorities are under a duty to meet environmental targets to

<sup>18</sup> J M Salanova “A review of modelling of taxi services” (2011) p 151, at <http://www.sciencedirect.com/science/article/pii/S1877042811014005> (last visited 19 May 2014).

<sup>19</sup> This group comprises a number of stakeholders from both the taxi and private hire industries. It was established by the National Association of Licensing Enforcement Officers.

<sup>20</sup> Areas with capacity for overflow vehicles, which are generally situated away from busy areas and main ranks, but provide a queuing system for the ranks themselves.

<sup>21</sup> See J M Salanova “A review of modelling of taxi services” (2011) p 160, at <http://www.sciencedirect.com/science/article/pii/S1877042811014005> (last visited 19 May 2014).

decrease pollution.<sup>22</sup> Mike Middleton, a taxi driver from Blackpool, believed that derestriction would lead to a significant increase in emissions, with large numbers of private hire vehicles becoming taxis and switching to plying for hire.

- 11.32 The Bournemouth taxi and private hire trade provided us with calculations indicating that a derestricted local taxi trade (which they believed would amount to 749 vehicles, 500 more than at present) would account for 13% of emissions in Bournemouth.<sup>23</sup> Trafford Green Party raised similar concerns about deregulation in their area.
- 11.33 On the other hand, some stakeholders have also argued that restricting vehicle numbers may not have the effect of reducing pollution.<sup>24</sup> Reduced taxi availability may encourage greater use of private cars, and thus ultimately do greater harm to environmental goals. Furthermore, it has been argued that if a public authority truly wishes to take action to reduce environmental harm, this should apply to all vehicles.<sup>25</sup> Indeed taxis currently enjoy exemptions from some environmental requirements, such as the congestion charge in London. However, limiting the number of taxis may still be useful and possibly the easiest vehicle emissions reduction measure to implement.

#### **Impact on enforcement**

- 11.34 Maintaining quantity restrictions can reduce enforcement costs to the extent that it reduces the number of licensed vehicles which have to be monitored. In addition, the high value of the licence usually associated with quantity restricted areas may go some way towards ensuring compliance by the licence holders, as the suspension or revocation of such a valuable asset would be a severe penalty.<sup>26</sup> Conversely, quantity restrictions may increase enforcement costs to the extent that they lead to more use of unlicensed vehicles as taxis.
- 11.35 The impact of derestriction on the number of unlicensed vehicles illegally offering

<sup>22</sup> See for example, London, and the Mayor's Air Quality Strategy, discussed in Chapter 5. See also the three main European Directives in respect of emissions: Directive 2008/50/EC on ambient air quality and cleaner air for Europe; Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air ; and Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants. The Environment Act 1995, s 82 and Local Air Quality Management (LAQM) implement these duties.

<sup>23</sup> Contrast however a report we cited in our consultation impact assessment, which suggested the increase would only be 1%, see Impact Assessment Reforming Taxi and Private Hire Services (2012) Law Commission Impact Assessment 0016.

<sup>24</sup> See also Office of Fair Trading, The regulation of licensed taxi and private hire vehicle services in the UK (November 2003) para 4.73.

<sup>25</sup> See Katrina Wyman, "Problematic Private Property: The Case of New York Taxicab Medallions" in Volume 30 *Yale Journal on Regulation*, p 125 fn 126.

<sup>26</sup> For a presentation of such arguments, see Katrina Wyman, "Problematic Private Property: The Case of New York Taxicab Medallions" forthcoming in Volume 30 *Yale Journal on Regulation*, 125, at p 129 to 130; see also S Rosenbloom (1985) "The Taxi in the Urban Transport System" in *Urban Transit*, ed C A Lave San Francisco: Pacific Institute for Public Policy Research, pp 181 to 213.

taxi services is particularly difficult to assess.<sup>27</sup> Though there is evidence in the literature that a quantity-restricted market is more expensive to regulate,<sup>28</sup> we have not been able to reach a conclusion on whether that would be the case in England and Wales.

- 11.36 There are also issues about the effectiveness of enforcement. Many stakeholders feared that enforcement action would need to be strengthened further following deregulation, to cope with an increased number of licensees and greater congestion. To the extent (which we cannot gauge) that derestriction created an unmet need for more enforcement, the reliability of enforcement as a means of ensuring quality could be called into question.
- 11.37 We note that some foreign jurisdictions have counter-balanced the greater size of derestricted taxi fleets by introducing an extra regulatory tier, requiring taxi drivers to be affiliated with intermediate organisations and making these organisations liable for any infringements. Such a model has been applied, for example, in New Zealand and Singapore.

#### **EVIDENCE OF THE IMPACT OF DERESTRICTION ON VEHICLE NUMBERS**

- 11.38 An important issue associated with the removal of quantity restrictions is the impact such a decision might have on licensed vehicle numbers.
- 11.39 Many stakeholders believed that derestriction would open the floodgates to the use of hundreds of new vehicles, bringing with it numerous associated problems such as congestion. Whilst it is to be expected that areas which currently operate quantity restrictions would see an increase in the number of vehicles,<sup>29</sup> there is evidence to suggest that this may not be as great or as long-lasting as some stakeholders believe. Such outcomes are reported in economic literature.<sup>30</sup>
- 11.40 The number of vehicles may tend to decrease again over time as the supply progressively adjusts to demand. Aylesbury District Council and Ribble Valley Borough Council both expected that there would be a temporary rush for licences but that this would die down.
- 11.41 There is evidence from a number of areas which have deregulated in recent years that the number of vehicles in the overall taxi and private hire fleet does not

<sup>27</sup> See A T Moore and T Balaker in “Do Economists Reach a Conclusion on Taxi Deregulation?” (January 2006) 3(1) *Econ Journal Watch* p 116, arguing that “with deregulation, large numbers of cabs suddenly enter the legitimate market, so we should expect the absolute number of complaints to increase. One would expect it to take some time for these taxis to bring themselves into compliance with safety and insurance codes”. However, evidence from consultation does not suggest removal of quantity restrictions reduces the number of taxis operating unlicensed. This may be because, while some of them may have taken advantage of derestriction to regularise their situation, not all of them would meet the entry requirements.

<sup>28</sup> See M W Frankena, and P A Pautler, *An Economic Analysis of Taxicab Regulation. Federal Trade Commission* (1984), pointing to costs savings following deregulation.

<sup>29</sup> See for example Office of Fair Trading, *The Regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) – in particular chapter 4.

increase significantly. We were told this by licensing officers from Ipswich and Exeter. This is because many of the new taxi plates are taken up by existing private hire vehicle licence holders. For example, Cardiff derestricted in 2005, and saw taxi numbers rise from 481 to 702 in 2007 and private hire vehicle numbers drop from 999 to 783. Derestriction thus resulted in only five more licensed vehicles on the road at the end of that period, albeit nearly a 50% increase in taxi numbers. In Bristol, following derestriction, the number of taxi licences increased by 150%, whilst the size of the overall fleet only increased by 4%. Similarly, Cambridge and Sheffield saw virtually no change in the number of licensed vehicles following derestriction.<sup>31</sup>

- 11.42 A relevant factor here is the level of supply prior to derestriction; according to economic literature, where it is close to the level of demand, the increase in the number of vehicles will be moderate.<sup>32</sup> Mid-Sussex District Council told us that their latest unmet demand survey showed that the local limit was in fact set too high, and they doubted that more taxis would enter the market if the limit was removed.
- 11.43 A number of local authorities predicted that derestriction in their area would give rise to a short-term rise in numbers which could be smoothed out by the application of increased quality standards; these included Ceredigion County Council, Northampton Borough Council and Pembrokeshire Council.
- 11.44 The effects of a rise in taxi numbers are both mixed and difficult to predict. While a shift from private hire to taxi licences may benefit customers in that taxis can be hailed in the street and hired at taxi ranks as well as booked by telephone, increased taxi numbers may have an adverse impact in terms of congestion and pollution, given the way in which taxis work: for example, driving around looking for business, or keeping the engine running whilst at a rank.
- 11.45 A rise in numbers may have either a positive or negative effect on availability. Whilst in general terms more vehicles would suggest greater availability, that may not be the case during unsocial hours and in more out of the way locations, if new entrants "cherry pick" the most popular hours and areas.
- 11.46 We received evidence that certain licensing authorities used standard-setting as a proxy for limiting numbers, deliberately setting them at a level which would limit supply. Not only does this allow the licensing authority to limit or prevent the floodgates effect, but it is also a means of ensuring a high-quality taxi fleet with appropriately committed licence holders. This is said to have been the case in Ipswich, where deregulation was accompanied by new standards requiring all vehicles to be wheelchair-accessible and no more than four years old. In the

<sup>30</sup> See A T Moore and T Balaker, "Do Economists Reach a Conclusion on Taxi Deregulation?" (January 2006) 3(1) *Econ Journal Watch* p 112, referring to varying outcomes of derestriction.

<sup>31</sup> Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) para 4.20.

<sup>32</sup> See J M Salanova "A review of modelling of taxi services" (2011) p 158, at <http://www.sciencedirect.com/science/article/pii/S1877042811014005> (last visited 16 May 2014).

seven years since deregulation, we were told, there has been just one additional taxi, but a far greater number of wheelchair-accessible vehicles.

- 11.47 It is difficult to make an objective assessment of the impacts of derestriction. First, crucial data, on fares or waiting times for example, are often lacking. Assessments of the success or otherwise of such an intervention may differ at different points in time, as the short-term and long-term effects of derestriction may be different. There are also wide-ranging differences in the parameters for gauging success, depending on the focus (customer waiting times or taxi drivers' remuneration, for example), selection of the parameters and the weight attached to them are both highly subjective matters. Assessments of the same deregulation experiences may as a result be very different, depending on the observer's perspective.<sup>33</sup> Different observers attach different weight to the same outcomes.<sup>34</sup>

### **UNCERTAIN GAINS OF DERESTRICTION**

- 11.48 When considering the taxi and private hire industries, consumer interests tend to be diffuse and less organised than the trades or regulators. Most of the taxi user responses we received related to accessibility and equality issues, although some stakeholders also provided more general consumer feedback.<sup>35</sup> Thus we have looked at economic evidence and models alongside the wealth of information we received during consultation.
- 11.49 We have taken the principal consumer gains that might be predicted to derive from derestriction to be improved taxi availability (with shorter waiting times), and cheaper fares. We consider each element below.

### **Waiting times and vehicle availability**

- 11.50 Economists predict that waiting times would be reduced if there were more vehicles available.<sup>36</sup> Behavioural studies of taxi drivers,<sup>37</sup> and an abundance

<sup>33</sup> See for example the generally positive assessment made by Katrina Wyman of derestriction in Ireland in "Problematic Private Property: The Case of New York Taxicab Medallions" in Volume 30 *Yale Journal on Regulation* 125, fn 121, in contrast to a more critical assessment in e.g. LHM Casey McGrath Critical Evaluation and Review of the "Economic Review of the Small Public Service Vehicle Industry" prepared by Goodbody Economic Consultants (2009) at <http://www.taxi-library.org/goodbody-report-critique.pdf>.

<sup>34</sup> Considering the conflicting results of deregulation policies, A T Moore and T Balaker acknowledge in "Do Economists Reach a Conclusion on Taxi Deregulation?" (January 2006) 3(1) *Econ Journal Watch* p 113 that "the devil is in the details of implementing deregulation and in what is measured to define success".

<sup>35</sup> For example, responses received from the National Association of Taxi Users and the Passenger Transport Board.

<sup>36</sup> Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003), pp 24 to 29.

<sup>37</sup> Katrina Wyman, "Problematic Private Property: The Case of New York Taxicab Medallions" forthcoming in Volume 30 *Yale Journal on Regulation*, 125 at fn 121; C Camerer et al, "Labor supply of New York City cab drivers: one day at a time", in D Kahneman and A Tversky (eds), *Choices, Values and Frames* (2000) pp 356 to 370; J Rowson and J Young, "Inside the Mind of a Cabbie" (2011).

of anecdotal evidence during consultation,<sup>38</sup> suggest they do not behave as predicted by economic theories. In addition, the workforce is largely uncoordinated and independent, and drivers are very resistant to change in working patterns. This suggests that increased taxi numbers could result in more taxis at times and in places where demand is already relatively well served but little improvement elsewhere, such as at night or in more suburban areas. The effect of deregulation may therefore not be uniform.<sup>39</sup>

- 11.51 The National Association of Licensing Enforcement Officers warned that uneven supply of taxi services could persist after derestriction:

Just by removing quantity control will not guarantee provision at times of need (neither will additional higher tariffs). This can be seen from London where plates are not limited.

- 11.52 Further, stakeholders commonly argued that quantity restrictions contribute to better and more efficient provision, particularly at night, through encouraging double-shifting - the use of a taxi by more than one driver, for example where one driver covers normal daytime hours while the other works night shifts and weekends. This increases the usage rates of individual vehicles and makes them work more efficiently. If each driver had access to a different vehicle, they might both concentrate their working hours into the daytime. For example, during the derestricted period in the Wirral, it was reported to us, the lack of double-shifting led to unmet demand appearing in areas where there had previously been none.

- 11.53 Unite the Union gave the following explanations:

In areas with restricted taxi numbers, it is commonplace to have a taxi double shifted, for instance in cities such as Liverpool and Manchester, and even in smaller areas ie Ellesmere Port, Knowsley etc, approximately 70% of the taxi fleet is double-shifted; this has two main benefits for the travelling public; it gives taxi coverage 24/7, and the driver has shorter shift patterns. Wirral also had 70% double-shift prior to the increase in licences, and it is now between 2-4%. When WBC took the decision to remove numerical controls, most of the "jockeys" applied for a licence and very rapidly the double-shift system was abandoned, and drivers began to "cherry pick" the most lucrative hours to work [namely 8am-8/10pm from Monday to Friday, with longer hours at weekend].

- 11.54 One respondent to the survey organised by the Private Hire and Taxi Monthly magazine told us that two drivers work his vehicle, ensuring that it is available at all times, but that there would not be enough work if quantity restrictions were lifted in his area. Liverpool City Council felt that double-shifting gave them a good level of provision to service their night economy, although

<sup>38</sup> For example, the London Taxi Drivers Association told us that Tariff 3 in London, rather than encouraging drivers to work later, simply had the effect that they met their personal target for earnings more quickly and finished work earlier than before. The rate increase therefore had the opposite effect to that intended, reducing availability later at night.

<sup>39</sup> J T Bekken and F Longva, Institute of Transport Economics, *Trends in Taxi Regulation* (2004) p 9. See in particular the deregulation experiences in Sweden and New Zealand.

private hire drivers in Liverpool felt that there was unmet demand at night. We were also told that when Watford deregulated taxi numbers it suffered a decrease in double-shifting and consequently provision at night. On the other hand, where there are fewer vehicles consumers may be faced with longer waiting times, which would be a community loss but one which is harder to quantify.

## Fares

- 11.55 Fares are another area in which practice does not appear to match economic theory. Economists predict that fares should become lower if there are more vehicles available.<sup>40</sup> The prediction is not borne out either by comparisons of fares across licensing authorities or by comparisons of fare levels before and after derestriction. Though the comparisons relate to maximum fare levels set by licensing authorities rather than realised prices generated by price competition, there are nevertheless some indications, as we explain below, of an association between derestriction and higher fares.<sup>41</sup>
- 11.56 The National Private Hire Association collects data about the taxi tariffs applied by the different licensing authorities across England and Wales, and regularly publishes national taxi fare tables.<sup>42</sup> It provides statistics determining the national average, as well as monitoring fare rises since 2002. These suggest that fare levels in quantity-restricted areas are not higher than in unrestricted areas; indeed, many are lower.<sup>43</sup>
- 11.57 Even where licensing authorities have removed quantity restrictions, fares have not reduced: since 1999 only two authorities have reduced their taxi fares,<sup>44</sup> though a larger number have derestricted. However, removal of quantity restrictions has been observed to have the opposite effect, making taxi fares more expensive: the Office of Fair Trading's 2003 report, which had recommended the removal of quantity restrictions, noted nevertheless that taxi fares in derestricted areas increased at a higher rate than in areas where quantity restrictions were still in place.<sup>45</sup>
- 11.58 A plausible explanation of why removal of quantity restrictions is associated with higher fares appears to be that, with less work to go around between a larger number of drivers, the pressure to earn more for each job is greater. This leads to

<sup>40</sup> Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) pp 24 to 29.

<sup>41</sup> Our experience is that drivers generally apply the maximum permitted fare rate, although discounting does occur.

<sup>42</sup> See <http://www.phtm.co.uk/newspaper/digital-edition> (last visited 19 May 2014).

<sup>43</sup> See <http://www.phtm.co.uk/newspaper/digital-edition> (last visited 19 May 2014), pp 26 to 27.

<sup>44</sup> Hart District Council and Medway Council in 2013: *Private Hire and Taxi Monthly*, issue 246, March 2013, p 67.

<sup>45</sup> A sample of 30 restricted and 30 derestricted authorities had been studied using the December 2000 edition of *Private Hire and Taxi Monthly*. The results showed that between 1999 and 2002, taxi fares had increased by an average of 21.8% in restricted areas; but by 24.3% in areas that had removed quantity restrictions. See the Office of Fair Trading, *The Regulation of Licensed Taxi and private hire vehicle services in the UK* (November 2003), Annex D, para 4.29, [http://www.offt.gov.uk/shared\\_offt/reports/comp\\_policy/oft676.pdf](http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft676.pdf) (last visited 16 May 2014).

pressure on licensing authorities to raise the regulated fare. We were told by licensing officers at a large northern authority that pressure for higher fares was much more intense during a period of derestriction.

### **Conclusion**

11.59 We take the view that we should not propose a change to the existing legal position unless we are satisfied that it will yield an improvement. We are not satisfied of this in the light of apparent empirical evidence to the contrary.

11.60 In summary, evidence from consultation suggests that we cannot be confident that removing quantity restrictions would bring significant consumer benefit.

### **DERESTRICTION ABROAD**

11.61 During consultation we conducted additional research regarding foreign jurisdictions and their experience of derestriction. Overall, we found no consensus. Whilst many of the problems affecting the taxi trade are the same across different jurisdictions, differences between regulatory systems mean that comparisons need to be treated with caution.

11.62 In New Zealand, improvements in taxi availability and reduced passenger waiting times in cities were matched with a diminution in the supply to rural areas because taxi drivers tend to concentrate in places of highest demand in the absence of licensing zones.<sup>46</sup>

11.63 Reported experience in the Netherlands, Sweden and New Zealand also suggests that new entrants tend to concentrate in already well-served places, such as airports, and that quality standards can be an issue in derestricted taxi markets. Issues typically include poor geographical knowledge and language skills, abusive behaviour towards customers and refusals of short fares. New sets of standards,<sup>47</sup> including new codes of conduct,<sup>48</sup> revised sanctions and complaints handling<sup>49</sup> have usually accompanied or followed any deregulation. Declining quality standards seem to reflect an enforcement problem as numbers grow.

11.64 Overall, the picture of the deregulated landscape is very mixed and includes: improved waiting times, at least in some urban areas, owing to an increased number of taxis in the streets; a broader variety of vehicles and range of services

<sup>46</sup> J T Bekken and F Longva, Institute of Transport Economics, *Trends in Taxi Regulation* (2004) p 9.

<sup>47</sup> The Singapore Land Transport Authority introduced a revised framework governing the conduct of taxi drivers (known as the Vocational Licence Points System) in 2003. It spells out to taxi drivers the offences, fines, demerit points and guidelines for suspending or revoking a taxi vocational licence. See the Land Transport Agency's website: <http://www.lta.gov.sg/content/ltaweb/en/public-transport/taxis/industry-matters-for-taxi-drivers.html> (last visited 16 May 2014).

<sup>48</sup> In the Northern Territory of Australia, a Code of Conduct was approved in 2001 in order to set minimum standards of customer service. Breaches may result in fines (up to \$2,000) and possible restrictions of the taxi operation.

<sup>49</sup> In Singapore, companies who wish to operate a taxi service are subject to stringent conditions. The operating rules of the company, which must be approved by the Land Transport Authority, have to include a complaints procedure.



offered, but also rising fares, increased congestion and over-ranking; issues relating to the ability of taxi drivers to maintain, and for the public authorities to enforce, quality standards; longer working hours for drivers leading potentially to unsafe working, and concerns about taxi drivers' remuneration. In short, comparative studies suggest no clear answer to the question of quantity restrictions.

### **A DECISION TO BE MADE ON THE BASIS OF LOCAL CIRCUMSTANCES**

11.65 We have acknowledged the importance of local decision-making in respect of taxis; and the trades have argued that numbers regulation falls squarely within that local remit. We see merit in this argument. It is also telling that those areas which maintain quantity restrictions tend to be cities and larger towns, which stand to suffer more seriously from problems of congestion, over-ranking and detrimental environmental impact.

11.66 The argument for local decision-making was made forcefully by a number of stakeholders. The Leicester and Rutland branch of the RMT argued that:

Licensing authorities are ones which know the local area and plan their transport, so they will know their exact requirements and by correct consultations with trade unions should be able to revise numbers without causing problems to people's investment and livelihood.

11.67 North Tyneside Hackney Carriage Association added that:

The Local Authority must retain the ability to limit numbers of taxi (hackney carriage) licences it issues as it is best aware of local circumstances and needs for the licensing district.

11.68 The behaviour of those licensing authorities that decided to reintroduce quantity controls after derestriction is evidence that the power is regarded as useful by regulators.<sup>50</sup>

### **CONCLUSION ON QUANTITY RESTRICTIONS**

11.69 We have noted the strong view put forward during consultation that quantity restrictions can have a positive role to play within the taxi licensing framework and have found a lack of empirical evidence of the benefits of derestriction.

11.70 Our initial view was that derestriction would be likely to provide the most efficient use of resources by enabling the market to determine supply and demand. However, having listened to the responses to our consultation, we recognise that some limitation on taxi licence numbers may, in some areas, be desirable.

<sup>50</sup> These include Birmingham, Chesterfield, Copeland, Derbyshire, Fylde, North East Lincolnshire, Sheffield, Slough, West Berkshire and the Wirral.

### **Recommendation 58**

**We recommend that licensing authorities should continue to have the power to limit the number of taxi vehicles licensed in their area.**

#### **MECHANISMS FOR DETERMINING TAXI NUMBERS**

- 11.71 Although we do not propose to abolish quantity restrictions, we see scope to improve significantly the way they are imposed.

#### **Unmet demand surveys**

- 11.72 As the law currently stands, a local authority can only impose quantity restrictions where it can show that there is no “significant unmet demand” for taxis in the area.<sup>51</sup> A general practice has developed of local authorities conducting what are known as “unmet demand surveys” before quantity restrictions are introduced (or retained where they are already in place).<sup>52</sup> The law does not permit a licensing authority to balance unmet demand against other factors militating in favour of quantity restrictions, such as congestion, over-ranking,<sup>53</sup> or environmental harm.
- 11.73 Our consultation paper suggested that the concept of unmet demand was not necessarily a useful or effective way of assessing whether quantity restrictions should be applied.
- 11.74 A taxi driver in Oxford told us that he did not believe surveys painted a true picture of demand, and suggested that the huge numbers applying for licences each time they are issued shows that there must be demand for more vehicles. We are not persuaded by that: demand from would-be taxi drivers does not necessarily match the demand from the public; the former may well exceed the latter, as there is no guarantee that taxi drivers’ expectations are in line with customer demand. However, the Metropolitan Borough of Sefton described unmet demand surveys as “expensive and unreliable”. Carmarthenshire County Council described the content of these surveys as “open to criticism”.
- 11.75 Furthermore, the process of applying quantity restrictions appears to be susceptible to trade pressure, and it is highly unlikely that the level of provision deemed acceptable by the trade will be the optimum level for the public. In other areas respondents have claimed that taxi drivers know when unmet demand surveys are taking place and will minimise the appearance of unmet demand by working the busiest hours to reduce waiting times. Furthermore, decisions about quantity restrictions seem to be taken with little or no input from the public.

<sup>51</sup> Town Police Clauses Act 1847 as modified by Transport Act 1985, s 16.

<sup>52</sup> See Southampton [http://www.southampton.gov.uk/Images/Halcrow\\_Unmet\\_Demand\\_Report\\_2012\\_tcm46-324746.pdf](http://www.southampton.gov.uk/Images/Halcrow_Unmet_Demand_Report_2012_tcm46-324746.pdf) (last visited 19 May 2014); the Wirral <http://www.national-taxi-association.co.uk/wp-content/uploads/2012/01/HALCROW-WIRRAL-SURVEY-2011.pdf> (last visited 19 May 2014) and the Ipsos Mori Taxi availability study for Licensed Taxi Drivers Association, conducted in 2007.

<sup>53</sup> Over-ranking refers to the problem of too many taxis lining up at ranks.

### **Broad discretion**

- 11.76 Some stakeholders argued for a return to the pre-Transport Act 1985 situation, when a local authority was unfettered in its discretion to apply quantity restrictions. This would allow them to take account of any matters felt to be relevant, structuring a mechanism to suit the local area and taxi fleet.
- 11.77 However, this model has no safeguards other than those of public law generally and there could be no opportunity for members of the public to have input. It is important to ensure that there are sufficient taxis to enable the public to travel with reasonable ease when they wish to and across a range of locations. Giving local authorities unfettered discretion may not achieve this, as we have heard that some are already reluctant to review and update their limits under the current scheme. We do not believe this would be a desirable change.

### **Linking taxi number increases to rank space**

- 11.78 As an alternative to the unmet demand test, a number of stakeholders, including Bryan Roland of the National Private Hire Association and Sefton Hackney Drivers, suggested that new plates should only be issued in proportion to available rank space. Increased pressure on rank space was an issue raised by a number of local authorities objecting to the removal of quantity restrictions. Whilst we can see some merit in this, we believe that ranks exist primarily to serve the public, in providing a convenient location at which to engage a taxi. Taxis are not limited to working at ranks, and technology is providing increasingly smarter ways of working, matching taxis with willing customers. Moreover, town centres and other areas where ranks would be useful often will simply not allow for more rank space. We therefore do not believe that placing local authorities under an obligation to relate taxi numbers to rank space would be satisfactory.

### **Evidence-based decisions on taxi numbers**

- 11.79 Certain US cities are moving towards increasingly technological, data intensive methods of monitoring taxi vehicle usage.<sup>54</sup> Such systems allow regulators to base decisions on actual data instead of projected figures and other proxies.<sup>55</sup> We do not suggest a requirement for licensing authorities to monitor industry data directly, and we are not aware of any authorities in England and Wales that take such an approach, presumably for reasons of cost. However, a number of stakeholders supported such an approach in their responses; for example, the Metropolitan Borough of Sefton. Whilst we do not recommend that legislation should necessarily include data gathering requirements, we suggest that consideration be given to including them in best practice guidance.

### **A PUBLIC INTEREST TEST**

- 11.80 Public interest tests are used in various North American cities and

<sup>54</sup> See, for example, New York Taxicab Passenger Enhancements Project, [http://www.nyc.gov/html/tlc/html/industry/taxicab\\_serv\\_enh.shtml](http://www.nyc.gov/html/tlc/html/industry/taxicab_serv_enh.shtml) (last visited 19 May 2014).

<sup>55</sup> See, for example, papers delivered on 17 November 2012 at the IATR Conference Washington DC by Roger F Teal, PhD, Market Data and Knowledge: Delivering in the Role of the Taxi Regulator Providing a Public Service; and Ray A. Mundy, PhD, Using Actual Taxi Data for Regulating Taxicab Services.

Australian states.<sup>56</sup> They often accompany a presumption in favour of granting taxi licences unless the regulator is able to show that this is against the public interest.<sup>57</sup>

11.81 Our draft Bill includes a power for licensing authorities to limit the number of taxis in their area but only if to do so is in the public interest.<sup>58</sup> Assessment of the public interest is to take into account a non-exhaustive list of statutory factors which include:

- (1) the interests of consumers;
- (2) provision for disabled passengers;
- (3) traffic congestion, over-ranking and environmental considerations; and
- (4) sustainability of the industry.

11.82 Our proposed public interest test could operate in a similar way to that in the Transport Act 2000, whereby local authorities are required to consider a public interest test before introducing a quality contracts scheme – essentially a bus franchise.<sup>59</sup>

11.83 In order to promote consistency, transparency and better quality decision-making, we recommend that the Secretary of State should have the power to make regulations prescribing how the public interest test should be applied.<sup>60</sup> This could include, but not be limited to, the current content of the Department for Transport's best practice guidance.<sup>61</sup> We recommend, for example, that so-called "peaked demand" should continue to be taken into account. Regulations might further specify how evidence in respect of each of the statutory factors should be analysed and taken into account. This can be important in ensuring transparency and consistency. We recommend that the regulation-making power should cover the following topics: what might constitute appropriate evidence; methodology; weighting; and benchmarks.

11.84 The draft Bill requires the Secretary of State, in making the relevant regulations, to consult the same groups as in respect of drafting national standards.<sup>62</sup>

11.85 We note that at the moment the Department for Transport best practice guidance

<sup>56</sup> For example, these were considered as part of a discussion on quantity restrictions at the International Association of Transport Regulators' 2012 Conference, held in Washington DC between Thursday 14 November and Saturday 16 November 2012.

<sup>57</sup> See for example, KPMG's review of Australian taxi legislation in 1999 which suggested moving to a presumption of granting applications for taxi licences unless the regulator could demonstrate this would be against the public interest.

<sup>58</sup> Draft Taxis and Private Hire Vehicles Bill, clause 18(7).

<sup>59</sup> Transport Act 2000, s 124(1)(b) to (e).

<sup>60</sup> Draft Taxis and Private Hire Vehicles Bill, clause 18(8).

<sup>61</sup> Department for Transport, Taxi and private hire licensing: best practice guidance, March 2010, paras 45 to 51.

<sup>62</sup> Draft Taxis and Private Hire Vehicles Bill, clause 73(4). For further detail on the consultation requirement, see Chapter 3 above.

recommends that surveys should not be funded by the trade; we recommend that money to pay for such surveys should come from licence fee revenue, and comply with our principles of a self-funding, ring fenced system.<sup>63</sup> The public interest test should be flexible enough to allow licensing authorities to take into account purely local considerations, but in the context of clear requirements set out in the public interest test regulations.

**Recommendation 59**

**The power of licensing authorities to impose quantity restrictions should be subject to a statutory public interest test. Further, the Secretary of State should have regulation-making powers prescribing how the statutory test should be applied.**

**FREQUENCY OF REVIEWS**

- 11.86 We think it important to set out the process by which the decision should be made, ensuring that it is procedurally correct and fair. The cornerstone of this is a requirement that local authorities should review their policy at regular intervals. We think the Department for Transport's best practice guidance, which recommends reviewing quantity restrictions at least every three years, strikes the correct balance.<sup>64</sup> A requirement to this effect is in clause 18(6) of our draft Bill.
- 11.87 Finally, the draft Bill requires licensing authorities to consult locally before introducing a quantity restrictions scheme; the process for local consultation is to be determined in regulations.<sup>65</sup>

**Recommendation 60**

**Decisions to restrict taxi numbers should be reviewed at least every three years and be subject to local consultation in accordance with such procedures as may be prescribed in regulations made by the Secretary of State.**

**ALTERNATIVE TOOLS FOR IMPROVING TAXI PROVISION**

**Dispensations for wheelchair accessible vehicles**

- 11.88 We are aware that some local authorities which currently apply quantity restrictions disapply these in relation to wheelchair accessible vehicles, and that provisions within the Equality Act 2010, if brought into force, would require local authorities to do so.<sup>66</sup> We consider that the proper application of a

<sup>63</sup> See Chapter 10 above.

<sup>64</sup> Department for Transport, *Taxi and private hire licensing: best practice guidance*, March 2010, para 49.

<sup>65</sup> Draft Taxis and Private Hire Vehicles Bill, clause 18(8).

<sup>66</sup> Equality Act 2010, s 161. This section is at present in force only in so far as it confers power to make regulations. This section provides that a local authority cannot refuse to grant a licence on grounds of numerical limit where the application is in respect of a wheelchair accessible vehicle if the proportion of such vehicles in the local licensing area for which the licence would be granted is less than a proportion prescribed by the Secretary of State. No regulations have, to date, been made using these powers.

public interest test should take into account the need to ensure accessibility, and that a failure to do so would be grounds upon which to challenge the quantity restrictions policy. We discuss accessibility policies more specifically in the following chapter.

### **Peak demand licences**

- 11.89 In the consultation paper, we sought views on alternative strategies which could be used to address shortages of taxis late at night. We asked whether it would be useful for licensing authorities to issue taxi licences that could only be used during specified hours of the day prescribed by the licensing authority.<sup>67</sup> Licensing authorities in England and Wales (outside London) already have an express power to restrict the working hours of taxis.<sup>68</sup>

### **Consultation**

- 11.90 This provisional proposal proved very unpopular. There were two main categories of consultees who disagreed. The first group disagreed with peak demand licences on the grounds that such a system would be unenforceable. Those in the second group argued that it would be unfair to allow greater competition at what was often the only profitable time of the week. However, we also heard that many taxi drivers were reluctant to work late nights, leading to shortages. There were also concerns that peak time licences would lead to public confusion, with peak demand taxis unlawfully working outside their prescribed times. These respondents stressed that night provision should be solved by other means. Transport for London has suggested that peak demand licences would not be appropriate for London.

### **Discussion**

- 11.91 In light of the preponderance of opinion, we are not taking this suggestion forward. The utility of adding such a further category of licence is outweighed by the complication it could add to the system.

### **PLATE VALUES**

- 11.92 Our recommendation to retain quantity restrictions means that plate values associated with taxi vehicle licences in restricted areas could continue.
- 11.93 Plate values arise from the scarcity of vehicle licences in areas which operate quantity restrictions, and are realised by the practice of selling vehicles with the licence still attached. There is no official or standardised platform in which trades occur, and such transactions are carried out informally.<sup>69</sup> Values vary enormously

<sup>67</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 40.

<sup>68</sup> See Town Police Clauses Act 1847, s 68: The commissioners may from time to time ... make byelaws for all or any of the purposes following ... For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance ... and for regulating the hours within which they may exercise their calling. The Metropolitan Public Carriage Act 1869, s 9 (which applies in London) does not refer to working hours.

<sup>69</sup> This can be contrasted with the position in other jurisdictions, such as New York where taxi licences are traded on the stock exchange. See for example, <http://www.marketwatch.com/investing/stock/taxi>.

and can range from £1,000 to £120,000. We have not been able to ascertain any pattern in values, and high values do not necessarily correlate to regions with higher earning potential. For example, the highest plate value we have heard of is in Oxford, where it is alleged that licences have changed hands for up to £120,000. Perhaps surprisingly, Oxford comes just 146th in the “league table” of fares published by Private Hire and Taxi Monthly.<sup>70</sup> Other values we are aware of are £20,000 to £30,000 in Torbay; £20,000 in Exeter; £30,000 in Blackpool; £50,000 in Reading and £25,000 in the Carrick licensing zone of Cornwall. In the impact assessment which accompanied our consultation paper we noted that two independent studies in 2007 estimated the weighted average premium value to be £29,753 and £33,635 respectively.<sup>71</sup>

- 11.94 However, there does seem to be a link between plate values and the longevity of a quantity restrictions policy; for example, taxi licences in Aylesbury Vale, where the number of licences for the town centre zone has not changed since the 1970s, allegedly change hands for £80,000 to £90,000. This suggests that in such areas licence holders feel that the quantity restriction policy is more secure and thus can be relied on more.

### **Consultation**

- 11.95 Although we did not ask a distinct question about the trade in taxi plates, many stakeholders brought the issue up in relation to quantity restrictions. It was notable that even those stakeholders who supported retaining quantity restrictions often felt that the trade in taxi licences should be stopped. The City of York objected to the high values licences attracted (around £60,000 in that city) and the fact that some individuals hold multiple vehicle licences, renting them to drivers at very high rates but leaving the driver responsible for vehicle maintenance and upkeep.
- 11.96 A number of stakeholders simply questioned whether it was right that individuals should gain such significant financial benefit from a public good, granted at low price, such as an authorisation to undertake a particular occupation. Private hire drivers often complained that the value was a substantial barrier to entry, and we had some responses from taxi drivers (often former owner/drivers) who disagreed with the high value trade in licences.
- 11.97 One licensing officer told us that plate values encouraged lower vehicle standards as older vehicles had an artificially inflated value and there was an incentive to keep them on the road as long as possible whilst the licence was attached to them.
- 11.98 We were also told that when licences change hands this tends to be within particular communities; the unofficial nature of the market encourages advertisement of a sale by word of mouth or through dedicated fora, so licences are often transferred to someone who already has an interest in the

<sup>70</sup> Private Hire and Taxi Monthly, Issue 245, February 2013, p 65.

<sup>71</sup> These values are found in the Europe Economics survey *Evaluating the impact of the taxis market study*, October 2007, para E.49 (£29.735) and a survey undertaken by the Taxi Driver Online website, *Restricting taxi numbers: myth and reality*, 2007, available at <http://www.taxi-driver.co.uk/reality.doc> (last visited 18 March 2013).

taxi trade, or who is a friend or relative of someone who does. This constitutes another, indirect, barrier to entry. It has also been suggested that the perception of value may have a negative effect on the best operation of the market, with incumbents staying in the industry even where it is not in their best interests to do so, in order to allow the value of their licence to continue to grow.<sup>72</sup>

11.99 We received fewer responses in favour of maintaining the status quo. Many respondents treated the issues of quantity restrictions and plate values together, and it seems that many respondents who supported the retention of quantity restrictions were also against any loss of plate value, even though they may not have said this expressly.

11.100 Trevor Boaler of the National Taxi Trades Group said:

The hardship that drivers will face who have currently taken out loans, remortgages to enter the trade and the loss to drivers who may have been thinking they had something to retire with should be fairly compensated. The Australian and Irish model for compensation could go some way to deal with this because if not, the financial hardship would ultimately put a burden on state benefit system.

11.101 A number of taxi drivers submitted the same response. Throughout consultation we were made aware of severe concerns about loss of a significant investment, which incumbents often rely on to provide a pension or to invest in a child's education, or which they have used as collateral for a loan or mortgage.

11.102 Many respondents simply pointed out that loss of plate values would be unfair. Some stakeholders, such as Jonathan Ninnis from St Ives, pointed to licence values as ensuring investment in the trade, which in turn promotes professional standards.

11.103 Stakeholders have highlighted some of the positive effects that accompany higher plate values. They promote professionalism and pride in the industry, given the large investment required to be involved. This in turn promotes more compliance and relieves enforcement costs. The academic Katrina Wyman considers the argument that plate values are a way of internalising the costs that taxis impose on society through congestion and pollution, by making plate owners pay for the privilege; however she rejects it, finding that licences are simply an economic instrument and means of political power.<sup>73</sup>

### **Discussion**

11.104 As a matter of principle, if we were starting from scratch, we would wish to have a licensing system that did not generate plate values. First, evidence suggests that the premium in plates is not generally put back into the industry to help finance new or upgraded vehicles. Rather, many licence holders rely on plate premiums

<sup>72</sup> Taxi Regulation Review, *Report of the Review Group*, p 12.

<sup>73</sup> See also Katrina Wyman, "Problematic Private Property: The Case of New York Taxicab Medallions" Volume 30 *Yale Journal on Regulation*, 125 at p 123 – 132. Wyman suggests that New York taxi medallions attract high values due to the economic benefit this gives to medallion owners, agents, brokers and lenders, drivers who share monopoly rents, the unions and the political clout of the taxi industry.



as pension funds, or to provide the collateral to repay a mortgage or fund their children's education.

- 11.105 Second, plate values add little or no value to the licensing system as a whole, and the effect is to prevent many would-be entrants to the trade being able to obtain their own licence. The Taxi Review Group established to consider taxi licensing in the Republic of Ireland (where licence values peaked at around €150,000) noted that "a licence should determine a person's suitability to carry out a function and it should not have monetary value or be traded on the open market."<sup>74</sup>
- 11.106 The above considerations suggest that if we were designing an entirely new system, plate values would not be a feature. However, it is important that we take into consideration the landscape which has evolved under the current law, in which plate values hold a great deal of significance for many people, for whom their removal would be highly damaging.
- 11.107 We recommend that in areas where quantity restrictions are introduced after our reforms (new quantity restricted areas), it should not be possible to trade vehicle licences.<sup>75</sup> In such areas an unwanted licence should be surrendered to the licensing authority, as with any other case of revocation or expiry at the end of a licence term. Notably, this means that if London, for example, were to introduce quantity restrictions further to our reforms, no plate values could arise.
- 11.108 The position is, however, considerably different in areas where quantity restrictions currently exist and premiums have been allowed to arise. Taxi licence holders in these areas have, in many cases reasonably, invested considerable sums in respect of plates. A change in the law would have a huge impact on incumbents, completely wiping out their investments. Given that plate premiums have been permitted to arise, it would we think be unfair for a shift in legal policy to destroy them, causing substantial loss to a class of individuals who acted in accordance with the law.<sup>76</sup>

#### **Recommendation 61**

**In licensing areas where quantity restrictions already exist at the time of the introduction of our reforms, but not in other areas, vehicle licence holders should continue to be able to transfer their taxi licences at a premium.**

- 11.109 This is achieved by clause 24 of the draft Bill, which empowers the Secretary of State to establish a procedure for the transfer of taxi vehicle licences, but only in areas specified in the regulations (which will be the areas which operate quantity restrictions at the coming into force of the clause) or in areas which do not have quantity restrictions, where transferees would have no incentive to pay a premium for the transfer.

<sup>74</sup> Taxi Regulation Review, *Report of the Taxi Review Group*, p 16.

<sup>75</sup> Draft Taxis and Private Hire Vehicles Bill, clause 24(4).

<sup>76</sup> Whilst incumbents have always faced the risk of their plate values disappearing as a result of derestriction, this is a different matter from a shift in policy which specifically destroyed plate values whilst preserving quantity restrictions.

# CHAPTER 12

## ACCESSIBILITY

### INTRODUCTION

- 12.1 Ensuring proper accessibility for all was a stated priority of our review.<sup>1</sup> Whilst improvements have been made over the last 20 years, more needs to be done to improve accessibility, particularly as provision currently varies widely between different licensing areas.

### INCENTIVES

- 12.2 We asked stakeholders whether licensing authorities should have the ability to set a lower licensing fee for vehicles meeting certain accessibility standards.<sup>2</sup> We were interested in finding out whether this could incentivise the uptake of accessible vehicles.

### Consultation

- 12.3 Most consultees agreed with this. At the same time, the majority of stakeholders we met at consultation events told us that it would be difficult to set the incentive at a level where it would make a difference. Torfaen County Borough Council said it had made available discounted fees for four years, but this had not been effective in increasing numbers as the discount did not cover the additional cost of purchasing the vehicle. A number of people suggested waiving VAT, reducing road tax for wheelchair accessible vehicles, or providing other tax breaks.
- 12.4 Consultees who disagreed tended to argue that providing lower fees for accessible vehicles would result in increased fees for other licensees, as fee levels are determined on a cost recovery basis.

### Discussion

- 12.5 Some form of financial incentive would clearly encourage licence holders to meet certain accessibility standards. However, the general view is that a reduction in licensing fees would not be the answer. Any reduction in the fee would most probably not compensate for the additional expense arising from purchasing and operating an accessible vehicle, although this would depend on the type of vehicle and the standards it met.
- 12.6 Further work would also be required to identify the right financial incentives and how the cost of them should be borne. It would not be for us to undertake this kind of assessment, but we recognise that it could be a worthwhile matter for the Secretary of State to pursue.

<sup>1</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, pp 136 – 137.

<sup>2</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 58.

## **ACCESSIBILITY STANDARDS**

- 12.7 In our consultation paper we suggested that the Secretary of State should have the power to set standards for drivers, vehicles and operators. We originally proposed that this power should be limited to conditions relating to safety. As discussed above,<sup>3</sup> we now think the power should extend also to conditions relating to accessibility, to protection of the environment and to matters relevant to enforcement. Accessibility would therefore feature as a central requirement as part of national standards, allowing the Secretary of State to impose the requirements we suggest in this chapter, together with any additional standards the Secretary of State found appropriate, following consultation with a technical panel.<sup>4</sup>

## **ACCESSIBILITY TRAINING**

- 12.8 In our consultation paper we strongly recommended that drivers of both taxis and private hire vehicles should undergo training on disability awareness as a condition of their licence.<sup>5</sup> We felt that many of the problems experienced by disabled people stemmed from lack of awareness and poor attitude, and that this would be most appropriately tackled through education.

### **Consultation**

- 12.9 This proposal attracted high levels of support. The key themes of such training were identified as enabling drivers better to understand the needs of their disabled passengers, and to be able to operate and maintain equipment properly. One respondent suggested that training was needed on how to adjust driving behaviour to address the needs of different passengers.
- 12.10 Anecdotal evidence was provided about drivers not knowing how to operate the ramp in their vehicle, and failing to use the restraints in their vehicle to secure a wheelchair. Other examples included drivers losing their temper with disabled passengers who required assistance in entering the vehicle and trying to require passengers to travel in a way which would not be comfortable or safe for them.
- 12.11 Consultees representing people with learning disabilities told us that such people may have difficulties in communication and often other sensory or physical disabilities, and may need high levels of support. Training is needed to increase awareness of such needs. The needs of passengers with visual and auditory impairments also need to be adequately represented in the training. A number of respondents reported instances of drivers refusing to carry assistance dogs on religious grounds, because dogs are regarded as unclean in some religions. Others described situations where inadequate or inappropriate accommodation was available for assistance dogs, and one case where the carpet was rolled back and the dog required to sit on a metal floor. This is another area which could be covered in mandatory training, particularly as the obligation of taxi and private hire vehicle drivers to carry an assistance dog at no additional charge is already

<sup>3</sup> See Chapter 5, Recommendation 31.

<sup>4</sup> See Chapter 4 for further information on the consultation requirements relating to the Secretary of State's standard-setting powers.

<sup>5</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 61.

prescribed in legislation.<sup>6</sup> Exemption certificates may be issued to drivers on medical grounds. Failure to comply with the duty is a criminal offence.

- 12.12 Dr Jon Hastie of the Fed Centre for Independent Living argued that such training requirements should extend to private hire operators. When we met with users of the Centre we heard of incidents where they had requested a specific type of vehicle, only for one which was wholly inappropriate to arrive. Much of this can be put down to a lack of understanding and awareness on the part of operators.
- 12.13 We received a number of suggestions as to what the training should involve and how it should be presented. A number of disability groups said that training should be provided, at least in part, by disabled people. It was important to increase awareness about the different types of disability, and to move away from the idea that it is solely about people in wheelchairs. Training might also help to address tension between drivers of accessible taxis and their disabled passengers. Many consultees also felt strongly that training should include making sure that passengers are safe once they have been dropped off at their destination.
- 12.14 The Disabled Persons Transport Advisory Committee said such training should be provided to a recognised, accredited standard equivalent to the Certificate of Professional Competence which drivers of public service vehicles and goods vehicles are required to have. It should also be linked to relevant security checks, such as Disclosure and Barring Service criminal records checks. Of course, it is important to recognise that a number of local authorities already require disability awareness training of their drivers, and that a number of successful schemes already exist.

### **Discussion**

- 12.15 Our provisional proposal for national standards to include recognised disability awareness training received overwhelming support. We firmly recommend that taxi and private hire drivers should be required to undergo disability awareness training. Our draft Bill would create such a requirement in primary legislation. We recommend that the Secretary of State should set out the required content of such training in the exercise of the standard-setting power. Nothing in our recommendations is intended to limit the training which may be required of drivers to disability awareness; indeed, during consultation we heard good arguments for it being combined with wider customer service training.
- 12.16 The latest statistics from the Department for Transport indicate that just under a third of authorities require disability awareness training for taxi drivers, and even fewer impose such a requirement on private hire drivers.<sup>7</sup> Unlike other matters that we have discussed as part of national standards, the need for which can be

<sup>6</sup> Equality Act 2010, ss 168 to 171; Disability Discrimination Act 1995 (Taxis) (Carrying of Guide Dogs etc) (England and Wales) Regulations SI 2000/2990 and Disability Discrimination Act 1995 (Private Hire Vehicles) (Carrying of Guide Dogs etc) (England and Wales) Regulations 2003 SI 2003/3122.

<sup>7</sup> Department for Transport, Taxi and Private Hire Vehicle Statistics: England and Wales 2013, 6 August, 2013, p 3, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226355/taxi-private-hire-statistics-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226355/taxi-private-hire-statistics-2013.pdf) (last visited 19 May 2014).

left to be determined by the Secretary of State, we think that disability awareness training for taxi and private hire drivers should be a requirement of primary legislation. Whereas in general we regard the requirements of licences and the level at which the requirements should be set as matters for the discretion of the Secretary of State, we do not consider that the discretion should extend to whether disability awareness training is required. By contrast, the content of such training would properly fall to be determined through national standards. This is provided for in clauses 15(3) and (4) of our draft Bill.

- 12.17 As we stressed during consultation, it would not be appropriate for us to make detailed recommendations as to the content of the course and how it should be delivered. Instead, the Secretary of State should have the power to do this, and should exercise this power following consultation with relevant expert groups and stakeholders.
- 12.18 It has been suggested by some that only new entrants to the trade should have to be trained. We disagree. We recommend that attaining the required level in a disability awareness course should become compulsory for all taxi and private hire vehicle drivers. In order to phase in compliance, drivers could be required to attend the course before their licence is next renewed. Provision should be made to ensure that drivers who have already undertaken a sufficient level of disability awareness training are not required to duplicate this.

**Recommendation 62**

**We recommend that taxi and private hire drivers be required to undergo disability awareness training of a standard set by the Secretary of State.**

- 12.19 This recommendation is given effect by clause 15(3) of our draft Bill, which will apply both to a first application for a licence and to a renewal application, and will require a course to have been undergone within a stipulated past period.

**A REQUIREMENT TO DISPLAY COMPLAINTS INFORMATION**

- 12.20 We proposed in our consultation paper that there should be a requirement to display information on how to complain about taxi and private hire services in all licensed vehicles.<sup>8</sup> We saw this as a useful tool in combating discrimination and as useful not only for disabled passengers but for the travelling public generally.

**Consultation**

- 12.21 This proposal was extremely popular. Of the nine respondents who disagreed seven were from the trade, together with one regulator and one “other”. Those who disagreed often did so on the basis that this would encourage unjustified complaints or false allegations. A number of respondents said such information needed to be externally visible on taxis, so a complaint could be lodged if a driver failed to stop when hailed. Respondents noted that it would be important for the information to be available in accessible formats.

<sup>8</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 62.

- 12.22 One respondent said that local licensing authorities should make the taxi fare tariff available online. This would be of benefit generally, as would the wider distribution of licensing information.

### **Discussion**

- 12.23 We remain persuaded that an obligation contained in vehicle licence conditions, to display complaints information inside the vehicle would be useful. We do not think such a requirement would be unduly onerous, and believe that the benefits would far outweigh any disadvantages. Such a requirement is common in public transport such as buses and trains. Complaints could also help draw the attention of local licensing authorities to those operating contrary to the legal requirements, which would assist with enforcement.
- 12.24 Local authorities are used to dealing with complaints, and are equipped for handling them. Some authorities provide direct links online for licensing complaints.<sup>9</sup> Many local libraries also incorporate local authority customer service centres where complaints could be lodged.
- 12.25 There are various practical issues to consider. It would be necessary to make the information available in alternative formats, such as large print and braille. Information should also be made available at ranks, and on local licensing authority websites. Some stakeholders have also suggested that information should be available on the outside of the vehicle, so that a complaint can be made if a taxi fails to stop when hailed. We are not convinced by this, as it is unlikely the disappointed traveller would be able to note the details, but it is something the Secretary of State could consider.

#### **Recommendation 63**

**We recommend that the Secretary of State require information on how to complain about taxi and private hire vehicle services to be displayed in taxi and private hire vehicles.**

#### **Recommendation 64**

**We recommend that local licensing authorities should display complaint information in offices, libraries and on websites.**

### **LOCAL ACCESSIBILITY NEEDS REVIEW**

- 12.26 During consultation stakeholders representing disabled passengers highlighted how local standard-setting often overlooked the needs of disabled passengers. Typically, this took the form of overly restricting the type of provision that could be made. Such policies, standards or conditions can be judicially reviewed, and we will recommend a streamlined process for judicial review of local standards.<sup>10</sup>
- 12.27 As we noted in our consultation paper, general equality duties apply to any public

<sup>9</sup> See, for example, Guildford Borough Council's online portal for complaints about licensed vehicles: <http://www.guildford.gov.uk/article/3623/Make-a-complaint-about-a-Guildford-licensed-taxidriver-or-company> (last visited 13 March 2014).

<sup>10</sup> For further details, see Chapter 14.

authority in discharging public functions. Furthermore, in Chapter 11 we recommended that a local authority wishing to impose or continue quantity restrictions must take into account a range of statutory public interest factors, including the impact on of doing so on disabled passengers.<sup>11</sup>

- 12.28 In order to ensure that licensing authorities specifically consider the needs of disabled passengers as part of reviewing their local licensing conditions, we recommend a new procedural requirement for licensing authorities to review their taxi licensing policy at least every three years, in order to assess whether the needs of their disabled constituents are being met.

**Recommendation 65**

**We recommend that licensing authorities conduct an accessibility review at three year intervals.**

- 12.29 This recommendation is given effect by clause 15(5) of the draft Bill.

**A NEW OBLIGATION TO STOP**

- 12.30 We asked stakeholders for their views on how best to tackle taxi drivers ignoring disabled passengers who try to hail them. We asked whether it would help to impose an obligation on drivers to stop, if reasonable and safe to do so.<sup>12</sup> This question is closely tied to that of compellability; we have discussed the question of an obligation to stop in Chapter 3.

**Consultation**

- 12.31 Whilst the majority of respondents agreed that there should be an obligation to stop, a key concern was how to enforce such a requirement. Some stakeholders considered it impractical, not least because it would be difficult to prove whether or not it would have been safe for the driver to stop. A number of respondents suggested that “mystery shoppers”<sup>13</sup> could be used to test compliance. The Disabled Persons Transport Advisory Committee recommended that fixed penalty notices should be used to enforce against failure to stop.
- 12.32 Some regulators in Wales said that licensing authorities needed clear enforcement powers to sanction drivers who fail to offer reasonable assistance to disabled passengers, with more appropriate penalties for offences. This could be combined with national training in relation to recommended approaches and techniques. They suggested a standard mandatory requirement for roof lights to be connected to the taxi meter, to record when the vehicle is available for hire. Others agreed that there should be some obvious mechanism to show when a vehicle is available for hire. Many respondents thought that an illuminated roof sign already signalled availability for hire and obliged the driver to stop where safe.

<sup>11</sup> Draft Taxi and Private Hire Vehicles Bill, clause 18(7)(b), and discussion at para 11.81 above.

<sup>12</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 63.

<sup>13</sup> An expression used by competition authorities to describe people presenting themselves as potential customers with a view to reporting infringements.

- 12.33 A number of respondents also identified overcharging as a problem for disabled passengers. Some firms charge more for use of a wheelchair accessible vehicle on the basis that it is more expensive to operate. There is also debate as to whether a taxi meter should start running as soon as the driver arrives to pick up the passenger or when the journey starts (and vice versa at the other end). If it is the former the passenger is charged for the time taken, for example, to load the wheelchair into and out of the vehicle, possibly adding quite considerably to the cost. Some in the trade believe they should be able to charge for time used in this way, whereas disability groups regard this as discriminatory in the provision of the service. Where the passenger has agreed to pay a fixed fee (either for a private hire vehicle or a pre-booked taxi), it is clear that any attempt to charge more on the basis that they are disabled would be in breach of the Equality Act 2010.<sup>14</sup> Best practice guidance from the Department for Transport advises that drivers should not start the meter until the passenger is seated in the vehicle, but the law is not clear on this question. We take the view that the meter should not be started whilst a disabled person is still accessing the vehicle.
- 12.34 Many stakeholders representing disabled people identified problems with taxis and private hire vehicles being late, not turning up at all, or not having the correct information about the passenger's needs. There were also concerns that the growth in the use of smartphone applications could increase discrimination, as some of these allow drivers to identify and sometimes even to rate passengers.

### **Discussion**

- 12.35 There is general support for an obligation for a taxi driver to stop when hailed if it is safe and reasonable to do so. This obligation would be in addition to the requirement of compellability, which is currently only engaged once a driver has stopped for a street hail or when the taxi is approached at a rank. This would go some way towards eradicating the problems that many disabled people have reported in hailing a taxi. However, there is a general question as to how this could be set down in law and enforced effectively. This question is closely linked to that of vehicle signage and the ability of the driver to signal whether or not he or she is available for hire.
- 12.36 In Chapter 3 we recommended that the licensing authorities should have the power to make a determination that taxis licensed in their area should be under a duty to stop when hailed. As a result of our recommendation, drivers licensed in such areas, and displaying a for hire sign, would commit an offence if they failed to stop when hailed to do so, unless they had a reasonable excuse.<sup>15</sup>
- 12.37 We regard this as an important recommendation for improving access to taxis for disabled people. Though we do not overlook the enforcement difficulties, we consider that the existence of the obligation would have a degree of effect in changing driver behaviour. So-called "mystery shoppers" may be a useful enforcement tool, and improved complaints procedures as described above could also help. Thought would need to be given to establishing a suitable level of burden of proof. We suggest that it should be for a driver to demonstrate that it was unsafe or otherwise unreasonable to stop. This recommendation is set out in

<sup>14</sup> Equality Act 2010, s 15.

<sup>15</sup> Draft Taxi and Private Hire Vehicles Bill, clause 29(2).



greater detail in Chapter 3 above.<sup>16</sup>

- 12.38 Recommendation 16, contained in Chapter 3 above, gives effect to this policy.

### **EQUALITY ACT 2010**

- 12.39 In our consultation paper we highlighted the application of the Equality Act 2010 to the area of taxi and private hire licensing. We noted that licensing authorities are subject to a duty to eliminate discrimination and promote equality of opportunity, whilst service providers must not discriminate against disabled people in the provision of services. We note that it would not fall within the scope of this project for the Law Commission to recommend bringing into force those sections of the Act which deal specifically with taxi and private hire services.
- 12.40 As will be clear from earlier parts of this chapter and the discussion in Chapter 3,<sup>17</sup> during consultation we heard a significant amount of concerning evidence about discrimination against disabled people. Two things were particularly clear: first, that a lack of training and understanding are at the bottom of many of the problems experienced; and secondly, that enforcement of existing protections is weak, if indeed it takes place at all.
- 12.41 We recommend in Chapter 5 that the Secretary of State should have the power to set national standards for driver, vehicle and dispatcher licences. These powers would include setting standards relating to safety, accessibility and matters relating to enforcement. Discrimination against disabled people is an area in which these three categories of standards are inherently intertwined.
- 12.42 As the law currently stands, much of the behaviour complained of by disabled passengers would infringe the provisions of the Equality Act 2010, in particular the requirement not to discriminate in the provision of services.<sup>18</sup> However, the only means of enforcing this is through pursuing an action in the civil courts. This is costly, complex and, without the support of a representative organisation or charity, not feasible for most individuals. Furthermore, even if action were to be taken against a driver or dispatcher, the court would not have the power to take action against the licence.
- 12.43 In order to provide a more effective means of enforcement, and one which targets the offending behaviour more squarely, we strongly recommend that the Secretary of State should exercise the standard-setting powers to make it a condition of licence for both drivers and operators that they comply with the provisions of the Equality Act 2010, specifically section 29, which prohibits discrimination in the provision of a service.
- 12.44 This would allow a licensing authority to take action against the licence where there was sufficient evidence to demonstrate that a driver or dispatcher had, for example, overcharged a customer on the basis of a disability. It would remove the difficulties the customer faces in seeking to take action against this behaviour, as the procedure would be activated simply by lodging a complaint with the

<sup>16</sup> See Recommendation 16, and discussion from para 3.88 above.

<sup>17</sup> See for example the discussion from para 3.83 above.

<sup>18</sup> Equality Act 2010, s 29.

licensing authority. The complaint could then be dealt with through the usual channels put in place by that authority, and would of course be subject to evidential requirements.

**Recommendation 66**

**We recommend that the Secretary of State require holders of taxi and private hire driver licences and dispatcher licences to comply with the Equality Act 2010 as a condition of the licence.**

**ACCESSIBLE VEHICLES**

- 12.45 In our consultation paper we asked whether there should be a separate licensing category for wheelchair accessible vehicles. We suggested that a vehicle holding such a licence could be required to give priority to disabled passengers. We also asked whether there should be a duty of licensing authorities to make adequate provision at ranks for wheelchair accessible vehicles.<sup>19</sup>

**Wheelchair-accessible vehicles**

- 12.46 It became apparent during consultation that there is a great deal of confusion and misunderstanding over what is meant by “wheelchair-accessible vehicle”. A number of stakeholders told us that application of the term does not always mean that a disabled person in a wheelchair can travel comfortably or safely in such a vehicle, or that it is suitable for all types of wheelchair.
- 12.47 European specifications are not mandatory for wheelchair accessible vehicles<sup>20</sup> and there is no single standard for such vehicles, although work has been done by the British Standards Institute.<sup>21</sup>
- 12.48 The dimensions for wheelchair accessible vehicles (including regulated rail vehicles, buses and coaches) are based on what is known as a “reference wheelchair.”<sup>22</sup> Some consultees told us that the dimensions are inadequate because many modern wheelchairs, particularly electric wheelchairs, are larger. However, other groups, such as the Disabled Persons Transport Advisory Committee and the Spinal Injuries Association, say that the number of larger wheelchairs is small and that the dimensions of accessible taxis are adequate.
- 12.49 Many wheelchair accessible vehicles are rear-loading, and some passengers prefer that. Others, however, prefer a side-loading vehicle. From a safety point of

<sup>19</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation paper No 203, question 57.

<sup>20</sup> Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units for such vehicles. See in particular Annex XI, Appendix 3.

<sup>21</sup> See Specification for M1 vehicles for the carriage of one or more passengers seated in wheelchairs. Manufacturing requirements PAS 2012-1:2012, and Specification for M1 vehicles for the carriage of one or more passengers seated in wheelchairs. Retail requirements PAS 2012-2:2012, both published by the BSI <http://www.bsigroup.com/en-GB/> (last visited 19 March 2013).

<sup>22</sup> As defined in the Rail Vehicle Accessibility (Non-interoperable Rail System) Regulations 2010, SI 2010/432, Schedule 2, diagram A. The dimensions are length 1200mm, width 700mm, sitting height 1350 and height of footrest about the floor, 150 mm.

view a rear-loading vehicle can present problems because the passenger can only access the vehicle from the road. This means that a longer ramp is required because the kerb cannot be used, which can present access problems.

- 12.50 Many consultees emphasised that for a vehicle to be accessible did not necessarily mean that it must be capable of carrying a wheelchair. Indeed, wheelchair-accessible vehicles can pose difficulties for non-wheelchair using disabled people; for example, those with mobility difficulties may struggle with the high step and raised floor of a purpose-built vehicle. This has played an important part in our policy consideration in this area.

### **Consultation**

- 12.51 Consultees were fairly evenly divided on the question of a separate licensing category for wheelchair accessible vehicles. The Disabled Persons Transport Advisory Committee regarded the proposal as an “important recommendation”. The Committee also considered that wheelchair accessible vehicles should be granted priority at taxi ranks.
- 12.52 However, other consultees thought this could be potentially harmful, creating tension between disabled people and other travellers. A comment made by a number of respondents, in particular representatives of disabled people, was that fair and equal access for all was the key, rather than priority treatment.
- 12.53 Another important point raised was that most disabled people do not require wheelchair accessible vehicles – for example, some consultees with mobility difficulties stated that they prefer saloon cars as they do not have to climb upwards into them as they do with a traditional black cab.
- 12.54 Some stakeholders felt it would be useful if licensing authorities distributed information regarding the range of vehicles available in the area, and who they are operated by. Others noted that they often have difficulty in accessing vehicles at ranks; during consultation we were shown ranks without dropped kerbs or where there is insufficient space to extend a ramp. At one railway station, it was only possible to load a wheelchair into an accessible taxi from the road, and not from the pavement. We have already mentioned issues surrounding rear-loading wheelchair-accessible vehicles; it is often difficult to accommodate these on ranks as space for a ramp must be left clear behind them. As a result, some licensing authorities will not license rear-loading vehicles.

### **Discussion**

- 12.55 There are a number of practical difficulties arising from a separate licensing category. It introduces another level of complexity into the licensing regime. A category solely for wheelchair accessible vehicles would ignore the point made by many respondents that the system needs to cater for many different types of disability.
- 12.56 There would also be practical difficulties in requiring a licensee to give priority to disabled passengers. For example, it may not always be obvious to a driver that a potential passenger is disabled.
- 12.57 We do not recommend a separate licensing category for wheelchair accessible

vehicles. We do, however, take the view that licensing authorities should consider the needs of disabled people in the provision of ranks and seek to provide appropriate facilities. We suggest that local authorities should reconsider the design of ranks to ensure compliance with the Equality Act 2010.<sup>23</sup>

- 12.58 Effective complaints procedures are also important in ensuring better provision for disabled passengers. This could be achieved, for example, by providing information about the licensing authority and local operators in alternative formats. Other positive measures promoting improved accessibility include providing information about the types of vehicle available from different operators (which are referred to as “dispatchers” in our draft Bill) in the area. These measures could be given effect as part of national standards by the Secretary of State, and through local licensing conditions, both of which are expressly required, under our recommendations, to take into account the needs of disabled passengers.

**Recommendation 67**

**We recommend that licensing authorities should reconsider rank design to ensure compliance with the Equality Act 2010.**

**Recommendation 68**

**We recommend that licensing conditions should provide that information about the licensing authority and local operators should be provided in alternative formats, as well as information about the types of vehicle available in their area.**

**INCREASING THE AVAILABILITY OF ACCESSIBLE VEHICLES**

- 12.59 In our consultation paper we asked stakeholders for suggestions as to how to improve the availability of accessible vehicles.<sup>24</sup>

**Quotas on wheelchair accessible vehicles**

- 12.60 In our consultation paper we made it clear that we did not consider quotas of wheelchair accessible vehicles to be a suitable issue for treatment within a national licensing framework.<sup>25</sup> We recognised that the need for accessible vehicles, whether wheelchair-accessible or otherwise, was a highly localised matter. Furthermore, the administration of such a system would prove difficult, particularly in relation to monitoring and its application to individual licence-holders.

<sup>23</sup> Equality Act 2010, s 149, which requires public authorities to eliminate discrimination, advance equality of opportunity and foster good relations between disabled and non-disabled persons.

<sup>24</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 59

<sup>25</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 60.

## **Consultation**

- 12.61 Most respondents felt that national quotas would be unhelpful because provision of accessible vehicles should be decided by individual licensing authorities in response to local needs. However, many groups representing disabled people, such as the Disabled Persons Transport Advisory Committee, disagreed with the proposal and said that provision of a mixed fleet of accessible vehicles required legislative underpinning. As for the appropriate threshold, the Committee's initial recommendation was that it should be in excess of 30% availability, while Disability Rights UK proposed a minimum of 50%. The Joint Committee on Mobility for Disabled People supported the use of quotas until such time as all vehicles are accessible.

## **Discussion**

- 12.62 It is our view that a mixed fleet would, in general, more appropriately meet the needs of disabled people. It is clear that one size does not fit all, and that there is a danger of focusing too heavily on the needs of passengers in wheelchairs, perhaps at the expense of those with other, sometimes less obvious, accessibility needs. Even amongst those who use wheelchairs there are different requirements. This is one of the reasons why the Department for Transport has found it so difficult to identify a "universal" vehicle in order to implement provisions in the Equality Act 2010 and make regulations on taxi accessibility.<sup>26</sup>
- 12.63 However, we do not regard focus on the taxi fleet alone as being helpful here. Many stakeholders, both representing the disabled community and otherwise, noted that the two-tier system, by its very nature, provides a mixed fleet. It is worth noting that 61% of disabled people plan their journeys in advance.<sup>27</sup>
- 12.64 Some stakeholders felt that legislative underpinning would be necessary to regulate the mix of vehicles. We have concerns that it could become unduly bureaucratic and unwieldy to administer. The right mix in one area may not be right in another. Therefore, we stand by our provisional proposal not to introduce quotas of wheelchair accessible vehicles. We also do not think that legislation should require local authorities to license a mixed taxi fleet. However, we recommend that authorities should aim to ensure a mixture of different types of taxi in their area. Guidance from the Department for Transport might be an appropriate way of encouraging authorities to adopt this policy.
- 12.65 We also do not propose to require private hire operators to have a particular proportion of wheelchair accessible vehicles in their fleets. Similar concerns as to administration and monitoring apply; furthermore, under our scheme it would be necessary to set such requirements on a national basis, which would not be appropriate.
- 12.66 Nothing in our proposals would prejudice the ability of a licensing authority to impose a requirement that all taxis must be wheelchair accessible, as many currently do, nor prevent a local authority from imposing their own quota if they felt this was desirable.

<sup>26</sup> Equality Act 2010, s 160.

<sup>27</sup> Department for Transport, Attitudes of Disabled People to Public Transport, 2002.

### **Large private hire operators**

- 12.67 Although in general terms we were not convinced that the imposition of quotas would be useful, or indeed desirable, we did hear strong arguments as to the position of large private operators (or dispatchers, as the licence holder would be called under our proposed framework). Consultees pointed out that an operator could control a fleet of tens, if not hundreds, of vehicles, without a single one being wheelchair accessible. Furthermore, where such operators exist, they tend to dominate their local market.
- 12.68 We recognise that there may be cogent reasons for requiring dispatchers with large fleets to be able to provide a certain number of accessible vehicles. We consider that the power to set national standards in our draft Bill is broad enough to allow the Secretary of State to impose specific accessibility requirements in respect of large private hire dispatchers, including in particular, quotas of disabled access vehicles fitting such specifications as may be prescribed.<sup>28</sup>

#### **Recommendation 69**

**We recommend that the Secretary of State should have the power to impose accessibility requirements on large operator/dispatchers. In particular, the power should permit the setting of quotas of accessible vehicles which must be available to such dispatchers.**

<sup>28</sup> Draft Taxi and Private Hire Vehicles Bill, clause 19(5).

# CHAPTER 13

## ENFORCEMENT

### INTRODUCTION

- 13.1 In this chapter, we consider the options for reforming enforcement of taxi and private hire law. In particular, we focus on the powers and sanctions available to licensing officers when taking enforcement action.
- 13.2 Under current law, responsibility for enforcement of the taxi and private hire licensing regime lies with the licensing authority that issued the relevant licence. In particular, authorities have powers to suspend or revoke licences, or to refuse to renew them.<sup>1</sup> Licensing authorities can also bring criminal charges against a suspected offender.<sup>2</sup> Where breaches of licensing conditions also constitute offences, the police can also take enforcement action. Crucially, licensing officers are unable to undertake enforcement against vehicles, drivers and operators licensed in another area.
- 13.3 It is our view that enforcement powers should be improved in the following areas:
- (1) a new power for licensing officers to stop licensed vehicles;
  - (2) touting;
  - (3) power to impound vehicles;
  - (4) fixed penalty notices;
  - (5) cross-border enforcement.

### A NEW POWER TO STOP LICENSED VEHICLES

- 13.4 We asked consultees whether licensing officers should have the power to stop licensed vehicles.<sup>3</sup> We noted that licensing officers currently only have power to inspect and test licensed vehicles for fitness;<sup>4</sup> with only the police having power to stop vehicles. The police often have competing priorities which may mean that enforcement against licensing offences is not given the degree of priority that licensing officers would like. We noted that specifically accredited Driver and Vehicle Standards Agency (formerly Vehicle and Operator Services Agency) “stopping officers” currently have powers to stop public service and

<sup>1</sup> Local Government (Miscellaneous Provisions) Act 1976, ss 60 to 62; London Hackney Carriages Act 1843, s 25; London Cab Order 1934, para 30; Private Hire Vehicles (London) Act 1998, s 16.

<sup>2</sup> Local Government Act 1972, s 222(1)(a).

<sup>3</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 64.

<sup>4</sup> It is worth noting the specific situation of London in this area. Enforcement is carried out by mixed teams including police and licensing officers, which greatly facilitates enforcement. The legal basis for Transport for London’s power to appoint officers of the Metropolitan Police to assist with enforcement is given by the Metropolitan Public Carriage Act 1869, s 12.

heavy goods vehicles.<sup>5</sup> Existing powers allow constables and authorised persons to stop and seize vehicles that are driven without appropriate public service vehicle licences for example.<sup>6</sup> To avoid a gap developing in the powers to stop and immobilise under the public service vehicle legislation in respect of vehicles that may now be regulated as private hire vehicles, our draft Bill grants the Secretary of State the power to make regulations to give constables and stopping officers appropriate powers in relation to private hire vehicles.<sup>7</sup>

### **Consultation**

- 13.5 This suggestion received a very positive response from consultees, including from within the trades themselves. Local authorities and other regulatory bodies had mixed views on the issue.
- 13.6 Most of those who supported the idea and made substantive comments felt that, although it would be a good idea to give licensing officers the power to stop licensed vehicles, this would need to be carefully defined. Adequate safeguards would also need to be put in place to protect officers, drivers and the general public. For example, although the National Association of Licensing Enforcement Officers strongly agreed with granting licensing officers the power to stop licensed vehicles, calling this “the tool that is most obviously missing from the current enforcement toolkit,” they highlighted the need for the proper training of licensing officers, as well as appropriate safety measures. A large number of other consultees also emphasised the need for empowered officers to be highly trained and easily recognisable. Several consultees mentioned that the Vehicle and Operator Services Agency (now the Driver and Vehicle Standards Agency) already has a similar power and felt that this should be examined as a template.
- 13.7 Some consultees, such as Transport for London, considered that the power should extend to unlicensed vehicles where there is a suspicion of illegal activity.
- 13.8 Consultees who disagreed either rejected the idea outright, or suggested various types of lesser powers which they considered more acceptable for licensing officers. Several consultees noted that the idea might present multiple risks, particularly to licensing officers from aggressive drivers, and to drivers from criminals impersonating officers. The Association of Chief Police Officers’ Road Policing Portfolio representative thought it better for licensing officers to work with the police on stopping vehicles. Several consultees, including the Welsh Local Authorities and Birmingham City Council, suggested that licensing officers should be given power to direct vehicles to a designated stopping place but not to stop them on the highway. Neath Port Talbot County Borough Council suggested that licensing officers should only be permitted to instruct already stationary vehicles either to remain in place or to move to a

<sup>5</sup> A stopping officer is defined as “an officer appointed under section 66B of the Road Traffic Act 1988”.

<sup>6</sup> Public Passenger Vehicles Act 1981, s 12B, and the powers conferred upon examiners to immobilise vehicles, under s 66A of the Road Traffic Act 1988, and the Public Service Vehicle Regulations (Enforcement Powers) Regulations 2009.

<sup>7</sup> See discussion at Chapter 4, from para 4.53, and in particular, stretch limousines and novelty vehicles; and “opt in vehicles”.



different location for examination.

### **Discussion**

- 13.9 We maintain that a new stopping power for licensing officers, akin to that of Driver and Vehicle Standards Agency officers under the Road Traffic Act 1988, would greatly aid enforcement.<sup>8</sup> A properly trained and appointed local authority “stopping officer” may have better knowledge and greater experience of the nuances of taxi and private hire licensing law than the police. Stopping a vehicle “in the act” may sometimes be the only viable way to halt illegal activity and prevent further breaches from occurring.
- 13.10 However, we recognise that allowing licensing officers to stop licensed vehicles raises a number of challenges. The power to stop vehicles on the highway is typically associated only with the police, and there are potential risks to drivers, licensing officers and the public if adequate safeguards are not put in place. It might be difficult for licensing officers to identify in advance whether a vehicle was licensed, raising civil liberties issues if they were to stop a non-licensed vehicle. Some questioned the propriety of having a licensing officer, rather than a uniformed police officer, approaching members of the public and questioning them about their behaviour.
- 13.11 On the other hand, we do not believe these challenges are insurmountable. The example of the powers of accredited officers from the Driver and Vehicle Standards Agency to stop public service and heavy goods vehicles reveals that these types of powers do not always have to be exercised by the police, whose resources are thinly stretched. Proper accreditation programmes can tackle issues such as public identification of officers and circumstances in which it would be appropriate to stop a vehicle; further, it would not be difficult to inform licensed taxi and private hire drivers of the change.
- 13.12 The draft Bill carefully circumscribes this power. The power would only be available to licensing officers that had been appropriately trained and accredited according to such requirements as may be set down by the Secretary of State.<sup>9</sup> As an example, the existing power to stop public service vehicles includes a requirement that officers must be provided with identification and a recognisable uniform.<sup>10</sup> We would expect that training would also include aspects such as ensuring that the power is only used where there is a suitable and safe stopping

<sup>8</sup> The Road Vehicles (Powers to Stop) Regulations 2011, SI 2011 No 996.

<sup>9</sup> Draft Taxis and Private Hire Vehicles Bill, clause 44.

<sup>10</sup> Road Traffic Act 1988, s66B(4).

place, and compliance with PACE codes.<sup>11</sup>

- 13.13 In order to reduce risks to officers and to safeguard the civil liberties of the general public, the draft Bill provides that officers are only empowered to stop licensed taxi or private hire vehicles (or vehicles that the officers reasonably believe to be so licensed) for the purposes of carrying out checks to verify compliance with licensing requirements.<sup>12</sup>
- 13.14 It should be for each local authority to decide whether it wants to train and accredit licensing officers to be able to stop vehicles, depending on the levels of licence contraventions.
- 13.15 Finally, we note that this power, alongside the new power to move vehicles on, which we propose in the context of dispersing unofficial ranks,<sup>13</sup> can significantly enhance licensing officers' ability to enforce licensing requirements.

#### **Recommendation 70**

**We recommend that licensing officers who have been suitably trained and accredited should be given the power to stop licensed taxi and private hire vehicles in a public place for the purpose of checking compliance with licensing requirements.**

#### **TOUTING**

- 13.16 We asked consultees how we could better address the offence of touting.<sup>14</sup> The criminal offence of taxi touting consists of, in a public place, soliciting persons to hire vehicles to carry them as passengers.<sup>15</sup> It can apply to licensed and unlicensed vehicles. Touting can attract a fine up to £2,500.<sup>16</sup> In general terms, soliciting means to encourage or try to induce someone to engage the services of a taxi. With specific reference to taxis and private hire vehicles, this behaviour tends to involve a tout approaching potential customers, often as they leave a restaurant or bar, to ask if they need a taxi. Soliciting requires more than a

<sup>11</sup> S 67(9) of the Police and Criminal Evidence Act provides that the codes of practice apply to persons "other than police officers who are charged with the duty of investigating offences or charging offenders". This has been held to include Revenue and Customs officers: *R v Okafor*, 99 Cr App R. 97, CA for example. It is a question of fact whether or not a particular individual is a person "charge with the duty of investigating offences", see *R v Bayliss*, 98 Cr App R 235, CA. We expect that this could cover the activities of stopping officers. Similar considerations apply in respect of Driver and Vehicle Standards Agency officers exercising their powers to stop vehicles under the Road Traffic Act 1988, see for example <http://www.publications.parliament.uk/pa/cm200506/cmstand/a/st060321/pm/60321s05.htm> (last visited 19 May 2014).

<sup>12</sup> See draft Taxis and Private Hire Vehicles Bill, clause 49(2). Licensed vehicles should be relatively easy to identify as they should be carrying a licence plate; national standards relating to signage could assist here.

<sup>13</sup> See discussion from para 3.68 above.

<sup>14</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 65.

<sup>15</sup> Criminal Justice and Public Order Act 1994, s 167.

<sup>16</sup> See Criminal Justice and Public Order Act 1994, s 167(5), which imposes level 4 fine.

vehicle simply waiting in the street.<sup>17</sup>

- 13.17 Touting is considered by both licensing officers and the police to pose a major risk in terms of public safety. Those targeted by touts are often vulnerable because they are alone and/or have consumed alcohol, are anxious to get home, and may not realise the dangers of taking unlicensed cars or un-booked private hire vehicles. This is the reason why, in many areas, the police are very active in pursuing such behaviour. This is in contrast to plying for hire, in relation to which the police bring very few, if any, prosecutions.<sup>18</sup> Touting raised most concern in London, where a specialist Cab Enforcement Unit was set up in 2003,<sup>19</sup> and in many town centres, especially at night.
- 13.18 Touting is currently an offence if committed “in a public place”. This covers places to which the public has access, whether or not payment is required.<sup>20</sup> This means, for example, that doormen offering customers leaving a venue a hire vehicle may technically be touting. Transport for London allows licensed private hire operators to set up “satellite” booking offices within venues and promote their business there, with the aim of discouraging unlicensed touts and ensuring that people get home in safe, licensed cars. However, many in the taxi trade have expressed strong opposition to this, also reporting that aggressive tactics are used by the private hire firms’ employees, known as “clipboard johnnies”, to push taxi drivers away from the venues and hustle customers into the firm’s vehicles. Transport for London often place conditions on these satellite offices which require, for example, that the booking be made in a restricted location.

### **Consultation**

- 13.19 Consultees responded with a wide range of different ideas. Responses tended to vary by area – touting seems to be a much bigger problem in large cities and less so in smaller towns and rural areas. Responses also varied between those who saw touting as a major problem and those who suggested that it could sometimes be a legitimate way of promoting business for licensed operators.
- 13.20 Many consultees told us that there is insufficient enforcement of the law on touting. Some consultees, such as Peterborough taxi driver Mohammed Ali, told us that they see little or no enforcement in their area. Allied Vehicles also suggested that “more proactive field-work” would be necessary to tackle the problem.
- 13.21 Many consultees argued that there should be higher penalties for touting; this was a very popular suggestion. Many consultees, such as ComCab Liverpool, told us that the currently relatively low penalties for touting mean that offenders are willing to take the risk, as their profits will outweigh the effects of any fine. Currently, a conviction for touting attracts a maximum penalty of £2500;<sup>21</sup>

<sup>17</sup> *Oddy v Bugbugs Ltd* [2003] EWHC 2865 (Admin); 2003 WL 22477363, by Mr Justice Pitchford at paras 51 to 52.

<sup>18</sup> We understand that “plying for hire” has been removed from the curriculum at Hendon Police College.

<sup>19</sup> See <http://www.tfl.gov.uk/corporate/about-tfl/19382.aspx> (visited 16 May 2014).

<sup>20</sup> Criminal Justice and Public Order Act 1994, s 167(6).

<sup>21</sup> Criminal Justice Act 1982, s 37; Criminal Justice and Public Order Act 1994, s 167.

however, stakeholders have told us that the actual penalty imposed for touting is usually in the range of £200 to £300. Transport for London has reported that in London the average penalty handed down in the magistrates' courts at the time was £260.<sup>22</sup> If a tout stands to make twice as much as this over the course of an evening, the risk of being caught and faced with such a level of fine is a poor deterrent.

13.22 Suggestions for stronger penalties included much higher fines (in the region of thousands rather than hundreds of pounds), suspension or revocation of licences (for touting of licensed vehicles),<sup>23</sup> imprisonment of offenders, impounding of vehicles by local authorities or seizure of vehicles by police, use of fixed penalty notices and escalating penalties for repeat offenders.

13.23 Another very popular suggestion was to increase public awareness of the dangers of touting, how to identify unlicensed vehicles and how to book private hire vehicles legally. Linked to this was the idea that signage on all licensed vehicles should be very clear, and in particular should make it possible to distinguish between taxis and private hire vehicles and make it obvious that the latter have to be pre-booked. Sylvia Oates, from Nottingham's Business Improvement District, suggested the creation of a national helpline which people could call to report touts.

13.24 Some consultees suggested that the current definition of the offence of touting is itself a problem. City of York Council said "it is difficult for licensing authorities to take legal action therefore clearer legislation is required regarding this offence."

13.25 A number of consultees suggested that operators should be pursued for touting offences committed by their drivers or agents. The Welsh Local Authorities supported this because:

Operators are less ephemeral than the people who they employ to stand outside venues and they have more to lose in terms of their licences, as against touts who will not have a licence and who are probably paid on a casual basis.

13.26 Some consultees thought that enforcement of the law on touting should take place at a national level. For example, the United Cabbies Group suggested that "central funding of a nationwide enforcement body should be implemented."

13.27 There was significant disagreement amongst consultees regarding the desirability of having so-called "satellite" booking offices, as permitted by Transport for

<sup>22</sup> This comprised a fine for the offence plus an extra fine for having no insurance, which is usually prosecuted at the same time as the touting offence. Indeed, lack of insurance is often the primary means of recourse against a tout, as this can give rise to points being imposed on their driving licence. See also Sentencing Guidelines Council, Magistrates' Court Sentencing Guidelines, p 98, available at [http://sentencingcouncil.judiciary.gov.uk/docs/MCSG\\_\(web\)\\_-\\_April\\_2014.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/MCSG_(web)_-_April_2014.pdf) (last visited 19 May 2014). The starting point for setting fines is based on varying proportions of the offender's weekly income (the relevant weekly income is deemed to be at least £110).

<sup>23</sup> For example Cab Enforcement Unit recommended that the Public Carriage Office (now London Taxi and Private Hire) should use their powers to revoke driver licences after three convictions for touting, following similar approaches in Birmingham and Leeds.

London. Bedford Borough Council suggested that touting should be authorised as part of operator licensing, without any qualification as to a specific venue. Sheffield City Council suggested that local authorities should run a system of issuing licences to “booking agents” who could then carry out touting-type activities. The Licensed Private Hire Car Association felt that:

Licensed PHV bookers, affiliated to Licensed Offices and specifically defined premises would greatly enhance public safety and deter touts.

The Licensed Private Hire Car Association also favoured the use of taxi marshals, whose role is to administer taxi ranks and match up late-night passengers with drivers who are heading home the same way.

- 13.28 On the other hand, many consultees expressed strong disagreement with such approaches. One of these was the United Cabbies Group, who argued that the licensing of satellite booking offices in London has resulted in many problems. The group reported that these venues are no longer required to have planning permission and that “clipboard johnnies” (booking agents) frequently try to drum up business outside on the street, which is illegal. They also said that the system creates a monopoly at venues where it is used, therefore reducing the amount of business available to taxi drivers in the area. We are aware that other areas experience similar problems, for example Manchester.

### **Discussion**

- 13.29 As can be seen from the range of comments discussed above, touting is a multifaceted and controversial issue which presents many different problems. However, much depends upon the individual response of local authorities and police to the problems that arise in their areas, particularly as regards enforcement and the resources available for it.
- 13.30 Our recommendations elsewhere in this report cover important reforms that can help underpin more incisive enforcement action against touts, including:
- (1) new impounding powers;<sup>24</sup>
  - (2) powers for licensing officers to move licensed vehicles on;<sup>25</sup>
  - (3) a new offence of accepting a there-and-then hiring unless a local taxi driver.<sup>26</sup>
- 13.31 We think that the broad package of reforms noted above, alongside the changes we propose below, can significantly enhance enforcement without the need to set up a specific national body, which in any event, would likely be too resource intensive to be practicable.

<sup>24</sup> See from para 13.41 below.

<sup>25</sup> See Recommendation 9 and discussion in para 3.68 above.

<sup>26</sup> See Draft Taxis and Private Hire Vehicles Bill, clause 6, recommendation 10 and discussion from para 3.71 above.

### **The scope of touting**

- 13.32 Unlike touting in respect of other trades, there is a strong link between hire vehicle touting and other crimes, justifying the retention of the current broad scope of the offence. We note that there are already a number of statutory exemptions from touting – for example, taxi sharing schemes – and these have not caused particular problems.<sup>27</sup> A narrower definition of touting could undermine the ability of the police and licensing officers to protect the public adequately. We therefore do not recommend, with one exception discussed below, any changes to the breadth of the touting offence.<sup>28</sup>
- 13.33 In one respect, it appears that the current broad definition of touting can hamper otherwise legitimate ways of working by licensed operators working in compliance with local conditions set by their licensing authority. We think that the activities of satellite booking offices working with licensed private hire vehicles, or indeed, taxis, can be a useful tool in addressing safety problems at night. To this end, our draft Bill provides that licensing authorities should have the power, within their licensing area, to designate certain places where bookings may be solicited in accordance with such conditions as they may prescribe.<sup>29</sup> These may, for example, specify only certain approved dispatchers, or prescribe the way passengers may be approached and the way bookings should be made. Satellite offices, as operated in London, would be allowed to continue.

#### **Recommendation 71**

**The offence of touting should be retained. It should continue to be an offence of broad application which extends to all persons, whether licensed or unlicensed.**

#### **Recommendation 72**

**We recommend that there should be a new defence to touting, where the solicitation is in respect of a licensed taxi or private hire vehicle, if the soliciting occurs in a place which has been designated by that licensing authority for that purpose, and that conditions as may be specified by the licensing authority have been complied with.**

- 13.34 This recommendation is given effect by clause 70 of our draft Bill.

### **Sentencing guidelines for touting**

- 13.35 We noted stakeholders' dissatisfaction with the low penalties typically imposed upon touts. We recommend increasing the penalty for touting to an unlimited fine to reflect the seriousness of the offence.<sup>30</sup> However, stakeholders told us that it

<sup>27</sup> Criminal Justice and Public Order Act 1994, s 167(3).

<sup>28</sup> We do, however, recommend its inclusion within the same statute as the taxi and private hire licensing framework; this is done by our draft Taxis and Private Hire Vehicles Bill, clause 70.

<sup>29</sup> See Clause 70(5) of our draft Bill.

<sup>30</sup> Draft Taxis and Private Hire Services Bill, clause 70(9). Touting is currently punishable with up to a level 4 fine, of £2,500.

was a significant problem that magistrates routinely impose much lower penalties which provide little or no deterrent. It therefore appears that sentencing guidelines could be revised to reflect better the rationale of this offence.<sup>31</sup>

- 13.36 We noted that the association with the risk of offences against passengers, particularly sexual assault, is a major part of the concerns surrounding touting. In 2003 there were an estimated 18 sexual assaults a month in London involving touted vehicles. The Metropolitan Police Sapphire Unit (targeting sexual assaults) noted that sexual predators were using touting as a route to identify and pursue victims.<sup>32</sup> The Safer Travel at Night initiative<sup>33</sup> and the establishment of a specialist Cab Enforcement Unit in 2003 were key initiatives adopted by the Metropolitan Police and Transport for London to tackle touting.<sup>34</sup> The figures for 2013/14 indicate that there have been 71 cab-related sexual offences, 24 per cent lower compared with the same period the previous year. London has 68 dedicated cab enforcement officers, and Transport for London contributes to the funding of 1,800 uniformed officers. In London, licensed private hire drivers convicted of touting lose their private hire driver's licence for a minimum of one year. More than 1,000 drivers have had their licences revoked.<sup>35</sup>
- 13.37 Evidence from recent Freedom of Information requests to police forces across England and Wales found the number of taxi and private hire related assaults remained alarmingly high.<sup>36</sup>
- 13.38 Current sentencing guidelines on touting refer to several factors impacting on higher culpability and degree of harm but do not reflect the link between touting and sexual offences:

#### FACTORS INDICATING HIGHER CULPABILITY

1. Commercial business/large scale operation
2. No insurance/invalid insurance
3. No driving licence and/or no MOT

<sup>31</sup> See Sentencing Guidelines Council, Magistrates' Court Sentencing Guidelines, p 98, available at [http://sentencingcouncil.judiciary.gov.uk/docs/MCSG\\_\(web\)\\_-\\_April\\_2014.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/MCSG_(web)_-_April_2014.pdf) (last visited 16 May 2014).

<sup>32</sup> By 2008, the reported number of cab-related sexual offences fell to seven each month. See Transport for London, Surface Transport Panel, Tackling Taxi Touting (24 February, 2009), para 23, see <http://beta.tfl.gov.uk/cdn/static/cms/documents/Item13-Tackling-Taxi-Touting.pdf> (last visited 16 May 2014).

<sup>33</sup> Safer Travel at Night was set up in 2002, and is an ongoing initiative involving the Greater London Authority, Transport for London and the Metropolitan Police.

<sup>34</sup> Transport Committee of the London Assembly, Tackling taxi touting in London (March 2008) p 4, see <http://legacy.london.gov.uk/assembly/reports/transport/taxi-touting.rtf> (last visited 19 May 2014).

<sup>35</sup> See <http://www.tfl.gov.uk/info-for/media/press-releases/2014/january/more-than-170-drivers-arrested-as-part-of-illegal-cab-touting-crackdown> (last visited 16 May 2014).

<sup>36</sup> The evidence was collated and presented by the National Private Hire Association at a meeting held at New Scotland Yard on 12 September 2012. Participants included the Association of Chief Police Officers, the Department for Transport and the Law Commission. See also [https://www.whatdotheyknow.com/request/sex\\_attacks\\_2](https://www.whatdotheyknow.com/request/sex_attacks_2) (last visited 16 May 2014).

#### 4. Vehicle not roadworthy

##### FACTORS INDICATING GREATER DEGREE OF HARM

1. Deliberately diverting trade from taxi rank
2. PHV licence had been refused/offender ineligible for licence

##### FACTOR INDICATING LOWER CULPABILITY

Providing a service when no licensed taxi available<sup>37</sup>

- 13.39 We accept that the court can only sentence for the offence before them - if the offender has not been convicted of a sexual assault then the court cannot take into account the fact that others have used their position, holding themselves out as being a taxi or private hire driver, to commit a sexual offence. However, the recently issued Sexual Offences Guideline (in force since 1 April 2014) allows the court to increase the culpability level of an offender convicted of a sexual offence in this situation through the use of the higher culpability factor “abuse of trust”.<sup>38</sup> The Sentencing Council’s approach in all other guidelines has been to identify a “vulnerable victim” as a harm factor and leave it to the discretion of the court, on the facts of the case before them, to identify the nature of the vulnerability. This could include for example whether the passenger targeted was intoxicated or a child.
- 13.40 We recommend that the Sentencing Council consider revising the magistrates’ courts sentencing guidelines in respect of touting as part of its next work plan, such that the where the victim is particularly vulnerable due to personal circumstances that may be considered as a factor relevant to the degree of harm.<sup>39</sup>

#### **Recommendation 73**

**We recommend that the Sentencing Council consider amending the Magistrate’s Court Sentencing Guidelines in respect of taxi touting to take into account the vulnerability of the persons solicited as a relevant factor in sentencing.**

<sup>37</sup> Sentencing Guidelines Council, Magistrates’ Court Sentencing Guidelines, p 98, available at [http://sentencingcouncil.judiciary.gov.uk/docs/MCSG\\_\(web\)\\_-\\_April\\_2014.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/MCSG_(web)_-_April_2014.pdf) (last visited 16 May 2014).

<sup>38</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Final\\_Sexual\\_Offences\\_Definitive\\_Guideline\\_content\\_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_Offences_Definitive_Guideline_content_(web).pdf) (last visited 16 May 2014).

<sup>39</sup> We would like to thank the Chief Executive of the Sentencing Council, Michelle Crotty, for her contribution to this recommendation. The Sentencing Council agrees the order of guidelines to be included in its work programme based on a number of criteria. Particular weight is given to the volume of a particular type of offence coming through the courts (for example the high volume of violence against the person offences led to assault being produced as the Council’s first guideline). The Council’s work plan currently extends to 2017, so that is the earliest point at which our proposed amendment may be considered. Inclusion at that point would depend upon both the Council’s view on the seriousness of touting and on what other offences needed either new or revised guidelines.



## POWERS TO IMPOUND VEHICLES

- 13.41 In our consultation paper, we considered how the current range of licensing authority powers could be enhanced to make enforcement easier and more effective. We asked whether licensing authorities should be given powers to impound vehicles used in breach of taxi and private hire rules.<sup>40</sup> We suggested these powers could be modelled on the public service and heavy goods vehicle impounding regimes.<sup>41</sup> The police also have powers to seize vehicles used without insurance.<sup>42</sup> This power is used to tackle touting, as any hire and reward insurance is invalidated if the driver touts.<sup>43</sup>

### Consultation

- 13.42 The idea of introducing powers to impound vehicles was very popular. Those in favour of new powers felt that the powers would make enforcement more effective by depriving the driver of the tool needed to break the law. The United Cabbies Group felt that impounding vehicles would be “the only real deterrent.”
- 13.43 However, many consultees who agreed also raised practical issues, including whether it would be safe for licensing officers to exercise such powers. Stakeholders also thought that it might be difficult for licensing officers to order drivers to vacate their vehicles or prevent them from leaving.
- 13.44 Consultees were also concerned that individual licensing authorities would lack the resources to fund the impounding of vehicles and space in which to store them. Questions were also raised as to whether seized vehicles would be destroyed or sold, and how this would be funded.
- 13.45 Some consultees felt that impounding would only be justified for very serious cases. These consultees often emphasised the importance of the vehicle for the driver’s livelihood. For example, the Local Government Association said:

Any use of a new power to impound vehicles would need to be used as a last resort for persistent offences, as to do otherwise would materially affect the right of the driver to earn a living. It is difficult to see what impact this would have in addition to the ability to review and revoke the licence.

- 13.46 A number of consultees felt that seizure should remain exclusively a police power, but should be extended to enable the police to act on breaches of taxi and private hire licensing laws as well as, for example, lack of insurance. For

<sup>40</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 66.

<sup>41</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, para 19.9.

<sup>42</sup> Public hire insurance policies are invalidated where a vehicle is used to illegally ply for hire or in connection with touting. See for example, in respect of plying for hire, *Telford and Wrekin Borough Council v Ahmed and Others* [2006] EWHC 1748 (Admin); [2006] All ER (D) 222 (Jun) and Road Traffic Act 1988, ss 163 to 165A.

<sup>43</sup> See the evidence considered by the Transport Select Committee, available at <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/writew/taxi/m46.htm> (last visited 16 May 2014).

example, Transport for London favoured extending police powers to enable them to impound “vehicles where the driver is touting or illegally plying for hire.”

- 13.47 A significant minority of consultees disagreed with any new powers to impound vehicles, describing the idea as “draconian” and suggesting that its practical drawbacks would outweigh any likely benefits.

### **Discussion**

- 13.48 There was strong support among stakeholders for extending the use of impounding powers to licensing officers acting independently of police officers. Our discussions with the Driver and Vehicle Standards Agency confirmed the benefits of this approach in connection with their experience with the impounding regimes that apply to public service and heavy goods vehicles. Since the introduction of these powers the number of illegally operated vehicles has fallen, and there has been an increase in the number of licence applications to Traffic Commissioners.
- 13.49 On the other hand, impounding is a very severe penalty, and one that is applied before or as an alternative to a criminal conviction. The vehicle owner may be deprived of their livelihood for a significant period before establishing whether they are entitled to recover their vehicle.<sup>44</sup> In practice, the Driver and Vehicle Standards Agency only use their impounding powers against known, persistent offenders. Impounding should therefore be limited to only the most serious offences.
- 13.50 On balance, we think impounding can provide a very valuable enforcement tool, but that it should only apply in respect of vehicles used in connection with touting.<sup>45</sup> The discretionary power to impound created by clause 50 of our draft Bill is available in respect of would cover both licensed taxi and private hire vehicles, and completely unlicensed vehicles; we envisage that it would be used in the more serious cases.
- 13.51 The draft Bill therefore introduces powers for accredited licensing authority stopping officers to impound vehicles used in connection with touting based on the model provided by the public service and heavy goods vehicle impounding regime.<sup>46</sup>
- 13.52 Powers under this legislation are available to authorised officers of the Driver and Vehicle Standards Agency. Under the Public Service Vehicles (Enforcement

<sup>44</sup> We discuss the human rights implications of interfering with the vehicle owner’s property rights below.

<sup>45</sup> In some respects, the basis for seizing vehicles under our recommendations is broader than the “no insurance” basis under section 165A of the Road Traffic Act 1988, as that refers to the vehicle being “driven”, such that the police need to wait until the passenger is inside the vehicle. Our recommendations instead allow licensing officers to impound vehicles where these are used in connection with touting, which allows earlier intervention. See Draft Taxis and Private Hire Vehicles Bill, clause 50.

<sup>46</sup> In respect of public service vehicles, see Public Passenger Vehicles Act 1981, s 12A and Schedule 2A and the Public Service Vehicles (Enforcement Powers) Regulations 2009, SI 2009 No 1964. In respect of heavy goods vehicles, see Goods Vehicles (Licensing of Operators) Act 1995, s 2A and Schedule 1A and the Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001 No 3981.

Powers) Regulations 2009, once the vehicle has been detained, it can be immobilised and removed.<sup>47</sup> Unless the vehicle has been detained in error,<sup>48</sup> the owner must apply to the Traffic Commissioners to have the vehicle returned.<sup>49</sup> If this is not done by a specific date, or if the Traffic Commissioner determines that the grounds for the return of the vehicle have not been satisfied,<sup>50</sup> the vehicle can be sold or destroyed.<sup>51</sup> Proceeds of sale are used to offset enforcement costs.<sup>52</sup>

- 13.53 The impounding scheme for taxi and private hire vehicles in the draft Bill is based on the above impounding provisions. Under our draft Bill, regulations may make provision for the removal and retention of vehicles and their release and disposal, including a right of appeal to a magistrates' court.<sup>53</sup>
- 13.54 Licensing authorities will have discretion as to whether to set up impounding schemes in their area. We appreciate that some licensing authorities may lack the resources to impound vehicles, and in some areas these serious offences are rare; impounding should be an optional tool which licensing authorities could choose to employ.
- 13.55 In areas that choose to introduce a local impounding scheme, licensing officers involved in these operations would need special training and accreditation, as with the power to stop vehicles, and to move vehicles on. We note that many authorities already have car pounds to store vehicles impounded in connection with parking contraventions and other road traffic offences, so that the infrastructure would already be in place for impounding vehicles for breaches of taxi and private hire law.
- 13.56 We have considered the human rights implications of this policy and believe Article 1 of Protocol 1 to the European Convention on Human Rights is potentially engaged, to the extent that the vehicle owner or other interested party may be deprived of their possessions. Deprivation must be in the public interest and subject to conditions provided by law. Article 1 is also without prejudice to the right of a state to secure the payment of penalties. It is in the public interest to deter touting.
- 13.57 Under the draft Bill, the power to impound for touting is conditional upon the Secretary of State having made regulations under clause 51. The Schedule to the Bill stipulates some minimum requirements. The owner of the vehicle<sup>54</sup> must be

<sup>47</sup> Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001 No 3981, reg 5.

<sup>48</sup> Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001 No 3981, reg 4 (as substituted by SI 2009/1965, regs 2 and 3).

<sup>49</sup> Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001 No 3981, reg 10.

<sup>50</sup> Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001 No 3981, reg 4(3).

<sup>51</sup> Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001 No 3981, reg 15.

<sup>52</sup> Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001 No 3981, reg 18.

<sup>53</sup> Draft Taxis and Private Hire Vehicles Bill, clause 51, and Schedule (Vehicles detained under section 50: supplementary provisions) para 10.

<sup>54</sup> The draft Bill refers to an "eligible person" which includes persons other than the owner, and extends to the registered keeper, and taxi or private hire vehicle licence holder. See clause 6(2) of the Schedule.

able to recover the vehicle on at least any of the following grounds:<sup>55</sup>

(a) that, at the time the vehicle was detained, the vehicle was not being, had not been and was not about to be used in connection with touting;

(b) that, although at the time the vehicle was detained it was being, had been or was about to be used in connection with touting, the owner did not know that it was being, or had been so used;

(c) that, although knowing at the time the vehicle was detained that it was being, had been or was about to be used in contravention of the relevant provisions, the owner -

(i) had taken steps with a view to preventing that use, and

(ii) has taken steps with a view to preventing any further such use.

13.58 The vehicle owner must have a right to apply for the return of the vehicle and a further right of appeal to the magistrates' court.<sup>56</sup> The Secretary of State in making the regulations and the licensing authority in impounding the vehicle will in any event be subject to the Human Rights Act 1998.

13.59 Finally, we agree with Transport for London's view that greater use of Deprivation Orders under the Powers of Criminal Courts (Sentencing) Act 2000 could be beneficial. Under this power a court can order that a person be deprived of any property which has been lawfully seized from them or which was in their possession at the time at which they were apprehended or summons issued.<sup>57</sup> The convicted person can only be deprived of property which was used for the purpose of committing or facilitating the commission of the offence, or which they intended to use for that purpose.<sup>58</sup>

#### **Recommendation 74**

**We recommend that licensing authorities should have the power to impound vehicles used in connection with touting.**

#### **FIXED PENALTY SCHEMES**

13.60 Fixed penalty notices can currently be given for some road traffic offences.<sup>59</sup> Notices may be given on the spot by a constable in uniform or a vehicle examiner who has reason to believe that someone is committing, or has committed, a fixed penalty offence.<sup>60</sup> The recipient can choose to pay the fine or

<sup>55</sup> Draft Taxis and Private Hire Vehicles Bill, Schedule, para 7(3).

<sup>56</sup> See Draft Taxis and Private Hire Vehicles Bill, Schedule, para 10.

<sup>57</sup> Power of Criminal Courts (Sentencing) Act 2000, s 143(1)(a) and (b).

<sup>58</sup> Power of Criminal Courts (Sentencing) Act 2000, s 143(1)(a) and (b).

<sup>59</sup> Road Traffic Offenders Act 1988, s 51 and Sch 3.

<sup>60</sup> Road Traffic Offenders Act 1988, s 54. For the definition of a vehicle examiner see Road Traffic Act 1988, s 66A.

have the matter heard in court. Fixed penalty schemes may also be enforced through licensing conditions. Some breaches of the public service vehicle or goods vehicle licensing requirements may lead to such penalties,<sup>61</sup> and in respect of taxi and private services legislation, authorised officers in London have been given the power to issue fixed penalty notices for certain relatively minor offences, although these provisions are not yet in force.<sup>62</sup>

- 13.61 In our consultation paper, we suggested introducing fixed penalty notices for some taxi and private hire offences.<sup>63</sup>

### **Consultation**

- 13.62 A majority of respondents agreed with this idea. Many regulators said that they would welcome the introduction of such schemes as a valuable way of enabling them to deal quickly and easily with common and “routine” breaches of taxi and private hire law.
- 13.63 Some consultees, including Oldham Metropolitan Borough Taxi Owners Association, thought that fixed penalties should also be available for serious offences such as touting, as this would allow for effective enforcement and deterrence. However, many other consultees felt that fixed penalties would only be appropriate for minor offences, as they were concerned that fixed penalties would not be a sufficient deterrent for more serious and harmful behaviour.
- 13.64 Many consultees also felt that fixed penalties would only be appropriate where the behaviour in question could be objectively shown to have taken place. The Institute of Licensing made the following comments:
- 13.65 We are in favour of developing fixed penalty schemes for licensing authorities to use for breaching taxi and private hire licensing rules. Prosecution is time consuming and costly. We agree that fixed penalties are only appropriate in very clear cut cases, such as not wearing a badge or not displaying the correct licence plates or signs or ranking inappropriately.
- 13.66 Transport for London expressed concern that the system might not be self-funding, particularly if a large number of drivers chose the option of having a hearing rather than accepting the penalty. Going to court would be expensive and so would not cover the costs of pursuing the relatively minor offences to which fixed penalties would apply.
- 13.67 A significant minority of consultees were opposed to the introduction of fixed penalty schemes of any kind. They tended to fear that the schemes would be abused by licensing authorities for commercial gain, or that the penalties would be seen as a “price worth paying” by offenders.

<sup>61</sup> Fixed Penalty Offences Order 2009, SI 2009 No 483.

<sup>62</sup> Transport for London Act 2008, ss 17 to 21.

<sup>63</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, question 67.

## Discussion

- 13.68 Our view is that fixed penalties are a useful and cost effective enforcement tool against minor offences where evidence of commission of the offence is relatively clear. In Chapter 6 we recommended that the Secretary of State have power to designate particular licence conditions as ones whose breach is also a criminal offence. We further recommend that the Secretary of State also have power to specify offences under our draft Bill or under criminally enforceable licence conditions as fixed penalty offences.
- 13.69 Fixed penalties would not be appropriate for more serious offences, or those whose commission is more difficult to prove. The existing, uncommenced legislation indicates that appropriate offences for fixed penalties might include drivers failing to wear their badge, or to produce their licence, or taxis using ranks or accepting hails outside their licensing area or zone, carrying an excessive number of passengers or failing to attend their vehicle at a taxi rank.<sup>64</sup>
- 13.70 We do not agree that most of those issued with a fixed penalty notice would opt for a court hearing; if the evidence was strong we expect that most would opt to pay the fine rather than risk a more severe penalty and extra costs. Together with powers to impound vehicles, the introduction of fixed penalty offences in taxi and private hire regulation could help to focus and strengthen enforcement.

### **Recommendation 75**

**Fixed penalties should be among the sanctions available in respect of minor criminal offences under taxi and private hire legislation.**

- 13.71 This recommendation is given effect by clause 61 of our draft Bill.

## IMMEDIATE SUSPENSION

- 13.72 Generally, decisions to suspend or revoke taxi and private hire driver licences do not take effect until the 21 day period for appeal against the decision has expired. If an appeal is lodged, the suspension or revocation will not take effect until its dismissal by the magistrates' court, or the Crown Court if a further appeal is brought.<sup>65</sup> This could be a considerable length of time.
- 13.73 In England and Wales, immediate suspension or revocation is possible if there is an immediate risk to public safety, but in respect of taxi and private hire driver licences only.<sup>66</sup> In London immediate suspension is not limited to driver licences; and can also apply in respect of operator and vehicle licences.<sup>67</sup>

<sup>64</sup> These offences are listed in schedule 1 of the Transport for London Act 2008, whose provisions are not in force at the time of writing.

<sup>65</sup> Local Government (Miscellaneous Provisions) Act 1976, s 77(2). In London, see Private Hire Vehicles (London) Act 1998, ss17 and 26. In respect of London taxis the suspensory power under s 17(9) of the Transport Act 1985 is discretionary.

<sup>66</sup> Local Government (Miscellaneous Provisions) Act 1976, s 61 (2A and 2B).

<sup>67</sup> See Private Hire Vehicles (London) Act 1998, ss 17 and 26. In respect of London taxis the suspensory power under s 17(9) of the Transport Act 1985 is discretionary.

### **Recommendation 76**

**We recommend extending the power to suspend licences immediately on grounds of public safety to all licence types, in line with the current position in London.**

13.74 This is given effect by clauses 54(5) and 57(1) of our draft Bill.

### **CROSS-BORDER ENFORCEMENT POWERS**

13.75 Under the current law, enforcement officers are only able to enforce against licences issued by their own licensing authority.<sup>68</sup> If a driver from a neighbouring area commits an offence, licensing officers are unable to take any action in respect of the offender's licence. Unless that licensing authority has delegated powers from the area in which the offender was licensed,<sup>69</sup> action is only possible in respect of criminal offences, by the expensive and time-consuming route of a criminal prosecution.

13.76 In our consultation paper, we proposed that licensing authorities should have greater powers to enforce against vehicles, drivers and operators licensed by other licensing authorities. We suggested this should cover on-the-spot enforcement action as well as initiating suspension or revocation of licence.<sup>70</sup>

13.77 Our recommendations to liberalise existing constraints on cross-border working for private hire services make it all the more important to have robust cross-border enforcement measures.<sup>71</sup>

### **Consultation**

13.78 A large majority of consultees agreed with the proposal. Many of those who agreed, for example the National Association of Licensing Enforcement Officers, supported our view that such powers would be necessary to ensure that our proposed liberalisation of cross-border working could function successfully; many also emphasised that cross-border issues are already a problem and that mechanisms for dealing with this are urgently required.

<sup>68</sup> See, in England and Wales (outside London), the Local Government (Miscellaneous Provisions) Act 1976, s 80(2); and Town Police Clauses Act 1847, references to the "prescribed distance" and references to the powers of commissioners (the licensing officers) only applying in respect the relevant area. In London, see Private Hire Vehicles (London) Act 1998, Transport for London's powers to suspend or revoke licences only exists in respect of London licences (s16); and London Hackney Carriage Act 1843, s 25 (power to suspend or revoke licences issued under the provisions of the same Act, which only extends to Greater London). A leading case discussing cross-border enforcement problems is *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWCH 2369 (Admin).

<sup>69</sup> For example the arrangements in Merseyside, which Unite the Union highlighted as an example of good practice, where five licensing authorities have agreed a concordat that they could enforce against all the vehicles and drivers licensed by any of those five licensing authorities. A similar arrangement exists between Chiltern District Council and South Bucks District Council.

<sup>70</sup> Reforming the law of taxi and private hire services (2012) Law Commission Consultation Paper No 203, provisional proposal 68.

<sup>71</sup> See from para 13.85 below.

13.79 Several consultees raised the issue of funding for cross-border enforcement. Some, including taxi driver Sue Burrige, were against extending cross-border enforcement because they were concerned that this would increase licensing fees in their own area. However, others thought that funding for these activities could be raised from fining out-of-area vehicles: this was the view of N J W Horler, a private hire operator, and John Murphy, managing director of an executive and luxury chauffeur car company.

### **Discussion**

13.80 We believe that licensing officers should be able to take enforcement action against vehicles, drivers and operators regardless of which licensing authority issued the licence.

13.81 The introduction of national standards will mean that, for the first time, all taxi and private hire services will be subject to a common set of rules.<sup>72</sup> Cross-border enforcement powers are critical in respect of enforcing private hire licensees' obligations, as licensees will no longer be restricted to working only with operators and vehicles from their same licensing area. National standards will comprise the full set of obligations to which private hire service providers would be subject, and these should be fully enforceable by licensing officers from any licensing area.

13.82 In respect of taxis, licensing officers should be able to enforce the minimum national standards against vehicles and drivers from any licensing area. Licensing officers would, however, only be able to enforce local taxi conditions (which may differ from national standards) against licensees from their own area, unless they had express delegated powers from the licensing authority which issued the relevant taxi licence.

13.83 The licensing authority that originally issued the licence must continue to have primary responsibility in respect of suspensions and revocations. We refer to this authority as the licensee's "home licensing authority". Without prejudice to the ability to prosecute licensing offences, the draft Bill gives licensing officers the following powers in respect of any vehicle, operator or driver licence issued in England and Wales:

- (1) the ability to conduct inspections and request information;<sup>73</sup>
- (2) in respect of suspensions and revocations, the ability to suspend licences with immediate effect where there is a risk to public safety,<sup>74</sup> and to initiate a formal procedure in respect of enforcing conditions that do not present an immediate public safety risk (and which could lead to the revocation of a licence);<sup>75</sup> and
- (3) the ability to stop licensed vehicles, impound vehicles in cases of touting

<sup>72</sup> Supplemented, in the case of taxis only, by local rules.

<sup>73</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 47 and 48.

<sup>74</sup> Draft Taxis and Private Hire Vehicles Bill, clause 57.

<sup>75</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 56 and 58-60.



and issue fixed penalty notices.<sup>76</sup>

13.84 We discuss the procedures to give effect to the above sanctions below.

**Recommendation 77**

**Licensing officers should be able to take non-criminal enforcement action against vehicles, drivers and operators, licensed outside their licensing area.**

**CROSS-BORDER ENFORCEMENT PROCEDURES**

13.85 In our consultation paper we noted that whilst criminal prosecutions can be brought anywhere and by any licensing authority, non-criminal sanctions such as revoking a licence are frequently the most effective. Under the current licensing framework only the home licensing authority has the power to take such action.

13.86 We suggested that reform could take one of three forms:

- (1) informal cooperation between licensing authorities;
- (2) formal procedures for cross-border cooperation, including a power for the licensing authority in whose area the infraction occurred to propose an appropriate sanction to the home authority as well as to suspend a licence temporarily; and
- (3) full powers for a licensing authority in whose area an infraction occurs to suspend and to revoke licences, whether issued in their own or another licensing area.

13.87 We provisionally favoured option two as striking an appropriate balance between local licensing and the need for effective cross-border deterrence. We suggested that appeals should always be heard in the offender's home licensing authority.<sup>77</sup>

**Consultation**

13.88 This suggestion proved controversial, but a majority of consultees were in favour.

13.89 Our favoured option of introducing formal procedures for cross-border cooperation, but stopping short of allowing suspension or revocation of licences by a local authority other than the issuing authority, proved popular. For example, Maidstone Borough Council commented that:

[This option] brings an element of formality to the system and also requires other licensing authorities to take action.

13.90 A number of consultees commented that in order for the system to be workable, local authorities would need to have ways of sharing data. For example, Rushmoor Borough Council said that:

<sup>76</sup> Draft Taxis and Private Hire Vehicles Bill, clauses, 49-50 and 61-62.

<sup>77</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 69.

A national database of licence holders would make this far more workable, and there needs to be something in law which allows authorities to freely share information amongst each other.

- 13.91 However, some consultees either disagreed with the proposal outright, or felt that the practical drawbacks would outweigh any potential benefits. Transport for London raised a number of concerns in this regard. It felt that the proposed system for formal cooperation would be “ineffective and bureaucratic”, as they:

Would be required to write recommendations to the licensing authorities from where these vehicles were licensed, and also be required to consider and carry out appropriate sanctions where TfL received recommendations from other licensing authorities.

- 13.92 Daventry District Council raised similar concerns:

As there is no proposal for a central register of licences, there will be practical difficulties establishing where a driver is licensed/registered. Additional conditions for taxis can be applied by Councils where there will not be uniform conditions in place. There will be an issue as to one Council’s standing to prosecute for another, meaning delegations for each authority. These issues would be better addressed by a national Enforcement Agency, for example [the Vehicle and Operators Standards Agency].

- 13.93 Finally, we also received evidence in respect of voluntary joint enforcement arrangements undertaken by neighbouring licensing authorities and sometimes alongside the police.<sup>78</sup> We heard an example of licensing officers from an area “touring” outside the area in order to carry out enforcement activities against vehicles licensed in that area but working outside it.<sup>79</sup>

### **Discussion**

- 13.94 On balance, we favour the introduction of formal procedures for cross-border collaboration on the suspension and revocation of licences. It remains our view that revocation and suspension of licences must remain the prerogative of the authority which issued the licence. That “home” authority will have more knowledge about its licence holders and a better understanding of their history, which may be relevant to the severity of any penalty imposed. However, licensing officers from other areas should have the power to initiate a procedure recommending licensing sanctions, including revocation of licence, and have the ability to suspend licences if there is an immediate threat to public safety.

<sup>78</sup> See the Local Government Regulation, Taxi and Private Hire Vehicle Licensing Standardised Conditions Template (version updated 09.10), para 15.

<sup>79</sup> We understand this was the approach taken by Berwick; given the large number of vehicles licensed there that were working outside the licensing area.

***Cross-border enforcement of national standards<sup>80</sup>***

13.95 Licensing officers finding a breach of national standards, other than in situations warranting immediate suspension or revocation (discussed immediately below) should be able to initiate the following cross-border procedure:

- (1) upon notice to the licensee and home licensing authority within 21 days of the infraction, the licensing authority could recommend an appropriate sanction; and
- (2) issuing such a notice would in turn trigger an obligation on the receiving (home) licensing authority either to impose the sanction (giving reasons) or explain its reasons for not doing so in writing (copied to the licensee) within 21 days.

***Accelerated cross-border procedure where there is a risk to public safety***

13.96 Where there is an immediate risk to public safety, licensing officers should also have immediate powers to suspend licences issued elsewhere. We suggest that where a cross-border authority takes immediate enforcement action based on an immediate risk to public safety, that authority should be under a duty to notify the home licensing authority within a shorter period than under the standard procedure discussed above, 14 days instead of 21.<sup>81</sup>

13.97 The home licensing authority should have the power to reverse the decision to suspend the licence, or to confirm it, within a further 14 days, notifying the enforcing licensing authority and licensee, and providing reasons for its decision.<sup>82</sup>

**Recommendation 78**

**We recommend that powers to revoke a licence should be available only to the licensing authority which issued that licence. However, enforcement officers in another area should have the power to:**

- (a) suspend a licence when they consider this to be necessary in the interests of public safety; and**
- (b) make recommendations to the home licensing authority as to appropriate sanctions, to which the home authority must have regard.**

13.98 These recommendations are given effect by clauses 55 to 60 of our draft Bill.

<sup>80</sup> Draft Taxis and Private Hire Vehicles Bill, clauses 55 to 60.

<sup>81</sup> The suspension, and consequently its notification to the licensee, would be immediate.

<sup>82</sup> Draft Taxis and Private Hire Vehicles Bill, clause 58.

# CHAPTER 14

## HEARINGS AND APPEALS

### INTRODUCTION

- 14.1 In this Chapter we make recommendations for reform of the systems of adjudication in taxi and private hire law. When we talk about appeals, we are concerned with the mechanism for challenging decisions taken by licensing authorities in relation to an individual application or licence. In this chapter we also look at the way in which a challenge (“judicial review”) might be made to national standards or a local authority’s taxi conditions more generally.
- 14.2 The current framework for hearings and appeals is riddled with inconsistencies and complexity. Similar situations are covered by entirely different provisions in different statutes. For example, due to an historical anomaly, taxi vehicle owners in England and Wales outside London have a right of appeal directly to the Crown Court, whereas private hire vehicle owners can only appeal to the magistrates’ court in the first instance.<sup>1</sup>
- 14.3 Our key recommendations reflect the following policies:
- (1) standardising and removing inconsistencies in the procedure for statutory appeals across England and Wales including London, and for all types of licence;
  - (2) limiting standing to bring appeals to the applicant or licence-holder;
  - (3) adopting the London model, whereby applicants can require the licensing authority to reconsider the original decision, as a first stage in the statutory appeal process. This would take place prior to appeal to the magistrates’ court, which would be retained. There should then be a further right of appeal to the Crown Court.
  - (4) the introduction of a local judicial review procedure for challenging local taxi conditions.
- 14.4 Overall, our recommendations aim at simplification with few changes to the substantive rules.

### WHO CAN APPEAL

- 14.5 We provisionally proposed that only the applicant or licence holder should be able to appeal against a decision to refuse to grant, renew, suspend or revoke a taxi or private hire licence.<sup>2</sup> Currently, there are variations as to who

<sup>1</sup> For taxis, see Public Health Acts Amendment Act 1907, s 7; for private hire vehicles, see Local Government (Miscellaneous Provisions) Act 1976, s48(7). The situation again differs in London, where both categories of proprietor must first appeal to the magistrates’ court for taxis, see Transport Act 1985, s 17; for private hire vehicles, see Private Hire Vehicles (London) Act 1998, s 7(7).

<sup>2</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 70.

can challenge the decision of a licensing authority. In England and Wales (excluding London), the right to challenge a refusal to grant a vehicle or driver's licence or to challenge the conditions attached to a vehicle licence broadly lies with "any person aggrieved".<sup>3</sup> By contrast, the right to appeal against an operator's licence anywhere in England and Wales, or in London against a refusal to grant a vehicle or driver's licence or against the conditions attached to the vehicle's licence, are limited to the aggrieved applicant.<sup>4</sup>

### **Consultation**

- 14.6 This was a popular proposal among a significant majority of respondents. Several consultees who agreed with the proposal said that limiting standing to appeal against licensing decisions to the applicant or licence holder would be appropriate because challenges to an overall policy could still be brought by way of judicial review, which is available to a wider category of claimants with a "sufficient interest".
- 14.7 Sheffield City Council, which also agreed with the proposal, said that the current system, which could result in "literally any citizen of the city making an appeal against a decision", had little practical use and should be reformed.
- 14.8 However, a number of consultees disagreed with the proposal, and some of them made alternative suggestions. The Local Government Association felt that "residents or businesses may wish to make representations" on matters that "materially affect public safety", particularly concerning whether a person meets the "fit and proper" standard. East Northamptonshire Council thought that other interested parties, such as complainants and police, should also have the right to appeal against decisions, while Milton Keynes Council wanted to give that right to "anyone with a justifiable concern".

### **Discussion**

- 14.9 We maintain our provisional proposal. We regard the current standing provisions as too wide, and not of practical benefit; it is unlikely that members of the public would wish to bring appeals or that they would have good reason for doing so. A method for interested persons to oppose a particular policy already exists through judicial review. We propose simplifying this process, as discussed further below.<sup>5</sup>

#### **Recommendation 79**

**The right to appeal against refusals to grant or renew taxi and private hire licences or to suspend or revoke them should be limited to the applicant or licence holder.**

- 14.10 This is given effect by clause 64(1) of our draft Bill.

<sup>3</sup> For example, see Local Government (Miscellaneous Provisions) Act 1976, ss48(7), 52 and 59(2).

<sup>4</sup> For example, see Local Government (Miscellaneous Provisions) Act 1976, ss 55 and 62; Private Hire Vehicles (London) Act 1998, ss 3(7) and 25(6).

<sup>5</sup> Our draft Bill provides that an individual can appeal a decision on local tax conditions to the County Court, where the County Court considers them to have sufficient interest in the decision: draft Taxis and Private Hire Vehicles Bill, clause 65(2)(b).

## **A DUTY OF THE LICENSING AUTHORITY TO RECONSIDER**

- 14.11 In our consultation paper we suggested that the first stage of any appeal should be internal reconsideration of the decision by the licensing authority.<sup>6</sup> This is currently the case in London.<sup>7</sup> The decision of the review panel should then be capable of being challenged in the magistrates' court.
- 14.12 As we discussed in the consultation paper, we find reconsideration by the licensing authority an attractive option. It is a cheaper and easier mechanism for obtaining an initial review and would enable genuine errors to be rectified easily. It would benefit those applicants and authorities who would be spared the need to go to court and would remove a number of cases from the court system.

### **Consultation**

- 14.13 Consultees were generally in favour of this proposal. Notably, consultees from the taxi and private hire trades tended to be strongly in favour, whereas regulators gave a more mixed response. This suggests that the trades have faith in the ability of regulators to offer a fair and efficient second look at licensing decisions. However, some (but by no means all) regulators were concerned about some of the implications of the proposed system.
- 14.14 Those who agreed with the proposal felt that it would be a more efficient and cost-effective option than retaining the current system. Many cited the prohibitive costs of taking an appeal to the magistrates' court. For example, Transport for London noted that:

Lodging an appeal at the magistrates' court in London costs an appellant £200.... More significantly however there will be the associated legal costs. For example, when TfL asks the court to award it costs following an unsuccessful appeal, we generally ask for a contribution of £500 at magistrates' court and £560 at Crown Court and if awarded these costs have to be met by the appellant.

- 14.15 Consultees also felt that reconsideration was better for applicants in terms of the quality of the decision-making as well as speed and ease. Some authorities, such as Brentwood Borough Council, said that they already offered such a reconsideration procedure themselves and felt that it was beneficial to those who used it.
- 14.16 Transport for London also gave us valuable information on how their reconsideration procedure works. They reported that the system works successfully and is popular with those who have the option to use it. They cited the following statistics:

While the reconsideration hearing is optional, in 2011/12, 95 per cent of taxi driver appellants chose the reconsideration process in the first instance and only 15 per cent of those resulted in a subsequent magistrate's court hearing. The proportion of private hire driver

<sup>6</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, provisional proposal 71.

<sup>7</sup> Transport Act 1985, s 17(2)(a).

appeals progressing to the Crown court was also 15 per cent. This indicates that the reconsideration process for taxi driver applicants and licensees is just as effective as the first line of appeal for private hire drivers.

- 14.17 The Local Government Association also felt that licensing authorities were best placed to undertake the initial reconsideration, because:

It is important that the issuing of licences continues to be transparent to applicants, residents and other enforcement agencies such as the police. Licensing authorities have well-established and rigorous scrutiny mechanisms, as well as their ultimate democratic accountability to their residents. It is therefore quite right that the first stage in the appeal process should be to the council to reconsider its decision.

- 14.18 Consultees also expressed confidence that the reconsideration procedure could offer sufficient independence and neutrality to applicants and licence holders, especially as they would also have the reassurance of the option of a further appeal to the magistrates' court.

- 14.19 However, a number of consultees disagreed with the proposal. As mentioned above, these tended to be regulators. Some felt that reconsideration by the authority would be complicated to administer as it would require some restructuring of the authority's processes. Sheffield City Council expressed this view frankly:

Our view is that this would be a complete waste of time, unless all authorities had to delegate powers to officers to allow them to refuse, and revoke licences. This is currently not the case in most Councils and is not the case; in Sheffield the right of refusal and revocation remains with an independent licensing committee.

- 14.20 Some regulators, such as the Institute of Licensing and Carmarthenshire County Council, suggested that reconsideration would be costly for local authorities to administer. Milton Keynes Council also felt that speed and efficiency would be reduced. Some consultees were concerned that the process would not be impartial as the licensing authority would not want to impugn its own decision.

### **Discussion**

- 14.21 We recommend that the first stage in the appeal process throughout England and Wales, in respect of refusals, suspensions or revocations, should be for the local licensing authority to reconsider its decision. The licence holder concerned would be able to waive this and proceed directly to the magistrates' court. We have taken account of the arguments against this recommendation; however, we do not feel that any of the problems raised by consultees are sufficiently great to outweigh the benefits of our proposed system.

- 14.22 A key concern was the perceived cost of reconsidering decisions. However, we note the evidence provided by other consultees that defending an appeal in the magistrates' court is also costly for local authorities. Licensing authorities will be able to fund the reconsideration process from licence fees, as Transport for

London currently does.<sup>8</sup> We appreciate that, as reconsideration by the authority is cheaper for applicants and licence holders than an appeal to the magistrates' court, more of them might pursue that option than would be prepared to pay for an appeal. We nevertheless regard this as a positive result as it would mean that fewer applicants and licence holders were denied the opportunity to challenge the authority's decision owing to cost considerations.

- 14.23 We also believe that speed and efficiency would be improved rather than hindered by requiring reconsideration by the licensing authority. An appeal to the magistrates' court is not a speedy option. We appreciate that local authorities have many demands on their time and resources, but in this respect they are no different from the courts. In addition, a reconsideration panel within the authority will be able to build up a body of experience and expertise which is unlikely to be possible to the same degree in the magistrates' court.
- 14.24 Some consultees feared that authorities would not be able to reconsider their decisions in a fully independent fashion. We feel that this could be addressed by requiring authorities to ensure that the reconsideration is performed by a differently constituted person or committee to that which took the original decision. Transport for London does this by employing "individuals with experience in taxi licensing to act as its representative" at reconsideration hearings, though the final decision remains with Transport for London itself. This strikes us as a good model, but we do not think that authorities should be restricted to using independent advisors –they should be able to use individuals from within the authority so long as they are adequately trained and have taken no part in the original decision.
- 14.25 Our consultation results indicate that members of the taxi and private hire trades generally trust licensing authorities to give them a fair rehearing. As an additional safeguard, we think that applicants and licence holders should have the option to proceed directly to the magistrates' court if they choose. This would assist those who are concerned that the authority would not be impartial in reconsidering their case.
- 14.26 An analogous statutory scheme is that found under section 202 of the Housing Act 1996. This allows a disappointed applicant for assistance to seek reconsideration within a set time limit. The Secretary of State has the power to prescribe the procedure to be followed.<sup>9</sup> This can relate, for example, to who may undertake the reconsideration and in what circumstances there must be an oral hearing. The apparent success of this scheme suggests that its replication in the taxi and private hire context would be successful.
- 14.27 Our recommended approach is that licensing authorities should be required to offer an impartial reconsideration process to applicants or licence holders who are dissatisfied with the authority's decision to refuse, suspend or revoke a licence.<sup>10</sup> It should be left to individual authorities to design a suitable process, but they should be given guidance on this. Applicants and licence holders should

<sup>8</sup> For further discussion on the use of licensing fees, see Chapter 10 above.

<sup>9</sup> Housing Act 1996, s 203.

<sup>10</sup> Draft Taxis and Private Hire Vehicles Bill, clause 64(2).



have the option to bypass the reconsideration stage and go straight to the magistrates' court if they so wish. We note that, in London, those who are eligible for reconsideration cannot appeal to the Crown Court after an unsuccessful appeal in the magistrates' court, regardless of whether they had first opted for reconsideration by the authority. As we explain below, we disagree with this approach and think that an appeal to the Crown Court should always remain available.

**Recommendation 80**

**We recommend that the first stage in the appeal process in respect of refusals, suspensions or revocations of licences should be the right to require licensing authorities to reconsider the original decision. Appellants should have the right to bypass this stage and proceed direct to the magistrates' court.**

14.28 This is given effect by clause 64(2)(a) of our draft Bill.

**APPEAL TO THE MAGISTRATES' COURT**

14.29 With the exception of challenges to taxi vehicle licence decisions,<sup>11</sup> all appeals currently lie to the magistrates' court. Statutory appeals to the magistrates' court are appeals on the merits of the licensing authority's decision and give rise to a fresh hearing of the issue. In the consultation paper, we discussed whether appeals should continue to be heard in the magistrates' courts. We noted the concerns raised over whether magistrates have sufficient expertise to adjudicate on issues of taxi and private hire law.<sup>12</sup> We provisionally concluded that they were the correct forum for licensing appeals; concerns about them stemmed from the complex and fragmented nature of the law, which we would tackle in our reform proposals.

**Consultation**

14.30 This was a very popular proposal. Respondents to a survey distributed by the Institute of Licensing commented that magistrates' courts are "reasonably affordable" and "independent", but also mentioned the desirability of further training. These views were echoed by many stakeholders. Reading Borough Council, who also supported the proposal, said that:

These decisions have serious implications for the applicant or licence holder and require to be heard by a body that carries suitable impartiality, gravitas and no link to the licensing authority.

14.31 However, a number of consultees saw drawbacks in continuing to refer appeals to the magistrates' courts. They said that magistrates had insufficient expertise to adjudicate competently on taxi and private hire cases, and suggested the use of a specialist tribunal. For example, Burnley Borough Council said:

<sup>11</sup> In respect of which appeals lie directly to the Crown Court: Public Health Acts Amendment Act 1907, s7.

<sup>12</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, para 20.20.

Some of the decisions of magistrates at appeal hearings highlight a lack of understanding of the legislation. A transport tribunal would be preferable.

- 14.32 Some consultees who disagreed suggested that the Traffic Commissioners should have jurisdiction in taxi and private hire appeals. This was the view of Transport for London, their rationale being that:

The Traffic Commissioners are independent to the licensing authority whilst having a clear enough understanding of licensing to make an informed decision.

- 14.33 The Traffic Commissioner with lead responsibility for limousines, Nick Jones, made a similar suggestion, noting that Traffic Commissioners already have considerable expertise in these areas.<sup>13</sup>

### **Discussion**

- 14.34 We have carefully considered suggestions concerning alternatives to the magistrates' courts. However, we adhere to our original proposal that appeals should continue to be heard in the magistrates' courts.

- 14.35 First, the feedback we have received from consultees does not suggest that the current role of the magistrates' courts causes any major problems. The vast majority of consultees did not find it necessary to make any comments on our proposal other than to agree with it. Our proposed system of national standards for taxi and private hire regulation should also mean that magistrates will be able to draw upon a more consistent body of decided cases in the future.

- 14.36 The alternative forums suggested to us included the county courts, the High Court, the Transport Tribunal, and the Traffic Commissioners. The Transport Tribunal no longer exists<sup>14</sup>, its former jurisdiction having been distributed between the First Tier Tribunal (General Regulatory Chamber), which deals with appeals against decisions of the Registrar of Approved Driving Instructors and against decisions of Transport for London regarding London service permits,<sup>15</sup> and the Upper Tribunal,<sup>16</sup> which deals with appeals against

<sup>13</sup> Limousines have featured systematically in Traffic Commissioners' annual reports. For 2012 to 2013, see p 12, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/263683/tc-annual-report-2012-13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263683/tc-annual-report-2012-13.pdf) (last visited 93 May 2014). For 2011 to 2012, see p 34, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/9463/tcs-annual-report-2011-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9463/tcs-annual-report-2011-2012.pdf) (last visited 16 May 2014).

<sup>14</sup> Except, for limited purposes, in Scotland.

<sup>15</sup> See <http://www.justice.gov.uk/tribunals/general-regulatory-chamber> (last visited 16 May 2014).

<sup>16</sup> See <http://www.justice.gov.uk/tribunals/aa> (last visited 16 May 2014).

decisions of the Traffic Commissioners.<sup>17</sup>

- 14.37 Neither Tribunal disposes of many such cases and adding an additional area of jurisdiction would have resource implications. It is not clear that any consultees actually meant to suggest the Upper Tribunal, which is a high-level, specialist body, appeals from which go to the Court of Appeal; a forum at this level is not appropriate as the first level of appeal in taxi and private hire licensing cases. We reject the suggestion of the High Court for similar reasons.
- 14.38 Transport for London's suggestion was that appeals should be decided by the Traffic Commissioners, acting in a judicial capacity. This was supported by Traffic Commissioner Nick Jones. It is true that the Traffic Commissioners have considerable expertise in matters similar to taxi and private hire licensing through their jurisdiction over public service and heavy goods vehicle licensing. We note also that the Scottish Traffic Commissioner already has an appeal jurisdiction over taxi fare schedules set by local authorities.
- 14.39 However, the Traffic Commissioners do not oversee the taxi and private hire licensing structure as a whole and do not have a detailed knowledge of the system. Secondly, such a change would again have significant resource implications. We also do not think that there is sufficient evidence of problems with the magistrates' courts to justify a wholesale transfer to the Traffic Commissioners. The benefit of magistrates' courts is that cases can be decided locally and conveniently, which seems appropriate to the nature of taxi and private hire licensing cases, and an onward right of appeal from a magistrates' court to the Crown Court – which also has the advantage of being local – is eminently appropriate.<sup>18</sup>
- 14.40 Nor does it seem sensible to transfer the jurisdiction to the County Court. We regard magistrates as well equipped to decide the sort of mainly factual issues that are likely to arise in licensing appeals, particularly given the proposed safeguard of a right of appeal to the Crown Court. If the County Court were the first tier of appeal, further appeal would have to be to the Court of Appeal.
- 14.41 As a result, we recommend that the legislation should provide in all cases that an applicant or licence-holder dissatisfied with the decision reached by the licensing authority's reconsideration panel can appeal against the decision of the panel to a magistrates' court.<sup>19</sup> An applicant or licence holder should also be able to elect to bypass the reconsideration procedure and appeal directly to the magistrates'

<sup>17</sup> Appeals which may be brought to the Upper Tribunal from the Traffic Commissioners include (all references to Public Passenger Vehicles Act 1981): the right of a transport manager to appeal to the Upper Tribunal against an order made in respect of repute and/or professional competence (see Schedule 3, paragraph 7B(4)); public service vehicle operators have a right of appeal against any decision to: refuse an application to vary or remove any condition or undertaking; vary any condition, or to attach a new condition to the licence; or revoke or suspend the licence (see s 50(4)); appeal by a person who has applied for a review under section 49A (in respect of the refusal to grant or vary a public service vehicle operator's licence) under section 50(4A); and appeal by a person disqualified from holding or obtaining a licence under section 28 against that determination, under section 50(5).

<sup>18</sup> Discussed and recommended in the next section of this Chapter.

<sup>19</sup> Draft Taxis and Private Hire Vehicles Bill, clause 64(2).

court if they prefer.

**Recommendation 81**

**We recommend that all taxi and private hire licensing appeals should be heard in the magistrates' court.**

**ONWARD APPEALS**

- 14.42 In the consultation paper we put forward the view that our proposed system of reconsideration by the licensing authority followed by the possibility of an appeal to the magistrates' court would provide adequate safeguards in most cases. However, given the importance of the rights at stake, we also asked whether an onward right of appeal to the Crown Court should remain available to those dissatisfied with the decision in the magistrates' court.<sup>20</sup>

**Consultation**

- 14.43 This proposal was popular with a large majority of consultees. Consultees who agreed with the proposal thought it important to have an additional appeal jurisdiction for particularly complex or difficult cases. This was also thought necessary in the interests of justice. Reading Borough Council commented that:

Magistrates are lay persons and there needs to be a right to appeal to a higher court to ensure no miscarriage of justice. If this doesn't happen case law could build up from wrong decisions and magnify that wrong decision.

- 14.44 A significant minority of consultees nevertheless disagreed with the proposal; the majority of these were from the taxi trade. Some felt that a further right of appeal would simply be unnecessary given that, under our proposed system, two appeals would already have taken place before a case reached the Crown Court. This was the view of the Institute of Licensing. Darlington Borough Council and Tees Valley Licensing Group feared that the right to a further appeal would be abused by applicants, who would use it to extend the period in which they could continue to drive pending the outcome of both hearings, which could take many months. They noted that the Licensing Act 2003 and Gambling Act 2005 provide only one right of appeal – to the magistrates' courts. They also suggested that suspension and revocation of licences should not be subject to a right of appeal, to protect public safety.

**Discussion**

- 14.45 We consider that the possibility of an appeal to the Crown Court should be retained, as it provides an important further safeguard which will ensure the integrity of our new appeals system. We do not anticipate that there will be many appeals to the Crown Court, but in a small number of cases such an appeal may be appropriate. We do not think that applicants to the Crown Court should have to satisfy any particular filter requirement, such as a requirement to obtain permission to appeal. The financial and other burdens of further litigation will be a

<sup>20</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, question 73.

sufficient discipline.

- 14.46 We agree that where an individual or vehicle poses a serious threat to the public, powers to suspend the relevant licence immediately should be available, as is the case under current law.<sup>21</sup> This would, of course, be subject to a right of appeal.<sup>22</sup>

**Recommendation 82**

**We recommend the retention of an onward right of appeal to the Crown Court.**

**APPEALS AGAINST THE DENIAL OF AN OPT-IN VEHICLE LICENCE**

- 14.47 Vehicles with a passenger carrying capacity of nine or more passengers which are used for hire generally fall exclusively within the jurisdiction of Traffic Commissioners as public service vehicles.<sup>23</sup> Whereas this will largely continue to be the case under our reforms, we have suggested some modification to the boundary between taxi and private hire licensing and public service vehicle licensing. One effect of our recommendations is that vehicles with a capacity to carry between nine and sixteen passengers can be licensed as taxis or private hire vehicles provided they satisfy the requirements of national (or local taxi) standards.<sup>24</sup> Our draft Bill gives the Senior Traffic Commissioner the power to veto applications for such “opt-in vehicle” licences on the basis that the vehicle should properly be licensed as a public service vehicle and be operated under a public service vehicle operator’s licence.<sup>25</sup>
- 14.48 Where the application for a licence for an opt-in vehicle is refused because the Senior Traffic Commissioner objects, we think the disappointed applicant should have the right to appeal that decision to the Upper Tribunal. The appeal will in effect be against the decision of the Traffic Commissioner and it seems appropriate for it to be heard in the same forum as other appeals against Traffic Commissioner decisions. Where the opt-in vehicle licence application is refused for any other reason, it would fall within the general taxi and private hire appeals jurisdiction of the magistrates’ court and Crown Court.<sup>26</sup>

**Recommendation 83**

**We recommend that applicants for a vehicle licence for an opt-in vehicle should have a right of appeal to the Upper Tribunal if their application is refused on the basis of an objection by the Senior Traffic Commissioner.**

<sup>21</sup> See discussion above in Chapter 13, from para 13.72, and Recommendation 76.

<sup>22</sup> Draft Taxis and Private Hire Vehicles Bill, clause 64.

<sup>23</sup> Public Passenger Vehicles Act 1981, s 1.

<sup>24</sup> Recommendation 26(b), discussed in Chapter 4, from para 4.75.

<sup>25</sup> Draft Taxis and Private Hire Vehicles Bill, clause 17(4).

<sup>26</sup> We note for completeness that under our reforms, vehicles with a passenger carrying capacity of between nine and sixteen passengers that are stretch limousines or novelty vehicles, as defined in Regulations, will fall to be licensed only as taxi or (more probably) private hire vehicles; any appeals will fall within the taxi and private hire appeals regime, as discussed in this chapter.

14.49 This recommendation is given effect by clause 66 of the draft Bill.

### **JUDICIAL REVIEW**

- 14.50 Under our proposed reforms, the only way to challenge matters of licensing policy or standard-setting would be by judicial review. An individual taxi driver could not use the statutory appeals procedure discussed in this chapter to make a collateral attack on the conditions imposed by a licensing authority in pursuance of its standard-setting powers, just as these appeals procedures could not be used by private hire licensees wishing to challenge the national conditions set by the Secretary of State. Such challenges are best suited to judicial review.
- 14.51 As we noted in the consultation paper, we do not regard the magistrates' court as a suitable venue to consider the legality of a licensing standard or policy.<sup>27</sup> The purpose of an appeal to a magistrates' court is to consider the application of licensing standards to the individual in question, as opposed to the validity or application of a standard or policy generally. Furthermore, magistrates do not conduct judicial review-like hearings, are not trained for and may be reluctant to undertake this type of assessment.
- 14.52 During our consultation, however, many stakeholders complained of the difficulty of seeking judicial review, particularly in terms of time and expense. We have concluded that taxi drivers and taxi vehicle licence holders should have the opportunity to challenge local taxi conditions using a streamlined review process modelled on that found in the Housing Act 1996. The procedure would also be available to other individuals, but only if they could satisfy the County Court that they had sufficient interest in the challenged decision.<sup>28</sup>
- 14.53 By contrast, we do not think the procedure should be available in respect of challenging national standards. These should remain challengeable solely by standard judicial review procedures, given the centralised nature of the decision.
- 14.54 The Housing Act enables disappointed applicants for local authority assistance to appeal to the County Court on a point of law.<sup>29</sup> The Court can confirm, quash or vary the decision.<sup>30</sup> The County Court procedure is cheaper and more straightforward than pursuing judicial review before the High Court. We recommend that a similar procedure, enabling local taxi standards to be challenged in the County Court on public law grounds, should be available in relation to taxi conditions set by licensing authorities.<sup>31</sup> National standards set by the Secretary of State should continue to only be challengeable through normal judicial review procedures.

<sup>27</sup> Reforming the Law of Taxi and Private Hire Services (2012) Law Commission Consultation Paper No 203, Chapter 20.

<sup>28</sup> Draft Taxis and Private Hire Vehicles Bill, clause 65(2)(b).

<sup>29</sup> Housing Act 1996, s 204(1).

<sup>30</sup> Housing Act 1996, s 204(3).

<sup>31</sup> Draft Taxis and Private Hire Vehicles Bill, clause 65.

**Recommendation 84**

**We recommend that a County Court judicial review procedure along the lines provided under the Housing Act 1996 should be available to challenge taxi conditions set by licensing authorities.**

14.55 This recommendation is given effect by clause 65 of our draft Bill.

*(Signed)* DAVID LLOYD JONES, *Chairman*

ELIZABETH COOKE

DAVID HERTZELL

DAVID ORMEROD

NICHOLAS PAINES

ELAINE LORIMER, *Chief Executive*

19 May 2014

**APPENDIX A  
DRAFT TAXIS AND PRIVATE HIRE VEHICLES  
BILL**



# Taxis and Private Hire Vehicles Bill

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A  
**B I L L**

TO

Make provision for the licensing and regulation of taxis and private hire vehicles, the drivers of those vehicles and people who dispatch drivers of those vehicles; and for connected purposes

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

INTRODUCTORY

**1 Meaning of “using a vehicle as a hire vehicle” and related terms**

- (1) This section applies for the purposes of this Act.
- (2) A vehicle is “used as a hire vehicle” if it is used to carry a passenger in circumstances where the vehicle, together with the services of the driver, have been hired for that purpose; but this is subject to subsections (3) and (4).
- (3) A vehicle used to carry a passenger is not to be treated as being “used as a hire vehicle” if the carriage of the passenger is ancillary to, or an incidental part of, another service provided to, or in respect of, the passenger.
- (4) A vehicle is not to be treated as being “used as a hire vehicle” at any time when it is being used in connection with a wedding or a funeral.
- (5) A “hire-vehicle booking” is a booking for the hire of a regulated vehicle, together with the services of a driver, for the purpose of carrying a passenger.
- (6) A person (A) dispatches another person (“the driver”) to fulfil a hire-vehicle booking if—
  - (a) A instructs or requests the driver to use a vehicle to fulfil the booking, and
  - (b) the driver accepts the instruction or request.

**2 Meaning of “regulated vehicle” and “opt-in vehicle”**

- (1) Subject to subsection (5), a vehicle is a “regulated vehicle” for the purposes of this Act if it is within subsection (2), (3) or (4).
- (2) A vehicle is within this subsection if it is a motor vehicle constructed or adapted to carry no more than 8 passengers.
- (3) A vehicle is within this subsection if –
  - (a) it is a motor vehicle constructed or adapted to carry more than 8 passengers but fewer than 17, and
  - (b) it is a stretch limousine or other novelty vehicle.
- (4) A vehicle is within this subsection if –
  - (a) it is not a motor vehicle, but
  - (b) it is constructed or adapted for use on roads.
- (5) A vehicle within subsection (2), (3) or (4) is not a “regulated vehicle” for the purposes of this Act if –
  - (a) it is a public service vehicle;
  - (b) it is a vehicle constructed or adapted for use as part of a transport system to which section 1 of the Transport and Works Act 1992 applies (railways, tramways etc).
- (6) A vehicle is to be treated as a “regulated vehicle” for the purposes of this Act if it is an opt-in vehicle in respect of which a taxi licence or a private hire vehicle licence granted under section 16 in force.
- (7) A vehicle is an “opt-in vehicle” for the purposes of this Act if –
  - (a) it is a motor vehicle constructed or adapted to carry more than 8 passengers but fewer than 17, and
  - (b) it is not a stretch limousine or other novelty vehicle.
- (8) “Motor vehicle” means a mechanically propelled vehicle constructed or adapted for use on roads.
- (9) “Stretch limousine” means a vehicle of a description specified in regulations.
- (10) “Novelty vehicle” means a vehicle of a description specified in regulations.
- (11) Regulations under subsection (9) or (10) may specify a description of vehicle by reference, in particular, to one or more of the following –
  - (a) the physical characteristics of the vehicle;
  - (b) a type of event or occasion in connection with which the vehicle is used as a hire vehicle;
  - (c) a type of service provided to passengers when the vehicle is used as a hire vehicle (such as the provision of alcohol).
- (12) In determining for the purposes of this section the number of passengers that a vehicle is constructed or adapted to carry, a space within the vehicle is not to be disregarded by reason only of the fact that it is located next to the driver’s seat or is separated by a partition from the rest of the vehicle.

**3 Meaning of “licensing authority”**

- (1) In this Act “licensing authority” means –
  - (a) Transport for London;

- (b) the council of a district in England;
  - (c) the council of a county in England in which there are no district councils;
  - (d) the council of a county in Wales;
  - (e) the council of a county borough in Wales.
- (2) References in this Act to the area of a licensing authority are –
- (a) in the case of Transport for London, to Greater London;
  - (b) in any other case, to the area for which the authority acts.

## PART 2

### ACTIVITIES PROHIBITED WITHOUT LICENCES ETC

#### 4 Prohibition on using a regulated vehicle as a hire vehicle without licences

- (1) A regulated vehicle must not be used as a hire vehicle unless the condition in subsection (2) or subsection (3) is met.
- (2) The condition in this subsection is that –
- (a) the driver of the vehicle holds a taxi driver’s licence, and
  - (b) a taxi licence granted by the same licensing authority that granted the taxi driver’s licence is in force in respect of the vehicle.
- (3) The condition in this subsection is that –
- (a) the driver of the vehicle holds a PHV driver’s licence, and
  - (b) a private hire vehicle licence is in force in respect of the vehicle.
- (4) Subsection (1) does not apply to a regulated vehicle –
- (a) which is of a description specified in regulations;
  - (b) while it is being used to carry a passenger in circumstances or for a purpose specified in regulations.

#### 5 Offence of contravening section 4

- (1) This section applies where a regulated vehicle is used as a hire vehicle in contravention of section 4.
- (2) The driver of the vehicle is guilty of an offence if –
- (a) the driver held neither a taxi driver’s licence nor a PHV driver’s licence;
  - (b) the driver –
    - (i) held a taxi driver’s licence, but
    - (ii) knew or had reason to suspect that a taxi licence granted by the same licensing authority that granted his or her taxi driver’s licence was not in force in respect of the vehicle;
  - (c) the driver –
    - (i) held a PHV driver’s licence, but
    - (ii) knew or had reason to suspect that a private hire vehicle licence was not in force in respect of the vehicle.
- (3) In a case where the owner of the vehicle was someone other than the driver, the owner is guilty of an offence if –
- (a) neither a taxi licence nor a private hire vehicle licence was in force in respect of the vehicle, and

- (b) the owner –
  - (i) permitted the vehicle to be taken out of his or her possession (whether by the driver or another person), and
  - (ii) knew or had reason to suspect that whilst out of his or her possession the vehicle would be used as a hire vehicle.
- (4) In a case where a taxi licence or a private hire vehicle licence was in force in respect of the vehicle and the holder of that licence was someone other than the driver, the holder of that licence is guilty of an offence if the holder –
  - (a) permitted the vehicle to be taken out of his or her possession (whether by the driver or another person), and
  - (b) knew or had reason to suspect that whilst out of his or her possession the vehicle would be used in contravention of section 4.
- (5) If, in proceedings for an offence under subsection (2) or (4), the prosecution proves that a vehicle in respect of which a taxi licence or private hire vehicle licence was in force was being used at any time to carry a passenger it is to be presumed, unless the contrary is shown, that the vehicle was at that time being used as a hire vehicle.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine.

## **6 Prohibition on accepting a there-and-then hiring unless a local taxi driver**

- (1) The driver of a regulated vehicle must not in a public place agree to use the vehicle as a hire vehicle on a journey which begins there and then unless –
  - (a) the driver holds a taxi driver’s licence,
  - (b) a taxi licence granted by the same licensing authority that granted the taxi driver’s licence (“the relevant licensing authority”) is in force in respect of the vehicle, and
  - (c) the place is –
    - (i) within the area of the relevant licensing authority, and
    - (ii) if the relevant licensing authority has made a determination under section 7 that its area is to be divided into taxi zones, within a zone which is specified in the taxi driver’s licence and the taxi licence.
- (2) But subsection (1) does not apply in relation to a regulated vehicle which is of a description specified in regulations unless the licensing authority for the area in which the public place is situated has made a determination that subsection (1) should apply in relation to vehicles of that description.
- (3) A determination under subsection (2) may be revoked by the licensing authority that made it.
- (4) A licensing authority which makes a determination under subsection (2) must –
  - (a) publish the determination, and
  - (b) if it revokes the determination, publish notice of the revocation.
- (5) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) If a licensing authority makes a determination under section 7 that its area is to be divided into taxi zones, any taxi driver’s licence or taxi licence granted by



the authority before the determination was made which has not been varied under section 21 since the determination was made is to be treated for the purposes of this Act as if it specified all the zones.

## 7 Taxi zones

- (1) A licensing authority may make a determination that its area is to be divided for the purposes of this Act into two or more taxi zones specified in the determination.
- (2) A determination under this section may be varied or revoked by the licensing authority that made it.
- (3) In deciding whether and, if so, how to exercise its powers under this section a licensing authority must, in particular, take into account—
  - (a) the interests of people who hire or seek to hire licensed taxis,
  - (b) the particular interests of disabled people who hire or seek to hire licensed taxis,
  - (c) the interests of people who hold taxi licences and taxi driver’s licences,
  - (d) the need to avoid traffic congestion,
  - (e) the need to preserve the environment, and
  - (f) such other matters as may be specified in regulations.
- (4) Before making a determination under this section, revoking a determination or varying a determination so as to alter the number of taxi zones into which its area is divided, a licensing authority must—
  - (a) carry out a consultation in such manner as is specified in regulations;
  - (b) obtain such evidence as is specified in regulations;
  - (c) undertake such assessments as are specified in regulations; and
  - (d) take any other steps as are specified in regulations.
- (5) A licensing authority which has made a determination under this section must—
  - (a) publish the determination;
  - (b) if it varies the determination, publish the determination as varied;
  - (c) if it revokes the determination, publish notice of the revocation.

## 8 Prohibition on PHV driver using a regulated vehicle as a hire vehicle unless dispatched by licensed dispatcher

- (1) A person (A) who holds a PHV driver’s licence must not use a regulated vehicle as a hire vehicle unless a person who holds a dispatcher’s licence has instructed or requested A to do so for the purpose of fulfilling a hire-vehicle booking.
- (2) A person who contravenes subsection (1) is guilty of an offence.
- (3) But in a case where a person (A) contravenes subsection (1) by reason only of the fact that another person (B) did not hold a dispatcher’s licence, A is guilty of an offence only if A knew, or had reason to suspect, that B did not hold a dispatcher’s licence.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (5) Subsection (1) does not apply to a person who holds a PHV driver’s licence if the person also holds a dispatcher’s licence.

## **9 Prohibition on dispatching a PHV driver unless a licensed dispatcher**

- (1) A person (A) must not in the course of business dispatch a person who holds a PHV driver’s licence (“the driver”) to fulfil a hire-vehicle booking unless A holds a dispatcher’s licence.
- (2) A person who contravenes this subsection is guilty of an offence.
- (3) In proceedings for an offence under this section it is a defence to show that the defendant reasonably believed, having made such enquiries as were reasonable, that the driver –
- (a) held a taxi driver’s licence, and
  - (b) would use a licensed taxi to fulfil the booking.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **10 Offence of dispatching unlicensed driver or unlicensed vehicle etc**

- (1) A person commits an offence if –
- (a) in the course of business the person dispatches another person (“the driver”) to fulfil a hire-vehicle booking, and
  - (b) the driver contravenes section 4 when using a vehicle for the purpose of fulfilling the booking.
- (2) In proceedings for an offence under this section it is a defence to show that the defendant reasonably believed, having made such enquiries as were reasonable, that –
- (a) the driver –
    - (i) held a taxi driver’s licence, and
    - (ii) would use a vehicle in respect of which there was in force a taxi licence granted by the same licensing authority that granted the taxi driver’s licence, or
  - (b) the driver –
    - (i) held a PHV driver’s licence, and
    - (ii) would use a vehicle in respect of which there was in force a private hire vehicle licence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale

## **11 Sections 9 and 10: supplementary**

If, in proceedings for an offence under section 9 or 10, the prosecution proves that –

- (a) in the course of business the defendant accepted a hire-vehicle booking, and
- (b) another person (“the driver”) used a vehicle as a hire vehicle for the purpose of fulfilling the booking,

it is to be presumed, unless the contrary is shown, that in the course of business the defendant dispatched the driver to fulfil the booking.

## 12 Liability of other intermediaries

- (1) A person (A) commits an offence if—
  - (a) in the course of business A accepts a hire-vehicle booking or agrees to make arrangements for a hire-vehicle booking to be fulfilled,
  - (b) A makes arrangements with another person (B) under which B agrees to make further arrangements for fulfilling the booking, and
  - (c) A knows or has reason to suspect—
    - (i) that a vehicle will be used in contravention of section 4 for the purpose of fulfilling the booking, or
    - (ii) that B or any other person will contravene section 9 when dispatching a driver to fulfil the booking.
- (2) A person (A) commits an offence if—
  - (a) in the course of business A makes provision for enabling another person to accept a hire-vehicle booking, and
  - (b) A knows or has reason to suspect—
    - (i) that a vehicle will be used in contravention of section 4 for the purpose of fulfilling the booking, or
    - (ii) that a person will contravene section 9 when dispatching a driver to fulfil the booking.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## PART 3

### LICENSING

## 13 Applications for licences

- (1) Any person may apply to a licensing authority for—
  - (a) a taxi driver's licence;
  - (b) a PHV driver's licence;
  - (c) a dispatcher's licence;
  - (d) a taxi licence for a regulated vehicle or an opt-in vehicle;
  - (e) a private hire vehicle licence for a regulated vehicle or an opt-in vehicle.
- (2) An application under this section must be in such form, and include such declarations and information, as may be specified in regulations.
- (3) A person who makes an application to a licensing authority under this section must give to the authority whatever additional information the authority may reasonably require for the purpose of dealing with the application.
- (4) A person commits an offence if, in giving information under this section, the person makes a statement that the person knows, or has reason to suspect, is untrue.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**14 Licensing criteria**

- (1) Regulations must be made specifying criteria which must be met for a person who has applied for a licence under section 13 to be granted the licence.
- (2) A licensing authority may set additional criteria which must be met for a person who has applied to the authority for a taxi driver's licence or a taxi licence to be granted the licence.
- (3) A licensing authority which sets additional criteria may revise or revoke the criteria.
- (4) A licensing authority which sets additional criteria must –
  - (a) publish the criteria;
  - (b) if it revises the criteria, publish the criteria as revised;
  - (c) if it revokes the criteria, publish notice of the revocation.
- (5) Different criteria may be specified or set –
  - (a) in respect of different types of licence;
  - (b) otherwise for different purposes, circumstances or cases.
- (6) The criteria specified or set in respect of taxi licences and private hire vehicle licences must be criteria concerning –
  - (a) the vehicle for which the licence is sought, or
  - (b) the connection that the person applying for the licence has with that vehicle.

**15 Licensing criteria: supplementary**

- (1) Regulations under section 14 may specify a particular criterion only if the Secretary of State is satisfied that specifying the criterion is necessary or expedient for a purpose mentioned in subsection (2).
- (2) The purposes are –
  - (a) securing the safety of individuals;
  - (b) preserving the environment;
  - (c) enabling the effective and efficient enforcement of this Act or any conditions to which licences under this Act are subject;
  - (d) promoting the interests of disabled people who hire or seek to hire licensed taxis or licensed private hire vehicles.
- (3) Regulations under section 14 must specify criteria which prevent a person who has applied for a taxi driver's licence or a PHV driver's licence being granted the licence unless, within a period specified in the regulations ending with the date the application was made, the applicant has completed an approved training course concerning the needs of disabled people who hire or seek to hire licensed taxis or licensed private hire vehicles.
- (4) In subsection (3) "approved training course" means a training course approved in a manner specified in regulations.
- (5) Each licensing authority must review, at least every three years, whether it is necessary or expedient for it to exercise its powers under subsection (2) or (3) of section 14 for the purpose of promoting the interests of disabled people who hire or seek to hire licensed taxis.

- (6) Before exercising its powers under subsection (2) or (3) of section 14 a licensing authority must consult such persons as it considers appropriate.

## **16 Determination of applications**

- (1) This section applies where an application for a licence is made to a licensing authority under section 13.
- (2) The licensing authority must grant the licence to the applicant if satisfied that the criteria specified or set under section 14 which are applicable are met; but this is subject to section 17(4) and 18(2).
- (3) If the licensing authority is not satisfied that those criteria are met it must refuse the application.
- (4) If the licensing authority grants the licence to the applicant it must –
  - (a) in a case where the licence is a taxi driver’s licence or a PHV driver’s licence, issue the applicant with a badge which identifies him or her as a person who holds such a licence;
  - (b) in a case where the licence is taxi licence or private hire vehicle licence, issue the applicant with a plate for the vehicle concerned which identifies the vehicle as a vehicle for which such a licence is in force.
- (5) If the licensing authority refuses the application it must give the applicant notice of the refusal and the reasons for the refusal.
- (6) A licence granted under subsection (2) and a badge or plate issued under subsection (4) must be in such form and contain such information as may be specified in regulations.

## **17 Determination of applications: opt-in vehicles**

- (1) This section applies where an application is made to a licensing authority for –
  - (a) a taxi licence for an opt-in vehicle, or
  - (b) a private hire vehicle licence for an opt-in vehicle.
- (2) The licensing authority must give to the senior traffic commissioner –
  - (a) a copy of the application, and
  - (b) any information given by the applicant under section 13(3).
- (3) The senior traffic commissioner may, within such period as is specified in regulations, object to the grant of the licence if the senior traffic commissioner considers it appropriate to do so in view of the effect that granting the licence would have by virtue of section 1(2B) of the Public Passenger Vehicles Act 1981 (opt-in vehicles licensed as taxis or private hire vehicles not to be treated as public service vehicles for the purposes of that Act).
- (4) If the senior traffic commissioner objects to the grant of the licence the licensing authority must refuse the application (despite being satisfied as mentioned in section 16(2)).

## **18 Determination of applications: power to limit the number of taxi licences**

- (1) A licensing authority may make a determination that the number of taxi licences granted by it, discounting those that have ceased to have effect, should not at any time exceed a number specified in the determination.

- (2) A licensing authority that has made a determination under this section may refuse an application for a taxi licence (despite being satisfied as mentioned in section 16(2)) if it thinks it appropriate to do so in pursuance of the determination; but this is subject to subsections (3) and (4).
- (3) A licensing authority which has previously granted a taxi licence for a vehicle (“the existing licence”) may not, in reliance on subsection (2), refuse an application for a new taxi licence for the same vehicle if the application is made by the holder of the existing licence prior to its ceasing to have effect.
- (4) A licensing authority may not, in reliance on subsection (2), refuse an application for a taxi licence for a vehicle if—
  - (a) the applicant holds a taxi licence for another vehicle (“the existing licence”) which was granted by the authority, and
  - (b) the application contains a request that the existing licence be revoked when the licence applied for is granted.
- (5) A licensing authority may vary or revoke a determination made by it under this section.
- (6) A licensing authority that has made a determination under this section must review, at least every three years, whether to exercise the power to vary or revoke the determination.
- (7) In deciding whether and, if so, how to exercise the power to make or vary a determination under this section a licensing authority must, in particular, take into account—
  - (a) the interests of people who hire or seek to hire licensed taxis,
  - (b) the particular interests of disabled people who hire or seek to hire licensed taxis,
  - (c) the interests of people who hold taxi licences and taxi drivers’ licences,
  - (d) the need to avoid excessive queues of licensed taxis at taxi ranks,
  - (e) the need to avoid traffic congestion,
  - (f) the need to preserve the environment, and
  - (g) such other matters as may be specified in regulations.
- (8) Before making a determination under this section, or varying a determination by replacing the number specified in it with a lower number, a licensing authority must—
  - (a) carry out a consultation in such manner as is determined by regulations;
  - (b) obtain such evidence as is specified in regulations;
  - (c) undertake such assessments as are specified in regulations; and
  - (d) take any other steps as are specified in regulations.
- (9) A licensing authority which makes a determination under this section must—
  - (a) publish the determination,
  - (b) if it varies the determination, publish the determination as varied,
  - (c) if it revokes the determination, publish notice of the revocation.

## 19 Licence conditions

- (1) Regulations must be made specifying conditions to which licences granted under section 16 are subject.

- (2) A licensing authority may set additional conditions to which taxi drivers' licences or taxi licences granted by the authority are subject.
- (3) A licensing authority which sets conditions may revise them or revoke them.
- (4) A licensing authority which sets conditions must –
  - (a) publish the conditions,
  - (b) if it revises the conditions, publish the conditions as revised,
  - (c) if it revokes the conditions, publish notice of the revocation.
- (5) Different conditions may be specified or set –
  - (a) in respect of different types of licence;
  - (b) otherwise for different purposes, circumstances or cases.
- (6) Conditions may be specified or set –
  - (a) in respect of licences granted at any time, or
  - (b) only in respect of licences granted after the regulations specifying the conditions come into force or (as the case may be) after the licensing authority setting the conditions publish them.

## **20 Licence conditions: supplementary**

- (1) Regulations under section 19 may specify a particular condition only if the Secretary of State is satisfied that specifying the condition is necessary or expedient for a purpose mentioned in section 15(2).
- (2) Regulations under that section may include provision making it a criminal offence, triable summarily and punishable with a fine not exceeding level 3 on the standard scale, for the holder of a licence under this Act to fail to comply with a condition to which the licence is subject by virtue of the regulations.
- (3) Each licensing authority must review, at least every three years, whether it is necessary or expedient for it to exercise its powers under subsection (2) or (3) of section 19 for the purpose of promoting the interests of disabled people who hire or seek to hire licensed taxis.
- (4) Before exercising its powers under subsection (2) or (3) of section 19 a licensing authority must consult such persons as it considers appropriate.

## **21 Power to vary taxi licence or taxi driver's licence to specify taxi zones etc**

- (1) A licensing authority which has made a determination under section 7 that its area is to be divided into taxi zones may vary a taxi driver's licence or taxi licence granted by it so that –
  - (a) the licence specifies a taxi zone in the authority's area;
  - (b) the licence ceases to specify a taxi zone in the authority's area.
- (2) A licensing authority which decides to vary a licence under this section must give to the holder of the licence notice of –
  - (a) the decision, and
  - (b) if the holder did not request the variation, the reasons for the decision.
- (3) A variation under this section takes effect –
  - (a) if the holder of the licence did not request the variation, at the end of the period of 21 days beginning with the day on which that notice is served on the holder,

- (b) if the holder of the licence did request the variation, when the notice under subsection (2) is served on the holder.

## 22 Duration of licences

- (1) A licence under this Act has effect, if not revoked or suspended –
  - (a) for the relevant period beginning with the date it was granted, or
  - (b) for such shorter period beginning with that date as is specified in the licence.
- (2) But a shorter period than the relevant period may be specified in a PHV driver's licence, a private hire vehicle licence or a dispatcher's licence only in circumstances specified by regulations.
- (3) The "relevant period" means –
  - (a) in the case of a taxi driver's licence or a PHV driver's licence, three years;
  - (b) in the case of a taxi licence or a private hire vehicle licence, one year;
  - (c) in the case of a dispatcher's licence, five years.

## 23 Register of licences

- (1) A licensing authority must maintain a register of persons who hold a licence granted by the authority under section 16.
- (2) A register maintained under this section must contain such information as is specified in regulations.
- (3) A licensing authority must –
  - (a) publish a copy of the register maintained by it in such manner as is specified in regulations;
  - (b) make a copy of the register maintained by it available, at all reasonable times and at such places as the authority may determine, for any person to inspect.
- (4) Regulations may provide –
  - (a) that before a copy of the register maintained by a licensing authority is published or made available under subsection (3) the licensing authority must remove from the copy any information which is of a description specified in the regulations;
  - (b) that a licensing authority must not disclose from the register kept by it any information which is of that description otherwise than in circumstances specified in the regulations.

## 24 Transfer of taxi licences

- (1) Regulations may make provision for, and in connection with, establishing a procedure under which the holder of a taxi licence granted by a relevant licensing authority may transfer his or her obligations as holder of the licence to another person.
- (2) Where the holder of a taxi licence transfers his or her obligations to another person under a procedure established under this section that other person is to be treated for all purposes as the holder of the licence (subject to any further transfer by that person).



- (3) In subsection (1) “relevant licensing authority” means a licensing authority which –
  - (a) is specified in the regulations, or
  - (b) has not made a determination under section 18 which remains in force.
- (4) A licensing authority may be specified in the regulations only if it appears to the Secretary of State that immediately before the coming into force of this section the authority had a policy of limiting the number of licences granted by it under section 37 of the Town Police Clauses Act 1847 (power to license hackney carriages).
- (5) Regulations under this section may –
  - (a) provide for the making of applications;
  - (b) impose duties or confer powers on licensing authorities;
  - (c) provide for the charging of fees;
  - (d) provide for appeals;
  - (e) create criminal offences.

## 25 Fees for grant of licences etc

- (1) Regulations may provide that any person who applies to a licensing authority for a PHV driver’s licence, a private hire vehicle licence, or a dispatcher’s licence must pay to the authority a specified fee –
  - (a) on making the application;
  - (b) on the grant of the licence (if it is granted);
  - (c) at specified times while the licence is in force (if it is granted).
- (2) Regulations may provide that any person who applies to a licensing authority for a taxi driver’s licence or a taxi licence must pay to the authority a fee, of such amount as is determined from time to time by the authority –
  - (a) on making the application;
  - (b) on the grant of the licence (if it is granted);
  - (c) at specified times while the licence is in force (if it is granted).
- (3) Regulations under subsections (1) and (2) may provide for fees to be payable by instalments, or for fees to be remitted or refunded (in whole or part), in specified circumstances.
- (4) A licensing authority may decline to proceed with –
  - (a) an application for a licence under this Act, or
  - (b) the grant of a licence under this Act,until any fee (or instalment) due by virtue of this section in respect of the application or grant is paid.
- (5) In making a determination under subsection (2) a licensing authority must ensure that –
  - (a) the fees payable by any person who applies to the authority for a taxi driver’s licence are not less than the fees that would be payable by that person if he or she were to apply instead for a PHV driver’s licence;
  - (b) the fees payable by any person who applies to the authority for a taxi licence for a vehicle are not less than the fees that would be payable by that person if he or she were to apply instead for a private hire vehicle licence for the vehicle.

- (6) A determination under subsection (2) may –
  - (a) set different fees for different purposes, circumstances or cases,
  - (b) be varied or revoked.
- (7) A licensing authority which has made a determination under subsection (2) must –
  - (a) publish the determination,
  - (b) if it varies the determination, publish the determination as varied,
  - (c) if it revokes the determination, publish notice of the revocation.
- (8) Subject to subsection (9), the fees received by a licensing authority by virtue of this section must be applied for meeting the expenses incurred by the authority in connection with the exercise of –
  - (a) its functions under this Act, and
  - (b) the functions of its officers under Part 6 of this Act (enforcement).
- (9) Regulations may make provision for, and in connection with, –
  - (a) requiring licensing authorities to pay to the Secretary of State the fees received by them under subsection (1), and
  - (b) requiring the Secretary of State to redistribute those fees amongst the licensing authorities in accordance with a specified scheme.
- (10) In this section “specified” means specified in regulations under this section.

#### PART 4

##### FURTHER PROVISION ABOUT TAXIS AND TAXI DRIVERS

##### *Ranks, duty to stop, compellability and fares*

#### **26 Power of licensing authority to designate taxi ranks**

- (1) A licensing authority may for the purposes of this Act designate any place within its area to be a taxi rank –
  - (a) at all times; or
  - (b) for such times of the day, days or other periods as may be specified in the designation.
- (2) A designation under this section may specify the number of licensed taxis permitted at any one time to wait at the place designated.
- (3) A designation under this section may be varied or revoked by the licensing authority that made it.
- (4) A licensing authority that has made a designation under this section must –
  - (a) publish the designation;
  - (b) if it varies the designation, publish the designation as varied;
  - (c) if it revokes the designation, publish notice of the revocation.
- (5) Before designating a place under this section, or varying or revoking a designation of a place, a licensing authority must –
  - (a) give notice of the proposed designation, variation or revocation to the chief officer of police for the police area in which the place concerned is situated;

- (b) publish notice of the proposed designation, variation or revocation and take into consideration any objections or representations in respect of the proposal which are made to it within 28 days of the publication.
- (6) A licensing authority must not designate a place on a highway, or vary or revoke the designation of a place on a highway, without the consent of the highway authority.
- (7) A licensing authority must have regard to the position of any bus stops that are in use before designating a place or varying a designation.
- (8) A licensing authority must not designate a place, or vary a designation, if the effect of doing so would be to –
  - (a) unreasonably prevent access to any premises;
  - (b) impede the use of any points authorised to be used in connection with a local service within the meaning of the Transport Act 1985 or a PSV operator’s licence granted under the Public Passenger Vehicles Act 1981, as points for the taking up or dropping off of passengers;
  - (c) unreasonably interfere with access to any station or depot of any passenger road transport operator.
- (9) Each licensing authority must review, at least every three years, whether to exercise its powers under subsections (1) and (3).
- (10) In carrying out a review under subsection (9) a licensing authority must consult such persons as it thinks fit.

## **27 Specified types of taxi ranks**

- (1) A designation under section 26 may specify that the place designated as a taxi rank is to be a rest rank –
  - (a) at all times, or
  - (b) for such times of the day, days or other periods as may be specified in the designation.
- (2) Where a designation specifies that a place designated as a taxi rank is to be a rest rank, the designation may specify the maximum period that a taxi may wait at the rest rank, and may specify different maximum periods for different times of the day, days or other periods.
- (3) A designation under section 26 may specify that the place designated as a taxi rank is to be a directional taxi rank –
  - (a) at all times, or
  - (b) for such times of the day, days or other periods as may be specified in the designation.
- (4) In this section and section 30 “directional taxi rank” means a taxi rank for taxis which are available for immediate hire for journeys in the direction, or in one of the directions, specified in the designation relating to that rank.
- (5) Notice that a place designated under section 26 is a rest rank or a directional taxi rank must be indicated by such traffic signs as may be prescribed or authorised for the purpose by the Secretary of State in pursuance of the powers conferred by section 64 of the Road Traffic Regulation Act 1984.

**28 Prohibition on taxi ranks being used other than by local taxis**

- (1) A person must not cause or permit any vehicle to wait at a place designated as a taxi rank by a licensing authority (the “designating authority”) unless –
  - (a) the driver of the vehicle holds a taxi driver’s licence granted by the designating authority,
  - (b) a taxi licence granted by the designating authority is in force in respect of the vehicle, and
  - (c) if the designating authority has made a determination under section 7 that its area is to be divided into taxi zones, the zone in which the taxi rank is situated is specified in the taxi driver’s licence and the taxi licence.
- (2) Notice of the prohibition in this section must be indicated by such traffic signs as may be prescribed or authorised for the purpose by the Secretary of State in pursuance of the powers conferred by section 64 of the Road Traffic Regulation Act 1984.
- (3) A person who without reasonable excuse contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) In any proceedings under this section against the driver of a public service vehicle it is a defence to show that –
  - (a) the driver caused the vehicle to wait at the taxi rank in order to avoid an obstruction to traffic or for some other good reason, and
  - (b) the driver caused the vehicle to wait at the taxi rank only for so long as was reasonably necessary for the picking up or dropping off of passengers.

**29 Prohibition on local taxi driver failing to stop when hailed**

- (1) Subsection (2) applies where –
  - (a) a person who holds a taxi driver’s licence (“the driver”) is driving a vehicle in respect of which a taxi licence is in force (“the taxi”),
  - (b) the taxi driver’s licence and the taxi licence were granted by the same licensing authority (“the relevant licensing authority”),
  - (c) the place where the driver is driving the taxi is –
    - (i) within the area of the relevant licensing authority, and
    - (ii) in a case where the relevant licensing authority has made a determination under section 7 that its area is to be divided into taxi zones, within a zone which is specified in the taxi driver’s licence and the taxi licence, and
  - (d) the relevant licensing authority has made a determination that this section is to apply in the area of the authority.
- (2) The driver commits an offence if at a time when the taxi is displaying a for-hire sign the driver fails, without reasonable excuse, to stop the taxi when hailed to do so.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) A determination under subsection (1)(d) may be revoked by the licensing authority that made it.

- (5) A licensing authority which makes a determination under subsection (1)(d) must –
  - (a) publish the determination, and
  - (b) if it revokes the determination, publish notice of the revocation.

### **30 Prohibition on local taxi driver refusing to drive the compellable distance**

- (1) This section applies where –
  - (a) a person who holds a taxi driver’s licence (“the driver”) is driving a vehicle in respect of which a taxi licence is in force (“the taxi”),
  - (b) the taxi driver’s licence and the taxi licence were granted by the same licensing authority (“the relevant licensing authority”), and
  - (c) the place where the driver is driving the taxi is –
    - (i) within the area of the relevant licensing authority, and
    - (ii) in a case where the relevant licensing authority has made a determination under section 7 that its area is to be divided into taxi zones, within a zone which is specified in the taxi driver’s licence and the taxi licence.
- (2) The driver commits an offence if at a time when the taxi is –
  - (a) at a taxi rank which is not, at that time, a rest rank,
  - (b) displaying a for-hire sign, or
  - (c) otherwise being made available by the driver for immediate hire,the driver refuses, without reasonable excuse, to drive a person who wishes to hire the taxi to a place within the compellable distance.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) In subsection (2), the reference to a rest rank is a reference to a taxi rank that is specified as a rest rank in accordance with section 27.
- (5) The question whether any place is within the compellable distance for the purposes of subsection (2) is to be determined by rules made by the relevant licensing authority; but in the absence of any such rules having been made, a place is within the compellable distance for the purposes of subsection (2) if it is within the area of the relevant licensing authority.
- (6) Rules made by the relevant licensing authority under subsection (5) may not have the effect of making a place within the compellable distance for the purposes of subsection (2) if the place is –
  - (a) more than seven miles outside the area of the authority, or
  - (b) in a case where the authority is Transport for London, more than 20 miles outside that area.
- (7) Rules made under subsection (5) may make different provision –
  - (a) in respect of journeys beginning in different places;
  - (b) in respect of journeys beginning at a directional taxi rank;
  - (c) otherwise for different purposes, circumstances or cases.
- (8) A licensing authority which makes rules under subsection (5) may vary or revoke the rules.
- (9) A licensing authority which makes rules under subsection (5) must –
  - (a) publish the rules;

- (b) if it varies the rules, publish the rules as varied;
- (c) if it revokes the rules, publish notice of the revocation.

### **31 Power of licensing authority to fix fares for local taxis**

- (1) A licensing authority may make rules fixing the fares to be paid in connection with the hire of vehicles licensed as taxis by the authority.
- (2) Rules under this section may fix fares by reference to time or distance or both.
- (3) Rules under this section may make different provision for different purposes, circumstances or cases.
- (4) A licensing authority which makes rules under this section may vary or revoke the rules.
- (5) A licensing authority which makes rules under this section must –
  - (a) publish the rules,
  - (b) if it varies the rules, publish the rules as varied,
  - (c) if it revokes the rules, publish notice of the revocation.
- (6) Each licensing authority must review, at least every three years, whether to exercise its powers under this section.
- (7) In carrying out a review under subsection (6) a licensing authority must consult such persons as it thinks fit.
- (8) In this section and section 32 “fare” does not include a taxi booking fee.
- (9) A “taxi booking fee” is a fee –
  - (a) which a person charges as consideration for accepting a booking for the hire of a licensed taxi, and
  - (b) whose amount, or method of calculation, is agreed with the person who wishes to make the booking before the booking is accepted.
- (10) But a fee which a person charges as consideration for accepting a booking for the hire of a licensed taxi is not to be treated as a “taxi booking fee” if the person is also the driver who fulfils the booking.

### **32 Prohibition on taking or demanding more than the fixed fare**

- (1) This section applies where –
  - (a) a licensing authority has made rules under section 31, and
  - (b) a vehicle licensed as a taxi by the authority is hired for a journey beginning in the authority’s area.
- (2) A person must not take or demand a fare in connection with the hiring which is greater than the fare permitted by the rules unless –
  - (a) the journey is a long journey (see subsection (3)), and
  - (b) the amount of the fare taken or demanded was agreed before the beginning of the journey.
- (3) A journey is a long journey for the purposes of subsection (2) if –
  - (a) it ends more than such distance outside the area of the licensing authority as is specified in the rules made under section 31, or

- (b) in a case where no distance is specified in those rules, it ends outside the area of the licensing authority.
- (4) A distance specified in rules for the purposes of subsection (3)(a) must not be a distance greater than –
  - (a) seven miles, or
  - (b) in the case of rules made by Transport for London, 20 miles.
- (5) A person who contravenes subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Out of area taxi pre-bookings*

**33 Application and interpretation of sections 34 and 35**

- (1) Sections 34 and 35 impose duties on the holder of a taxi driver’s licence in any case where the holder –
  - (a) proposes to use a licensed taxi to fulfil an out of area hire-vehicle booking; but
  - (b) has not been dispatched to fulfil the booking by the holder of a dispatcher’s licence.
- (2) It is immaterial whether the booking was originally accepted by the hirer.
- (3) A duty arising under section 34 or 35 ceases to apply if before the start of the journey the booking is either cancelled or accepted by another person.
- (4) In this section and sections 34 to 36 as they apply to a case mentioned in subsection (1) –
  - “the driver”, “the booking” and “the taxi driver’s licence” are respectively the holder of the taxi driver’s licence, the hire-vehicle booking and the taxi-driver’s licence mentioned in subsection (1);
  - “the journey” means the journey to which the booking relates;
  - “the hiring” means the hiring to which the booking relates (and “the hirer” means the hirer for the purposes of that hiring);
  - “out of area hire-vehicle booking” means a booking for a journey starting –
    - (a) outside the area of the licensing authority that granted the taxi driver’s licence, or
    - (b) if that licensing authority has made a determination under section 7 that its area is to be divided into taxi zones, within that area but not within a zone specified in the taxi driver’s licence;
  - “passenger”, when used in relation to a time before the start of the journey, means an individual who at that time is expected by the driver to be carried in the vehicle used to fulfil the booking.

**34 Duty to acquire and record information about the booking**

- (1) The driver must, before the start of the journey –
  - (a) acquire or otherwise be in possession of such information as may be specified in regulations for the purposes of this paragraph; and
  - (b) make a record of the booking containing such information as may be specified in regulations for the purposes of this paragraph.

- (2) Any information relating to the booking or the hiring may be specified for the purposes of subsection (1)(a) or (b) including (among other things) any of the following –
  - (a) the identity of the hirer, the person who made the booking or a person liable to pay the fare;
  - (b) the identity of a passenger;
  - (c) the place at which the journey is to start or end;
  - (d) any applicable booking fee (however described);
  - (e) the agreed price for the hiring (if any);
  - (f) the method of determining the fare (if no price is agreed before the start of the journey);
  - (g) an estimate of the likely fare made in good faith (if no price is agreed before the start of the journey);
  - (h) any assumptions made in giving such an estimate;
  - (i) any other terms applicable to the hiring.
- (3) Regulations under subsection (1)(b) may –
  - (a) provide for information to be specified information only if known by the driver;
  - (b) provide for particular circumstances in which any information that would not otherwise be specified is to be regarded as specified information;
  - (c) provide for particular circumstances in which any information that would otherwise be specified information is not to be regarded as specified (and so need not be recorded); and
  - (d) specify the form in which specified information must be recorded in order to comply with the duty to make a record of the booking.
- (4) It is not a contravention of the duty under subsection (1)(b) for the record of the booking to include –
  - (a) information other than specified information, or
  - (b) information recorded before the duty to record it arises.
- (5) If the driver –
  - (a) uses a licensed taxi to start the journey; and
  - (b) has not complied with a duty under subsection (1),the driver is guilty of an offence.
- (6) In proceedings for an offence under subsection (5), it is a defence for the driver to show that it was not practicable to comply with the duty and that the driver –
  - (a) took all reasonable steps to comply with the duty; and
  - (b) either complied with the relevant requirement as soon as practicable after the start of the journey or took all reasonable steps to do so.
- (7) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **35 Duty to give information about cost on request**

- (1) If before the start of the journey the hirer requests the driver to provide information about the cost of the hiring, the driver must (unless a price for the



- journey is agreed) respond to the request by providing the hirer with one or more of the following –
- (a) a proposed price for the journey;
  - (b) an estimate of the likely fare; or
  - (c) a description of the method to be used for determining the fare.
- (2) It is immaterial for the purposes of subsection (1) –
- (a) whether the request for information was made before or after the booking was made; and
  - (b) how the request for information is expressed.
- (3) A response providing an estimate of the likely fare does not comply with the duty under this section unless the estimate is given in good faith.
- (4) The response may be given orally.
- (5) If –
- (a) the driver uses a licensed taxi to start the journey, and
  - (b) at that time the driver has failed to comply with the duty to respond to a request under this section,
- the driver is guilty of an offence.
- (6) In proceedings for such an offence it is a defence for the driver to show –
- (a) that before the start of the journey information that would satisfy the duty to respond to the request was given to the hirer by another person; or
  - (b) that it was not practicable for the driver to comply with the request before the journey started but the driver took all reasonable steps to do so.
- (7) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **36 Duty to preserve records**

- (1) The driver must –
- (a) preserve any record required to be made under section 34(1)(b) for such period as may be specified in regulations; and
  - (b) at the request of a constable or licensing officer, produce for inspection any record required by that section to be kept.
- (2) In subsection (1) “licensing officer” has meaning given by section 44(1).
- (3) If the driver contravenes the duty under subsection (1) the driver is guilty of an offence.
- (4) In proceedings for an offence under subsection (3) it is a defence for the driver to show that the driver took all reasonable steps to avoid committing such an offence.
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**PART 5**

## FURTHER PROVISION ABOUT DISPATCHERS ETC

*Duties of licensed dispatcher in relation to a hire-vehicle booking***37 Application and interpretation of sections 38 and 39**

- (1) Sections 38 and 39 apply to impose duties on the holder of a dispatcher’s licence in any case where the holder proposes to dispatch a particular licensed driver to fulfil a hire-vehicle booking.
- (2) It is immaterial whether the booking was originally accepted by the dispatcher or another person.
- (3) A duty arising under section 38 or 39 ceases to apply if before the start of the journey the booking is either cancelled or accepted by another person.
- (4) In this section and sections 38 to 42, as they apply in relation to a case mentioned in subsection (1) –
  - “the booking”, “the dispatcher”, and “the driver” are respectively the hire-vehicle booking, the holder of the dispatcher’s licence and the licensed driver mentioned in subsection (1);
  - “the journey” means the journey to which the booking relates;
  - “the hiring” means the hiring to which the booking relates (and “the hirer” means the hirer for the purposes of that hiring);
  - “licensed driver” means a holder of a PHV driver’s licence or a taxi driver’s licence;
  - “licensed vehicle” means a licensed taxi or a licensed private hire vehicle;
  - “passenger”, used in relation to a time before the start of the journey, means an individual who at that time is expected by the dispatcher to be carried in the vehicle used to fulfil the booking.

**38 Duty to acquire and record information about the booking**

- (1) The dispatcher must, before the start of the journey –
  - (a) acquire or otherwise be in possession of such information as may be specified in regulations for the purposes of this paragraph; and
  - (b) make a record of the booking containing such information as may be specified in regulations for the purposes of this paragraph.
- (2) Any information relating to the booking or the hiring may be specified for the purposes of subsection (1)(a) or (b) including (among other things) any of the following –
  - (a) the identity of the hirer, the person who made the booking or a person liable to pay the fare;
  - (b) the identity of a passenger;
  - (c) the identity of the driver;
  - (d) the place at which the journey is to start or end;
  - (e) any applicable booking fee (however described);
  - (f) the agreed price for the hiring (if any);
  - (g) the method of determining the fare (if no price is agreed before the start of the journey);

- (h) an estimate of the likely fare made in good faith (if no price is agreed before the start of the journey);
  - (i) any assumptions made in giving such an estimate;
  - (j) any other terms applicable to the hiring;
  - (k) information about any arrangements made by the dispatcher for fulfilling the booking or for fulfilling bookings of a description which covers the booking.
- (3) Regulations under subsection (1)(b) may –
- (a) provide for information to be specified information only if known by the dispatcher;
  - (b) provide for particular circumstances in which any information that would not otherwise be specified is to be regarded as specified information;
  - (c) provide for particular circumstances in which any information that would otherwise be specified information is not to be regarded as specified (and so need not be recorded); and
  - (d) specify the form in which specified information must be recorded in order to comply with the duty to make a record of the booking.
- (4) It is not a contravention of the duty under subsection (1)(b) for the record of the booking to include –
- (a) information other than specified information, or
  - (b) information recorded before the duty to record it arises.
- (5) If –
- (a) the driver is dispatched by the dispatcher to fulfil the booking;
  - (b) the driver uses a licensed vehicle to start the journey; and
  - (c) the dispatcher has not complied with a duty under subsection (1),
- the dispatcher is guilty of an offence.
- (6) In proceedings for an offence under subsection (5), it is a defence for the dispatcher to show that it was not practicable to comply with the duty and that the dispatcher –
- (a) took all reasonable steps to comply with the duty; and
  - (b) either complied with the relevant requirement as soon as practicable after the start of the journey or took all reasonable steps to do so.
- (7) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **39 Duty to give information about cost on request**

- (1) If before the start of the journey the hirer requests the dispatcher to provide information about the cost of the hiring, the dispatcher must (unless a price for the journey is agreed) respond to the request by providing the hirer with one or more of the following –
- (a) a proposed price for the journey;
  - (b) an estimate of the likely fare;
  - (c) a description of the method to be used for determining the fare.
- (2) It is immaterial for the purposes of subsection (1) –
- (a) whether the request for information was made before or after the booking was made; and

- (b) how the request for information is expressed.
- (3) A response providing an estimate of the likely fare does not comply with the duty under this section unless given in good faith.
- (4) A response may be given orally.
- (5) If—
  - (a) the driver is dispatched by the dispatcher to fulfil the booking,
  - (b) the driver uses a licensed vehicle to start the journey, and
  - (c) at that time the dispatcher has failed to comply with the duty to respond to a request under this section,
 the dispatcher is guilty of an offence.
- (6) In proceedings for such an offence it is a defence for the dispatcher to show—
  - (a) that before the start of the journey information that would satisfy the duty to respond to the request was given to the hirer by another person; or
  - (b) that it was not practicable for the dispatcher to comply with duty to respond to the request before the journey started and the dispatcher took all reasonable steps to do so.
- (7) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **40 Effect of change of driver before start of journey**

- (1) This section applies where the dispatcher has dispatched a licensed driver (“A”) to fulfil the booking but later a different licensed driver (“B”) is dispatched to fulfil the same booking (in place of A), whether by the dispatcher or by another person holding a dispatcher’s licence.
- (2) If B is dispatched by the dispatcher, sections 37 to 42 apply again with references to the driver being read as references to B (but the dispatcher may comply with the duty under section 38(1)(b) by keeping or amending an existing record or by making a new record).
- (3) If B is dispatched by another person holding a dispatcher’s licence, the dispatcher ceases to be under any duty under sections 38 to 42 (but without prejudice to the application of those duties to that other person).

#### *Duties of licensed dispatcher to keep and preserve records*

#### **41 Duty to keep records**

- (1) The holder of a dispatcher’s licence must (in addition to the records required by section 38(1)(b))—
  - (a) keep such records as may be specified in regulations of particulars of the private hire vehicles and private hire drivers which are available to the dispatcher to fulfil hire-vehicle bookings accepted by the dispatcher; and
  - (b) keep such other records in connection with the dispatcher’s activities as may be specified in regulations.
- (2) If the dispatcher fails to comply with the duty under subsection (1) the dispatcher is guilty of an offence.

- (3) In proceedings for an offence under subsection (2) it is a defence for the dispatcher to show that the dispatcher took all reasonable steps to avoid committing such an offence.
- (4) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **42 Duty to preserve records**

- (1) The dispatcher must—
  - (a) preserve any records required to be made under section 38(1)(b) or 41 for such period as may be specified in regulations; and
  - (b) at the request of a constable or licensing officer, produce for inspection any record required by that section to be kept.
- (2) In subsection (1) “licensing officer” has the meaning given by section 44(1).
- (3) If the dispatcher fails to comply with the duty under subsection (1) the dispatcher is guilty of an offence.
- (4) In proceedings for an offence under subsection (3) it is a defence for the dispatcher to show that the dispatcher took all reasonable steps to avoid committing such an offence.
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Duty of person accepting a hire-vehicle booking to give information to the hirer*

#### **43 Duty of person accepting a hire-vehicle booking to give information to the hirer**

- (1) This section applies where a person (“A”) accepts a hire-vehicle booking from the hirer or from another person who accepted the booking (and it is immaterial how or by whom the booking is to be fulfilled).
- (2) For this purpose a person accepts a hire-vehicle booking by accepting responsibility for the fulfilment of the booking, otherwise than in the course of being dispatched by another person to fulfil it.
- (3) If the hirer requests A to state either or both of the following—
  - (a) whether another person accepted the booking from A, or
  - (b) whether A dispatched a driver to fulfil the booking,A must respond to the request by giving the hirer the information required by this section within the period for compliance.
- (4) That duty does not apply to a request made—
  - (a) after the end of the period of 3 months beginning with the day on which the booked journey starts;
  - (b) after the booking is fulfilled, in a case where it is fulfilled by the holder of a taxi driver’s licence using a licensed taxi.
- (5) The period for compliance is the period of 14 days beginning with the day on which the request was made.

- (6) The response to a request to state whether another person accepted the booking must, if the answer is that another person accepted it from A, include—
  - (a) the name of the other person; and
  - (b) if the other person is the holder of a dispatcher’s licence, the licence number and the name of the licensing authority that granted it.
- (7) The response to a request to state whether A dispatched a driver must—
  - (a) if A dispatched a driver, include the name of the driver, the type of driver’s licence under this Act held by the driver and the name of the licensing authority that issued it; and
  - (b) if another person accepted the booking from A, include the information about the other person mentioned in subsection (6).
- (8) The response must be in writing.
- (9) If A fails to comply with the duty under subsection (3) to respond to a request by giving the hirer the required information within the period for compliance, A is guilty of an offence.
- (10) In proceedings for such an offence, it is a defence for A to show—
  - (a) that it was not practicable to comply with the duty in time but A took all reasonable steps to do so; and
  - (b) that A either gave the hirer the required information as soon as practicable after the end of the period for compliance or took all reasonable steps to do so.
- (11) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## PART 6

### ENFORCEMENT

#### *Licensing officers and licensing authority stopping officers*

#### **44 Authorisation of officers**

- (1) In this Part, references to a licensing officer are references to a person authorised by a licensing authority for the purposes of this Part.
- (2) A licensing authority may authorise a licensing officer to carry out the functions of a licensing authority stopping officer under sections 49, 50 and 53 and regulations under section 51.
- (3) A licensing authority may not authorise a person to carry out the functions of a licensing authority stopping officer unless the authority is satisfied that the person meets the criteria for authorisation specified in regulations.
- (4) Regulations under subsection (3) may, in particular, specify criteria relating to training or qualifications.

#### 45 Offences

- (1) It is an offence to intentionally obstruct a licensing officer, or a licensing authority stopping officer, in the exercise of the officer's powers under this Part.
- (2) It is an offence for a person to make any statement or to otherwise act in a way that is calculated falsely to suggest that the person is—
  - (a) a licensing officer, or
  - (b) a licensing authority stopping officer.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Investigative powers*

#### 46 “Licence holder”

In this Part, “licence holder” means a person who holds—

- (a) a taxi driver's licence,
- (b) a PHV driver's licence,
- (c) a dispatcher's licence,
- (d) a taxi licence, or
- (e) a private hire vehicle licence.

#### 47 Provision of information and documents

- (1) A licensing officer or a constable in uniform may require a licence holder to—
  - (a) provide information for the purpose of ascertaining whether the licence holder complies with—
    - (i) the provisions of this Act, and
    - (ii) the licence conditions specified in regulations under section 19(1) in respect of the licence;
  - (b) produce the licence for inspection.
- (2) A licensing officer or a constable in uniform may require the holder of a taxi licence or a taxi driver's licence to provide information for the purpose of ascertaining whether the licence holder complies with the local licence conditions.
- (3) But a licensing officer may only exercise the power under subsection (2) where the home licensing authority in relation to the licensing officer is the same as—
  - (a) where the requirement relates to the holder of a taxi licence, the home licensing authority in relation to the taxi;
  - (b) where the requirement relates to the holder of a taxi driver's licence, the home licensing authority in relation to the taxi driver.
- (4) In subsection (2) “local licence conditions” means—
  - (a) in the case of the holder of a taxi licence, the conditions set under section 19(2) to which the taxi licence is subject;
  - (b) in the case of the holder of a taxi driver's licence, the conditions set under section 19(2) to which the taxi driver's licence is subject.

- (5) A licensing officer or a constable in uniform may require the holder of a taxi licence or a private hire vehicle licence to produce for inspection the certificate of the policy of insurance or security required in respect of the vehicle by Part VI of the Road Traffic Act 1988 (third-party liabilities).
- (6) Information or a document that is not provided or produced at the time of the request must be provided or produced by the licence holder within such period, and at such place, as the licensing officer or constable may reasonably require.
- (7) A person who without reasonable excuse fails to comply with a request under this section commits an offence.
- (8) A person commits an offence if, in providing information requested under this section, the person makes a statement that the person knows, or has reason to suspect, is untrue.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **48 Inspection and testing: vehicles and taximeters**

- (1) A licensing officer or a constable in uniform may inspect and test –
  - (a) a licensed taxi or a licensed private hire vehicle, and any taximeter affixed to the vehicle, for the purpose of ascertaining whether it complies with the licence conditions specified in regulations under section 19(1);
  - (b) a licensed taxi for the purpose of ascertaining whether it complies with the licence conditions set under section 19(2) to which the taxi licence is subject;
  - (c) a taximeter affixed to a licensed taxi or a licensed private hire vehicle for the purpose of assessing its accuracy.
- (2) But a licensing officer may only exercise the power under subsection (1)(b) where the home licensing authority in relation to the licensing officer is the same as the home licensing authority in relation to the taxi.
- (3) Subsection (4) applies where the licensing officer or constable –
  - (a) is not satisfied that the taxi or private hire vehicle complies with the licence conditions, or
  - (b) is not satisfied as to the accuracy of the taximeter.
- (4) The licensing officer or constable may by notice require the relevant licence holder to make the taxi, private hire vehicle or taximeter available for further inspection and testing.
- (5) A notice under subsection (4) must specify the time and place of the further inspection and testing.
- (6) In subsection (4) the reference to the “relevant licence holder” is a reference –
  - (a) in the case of a licensed taxi, to the person who holds the taxi licence;
  - (b) in the case of a private hire vehicle, to the person who holds the private hire vehicle licence.



*Powers to stop and detain vehicles*

**49 Power to stop licensed taxis and licensed private hire vehicles**

- (1) A licensing authority stopping officer may direct the driver of a vehicle, which appears to the officer to be a licensed taxi or a licensed private hire vehicle, to stop the vehicle.
- (2) The power conferred by subsection (1) may be exercised for the purpose of enabling the licensing authority stopping officer to carry out any of the functions conferred on the officer by sections 47 and 48.
- (3) A person who fails, without reasonable excuse, to comply with a direction of a licensing authority stopping officer under this section is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**50 Power to stop and detain regulated vehicles: touting**

- (1) This section applies where a licensing authority stopping officer has reasonable grounds for believing that a person is soliciting, or has solicited, another person to hire a regulated vehicle (whether or not it is a licensed taxi or a licensed private hire vehicle) in contravention of section 70.
- (2) The licensing authority stopping officer may –
  - (a) if the vehicle is in motion, direct the driver of the vehicle to stop the vehicle;
  - (b) detain the vehicle.
- (3) The powers conferred on an licensing authority stopping officer by this section may be exercised only at a time when regulations under section 51 are in force.

**51 Retention etc. of vehicles detained under section 50**

- (1) Regulations may make provision as to –
  - (a) the removal and retention of vehicles, and the contents of vehicles, detained under section 50, and
  - (b) the release or disposal of those vehicles and their contents.
- (2) The Schedule makes further provision about regulations under subsection (1).
- (3) In this section and the Schedule references to the “contents” of a vehicle do not include references to the personal effects of any individual.

**52 Regulations: power to stop and detain regulated vehicles being used in contravention of section 4**

- (1) Regulations may provide that a constable in uniform, an examiner appointed under section 66A of the Road Traffic Act 1988 or an officer appointed under section 66B of that Act may –
  - (a) direct the driver of a regulated vehicle to stop the vehicle, and
  - (b) detain a regulated vehicle where the constable or officer has reasonable grounds for believing that the vehicle is being, has been or is about to be used as a hire vehicle in contravention of section 4.

- (2) Regulations may make provision as to—
  - (a) the removal and retention of vehicles, and the contents of vehicles, detained under this section, and
  - (b) the release or disposal of those vehicles and their contents.
- (3) Regulations under subsection (2) may make provision of a kind required or permitted to be made (in respect of vehicles detained by licensing authority stopping officers under section 50) by any provision of the Schedule.

### **53 Power to move vehicles on**

- (1) A licensing authority stopping officer may give a direction to move on where—
  - (a) a licensed taxi or a licensed private hire vehicle is waiting (whether on its own or with other licensed taxis or licensed private hire vehicles) in a public place (the “relevant place”), and
  - (b) at least one of Conditions 1 to 3 is satisfied.
- (2) For the purposes of subsection (1), a “direction to move on” is a direction to the driver of the licensed taxi or licensed private hire vehicle to move the vehicle from the relevant place immediately.
- (3) Condition 1 is that—
  - (a) the licensing authority stopping officer considers that there is a reasonable likelihood that a person may be led to believe, by reason of the taxi or private hire vehicle waiting at the relevant place, that the vehicle may be used as a hire vehicle on a journey which begins there and then, and
  - (b) the driver could not agree to use the vehicle in such a way without contravening section 6.
- (4) Condition 2 is that the licensing authority stopping officer considers that the taxi or private hire vehicle is causing an unnecessary obstruction.
- (5) Condition 3 is that—
  - (a) the relevant place is in close proximity to a place designated as a taxi rank under section 26, and
  - (b) the licensing authority stopping officer considers that, by waiting at the relevant place, the driver of the taxi or private hire vehicle is attempting to prevent the hire of a vehicle waiting at the taxi rank.
- (6) A person who fails, without reasonable excuse, to comply with a direction of a licensing authority stopping officer under this section is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Suspension and revocation of licences*

### **54 Power of licensing authority to suspend or revoke licences**

- (1) A licensing authority may suspend or revoke a licence it has granted under section 16 if—
  - (a) the holder of the licence has failed to comply with any condition to which the licence is subject by virtue of section 19,

- (b) the holder of the licence has failed to comply with any provision of this Act, or
  - (c) there is any other reasonable cause to suspend or revoke the licence.
- (2) A licensing authority may also revoke a licence it has granted under section 16 at the request of the holder of the licence.
- (3) A licensing authority which decides to suspend or revoke a licence under this section must give to the holder of the licence notice of –
  - (a) the decision, and
  - (b) except in the case of a decision to revoke under subsection (2), the reasons for the decision.
- (4) A revocation or suspension under subsection (1) takes effect at the end of the period of 21 days beginning with the day on which the notice under subsection (3) is served on the holder of the licence; but this is subject to subsection (5) and section 64(8) and (9).
- (5) If a licensing authority is of the opinion that the interests of public safety require a suspension or revocation under subsection (1) to have immediate effect, and the notice under subsection (3) includes a statement of that opinion and the reasons for it, the suspension or revocation takes effect when the notice is served on the holder of the licence.
- (6) A revocation under subsection (2) takes effect when the notice under subsection (3) is served on the holder of the licence.
- (7) A licence suspended under this section remains suspended until such time as the licensing authority which suspended it by notice directs that the licence is again in force.

#### *Cross-border enforcement*

### **55 “Home licensing authority”**

- (1) In this Part “home licensing authority” means –
  - (a) in relation to a person who is a licensing officer, the licensing authority that authorised the person for the purposes of this Part;
  - (b) in relation to a licensed taxi, the licensing authority that granted the taxi licence;
  - (c) in relation to a licensed private hire vehicle, the licensing authority that granted the private hire vehicle licence;
  - (d) in relation to the driver of a licensed taxi, the licensing authority that granted the taxi driver’s licence;
  - (e) in relation to the driver of a licensed private hire vehicle, the licensing authority that granted the PHV driver’s licence;
  - (f) in relation to a person who holds a dispatcher’s licence, the licensing authority that granted the dispatcher’s licence.

### **56 “Cross-border enforcement conditions”**

- (1) For the purposes of sections 57 and 59, the cross-border enforcement conditions are that –
  - (a) a licensing officer has exercised powers under section 47 or 48 in relation to a licence holder,

- (b) the home licensing authority in relation to the licensing officer is not the same as the home licensing authority in relation to the licence holder, and
  - (c) subsection (2), (3) or (4) applies.
- (2) This subsection applies where the licensing officer considers that the licence holder has failed to comply with—
  - (a) a provision of this Act, or
  - (b) the licence conditions specified in regulations under section 19(1) in relation to the licence.
- (3) This subsection applies where the powers under section 47 have been exercised and the licence holder has failed to comply with a request to produce information or a document within the period specified in section 47(6).
- (4) This subsection applies where the powers under section 48(1)(c) have been exercised and the licensing officer is not satisfied as to the accuracy of the taximeter.

#### **57 Suspension of a licence with immediate effect**

- (1) A licensing officer may suspend a licence where—
  - (a) the cross-border enforcement conditions are satisfied in respect of the licence holder, and
  - (b) the licensing officer is of the opinion that the interests of public safety require the licence to be suspended with immediate effect.
- (2) The licensing officer must give notice to the licence holder of the suspension of the licence under this section (an “immediate suspension notice”).
- (3) The immediate suspension notice must—
  - (a) state the information specified in subsection (4),
  - (b) state that the licensing officer is of the opinion that the interests of public safety require the suspension of the licence to have immediate effect, and
  - (c) specify the reasons for that opinion.
- (4) The information for the purposes of subsection (3)(a) is—
  - (a) in a case within section 56(2), each of the provisions or conditions with which the licensing officer considers that the licence holder has failed to comply;
  - (b) in a case within section 56(3), the request with which the licence holder has failed to comply;
  - (c) in a case within section 56(4), the reason why the licensing officer is not satisfied as to the accuracy of the taximeter.
- (5) The suspension of the licence takes effect when the notice is served on the licence holder.
- (6) The licensing officer must give a copy of the notice to the licence holder’s home licensing authority.
- (7) The copy must be given before the end of the period of 14 days beginning with the day on which the licensing officer gave the immediate suspension notice.

## **58 Licence suspension: determination by home licensing authority**

- (1) This section applies where a licensing authority receives a copy of an immediate suspension notice under section 57(6).
- (2) The licensing authority must determine either –
  - (a) that the licence is to remain suspended (until such time as the licensing authority directs that the licence is again in force), or
  - (b) that the suspension is to cease to have effect.
- (3) A licensing authority must give notice of the determination to –
  - (a) the holder of the licence to which the determination relates, and
  - (b) the home licensing authority in relation to the licensing officer who suspended the licence under section 57.
- (4) The notice must specify –
  - (a) the determination made by the licensing authority under this section, and
  - (b) the reasons for that determination.
- (5) The notice must be given before the end of the period of 14 days beginning with the day on which the copy of the immediate suspension notice was given under section 57(6).

## **59 Enforcement notice**

- (1) This section applies where –
  - (a) the cross-border enforcement conditions are satisfied in relation to a licence holder, and
  - (b) the licensing officer has not exercised the power under section 57 to suspend the licence.
- (2) The licensing officer must give an enforcement notice to –
  - (a) the licence holder, and
  - (b) the licence holder’s home licensing authority.
- (3) An enforcement notice is a notice stating –
  - (a) the information specified in subsection (4), and
  - (b) the recommended enforcement action (if any).
- (4) The information for the purposes of subsection (3) is –
  - (a) in a case within section 56(2), each of the provisions or conditions with which the licensing officer considers that the licence holder has failed to comply;
  - (b) in a case within section 56(3), the request with which the licence holder has failed to comply;
  - (c) in a case within section 56(4), the reason why the licensing officer is not satisfied as to the accuracy of the taximeter.
- (5) In this section –
  - (a) “enforcement action” means the exercise of any power of a licensing authority under this Part;
  - (b) “recommended enforcement action” means the enforcement action that the licensing officer considers appropriate for the licence holder’s home licensing authority to take in respect of the failure to comply with the

provisions, conditions or request or, as the case may be, the inadequate accuracy of the taximeter.

- (6) The notice must be given before the end of the period of 21 days beginning with—
- (a) where the licensing officer exercised powers under section 47—
    - (i) the day on which the period specified by the licensing officer for the purposes of section 47(6) expires, or
    - (ii) where no such period was specified, the day on which the request for the provision of information or production of a document was made;
  - (b) where the licensing officer exercised powers under section 48, the day on which the inspection or testing was carried out.

## **60 Enforcement action: determination by home licensing authority**

- (1) This section applies where a licensing authority receives an enforcement notice under section 59(2).
- (2) The licensing authority must determine whether to—
  - (a) take the recommended enforcement action (if any),
  - (b) take other enforcement action, or
  - (c) take no further action in respect of the licence holder.
- (3) A licensing authority must give notice of the determination to—
  - (a) the holder of the licence to which the determination relates, and
  - (b) the home licensing authority in relation to the licensing officer that gave notice under section 59(2).
- (4) The notice must specify—
  - (a) the determination made by the licensing authority, and
  - (b) the reasons for that determination.
- (5) The notice must be given before the end of the period of 21 days beginning with the day on which the enforcement notice was given.

### *Fixed penalties*

## **61 Fixed penalty offences**

- (1) This section applies where on any occasion an authorised officer has reason to believe that a person has on that occasion committed a fixed penalty offence.
- (2) The authorised officer may give the person a notice (a “fixed penalty notice”) offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (3) A “fixed penalty offence” is a specified offence under—
  - (a) a provision of this Act, or
  - (b) regulations made under section 19(1) and 20(2) (licence conditions).
- (4) In subsection (3), “specified” means specified in regulations for the purposes of this section.
- (5) Regulations may specify the amount of the fixed penalty for an offence.

- (6) But the regulations may not specify that the fixed penalty for an offence is an amount exceeding half of the maximum amount of the fine to which a person committing that offence would be liable on summary conviction.
- (7) In this section “authorised officer” means a person authorised by a licensing authority for the purposes of this section.

## **62 Fixed penalty notices**

- (1) Where a person is given a fixed penalty notice under section 61 in respect of an offence –
  - (a) no proceedings shall be instituted for that offence before the end of the period of 28 days beginning with the date on which the notice is given or such longer period as may be specified in the notice, and
  - (b) the person shall not be convicted of the offence if the person pays the fixed penalty before the end of that period.
- (2) A fixed penalty notice under this section must give particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must state –
  - (a) the period during which, by virtue of subsection (1), proceedings will not be taken for the offence,
  - (b) the amount of the fixed penalty,
  - (c) the name of the person to whom and the address at which the fixed penalty may be paid, and
  - (d) the consequences of not making any payment within the period for payment.
- (4) Regulations may make provision about the form of notices under this section.

### *Return of licences etc*

## **63 Return of licences etc**

- (1) Where a licence granted under this Act by a licensing authority expires or is revoked the holder of the licence must, within the period of 7 days beginning with the day the licence expires or the revocation takes effect, return the items mentioned in subsection (4) to the licensing authority.
- (2) Where a licence granted under this Act by a licensing authority is suspended, the licensing authority or a licensing officer may give a notice to the holder of the licence requiring the holder, within the period of 7 days beginning with the day the notice is given, to return any of the items mentioned in subsection (4) to the authority or officer.
- (3) Where a licence granted under this Act by a licensing authority is revoked or suspended with immediate effect by virtue of section 54(5) or 57, the holder of the licence must, at the request of a licensing officer, immediately return the items mentioned in subsection (4) to the officer.
- (4) The items are –
  - (a) the licence;

- (b) in a case where the licence is a taxi driver’s licence or a PHV driver’s licence, the badge issued under subsection (4)(a) of section 16 to the holder of the licence;
  - (c) in a case where the licence is a taxi licence or a private hire vehicle licence, the plate issued under subsection (4)(b) of that section for the vehicle concerned.
- (5) A person who without reasonable excuse fails to comply with any requirement under this section is guilty of an offence.
- (6) A person guilty of an offence under this section is liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) in the case of a continuing offence, to a fine not exceeding one-tenth of level 1 on the standard scale for each day during which an offence continues after conviction.
- (7) Where—
- (a) the holder of a taxi licence or private hire vehicle licence fails to comply with a requirement under subsection (1) or (2), or
  - (b) a taxi licence or private hire vehicle licence is revoked or suspended with immediate effect by virtue of section 54(5) or 57,
- a licensing officer may remove and retain from the vehicle concerned the plate issued under subsection (4)(b) of section 16.

## PART 7

### APPEALS

#### **64 Appeal to magistrates’ court etc against decisions of licensing authorities**

- (1) This section applies where a licensing authority—
- (a) decides to refuse an application made under section 13;
  - (b) decides under section 54(1) to suspend or revoke a licence;
  - (c) decides under section 58(2) that a licence is to remain suspended.
- And in this section references to “the aggrieved person” are to the applicant or (as the case may be) the holder of the licence.
- (2) The aggrieved person may within 21 days from the date on which notice of the decision is served on him or her—
- (a) require the licensing authority to reconsider its decision, or
  - (b) appeal to a magistrates’ court.
- (3) The aggrieved person may exercise the right under subsection (2)(a) by giving the licensing authority notice of the exercise of the right.
- (4) If the aggrieved person exercises the right under subsection (2)(a)—
- (a) the aggrieved person is entitled to be heard (either in person or through a representative) when the licensing authority reconsiders its decision,
  - (b) the licensing authority must give notice of its decision on reconsideration to the aggrieved person, and
  - (c) if the aggrieved person is dissatisfied with the decision of the licensing authority on reconsideration, he or she may appeal to a magistrates’



court within 21 days from the date notice under paragraph (b) is served on him or her.

- (5) An appeal to a magistrates' court under this section is to be by way of complaint for an order and the Magistrates' Court Act 1980 applies to proceedings on the appeal.
- (6) The aggrieved person or the licensing authority may appeal to the Crown Court against a decision of a magistrates' court on an appeal under this section.
- (7) Where on appeal a court varies or reverses the decision of the licensing authority the order of the court must be given effect to by the licensing authority.
- (8) Where a licensing authority decides under section 54(1) to suspend or revoke a licence and the person who holds the licence exercises the right under subsection (2)(a), the suspension or revocation does not take effect until –
  - (a) the licensing authority has reconsidered its decision, and
  - (b) the time for appealing under subsection (4)(c) has expired or (where an appeal is brought) the appeal is disposed of or withdrawn.
- (9) Where a licensing authority decides under section 54(1) to suspend or revoke a licence and the person who holds the licence appeals under subsection (2)(b) the suspension or revocation does not take effect until the appeal is disposed of or withdrawn.
- (10) Subsections (8) and (9) do not apply in relation to a decision of a licensing authority to suspend or revoke a licence if the notice of suspension or revocation includes a statement that in the authority's opinion the interests of public safety require the suspension or revocation to have immediate effect.

## **65 Appeal to county court against decisions of licensing authorities**

- (1) This section applies where a licensing authority decides –
  - (a) to set criteria under section 14;
  - (b) to revise any criteria it has set under that section;
  - (c) to set conditions under section 19;
  - (d) to revise any conditions it has set under that section.
- (2) A person may appeal to the county court against the decision if –
  - (a) the person holds a taxi driver's licence or a taxi licence granted by the authority, or
  - (b) the county court considers that the person has a sufficient interest in the decision.
- (3) But an appeal may only be brought within the period of 3 months beginning with the day on which the licensing authority published the criteria or revised criteria under subsection (4) of section 14 or (as the case may be) published the conditions or revised conditions under subsection (4) of section 19.
- (4) On an appeal under this section the court may confirm, quash or vary the decision.
- (5) In considering whether to confirm, quash or vary the decision the court is to apply the principles applied by the High Court on an application for judicial review.

**66 Appeal to Upper Tribunal against senior traffic commissioner’s objection to grant of licence**

A person who applies for –

- (a) a taxi licence for an opt-in vehicle, or
- (b) a private hire vehicle licence for an opt-in vehicle,

may appeal to the Upper Tribunal against a decision of the senior traffic commissioner to object under section 17(3) to the grant of the licence.

**PART 8**

## MISCELLANEOUS AND SUPPLEMENTARY

**67 Duty to notify licensing authority of change in ownership of licensed vehicle**

- (1) This section applies if the ownership of a licensed taxi or licensed private hire vehicle changes.
- (2) The holder of the taxi licence or (as the case may be) private hire vehicle licence must within 14 days of the relevant date give notice of the change and the name and address of the new owner to the licensing authority which granted the licence.
- (3) In subsection (2) “relevant date” means –
  - (a) the date of the change of ownership, or
  - (b) if later, the date the holder of the licence becomes aware of the change.
- (4) A person who, without reasonable excuse, contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**68 Prohibition on certain signs etc on vehicles**

- (1) There must not be displayed on or from any unlicensed vehicle –
  - (a) any sign which consists of or includes the word “taxi”, “taxis”, “cab” or “cabs” or any word so closely resembling any of those words as to be likely to be mistaken for it (whether alone or as part of another word), or
  - (b) any sign, notice or other feature which may suggest that the vehicle is a licensed taxi or a licensed private hire vehicle.
- (2) There must not be displayed on or from any licensed private hire vehicle –
  - (a) any sign which consists of or includes the word “taxi” or “taxis” or any word so closely resembling either of those words as to be likely to be mistaken for it (whether alone or as part of another word), or
  - (b) any sign, notice or other feature which may suggest that the vehicle is a licensed taxi.
- (3) The display on or from a licensed private hire vehicle of any sign, notice or other feature which consists of or includes the word “cab” or “cabs” does not by itself amount to a contravention of subsection (2)(b).
- (4) A person commits an offence if the person –
  - (a) drives a vehicle in respect of which subsection (1) or (2) is contravened, or

- (b) causes or permits that subsection to be contravened in respect of any vehicle.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In this section “unlicensed vehicle” means a vehicle which is neither a licensed taxi nor a licensed private hire vehicle.

## **69 Prohibition on certain advertisements**

- (1) This section applies to any advertisement indicating that vehicles can be hired from any person or by any means.
- (2) The advertisement must not, in referring to the vehicles offered for hire, use—
  - (a) the word “taxi” or “taxis”, or
  - (b) any word so closely resembling either of those words as to be likely to be mistaken for it,(whether alone or as part of another word), unless the vehicles offered for hire are licensed taxis.
- (3) A person who publishes, or causes to be published, an advertisement which contravenes this section is guilty of an offence.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In proceedings for an offence under this section it is a defence to show that—
  - (a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements,
  - (b) the defendant received the advertisement in question for publication in the ordinary course of business, and
  - (c) the defendant did not know and had no reason to suspect that its publication would amount to an offence under this section.
- (6) In this section “advertisement” includes every form of advertising (whatever the medium) and references to the publication of an advertisement are to be construed accordingly.

## **70 Touting**

- (1) It is an offence, in a public place, to solicit a person to hire a vehicle to carry the person as a passenger.
- (2) It is immaterial for the purposes of subsection (1) whether the soliciting relates to a particular vehicle.
- (3) Displaying a for-hire sign on a vehicle does not amount to soliciting for the purposes of subsection (1).
- (4) It is not an offence under subsection (1) to solicit a person to hire a licensed taxi if the soliciting is permitted by a scheme under section 10 of the Transport Act 1985 (scheme for shared taxis) whether or not supplemented by provision made under section 13 of that Act (modifications of the taxi code).
- (5) It is not an offence under subsection (1) to solicit a person to hire a licensed taxi or a licensed private hire vehicle if—

- (a) the soliciting occurs in a place which is designated for the purposes of this section by the licensing authority in whose area the place is situated, and
  - (b) such conditions as are specified in the designation are complied with.
- (6) A designation under subsection (5) may be varied or revoked by the licensing authority that made it.
- (7) A licensing authority that has made a designation under subsection (5) must –
- (a) publish the designation;
  - (b) if it varies the designation, publish the designation as varied;
  - (c) if it revokes the designation, publish notice of the revocation.
- (8) In proceedings for an offence under subsection (1) it is a defence to show that the defendant was soliciting for passengers to be carried at separate fares by public service vehicles on behalf of the holder of a PSV operator’s licence for those vehicles whose authority the defendant had at the time of the alleged offence.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine.
- (10) In this section “PSV operator’s licence” has the same meaning as in Part 2 of the Public Passenger Vehicles Act 1981.

## **71 Power of neighbouring licensing authorities to combine their areas etc**

- (1) Regulations may make provision for, and in connection with, enabling two or more licensing authorities to make a joint determination that any reference in any relevant provision to the area of a licensing authority is to be read, in the case of each of the licensing authorities making the determination, as a reference to the combined area of both or (as the case may be) all of those authorities.
- (2) Regulations may make provision for, and in connection with, enabling two or more licensing authorities to make a joint determination that any reference in any relevant provision to the area of a licensing authority is to be read, in the case of one of the authorities making the determination, as a reference to an area comprising that authority’s area and all or a specified part of the other authority’s area or (as the case may be) the other authorities’ areas.
- (3) Regulations under this section may in particular make provision –
- (a) specifying conditions which must be met before a joint determination is made under this section;
  - (b) specifying any consultation that must be undertaken before a joint determination is made under this section;
  - (c) modifying the application of any provision made by or under this Act in relation to licensing authorities that have made a joint determination under this section.
- (4) In this section “relevant provision” means a provision made by or under this Act which is specified in regulations made under this section.
- (5) This section does not affect any power which a licensing authority may have by virtue of any other enactment.

## 72 Public service vehicles

- (1) The Public Passenger Vehicles Act 1981 is amended as follows.
- (2) In section 1 (definition of public service vehicle) –
  - (a) after subsection (2) insert –

“(2A) A vehicle within paragraph (a) or (b) of subsection (1) shall be treated as not being a public service vehicle if –

    - (a) it is adapted to carry no more than 16 passengers, and
    - (b) it is a stretch limousine or other novelty vehicle within the meaning of section 2 of the Taxis and Private Hire Vehicles Act 2014.

(2B) A vehicle within paragraph (a) of subsection (1) shall be treated as not being a public service vehicle if –

    - (a) it is an opt-in vehicle within the meaning of the Taxis and Private Hire Vehicles Act 2014 (see section 2(7) of that Act), and
    - (b) it is a vehicle in respect of which a taxi licence or a private hire vehicle licence granted under that Act is in force.”;
  - (b) after subsection (6) insert –

“(7) In determining for the purposes of this section the number of passengers that a vehicle is adapted to carry, a space within the vehicle is not to be disregarded by reason only of the fact that it is located next to the driver’s seat or is separated by a partition from the rest of the vehicle.”
- (3) In section 14ZC(1) (requirements for grant of PSV operator’s licence) –
  - (a) before paragraph (a) insert –

“(za) that the vehicles proposed to be used under the licence are properly to be regarded as public service vehicles;”;
  - (b) in paragraph (a) –
    - (i) after “maintaining” insert “those vehicles”;
    - (ii) omit “the vehicles proposes to be used under the licence”.

## PART 9

### GENERAL

## 73 Regulations

- (1) A reference in this Act to regulations is a reference to regulations made by statutory instrument by the Secretary of State.
- (2) A statutory instrument containing –
  - (a) regulations under section 14,
  - (b) regulations under section 19, or
  - (c) regulations under section 76 which amend an Act,may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (3) A statutory instrument containing regulations under this Act, other than regulations within subsection (2) or regulations under section 77, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Before making regulations under section 7, 14, 18 or 19 the Secretary of State must –
  - (a) appoint a panel in accordance with subsection (7),
  - (b) consult the panel,
  - (c) have regard to the recommendations made by the panel in response to the consultation, and
  - (d) publish –
    - (i) those recommendations, and
    - (ii) if the Secretary of State proposes not to accept any of those recommendations, a statement of the Secretary of State’s reasons.
- (5) Before making regulations under section 7 or 18 the Secretary of State must also –
  - (a) carry out a public consultation,
  - (b) have regard to the responses to the consultation, and
  - (c) publish a summary of the responses.
- (6) But subsections (4) and (5) do not apply before the making of regulations (“the new regulations”) if –
  - (a) the sole purpose of the new regulations is to make amendments to regulations previously made under the same section as the new regulations, and
  - (b) the Secretary of State considers that it is appropriate for the requirements of those subsections to be dispensed with in view of the minor nature of the amendments.
- (7) A panel appointed under subsection (4) must consist of –
  - (a) people appearing to the Secretary of State to represent the interests of –
    - (i) people who may be expected to apply for a licence under this Act,
    - (ii) people who hire licensed taxis or licensed private hire vehicles,
    - (iii) licensing authorities,
    - (iv) highway authorities,
    - (v) police forces,
    - (vi) disabled people, and
  - (b) such other people as the Secretary of State thinks fit.
- (8) Regulations under this Act may –
  - (a) make different provision for different purposes, circumstances or cases;
  - (b) contain incidental, consequential, transitional or supplementary provision.

#### **74 References to the owner of a vehicle**

- (1) For the purposes of this Act the owner of a vehicle is to be taken to be the person by whom it is kept.

- (2) In determining, in the course of any proceedings for an offence under this Act, who was the owner of a vehicle at any time it is to be presumed that the owner was the person who was the registered keeper of the vehicle at that time.
- (3) But despite that presumption –
  - (a) it is open to the defence to show that the person who was the registered keeper of a vehicle at any particular time was not the person by whom the vehicle was kept at that time; and
  - (b) it is open to the prosecution to prove that the vehicle was kept at that time by some person other than the registered keeper.
- (4) In this section “registered keeper”, in relation to a vehicle, means the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994.

## 75 Interpretation

- (1) In this Act –
  - “disabled person” has the same meaning as in the Equality Act 2010;
  - “fare” includes any payment to be made in respect of the hire of a licensed taxi or licensed private hire vehicle (subject to section 31(8));
  - “a for-hire sign” is a sign on a vehicle which indicates that it is immediately available for hire;
  - “licensed taxi” means a vehicle in respect of which a taxi licence granted under section 16 is in force;
  - “licensed private hire vehicle” means a vehicle in respect of which a private hire vehicle licence granted under section 16 is in force;
  - “opt-in vehicle” has the meaning given by section 2(7);
  - “public place” includes any highway and any other premises or place to which the public have or are permitted to have access (whether on payment or otherwise);
  - “public service vehicle” has the same meaning as in the Public Passenger Vehicles Act 1981;
  - “regulations” has the meaning given by clause 73.
- (2) In this Act a reference to the holder of a licence is to the person to whom the licence was granted; but this is subject to section 24(2).

## 76 Repeals and consequential provision

- (1) The following enactments (which are superseded by this Act) are repealed –
  - (a) the London Hackney Carriage Act 1831;
  - (b) the London Hackney Carriages Act 1843;
  - (c) sections 37 to 68 of the Town Police Clauses Act 1847;
  - (d) the London Hackney Carriages Act 1850;
  - (e) the London Hackney Carriage Act 1853;
  - (f) the Metropolitan Public Carriage Act 1869;
  - (g) the London Cab and Stage Carriage Act 1907;
  - (h) Part 2 of the Local Government (Miscellaneous Provisions) Act 1976;
  - (i) section 65 of the Transport Act 1980;
  - (j) section 167 of the Criminal Justice and Public Order Act 1994;
  - (k) the Private Hire Vehicles (London) Act 1998;

- (1) Part 3 of the Transport for London Act 2008.
- (2) Regulations may make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (3) Regulations under subsection (2) may, in particular, amend, repeal, revoke or otherwise modify any provision made by or under an enactment.

**77 Extent, commencement and short title**

- (1) This Act extends to England and Wales only, subject to subsection (2).
- (2) Subsections (2) and (3) of section 76 also extend to Scotland.
- (3) This section comes into force on the day on which this Act is passed.
- (4) The other provisions of this Act come into force on such day or days as the Secretary of State may by regulations appoint.
- (5) Regulations under subsection (4) may –
  - (a) appoint different days for different purposes;
  - (b) include transitional provision and savings.
- (6) This Act may be cited as the Taxis and Private Hire Vehicles Act 2014.



## SCHEDULE

Section 51

### VEHICLES DETAINED UNDER SECTION 50: SUPPLEMENTARY PROVISIONS

#### REMOVAL AND DELIVERY OF VEHICLE

##### *Removal and delivery of vehicle to nominated custodian*

- 1 (1) Regulations under section 51 (“the regulations”) may make provision for a licensing authority stopping officer to direct that a vehicle detained by the officer under section 50 is to be removed and delivered into the custody of a person (the “nominated custodian”) specified in the direction.
- (2) The regulations may –
  - (a) provide for the contents of a vehicle detained under section 50 to be delivered into the custody of the nominated custodian, and
  - (b) make provision about the steps to be taken in respect of any personal effects remaining on the vehicle before the vehicle is delivered into the custody of the nominated custodian.
- (3) The nominated custodian must be a person who –
  - (a) meets such requirements as may be specified by the regulations,
  - (b) has made arrangements with the Secretary of State, and
  - (c) has agreed to accept delivery of the vehicle and its contents in accordance with those arrangements.
- (4) Arrangements falling within sub-paragraph (3)(b) may include provision for making a payment to the nominated custodian.
- (5) The regulations may provide that a licensing authority stopping officer who has given a direction under sub-paragraph (1) in respect of a vehicle may permit the driver of the vehicle to take any passengers who have been travelling in the vehicle to their destination, or to a place that is suitable to enable them to continue their journey, before delivering the vehicle into the custody of the nominated custodian.

##### *Information about the detention of a vehicle etc.*

- 2 (1) The regulations may make provision about informing the owner of a vehicle, and such other persons as may be specified –
  - (a) that the vehicle has been detained;
  - (b) that the vehicle and its contents have been removed and delivered to a nominated custodian.
- (2) The regulations may –
  - (a) require a licensing authority stopping officer to give notice of the detention of the vehicle, and
  - (b) make provision about the content of the notice.

### IMMOBILISATION

*“Immobilisation device”*

- 3 In this Schedule “immobilisation device” means a device or appliance—
- (a) designed or adapted to be fixed to a vehicle for the purpose of preventing it from being driven or otherwise put in motion, and
  - (b) approved by the Secretary of State for the purposes of section 104 of the Road Traffic Regulation Act 1984.

*Immobilisation of vehicles*

- 4 (1) The regulations may provide that, before a vehicle is removed in accordance with provision made under paragraph 1, a licensing authority stopping officer may—
- (a) fix an immobilisation device to the vehicle in the place where the vehicle has been detained, or
  - (b) move the vehicle, or require it to be moved, to a more convenient place and fix an immobilisation device to the vehicle in that other place.
- (2) The regulations may provide—
- (a) that, on any occasion when an immobilisation device is fixed to a vehicle, the person fixing the device must also fix to the vehicle an immobilisation notice (see sub-paragraph (3)), and
  - (b) that a vehicle to which an immobilisation device has been fixed may only be released from the device by or under the direction of a licensing authority stopping officer.
- (3) In this paragraph “immobilisation notice” means a notice—
- (a) indicating that an immobilisation device has been fixed to the vehicle,
  - (b) warning that no attempt should be made to drive the vehicle or otherwise put it in motion, and
  - (c) containing such other information as may be specified.
- (4) The regulations may provide that an immobilisation notice may not be removed or interfered with except by or on the authority of a licensing authority stopping officer.

*Immobilisation: offences*

- 5 (1) The regulations may provide—
- (a) that it is an offence for an unauthorised person to remove or attempt to remove an immobilisation device fixed to a vehicle in accordance with regulations made under paragraph 4(1), and
  - (b) that a person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) In sub-paragraph (1) “unauthorised person” means a person who is not authorised to release the vehicle in accordance with regulations under paragraph 4(2)(b).
- (3) The regulations may provide—

- (a) that it is an offence to remove or interfere with an immobilisation notice in contravention of regulations made under paragraph 4(4), and
- (b) that a person who commits such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### RETURN OF DETAINED VEHICLE

##### *Application to licensing authority for the return of the vehicle*

- 6 (1) The regulations must make provision enabling an eligible person to apply to the relevant licensing authority for the return of a vehicle that has been removed in accordance with provision made under paragraph 1.
- (2) In this paragraph “eligible person” means, in relation to a vehicle—
  - (a) the owner of the vehicle;
  - (b) the registered keeper of the vehicle;
  - (c) in the case of a licensed taxi, the person who holds the taxi licence or the taxi driver’s licence;
  - (d) in the case of a licensed private hire vehicle, the person who holds the private hire vehicle licence or the PHV driver’s licence.
- (3) In sub-paragraph (2)(b) “registered keeper” has the meaning given by section 74(4).
- 7 (1) The regulations may, in particular—
  - (a) require notice of an application to be given to the relevant licensing authority within such period as may be determined in accordance with the regulations;
  - (b) require notice of an application to be made in the specified form.
- (2) The regulations must specify the grounds upon which an eligible person may apply for the return of the vehicle.
- (3) The specified grounds must include each of the following—
  - (a) that, at the time the vehicle was detained, the vehicle was not being, had not been and was not about to be used in contravention of section 70;
  - (b) that, although at the time the vehicle was detained it was being, had been or was about to be used in contravention of section 70, the person applying for the return of the vehicle did not know that it was being, or had been, so used;
  - (c) that, although knowing at the time the vehicle was detained that it was being, had been or was about to be used in contravention of section 70, the person applying for the return of the vehicle—
    - (i) had taken steps with a view to preventing that use, and
    - (ii) has taken steps with a view to preventing any further such use.
- (4) In this paragraph “relevant licensing authority” means the home licensing authority in relation to the licensing authority stopping officer that exercised the power to detain the vehicle under section 50.

*Hearings by a licensing authority*

- 8 (1) The regulations must make provision –
- (a) enabling a licensing authority to hold a hearing before determining an application made under paragraph 6,
  - (b) as to the time within which the hearing must be held, and
  - (c) subject to such provision as may be made by the regulations, for the hearing to be held in public.
- (2) The regulations must also provide that, if no hearing is held, the application must be determined by a licensing authority within a specified period.

*Consequences of a licensing authority's determination*

- 9 The regulations must provide that –
- (a) if a licensing authority determines that one or more of the grounds specified under paragraph 7(2) is made out, the authority may order the nominated custodian to return the vehicle to the person who applied for the return of the vehicle, and
  - (b) if a licensing authority determines that none of those grounds is made out, the vehicle may be sold or destroyed by the nominated custodian, in such manner as may be specified.

*Appeals*

- 10 (1) The regulations must provide for a person who has made an application in accordance with provision made under paragraph 6 to have a right of appeal to a magistrates' court against a determination of a licensing authority to refuse that application.
- (2) The regulations may include provision about –
- (a) the period within which an appeal may be made;
  - (b) the grounds on which an appeal may be made;
  - (c) the procedure for making an appeal;
  - (d) the persons who must be notified of an appeal;
  - (e) the powers of the court to which an appeal is made.

*False statement*

- 11 (1) The regulations may provide that it is an offence to make a statement for the purposes of an application under paragraph 6 or a hearing under paragraph 8 that the person knows, or has reason to believe, is untrue.
- (2) The regulations may provide that a person who is guilty of an offence under regulations made under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Return of vehicle without an application*

- 12 The regulations may make provision authorising a vehicle removed in accordance with provision made under paragraph 1 to be returned to the owner, in specified circumstances, without an application under paragraph 6.

*Sale or destruction of vehicle where no application made under paragraph 6*

- 13 The regulations may provide that, if no application is made in respect of a vehicle to a licensing authority in accordance with regulations made under paragraph 6, the vehicle may be sold or destroyed in the specified manner.

SUPPLEMENTARY PROVISIONS

*Custody of property*

- 14 (1) The regulations may provide that the nominated custodian may retain custody of a vehicle and its contents until –
- (a) the vehicle and its contents are returned, in accordance with the regulations, to the owner, or
  - (b) the vehicle and its contents are sold or destroyed by the nominated custodian in the specified manner.
- (2) The regulations must provide that while a vehicle and its contents are in the custody of a nominated custodian, it is the duty of the nominated custodian to take such steps as are necessary for the safe custody of the vehicle and its contents.

*Proceeds of sale*

- 15 The regulations must provide for the proceeds of sale of any property sold under regulations made under paragraph 9, 13 or 14(1)(b) –
- (a) to be applied towards meeting expenses incurred by a licensing authority stopping officer in exercising functions under section 50 or this Schedule, and
  - (b) in so far as they are not so applied, to be applied in such other manner as may be specified.

# **APPENDIX B**

## **LIST OF RECOMMENDATIONS**

### **CHAPTER 2 – RETAINING THE TWO TIER SYSTEM**

#### Recommendation 1

We recommend retaining the two-tier system. Regulation should continue to distinguish between taxis, which can be hailed or use ranks, and private hire vehicles, which can only be pre-booked. (*Page 16*)

### **CHAPTER 3 – REFORM OF DEFINITIONS AND SCOPE**

#### Recommendation 2

We recommend that the offences relating to plying for hire should be abolished. We propose replacing the concept of plying for hire with a new scheme of offences, resting on the principal prohibition of carrying passengers for hire without a licence, alongside a new offence making it unlawful for anyone other than a local taxi driver to accept a journey starting “there and then”. (*Page 22*)

#### Recommendation 3

We recommend a statutory definition of pre-booking in order to create a clear distinction between the work of a taxi in its licensing area and the work of a private hire vehicle. (*Page 22*)

#### Recommendation 4

We recommend that the term “hackney carriage” should be replaced in legislation with the word “taxi”. The term “private hire vehicle” should remain unchanged. (*Page 24*)

#### Recommendation 5

We recommend that only the providers of licensed taxi services should be allowed to describe themselves using the term “taxi” on vehicles or in advertising materials. (*Page 24*)

#### Recommendation 6

Operators across England and Wales (dispatchers under our Bill) should be under a duty to provide a price or an estimate of the fare on request, as is already the case in London. (*Page 26*)

#### Recommendation 7

We recommend that taxis picking up passengers outside their licensing area should be subject to a pre-booking requirement, which would be statutorily defined for the first time. This would require provision of an estimate of the price for the journey in advance, if requested, and record-keeping obligations. These requirements could be further refined through national standards as set by the Secretary of State. (*Page 32*)

#### Recommendation 8

We do not recommend the introduction of record-keeping requirements in respect of taxis except where they are picking up passengers outside their licensing area. *(Page 32)*

#### Recommendation 9

We recommend that local authority stopping officers should have a new enforcement power to require licensed vehicles to move on where the officer considers that:

- (1) there is a reasonable likelihood that the public may believe the vehicle is available for immediate hire;
- (2) the vehicle is causing an obstruction to traffic flow; or
- (3) the driver is attempting to take work away from ranked taxis. *(Page 33)*

#### Recommendation 10

We recommend introducing a new offence which makes it unlawful for anyone other than a locally licensed taxi driver to accept a booking for a journey starting there and then. *(Page 34)*

#### Recommendation 11

We recommend that compellability should be retained in its current form. It should be open to licensing authorities to express compellability as a time or distance from the point of hire, or as extending to the boundaries of a licensing zone. Licensing authorities should also be able to extend the compellable distance up to seven miles beyond the boundary of the licensing area, or twenty miles in the case of Transport for London. *(Page 37)*

#### Recommendation 12

Licensing authorities should have the power to make a determination that in their areas, taxis should be under a duty to stop when hailed. In such areas, it would be an offence for a taxi driver in a vehicle displaying a "for hire" sign to fail to stop in response to a hail, without reasonable excuse. *(Page 38)*

#### Recommendation 13

Licensing authorities should be under a duty to consult on the need to alter rank provision; and to consider whether new ranks should be appointed, or current ones moved or removed, on a periodic basis not exceeding every three years. *(Page 39)*

#### Recommendation 14

We recommend that those acting in the course of a business who pass taxi or private hire bookings to providers who they know or suspect to be unlicensed should be guilty of an offence. *(Page 41)*

#### Recommendation 15

We do not propose to require intermediaries working solely with licensed taxis (which we refer to as “radio circuits”) to be licensed. (*Page 44*)

#### Recommendation 16

We recommend that licensed operators (in future to be referred to in legislation as “dispatchers”) should be retained as a necessary element of the regulation of private hire services. (*Page 46*)

#### Recommendation 17

We recommend that operator licensing should only cover dispatch functions, and no longer apply to the invitation or acceptance of bookings as such. However, if it is shown that an individual or company accepted a hire vehicle booking, a presumption should arise that that person also “dispatched” the driver. This ensures the continued accountability of those who, in the course of business, accept hire vehicle bookings from the public. (*Page 48*)

#### Recommendation 18

It should also be an offence, in the course of business, to dispatch an unlicensed vehicle or driver. It would also be an offence for a person to dispatch a private hire vehicle and driver unless that person holds a dispatcher’s licence. It would be a defence if the driver and vehicle were reasonably believed to hold appropriate taxi licences. (*Page 48*)

#### Recommendation 19

Persons accepting a hire vehicle booking in the course of business should be under a duty to provide information to the hirer in respect of any person on to whom they passed the booking. (*Page 48*)

### **CHAPTER 4 – DEFINITIONS AND SCOPE**

#### Recommendation 20

We recommend that our proposed reforms should extend to all of England and Wales, including London and Plymouth. (*Page 55*)

#### Recommendation 21

Taxi and private hire licensing should cover vehicles regardless of their form or construction, including non-motorised vehicles. (*Page 57*)

#### Recommendation 22

We recommend that taxi and private hire licensing requirements should only cover services provided for commercial gain. (*Page 63*)

#### Recommendation 23

We recommend that taxi and private hire licensing should not cover the carriage of a passenger as an ancillary or incidental part of another service. (*Page 63*)



#### Recommendation 24

We recommend that, for the purposes of taxi, private hire and public service vehicle legislation, all passenger seats and spaces capable of carrying a standing passenger should be included when assessing vehicle carrying capacity. (*Page 66*)

#### Recommendation 25

We recommend that consideration be given to revising the criteria for licensing a vehicle as a “small public service vehicle”, making them more clearly centred on local bus services. (*Page 67*)

#### Recommendation 26

We recommend extending the reach of taxi and private hire licensing to larger vehicles in two circumstances:

- (a) on a mandatory basis, in respect of stretch limousines and novelty vehicles; and
- (b) on an optional basis, where providers want to use larger vehicles in a taxi or private hire business. (*Page 70*)

#### Recommendation 27

We recommend that the Secretary of State should have the power to exempt certain categories of vehicle or services used to carry passengers for hire from the requirement to hold a taxi or private hire licence. Licensing authorities would, however, retain the power to impose licensing requirements on vehicles used as taxis within their local licensing area. (*Page 71*)

#### Recommendation 28

We recommend that wedding and funeral cars should continue to be exempt from taxi and private hire licensing while the vehicle is being used in connection with a wedding or a funeral. (*Page 74*)

#### Recommendation 29

Non-professional use of licensed taxi and private hire vehicles, including by non-professional drivers, should be permitted, subject to a rebuttable presumption that such vehicles are being used professionally when they are carrying passengers. (*Page 77*)

### **CHAPTER 5 – COMMON NATIONAL STANDARDS FOR TAXI AND PRIVATE HIRE**

#### Recommendation 30

We recommend the introduction of national standards for taxi and private hire services. (*Page 80*)

#### Recommendation 31

National standards should promote enforcement, protection of the environment

and accessibility, in addition to safety. *(Page 82)*

#### Recommendation 32

National standards for taxi services should be comparable but not necessarily identical to national standards for private hire services. *(Page 82)*

#### Recommendation 33

We recommend that driver and vehicle standards should be set in secondary legislation by the Secretary of State. *(Page 84)*

#### Recommendation 34

The standard setting power of the Secretary of State should be subject to a statutory consultation requirement. *(Page 91)*

#### Recommendation 35

We recommend that the ability to apply for a vehicle licence should no longer be restricted to vehicle owners. *(Page 93)*

#### Recommendation 36

Applicants for vehicle licences should not be subject to a fit and proper person test. *(Page 95)*

#### Recommendation 37

We recommend that licensing authorities should not have a general power to impose individual conditions on the holders of taxi or private hire licences. *(Page 98)*

### **CHAPTER 6 – CRIMINAL OFFENCES SPECIFIC TO THE TAXI AND PRIVATE HIRE TRADES**

#### Recommendation 38

We recommend that the Secretary of State should exercise the standard setting power to provide that a conviction for specified offences is a breach of a licensing condition, or incompatible with eligibility to hold a licence. *(Page 101)*

#### Recommendation 39

The Secretary of State should have the power to designate specific licence conditions, breach of which will amount to a criminal offence. *(Page 102)*

### **CHAPTER 7 – NATIONAL STANDARDS FOR PRIVATE HIRE**

#### Recommendation 40

Private hire services should only be subject to national standards. Licensing authorities should no longer have the power to impose local conditions. *(Page 104)*

#### Recommendation 41

We recommend that dispatchers should continue to be subject to fit and proper person requirements as part of national standards. *(Page 105)*

#### Recommendation 42

We recommend that dispatchers should be subject to a statutory duty to maintain records in such form as may be prescribed by the Secretary of State. (*Page 107*)

#### Recommendation 43

Signage requirements for private hire vehicles should form part of the national standards determined by the Secretary of State. The Secretary of State should impose requirements that aim to ensure that the public are able to distinguish easily between taxis and private hire vehicles. (*Page 112*)

#### Recommendation 44

We recommend that operator/dispatchers should no longer be restricted to working only with drivers and vehicles whose licences are issued by the same licensing authority as the dispatcher. (*Page 115*)

#### Recommendation 45

Dispatchers should have the ability to sub-contract bookings to any dispatcher in England and Wales. (*Page 117*)

### **CHAPTER 8 – LOCAL TAXI STANDARDS**

#### Recommendation 46

We recommend that licensing authorities should retain the power to set local taxi standards over and above national standards. (*Page 120*)

#### Recommendation 47

Licensing authorities should be required to consult on additional licensing conditions for taxi drivers and vehicles. (*Page 121*)

### **CHAPTER 9 – TAXI FARE REGULATION**

#### Recommendation 48

Licensing authorities should retain the ability to regulate taxi fares, in respect of any journey within the compellable distance. (*Page 125*)

#### Recommendation 49

A taxi driver should be allowed to charge more than the metered fare for journeys starting inside the licensing area and ending beyond the compellable distance only if this is agreed in advance. In the case of pre-booked journeys starting outside the compellable distance the price or an estimate should be given on request and, if so, recorded. (*Page 125*)

#### Recommendation 50

We recommend that licensing authorities should retain the power to regulate fares charged for pre-booked taxi journeys. However, there should be no power to regulate third party booking fees, provided these are agreed in advance. (*Page 130*)

## **CHAPTER 10 – ADMINISTRATION OF THE LICENSING SYSTEM**

### Recommendation 51

The principle of cost recovery should continue to apply in respect of taxi and private hire licensing fees. (*Page 134*)

### Recommendation 52

Licensing authorities should be able to collect and use licensing fees from taxi and private hire licensing only for the following purposes:

- (2) administration of the licensing system (including but not limited to processing applications for granting or renewing licences and carrying out inspections and tests);
- (2) statutorily required reviews of fare levels, rank provision, accessibility and existing quantity restrictions at least every three years;
- (2) enforcement of the licensing system including but not limited to the control and supervision of taxi and private hire services (whether licensed or unlicensed) and activities associated with suspending or revoking licences; and
- (2) providing taxi ranks. (*Page 134*)

### Recommendation 53

We recommend that the Secretary of State should set a private hire licensing fee which could not be varied locally. Taxi licensing fees should continue to be set locally, but at a level no lower than the national private hire fee. (*Page 135*)

### Recommendation 54

We recommend that the Secretary of State should have the power to set up a system of pooling private hire licence fees nationally, for the purposes of redistributing these to reflect enforcement needs, in accordance with such a scheme as may be prescribed. (*Page 136*)

### Recommendation 55

Licensing authorities should have the power to combine their taxi and private hire licensing areas. (*Page 138*)

### Recommendation 56

We recommend that licensing authorities should be under a duty to publish their driver, vehicle and operator licensing data in such form as the Secretary of State may require. (*Page 140*)

### Recommendation 57

Licensing authorities should have a more flexible power to introduce and remove taxi licensing zones. This power would permit removal or introduction of zones within a licensing district. The power should be subject to consultation and a statutory public interest test. (*Page 143*)

## **CHAPTER 11 – QUANTITY RESTRICTIONS**

### Recommendation 58

We recommend that licensing authorities should continue to have the power to limit the number of taxi vehicles licensed in their area. (*Page 159*)

### Recommendation 59

The power of licensing authorities to impose quantity restrictions should be subject to a statutory public interest test. Further, the Secretary of State should have regulation-making powers prescribing how the statutory test should be applied. (*Page 162*)

### Recommendation 60

Decisions to restrict taxi numbers should be reviewed at least every three years and be subject to local consultation in accordance with such procedures as may be prescribed in regulations made by the Secretary of State. (*Page 162*)

### Recommendation 61

In licensing areas where quantity restrictions already exist at the time of the introduction of our reforms, but not in other areas, vehicle licence holders should continue to be able to transfer their taxi licences at a premium. (*Page 166*)

## **CHAPTER 12 – ACCESSIBILITY**

### Recommendation 62

We recommend that taxi and private hire drivers be required to undergo disability awareness training of a standard set by the Secretary of State. (*Page 170*)

### Recommendation 63

We recommend that the Secretary of State require information on how to complain about taxi and private hire vehicle services to be displayed in taxi and private hire vehicles. (*Page 171*)

### Recommendation 64

We recommend that local licensing authorities should display complaint information in offices, libraries and on websites. (*Page 171*)

### Recommendation 65

We recommend that licensing authorities conduct an accessibility review at three year intervals. (*Page 172*)

### Recommendation 66

We recommend that the Secretary of State require holders of taxi and private hire driver licences and dispatcher licences to comply with the Equality Act 2010 as a condition of the licence. (*Page 175*)

### Recommendation 67

We recommend that licensing authorities should reconsider rank design to ensure compliance with the Equality Act 2010. (*Page 177*)

#### Recommendation 68

We recommend that licensing conditions should provide that information about the licensing authority and local operators should be provided in alternative formats, as well as information about the types of vehicle available in their area. *(Page 177)*

#### Recommendation 69

We recommend that the Secretary of State should have the power to impose accessibility requirements on large operator/dispatchers. In particular, the power should permit the setting of quotas of accessible vehicles which must be available to such dispatchers. *(Page 179)*

### **CHAPTER 13 – ENFORCEMENT**

#### Recommendation 70

We recommend that licensing officers who have been suitably trained and accredited should be given the power to stop licensed taxi and private hire vehicles in a public place for the purpose of checking compliance with licensing requirements. *(Page 183)*

#### Recommendation 71

The offence of touting should be retained. It should continue to be an offence of broad application which extends to all persons, whether licensed or unlicensed. *(Page 187)*

#### Recommendation 72

We recommend that there should be a new defence to touting, where the solicitation is in respect of a licensed taxi or private hire vehicle, if the soliciting occurs in a place which has been designated by that licensing authority for that purpose, and that conditions as may be specified by the licensing authority have been complied with. *(Page 187)*

#### Recommendation 73

We recommend that the Sentencing Council consider amending the Magistrate's Court Sentencing Guidelines in respect of taxi touting to take into account the vulnerability of the persons solicited as a relevant factor in sentencing. *(Page 189)*

#### Recommendation 74

We recommend that licensing authorities should have the power to impound vehicles used in connection with touting. *(Page 193)*

#### Recommendation 75

Fixed penalties should be among the sanctions available in respect of minor criminal offences under taxi and private hire legislation. *(Page 195)*

Recommendation 76

We recommend extending the power to suspend licences immediately on grounds of public safety to all licence types, in line with the current position in London. *(Page 196)*

Recommendation 77

Licensing officers should be able to take non-criminal enforcement action against vehicles, drivers and operators, licensed outside their licensing area. *(Page 198)*

Recommendation 78

We recommend that powers to revoke a licence should be available only to the licensing authority which issued that licence. However, enforcement officers in another area should have the power to:

(a) suspend a licence when they consider this to be necessary in the interests of public safety; and

(b) make recommendations to the home licensing authority as to appropriate sanctions, to which the home authority must have regard. *(Page 200)*

## **CHAPTER 14 – HEARINGS AND APPEALS**

Recommendation 79

The right to appeal against refusals to grant or renew taxi and private hire licences or to suspend or revoke them should be limited to the applicant or licence holder. *(Page 202)*

Recommendation 80

We recommend that the first stage in the appeal process in respect of refusals, suspensions or revocations of licences should be the right to require licensing authorities to reconsider the original decision. Appellants should have the right to bypass this stage and proceed direct to the magistrates' court. *(Page 206)*

Recommendation 81

We recommend that all taxi and private hire licensing appeals should be heard in the magistrates' court. *(Page 209)*

Recommendation 82

We recommend the retention of an onward right of appeal to the Crown Court. *(Page 210)*

Recommendation 83

We recommend that applicants for a vehicle licence for an opt-in vehicle should have a right of appeal to the Upper Tribunal if their application is refused on the basis of an objection by the Senior Traffic Commissioner. (*Page 210*)

Recommendation 84

We recommend that a County Court judicial review procedure along the lines provided under the Housing Act 1996 should be available to challenge taxi conditions set by licensing authorities. (*Page 212*)



## APPENDIX C ADVISORY GROUP

### ***Law Commission***

Frances Patterson QC	Commissioner, Public law team
Richard Percival	Team manager, Public law team
Vindelyn Smith-Hillman	Economist
Jessica Uguccioni	Team lawyer, Public law team
Hannah Gray	Research assistant, Public law team

### ***Trade associations***

Paul Brent	Chairman, National Taxi Association
Bob Oddy	General Secretary, Licensed Taxi Drivers Association
Patrick Connor	National Taxi Trades Group
Tommy McIntyre	National Taxi Representative, Unite the Union
Mick Carty	RMT
Bryan Roland	General Secretary, National Private Hire Association
Steve Wright MBE	Chairman, Licensed Private Hire Car Association
Patrick Raeburn	Private Hire Board
Mick Hildreth	Secretary, GMB Professional Drivers National Organising Committee
Bill Bowling	Legislation officer, National Limousine and Chauffeur Association
Geoffrey Riesel	Chairman, Radio Taxis Group – representing radio circuit operators.
Julian Francis	Government Affairs Manager, London Taxi Company
Donald Pow	General Manager, Allied Vehicles
Deborah Hunter	Sales and Marketing Director, Digitax Electronics UK Ltd.

**Regulatory bodies**

Pippa Brown	Taxi and PSV regulation branch, Department for Transport
Simon Woodward	Lawyer, Department for Transport
Sarah Wooller	Head of Taxi and PSV regulation branch, Department for Transport
John Mason	Director of Taxi and Private Hire, Transport for London
Helen Chapman	Deputy Director of Taxi and Private Hire, Transport for London
Roger Butterfield	Honorary solicitor, National Association of Licensing Enforcement Officers
Eddie Gorman	Chair, Strategy and Policy Group, National Association of Licensing Enforcement Officers
Huw Thomas	Integrated Transport Division, Welsh Government
Yvonne Lewis	Licensing Officer, City and County of Swansea Council
Dafydd Jones	Principal Licensing Officer, Gwynedd County Council
Myles Bebbington	Vice Chair, Institute of Licensing
Vicki Ball	Policy Manager, People 1st, Go Skills

**User groups**

Dai Powell OBE	Chair, Disabled Persons Transport Advisory Committee
Ian Millership	Vice Chair, National Association of Taxi Users

**Consultants**

James Button	Principal, James Button and Co. Solicitors, author of Button on Taxis
Darren Tenney	Shared Service Implementation and Policy Advisers

## EXPERT PANEL ON PLYING FOR HIRE

Roger Butterworth	Honorary solicitor, National Association of Licensing Enforcement Officers
Jim Button	Solicitor, James Button & Co
James Findlay QC	Cornerstone Barristers
Marie-Claire Frankie	Solicitor, Legal Services, Sheffield City Council
Philip Kolvin QC	Cornerstone Barristers
Alison Lambert	Trinity Chambers (now of 2 Pump Court)
Mark McConochie	Legal Manager – Regulation and Enforcement, Transport for London
Karen Mitchell	Legal Officer, RMT
Jeremy Phillips	Francis Taylor Buildings
Jonathan Rodger	Barrister, Enterprise Chambers
Simon Woodward	Lawyer, Department for Transport