

REPORT TO: Licensing Sub-Committee

MEETING DATE: 14 March 2013

BY: Executive Director (Support Services)

SUBJECT: Taxi & Private Hire Car Licensing- Proposals for Change

1 PURPOSE

- 1.1 To present the Sub-committee with the proposed response to the above Consultation on behalf of the Council.

2 RECOMMENDATIONS

- 2.1 That the Sub-Committee approve the proposed response to the Consultation questions and authorise the Corporate Legal Advisor to issue same.

3 BACKGROUND

- 3.1 A report was submitted to the Sub-Committee on 14 February 2013 providing an introduction to the Scottish Government Consultation on Taxi & Private Hire Car Licensing and detailing the various questions being raised as part of that consultation.
- 3.2 The Sub-Committee agreed at the meeting to provide comments on the consultation questions which would inform the proposed response from the Council, and thereafter to accept a further report appending the proposed response for approval.
- 3.3 The proposed response is attached hereto for consideration and approval.

4 POLICY IMPLICATIONS

- 4.1 None. As Licensing Authority, the Council has the power to regulate licensed activities and conditions relative thereto. It has the duty to

respond to, address and enforce any relevant changes to national legislation relative to the licensing regime.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
6.2 Personnel - None
6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Scottish Government Consultation "Taxi & Private Hire Car Licensing-Proposals for Change"- November 2012
7.2 Report to Licensing Sub-Committee 14.2.13

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DATE	12 March 2013

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

East Lothian Council

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

Surname

Forename

2. Postal Address

John Muir House

Brewery Park

Haddington

East Lothian

Postcode EH41 3HA

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

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

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

- (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).

Are you content for your **response** to be made available?

Please tick as appropriate X Yes No

- (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 X Yes No

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

It would appear logical that the power to restrict the number of PHCs should be available. This does not mean that there would automatically be a need to use such a power, but having the power available for use as and when circumstances require it, appears to be an entirely sensible approach.

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?

There will always be the danger of the development of a “black market” in plates where the Trade come to perceive that there is a danger of being squeezed out of business in a particular area as a result of a limit on numbers being introduced. While it would be hoped that the market would, in effect, find its own natural levels, there is a need to be realistic about the potential issues, especially if limits are set which are perceived by the Trade to be particularly low in comparison to current, unlimited levels. The introduction of any such limit would require to be done sensibly and proportionately, in response to a clear problem, and not simply brought in across the board simply because such a power has been given to Licensing Authorities.

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?

East Lothian does not currently require any particular training of PHC drivers. The Council does not consider training to be “necessary” insofar as being a pre-requisite to the grant of a licence, but it is accepted that such training could be useful in particular circumstances, particularly if there is a perceived problem with drivers being unable to carry out their tasks efficiently due to a lack of such training.

There is considered to be merit in the idea of allowing Authorities to introduce training in specific areas where a need is identified. Potential areas for training would include geographical knowledge of the area; advanced driving skills; customer service and “people skills”.

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 clear system of examining current provision/numbers and whether levels are too high or indeed too low. Whether enshrining criteria for such consideration in statute would assist is unclear. Criteria are likely to adapt to local conditions and a statutory structure may be too inflexible to cope with local conditions.

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?

There would be an obvious additional layer of paperwork, in that those tendering for contracts would require to ensure that they had their licence paperwork in order and those awarding such contracts would have an additional requirement to see such licence paperwork as a condition of awarding the contract.

Parties which currently providing such services without the requirement to have a licence will find themselves with an additional expense they are not currently required to meet. They may therefore want to adjust their charges accordingly, which could have obvious knock-on effects for those parties awarding/paying for such contracts.

It is not anticipated that passengers using the services would notice much difference, but they would have the additional reassurance that the company providing their transport had been required to meet the standard of scrutiny required to successfully obtain a licence.

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.)

Such services do not currently require to be licensed. That position would not change under these proposals. The main issue should for-profit

contracts be included within the licensing regime will be to have a clear criteria as to what does and does not constitute “for profit”. It would probably be sensible for some type of definition to be added to the legislation making this proposed change with a view to minimising the potential for confusion and circumvention of the expanded regime.

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).

There has been criticism that the licensing requirements for the same licence seem to vary quite dramatically depending on which authority is issuing the licence. It is, of course, impossible to avoid a degree of variation where a single, national licence regime is not desired and the autonomy of local authorities is to be maintained.

Having mandatory conditions appears to have worked perfectly well in those areas of licensing which have them. There would appear to be a reasonable argument to have at least the basics of the licensing requirements for taxis covered by such conditions, applying country-wide, leaving local conditions to cover area specific matters and requirements.

It is noted that the previously issued recommended conditions have been widely adopted. There would therefore appear to be some precedent for achieving greater consistency in this way.

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

Yes. The terms of the Booking Office Order as currently drafted are seriously flawed and the proposed closure of the current loophole relative to the number of vehicles and the use of mobile/smart phone technology is to be welcomed.

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

Enforcement is a particular issue for East Lothian as there is only one Enforcement Officer in post, and that on a part-time basis. Increasing the emphasis on the criminal law aspect of this regime would be of considerable

benefit to authorities which simply do not have the staff or resources to enforce observance of the rules from an in-house perspective.

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?

The Police currently comment on applications, advise the authority of criminal convictions on the record of the applicant and they will object to the grant or renewal of a licence in cases where they have appropriate concerns. It is unclear whether placing the duty on the Police to carry out these tasks on a formal statutory footing would result in a perceptible improvement in the standard of information provided. However, it seems reasonable to assume that greater clarity on their role would assist the Police in terms of the information they provide to authorities and in particular what should or should not be included.

There is some evidence of a unilateral decision not to include details of old convictions that would be considered “spent” for other purposes. While it is entirely possible that such convictions would not be deemed relevant to the current application, that is a matter for the licensing authority to decide, and they should be provided with a full record of criminal history to enable them to make this decision.

21 days for the provision of such information would appear to be a reasonable timescale in these cases.

The information provided should detail all convictions appearing on the applicants’ record and lay out in detail any concerns which the Police have regarding that person’s suitability for the licence applied for.

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?

Potentially. However, cognisance is required of the work required to create such objectives. Creation of such objectives in the alcohol licensing regime was a very time-intensive task, and there is an obvious danger of there being insufficient resources to produce such objectives within a reasonable timescale, particularly if they are brought in across the full range of Civic licensing regimes.

It is accepted however that the end-result of such a process would doubtless be a worthwhile result at which to aim. This would be a task for the licensing authority, in collaboration with the Police and relevant trade

representatives.

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

There is some merit in having a set of objectives across the entire range of Civic licensing, but it would, inevitably, be a slightly simpler task were they to be limited to specific areas. It is likely that, were the process to be undertaken for a particular area, such as taxis, it would thereafter be a relatively straightforward process to expand the result to cover matters across the board. If the effort is to be made, it would make sense for it to cover the entire regime.

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?**

Guidance would be useful in strengthening consistency in the application process across the country. It is not clear that a power to make regulations on hearings procedures is required, but if there is perceived inconsistency in how authorities deal with such processes then having such a power available would not be inappropriate.

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

The Guidance is at its most useful when it is up to date. A review of the Guidance would no doubt be of considerable assistance.

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?**

The potential is quite high that many applicants would struggle to pass such an onus of proof. Authorities are already seeing an often lamentable failure from applicants in the completion of application forms and the disclosure of prior convictions. Passing the onus of proof of being fit and proper is only going to be workable if there is very clear guidance/definition as to what is

deemed to constitute “fit and proper”. The obvious criterion is a lack of criminal convictions, but of course an applicant is not deemed unfit simply by virtue of having a criminal record- a wider context requires to be considered.

Some demonstration of an understanding of and appreciation of the purpose of the relevant law would be another potential criterion.

It is considered that applicants are likely to be unable to satisfy the onus of proof unless they have access to a clear set of guidelines on the matters they would be required to address. Would a form stating “I am a fit and proper person to hold a licence because I only have three points on my drivers licence” be of any use to anyone?

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?

(a) Licensing Authorities, Police, Government. (b) Yes (c) Shared web-space would presumably widen the availability of information-sharing, as physical meetings are inevitably limited in terms of location, travel conditions and officer time/availability.

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?

Yes. No measure is capable of fully eradicating determined organised crime from an industry, but such proposals would clearly assist in reducing the potential for such a presence.

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?

The obvious method of ensuring easier access is to ensure that no vehicle is given a licence unless it is fully compatible/adapted. There is an obvious divergence between taxis and PHCs at present in that regard, and an equally obvious and potentially prohibitive cost implication in such a solution.

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?

Ultimately, the key is always going to be funding.

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?

There has almost certainly been some impact but it is not easy to determine to what extent any change in provision is directly attributable to the Act.

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)?

None are currently perceived.

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?

The problem is one of resources. A statutory requirement is all very well but unless the authority is provided with appropriate funds to employ and train such staff it is likely to be unworkable

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

Realistically these would be employed by the licensing authority. Once again, without the provision of adequate resources to fund such posts, it is difficult to see how they would be practical.

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?

In our case, simply the general lack of such vehicles in the area.

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

It would remove inconsistency between authorities as to whether such vehicles are licensed or not.

27. What form should a national response take?

If there is a perceived need, amendment of the legislation to specifically require such vehicles to be licensed.

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?

That would depend on what the special event vehicles are being used for. If the contract requires there to be a licence, this is something that the vehicle provider would need to consider in tendering.

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

There is no reason why it should affect it. The exemption is specific to weddings. If the vehicle is not being used for a wedding, the exemption does not apply.

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

Comments