

## BABERGH DISTRICT COUNCIL

<b>From: Head of Environment</b>	<b>Report Number: M57</b>
<b>To: Licensing and Appeals Committee</b>	<b>Date of meeting: 2 August 2012</b>

### LAW COMMISSION REVIEW OF TAXI AND PRIVATE HIRE LEGISLATION

#### 1. Purpose of Report

- 1.1 To examine the proposals produced by the Law Commission as they seek to reform the legislation affecting the hackney carriage (taxi) and private hire licensing regime administered by Local Authorities.
- 1.2 To seek approval of a consultation response for issuing to the Law Commission in advance of the 10 September 2012 deadline.

#### 2. Recommendations

- 2.1 That the Committee approve a response, as may be suitably modified by the Committee as a result of its deliberations, to the questionnaire produced by the Law Commission as part of its consultation process.

The Committee is able to resolve this matter.

#### 3. Financial Implications

- 3.1 None directly arising from the matters contained within this report.

#### 4. Risk Management

- 4.1 Key risks are set out below:

<b>Risk Description</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Mitigation Measures</b>
Failure to respond to the consultation will mean the views of the local Licensing Authority are not considered as part of the review process.	Low likelihood of failure to respond	Marginal	Consider the legislative reform proposals and respond to the Law Commission consultation by the 10 September 2012 deadline.

#### 5. Consultations

- 5.1 The subject of this report refers to the Council's response to an active consultation.

## **6. Equality Analysis**

- 6.1 There are no equality analysis impacts arising directly from the matters contained within this report.

## **7. Shared Service / Partnership Implications**

- 7.1 The Licensing Team serves both Babergh District Council and Mid Suffolk District Council, and seeks to align process and policy wherever viable. It is anticipated that the consultation response will be substantially the same from both Councils. This matter has already been subject to a report to Mid Suffolk DC Licensing Committee.

## **8. Key Information**

- 8.1 The current regulatory controls in place for hackney carriage and private hire licensing date back to as far as 1831. They are in urgent need of fundamental reform due to the complex, restrictive and inconsistent legislation.
- 8.2 The Law Commission has undertaken the task of reviewing the current laws and aims to bring a new Bill before parliament in late 2013 to rationalise and modernise the controls on taxi and private hire vehicle operation.
- 8.3 It has published a document in excess of 250 pages on its thoughts for a new legislative scheme. A very basic summary of the Law Commission proposals follows below:
- (a) National minimum safety standards for both taxis and private hire vehicles.
  - (b) Changes to standard-setting: additional local standards, above the national standards, would continue to apply to taxis (for example, topographical knowledge and vehicle requirements). However, for private hire vehicles, only the national standards would apply and there would be no scope for additional local standards. However we ask about possible exceptions where local private hire standards may be retained, for example, in respect of signage.
  - (c) It would be easier for private hire services to operate on a national basis. We suggest private hire operators would no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by the same licensing authority. Sub-contracting would be allowed, as is already the case in London.
  - (d) London would be regulated under the same flexible framework as the rest of England and Wales.
  - (e) Licensing authorities could no longer limit the number of taxi licences.
  - (f) More enforcement powers for licensing officers against out-of-borough vehicles and drivers.
  - (g) Disability awareness training for drivers.
  - (h) Introduction of a statutory definition of “plying for hire” (but without changing it in substance).
  - (i) Weddings and funeral cars would no longer be exempted through primary legislation.
  - (j) Allowing leisure use of taxis and private hire vehicles.

- (k) Bringing more vehicles within the licensing system (including for example limousines, motorbikes and pedicabs) – but giving the Secretary of State and Welsh Ministers power to make exclusions, and to set separate standards, in respect of different categories of vehicle.
- (l) Clearer exclusions for volunteers and other services where transport is not the main service provided, such as childminders.
- (m) Powers for government to issue binding statutory guidance to create greater consistency in how taxi and private hire legislation is applied.

8.4 Also the Law Commission consultation is asking questions about:

- (a) a new category of wheelchair accessible vehicles;
- (b) extending operator licensing to taxi radio circuits;
- (c) possible use of the term “taxi” in respect of private hire services if used in phrases like “pre-booked taxi only”;
- (d) reintroducing a (revised) contract exemption;
- (e) improving the enforcement powers of licensing officers; and
- (f) a new “peak time” taxi licence that could only be used at particular times of day as decided by the licensing authority.

8.5 Officers have worked together, also in wider partnership with licensing colleagues from St.Edmundsbury BC and Forest Heath DC, to examine the proposals in more depth and detail and draft a proposed response to each of the 73 questions and proposals posed by the Law Commission.

8.6 The document attached as Appendix A is the draft response resulting from that work, and is now produced to the Committee for review, any amendment considered necessary and approval for submission.

## 9. Appendices

Title	Location
A: Draft consultation response to the Law Commission	Attached
B: Consultation Document	<a href="http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm">http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm</a>

## 10. Background Documents

10.1 None

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## APPENDIX A – DRAFT RESPONSE

LAW COMMISSION REFORM OF TAXI AND PRIVATE HIRE SERVICES	
QUESTION	PROPOSED RESPONSE
Regulation should continue to distinguish between taxis, which can accept pre-booked fares, be hailed on the street and wait at ranks, and private hire vehicles, which can only accept pre-booked fares. <i>(Page 160)</i>	Would simplify for the user to have a single class of vehicle able to operate as both immediate hire and pre-booked. We do however accept the argument that a reformed two-tier system has advantages in relation to competition, consumer choice and standards.
London should be included, with appropriate modifications, within the scope of reform. <i>(Page 162)</i>	N/A
The regulation of taxi and private hire vehicles should not be restricted to any particular type of vehicle but should rather focus on road transport services provided for hire with the services of a driver. <i>(Page 164)</i>	Prefer first definition of “every wheeled carriage whatever its form or construction”  If restricted to “limited to vehicles that need a driving licence” then safety issues of unregulated vehicles may result.
Would there be (and if so what) advantages to restricting licensing to motor vehicles that require a driving licence? <i>(Page 164)</i>	No (see above)
Public service vehicles should be expressly excluded from the definition of taxi and private hire vehicles; and taxi and private hire vehicles should only cover vehicles adapted to seat eight or fewer passengers. <i>(Page 165)</i>	Could consider increasing definition of PH to 16 seats?  Clarity needed on extent of PSV regime (including the 10% rule for unlicensed PHV which should be removed). Clarity needed on stretched limousines and small buses. Already some cross-over issues on enforcement.
References to stage coaches charging separate fares should no-longer feature as an exclusion from the definition of taxis. <i>(Page 166)</i>	Agree removal. Should be licensable as private hire – dial-a-ride services/pedicabs etc
The Secretary of State should consider issuing statutory guidance to the Senior Traffic Commissioner about the licensing of limousines and other novelty vehicles to assist consistency. <i>(Page 167)</i>	It is not satisfactory for vehicles to fall on Local Authority discretion where vehicles do not meet construction and use criteria for PSV. Clear national guidance and standards needed for whoever licences specialist/higher risk vehicles.
The concept of “in the course of a business of carrying passengers” should be used to limit the scope of taxi and private hire licensing so as to exclude genuine volunteers as well as activities where transport is ancillary to the overall service. <i>(Page 168)</i>	Happy to exclude volunteers/ancillary use who may provide a vital transport lifeline for communities (especially rural/hard to reach). However un-vetted drivers may also pose a risk?  Clearer exemptions and definitions will assist.

<p>How, if at all, should the regulation of taxis and private hire deal with: (a) carpooling; and (b) members clubs? <i>(Page 170)</i></p>	<p>Complex area. Different levels of insurance cover necessary depending on how used. Clarity needed either way.</p>
<p>The power of the Secretary of State and Welsh Ministers to set national standards should be flexible enough to allow them to make exclusions from the taxi and private hire licensing regimes. <i>(Page 171)</i></p>	<p>Yes. Any exclusions should be clearly defined.</p>
<p>Weddings and funerals should no-longer be expressly excluded from private hire licensing through primary legislation. <i>(Page 172)</i></p>	<p>Happy to continue to exclude funeral cars (ancillary use and very specific purpose) but not wedding cars. Wedding car 'packages' can currently be excluded in connection with a wedding, when more akin to PHV events (stag/hen parties etc).</p>
<p>Would there be merits in reintroducing the contract exemption, by means of the Secretary of State and Welsh Ministers' exercise of the power to set national standards? If so, what modifications could be made to help avoid abuse? <i>(Page 174)</i></p>	<p>No merit whatsoever in reintroducing contract exemption.</p> <p>The removal of exemption was overdue and welcome. It is vital for ensuring vetting of drivers/vehicles particularly for education and social services contractors.</p>
<p>Regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to "streets". <i>(Page 175}</i></p>	<p>Yes. Private land uses need to be clarified/covered.</p>
<p>Is there a case for making special provision in respect of taxi and private hire regulation at airports? In particular, where concessionary agreements are in place should airports be obliged to allow a shuttle service for passengers who have pre-booked with other providers, or to the closest taxi rank? <i>(Page 177)</i></p>	<p>No firm view either way. No airport in our area.</p>
<p>The defining feature of taxis, the concept of "plying for hire", should be placed on a statutory footing and include: (a) references to ranking and hailing; (b) a non-exhaustive list of factors indicating plying for hire; and (c) appropriate accommodation of the legitimate activities of private hire vehicles. <i>(Page 181)</i></p>	<p>Agreed but very careful drafting needed.</p> <p>Issues over illegal-ranking rather than legitimate PHV parking need to be considered as part of this.</p>
<p>The concepts of hailing and ranking should not cover technological means of engaging taxi services.<i>(p181)</i></p>	<p>Difficult to predict or draft. Technology should not be arbitrarily restricted (e.g. smartphone apps) only to cause a later regulatory problem.</p>

<p>Would there be advantages to adopting the Scottish approach to defining taxis in respect of “arrangements made in a public place” instead of “plying for hire”? <i>(Page 182)</i></p>	<p>Appears to be a good definition, has been in practice. Easier to enforce and covers private land.</p>
<p>The concept of compellability, which applies exclusively to taxis, should be retained. <i>(Page 182)</i></p>	<p>Yes. This should also extend to accessible vehicles and vehicles being kept in seating configuration to immediately pick up a wheelchair user. Some users may prefer a different type of vehicle however than the first available.</p>
<p>Pre-booking would continue to be the only way of engaging a private hire vehicle and cover all technological modes of engaging cars. This is without prejudice to the continued ability of taxis to be pre-booked. <i>(Page 183)</i></p>	<p>Yes, if a reformed two-tier approach is the way forward</p>
<p>Leisure and non-professional use of taxis and private hire vehicles should be permitted. There would however be a presumption that the vehicle is being used for professional purposes at any time unless the contrary can be proved. <i>(Page 184)</i></p>	<p>Needs careful consideration. There are issues (including insurance) with current system of spouses, non-licensed drivers being able to move or use vehicles for leisure/emergency type use. Problematic enforcement may result from permitting and could lead to more un-vetted drivers being tempted (for example illness cover)</p>
<p>The Secretary of State and Welsh Ministers should have the power to issue statutory guidance in respect of taxi and private hire licensing requirements. <i>(Page 185)</i></p>	<p>Guidance is an interpretation of legislation which is always open to legal argument. Robust and clear legislation should negate the need for statutory guidance. Non-statutory guidance, like the current DfT guidance, could still be beneficial.</p>
<p>Reformed legislation should refer to “taxis” and “private hire vehicles” respectively. References to “hackney carriages” should be abandoned. <i>(Page 185)</i></p>	<p>Yes - is the common term known to the public and modernising the legislation means ‘hackney carriage’ should fall</p>
<p>Should private hire vehicles be able to use terms such as “taxi” or “cab” in advertising provided they are only used in combination with terms like “pre-booked” and did not otherwise lead to customer confusion? <i>(Page 186)</i></p>	<p>If the two-tier is maintained then advertising should reflect the type of vehicle being used. Taxi should not be permissible to PHV unless the operator has a mixed fleet.</p>
<p>Taxi and private hire services should each be subject to national safety requirements. <i>(Page 188)</i></p>	<p>Yes – but basic standards common to both with the LA entitled to raise for taxis. Common standards would aid cross-border licensing and enforcement.</p>
<p>National safety standards, as applied to taxi services, should only be minimum standards. <i>(Page 189)</i></p>	<p>Yes – needs to cover all types of vehicle Must be clear and enforceable</p>

National safety standards, as applied to private hire services, should be mandatory standards. (Page 189)	Yes
Private hire services would not be subject to standards except those related to safety. Requirements such as topographical knowledge would no-longer apply to private hire drivers. (Page 190)	Minimum safety standards across the board are essential. LA should however be able to react to any specific local issues. English language tests? Disability awareness training?
Should local standard-setting for private hire services be specifically retained in respect of vehicle signage? Are there other areas where local standards for private hire vehicles are valuable? (Page 190)	Should also be a National Standard. Local standards on comfort and cleanliness (fit for public service) may need to be considered.
What practical obstacles might there be to setting common national safety standards for both taxis and private hire vehicles? (Page 191)	National safety standards will need to cover a broad variety of different vehicles and need to be both clear and reliable.
Should national conditions in respect of driver safety be different for taxi services compared with private hire services? (Page 192)	Drivers picking up off the street are generally more at risk as no pre-booking details available. CCTV/still image recording (e.g. Verify) and screening may be more commonly requested by the taxi trade in some localities.
The powers of the Secretary of State and Welsh Ministers to set standards for taxis and private hire vehicles should <i>only</i> cover conditions relating to safety. (Page 192)	Might be too limiting? Needs to cover driver safety.
The powers of the Secretary of State and Welsh Ministers to set national safety standards should be subject to a statutory consultation requirement. (Page 193)	Yes
What would be the best approach for determining the content of national safety standards? In particular should the statutory requirement to consult refer to a technical advisory panel? (Page 193)	Full consultation with all stakeholders. Technical standards need to be specific to vehicle types (e.g limos and novelty vehicles) and need to be workable and not overly-burdensome on trade, testers or regulators.
Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards. (Page 193)	Yes. Important tool to address specific local issues, which cannot always be anticipated in advance. Should be considered for both taxi and PHV.
Should there be statutory limits to licensing authorities' ability to set local taxi standards? (Page 194)	Yes. Trade need some assurance. Some LAs views on matters such as livery/signage may be considered arbitrary.
Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators? (Page 194)	Yes. Case-by-case assessment to address specific local needs. Pre-requisites as well as individual conditions. Need discretion to depart from usual standards/policy.
Should the powers and duties of licensing authorities to cooperate be on a statutory footing or is it best left to local arrangements? (Page 195)	LAs should be trusted to make their own local arrangements. Good practice type guidance would be fine to aid consistency without putting it on a statutory footing. Needs to include VOSA.
Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting. (Page 196)	Yes – especially in view of any local shared services

Licensing authorities should have the option to create, or remove, taxi zones within their area. <i>(Page 196)</i>	Removal of zones is simpler and adds consistency. Zoning is an arbitrary restriction on trade.
Would it be useful for licensing authorities to have the power to issue peak time licences which may only be used at certain times of day as prescribed by the licensing authority? <i>(Page 197)</i>	No firm view – unlikely to apply in our rural area. Restriction to ‘part-time’ ranks only (e.g. bus station evenings) could help. May assist the local night time economy but also an arbitrary restriction on trade? Maybe more suited to urban areas with saturation issues.
Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by a particular licensing authority. <i>(Page 198)</i>	Yes. Flexibility needed. Common minimum safety standards should aid removal of such restrictions.
We do not propose to introduce a “return to area” requirement in respect of out-of-area drop offs. <i>(Page 199)</i>	Good! Common sense with trade and environmental benefits.
Licensing authorities should retain the ability to regulate maximum taxi fares. Licensing authorities should not have the power to regulate private hire fares. <i>(Page 200)</i>	Yes – provided the costs of setting and enforcing can be recovered in licence fees. Alternatively the fares could be advertised in the window/on the vehicle to allow customers to decide on price.
Should taxis be allowed to charge a fare that is higher than the metered fare for pre-booked journeys? <i>(Page 200)</i>	No
Should national driver safety standards such as the requirement to be a “fit and proper person” be either: (a) set out in primary legislation; or (b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? <i>(Page 203)</i>	Primary legislation. Needs clear definition and cover medical, driving standard, criminal record etc
Vehicle owners should not be subject to “fit and proper” tests and the criteria applied would relate solely to the vehicle itself. <i>(Page 204)</i>	Happy for status quo to remain in this area.
Should national vehicle safety standards be either: (a) set out in primary legislation; or (b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? <i>(Page 205)</i>	Yes Must reflect the changes in technology when they are relevant.

Operator licensing should be retained as mandatory in respect of private hire vehicles. <i>(Page 207)</i>	Yes – important to ensure checks of record-keeping, planning and parking issues, waiting area (if any), complaints etc. Base is easier to regulate/enforce/contact.
Should operator licensing be extended to cover taxi radio circuits and if so on what basis? <i>(Page 208)</i>	Operating licensing should be extended to all pre-booking of taxis – vital for record-keeping etc
The definition of operators should not be extended in order to include intermediaries. <i>(Page 209)</i>	Should extend to any party inviting or accepting bookings, even if they pass them on.
Should “fit and proper” criteria in respect of operators be retained? <i>(Page 210)</i>	Yes but only if defined and the individual is subject to enhanced checks. Especially relevant to operators of school and social contracts/bases with waiting rooms etc
Operators should be expressly permitted to sub-contract services. <i>(Page 210)</i>	Yes to another licensed operator – promotes national standards and consistency of enforcement
Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply? <i>(Page 210)</i>	Ideally yes but in practice, or for enforcement, unlikely to work
Licensing authorities should no longer have the power to restrict taxi numbers. <i>(Page 213)</i>	Agree – market forces should mean restriction is not necessary
What problems (temporary or permanent) might arise if licensing authorities lost the ability to restrict numbers? <i>(Page 213)</i>	Already removed restriction in our area and there were no problems or issues. The existing trade’s original argument of saturation and businesses going under never happened
Should transitional measures be put in place, such as staggered entry to the taxi trade over a scheduled period of time, if quantity restrictions are removed? <i>(Page 215)</i>	N/A
Should there be a separate licence category for wheelchair accessible vehicles? This could involve: (1) a duty on the licensee to give priority to disabled passengers; and (2) a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles. <i>(Page 217)</i>	No perceived need for separate category. National Standards should apply.  Imposing a duty on LAs to make adequate provision for accessible ranks is a step too far – local town centre layout may not facilitate such a possibility.
Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards? <i>(Page 217)</i>	No, still costs the same to process and service as a whole must be self-funding. Local taxpayers should not foot the bill.
Do you have any other suggestions for increasing the availability of accessible vehicles, and catering for the different needs of disabled passengers? <i>(Page 217)</i>	Access to “blue badge” and disabled drop off points?

<p>We do not propose to introduce national quotas of wheelchair accessible vehicles. (Page 218)</p>	<p>Good. Not necessary for all vehicles to be wheelchair accessible. Some wheelchair users prefer to travel in a standard vehicle.</p>
<p>National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training. (Page 219)</p>	<p>Yes especially those driving accessible/adapted vehicles. They need to be able to use the fittings etc properly and ensure the safety/comfort of the customer. Operators generally ensure this happens but national standards would aid consistency.</p>
<p>In order to better address concerns about discrimination, taxis and private hire vehicles should be required to display information about how to complain to the licensing authority. (Page 219)</p>	<p>Yes, although we already operate an interior plate scheme for this purpose.</p>
<p>What would be the best way of addressing the problem of taxis ignoring disabled passengers seeking to hail them? Could an obligation to stop, if reasonable and safe to do so, in specified circumstances, help? (Page 220)</p>	<p>Unenforceable in practice. Compellability if 'for hire' sign is lit more difficult for hailing than rank work.</p>
<p>Should authorised licensing officers have the power to stop licensed vehicles? (Page 222)</p>	<p>Yes and to stop them moving away or direct to alternate safe place. What about <i>unlicensed</i> vehicles?</p>
<p>What more could be done to address touting? Touting refers to the offence "in a public place, to solicit persons to hire vehicles to carry them as passengers". (Page 223)</p>	<p>Offence should be "to make available for immediate hire" or "accepting a passenger without a prior booking" Legislative change may help.</p>
<p>Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules? (Page 223)</p>	<p>No However there should be a methodology (name and shame) to identify those vehicles that have received an "advisory" after vehicle test of have been taken off the road.</p>
<p>Should licensing authorities make greater use of fixed penalty schemes and if so how? (Page 225)</p>	<p>Yes but must be prepared to prosecute if necessary. The problem is accusation of generating revenue. Needs to be for specific offences (i.e. customer not pre-booked). Need to properly introduce the scheme (publicity).</p>
<p>Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas. (Page 225)</p>	<p>Vehicles and drivers only. Offences committed within our district and capable to immediate remedy – e.g. refusal to carry, refusal to carry assistance animals, standards issues and being available for immediate hire (PHV).</p>
<p>Should cross-border enforcement powers extend to suspensions and revocation of licences? If so what would be the best way of achieving this? (Page 226)</p>	<p>No. We do not know the history. This should go back to the 'home authority' although evidence in support should be offered.</p>

The right to appeal against decisions to refuse to grant or renew, suspend or revoke a taxi or private hire licence should be limited to the applicant or, as appropriate, holder of the relevant licence. <i>(Page 230)</i>	Yes
The first stage in the appeal process throughout England and Wales, in respect of refusals, suspensions or revocations should be to require the local licensing authority to reconsider its decision. <i>(Page 231)</i>	No. We can't resource such re-runs/second bite at the cherry. Retain right of appeal to Magistrates Court.
Appeals should continue to be heard in the magistrates' court. <i>(Page 232)</i>	Yes
Should there be an onward right of appeal to the Crown Court? <i>(Page 233)</i>	No (or first rights to Crown)

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