

**REPORT TO:** Licensing Sub-Committee

**MEETING DATE:** 9 June 2016

**BY:** Depute Chief Executive (Resources and People Services)

**SUBJECT:** Scottish Government Consultation - Taxi & Private Hire Car  
Licensing - The Impact of Modern Technology

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## **1 PURPOSE**

- 1.1 To advise the Sub-Committee of the current consultation by Scottish Government on the impact of modern technology on taxi and private hire car licensing and the proposed response thereto.

## **2 RECOMMENDATIONS**

- 2.1 That the Sub-Committee approve the proposed response to the Consultation on behalf of the Council, which is included as an appendix to this report.

## **3 BACKGROUND**

- 3.1 The Scottish Government are presently consulting on a number of issues that impact on Licensing matters. One current consultation relates to the impact of modern technology on the taxi/PHC licensing arena. In particular, the consultation is looking at the current Taxi Booking Office regulations, and the fact that these regulations are specifically premises-based and do not take account of booking by mobile phone or booking apps on smart phones and tablets.
- 3.2 The Booking Office regulations were introduced somewhat hurriedly in 2009 and problems with them were recognised from the outset with regard to those businesses which take bookings via a mobile phone or app and have no “booking office premises” in the traditional sense.
- 3.3 The gist of the consultation questions relate to whether the Booking Office Regulations require to be amended to take account of modern booking methods. The general view which has been expressed by Councils and SOLAR working groups over the years is that the

Regulations do indeed require some form of updating, and the proposed response to the consultation reflects this.

- 3.4 The Consultation is due to close to submissions on 15 June, and so any additions or amendments to proposed responses would require to be decided on within that timescale.

#### **4 POLICY IMPLICATIONS**

- 4.1 None

#### **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

#### **6 RESOURCE IMPLICATIONS**

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

#### **7 BACKGROUND PAPERS**

- 7.1 Consultation Questions

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## Proposed Response to Consultation Questions

1- Yes

Comment- The Booking Office Regulations have never been sufficiently flexible to deal with the modern reality of businesses which deal with booking of taxis but which do not have a recognised “premises” from which such business is carried out.

2- The regime should deal with the business of taxi- booking as a licensable activity, and not restrict itself to the premises from which such business is transacted.

3- There would clearly be an impact in that some businesses which do not currently fall within the ambit of the regime by virtue of there being no “premises” as such would fall into the licensing ambit of an amended regime. It is expected that the trade would approve the increased fairness of such a change, as there has been a degree of irritation from those members of the trade who have been required to licence booking office premises under the current scheme regarding those who have not been so required, due simply to the technology or methodology used to actually take bookings. There would be little obvious direct impact on the public, other than added re-assurance that the business they are booking taxis from are legitimate, properly licensed operations.

4- No

Comment- the figure is somewhat arbitrary, but seems to be a reasonable transition point between very small operations and larger commercial businesses.

5- N/A

6- Impact will be nil if the limit is not changed. If the limit were to be lowered or removed altogether, it would clearly have a potentially adverse impact on the very small and one-man operations in business for themselves, as opposed to the larger operations who are presumably better able to absorb the additional costs of such licensing requirements. If the limit were raised, then arguably there would be more opportunity for larger operations to escape the control that the booking regime is aimed to provide.

7- No

Comment- the current regime is clearly not sufficiently flexible or reflective of modern business practices and the increasing use by the public of online bookings and the use of business apps on smart phones etc.

8- Ideally, the business should be licensed by the area in which it is based. It is recognised that this may be impossible to determine in the case of an online or app-based service. In such cases, it may therefore be more sensible to require a licence for any area in which the business is taking bookings, analogous to the position with street traders- a licence is required for whichever area in which they are carrying on business.

9- A booking business should be able to provide records of all bookings taken, the name of the customer, and the start and end points of the journey booked, as well as the date and time. This information should be stored in a readily accessible form (hard copy or electronic) and be available for examination on request by authorised officers of any relevant licensing authority and Police Scotland.

10- No

11- No

Comment- As before, the current regime needs to adapt to modern business reality.

12- Perhaps. There may be situations where such a position would be deemed beneficial, particularly in areas where fare fluctuations are being noted as a particular issue.

13- No- see next answer.

14- Yes.

Comment- It would be better for individual authorities to deal with such matters at their own discretion as and when a problem is identified, rather than having the matter enforced nationally which would impact on areas where this is not and may never have been a problem.

15- There would clearly be a financial impact on operators if they were required to install meters in vehicles which no currently have or require them. This could have potentially serious implications both for larger operations which have a larger number of vehicles potentially affected, as well as the smaller operators who may only have one vehicle, but who may face significant difficulties in affording the cost of such adaptations. These potential cost penalties would arguably outweigh any perceived benefits in areas which have not had a problem with the fare surge phenomenon.

16- No

17- N/A

18- No

19- N/A

# **Taxi And Private Hire Car Licensing - Consultation on The Impact of Modern Technology**

**March 2016**

## **TAXI AND PRIVATE HIRE CAR LICENSING – CONSULTATION ON THE IMPACT OF MODERN TECHNOLOGY**

### **Background**

1. The Civic Government (Scotland) Act 1982 (the "1982 Act")<sup>1</sup> provides that both a taxi and private hire car are "hire cars". Taxis are able to use taxis ranks and be hailed in the street as well as being pre-booked. However, a private hire car may not ply for hire in this way and must be pre-booked. Drivers of taxis and private hire cars are licensed separately under the 1982 Act.

2. Taxis and private hire cars are licensed by local authorities. The 1982 Act provides the licensing authority is the local authority within whose area the licensed activity takes place. They administer the licensing regime including setting local licensing conditions and, with the assistance of Police Scotland, enforce the licensing regime requirements. Section 3A of the 1982 Act also enables Scottish Ministers to provide mandatory licence conditions for any licensing regime in the 1982 Act.

3. More recently in this area, the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (the "2009 Order") was introduced to increase control and oversight of offices that take bookings for taxis and/or private hire cars. These arrangements allow local licensing authorities to license and regulate taxis and private hire car vehicles, drivers and booking offices to ensure they provide safe services for the public. Licensing authorities are best placed to take local circumstances into account.

4. The Scottish Government consulted on proposals for change in relation to taxis and private hire cars between 2012/2013<sup>2</sup> and the Summary of Consultation Responses is available online<sup>3</sup>. This consultation helped inform the provisions within the recent Air Weapons and Licensing (Scotland) Act 2015<sup>4</sup> (the "2015 Act").

5. During the Parliamentary passage of the 2015 Act, concerns were raised about the impact of modern technology such as smartphone apps on the licensing regime for taxis and private hires, and the Cabinet Secretary for Justice made a commitment to undertake further work to address these issues. Scottish Government officials have carefully considered the issues raised during the passage of the 2015 Act, and have met with stakeholders to seek their views.

### **Other developments in the United Kingdom**

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1982/45/contents>

<sup>2</sup> <http://www.gov.scot/Publications/2012/11/2484>

<sup>3</sup> <http://www.gov.scot/Publications/2013/09/2230>

<sup>4</sup> <http://www.legislation.gov.uk/asp/2015/10/contents/enacted>

6. In 2014 the Law Commission issued a report on taxi and private hire services in England and Wales (see the summary<sup>5</sup> and the report<sup>6</sup>). This report discusses the issue of modern technology in paragraph 3.146 – 3.159 and is now being considered by the UK Government.

7. In August 2015, the UK Government House of Commons produced a briefing on taxis and private hire vehicles<sup>7</sup>. This briefing provides a good summary of current issues, with a useful analysis of the position in terms of licensing across the four nations.

8. This demonstrates that there are concerns regarding the impact of modern technology on taxi and private hire car services not only in Scotland but also in the UK. These issues are also attracting attention worldwide and have generated significant political and media interest.

### **Purpose of Consultation**

9. The Scottish Government is undertaking a variety of work in relation to taxis and private hire cars, this consultation is particularly focussed on the impact of modern technology. Modern technology, such as the advent of smartphone apps allowing you to book a taxi or private hire car directly from a mobile phone, is already having a major impact on the way that taxis and private hire cars operate. It is increasingly clear that we face a changing technological environment, which will challenge existing businesses and regulatory models.

10. The licensing and regulation of taxis and private hire cars is there to protect the public, and the Scottish Government will continue to review the existing legislation to ensure that it operates as effectively as possible.

11. There are clear potential benefits for taxi and private hire companies and consumers in modern technology such as using apps. However in order to safely realise these benefits we need to develop an up to date licensing regime that reflects the technology used in smart phone apps. The Scottish Government would expect any taxi or private hire car business operating in Scotland to comply with the existing licensing requirements set out by the 1982 Act and the 2009 Order and to ensure all vehicles and drivers continue to be licensed. We are not contemplating a fundamental revision of the licensing regime for taxis and private hire cars.

12. We are also aware that the interests of public safety need to be balanced with the need for regulations that are proportionate. In particular we would welcome specific evidence of any adverse effect proposals could have on small operators and any ways this can be mitigated or avoided.

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<sup>5</sup> [http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347\\_taxi-and-private-hire-services\\_summary.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services_summary.pdf)

<sup>6</sup> [http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347\\_taxi-and-private-hire-services.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services.pdf)

<sup>7</sup> <http://researchbriefings.files.parliament.uk/documents/SN02005/SN02005.pdf>

## **Consultation sections**

13. The proposals are split into the following sections:

- The taking of bookings - review of regulations
- Local presence
- Taxi and private hire car maximum fares
- Other concerns.

### **The taking of bookings– review of regulations**

#### **What activity should be regulated?**

14. The 2009 Order was introduced to increase control and oversight of offices that take bookings for taxis and/or private hire cars. The decision was made at the time to limit licensing to physical premises to address concerns that had been raised about enforcement of the regime should a booking office licence not be tied to a specific local authority area. It was also decided to limit licensing to those taking bookings for four or more vehicles to reduce the burdens on business.

15. The 2009 Order has now been in force for 6 years and a variety of concerns have been expressed as to the effectiveness of its provisions:

- It has been suggested the current exemption to the booking office licensing regime, where the number of relevant vehicles in respect of which bookings are taken is three or less, should be amended or removed.
- Views have been expressed that the 2009 Order should now be updated and reviewed to take account of modern technology now used for the taking of bookings. The requirement in the 2009 Order for the use of physical premises in the takings of bookings for the licensing regime to apply the focus on premises, such as booking offices, has presented difficulties where bookings can be taken without the need for any office, as can be the case with smart phone apps and online bookings.

16. However we believe that there does remain the need for the public and regulators to be able to contact a business for the purposes of local regulation and enforcement. There are benefits to customers and others in having a business that is readily accessible, and capable of handling complaints and queries promptly.



**Questions: the regulation of the taking of bookings**

1. Should the current booking office licensing regime be updated and the definition of the licensed activity amended?

Yes No

Comments

2. In what ways should the booking office licensing regime be amended?

Comments

3. What would be the impact for local Licensing Authorities, the trade and the public?

Comments

4. Should the current exemption to the licensing regime for booking offices with three or less relevant vehicles be amended?

Yes No

Comments

5. What should the limit be amended to?

Comments

6. What would be the impact for local Licensing Authorities, the trade and the public?

Comments

7. Should the current position and status quo be maintained?

Yes No

Comments

**Local presence:**

**Where should that activity be regulated?**

17. The licensing requirement in the 2009 Order is activated in respect to premises carrying out the activity of taking booking from members of the public for the hire of a relevant vehicle. An alternative of licensing the activity of taking bookings, without the requirement of doing so from a physical premise, was rejected due to concerns raised about enforcement of the licensing regime. For example if the licensed activity was simply the taking of a booking, it may prove difficult to regulate

someone taking bookings by mobile technology, who might easily move between different licensing authority areas. Issues may arise not only with regards to which licensing authority the person requires a licence from but also how the licensing requirements can be enforced by the licensing authority or Police Scotland. These same issues will still need to be considered.

**Questions: where should the taking of bookings be regulated**

8. If a business is taking bookings where should it be registered? For example should it be registered in every local authority where it takes bookings?

Comments

9. What sort of information or assistance should a business taking bookings be required to provide and to whom?

Comments

10. Do you have other concerns about where the taking of bookings should be licensed?

Yes No

Comments

11. Should the current position and status quo be maintained?

Yes No

Comments

**Taxi and private hire car maximum fares**

**Should all fares be regulated?**

18. Licensing authorities set the scales for taxi and private hire car fares for their area under section 17 and 18 of the 1982 Act. It is an offence for a taxi or private hire car with a taximeter to charge in excess of these fare scales under section 21(5). However this would only apply where the vehicle is fitted with a taximeter, and while taxis will generally have a taximeter, it is not always standard practice for local licensing authorities to require private hire cars to have a taximeter.

19. Concerns have been expressed that operators without a taximeter installed could now increase prices where there is a mismatch of supply and demand; so called surge pricing, resulting in fares far in excess of the usual metered rate. Local

licensing authorities can already agree different fare tariffs to take account of periods such as late night operation or the new year. However surge pricing can result in passengers facing fares many times the usual rate.

20. One option would be for the Scottish Government to apply mandatory conditions such that all relevant vehicles were required to install a taximeter. Alternatively licensing authorities that were concerned about this issue, could impose a condition requiring that a taximeter is installed in all relevant vehicles.

**Questions: Taxi and private hire car fares and the control of fares**

12. Would it be appropriate for taxis and private hire cars to be required to have a taximeter?

Yes No

Comments

13. Should the Scottish Government impose the requirement of a taximeter on all taxis and private hire cars ?

Yes No

Comments

14. Should the requirement of a taximeter for taxis and private hire cars be left instead to the discretion of each local authority?

Yes No

Comments

15. What would be the impact, for example additional costs, of requiring all taxis and private hire car vehicles to install and operate a taximeter. In particular could this jeopardise provision in rural areas?

Comments

16. Are you aware of particular problems with the charging of fares in your local area?

Yes No

Comments

17. Can you suggest, or have you experienced licensing authority good practice in relation to fares?

Yes No

Comments

#### 4. Other Concerns

21: We are keen to hear of any other issues or concerns people may have regarding the impact of modern technology and smart apps on taxis and private hire cars.

**Questions: Any additional concerns or suggestions:**

18. Do you have any additional concerns regarding the issues raised in this consultation?

Yes No

Comments

19. Do you have any suggestions or are you aware of existing good practice, for addressing the issues raised in this consultation?

Yes No

Comments

