



LICENSING COMMITTEE

Thursday, 6th September, 2012

7.30 pm

Town Hall, Watford

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CONTACT

If you require further information or you would like a copy of this agenda in another format, e.g. large print, please contact Jodie Kloss in Legal and Property Services on 01923 278376 or by email to legalanddemocratic@watford.gov.uk .

Welcome to this meeting. We hope you find these notes useful.

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COMMITTEE MEMBERSHIP

Councillor J Brown (Chair)

Councillor P Jeffree (Vice-Chair)

Councillors I Brandon, I Brown, J Connal, K Crout, G Derbyshire, J Dhindsa, K Hastrick, M Hofman, M Meerabux, M Mills, D Scudder, L Scudder and D Walford

AGENDA

PART A - OPEN TO THE PUBLIC

1. **APOLOGIES FOR ABSENCE/ COMMITTEE MEMBERSHIP**
2. **DISCLOSURE OF INTERESTS (IF ANY)**
3. **MINUTES**

To approve for signature the minutes of the meeting held on 16 July 2012.

4. **REFORMING THE LAW OF TAXI AND PRIVATE HIRE SERVICES** (Pages 1 - 24)

This report asks the Committee to endorse the response to the Law Commission's consultation paper.

5. **MINOR LICENSING POLICY AMENDMENTS** (Pages 25 - 30)

This report asks the Committee to consider a small number of policy changes that have been identified following a business process redesign exercise.

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PART A

Report to: Licensing Committee
Date of meeting: 6 September 2012
Report of: Head of Environmental Services
Title: Reforming the Law of Taxi and Private Hire Services

1.0 SUMMARY

- 1.1 Following a well-publicised judicial review brought by Newcastle-upon-Tyne City Council against the now defunct Berwick-upon-Tweed Council and a subsequent High Court case, the House of Commons Transport Select Committee embarked on an enquiry into “cross-border hiring” of private hire vehicles. One of their recommendations was for the Government to review the law in this area, which the Law Commission agreed to undertake as part of its current programme of law reform.
- 1.2 The Commission has published an extensive consultation paper containing over seventy proposals for reform of legislation that dates back in parts to 1847. The formal consultation process closes on 10 September 2012.

2.0 RECOMMENDATIONS

- 2.1 That the Licensing Committee endorses the draft response to the Law Commission at appendix 1, together with any such amendments and dissenting or minority opinions that may be added to at the Committee meeting.

Contact Officer:

For further information on this report please contact Jeffrey Leib (Licensing Manager) on extension: 8429 or email jeffrey.leib@watford.gov.uk.

Report approved by: Alan Gough, Head of Environmental Services

3.0 **DETAILED PROPOSAL**

3.1 In July 2011 the Law Commission – an independent, statutory law reform body – announced that it would:

“Review the law relating to the regulation of taxis and private hire vehicles, with a view to its modernisation and simplification, having due regards to the potential advantages of deregulation in reducing the burdens on business and increasing economic efficiency”.

3.2 The announcement was the culmination of a short sequence of events involving a judicial review application by one local authority against another council’s licensing policy and an Inquiry by the Transport Select Committee.¹

3.3 The Commission published its consultation paper on 10 May 2012, and the consultation period ends on 10 September 2012 (having been extended from 10 August 2012). The Commission is expected to publish its final proposals for reform with a draft Bill in November 2013, and it will be for the Government to decide whether to take the proposals forward, and for Parliament to decide whether to enact any of the changes into law.

3.4 The Commission’s consultation document, at more than 240 pages, is too long to reproduce or summarise here without distorting the ideas being presented. However, the main headline features are:

- the distinction between taxi and private hire services should be kept
- local authorities would not be able to limit the number of hackney carriages in their area
- hackney carriages would still be compelled to carry passengers within their licensing area
- hackney carriages would be subject to national minimum standards that local councils could add to in limited aspects
- private hire vehicles would be subject to national mandatory standards that might only be added to by local councils on grounds of safety
- private hire vehicles would be able to operate anywhere in the country through a licensed operator, rather than one licensed by their “home” local authority
- local authorities could issue fixed penalty notices for some contraventions of the new legislation

3.5 Members have previously been supplied with links to the full document and an electronic version of the shorter summary document. A meeting with Law Commission officials was arranged for Members on 30 August 2012 to discuss the provisional proposals in more detail and so the draft response may change in light of that event.

3.6 Officers have drafted a response at appendix 1 for Members to comment upon and endorse. It is anticipated that, perhaps unusually for this Committee, there may be a divergence of views to include in the final response given the complexity and breadth of the Commission’s proposals. Officers will endeavour to reflect any dissenting or

¹ See <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/720/72002.htm> and also the Government’s response at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/1507/150702.htm>.

minority opinions as accurately as possible.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Head of Strategic Finance comments that there are no financial implications arising from this report. Any implications will only become apparent if and when new legislation in this area is framed.

4.2 **Legal Issues** (Monitoring Officer)

4.2.1 As above.

4.3 **Equalities**

4.3.1 As above.

4.4 **Potential Risks**

4.4.1 None

Appendices

Draft response to the Law Commission – Reforming the Law of Taxi and Private Hire Services

Background Papers

Reforming the Law of Taxi and Private Hire Services (www.lawcommission.org.uk)

File Reference

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APPENDIX I

LIST OF PROVISIONAL PROPOSALS AND QUESTIONS

CHAPTER 13 - OVERVIEW OF PROVISIONAL REFORM PROPOSALS		
Proposition/Question Number	Proposition/Question	Comments for consideration by the General Licensing Committee
Provisional Proposal 1	Regulation should continue to distinguish between taxis, which can accept pre-booked fares, be hailed on the street and wait at ranks, and private hire vehicles, which can only accept pre-booked fares. (Page 160)	<p>The current different legislative position of taxis and private hire vehicles is an unnecessary one. While there is a full appreciation of why the legislation was enacted in the 19th and 20th centuries this distinction based only on the relative point in time when the booking was made is outdated and irrelevant. Modern technology has made such advancement in communications and the reality is that individuals on the move can book a private hire vehicle in front of them via the internet, SMS or voice call in the same amount of time as it would to hail a Hackney Carriage or give directions to the driver through the window at a Hackney Carriage Rank.</p> <p>Indeed, the cost of enforcement work by local authorities of this distinction is a diversion from issues such as vehicle quality, misconduct by drivers towards passengers and overcharging.</p> <p>The different treatment of taxis and private hire vehicles is the biggest single interference in the proper function of the market place for the hire of vehicles with drivers. To enable the market to be fully functional, the division should be removed. In its place, local authorities exercising licensing functions should be permitted, if not encouraged, to provide Taxi Ranks at suitable locations and access to those Ranks should be for wheelchair accessible vehicles as defined in the Equality Act 2010. To open up competition further, individuals ought to be able to apply to the Highways Authority, with the agreement of the Licensing Authority, for permission to install ranks on the public highway at their expense.</p>

		In addition, the new single form of licensed vehicle should also be required to have an Operator with whom the contract for the booking is deemed to be made and therefore drivers of licensed vehicles that are immediately booked will need to record the relevant details and/or pass the booking detail to the Operator.
CHAPTER 14 – REFORM OF DEFINITIONS AND SCOPE		
Provisional Proposal 2	London should be included, with appropriate modifications, within the scope of reform. (Page 162)	The influence of the London taxi trade on legislation throughout the rest of the country has been marked in the past – for instance, the resistance to and eventually licensing of private hire vehicles in the capital had an impact in the Home Counties for many years. There is no good reason for excluding London from the same reforms that may apply throughout the country, albeit the strategic regulatory role of Transport for London ought to remain.
Provisional Proposal 3	The regulation of taxi and private hire vehicles should not be restricted to any particular type of vehicle but should rather focus on road transport services provided for hire with the services of a driver. (Page 164)	Restrictions in relation to particular makes and models of vehicles do not promote the effective operation of the market for these services and should not be the focus of the work of licensing authorities. For the market to be effective, Operators of these services should be free to secure the appropriate vehicle within parameters set by licensing authorities.
Question 4	Would there be (and if so what) advantages to restricting licensing to motor vehicles that require a driving licence? (Page 164)	Motor vehicles requiring driving licences are not the only mode of passenger-carrying vehicle. This proposal would create a lacuna where the safety of any other vehicle, and the standards of the drivers, would be unregulated.
Provisional Proposal 5	Public service vehicles should be expressly excluded from the definition of taxi and private hire vehicles; and taxi and private hire	We agree that the principle of public service vehicles still being licensed by the Traffic Commissioners is one with which we concur. However, we see no real rationale why taxi and private hire vehicles should be limited to eight or fewer passengers, and in some areas it may be advantageous to licence vehicles for

	vehicles should only cover vehicles adapted to seat eight or fewer passengers. (Page 165)	perhaps up to sixteen passengers. In our view, it is the way in which the vehicle is operated rather than the size of the vehicle that is the issue.
Provisional Proposal 6	References to stage coaches charging separate fees should no longer feature as an exclusion from the definition of taxis. (Page 166)	This proposal is wholeheartedly endorsed.
Provisional Proposal 7	The secretary of State should consider issuing statutory guidance to the Senior Traffic Commissioner about the licensing of limousines and other novelty vehicles to assist consistency.(Page 167)	If larger vehicles are licensed by the licensing authorities rather than the Traffic Commissioners (as outlined in our response to proposal 5), then the latter will licence stretch limousines and other similar vehicles anyway, negating the need for separate guidance from the Secretary of State.
Provisional Proposal 8	The concept of “in the course of a business of carrying passengers” should be used to limit the scope of taxi and private hire licensing so as to exclude genuine volunteers as well as activities where transport is ancillary to the overall service. (Page 168)	This proposal is wholeheartedly endorsed. In fact, the reply referred to in response to question 4 above could be used to circumvent any attempts to misuse this exclusion to avoid control of vehicles and drivers through the provisions relevant to taxis and private hire vehicles.
Question 9	How, if at all, should the regulation of taxi and private hire deal with: (a) carpooling; and (b) members clubs? (page 170)	With the proviso expressed in the reply to question 4 in order to circumvent any attempt to use such an exclusion to avoid the requirements that would otherwise apply to taxis and private hire services the exclusions should be permitted

Provisional Proposal 10	The power of the Secretary of State and Welsh Ministers to set national standards should be flexible enough to allow them to make exclusions from the taxi and private hire licensing regimes. (Page 171)	National minimum standards which could be built upon by local authorities according to different needs and circumstances would be welcome and so this flexibility ought to be allowed.
Provisional Proposal 11	Weddings and funerals should no longer be expressly excluded from private hire licensing through primary legislation. (Page 172)	<p>We believe that licensing should be conducted on a risk basis, with greater regulation being applied to those areas that present the greatest risk. We do not believe that funeral cars represent any significant risk to the public providing they pass the current MOT standards. Unlike PHVs or taxis, passengers are rarely alone in such vehicles with the drivers. It would also logically lead to the need for hearses to be licensed, or to lead to an imbalance where hearses need not be licensed (but which could potentially be carrying mourners) and other vehicles in a funeral cortege would need licensing.</p> <p>Wedding cars are also, in our view, of low risk. Those planning weddings usually select their preferred mode of transport a considerable time in advance, and are able to make an informed decision as to the suitability of the vehicle provider. There is however an argument that the wording of the statutory exemption should be tightened, perhaps to expressly state such exemptions only applied when the vehicle is being used to convey passengers to and from a recognised marriage ceremony and associated celebrations.</p>
Question 12	Would there be merits in reintroducing the contract exemption, by means of the Secretary of State and Welsh Ministers' exercise of the power to set national standards? If so, what modifications could be made to	There is no merit in this proposal. The existence of the exclusion was a distortion to the operation of this market and one that should not be re-introduced. The Secretary of State should be able, with appropriate consultation, to publish regulations (or guidance) setting out the types of services which would not need licensing such as child-minding, patient transport, close-protection transport by Security Industry Authority licensed personnel or prisoner escorts.

	help avoid abuse? (Page 174)	
Provisional Proposal 13	Regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to “streets”. (Page 175)	This proposal is wholeheartedly endorsed. It should apply to anywhere where the public have access as of right or access as of fact. Any future legislation should also make clear that enforcement powers exercised by local authority officers extend to private land for those purposes.
Question 14	Is there a case for making special provision in respect of taxi and private hire regulation at airports? In particular, where concessionary agreements are in place should airports be obliged to allow a shuttle service for passengers who have pre-booked with other providers, or to the closest taxi rank? (Page 177)	No specific comments are made on this proposal.
Provisional Proposal 15	The defining feature of taxis, the concept of “plying for hire”, should be placed on a statutory footing and include: <ul style="list-style-type: none"> (a) references to ranking and hailing (b) a non-exhaustive list of factors indicating plying for hire; and (c) appropriate accommodation of the legitimate activities of private hire vehicles. (Page 181) 	<p>This question of course reinforces the assumption that there will continue to be a two-tier system, which we do not necessarily agree with. If that is the position, then the following is applicable.</p> <p>We are concerned that, whilst a statutory definition would be useful, a non-exhaustive list of factors describing “plying for hire” could lead to stated cases that replicate the current muddled position. In our view, legislation could be framed along the lines of the following:</p> <p>1 (1) The driver (D) of a vehicle that is not licensed as a taxi shall commit an offence if in any place:</p> <ul style="list-style-type: none"> (i) by his conduct or (ii) by his use of the vehicle

		<p>he arranges or encourages passengers to make a booking directly with him for the hire of the vehicle to be driven by him or someone other than the passenger (P) for money or money's worth.</p> <p>(2) D shall commit an offence if in any place he uses a vehicle that is not licensed as a taxi to carry P for money or money's worth unless:</p> <p>(i) D is licensed as a private hire operator and has made arrangements for P to hire the vehicle other than in person prior to the start of the hiring or</p> <p>(ii) P has hired a vehicle directly from a private hire operator without any involvement of D.</p>
Provisional Proposal 16	The concepts of hailing and ranking should not cover technological means of engaging taxi services. (Page 181)	We would agree that hailing and ranking are activities conducted in person and therefore the technological means of engaging taxi services are irrelevant.
Question 17	Would there be advantages to adopting the Scottish approach to defining taxis in respect of "arrangements made in a public place" instead of "plying for hire"? (Page 182)	If a two-tier arrangement is maintained, then we would agree this would be a better basis for defining the use of taxis in a public place and matches our response to provisional proposal 15.
Provisional Proposal 18	The concept of compellability, which applies exclusively to taxis, should be retained. (Page 182)	This proposal is endorsed. Your proposal would see this requirement as substantially the same as in the current law, which at present requires drivers without reasonable excuse to carry passengers anywhere within the district that they are licensed. However we feel that any new legislation should make the requirement clear, specific and enforceable.

Provisional Proposal 19	Pre-booking would continue to be the only way of engaging a private hire vehicle and cover all technological modes of engaging cars. This is without prejudice to the continued ability of taxis to be pre-booked. (Page 183)	The retention of the archaic distinction in law between private hire and taxi vehicles is not supported and will not meet the test of time and continue to divert licensing officer resources away from more important aspects of this licensing framework. The absence of a record of taxi bookings made directly with the driver is also a loophole which any revision of the law should address. The creation of a single form of licensed vehicle and in respect of which the local authority can designate taxi ranks and determine access to those ranks is a more straight forward licensing framework and has the capacity to last without revision.
Provisional Proposal 20	Leisure and non-professional use of taxis and private hire vehicles should be permitted. There would however be a presumption that the vehicle is being used for professional purposes at any time unless the contrary can be proved. (Page 184)	This proposal is wholeheartedly endorsed. The current provisions are perverse in this regard and a licensed vehicle should be permitted to be 'out of service' for other purposes as determined by its owner/keeper. The proposition referred to in the replies about to require all bookings of vehicles and all immediate hirings of vehicles to be logged with an Operator will provide the mechanism by which alternative uses can be permitted.
Provisional Proposal 21	The Secretary of State and Welsh Ministers should have the power to issue statutory guidance in respect of taxi and private hire licensing requirements. (Page 185)	DfT has published non-statutory guidance on taxi licensing as well as the guidance on the factors to be taken into account when considering if a service is private hire or not. We have found this advice useful and would see it being elevated to the form of statutory guidance as a helpful indicator of nationally consistency. Any guidance must be subject to proper consultation and revision requirements.
Provisional Proposal 22	Reformed legislation should refer to "taxis" and "private hire vehicles" respectively. References to "hackney carriages" should be abandoned. (Page 185)	The reformed legislation should refer to a single form of licensed vehicle and the preference would be for this to be "Taxi".

Question 23	Should private hire vehicles be able to use terms such as “taxi” or “cab” in advertising provided they are only used in combination with terms like “pre-booked” and did not otherwise lead to customer confusion? (Page 186)	<p>If there is a single-tier system, this question would not of course arise. This proposal in a two-tier system then runs counter to proposal 22, whereby the legislation would define the two types of vehicle but allowing both to use the same terms for advertising purposes. In our view this would lead to considerable confusion amongst the public and operators.</p> <p>The proposals set out in the above replies to the Commissions provisional proposals and questions would dispense with restrictions on such terms and the anomalies this creates. The Commission should also examine the possibility of restricting the use of this term so that other businesses do not use it eg parcel delivery companies.</p>
A REFORMED REGULATORY FRAMEWORK		
Provisional Proposal 24	Taxi and private hire services should each be subject to national safety requirements. (Page 188)	It does seem illogical that a taxi in Penzance can have different safety standards to one in Carlisle when they are both doing the same job. There seems nothing inherently wrong with subjecting licensed vehicles (whether one or two-tier) to the same minimum standards. However, we would be concerned by a rush to the lowest common denominator and would like to see a phased approach of perhaps five years to allow those areas with lower standards to come up to a nationally recognised minimum.
Provisional Proposal 25	National safety standards, as applied to taxi services, should only be minimum standards. (Page 189)	This has merit and would avoid licence-holders seeking out those authorities within a region with lower standards in order to get licensed and provide the national consistency that we refer to above. We think there is a strong case for allowing local discretion for additional standards such as signage but in order to maintain consistency the legislation should set the parameters within which any additional conditions can be made.
Provisional Proposal 26	National safety standards, as applied to private hire services,	The appropriate level for standards to be set is locally where they can respond to the demands from the local population and businesses who use those services.

	should be mandatory standards. (Page 189)	
Provisional Proposal 27	Private hire services would not be subject to standards except those related to safety. Requirements such as topographical knowledge would no longer apply to private hire drivers. (Page 190)	This is illogical and would be a retrograde step. The professionalization of licensed drivers through requirements such as English language, topography and driving skills is a major contribution to advancement of this sector of the economy. Hundreds of licensed drivers nationally have secured recognised qualifications and it is hard to envisage that this would have occurred without the general development of skills and competencies among this section of the community.
Question 28	Should local standard-setting for private hire services be specifically retained in respect of vehicle signage? Are there other areas where local standards for private hire vehicles are valuable? (Page 190)	Local standard setting by local authorities for signage should be retained. Centrally set standards for other criteria would help develop a level playing field although there may be concerns about the speed of any necessary reforms once the legislation is in place.
Question 29	What practical obstacles might there be to setting common national safety standards for both taxis and private hire vehicles? (Page 191)	Getting consensus from the large number of licence-holders, local authorities and other interested parties would present a challenge in setting common safety standards, but perhaps no less a challenge than many other areas of public policy and regulation. Any significant rise in standards would need a lead-in time to allow the industry to address those changes.
Question 30	Should national conditions in respect of driver safety be different for taxi services compared with private hire services? (Page 192)	On the assumption that there is still a distinction between the two halves of the trade, we do not think national conditions should be different when considering taxi and private hire driver safety. We believe drivers are equally at risk regardless of driving a taxi or a private hire vehicle, although drivers in some areas of the country may be at significantly more risk than others and this in turn may be reflected in the make or model of vehicle being driven.

Provisional Proposal 31	The powers of the Secretary of State and Welsh Ministers to set national safety standards in particular should only cover conditions relating to safety (Page 192)	The proposition of the Secretary of State usurping the current role of local licensing authorities is not welcomed.
Provisional Proposal 32	The powers of the Secretary of State and Welsh Ministers to set national safety standards should be subject to a statutory consultation requirement. (Page 193)	The proposition of the Secretary of State usurping the current role of local licensing authorities is not welcomed. However, if it is pursued, there must be a consultation requirement prior to determination of those standards.
Question 33	What would be the best approach for determining the content of national safety standards? In particular should the statutory requirement to consult refer to a technical advisory panel? (Page 193)	Irrespective of whether this is pursued, the setting of safety standards should be evidence based and provide for local circumstances to be integrated into such considerations.
Provisional Proposal 34	Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards. (Page 193)	We agree that minimum standards could usefully be set at a national level to provide consumer confidence, industry reassurance and to eliminate inconsistency. We also strongly agree that local authorities ought to have a power to set conditions that are appropriate for its local area, which could include for instance specific customer care skills in tourist areas, disability awareness training etc.
Question 35	Should there be statutory limits to licensing authorities' ability to set local taxi standards? (Page 194)	Any restriction on the decisions of a local authority exercising licensing powers is already the subject of judicial oversight and this should continue as at present. If there is to be a role for the Secretary of State it should be issue statutory guidance

		in the area of actions by licensing authorities that could severely harm the operation of the market for these services.
Question 36	Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators? (Page 194)	This power should remain as at present. Conditions may correct specific local issues, or It may be appropriate in some case as a remedial power. Breaches of conditions should, in the future be capable of being dealt with through the penalty notice procedure as an alternative to prosecution.
Question 37	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)	There is advantage in areas of the country where there are two tier authorities for a general duty on the highway and licensing authorities to co-operate to ensure their roles are facilitated. Other than this, the appropriate level of cross-boundary standard setting and joint working should be left to local decision-makers.
Provisional Proposal 38	Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting. (Page 196)	There would be no objections to any voluntary arrangements between neighbouring licensing authorities but in any event there are existing provisions for the creation of joint boards to administer licensing functions.
Provisional Proposal 39	Licensing authorities should have the option to create, or remove, taxi zones within their area. (Page 196)	This proposal is wholeheartedly endorsed. This power would provide measures to support transport provision where otherwise it might otherwise not be without the benefit of zoning.
Question 40	Would it be useful for licensing authorities to have the power to issue peak time licences which may only be used at certain times of day as prescribed by the licensing authority? (Page 197)	The creation of peak time licences is not supported. The investment in vehicles by their owners could be adversely affected by permitting individuals to enter the market at peak times and for very little overall advantage to the waiting time for passengers there would be a significant impact on the existing suppliers to maximise the income generation in order to meet their capital costs. Given the proposals that non-licensed drivers would be able to drive licensed vehicles when

		“off-duty”, we would either see this idea as being difficult to enforce or “off-duty” vehicles being unfairly targeted by enforcement officers.
Provisional Proposal 41	Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by a particular licensing authority. (Page 198)	<p>The existing legislation does not restrict operators from accepting or inviting bookings only within a particular locality and we see no reason for this to change.</p> <p>We see no objection to an operator licensed by Council X using a driver licensed by Council Y and in a vehicle licensed by Council Z with one fundamentally important caveat that Council X has the full powers of enforcement over those licences, including suspension, revocation, use of fixed penalty notices and prosecution whilst being used in their area. This must suggest that common standards are applicable across the country in relation to drivers and vehicles to ensure that drivers and vehicles deployed by the same operator (let alone within the same area) offer the same level of protection to the public.</p>
Provisional Proposal 42	We do not propose to introduce a “return to area” requirement in respect of out-of-area drop offs. (Page 199)	The power to require this should be a matter that can be within the scope of the Secretary of State to introduce a Statutory Instrument if circumstances necessitate this in the public interest (based on the operation of the market while also seeking to secure transport provision in local areas).
Provisional Proposal 43	Licensing authorities should retain the ability to regulate maximum taxi fares. Licensing authorities should not have the power to regulate private hire fares. (Page 200)	This proposal is wholeheartedly endorsed. All fares should be displayed in the same manner throughout the country, and the fare tariffs between authorities ought to have as much commonality as possible whilst allowing for local variations. Every authority would calculate its maximum fares to fit in with a national template set by the Secretary of State – for example, for journeys at night, for journeys under 10 miles, for journeys taking less than 30 minutes etc. In that way consumers would be able to compare like-for-like.
Question 44	Should taxis be allowed to charge a fare that is higher than the metered fare for pre-booked journeys? (Page 200)	On the basis of the proposal outlined in the response to proposal 43, the permissibility of fares above the metered fare should be permitted provided that standards or conditions make sure that consumers are aware of when this will happen.

REFORM OF DRIVER, VEHICLE AND OPERATOR LICENSING		
Question 45	<p>Should national driver safety standards such as the requirement to be a “fit and proper person” be either:</p> <p>(a) set out in primary legislation; or</p> <p>(b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? (Page 203)</p>	<p>The fit and proper person test is a subjective one which in our view allows inconsistencies to creep in between licensing authorities which in terms can affect local taxi markets with drivers often preferring those authorities with the lower standards.</p> <p>We would recommend that the “fit and proper” test is replaced by a more objective one. The legislation should specify some basic minimum requirements (eg driving experience, precluded previous criminal convictions, disability awareness training and medical requirements) that apply nationally. The legislation should indicate whether the DSA test should be a mandatory element of licensing. The legislation should allow licensing authorities to add to those requirements in terms of topographical knowledge tests or standards of English that meet their own particular area’s needs.</p>
Provisional Proposal 46	<p>Vehicle owners should not be subject to “fit and proper” tests and the criteria applied would relate solely to the vehicle itself. (Page 204)</p>	<p>While this presumption is accepted as a principal, in the exceptional circumstances that the vehicle owner has relevant convictions related to the maintenance of vehicles, the use of stolen property relevant to vehicles and/or the non payment of vehicle excise duty it would be relevant to consider these matters. These offences, like the ones above, should be specified in legislation rather than left to local authorities to divine.</p>
Question 47	<p>Should national vehicle safety standards be either:</p> <p>(a) set out in primary legislation; or</p> <p>(b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? (Page 205)</p>	<p>National vehicle safety standards (subject to those areas reserved for local authority discretion) should be included in general conditions to provide for greater flexibility for reform as circumstances change.</p>

T Provisional Proposal 48	Operator licensing should be retained as mandatory in respect of private hire vehicles. (Page 206)	This proposal is wholeheartedly endorsed. Indeed, the booking/hiring of taxi vehicles should also be deemed to be through an Operator who must then keep records of those hirings/bookings. In this way the advantages of such records being kept can be extended to all such licensed vehicles. However, an exemption could be made for sole operators, providing they are registered as such with the licensing authority.
Question 49	Should operator licensing be extended to cover taxi radio circuits and if so on what basis? (Page 208)	The idea of extending operator licensing is supported and should be extended to all hirings/bookings of taxis although again a simple registration should be available for sole operators.
Provisional Proposal 50	The definition of operators should not be extended in order to include intermediaries. (Page 209)	This proposal is wholeheartedly endorsed.
Question 51	Should "fit and proper" criteria in respect of operators be retained? (Page 209)	We would suggest that a similar approach is adopted for operators as we suggest for drivers. Indeed, given the range of material these businesses have, there should be an extension of licensing to controllers engaged by the Operators. Significant amounts of data about the activities and lifestyles of vulnerable adults and children will be held by Operators (and handled by those controllers). As such, they can be occupations sought out by those seeking to take advantage of those individuals and checks on the criminal records and other data held by the Criminal Records Bureau would be appropriate.
Provisional Proposal 52	Operators should be expressly permitted to sub-contract services. (Page 210)	This proposal is wholeheartedly endorsed. Auditable records of such sub-contracting arrangements should exist. We also see no reason why operators could not sub-contract to taxi operators or even public service vehicle operators in appropriate cases.
Question 53	Where a taxi driver takes a pre-booking directly, should record-	We agree that this ought to be a mandatory requirement where working through an operator. This may be onerous when applied to a sole operator, whether

	keeping requirements apply? (Page 210)	working in the hailing or rank market but believe that this could be overcome by a compulsory requirement for a taximeter receipt to be given to all passengers, and the record of the journey recorded on the taximeter for use by enforcement bodies if required at a later date.
REFORMING QUANTITY CONTROLS		
Provisional Proposal 54	Licensing authorities should no longer have the power to restrict taxi numbers. (Page 213)	<p>Whether or not licensing authorities should have this power depends on their role within any future legislation – are they there as regulators for public safety, or enablers and facilitators of the local market? The latter position would be increasingly at odds with most modern licensing legislation which stipulates that demand is not an area with which the regulatory body ought to be concerned.</p> <p>The present position has of course led to the growth of a whole “unmet demand” industry and a canon of associated case-law which in many areas has also damaged the relations between the trade, local councils and often the public.</p> <p>We would suggest that the Secretary of State should instead set out in regulations a maximum number of taxis and private hire vehicles, on a population pro-rata basis and including wheelchair-accessible vehicles in consultation with the local authority, that could be licensed by that local authority. Special considerations could apply to large metropolitan areas, tourist areas and areas with air or sea ports, or other criteria such as a higher percentage of taxi users than elsewhere. These figures should be reviewed centrally by government every five years, although it would also be open to a licensing authority (after consultation with the local trade) to apply for the Secretary of State to increase their maximum number during that period on the basis of a change in the locality, such as substantial new housing accommodation or the opening of a significant new tourist attraction. This would also allow local authorities to plan other services around the taxi trade, such as the development of their night-time economy, installation of new taxi ranks etc.</p>

Question 55	What problems (temporary or permanent) might arise if licensing authorities lost the ability to restrict numbers? (Page 213)	Our above proposals would see challengeable restrictions being placed on local taxi markets, providing some certainty for most taxi operators and to stop local markets from being flooded.
Question 56	Should transitional measures be put in place, such as staggered entry to the taxi trade over a scheduled period of time, if quantity restrictions are removed? (Page 215)	Transitional provisions should allow for either an increase or decrease in licensed vehicles where the market has to adjust to the allocated number as suggested in our answer to question 55. Where there is an increase, it should be introduced by the licensing authority as it thinks fit – either on a phased or immediate allocation of licences. Any decrease should be allowed to develop naturally.
TAXI AND PRIVATE HIRE REFORM AND EQUALITY		
Question 57	Should there be a separate licence category for wheelchair accessible vehicles? This could involve (1) a duty on the licensee to give priority to disabled passengers; and (2) a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles. (Page 217)	There is no necessity to yet further complicate the licensing regime set out in the proposals from the Commission although the proposal that licensees give priority to disabled passengers is one that we would support. A specific duty to have regard to the transport needs of people with disabilities/users of wheelchairs in determining the extent of, location of and access to Taxi Ranks in their area would seem appropriate.
Question 58	Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards? (Page 217)	Without some incentive (such as lower fees or that the licensing authority must licence a specific number of wheelchair accessible vehicles) it is unlikely in our view that the market itself will cater for that demand. This proposal has some attraction. The principal that the costs of licensing of taxis is fully recoverable from licensees (and applicants for licences) should be repeated in legislation.

Question 59	Do you have any other suggestions for increasing the availability of accessible vehicles, and catering for the different needs of disabled passengers? (Page 217)	The supply of licensed vehicles for pre-booking will respond to demand for those vehicles if the market operates effectively. As such, the issue is primarily one of providing accessible vehicles at designated Taxi Ranks. This added value of accessing these ranks for drivers of accessible vehicles is the mechanism to positively influence the market in individual local areas.
Provisional Proposal 60	We do not propose to introduce national quotas of wheelchair accessible vehicles. (Page 218)	We refer to our response to question 54, although an alternative approach could be for the revised legislation to set out the list of factors an authority ought to take into account when deciding its' own level of wheelchair accessible vehicles.
Provisional Proposal 61	National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training. (Page 219)	We would support this proposal in line with our response to question 59.
Provisional Proposal 62	In order to better address concerns about discrimination, taxis and private hire vehicles should be required to display information about how to complain to the licensing authority. (Page 219)	This proposal is wholeheartedly endorsed. If this is to be valuable though the role of the licensing authority to control standards locally must be retained. If the Commission wishes to pursue this proposal we would urge it to also provide for Operators to consider complaints against drivers/vehicles deployed by them. We require operators to have a complaints policy (amongst other policies) and would recommend this is adopted in a national scale). It is only appropriate that the Operator is the first contact point for most complaints rather than bypassing them and coming straight to the licensing authority. It is though understood that certain complaints should be submitted directly to the authority.
Question 63	What would be the best way of addressing the problem of taxis ignoring disabled passengers seeking to hail them? Could an obligation to stop, if reasonable and safe to do so, in specified circumstances, help? (Page 220)	This has only limited merit, as it would seem to us nearly impossible to enforce particularly it is proposed that the driver needs not always be licensed when it is being driven for social or domestic purposes. If this proposal is implemented, it would also have to include a concept of compellability which regrettably would be as difficult to enforce as the present situation. Under a one-tier system all vehicles could be compelled to stop when on duty,

		regardless of the status of the prospective passenger, and we believe this would be far easier to understand and to enforce. Alternatively, all taxis would be required to stop for able-bodied or disabled passengers.
REFORMING ENFORCEMENT		
Question 64	Should authorised licensing officers have the power to stop licensed vehicles? (Page 222)	This power should apply to licensing authority officers in relation to licensed vehicles or those they reasonably suspect to be acting as an unlicensed vehicle. Appropriate safeguards (such as training, or accreditation by VOSA or the chief constable for the area) could be instituted. In addition, provided it is only used where reasonable to do so and for public safety reasons, they should have the power to direct a driver with a vehicle to a local testing depot.
Question 65	What more could be done to address touting? Touting refers to the offence “in a public place, to solicit persons to hire vehicles to carry them as passengers”. (Page 223)	Touting is currently an arrestable offence, enforceable by the police. It should become a fixed penalty offence that could be dealt with by the licensing authority’s officers. In certain circumstances, touting could help dispersal of large numbers of individuals in one place and as such it may be more appropriate to require touting to be authorised by the local licensing authority, perhaps by way of some form of temporary derogation.
Question 66	Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules? (Page 223)	This power would greatly assist in the enforcement of licensing requirements. However, an alternative to this could be the issuing of penalty notices for such breaches. The immediate nature of the response is the key issue.
Question 67	Should licensing authorities make greater use of fixed penalty	A range of penalty notice provisions are mentioned above. These relate to most of the offence provisions under the current legislation and for breaches of

	schemes and if so how? (Page 225)	<p>conditions attached to licences. Existing fixed penalty notices allow for offenders to either challenge the allegation in court, or to discharge their liability through payment of the appropriate penalty. We believe that licensing authorities ought however to justify the revocation or non-renewal of a licence once a “trigger level” of FPNs have been issued and accepted by an individual to ensure the scheme has teeth.</p> <p>The revised legislation ought to have provision for licensing authorities to add additional conditions during the course of a licence where it is reasonably necessary to do so. Alternatively, licensing authorities should be able to make use of the provisions in sections 42 and 46 of the Regulatory Enforcement and Sanctions Act 2008 (discretionary requirements and stop notices respectively)</p>
Provisional Proposal 68	Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas. (Page 225)	This would be an essential requirement if operators were able to use drivers and vehicles licensed by other authorities and would be useful in maintaining and pooling resources between authorities without the need for any formal arrangements. The Commission should consider in its final report whether enforcement officers are able to exercise those powers outside of their own licensing area and, if so, whether that should also extend to those vehicles that are reasonably believed not to be licensed.
Question 69	Should cross-border enforcement powers extend to suspensions and revocation of licences? If so, what would be the best way of achieving this? (Page 226)	As we suggest in our response to provisional proposal 41, local authorities must have teeth in their own area if drivers and vehicles licensed by other operators are to be allowed to freely operate in those areas.
REFORM OF HEARINGS AND APPEALS		
Provisional Proposal 70	The right to appeal against decisions to refuse to grant or renew, suspend or revoke a taxi or	This proposal is wholeheartedly endorsed.

	private hire licence should be limited to the applicant or as appropriate, holder of the relevant licence (Page 230)	
Provisional Proposal 71	The first stage in the appeal process throughout England and Wales, in respect of refusals, suspensions or revocations should be to require the local licensing authority to reconsider its decision. (Page 231)	We agree that this provision makes considerable sense, and is likely to save considerable time and expense for both parties. We believe that the duty to reconsider should be placed upon the licensing committees established under the Licensing Committee 2003, who may decide to either delegate to another Council officer or to a sub-committee of that committee.
Provisional Proposal 72	Appeals should continue to be heard in the magistrates court. (Page 232)	We would recommend that appeals should no longer be heard in the magistrates' court, whose expertise is mainly in criminal law rather than administrative and regulatory law. We would recommend that any appeal route in new legislation should be to the General Regulatory Chamber of the First-Tier Tribunal which of course already covers transport, local government standards and some licensing areas.
Question 73	Should there be an onward right of appeal to the Crown Court? (Page 233)	If the initial appeal is to the General Regulatory Chamber then the appeal route would of course be to the Upper Tribunal.

*PART A

Report to: Licensing Committee
Date of meeting: 6 September 2012
Report of: Head of Environmental Services
Title: Minor licensing policy amendments

1.0 **SUMMARY**

1.1 The licensing team is in the process of implementing a number of changes to its business practices in order to improve service delivery for customers and efficiency. In order to fully implement the proposals a small number of policy changes have been identified that require consideration.

2.0 **RECOMMENDATIONS**

- 2.1 That from 1 October 2012 applicants for hackney carriage or private hire vehicle licences shall be required to produce a valid MOT certificate for the vehicle issued within the previous thirty days, and that Certificates of Compliance are no longer accepted.
- 2.2 That officers suspend the hackney carriage licence or private vehicle licence of a vehicle that has been damaged in an accident until such time as the damage is repaired or, if mechanical damage is involved, a valid MOT certificate has been produced to officers.
- 2.3 That applicants for a hackney carriage driver's or private hire vehicle driver's licence be required to submit with their applications certificates to show they have passed an appropriate assessment by the Driving Standards Agency and the Council's Knowledge Test, neither of which may be more than six months' old at the time of submitting the application.

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension: 8429 or email jeffrey.leib@watford.gov.uk

Report approved by: Alan Gough, Head of Environmental Services.

3.0 **DETAILED PROPOSAL**

3.1 As part of Service Prioritisation a review of the licensing functions was undertaken to improve service to customers and identify any savings possible. This project worked along two lines. The first being a business process redesign exercise to identify improved ways of working in line with Lean principles. The second stage was a review of the non statutory, wider corporate work.

3.2 The general findings of the review was that delivery of the front end of the licensing processes would be more effective and efficient if performed by the licensing team rather than the CSC in conjunction with the following changes:

- the team needs to be generic to deliver effectively,
- a move to more applications being made on line
- effective validation of applications so that fewer incorrect applications are submitted.
- policies need to be simple and consistently applied.

3.3 What this means in practice is that from October:

- the primary source of information for customers making applications will be the Council website, rather than directly to officers or to the CSC
- procedures have been simplified as far as possible so that customers are aware of what needs to be produced at the time of making applications, and that incomplete applications will be rejected
- licensing advice and information will no longer be provided via the CSC (although they will signpost customers to information on the website)

wherever possible, applications will be made electronically or in person to the licensing team at Wiggshall depot.

3.4 During the re-design process it became apparent that a small number of minor policy changes were required that are beyond the powers already delegated to officers. The Committee is therefore asked to approve the changes that are set out below.

3.5 Driver representatives have been consulted at various stages throughout the process, including a stakeholder engagement morning on 2 August 2012. Any suggested modifications to processes have been taken into account.

4.0 **POLICY CHANGES**

4.1 Licensed vehicles

For many years, the Council has had the use of an exemption certificate from the Secretary of State so that licensed vehicles could be tested to the Council's standards and be issued a Certificate of Compliance, rather than a normal MOT certificate.

4.2 Unlike MOT certificates, the Certificates of Compliance do not appear on the national Driver and Vehicle Licensing Agency database. Licensees cannot renew their car tax online through direct.gov unless they additionally pay for an MOT certificate, and police officers often stop drivers on suspicion of not having a valid MOT certificate when in fact they have a valid Certificate of Compliance.

4.3 Officers would recommend that in future licensees are only required to possess an MOT certificate, which has the additional benefit of being a maximum £54.85

compared to the £66 test fee charged by the Council (and which does not result in any financial loss to the Council). Licensees would still be required to obtain their MOT certificate from one of the Council's three nominated garages, (although this would be kept under review) and they would attend the Council depot for an additional vehicle examination by officers. The vehicle examination would concentrate on items such as signage, safety equipment, taximeters etc. This would not dilute the licence inspections in any way but separate them into two components including the opportunity for proper engagement with the Driver by the Licensing team which it is envisaged could improve compliance.

- 4.4 At present, vehicle licences expire at the end of a calendar month, and so a vehicle that is tested for the first time in April, for example, will expire on 31 March the following year. As an MOT certificate can be renewed up to 30 days in advance, licences can now be issued to expire on the day that they are actually issued. MOTs would only be accepted by officers if they have been issued within the previous thirty days.
- 4.5 Apart from the cash savings to licensees, officers also expect that the new process will reduce the average processing time for a vehicle licence from 22 days for hackney carriages and 30 days for private hire vehicles to just two working days. As licences will be issued immediately to applicants in person on completion of all the required formalities, there will be no longer be any ancillary costs associated with sending licences by post. Officers will not need to take time in issuing replacement Certificates of Compliance in cases of loss or theft as duplicate MOTs will be issued by the examining garage, and it will also be easier to renew the vehicle tax in person at a Post Office or online with an MOT rather than a Certificate of Compliance.
- 5.0 Accidents to vehicles
- 5.1 There is a legal requirement for accidents to licensed vehicles to be notified to the Council within 72 hours. Officers have adopted a process over the years to ensure that licensed vehicles damaged in accidents are suitable to convey the public. The review has indicated a need for that process to be streamlined.
- 5.2 Officers recommend that a new policy is introduced. Once an accident is reported, the licence will be suspended until an appropriate inspection can be undertaken. This will either be by officers where the damage relates to signage, livery, aerials, licence plates or rear lights, or an MOT test in all other cases (which will normally be recoverable through insurers). Once the inspection has been satisfactorily completed, the licence will be restored.
- 6.0 Licensed drivers
- 6.1 Current policy requires that an applicant for a hackney carriage or private hire vehicle driver's licence must pass the Driving Standards Agency test and Council Knowledge Test before a licence can be granted. These are currently taken once or whilst an application has been accepted and validated as correct by officers, and whilst Criminal Records Bureau and DVLA checks are being conducted.
- 6.2 From 1 October 2012, candidates will have to pass the Knowledge Test and DSA test prior to submitting their application. This will reduce the time officers spend dealing with an application and will reduce the number of times candidates have to contact officers.

6.3 To ensure that candidates' competency is kept up-to-date in those areas, officers recommend that the Knowledge Test and DSA test certificates should only be accepted if issued within the six months prior to them submitting their licence application.

7.0 **IMPLICATIONS**

7.1 **Financial**

7.1.1 The Head of Strategic Finance comments that there are no financial implications arising from this report. The new processes, as identified in the relevant project initiation document, will contribute to cashable savings of £38,000.

7.2 **Legal Issues** (Monitoring Officer)

7.2.1 The Head of Legal and Property Services comments that there are no legal issues arising from this report

7.3 **Equalities**

7.3.1 Watford Borough Council is committed to equality and diversity as an employer, service provider and as a strategic partner. In order to fulfil this commitment and its duties under the Equality Act 2010 it is important to demonstrate how policies, practices and decisions impact on people with different protected characteristics. It is also important to demonstrate that the Council is not discriminating unlawfully when carrying out any of its functions

7.3.2 The following table shows which of the policy changes has the potential to impact on each of the protected characteristics set out in the Equalities Duty. A crossed item indicates where officers believe there is unlikely to be an impact, and a tick where they is the potential for an impact.

	<i>MOT certificates¹</i>	<i>Suspending vehicle licences after accidents</i>	<i>Requiring DSA and Knowledge Test certificates before application²</i>
<i>Age</i>	X	✓	X
<i>Disability</i>	X	X	X
<i>Gender reassignment</i>	X	X	X

¹ MOT certificates are required for nearly every vehicle on UK roads. As this is a legal requirement applicable to vehicles rather than people it is not perceived as being discriminatory.

² This does not represent a change in the Council's requirements for new applicants, but a change in the order in which the application itself is made.

<i>Pregnancy or maternity</i>	X	X	X
<i>Race</i>	X	✓	X
<i>Religion or belief</i>	X	✓	X
<i>Sex</i>	X	X	X
<i>Sexual orientation</i>	X	X	X

7.3.3 Data will be collated by the licensing team to monitor suspension notices issued to drivers and, if particular groups receive more suspension notices than others relative to the base population, investigation will be undertaken to assess why.

7.4 **Potential Risks**

No risks have been identified.

Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

- Implementation of Licensing review business process redesign and associated papers.

File Reference

P:/internal/Licensing review

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