

LIST OF PROVISIONAL PROPOSALS AND QUESTIONS

OVERVIEW OF PROVISIONAL REFORM PROPOSALS

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)*

Agree: This preserves operational flexibility and precludes the re-emergence of un-licensed pre-booked only vehicles such as existed prior to pre-booked only Private Hire being regulated.

REFORM OF DEFINITIONS AND SCOPE

Provisional proposal 2

London should be included, with appropriate modifications, within the scope of reform. *(Page 162)*

No response

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)*

Agree – it is sensible to regulate for the service provided rather than type of vehicle

Question 4

Would there be (and if so what) advantages to restricting licensing to motor vehicles that require a driving licence? *(Page 164)*

See response to Question 3.

Provisional proposal 5

Public service vehicles should be expressly excluded from the definition of taxi and private hire vehicles; and taxi and private hire vehicles should only cover vehicles adapted to seat eight or fewer passengers. *(Page 165)*

Agree: However this should not preclude the continued ability to use PHVs and taxis to provide local bus services (which can be flexibly routed and timed demand responsive services) under the Special Restricted PCV licence granted by the Traffic Commissioner (See Paragraph 11.58 of Consultation -Transport Act 1985 ss 12 and 13a).

Provisional proposal 6

References to stage coaches charging separate fares should no-longer feature as an exclusion from the definition of taxis. *(Page 166)*

Agree: However this should not preclude the continued ability of Taxis to charge separate fares under the provisions of S11 of the 1985 Transport Act (see Paragraph 11.57 of the Consultation). Some PTEs use this provision to contract taxi operators to provide demand responsive services to provide transport for areas, links and/or at times where bus services are unsustainable.

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)*

Agree: This is currently a grey area. One option would be if the Limousine is more than 8 seats it should be covered by PCV licensing regime if up to 8 seats it should be covered by taxi legislation.

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)*

Agree in principle, but adding 'for profit' to the definition would be clearer in its intent to exclude Community Transport providers and their trading arms

Question 9

How, if at all, should the regulation of taxis and private hire deal with:

- (a) carpooling; and
- (b) members clubs? *(Page 170)*

- a) excluded where not for profit**
- b) include only where club is for profit and transport is the main activity of the club**

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)*

Agree: Flexibility will allow Ministers to make changes in line with changing circumstances without the need to amend primary legislation.

Provisional proposal 11

Weddings and funerals should no-longer be expressly excluded from private hire licensing through primary legislation. *(Page 172)*

No response

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 help avoid abuse? (Page 174)

Agree: This exemption, where services are provided for 7 days or more, was justified on the basis that contract terms effectively replace licensing requirements. This would reduce administration and increase operational flexibility. However, to avoid abuse the exemption should only apply where the customer is a public sector organisation.

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)

Agree: Public safety is imperative regardless of whether services to the public are being provided on public or private land.

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)

Agree: This follows from Proposal 13. Such provisions may need to cover:-

- provision of clearly marked taxi ranks at airports and stations with agreed maximum number of taxis parking on the rank;
- operation of shuttle services;
- limits on permits issued by stations or airports since this can lead to knock-on congestion in surrounding areas.

Provisional proposal 15

The defining feature of taxis, the concept of "plying for hire", should be placed on a statutory footing and include:

- (a) references to ranking and hailing;
- (b) a non-exhaustive list of factors indicating plying for hire; and
- (c) appropriate accommodation of the legitimate activities of private hire vehicles. (Page 181)

Agree: As discussed this would also facilitate a clear statutory distinction between Taxi and Private Hire.

Provisional proposal 16

The concepts of hailing and ranking should not cover technological means of engaging taxi services. *(Page 181)*

Agree: For simplicity and clarity the method of engaging taxis should remain the principal differentiating factor between plying for hire and pre-booking

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)

Disagree: The statutory definition proposed at 15 should address this issue

Provisional proposal 18

The concept of compellability, which applies exclusively to taxis, should be retained. *(Page 182)*

Agree: Abolishing compellability would render ranking pointless.

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)*

Agree: This maintains a clear distinction between taxis and private hire.

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)

Agree: Subject to the necessary insurance cover and removal/covering of signage and plates.

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)

Agree: Guidance would help licensing authorities and judges to decide cases and improve consistency across different licensing areas.

Provisional proposal 22

Reformed legislation should refer to “taxis” and “private hire vehicles” respectively. References to “hackney carriages” should be abandoned.
(Page 185)

Hackney Carriage is an outdated and no longer required terminology.

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 “prebooked” and did not otherwise lead to customer confusion? (Page 186)

No response

A REFORMED REGULATORY FRAMEWORK

Provisional proposal 24

Taxi and private hire services should each be subject to national safety requirements. (Page 188)

Agree: National minimum safety standards will provide clarity and aid understanding. This also accords with the ability of both Taxis and Private Hires to undertake pre-booked work in any licensing area.

Provisional proposal 25

National safety standards, as applied to taxi services, should only be minimum standards. (Page 189)

Taxis and private hire vehicles are a key part of the wider transport provision in the city regions. Government wants to see more decisions about how transport is provided devolved rather than specified by Whitehall. Whilst we support the setting of national safety standards, there is a need for a degree of additional flexibility so that different areas can set higher standards if they so wish.

Provisional proposal 26

National safety standards, as applied to private hire services, should be mandatory standards. (Page 189)

Agree: to be effective the standards should be mandatory and enforceable

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)

Disagree. In line with 25 locally accountable strategic transport authorities should have the option of setting quality standards for PHVs if this contributes to wider strategic goals for transport policy and the quality of non-private transport provision as part of the wider transport mix.

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)

In line with 27 locally accountable strategic transport authorities should have the option of setting local standards for signage if this contributes to the achievement of their wider policies on Taxis / PHVs

Question 29

What practical obstacles might there be to setting common national safety standards for both taxis and private hire vehicles? (Page 191)

Bottom line standards as suggested in the text should be simple to implement. Objections may be received from local licensing bodies, drivers or operators arguing for a higher local safety standard for Private Hire. This may especially occur where operators have already invested to achieve higher local standards (although see response to 27)

Question 30

Should national conditions in respect of driver safety be different for taxi services compared with private hire services? (Page 192)

No: There is insufficient difference in the service offered to justify this and it facilitates drivers driving both. Minimum standards should be the same for both trades but Licensing Authorities should be able to improve on these in response to local issues.

Provisional proposal 31

The powers of the Secretary of State and Welsh Ministers to set standards for taxis and private hire vehicles should *only* cover conditions relating to safety. (Page 192)

It may be sensible to allow for flexibility in any primary legislation to allow for standard setting in other areas of taxi and PHV standards to respond to any future changes in policy or circumstances

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)

Agree: There is a clear need for minimum national safety standards and these should be subject to consultation with licensing authorities and the taxi trade.

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)

A technical advisory panel could review proposals from Licensing Authorities, operators and other interested parties, consider improvements in vehicle design and technology, relevant data on accidents, incidences of violence against drivers etc. and advise the Minister on appropriate actions.

Provisional proposal 34

Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards. *(Page 193)*

Agree: Taxis and private hire vehicles are a key part of the wider transport provision in the city regions. Government wants to see more decisions about how transport is provided devolved rather than specified by Whitehall. How taxis are provided has knock on implications for rail and bus services which in turn support wider economic, social and environmental goals and policies for the city regions. We would further argue that where agreed locally, the responsibilities for safety and quality standards could better be undertaken by the local strategic transport authority (the PTE or similar body) so that these standards can be set by a body which also oversees other forms of transport provision across major conurbations. The regulatory function could remain with the existing Licensing Authority (or existing Licensing Authorities could also be combined at the city region level.

Question 35

Should there be statutory limits to licensing authorities' ability to set local taxi standards? *(Page 194)*

No: see response to 27

Question 36

Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators? *(Page 194)*

Yes: There may be local factors that require individual conditions.

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)*

In line with our response to 34 a combined licensing authority could generate administrative efficiencies, improve enforcement and be aligned to other key strategic city region transport planning and management functions. Where consolidation is not seen as desirable or sensible then powers and duties to cooperate would be helpful in reducing problems relating to boundaries between licencing authorities

Provisional proposal 38

Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting. *(Page 196)*

Agree: see response to 34 and 37

Provisional proposal 39

Licensing authorities should have the option to create, or remove, taxi zones within their area. *(Page 196)*

Agree: Licensing Authorities should have powers to regulate taxi zones within their areas. Where responsibilities for taxi standards and/or regulation are moved up to a city region body this would be a valuable tool in ensuring an even spread of taxis across the whole of a Metropolitan area.

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)*

Agree: In line with the wider benefits of devolving transport decision-making any additional flexibility is welcome.

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)*

This would logically follow on from the key thrust of the paper's proposal – the deregulation and nationalisation of the legal and regulatory framework for PHVs. There are advantages to this proposal in that it overcomes existing boundary issues, and facilitates more efficient operation. However, in line with our response to 34 devolutionary principles and city region strategic transport planning imperatives should also be reflected in terms of individual areas being able to determine quality standards and a locally appropriate 'offer' on taxi and PHV services

Provisional proposal 42

We do not propose to introduce a "return to area" requirement in respect of outof-area drop offs. *(Page 199)*

Agree: This would be wasteful of resources (subject to principles set out in 34)

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)*

Disagree: in line with response to 34, the option of strategic transport planning authorities having the ability to set a framework for fares regulation for PHVs should be retained.

Question 44

Should taxis be allowed to charge a fare that is higher than the metered fare for pre-booked journeys? *(Page 200)*

No response

REFORM OF DRIVER, VEHICLE AND OPERATOR LICENSING**Question 45**

Should national driver safety standards such as the requirement to be a “fit and proper person” be either:

- (a) set out in primary legislation; or
- (b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? *(Page 203)*

(a) No; (b) Yes: (b) is more flexible in light of changing circumstances over time.

Provisional proposal 46

Vehicle owners should not be subject to “fit and proper” tests and the criteria applied would relate solely to the vehicle itself. *(Page 204)*

Agree: This is the case at present.

Question 47

Should national vehicle safety standards be either:

- (a) set out in primary legislation; or
- (b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions? *(Page 205)*

b) retains flexibility.

Provisional proposal 48

Operator licensing should be retained as mandatory in respect of private hire vehicles. *(Page 206)*

Agree: operators licensing should be retained for both Taxi and Private Hire operators since they are the point of contact at booking.

Question 49

Should operator licensing be extended to cover taxi radio circuits and if so on what basis? *(Page 208)*

Agree: The radio circuit provider is the point of contact with the customer. The definition of operator should be extended to cover taxi radio circuits.

Provisional proposal 50

The definition of operators should not be extended in order to include intermediaries. *(Page 209)*

Disagree: If any person accepting a booking for a Private Hire trip is defined as an operator, then the same should apply to Taxis. Hence the definition of Taxi Operator should also be extended to cover any intermediaries.

Question 51

Should “fit and proper” criteria in respect of operators be retained? *(Page 209)*

Agree – In addition this should be extended to also cover Taxi owner drivers.

Provisional proposal 52

Operators should be expressly permitted to sub-contract services. *(Page 210)*

Agree: Further development of scheduling software will allow operators to pool trips thereby increasing efficiency and reducing costs.

Question 53

Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply? *(Page 210)*

Yes, any pre-booked journey record should be kept either through the booking centre.

REFORMING QUANTITY CONTROLS

Provisional proposal 54

Licensing authorities should no longer have the power to restrict taxi numbers. *(Page 213)*

Disagree: In line with our response to 34 strategic transport authorities should have the option of being able to manage taxi numbers as part of the wider transport strategy for their areas.

Question 55

What problems (temporary or permanent) might arise if licensing authorities lost the ability to restrict numbers? *(Page 213)*

- **Traffic congestion (with all the implications this has for the local economy, air quality standards and journey times for other road users – including local bus services)**
- **Unpredictable impacts on other forms of public transport (with knock on effects for subsidy and support)**
- **In conditions of over-provision then standards could drop as income falls**
- **Harder to police/regulate taxis**
- **Abuse/overcrowding/spilling of existing ranks – requiring more rank capacity**

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)

We do not agree with the premise but agree that if quantity restrictions were to be removed then this seems to be sensible approach. A minimum 3 year period is likely to be necessary.

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)

Yes (with appropriate signage for both taxis and Private Hire vehicles where drivers have completed the disability awareness course proposed in response to Question 59 below): However (1) could be challenging to enforce.

Question 58

Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards? (Page 217)

For vehicles meeting the proposed new category above this should be an option open to licensing authorities but for each area to determine depending on local circumstances, aspirations and wider policies on taxis and PHVs

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)

Drivers badge fees could also be lowered for drivers who have completed an accredited disability awareness training course.

More widely (and in line with our response to 34) PTEs have a track record of promoting more accessible transport (for example through investing in more accessible bus services). The way in which the overall provision of non-private transport (buses, trains, trams, taxis and PHVs) is best determined locally and in a holistic way.

Provisional proposal 60

We do not propose to introduce national quotas of wheelchair accessible vehicles. (Page 218)

Agree – see response to 59

Provisional proposal 61

National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training. *(Page 219)*

Agree: National standards will help to promote such training

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)*

Agree: This approach will also help with other complaints – fares, driving standards, vehicle issues etc.

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)*

Agree:

REFORMING ENFORCEMENT

Question 64

Should authorised licensing officers have the power to stop licensed vehicles? *(Page 222)*

Agree: Licensing officers should have similar powers to the Vehicle and Operator Services Agency

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)*

Clearly marked taxi ranks at locations where taxi demand is high would limit touting outside clubs. Issuing a fixed penalty notice could be considered.

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)*

No response

Question 67

Should licensing authorities make greater use of fixed penalty schemes and if so how? *(Page 225)*

Agree: See Q66 and Q67; Fixed penalty powers should be extended to Licensing Officers.

Provisional proposal 68

Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas. (Page 225)

Agree: This will reduce potential issues with cross-border operation.

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)

Disagree: The local Licensing Authority (LA) is better placed to consider this. The formal notice from the LA where the offence occurred to the local LA proposed in their consultation could facilitate this.

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 private hire licence should be limited to the applicant or, as appropriate, holder of the relevant licence. (Page 230)

Agree

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)

Agree

Provisional proposal 72

Appeals should continue to be heard in the magistrates' court. (Page 232)

Disagree; The Transport Tribunal would be a more knowledgeable body.

Question 73

Should there be an onward right of appeal to the Crown Court? (Page 233)

Agree

CONCLUSION

1.41 It is not possible in a summary of this length to introduce all of our provisional proposals. Consultees are therefore encouraged to refer to the full Consultation Paper available on our website. Please send responses by **10 August 2012**.

How to respond

Send your responses either -

By email to: tph@lawcommission.gsi.gov.uk or

By post to: Public Law Team (Taxi and Private Hire), Law Commission, Steel House, 11 Tothill Street, London SW1H 9LJ
Tel: 020 3334 0266 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, where possible, you also sent them to us electronically (in any commonly used format).