

**Civic Government (Scotland) Act 1982****Taxi and Private Hire Car Licensing – Proposals for Change****Report by John Blair Director, Corporate Resources****1 Purpose of Report**

The purpose of this report is to confirm that the Scottish Government has now issued a Consultation on proposals for change in relation to Taxi and Private Hire Car Licensing. A copy of the document is attached as **Appendix 1**. Responses are due by 15 March 2013.

**2 Background**

In 2012, Revised Best Practice Guidance was issued. On 13 November 2012, the Committee approved a number of measures to take forward the implementation of parts of it. Discussions are due to take place with the Trade in this respect.

Copies of the consultation document have been given to the Midlothian Taxi Owners' and the Private Hire Car Associations for their comments but, as yet, none have been received. The Chief Constable has been consulted.

The Consultation is predicated on the principle of the need for change as evidenced by "a number of concerns with the taxi and private hire car licensing regime for some time". The concerns are based around two main elements:

**Administration and enforcement of current regime:** This relates to concerns about the variability in how legislation is interpreted as well as the difficulty of enforcement.

**Criminality within the trade:** This relates to concerns with some firms being financed by individuals with connections to organised crime and public contracts being awarded to businesses with such links. There is also concern about legitimate trade being squeezed out in certain locations by unfair competition from businesses with criminal links and from criminal individuals.

## **Consultation Document**

The topics which feature in the consultation are as follows:-

- (a) tackling the anomalies of a two tier system of hire cars and drivers;
- (b) closing the “loophole” created by the exemption of 24 hour contract work;
- (c) the impact of the exemption of the voluntary sector;
- (d) a pereceived lack of consistency of application nationally and possible need for national standard licensing conditions;
- (e) the removal of doubt as regards the licensing of Hire Car Booking Offices;
- (f) an emphasis on the need for Police involvement;
- (g) the introduction of statutory licensing objectives;
- (h) specific guidance to local authorities as regards the administration of the application process;
- (j) shift of responsibility to the applicant to prove fitness and properness;
- (k) building on established good practice;
- (l) disability and equality awareness;
- (m) enforcement; and
- (n) difficulties created by Special Events Vehicles.

It has not been possible in the time available to prepare a detailed examination of all topics owing to uncertainty and a need for further research and dialogue with stakeholders. A brief summary of draft answers to questions is shown in **Appendix 2** hereto.

### **3 Report Implications**

#### **3.1 Resource Implications**

There are no resource implications arising directly from this report.

#### **3.2 Risk Implications**

There are no risk implications arising directly from this report.

#### **3.3 Policy Implications**

## **Strategy**

The proposals in this report relate to Licensing and Public Transport, etc Policies.

## **Consultation**

Preliminary consultation has commenced involving the Midlothian Taxi Owners and Midlothian Private Hire Car Associations and the Police. Further consultation will be necessary.

## **Equalities**

An equalities impact assessment has not been carried out but, clearly, the thrust of the guidance aims at equality.

## **Sustainability**

The sustainability implications have not been assessed and will be considered at a later date in report contact:

## **4 Conclusion**

Clearly, the Government wish to introduce fresh approach following the transfer of the licensing function from Transport Scotland. Many of the issues that have been raised have featured in previous discussions about best practice. It is perhaps unfortunate that the consultation follows so soon after the issue of the previous revised best practice and this has impacted on ongoing issues eg consideration of licensing conditions, etc. It is important that that impetus ought not to be lost.

A Meeting with the Trade Associations and the Police is due to take place in relation to the impact of the 2012 Best Practice Guidance on the licensing conditions. It is considered that that opportunity be taken to explore the issues contained in the Proposals for Change Consultation document so that there can be dialogue with the Trade prior to the submission of a response.

## **5 Recommendations**

The Committee is recommended to:-

- (a) note the report; and
- (b) remit to the Director, Corporate Resources, in consultation with the Chair, to arrange a submission in this respect.

**10 December 2012**

**Report Contact: R G Attack Tel No 0131 271 3161**



**Background Papers: Revised Best Practice Guidance**

**APPENDIX 1**

**Taxi and Private Hire Car Licensing  
-  
Proposals For Change**

1	
<b>Contents</b>	<b>Page number</b>
<b>Ministerial foreword</b>	<b>2</b>
<b>Introduction</b>	<b>3</b>
<b>Consultation themes (including proposals and questions):</b>	
<b>Structure of the regime</b>	<b>6</b>
<b>Interpretation</b>	<b>12</b>
<b>Enforcement and compliance</b>	<b>19</b>
<b>New areas of licensing</b>	<b>21</b>
<b>ANNEX A: Responding to the consultation</b>	<b>22</b>
<b>ANNEX B: The Scottish Government consultation process</b>	<b>24</b>
<b>ANNEX C: Consultation questionnaire (including Respondent Information Form)</b>	<b>25</b>
<b>ANNEX D: List of consultees</b>	<b>32</b>

**Ministerial Foreword**

Taxis and private hire cars play an essential part in local transport networks. Many people rely on their services not just as an occasional alternative but as an essential life line. The taxi and private hire car trades also represent a major employer and a significant level of turnover in the Scottish economy. Taking account of the importance of the taxi and private hire sector it is essential that it is regulated to the appropriate standards; that the public is protected from harm while using the service and the industry is protected from infiltration and targeting by organised crime groups and individuals. For all these reasons, we must have a robust system of licensing for taxis and private hire cars which takes both local and national issues into account. Local licensing authorities, working with the police, play a vital role in ensuring that we have a licensing system that not only serves local communities, but ensures that only fit and proper persons are involved with the management, ownership and operation of this important business sector. This is a significant responsibility. The proposals we make in this consultation offer a range of changes to the current regime which aim to tighten up the licensing process for taxi and private hire car drivers, vehicles and booking offices. Some of the changes are significant but we are keen to maintain the elements of the system that work well. I am content that the underlying legislation, the Civic Government (Scotland) Act 1982, works well in allowing local authorities sufficient flexibility to adapt their local licensing regimes to their local circumstances. However, where changes are required, we have made proportionate and practical proposals. These are broadly framed to allow those who work with the system day in and day out to give us their response to what we propose. Our views are not fixed and we are committed to an open and productive discussion on these proposals.

Any changes we make should support local authorities and the police in creating and managing appropriate local arrangements. Ultimately we want to bring all drivers and firms up to the correct standards to benefit people and businesses who make use of and rely on these services.

**Kenny MacAskill MSP**  
**Cabinet Secretary for Justice**

## Introduction

### Aim of Licensing

1. Throughout Scotland, high quality taxi and private hire car services play an essential part in local transport networks, providing an invaluable service for both residents and visitors to Scotland. However, we must ensure that the operation of the taxi and private hire car trades reflects appropriate standards in meeting the needs of customers and communities.
2. To paraphrase the Civic Government (Scotland) Act 1982, the aim of any licensing regime is the preservation of public safety and order and the prevention of crime<sup>1</sup>. We need, therefore, to have a licensing regime for taxis and private hire cars that can meet this aim in the current regulatory and technological context.
3. We want customers to have a safe, reliable and accessible service available to them when and where it is required, at a reasonable cost. We also want to ensure criminal groups and individuals do not benefit from unfair competition and lucrative public contracts.
4. In terms of the Scottish Government's overall purpose, a successful licensing regime contributes to three [national outcomes](#):
  - Our public services are high quality, continually improving, efficient and responsive to local people's needs;
  - We live in well-designed, sustainable places where we are able to access the amenities and services we need;
  - We live our lives safe from crime, disorder and danger.
5. The proposals in this consultation paper also aim to support specific priorities within Scottish Ministers' *Justice Strategy* (2012):
  - Enhancing efficiency;
  - Increasing public confidence;
  - Reducing fear of crime.

### Background

6. Local authorities are responsible for the creation, management and enforcement of the local taxi and private hire car licensing regime following the framework provided for in the Civic Government (Scotland) Act 1982 ('the 1982 Act').

7. While the underpinning legislation is brief, the body of case law and local practice that has built up around it in many ways dictates more forcefully how the regime actually works on the ground. In general this local process works well. Local

<sup>1</sup> Civic Government (Scotland) Act 1982, Long Title, 'An Act to make provision as regards Scotland for the licensing and regulation of certain activities; for the preservation of public order and safety and the prevention crime;...'

4

authorities have discretion in applying a local regime that best meets the needs of their locality and trade.

8. However, the Scottish Government has been aware of a number of concerns with the taxi and private hire car licensing regime for some time. Concerns are based around 2 main elements:

- **Administration and enforcement of current regime:** This relates to concerns about the variability in how legislation is interpreted as well as the difficulty of enforcement.

- **Criminality within the trade:** This relates to concerns with some firms being financed by individuals with connections to organised crime and public contracts being awarded to businesses with such links. There is also concern about legitimate trade being squeezed out in certain locations by unfair competition from businesses with criminal links and from criminal individuals.

9. Since the end of last year, officials have been reviewing information produced on the licensing regime to date<sup>2</sup> and have had fresh discussions with stakeholders. A number of common themes have come out of this process and we are now in a position to outline options for reform.

10. In addition to this specific work on taxi and private hire car licensing, the Better Regulation Bill, announced in the Programme for Government, responds to calls from business and practitioners to improve the way regulations are applied across Scotland.

11. The core proposal is new powers enabling duties to be placed on local authorities and other regulators to implement national systems and standards. This aims to deliver improved consistency, efficiency and effectiveness while still accommodating local democracy and circumstance, as individual local authorities or other regulators would have the capacity to present a case for variation or opt-out.

### **Purpose of consultation**

12. The main purpose of the consultation is to present options gathered from our discussions with stakeholders with a view to identifying the correct next steps towards a modern and effective licensing regime for taxis and private hire car services. While our current position on these options is outlined in the document, we are willing to review this in light of responses to this consultation paper. There are also areas on which we have not made proposals but have asked questions in order to gather more information before changes are proposed.

13. In order to ensure any resulting changes to legislation conform to principles of better regulation (that they are: proportionate, consistent, accountable, transparent

and targeted), we are also very keen for respondents to provide information and

<sup>2</sup> Including: the Civic Government (Scotland) Act ('the 1982 Act'); Scottish Development Department Circular 25/1986 ('the 1986 circular'); the 'Report by the Task Group Set Up to Review the Licensing Provisions Contained in the Civic Government (Scotland) Act 1982' ('the 2004 Task Group report'); Scottish Government Best Practice Guidance for Licensing Authorities.

5

evidence on the impact to business and regulators of the proposals. It would be helpful for these to be detailed within responses to relevant questions in this consultation document but we are also happy to speak directly to those with an interest. Of particular interest is information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.

14. Our aim is to have a taxi and private hire car licensing regime that is efficient and responsive to local needs and which can address legitimate concerns about the involvement of organised crime.

15. Some proposals would require changes to legislation while others are nonlegislative.

Legislative change clearly requires finding appropriate parliamentary time and an appropriate legislative vehicle.

16. To be clear from the outset however, we do not propose to make comprehensive changes to the licensing process. Some of the proposals are significant but our starting point is that the 1982 Act broadly serves its purpose and we should aim to make improvements rather than fundamentally review it.

### **Consultation themes**

17. The proposals are split into 4 themes:

- Structure of the regime;
- Interpretation;
- Enforcement and compliance;
- New areas of licensing.

6

### **Structure of the regime**

18. The fundamental feature of the licensing regime for taxis and private hire cars is that it is two tier – making a distinction between taxis and private hire cars both in terms of their operation and in some aspects of how they are licensed. Taxis can pick up passengers on the street and at ranks as well as be pre-booked. Private hire cars can only be pre-booked. Local authorities can limit taxi numbers while they cannot for private hire. Local authorities can require taxi drivers to take a test on knowledge of the area while there is no similar explicit reference in the 1982 Act for private hire drivers.

19. There have been long-standing calls to create a single tier licensing regime which would effectively merge private hire and taxis. However, the logistical reality of creating a single tier would be the doubling of the number of vehicles able to rank

and hail across Scotland. Snapshot figures indicate approximately 10,600 taxi and 10,700 private hire car licenses<sup>3</sup>, although the impact will be different locally depending on the split between taxis and private hire. This could have a significant impact on the road infrastructure, potentially causing increased congestion and pollution as well as creating issues for the profile of the fleet (saloon, purpose built vehicle), accessibility, testing, fares and meters.

### **Proposals 1, 2 and 3**

20. Our intention is a compromise position which would bring the two regimes closer together by allowing local authorities to restrict the number of private hire cars and to require testing of private hire car drivers, for example in knowledge of the area. However, we would stop short of a full merging at this time to avoid some of the logistical issues outlined above. This could be an interim step to further consideration of the interaction between the two tiers in the future.

21. If a local authority wishes to impose a quantity restriction on taxi vehicles their only legal justification is 'if, but only if, they are satisfied that there is no significant demand...which is unmet' (the 1982 Act, 10 (3)). The process to assess 'unmet demand' is not set out in statute but has, over time, become a relatively costly and complex exercise. We would aim to ensure local authorities had improved guidance on conducting surveys of unmet demand if we extend the provision to restrict numbers of private hire cars using the same grounds.

### **Proposals**

- 1. Allow local authorities the option to restrict numbers of private hire cars.**
- 2. Allow local authorities to require training of private hire drivers, for example in knowledge of the area.**

<sup>3</sup> Scottish Transport Statistics: <http://www.transportscotland.gov.uk/strategy-andresearch/publications-and-consultations/j205779-19.htm>

7

- 3. Convene working group to provide updated, improved guidance on overprovision studies to support local authorities in conducting timely, costeffective overprovision studies.**

### **Questions**

**Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business as a result of proposed changes.**

- 1. Should local authorities have the power to restrict numbers of private hire cars?**

- 2. What issues would arise from allowing local authorities to restrict numbers of private hire cars and how could these be resolved? For example, would consideration need to be given to setting percentages for certain vehicle types?**

- 3. Training:**

**a) Is it necessary to specifically allow local authorities to require training of private hire drivers? What evidence is there of local authorities already doing this with their current powers?**

**b) What might that training include? Should this be specified in legislation?**

- 4. What alternative options are there – legislative or non-legislative – that could improve the process of justifying a restriction on numbers of vehicles (taxis and/or private hire cars)?**

### **Proposal 4**

22. Section 22 of the Civic Government (Scotland) Act allows an exemption from licensing for certain vehicles, including (Section 22(c)) 'any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours'.

23. This 'contract exemption' presumes that anyone formulating a contract for a service is responsible for outlining the requirements e.g. of vehicle specification and driver suitability. This could leave a significant gap in scrutiny depending on the level of information available and ability/capacity to check compliance. Concerns have been raised that the contract exemption has been used to circumvent appropriate scrutiny of those offering driving services and undercut licensed companies. Requiring contract vehicles being used for personal conveyance **for profit** (section 23(2)) to be licensed would provide increased scrutiny.

24. To date, the position has been that 'The reference to "view to profit" in the general hire car definition is to exclude from the licensing requirements voluntary

8  
transport arrangements - such as those for disabled people - where a small charge is made but which are run basically as a charitable activity.'<sup>4</sup>

#### Protecting Vulnerable Groups Scheme

It is not proposed that we

seek to change these arrangements which provide a vital and worthwhile support to vulnerable people or people with particular mobility issues who might otherwise be isolated. It is worth noting here that any individual working directly with children and/or protected adults should become members of the

. For voluntary positions, these individuals may join the PVG

Scheme where they are transporting mainly elderly people or children. If this service is offered in connection with a Qualifying Voluntary Organisation (QVO), they can access these checks free.

#### Proposals

**4. Ensure vehicles and drivers used on contract are included within the licensing regime.**

#### Questions

**5. Inclusion of contract work in licensing:**

**a) How would the inclusion of contract work within licensing affect:**

**i) Those tendering and awarding contracts?**

**ii) Licensing authorities?**

**iii) Those providing driving services which are currently unlicensed?**

**iv) Passengers using a contracted service?**

**b) How could issues be resolved?**

**6. Are there any issues that need to be considered with reference to operations not run for profit? (Such as voluntary transport arrangements that are run basically as charitable activity, which will continue to be excluded from licensing.)**

#### Proposal 5

25. The taxi and private hire licensing regime is overwhelmingly devolved to local authorities. There has been criticism that this leads to a lack of consistency across Scotland although this is an inevitable outcome of a devolved system and the Scottish Government is keen that the local link is maintained. This allows it to be responsive to the local context - from the Shetland Islands to the Scottish Borders.

26. There are various ways that different licensing regimes address the tension between maintaining a degree of consistency and accommodating the local context.

<sup>4</sup> [Scottish Development Department Circular 25/1986](#), Paragraph 2.57

9

One way is through licensing conditions. These are the 'rules' in each licensing authority that incorporate legislative and local requirements. Mandatory conditions are used in a number of licensing regimes, including for booking office licenses. A mandatory condition must be used by all local authorities and can bring a helpful degree of consistency across authorities which can still use local conditions to maintain a degree of local discretion. In general however, taxi and private hire car licensing (specifically vehicle and driver licensing) has not used mandatory conditions to date. Mandatory conditions could make specific requirements of all licence holders, in keeping with the aims of the 1982 Act, to preserve public safety and order and prevent crime. This could be an additional measure to help tackle criminal influence in the trade.

27. In 1986, the then Scottish Development Department issued an information note to all local authorities – Circular 25/1986 – that included a set of recommended conditions for taxi and private hire car licensing. We understand most licensing authorities then went on to base their licensing conditions on those in the Circular. These original recommended conditions have not been updated since and could be reviewed and refreshed to encourage consistency across local authorities. A combination of mandatory and recommended updated conditions could be used to ensure an appropriate balance between addressing high level national concerns and local circumstances.

### **Proposals**

**5. Convene a working group to consider the creation of updated licensing conditions for taxi and private hire car drivers, vehicles and booking offices.**

### **Questions**

**7. Updating licensing conditions:**

**(a) Would the use of a combination of mandatory and recommended conditions achieve an appropriate balance between national consistency and local context?**

**(b) Do different levels of licence (driver, vehicle, booking office) require a different combination of mandatory and recommended conditions?**

**(c) What issues of national concern could be included in a set of mandatory conditions?**

**(d) Who should be involved in this work? (Please also indicate if you would be willing to be involved).**

10

28. Further work to create a more robust basis on which local policies are created and executed is discussed in the next section ('Interpretation') alongside options to encourage information sharing across local authorities.

### **Proposal 6**

29. The most recent structural change to the licensing regime was the introduction of booking office licensing (The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009). This layer of licensing was introduced in response to concerns related to criminal activity in offices that take bookings for taxis and/or private hire cars. The decision was made at the time to limit licensing to physical premises and to those taking bookings for over 3 cars. This limit in terms of scope was justified in terms of reducing the burdens on business and proportionality.

30. The Booking Office Order has been in place now for 3 years and some issues have been raised in respect of the effectiveness of its provisions. We have been told of examples of businesses sub-contracting work or splitting businesses up to avoid going over the 3 car limit. These businesses are escaping an important layer of scrutiny from the police and local authorities. As the Booking Office Order is limited to premises only, the increase in use and potential use of mobile and smart phone technology also presents significant difficulties. We propose therefore to make amendments to the Booking Office Order in order to widen coverage of the licensing regime. This has been widely supported in initial discussions with stakeholders.

### **Proposals**

**6. Remove the exclusion within the Booking Office Order of businesses with less than 4 cars and those with non-physical 'office' i.e. cover businesses run by mobile technology.**

### **Questions**

**8. Is the extension of the Booking Office Order a proportionate response to concerns at some companies circumventing this layer of licensing?**

**9. What specific measures would assist the enforcement of a licensing regime that covers businesses using mobile/smart phone technology?**

31. If we bring all businesses taking bookings within the licensing regime (regardless of the number of cars they run and for both contracts and for members of the public) as set out in Proposal 6 above, then we appear to cover all types of operation within the taxi and private hire car trades. Every driver, vehicle owner and booking office will require to be licensed. The next stage then is to ensure that the scrutiny process undertaken by local licensing authorities and police is sufficiently robust to prevent applicants who are unsuitable, such as those with links to organised crime, from acquiring a licence. This will be explored further in the next section ('Interpretation').

11

32. These changes to the Booking Office Order, and further proposals made in the next section, would be in the place of introducing an additional layer of licensing or the creation of an 'accreditation scheme' that has previously been considered. Officials have been scoping the possible structure of an additional system to vet taxi and private hire companies, but we believe that the proposals made here go as far as is possible within the licensing regime. Question 17 in the next section seeks responses on the extent to which these proposals will assist in tackling the presence of organised crime in the industry.

33. It is worth noting that procurement legislation (both Scottish and European) is currently being reviewed, for the opportunity to exclude companies from competition for public contracts where there is evidence to suggest that they have suspected links to organised crime.

12

### **Interpretation**

34. A significant feature of the licensing regime is that it is largely directed by local policy and court judgements. The framework legislation is widely interpreted as a result of evolving case law and different local authorities can come to contrary views on how legislation should translate to local policies and practice.

35. To a large extent the Scottish Government is content that this is how the system operates. Our position, outlined in the previous section, is that regimes should be responsive to the local context and local licensing authorities are responsible for the policies they create, administer and enforce, accountable to their own electorate. If there are issues with local policies or practice, these are resolved locally and

ultimately in the courts, not by the Scottish Government. The role of the Scottish Government is to ensure underlying legislation allows local licensing authorities to create and manage effective licensing regimes. We can also provide guidance on areas of strong contention and encourage broader discussion and information flow across the 32 authorities. The following proposals therefore are a combination of legislative and non-legislative options.

### **General concerns**

36. There are a range of issues that come up frequently in discussion with and between local licensing authorities. The Scottish Government has produced [Best Practice Guidance for Licensing Authorities](#) in order to address some of these issues. The first edition was published in 2007 and was updated earlier this year. We believe however it would be helpful for this to be updated more frequently to take account of current areas of concern. The underlying principle however must remain that any Scottish Government guidance cannot take the place of a local authority's own legal advice and interpretation of the law as it is being used by the courts.

### **Consideration of Applications**

37. The application process for a licence is laid out in Schedule 1 to the 1982 Act. This Schedule covers all regimes in the 1982 Act, not just the taxi and private hire car licenses (driver, vehicle or booking office). This process includes a provision for all applications to be copied to the Chief Constable which brings a role for the police into the licensing regime.

38. Significant concerns have been raised on the process of considering information relevant to an application. This is a key process for identifying and eliminating criminal influence from the taxi and private hire car trades.

39. Paragraph 5(3) of Schedule 1 to the 1982 Act outlines the circumstances under which the licensing authority should refuse a licence:

- if a court has ordered they are disqualified from holding a licence;
- if they are 'not a fit and proper person to be the holder of the licence';
- if 'the activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself';

13

- if the premises or vehicle is not suitable or convenient for the activity, or;
- 'other good reason for refusing the licence'.

40. There is no further definition of these grounds for refusal in the legislation and what is deemed relevant is decided and discussed within local licensing authorities and in the courts. An example of this is in relation to what constitutes 'a fit and proper person'. While it has commonly been viewed as referring to criminal convictions the scope is potentially much wider.

41. There has been criticism of this undefined nature – leading to a perceived inconsistency and randomness in how decisions are made – however, it is an important element of the licensing authorities' discretion that local authorities are generally content with. The licensing authority, objectors (including the police) and applicants should benefit from the wide scope which provides a broader context to be brought before a licensing authority committee.

42. The Scottish Government is satisfied that this model allows the discretion necessary to take account of the widest range of information when making the decision to grant or refuse a licence. Licensing authorities also have additional powers under paragraph 12 to Schedule 1 to suspend a licence 'if they are of the opinion that the carrying on of the activity to which the licence relates is causing or is

likely to cause a serious threat to public order or public safety’.

43. We do not believe however that full use is being made of the discretion available. In deciding how to address this, we have made a number of proposals, both legislative and non-legislative.

#### **Proposal 7**

44. The first proposal is to ‘borrow’ an element of the alcohol licensing regime by refocussing the role of the police within the application process. Currently Paragraph 2(1) of Schedule 1 of the 1982 Act states that ‘A licensing authority shall....send a copy of the application to the chief constable...’. There is no further statutory role for the police although practice and clear public duty ensures the police take a significant role in bringing objections and representations to the licensing authority. In relation to alcohol licensing, the Licensing (Scotland) Act 2005 puts a further duty on the police that within 21 days they give notice of specific information relating to connected persons and relevant offences. A similar provision could be brought into the 1982 Act to put the role of the police on a statutory footing.

#### **Proposal 8**

45. The second proposal also borrows from the alcohol licensing regime by introducing statutory licensing objectives to Civic Government licensing. These are intended to work in alcohol licensing to provide a clear national framework for basing local policies on. For alcohol licensing they are: (a) preventing crime and disorder; (b) securing public safety; (c) preventing public nuisance; (d) protecting and improving public health and; (e) protecting children from harm.

14

46. There is already a broad statement of the intention of licensing in the long title of the 1982 Act (‘...for the preservation of public order and safety and the prevention crime’) which could be expanded upon and brought into the heart of the Act. These objectives would be used as the basis of any update to recommended conditions of licence referred to in the previous section under Proposal 5.

#### **Proposal 9**

47. The next proposal is to produce specific guidance to local authorities on the application process. The guidance could have relevance across licensing regimes covered in the 1982 Act and would also aim to ensure similar concerns with alcohol licensing are addressed. It could cover, along with other potential options:

- Use of police information/intelligence in hearings;
- Good practice on conducting hearings, considering information and justifying refusal;
- Establishing the criminal history of people who have spent time outside the UK;
- Use of training requirements and other standards for applicants to promote higher standards of entry to trade.

48. We do not propose to create a tariff sheet of offences within the guidance. Previous consultation has indicated this is problematic for a number of reasons including the potential to narrow the scope of what information can be considered relevant.

49. This guidance could form part of reviewed and strengthened best practice guidance for licensing authorities from the Scottish Government. We could also consider creating a power within the 1982 Act for Scottish Ministers to make regulations in relation to ‘the procedure to be followed at or in connection with any hearing to be held’ by a licensing authority. This power is given in alcohol licensing under Section 133(1) of the Licensing (Scotland) Act 2005.

## **Proposal 10**

50. The next element would aim to shift more responsibility onto an applicant for any level of licence (driver, vehicle or booking office), to prove they are 'fit and proper'. It is already acknowledged that taxi and private hire car drivers should meet a higher standard of propriety than in other licensed activities through their exemption in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003. Many drivers are also already registered with the Protecting Vulnerable Groups Scheme (PVG) in order to be eligible to undertake contract work involving children and protected adults.

51. As outlined previously, 'fit and proper' is often seen in terms of criminal convictions. We have seen the police have a role in presenting objections to an application but that the scope of the information can be limited, by practice and case law rather than by legislation.

15

52. In addition to the other proposals in this section, we could aim to unblock this part of the process by putting the onus on applicants to prove they are 'fit and proper' rather than on committees to prove they are not. A set of requirements would need to be established for applicants to meet and if applicants were unable to meet these requirements or provide sufficient evidence, then the licensing authority would not grant or renew the licence. This could be helpful when processing applications for people who have spent time outside the UK where establishing the existence of foreign criminal convictions can be challenging if not impossible.

53. Part of this approach could be to allow local authorities to require that certain applicants submit a Disclosure certificate. A similar (discretionary) provision was made in relation to landlord registration. That gives access to a standard disclosure which would include information about spent and unspent conviction held on the UK's central records of convictions. However, this approach would, as the law currently stands, result in a reduction in the amount of information available to local authorities for licensing purposes and for the role of the police within the licensing system. It would be unlikely to deliver a higher standard of scrutiny than currently available.

## **Proposal 11**

54. The final proposal under this section is to build on the good networks already in place to share good practice in considering applications and finding solid grounds for refusing, revoking or suspending licences. There are already good links with local authorities and police in relation to licensing. Both of these groups are an invaluable source when considering how licensing regimes are working in practice across Scotland. It would be helpful to link these groups and to widen out this discussion to ensure good information flow around the system and for best practice to be shared and adopted as appropriate. There may also be scope to include sharing information on licence refusals, suspensions and revocations between authorities.

55. Again, we do not have a fixed view on how this wider network should be developed but we are clear that there is great value in the system routinely discussing points of contention and sharing successes and we recognise the benefits in facilitating such discussion. This group could also be the key contact/lead on the update of Scottish Government best practice guidance.

## **Proposals**

**7. Refocus the role of the police within the 1982 Act by mirroring the duty in the (alcohol) Licensing (Scotland) Act 2005 for police to respond within a given timeframe with specified information to the licensing authority.**

8. Introduce licensing objectives to Civic Government licensing regimes.
9. Produce guidance on the licence application process. To form part of improved Best Practice Guidance for Licensing Authorities.

16

10. Require applicant for any level of licence (driver, vehicle, booking office) to prove they are 'fit and proper'.

11. Support the development of a licensing policy network.

#### **Questions**

##### **10. Role of police:**

- a) How might the role of the police within the 1982 Act be refocussed?
- b) What would be an appropriate timeframe for police to respond to a request for information?
- c) How well defined should the information be that they should submit?

##### **11. Licensing Objectives:**

- a) Is the introduction of statutory licensing objectives a useful tool for local authorities?
- b) Who should be involved in the creation of the licensing objectives?
12. Should one set of licensing objectives apply to all Civic Government regimes or be specific to taxi and private hire car licensing?

##### **13. Guidance on licence application process:**

- a) Is guidance an appropriate response to this issue?
- b) Are there other elements this specific guidance should cover?
- c) Should a power be introduced to the 1982 Act (similar to the Licensing (Scotland) Act 2005) to make regulations on hearings procedures?

##### **14. Do you agree improved Best Practice Guidance is required?**

##### **15. Requiring applicants for any level of licence (driver, vehicle, booking office) to prove they are 'fit and proper':**

- (a) What would be the effects on the system of requiring applicants to prove they are 'fit and proper'?
- (b) What would be a suitable set of requirements for applicants to meet?
- (c) Who would be responsible for setting these?

17

##### **16. Develop licensing policy network:**

- (a) Who should be part of this network?
- (b) Could this network be used to share information on licence refusals, suspensions and revocations?
- (c) What format could a policy network take? E.g. physical meetings, shared web space?

##### **17. Taking into account the proposals in the last section on the Booking Office Order, updated conditions and contract work and proposals in this section on the licence application process, do you think that these will assist in tackling the presence of organised crime in the industry?**

#### **Equality Impact including Disability and Accessibility**

56. The provisions of the Equality Act 2010 in relation to local authorities' accessibility policies is another area that has been highlighted as requiring clarification. As this is an area of legislation that is reserved to the UK Government, the Scottish Government is limited in what action it can take. Interpretation of equality legislation is a matter for individual authorities bearing in mind any guidance from the UK Government and the Equality and Human Rights Commission. The

Scottish Government is not in a position to provide further clarification or guidance on the legislation. However, it is clear that the approach local authorities take in relation to accessibility varies. While we do not propose any changes in this area, it would be very helpful to gauge what local authorities see as the main issues in relation to accessibility in order to respond in an appropriate and competent way. It would also be helpful to understand the experience disabled people have when using taxis and private hire cars. We have quite broad questions in this area to allow the widest range of information to be passed on specifically in relation to disability and accessibility but also any other issues that are covered by the Equality Act general duty.

### **Questions**

**18. Is there sufficient access for disabled people to taxi and private hire car services? What would make it easier for everyone to access taxis or private hire cars?**

**19. What measures or support could be implemented that would increase the availability of wheelchair accessible taxi and private hire vehicles, particularly outside of Scotland's cities?**

**20. As well as the specific requirements in relation to taxis and private hire vehicles in sections 160 to 173, the Equality Act 2010 places a general duty on public bodies such as local authorities to advance the equality of opportunity**

**18 of disabled people. Do you believe that this has had an effect on the provision of wheelchair accessible taxi and private hire vehicles?**

**21. Are there any other issues related to taxi and private hire car licensing for people who share other protected characteristics under the Equality Act 2010 (age, race, religion or belief, sex, sexual orientation, gender reassignment, pregnancy or maternity)?**

19

### **Enforcement and Compliance**

57. Enforcement is central to the integrity of any licensing regime. The issues it covers are broad ranging including ensuring compliance against the local licensing conditions and investigating criminal activity within the trade. The response to these different types of transgression varies across Scotland, as you would expect for such a highly devolved system. There are also varying views on what constitutes a serious breach depending on your position within the system.

58. Most parts of the system – local authorities, police, legitimate trade - will agree that a driver who is discourteous or takes an unnecessarily long route does not serve the best interests of the customers. Most would also agree that in most cases, a local authority enforcement officer is probably in the most appropriate position to investigate and deal with complaints against individual firms or drivers, rather than the police.

59. However, with other issues there is less consensus. For example, an issue that frustrates and undermines the legitimate taxi trade is out of area taxis and private hire cars picking up passengers illegally. This may not always be seen as a significant enforcement priority for the local authority or police but its effect is significant on the legitimate trade: it acts as unfair competition for appropriately licensed taxis, denying them income and; provides an illegal revenue stream for drivers and vehicles that would otherwise not be financially viable – arguably keeping in business those individuals and companies with criminal links who would otherwise move out of this trade.

60. It is clear that from any perspective there is strain on the capacity to fully enforce local licensing regimes to the satisfaction of all elements of the system. In considering how to respond, it is also clear that there is no simple solution. With such significant constraints on public finances, it is difficult to see how an increased enforcement capacity can be resourced.

61. A key principle to bear in mind though is that the licensing regime is a self-financing system. The cost of the fees should reflect the costs of the system - including enforcement. There appears to be a general acceptance by the most reputable and professional end of the trade that increased enforcement capacity would require an increase in fees. As long as it results in a demonstrable improvement in enforcement.

### **Proposal 12**

62. Again, the alcohol licensing regime offers a potential model in its statutory role of the Licensing Standards Officer (LSO). It has been suggested that this mandatory role offers a way for local authorities to build a case for local authority enforcement capacity. Local authorities should be able to pay for the role through the fees. We would need to ensure that the statutory role was given appropriate and competent powers. It would not aim to replace the role of police who have specific powers in relation to stopping and inspecting vehicles for example.

20

63. Subject to the views of local authorities, the police and trade, we are willing to explore options, which could be funded from fees, to strengthen necessary enforcement. There is a clear requirement for a visible police presence in enforcement activity relating to more serious transgressions and cross border issues.

64. There is work currently being done on alcohol licensing to find out more about the fees structures across local authorities. The outcome of that work will likely inform any changes to the 1982 Act in this area. We have not therefore made a specific proposal related to this but have asked a general question on this topic.

### **Proposals**

**12. Explore options to enhance enforcement, including potentially a statutory basis for licensing enforcement officers.**

### **Questions**

**22. Statutory Licensing Enforcement Officer:**

**a) How would a statutory requirement for local authority enforcement officers work in the context of Civic Government licensing?**

**b) What would be the potential pitfalls?**

**23. Are there other solutions to creating increased enforcement/compliance capacity e.g. taxi marshals at night. Who should provide/pay for these?**

21

### **New areas of licensing**

65. We do not propose to create any new layers of licensing, as previously outlined in relation to changes to the Booking Office Order. However, one area of business increasingly linked to the private hire car trade and of concern to local licensing authorities is special events vehicles. These are most commonly limos, fire engines, police cars etc used for hire for children's parties, stag and hen parties and other special events.

66. None of these vehicles are specifically mentioned within the taxi and private hire car regimes although Scottish Government best practice guidance has advised that, where the vehicles have up to 8 seats, local authorities should consider licensing

them under the 1982 Act. Vehicles with more than 8 seats may fall under the Public Service Vehicle legislation, reserved to the UK Government.

67. Rather than making a specific proposal on this issue, we are asking a number of questions in relation to this to gauge where people – those involved in licensing and those operating and using these vehicles – feel a solution may lie.

#### **Questions**

**24. Do you know of licensing authorities that currently licence special events vehicles under the 1982 Act?**

**25. What prevents those authorities who don't licence special events vehicles from doing so?**

**26. Does this issue require a national response and why?**

**27. What form should a national response take?**

**28. What effect, if any, would the proposal to bring contract work within the taxi and private hire car licensing regime have on the operation of special event vehicles?**

**29. How would the weddings exemption within the 1982 Act affect any attempt to specifically licence these vehicles?**

#### **Question**

**30. Do you have any other information or comments related to taxi and private hire car licensing not covered in the consultation document?**

22

### **ANNEX A: RESPONDING TO THE CONSULTATION**

Please send your response with the completed Respondent Information Form (at ANNEX C) to:

[licensing.consultation@scotland.gsi.gov.uk](mailto:licensing.consultation@scotland.gsi.gov.uk)

or

Joanna Mackenzie

Licensing Team

2W St Andrew's House

Regent Road

Edinburgh

EH1 3DG

If you have any queries contact Joanna Mackenzie on 0131 244 8242.

The deadline for responding is **Friday 15 March**.

We would be grateful if you would use the consultation questionnaire provided (at ANNEX C) or could clearly indicate in your response which questions you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at:

<http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations:

<http://register.scotland.gov.uk>.

This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

#### **Handling your response**

We need to know how you wish your response to be handled and, in particular,

whether you are happy for your response to be made public. Please complete and return the Respondent Information Form, which forms part of the consultation questionnaire, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

23

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on any changes to taxi and private hire car licensing. We aim to issue a report on this consultation process in Spring 2013.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to Joanna Mackenzie using the details above.

24

## **ANNEX B: THE SCOTTISH GOVERNMENT CONSULTATION PROCESS**

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis

of response reports) can be accessed at:

<http://www.scotland.gov.uk/consultations>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

25

## **ANNEX C: CONSULTATION QUESTIONNAIRE**

### **Taxi and Private Hire Car Licensing**

#### **RESPONDENT INFORMATION FORM**

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

#### **1. Name/Organisation**

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

#### **2. Postal Address**

Postcode Phone Email

#### **3. Permissions - I am responding as...**

##### **Individual / Group/Organisation**

*Please tick as appropriate*

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate Yes No*

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis  
Are you content for your **response** to be made available?

*Please tick ONE of the following boxes Please tick as appropriate Yes No*

Yes, make my response, name and address all available

*or*

Yes, make my response available, but not my name and address

*or*

Yes, make my response and name available, but not my address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so.  
Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate Yes No*

26

## CONSULTATION QUESTIONS

Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business and regulators as a result of proposed changes including information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.

**1. Should local authorities have the power to restrict numbers of private hire cars?**

Yes No

Comments

**2. What issues would arise from allowing local authorities to restrict numbers of private hire cars and how could these be resolved? For example, would consideration need to be given to setting percentages for certain vehicle types?**

Comments

**3. Training:**

**(a) Is it necessary to specifically allow local authorities to require training of private hire drivers? What evidence is there of local authorities already doing this with their current powers?**

**(b) What might that training include? Should this be specified in legislation?**

Comments

**4. What alternative options are there – legislative or non-legislative – that could improve the process of justifying a restriction on numbers of vehicles (taxis and/or private hire cars)?**

Comments

**5. Inclusion of contract work in licensing:**

**a) How would the inclusion of contract work within licensing affect:**

**i) Those tendering and awarding contracts?**

**ii) Licensing authorities?**

**iii) Those providing driving services which are currently unlicensed?**

**iv) Passengers using a contracted service?**

27

**b) How could issues be resolved?**

Comments

**6. Are there any issues that need to be considered with reference to operations not run for profit? (Such as voluntary transport arrangements that are run basically as charitable activity, which will continue to be excluded from licensing.)**

Comments

**7. Updating licensing conditions:**

**(a) Would the use of a combination of mandatory and recommended conditions achieve an appropriate balance between national consistency and local context?**

**(b) Do different levels of licence (driver, vehicle, booking office) require a different combination of mandatory and recommended conditions?**

**(c) What issues of national concern could be included in a set of mandatory conditions?**

**(d) Who should be involved in this work? (Please also indicate if you would be willing to be involved).**

Comments

**8. Is the extension of the Booking Office Order a proportionate response to concerns at some companies circumventing this layer of licensing?**

Comments

**9. What specific measures would assist the enforcement of a licensing regime that covers businesses using mobile/smart phone technology?**

Comments

**10. Role of police:**

a) How might the role of the police within the 1982 Act be refocussed?

b) What would be an appropriate timeframe for police to respond to a request for information?

c) How well defined should the information be that they should submit?

28

Comments

**11. Licensing objectives:**

a) Is the introduction of statutory licensing objectives a useful tool for local authorities?

b) Who should be involved in the creation of the licensing objectives?

Comments

**12. Should one set of licensing objectives apply to all Civic Government regimes or be specific to taxi and private hire car licensing?**

Comments

**13. Guidance on licence application process:**

a) Is guidance an appropriate response to this issue?

b) Are there other elements this specific guidance should cover?

c) Should a power be introduced to the 1982 Act (similar to the Licensing (Scotland) Act 2005) to make regulations on hearings procedures?

Comments

**14. Do you agree improved Best Practice Guidance is required?**

Comments

**15. Requiring applicant for any level of licence (driver, vehicle, booking office) to prove they are 'fit and proper':**

(a) What would be the effects on the system of requiring applicants to prove they are 'fit and proper'?

(b) What would be a suitable set of requirements for applicants to meet?

(c) Who would be responsible for setting these?

Comments

**16. Develop licensing policy network:**

(a) Who should be part of this network?

29

(b) Could this network be used to share information on licence refusals, suspensions and revocations?

(c) What format could a policy network take? E.g. physical meetings, shared web space?

Comments

**17. Taking into account the proposals on the Booking Office Order, updated conditions and contract work and proposals on the licence application process, do you think that these will assist in tackling the presence of organised crime in the industry?**

Comments

**18. Is there sufficient access for disabled people to taxi and private hire car services? What would make it easier for everyone to access taxis or private hire cars?**

Comments

**19. What measures or support could be implemented that would increase the availability of wheelchair accessible taxi and private hire vehicles, particularly outside of Scotland's cities?**

Comments

**20. As well as the specific requirements in relation to taxis and private hire vehicles in sections 160 to 173, the Equality Act 2010 places a general duty on public bodies such as local authorities to advance the equality of opportunity of disabled people. Do you believe that this has had an effect on the provision of wheelchair accessible taxi and private hire vehicles?**

Comments

**21. Are there any other issues related to taxi and private hire car licensing for people who share other protected characteristics under the Equality Act 2010 (age, race, religion or belief, sex, sexual orientation, gender reassignment, pregnancy or maternity)?**

Comments

**22. Statutory Licensing Enforcement Officer:**

**a) How would a statutory requirement for local authority enforcement officers work in the context of Civic Government licensing?**

30

**b) What would be the potential pitfalls?**

Comments

**23. Are there other solutions to creating increased enforcement/compliance capacity e.g. taxi marshals at night. Who should provide/pay for these?**

Comments

**24. Do you know of licensing authorities that currently licence special events vehicles under the 1982 Act?**

Comments

**25. What prevents those authorities who don't licence special events vehicles from doing so?**

Comments

**26. Does this issue require a national response and why?**

Comments

**27. What form should a national response take?**

Comments

**28. What effect, if any, would the proposal to bring contract work within the taxi and private hire car licensing regime have on the operation of special event vehicles?**

Comments

**29. How would the weddings exemption within the 1982 Act affect any attempt to specifically licence special events vehicles?**

Comments

**30. Do you have any other information or comments related to taxi and private hire car licensing not covered in the consultation document?**

Comments

31

## **ANNEX D: LIST OF CONSULTEES**

Responses to this consultation are welcome from any individual or organisation with an interest. The following will be sent a copy of the consultation directly:

**ACPOS (Association of Chief Police Officers Scotland)**  
**All Scottish Local Authorities**  
**All Scottish MEPs**  
**Capability Scotland**  
**Clerk of the Justice Committee of the Scottish Parliament**  
**Consumer Focus Scotland**  
**COSLA (Convention of Scottish Local Authorities)**  
**Departmental Committee Liaison Officer**  
**Equality and Human Rights Commission**  
**Federation of Small Businesses**  
**Law Society of Scotland**  
**Mobility and Access Committee for Scotland**  
**National Private Hire Association**  
**Road Safety Great Britain**  
**Scottish Crime and Drug Enforcement Agency**  
**Scottish Government Library**  
**Scottish Human Rights Commission**  
**Scottish Taxi Federation**  
**Scottish Traffic Commissioner**  
**SOLAR (Society of Local Authority Lawyers and Administrators Scotland)**  
**SPICe (Scottish Parliament Information Centre) library**  
**The 6 Legal Deposit or 'Copyright' libraries**  
**The 8 Scottish Police Forces**  
**Transport Research Institute, Edinburgh Napier University**  
**(UK Government) Department for Transport**  
**Unite Union**  
**Vehicle and Operator Services Agency**

The consultation will also be sent to a number of individuals who have requested this.

**[www.scotland.gov.uk](http://www.scotland.gov.uk)**

© Crown copyright 2012

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit **<http://www.nationalarchives.gov.uk/doc/open-government-licence/>** or e-mail: **[psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)**.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-1-78256-230-6 (web only)

The Scottish Government

St Andrew's House

Edinburgh

EH1 3DG

Produced for the Scottish Government by APS Group Scotland

DPPAS13614 (11/12)

Published by the Scottish Government, November 2012

## APPENDIX 2

### Proposals

#### **1. Allow local authorities the option to restrict numbers of private hire cars.**

Already in Best practice Guidance

#### **2. Allow local authorities to require training of private hire drivers, for example in knowledge of the area.**

#### **3. Convene working group to provide updated, improved guidance on overprovision studies to support local authorities in conducting timely, cost-effective overprovision studies.**

### Questions

**Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business as a result of proposed changes.**

#### **1. Should local authorities have the power to restrict numbers of private hire cars?**

There have been no calls for this. Here, the number of private hire cars has remained relatively static ie over a twelve year period, rising to a high of 139 in 2008. The lowest being 108 in 2006.

#### **2. What issues would arise from allowing local authorities to restrict numbers of private hire cars and how could these be resolved? For example, would consideration need to be given to setting percentages for certain vehicle types?**

??????

#### **3. Training:**

##### **a) Is it necessary to specifically allow local authorities to require training of private hire drivers? What evidence is there of local authorities already doing this with their current powers?**

Currently, it is possible to arrange training of drivers in consultation with the Trade. Disability awareness is the sole issue that presents as being potentially in need of attention. As has been identified already, Topographical Testing may be worthwhile but here again, consultation with the Trade is necessary. Drivers involved in such bookings are able to check the route prior to departure.

##### **b) What might that training include? Should this be specified in legislation?**

Discussions with the Trade are required.

#### **4. What alternative options are there - legislative or non-legislative - that could improve the process of justifying a restriction on numbers of vehicles (taxis and/or private hire cars)?**

(a) currently, taxi Drivers receive training as respects the carriage of wheelchair bound passengers and general disability awareness. The Trade is generally not supportive of such training.

(b) consideration was given to this sometime ago and the following topics identified.

### Proposals

**4. Ensure vehicles and drivers used on contract are included within the licensing regime.**

#### **Questions**

**5. Inclusion of contract work in licensing:**

**a) How would the inclusion of contract work within licensing affect:**

**i) Those tendering and awarding contracts?**

**ii) Licensing authorities?**

**iii) Those providing driving services which are currently unlicensed?**

**iv) Passengers using a contracted service?**

The majority of these are led by the local authority and as such are well controlled.

**b) How could issues be resolved?**

???????????

**6. Are there any issues that need to be considered with reference to operations not run for profit? (Such as voluntary transport arrangements that are run basically as charitable activity, which will continue to be excluded from licensing.)**

It is considered that adequate safeguards ought to be included. Public Safety is paramount.

#### **Proposals**

**5. Convene a working group to consider the creation of updated licensing conditions for taxi and private hire car drivers, vehicles and booking offices.**

#### **Questions**

**7. Updating licensing conditions:**

**(a) Would the use of a combination of mandatory and recommended conditions achieve an appropriate balance between national consistency and local context?**

There is a need to act quickly on this. Prior to the Last Best Practice review the need for review was apparent. Successive consultations frustrates progress in this respect.

**(b) Do different levels of licence (driver, vehicle, booking office) require a different combination of mandatory and recommended conditions?**

Probably Yes.

**(c) What issues of national concern could be included in a set of mandatory conditions?**

???????????

**(d) Who should be involved in this work? (Please also indicate if you would be willing to be involved).**

Trade, Local Authorities, Police, Disabled Groups, Public Transport, etc.

## **Proposals**

### **6. Remove the exclusion within the Booking Office Order of businesses with less than 4 cars and those with non-physical 'office' i.e. cover businesses run by mobile technology.**

This topic has been the subject of many complaints from Members of the Public against those Operators who run businesses from their homes but escape by claiming that all bookings are taken by mobile phone. Therefore, in principle support but if it is unworkable, review the whole approach. Introducing a requirement that all should have a licence regardless of the number of hire cars involved would be unnecessarily disproportionate ie both regulatory frameworks combined.

## **Questions**

### **8. Is the extension of the Booking Office Order a proportionate response to concerns at some companies circumventing this layer of licensing?**

Yes. But see Q8

### **9. What specific measures would assist the enforcement of a licensing regime that covers businesses using mobile/smart phone technology?**

That such activities be licensed. The half way house approach creates more problems . If the system is not going to be effective, it is better done away with.

### **7. Refocus the role of the police within the 1982 Act by mirroring the duty in the (alcohol) Licensing (Scotland) Act 2005 for police to respond within a given timeframe with specified information to the licensing authority.**

Unfamiliar with this concept. Guidance to be sought.

### **8. Introduce licensing objectives to Civic Government licensing regimes.**

Approve.

### **9. Produce guidance on the licence application process. To form part of improved Best Practice Guidance for Licensing Authorities.**

Approve

### **10. Require applicant for any level of licence (driver, vehicle, booking office) to prove they are 'fit and proper'.**

Approve

### **11. Support the development of a licensing policy network.**

Approve

## **Questions**

### **10. Role of police:**

#### **a) How might the role of the police within the 1982 Act be refocussed?**

Renewal of existing collaborative working.

It is currently well focussed. Doubts arise in the context of the National Police Force and the effect that that will have on the collaborative working that is currently ongoing eg joint agency working in relation to the Taxi Examination Centre Edinburgh.

**b) What would be an appropriate timeframe for police to respond to a request for information?**

28 Days

**c) How well defined should the information be that they should submit?**

**11. Licensing Objectives:**

**a) Is the introduction of statutory licensing objectives a useful tool for local authorities?**

As currently? Yes.

**b) Who should be involved in the creation of the licensing objectives?**

All see above.

**12. Should one set of licensing objectives apply to all Civic Government regimes or be specific to taxi and private hire car licensing?**

Specific to include crime and public order and safety but also to contribute to the Transport Strategy.

**13. Guidance on licence application process:**

**a) Is guidance an appropriate response to this issue?**

Yes

**b) Are there other elements this specific guidance should cover?**

Occasional Areas where difficulty arises.

**c) Should a power be introduced to the 1982 Act (similar to the Licensing (Scotland) Act 2005) to make regulations on hearings procedures?**

Unfamiliar with this aspects. It is thought that procedures in this respect are already well developed.

**14. Do you agree improved Best Practice Guidance is required?**

Yes.

**15. Requiring applicant for any level of licence (driver, vehicle, booking office) to prove they are 'fit and proper':**

**(a) What would be the effects on the system of requiring applicants to prove they are 'fit and proper'?**

Unfamiliar territory

**(b) What would be a suitable set of requirements for applicants to meet?**

Unfamiliar territory

**(c) Who would be responsible for setting these?**

Unfamiliar territory

**16. Develop licensing policy network:**

**(a) Who should be part of this network?**

Trade, LAs, Police, etc

**(b) Could this network be used to share information on licence refusals, suspensions and revocations?**

Yes

**(c) What format could a policy network take? E.g. physical meetings, shared web space?**

Meetings

**17. Taking into account the proposals in the last section on the Booking Office Order, updated conditions and contract work and proposals in this section on the licence application process, do you think that these will assist in tackling the presence of organised crime in the industry?**

Yes. Although there appears to be no evidence of such activity here.

## **Questions**

**18. Is there sufficient access for disabled people to taxi and private hire car services? What would make it easier for everyone to access taxis or private hire cars?**

Guidance is needed. Wheelchair accessibility is but one of the elements. Attention needs to be paid to other aspects.

**19. What measures or support could be implemented that would increase the availability of wheelchair accessible taxi and private hire vehicles, particularly outside of Scotland's cities?**

Limiting numbers of licences.

**20. As well as the specific requirements in relation to taxis and private hire vehicles in sections 160 to 173, the Equality Act 2010 places a general duty on public bodies such as local authorities to advance the equality of opportunity of disabled people. Do you believe that this has had an effect on the provision of wheelchair accessible taxi and private hire vehicles?**

Yes.

**21. Are there any other issues related to taxi and private hire car licensing for people who share other protected characteristics under the Equality Act 2010 (age, race, religion or belief, sex, sexual orientation, gender reassignment, pregnancy or maternity)?**

??????????

## **Proposals**

**12. Explore options to enhance enforcement, including potentially a statutory basis for licensing enforcement officers.**

## **Questions**

**22. Statutory Licensing Enforcement Officer:**

**a) How would a statutory requirement for local authority enforcement officers work in the context of Civic Government licensing?**

This already exists under the direction of the Police.

**b) What would be the potential pitfalls?**

Not known. Police to advise.

**23. Are there other solutions to creating increased enforcement/compliance capacity e.g. taxi marshals at night. Who should provide/pay for these?**

Trade

## **Questions**

**24. Do you know of licensing authorities that currently licence special events vehicles under the 1982 Act?**

In Midlothian, vehicles like stretch limos are licensed. Others like converted Fire Engines and Ambulances are not.

**25. What prevents those authorities who don't licence special events vehicles from doing so?**

Not known.

**26. Does this issue require a national response and why?**

Perhaps this would be best ie support the view that all vehicles engaged in such services should all be regulated.

**27. What form should a national response take?**

To confirm the principle; and provide a framework from which to act.

**28. What effect, if any, would the proposal to bring contract work within the taxi and private hire car licensing regime have on the operation of special event vehicles?**

???

**29. How would the weddings exemption within the 1982 Act affect any attempt to specifically licence these vehicles?**

It would exempt those involved in conveying guests to / from the event.

## **Question**

**30. Do you have any other information or comments related to taxi and private hire car licensing not covered in the consultation document?**