

Government response to Law Commission review of taxis and private hire vehicles

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The Government's 52 paragraph response to the Law Commission consultation states:

Introduction

1. This review of taxi and private hire vehicle (PHV) legislation was requested by the Government. There are many problems with the existing legislative framework. It is complex and burdensome and in need of modernisation.
2. The Government's principal objective is to simplify the licensing system as far as possible and only impose requirements where they are justified.
3. We recognise that there are some contentious issues in the consultation document. Given the number of people involved in the provision, regulation and use of taxi and PHV services, it is inevitable that opinion will be divided. The Law Commission have faced these contentious issues head-on and their consultation will, no doubt, yield a diverse range of views.
4. Taking account of the range of views and drawing up a firm plan of action will require a careful balancing act. That is what the Law Commission must do in making sense of the multitude of responses which they will inevitably receive from a range of perspectives and we would urge them to take account of Government growth objectives in doing so.
5. The Government's response gives a broad indication of our position on the various issues raised in the consultation document and identifies areas where we consider that the Law Commission could usefully carry out further investigation or consideration before reaching a conclusion. It should be stressed that the Government is simply contributing to the deliberation process. We await a final report and draft Bill at the end of 2013.
6. Before setting out our views, we would make some general points about Government expectations to assist the Law Commission in going forward.
7. The first is that the overall outcome of the review should make the legislative framework for taxis and PHVs less burdensome than at present. Non-regulatory measures should be considered as far as possible before regulatory measures. New regulatory measures should only be proposed where there is a strong Cost Benefit Analysis, a clear indication of market failure and strong evidence of why regulation is necessary.
8. There are several proposals which, if taken forward, might involve local authorities having to adopt a new or different role. The Government would expect the Law Commission to undertake a New Burdens Assessment where this is the case. The Department for Transport and the Department for Communities and Local Government would be able to facilitate in this process.

9. Similarly, there are elements of the proposed approach which will require a Justice Impact Test. As the Law Commission's plans progress the Department for Transport and the Ministry of Justice can facilitate.

10. A further point which the Government would urge the Law Commission to consider is the concept of "grandfather rights": whether there are any elements or details of the existing licensing system which might be allowed to continue after the introduction of the new system. We would also want the legislation to be framed in such a way as to give the Government sufficient flexibility and time to draw up any necessary secondary legislation or guidance.

Overview of Provisional Reform Proposals

11. It is understandable that the first proposal in the consultation document relates to the way in which the whole system should work. The Government agrees with the Law Commission's proposal that regulation should continue to distinguish between taxis, which can be hailed on the street and wait at ranks, and private hire vehicles, which can only accept pre-booked fares. This approach allows for the sort of targeted approach to regulation which we would want to see in a modern regulatory framework.

Reform of Definitions and Scope

12. The Government's principal objective in relation to this element is to secure legislation which (i) captures the right people and services and (ii) makes it abundantly clear to all transport providers and to all those responsible for licensing and enforcement who should be licensed and who does not need to be licensed.

13. On that basis we would invite the Law Commission to undertake further consideration of the issues. In making this request, we would urge the Law Commission to think carefully about the reasons and justification for regulation and, of course, to ensure that no new regulations are proposed except where the evidence and cost benefit analysis strongly supports it.

14. The Government agrees that London should be included within the scope of reform and that a single regulatory system should be established across the whole country.

15. We do not consider that there is a case for requiring the licensing of wedding and funeral services though there may be a case for bringing certain categories into the licensing regime and then immediately exempting them, in the way, for example, that food is within the VAT regime but zero-rated.

16. The Government does have a particular concern about the provision of taxi services at airports. We want to establish a fair deal for passengers and we have doubts about whether a sole concession with a PHV company achieves this. We would like to see whether other respondents consider that there is a problem which would benefit from regulatory intervention.

17. The Government is clear that the defining characteristic of a taxi is that it takes

immediate hirings whereas a PHV must be booked through an operator. We would urge the Law Commission to consider more creatively the way in which this distinction could be couched in new legislation, and the best way for consumers to understand the distinction so that they are clear which vehicles they are able to hail.

18. The Government agrees that leisure and non-professional use of taxis and PHVs should be permitted.

19. In establishing a modern legislative framework, we would agree that the term “hackney carriage” should be abandoned in favour of “taxi”.

A Reformed Regulatory Framework

20. The proposal for national safety standards set by the Secretary of State would be a significant shift from the existing position where virtually all licensing standards are set by local licensing authorities. The Government agrees that a national approach to safety standard setting will simplify the licensing process and provide a more level playing field for the trades throughout the country.

21. We acknowledge that there might be a problem in determining what actually constitutes “safety”, and in securing agreement as to what the standards should be. We would welcome any thoughts from the Law Commission about dealing with these issues.

22. In relation to PHVs, the Government agrees that national safety standards set by the Secretary of State should be the only applicable licensing standards at present but reserve the right to revisit the matter in respect of accessibility standards in particular.

23. Another significant and radical proposal in this section is the move to a national system of PHV operation. The Government agrees with this proposal which marks a significant departure from the current position. It will have a substantial liberalising effect on the PHV trade and make it better responsive to passengers’ needs.

24. On the subject of topographical knowledge testing, the Government accepts that the whole thrust of the fresh approach to PHV licensing militates against the imposition of such a test on the basis that operators will attract custom if their drivers know where they are going and vice versa.

25. In relation to taxis, the Government agrees that local licensing authorities should retain the power to set standards locally above the national minimum standards. We would urge the Law Commission to consider an overarching framework whereby the Secretary of State or Welsh Ministers establish a range of “permitted top-up standards” which licensing authorities could choose whether or not to adopt. And we would expect licensing authorities to assess the impact on the trade and consumers of any top-up standards.

26. The Government recognises that an ability to impose individual licence conditions could be a useful tool, particularly in disciplinary cases, but would not want it to be abused and would expect to issue statutory guidance about the extent of the power.

27. The Government sees considerable advantage in allowing licensing authorities to co-operate or combine and we would want to see this facilitated in new legislation as far as is necessary.

28. The Government does not favour the creation of zones within a licensing area. They are generally an inefficient way of operating which causes frustration to passengers (who cannot understand why they cannot hail a cab licensed by their own local authority just because it is in a particular part of the district) and add to the administrative and enforcement burden of licensing authorities.

29. The Government agrees with the proposal that licensing authorities should retain the ability to regulate maximum taxi fares but not have any power to regulate PHV fares. This goes to the heart of the two-tier system in terms of regulating each mode appropriately.

Reform of Driver, Vehicle and Operator Licensing

30. As a general principle, the Government would want to ensure that any new regulatory framework was as easy to use as possible. That includes the ability to make any changes in a straightforward and timely way. On that basis, we would favour the setting of national standards by the Secretary of State and Welsh Ministers rather than enshrining them in primary legislation.

31. We would expect guidance from the Law Commission's review as to what those standards should be, the underlying need and who they should apply to, to help inform the implementation process following enactment of new legislation.

32. The Government agrees that operator licensing should be retained as mandatory in respect of PHVs and that they should continue to be assessed as "fit and proper". We note the question about whether the requirement for licensing should be extended to those who run taxi radio circuits, but would simply invite the Law Commission to consider whether there is a regulatory need for an extension and the relative costs and benefits of extending the licensing system in this way.

33. The Government agrees that the definition of operators should not be extended to include intermediaries. The person who actually supplies the vehicles and drivers should be the one who is licensed, not someone further along the chain who is, for example, organising an event and calling on the services of a person who can directly provide vehicles and drivers. Provided a licensed operator is involved at some point in the transaction and is clearly legally responsible for the transaction, the Government considers it unnecessary to bring intermediaries within the definition of operators and also require them to obtain licences.

34. We agree that operators should be expressly permitted to sub-contract services.

Reforming Quantity Controls

35. The Government agrees that licensing authorities should no longer have the power

to restrict taxi numbers.

36. We recognise that loss of plate premiums and a possible over-supply of taxis might be undesirable effects associated with a removal of the power to restrict taxi numbers, although this is likely to even out over a period of time. Nonetheless, we would see advantage in putting special transitional measures in place. A staggered or phased removal of the power to control taxi numbers might be a sensible way to proceed.

37. We would ask the Law Commission to consider the best approach to a phased approach to quantity control removal in order to control the impact on the current market.

Taxi and Private Hire Reform and Equality

38. The Government recognises the importance of taxis and PHVs for people with disabilities and we acknowledge that there are some difficult issues to reconcile. Our main message to the Law Commission on this would be to stress the Government's guiding principle of considering non-regulatory measures as far as possible before regulatory measures.

39. In accordance with that principle, we do not consider it necessary, at the moment, to establish a separate licence category for wheelchair accessible vehicles. And we are mindful of the burden that a statutory obligation for disability awareness training would place on the trade and are not convinced that the benefits would justify the costs.

40. On the issue of how to complain, we would urge the Law Commission to consider this further, including how consumers get information at the moment about complaining and what might be an optimum solution.

Reforming Enforcement

41. The Government does not consider it appropriate to extend the important and specialised power of stopping moving vehicles to taxi licensing officers. We would expect licensing authorities to work closely with the police in undertaking taxi and PHV enforcement activity.

42. The Government recognises the danger posed by taxi touts as well as the frustration to the legitimate licensed trade of touting. We consider that retention of the offence of taxi touting is important, but in the light of consultation responses, we would look to the Law Commission to judge whether the existing offence is framed in the most suitable way or whether the available sanction is appropriate.

43. The Government is inclined towards the view that impounding vehicles for vehicles breaching taxi and PHV rules would be a step too far, but would be interested to hear what other respondents think.

44. The Government considers that there is scope for greater use of fixed penalty

schemes. This would have to be restricted to offences or misdemeanours of an objective nature where the decision about any transgression is entirely clear-cut. The Government would welcome the thoughts of the Law Commission about which types of offences could be subject to fixed penalties.

45. The Government agrees with the proposal that enforcement officers should have powers to enforce against vehicles, drivers and operators licensed in other licensing areas. It is necessary in order for the proposed new model of licensing and operation to work effectively.

46. The crucial element, though, is deciding on the extent of the enforcement powers across boundaries. The Government considers that allowing licensing authorities to permanently suspend or revoke licences granted by other licensing authorities would be a radical change which goes beyond reasonable limits of enforcement powers.

47. We would urge the Law Commission to consider a compromise position, possibly involving temporary powers of enforcement for example to suspend a driver's licence for the rest of the evening but with the proviso that the licensing officer must then discuss the matter with the "home" licensing authority as soon as possible.

48. There is also an important question about funding of cross-border enforcement, which ties in with the issue of licence fees. The Government would urge the Law Commission to consider how the funding of cross-border enforcement could be achieved in an equitable way and, in particular, whether the setting of licence fees on a national basis would be a sensible course of action.

Reform of Hearings and Appeals

49. The Government agrees that the right to appeal against decisions to refuse to grant or renew; or suspend or revoke a taxi or PHV licence should be limited to the applicant or, as appropriate, holder of the relevant licence.

50. The Government agrees that the first stage in the appeal process in respect of refusals, suspensions or revocations should be to require the licensing authority to reconsider its decision. There is value in looking afresh at a decision before embarking on the judicial process.

51. The Government agrees that the magistrates' court is the right place to hear taxi and PHV licensing appeals.

52. The Government considers that on efficiency grounds it would be appropriate for the magistrates' court to be the final appeal. We consider that this ought to be subject to a continuing right of appeal to the High Court by way of case stated only where a decision was wrong in law or in excess of jurisdiction.