

Law Commission

Consultation Paper No 203

**REFORMING THE LAW OF TAXI AND
PRIVATE HIRE SERVICES**

A Consultation Paper

THE LAW COMMISSION: HOW WE CONSULT

About the Commissions: The Law Commission was set up by section 1 of the Law Commissions Act 1965. The Commission has the purpose of promoting reform of the law.

The Law Commissioners are: The Rt Hon Lord Justice Munby (Chairman), Professor Elizabeth Cooke, Mr David Hertzell, Professor David Ormerod and Frances Patterson QC. The Chief Executive is Elaine Lorimer.

Topic: This consultation covers the reform of the law on taxi and private hire services.

Geographical scope: England and Wales

An impact assessment is available on our website.

Duration of the consultation: 10 May to **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).

After the consultation: We plan to publish a final report with a draft Bill in November 2013. It will be for Parliament to decide whether to change the law.

Freedom of information: We will treat all responses as public documents. We may attribute comments and publish a list of respondents' names. If you wish to submit a confidential response, it is important to read our Freedom of Information Statement on the next page.

Availability: You can download this consultation paper and the other documents free of charge from our website at:

<http://www.lawcom.gov.uk> (See A–Z of projects > Taxi and Private Hire Services)

CODE OF PRACTICE ON CONSULTATION

The Law Commission is a signatory to the Government's Code of Practice described below.

THE SEVEN CONSULTATION CRITERIA

Criterion 1: When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Duration of consultation exercise

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Clarity and scope of impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

CONSULTATION CO-ORDINATOR

The Consultation Co-ordinator for this project is Phil Hodgson. You are invited to send comments to the Consultation Co-ordinator about the extent to which the criteria have been observed and any ways of improving the consultation process.

Contact: Phil Hodgson, Law Commission, Steel House, 11 Tothill Street, London SW1H 9LJ
Email: phil.hodgson@lawcommission.gsi.gov.uk

Full details of the Government's Code of Practice on Consultation are available on the BIS website at <http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>.

Freedom of Information statement

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000 and the Data Protection Act 1998 (DPA)).

If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Law Commission.

The Law Commission will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

THE LAW COMMISSION

REFORMING THE LAW OF TAXI AND PRIVATE HIRE SERVICES

CONTENTS

Paragraph *Page*

PART 1– REGULATORY FRAMEWORK

CHAPTER 1 - INTRODUCTION

The project	1.1	1
Problems with the law	1.25	4
The history of taxi and private hire legislation	1.29	6
Previous reviews of taxi and private hire regulation	1.36	7
The industry today	1.54	11
Wales	1.60	12
The structure of this consultation paper	1.61	13

CHAPTER 2 - THE LICENSING FRAMEWORK

Introduction	2.1	14
Key regulators	2.2	14
A local licensing regime	2.7	15
Overview of the statutory framework	2.9	15
Overview of licensing authorities' powers	2.18	17
Zoning	2.24	18
Fare regulation	2.30	19

	<i>Paragraph</i>	<i>Page</i>
CHAPTER 3 - DEFINITIONS AND SCOPE		
Introduction	3.1	24
Taxis	3.3	24
Plying for hire	3.17	27
Compellability	3.33	30
Private land	3.35	31
Private hire vehicles	3.45	33
Limousines and other novelty vehicles	3.77	40
Exclusive identifiers for taxis	3.85	42
CHAPTER 4 - DRIVER, VEHICLE AND OPERATOR LICENSING		
Introduction	4.1	44
Drivers: statutory requirements	4.7	45
Driver conditions set by licensing authorities	4.9	46
Vehicle requirements	4.32	52
Owners of taxi and private hire vehicles: statutory requirements	4.33	52
Taxi vehicles: statutory requirements	4.39	53
Private hire vehicles: statutory requirements	4.45	55
Conditions set by licensing authorities: taxis and private hire vehicles	4.48	56
Local conditions and compatibility with European law	4.65	60
Operator requirements	4.67	60
Operators: statutory requirements	4.71	61
Operators: statutory obligations	4.74	62
Limits on sub-contracting outside London	4.79	63
Operator conditions set by licensing authorities	4.80	64

	<i>Paragraph</i>	<i>Page</i>
Operator licensing in other countries	4.82	64
The relationship between driver and operator	4.88	66

CHAPTER 5 - ENFORCEMENT

Introduction	5.1	68
Local authorities	5.2	68
Approaches to enforcement	5.5	68
The police	5.8	69
Enforcement powers	5.10	70
Breach of licensing requirements	5.12	70
Offences of toutting and illegally plying for hire	5.14	71
Sanctions	5.23	73

CHAPTER 6 - HEARINGS AND APPEALS

Introduction	6.1	77
Appeals against what?	6.2	77
Statutory rights of appeal	6.5	77
Further rights of appeal	6.19	81
Judicial review	6.20	81
Internal reconsideration by the licensing authority	6.25	82

PART 2 – PROBLEMS WITH THE LAW AND THE CASE FOR REFORM

CHAPTER 7 - REGULATION AND THE ONE OR TWO TIER DEBATE

Introduction	7.1	84
Regulatory principles	7.2	84
The structure of the regulated industry: one tier or two?	7.35	90

	<i>Paragraph</i>	<i>Page</i>
CHAPTER 8 - PROBLEMS WITH THE LAW AND THE CASE FOR REFORM		
Introduction	8.1	94
Public safety	8.2	94
Excessive burdens on business	8.22	98
Ensuring availability	8.43	102
 CHAPTER 9 - QUANTITY RESTRICTIONS		
Introduction	9.1	104
Statutory provisions	9.2	104
Quantity restrictions in other countries	9.39	112
Provisional conclusions	9.58	118
Transitional issues	9.59	118
 CHAPTER 10 - CROSS-BORDER ISSUES		
Introduction	10.1	119
A legal analysis of cross-border issues	10.5	119
Taxis	10.7	120
Private hire vehicles	10.16	121
Sub-contracting by private hire vehicle operators	10.28	124
Pre-booked taxis	10.38	127
Related issues	10.49	129
The Transport Select Committee	10.74	134

	<i>Paragraph</i>	<i>Page</i>
CHAPTER 11 - EQUALITY AND TAXIS IN THE COMMUNITY		
Introduction	11.1	136
Accessibility requirements	11.2	136
How to ensure accessibility	11.9	137
Equality legislation	11.26	141
The role of taxis in the community	11.47	145
Local transport authorities – transport planning	11.50	146
Flexible transport services	11.52	146

CHAPTER 12 - TECHNOLOGY

Introduction	12.1	149
Communications technology	12.6	150
Technology and cross-border private hire operations	12.31	155
The interface with other transport systems	12.40	156
The future	12.42	157

PART 3– PROVISIONAL PROPOSALS FOR REFORM

CHAPTER 13 - OVERVIEW OF PROVISIONAL REFORM PROPOSALS

Introduction	13.1	158
The key features of a reformed two tier system	13.4	158
The alternative one tier system	13.8	159

CHAPTER 14 - REFORM OF DEFINITIONS AND SCOPE

Introduction	14.1	161
London	14.4	161
Wales	14.8	162
Definitions	14.9	162
What vehicles should be covered?	14.11	163
What services should be covered?	14.25	167
Making exclusions from the regulatory regime	14.35	170
The two tiers – defining taxis	14.60	177
Defining private hire services	14.81	183
Leisure use of vehicles	14.82	183
Statutory guidance	14.86	184
Terminology	14.88	185

CHAPTER 15 - A REFORMED REGULATORY FRAMEWORK

Introduction	15.1	187
Local licensing and enforcement	15.4	187
National safety standards for taxi and private hire services	15.5	187
The appropriate scope of national standards	15.22	192
Additional local standards for taxis	15.26	193
Licensing authorities working together	15.32	195
Zoning	15.37	196
Peak time licences	15.40	197
Cross-border hiring	15.44	197
Fare regulation	15.53	199

CHAPTER 16 - REFORM OF DRIVER, VEHICLE AND OPERATOR LICENSING

Introduction	16.1	201
Drivers	16.2	201
Driver requirements	16.4	202
Vehicles	16.10	203
Vehicle owner requirements	16.14	203
Vehicle requirements	16.17	204
Additional local standards for taxi vehicles and drivers	16.21	205
Operators	16.22	205
National operator standards	16.40	209
Sub-contracting	16.43	210
Record-keeping requirements for pre-booked taxi journeys	16.45	210

CHAPTER 17 - REFORMING QUANTITY CONTROLS

Introduction	17.1	211
The economics of quantity controls	17.2	211
Problems with “unmet demand”	17.9	212
Congestion and other externalities	17.12	213
Transitional issues	17.15	213

CHAPTER 18 - TAXI AND PRIVATE HIRE REFORM AND EQUALITY

Introduction	18.1	216
A specific wheelchair licence	18.3	216
Incentives	18.6	217
Accessibility training	18.12	218
Local authority responsibilities	18.16	219
Taxis and discrimination	18.18	220

	<i>Paragraph</i>	<i>Page</i>
CHAPTER 19 - REFORMING ENFORCEMENT		
Introduction	19.1	221
Enhancing licensing officers' enforcement powers	19.4	221
Fixed Penalty Schemes	19.12	224
Cross-border issues	19.19	225
Funding licensing and enforcement	19.29	227
 CHAPTER 20 - REFORM OF HEARINGS AND APPEALS		
Introduction	20.1	228
Who can appeal?	20.12	230
Duty to reconsider	20.15	230
Appeal to the magistrates' court	20.19	232
Onward appeals	20.24	233
 APPENDIX A - LIST OF PROVISIONAL PROPOSALS AND QUESTIONS		234

CHAPTER 1

INTRODUCTION

THE PROJECT

- 1.1 In July 2011, the Law Commission announced our Eleventh Programme of law reform. The programme included this project. The project had originally been proposed by the Department for Transport.

- 1.2 Our terms of reference are as follows:

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

- 1.3 We seek responses to this consultation paper by 10 August 2012. Our final report, which will include a draft Bill, will be published in November 2013.

The subject matter of the project: taxis and private hire vehicles

- 1.4 The fundamental legal distinction in this area is between taxis and private hire vehicles. The difference relates to the means by which passengers engage with the relevant services. Passengers can procure a vehicle and driver to take them to their destination by pre-booking the vehicle (by telephone, in person or by other means). Alternatively, they can hail a vehicle passing on the street, or they can approach a vehicle waiting at a rank. These three modes of engagement are remarkably consistent worldwide.

- 1.5 In England and Wales, both taxis and private hire vehicles must be licensed. Taxis, referred to as “hackney carriages” in much of the legislation, are licensed to carry out all three modes of hiring – pre-booking, hailing and ranking. Private hire vehicles may only take pre-booked fares. A person engaging in any of these three modes of operation without a licence is committing a criminal offence.

A deregulatory approach

- 1.6 The taxi and private hire trades are highly regulated. Taxis cannot operate without both the vehicle and the driver being licensed. Private hire vehicles require the same, plus an operator licence. Licensing authorities (local authorities in most of England and Wales, and Transport for London) set the standards necessary to obtain a licence. This can include conditions relating to the physical qualities of the vehicle, its age and appearance, and the character, knowledge and training of the driver. They can also regulate the maximum level of fares for taxis and, outside London, the number of taxis allowed to operate (if they choose to do so).
- 1.7 Our terms of reference require us to give due regard to the potential advantages of deregulation. This does not require us to blindly pursue deregulation at all costs. Rather, it means that we must look at each element of the existing regulatory system to ensure that it can be justified as necessary, and that it is structured in the right way to accomplish its supposed ends.

- 1.8 We could not approach the law in this area in any other way. It is always possible to identify various criticisms of the law in isolation, and we set some of them out below. But it is not possible to simplify and modernise the law regulating an economic activity such as the taxi and private hire markets without considering what the law is there to do. We have to be clear why the law is doing what it is doing to be able to improve it and to better achieve those ends.
- 1.9 In this consultation paper, we therefore look at why we regulate taxi and private hire services. Our preliminary conclusion is that there are good reasons to regulate *both* taxis and private hire vehicles to ensure that vehicles and drivers are safe. But beyond that point, we do not see a strong argument for further regulation of private hire vehicles, because the pre-booked market works reasonably well as a competitive market. This means that we can leave it to market forces to regulate price and quality, including additional safety provision.
- 1.10 Hailing and ranking, however, cannot operate in a normal competitive way, because of the nature of the transaction. In each case, the consumer, at the actual moment they engage the taxi, is in practice facing a monopoly supplier. We therefore see the logic in higher levels of regulation of taxis, both in relation to price and quality.

Our provisional proposals: an overview

- 1.11 We have applied this view of the right regulatory approach in the provisional proposals and questions we ask in this consultation paper. The overall effect is of a moderate reform programme, which retains much of the existing structure of regulation, while seeking to improve and simplify it.
- 1.12 Firstly, we have come to the provisional conclusion that there should continue to be a split between the taxi and private hire trades. This is also referred to as the one or two-tier debate. Retaining the division allows the regulatory system to deal differently with the distinct market conditions in the pre-booked market on the one hand and hailing and ranking on the other. There have been a number of calls for a so-called one-tier system, in which there is a unified category of vehicle doing all (or most) of the same work – pre-booked, hailing and ranking. We accept that the distinction is not well understood by the public, and that this provides an argument for a single tier. But our provisional view is that this would be disadvantageous. It would mean either that the reasonably competitive pre-booked market would be over-regulated; or that the hailing and ranking markets would be under-regulated.
- 1.13 Secondly, we provisionally propose only moderate changes to the regulation of taxis. We suggest retaining the local link with the setting of taxi conditions and fare regulation, licensing and enforcement. We consider the legal definition of “plying for hire”, which covers hailing and ranking, but do not propose radical change.
- 1.14 We do, however, provisionally propose that the Secretary of State and Welsh Ministers should set national *minimum* safety standards. We think all consumers of taxi services should be entitled to the same minimum safety standards, even if local licensing authorities wish to impose higher standards in their area. Further, establishing national minimum standards, which correlate with national standards for private hire vehicles (see below), will remove incentives for drivers to try to

play the system by being licensed in areas with lower standards. It will also help with the enforcement of conditions across each country.

- 1.15 We also provisionally propose that the power to limit the number of taxis allowed to operate in a licensing area should be removed. We accept that there are some good arguments for retaining the power (although not on the existing basis of a bureaucratic assessment of unmet demand), but provisionally consider that on balance quantity regulation is not justified.
- 1.16 Thirdly, on the private hire side, we make rather more far-reaching proposals. We provisionally propose that the Secretary of State and Welsh Ministers should set national standards for private hire vehicles and drivers, and that licensing authorities should not have the power to impose higher standards. This reflects our view that the pre-booked market works reasonably well as a competitive market, and so there is no need for the state to step in to guarantee quality or control fares. The granting of licences and enforcement would continue to be a function of the licensing authority. The national standards for private hire vehicles should be set at the same level as the minimum standards for taxis. In both cases, the power to set standards would allow for different standards to be set for different descriptions of vehicles.
- 1.17 Fourthly, we think that the flexibility of the Secretary of State and Welsh Ministers' power to set national minimum taxi and mandatory private hire standards can bring benefits in dealing with forms of provision on the border of the mainstream trades. This would include limousines, motorbikes, wedding and funeral cars, cars hired on longer contracts and so on. Currently, some of these forms of provision may be included in, or excluded from, licensing by accident. In other cases there are express statutory provisions to deal with them.
- 1.18 Our provisional view is that whether particular forms of provision should be included or not will generally depend on the form that that particular market takes. That is a matter of fact, which can readily change over time. We therefore provisionally propose that we describe the kind of activity that comes within the power to set standards in wide terms, but then expect the Secretary of State and Welsh Ministers to apply their power flexibly. This approach would allow the decision-maker to not set any standards at all for certain descriptions of vehicle, if there is no need to, or to set distinct standards appropriate for the particular niche market concerned.
- 1.19 Finally, we make provisional proposals to improve the enforcement of conditions. The existence of national standards for private hire and minimum standards for taxis will itself make enforcement easier, particularly cross-border enforcement (that is, enforcement by an officer of a licensing authority other than that which licenses the taxi or private hire vehicle). We make proposals designed to improve cross-border enforcement, and look at the extent to which enforcement officers' powers could be strengthened.
- 1.20 This is only a very brief summary of our provisional proposals, which cover a number of other detailed areas.

Consultation

- 1.21 It is of primary importance that we offer these views provisionally. This is so that they can form the basis of a discussion on consultation. We appreciate that consultees will have a variety of views and we are not firmly wedded to any of these proposals. Indeed, experience suggests that our final report may differ significantly from the provisional proposals we now make.
- 1.22 From the outset we have been aware of the need to understand not only the law but also how the trades work in practice. We have therefore already engaged in an extensive pre-consultation process. We have spoken to a range of stakeholders including the regulators, trades and consumer organisations. We also benefitted from an advisory group, which met on 22 November 2011.
- 1.23 Whilst this early pre-consultation has been essential in helping us to frame the issues and forming the background to our initial proposals, it represents only a fraction of the consultation we hope to undertake. We are seeking responses from anyone with any interest in this area. The consultation period will be our main evidence-gathering exercise and we intend to build our finalised proposals on the further information we will collect throughout the process.
- 1.24 Written responses to this consultation paper should be received by 10 August 2012. The opportunity to discuss the issues with interested parties is always most helpful. We would therefore welcome invitations to attend or make presentations at relevant conferences, seminars, workshops or other events during the consultation period.

PROBLEMS WITH THE LAW

- 1.25 Our review of the current law highlighted significant areas of uncertainty and inconsistencies in licensing practices across different authorities in England and Wales. For example, licensing officers are unable to stop vehicles and cannot take action against vehicles which are licensed by other authorities. There are no minimum standards of safety which apply nationally, leading to considerable variation in what could be considered common issues. Transport for London for example has reported over 100 taxi or private hire related sexual offences in London alone since 2009.¹ This review provides an opportunity to better address touting and to improve enforcement powers. More consistency across different licensing authorities, for example, in the treatment of Criminal Record Bureau data, would appear highly desirable.
- 1.26 The current legal framework has also been said to fail disabled passengers. In February 2009 a 14-year-old Birmingham girl died during a taxi ride home because her wheelchair was not properly secured.² Disability groups have told us

¹ Metropolitan Police Directorate of Information - *Cab Related Sexual Offences 2008 - 10* Freedom of Information Request, 30th January 2011, http://www.met.police.uk/foi/pdfs/disclosure_2011/january/2011010000589.pdf (last accessed 23rd April 2012).

² Razan Begum, a 14 year-old girl was killed in February 2009. Her wheelchair could not be properly secured as it was loaded into the taxi sideways. Birmingham Mail. 'Girl's death sparks taxi safety call; Coroner's taxi appeal', 2nd July 2009, <http://www.birminghammail.net/news/top-stories/2009/07/08/girl-s-death-sparks-taxi-safety-call-97319-24102815/> (last accessed 23 April 2012).

that most disabled persons have to travel without proper restraints on a daily basis. This is not only unsafe, but uncomfortable and at times undignified. These problems do not only affect wheelchair users. Deaf passengers may have difficulty communicating with the driver where the vehicle is fitted with a partition, and blind passengers have concerns about being unable to read taximeters. Our provisional proposals include questions on how to promote safety for disabled passengers as well as compulsory disability discrimination training for taxi and private hire drivers.

- 1.27 Limousines are a prime example of a licensing grey area. Although users will have little trouble finding a willing provider of such services it may be much more difficult to determine whether they have been properly vetted and licensed. Although the Department for Transport recommends that small limousine services should be covered by private hire licensing,³ in practice many are not. This is because local licensing conditions may be impossible for the vehicles to satisfy (many are imported and have left hand drives, for instance, or fall foul of prohibitions on tinted windows). Such limousines continue operating but lie outside any form of regulation unless they seek to be licensed as a small public service vehicle with the Traffic Commissioners. The Traffic Commissioners' checks however currently do not include, for example, Criminal Record Bureau checks, which are a key component in ensuring passenger safety.⁴ In recent years, there have been a number of high profile limousine accidents reported in the national press; most prominently, the case of a group of teenage girls travelling in a defective limousine which caught fire. The vehicle lacked a certificate of initial fitness, a test certificate and appropriate insurance cover.⁵
- 1.28 Businesses are also restricted in the types of services they may offer consumers through limits on cross-border provision, for example. The considerable uncertainty around more modern booking methods using mobile and internet technology means these important innovations occupy an uncomfortable grey area. Whereas these problems may be largely invisible to the average user of taxi services they have a strong impact on the price they pay for services and on the supply of services to which they can have access.

³ Department for Transport, *Private hire vehicle licensing – a note for guidance from the Department for Transport* (August 2011), para 32.

⁴ Vehicle and Operator Services Agency, *Guidance for operators of stretch limousines* (March 2011).

⁵ <http://www.dft.gov.uk/vosa/newsandevents/pressreleases/2009pressreleases/21-01-09limocompanyfinedaftervosainvestigation.htm> (last visited 23 April 2012).

THE HISTORY OF TAXI AND PRIVATE HIRE LEGISLATION

Taxi regulation

- 1.29 The first attempts to regulate taxis date back to the 1630s and were targeted at reducing congestion in London.⁶ More concerted efforts at taxi regulation came about much later with the London Hackney Carriage Act 1831, some of which remains in force today. This introduced the enduring concepts of plying for hire and compellability, for example. Further London Hackney Carriage Acts were passed in 1842, 1850 and 1853, followed by the Metropolitan Public Carriage Act 1869, which remains the principal taxi legislation in London. This Act also contains powers to make regulations, in the form of London Cab Orders. The London Cab Order 1934,⁷ as amended over the years, remains in force today.
- 1.30 A key change was made by the Greater London Authority Act 1999 which transferred the functions of the Metropolitan Police and the Secretary of State in relation to taxis and private hire regulation respectively to Transport for London.⁸ Day to day licensing functions have been delegated to officers in the London Taxi and Private Hire unit previously known as the Public Carriage Office.
- 1.31 Outside London, hackney carriages were first regulated through the Town Police Clauses Act 1847⁹ and this remains the principal legislation for the regulation of taxis outside London. The Act was adoptive and had to be incorporated in each area through local acts. Even then, the provisions did not necessarily apply throughout the whole of a local area and it was for each individual area to determine its extent. All this contributed to a patchy network of regulation. It was over 100 years before regulation was universally applicable. Although it remains the principal legislation governing taxis outside of London, the Town Police Clauses Act 1847 has been supplemented by a diverse array of statutes, such as the Local Government (Miscellaneous Provisions) Act 1976, various Transport Acts and the Equality Act 2010.

Private hire legislation

- 1.32 Private hire vehicle regulation arose in response to the emerging market in so-called “minicabs”, where customers arranged journeys in advance and away from the regulated concepts of ranks and hailing. These vehicles emerged at the fringes of taxi provision in direct response to consumer demand, and were initially completely unregulated. The pattern of a pre-booked service emerging in the spaces left by existing regulation is also seen in other countries.¹⁰

⁶ The first of the Royal Proclamations was ‘A Proclamation for the restraint of excessive carriages to the destruction of the High Wayes’ (1 November 1635), *Proclamations, II Chronological Series*, Charles I (1625 – 1649).

⁷ SI 1932, No 1346.

⁸ See Greater London Authority Act 1999, s 253 and Sch 20 (in respect of taxis); and s 254 and Sch 21 (in respect of private hire).

⁹ Amended by the Town Police Clauses Act 1889,

¹⁰ B Darbera, “When the regulator acknowledges the existence of two distinct markets for taxi services”, *Report of the 133rd Roundtable on Transport Economics on (De)regulation of the taxi industry*, 2007.

- 1.33 In the 1970s, the key motivation for regulating private hire vehicles was the need to address increasing concerns about unlicensed minicab operations. These moves were initially fiercely opposed by the taxi trade which regarded private hire vehicles as sub-standard and unsafe. Moreover, they provided competition. Private hire vehicles in England and Wales (but not London) were brought within a regulatory regime in 1976.¹¹ Calls for them to be outlawed continued however, meaning that they remained completely unregulated in London until as late as 1998.¹² The problems of these vehicles continuing to be unlicensed were highlighted in a Report by the Transport Select Committee.¹³ The Committee referred to

alarming evidence ... about the rate of attacks by drivers on passengers, accidents involving uninsured vehicles, and the number and range of offences disclosed by police spot checks.¹⁴

- 1.34 As in the rest of the country, concerns were also raised by members of the legitimate taxi trade, who were frequently unable to compete with the low fares offered by illegal operators. Trade associations and safety groups were also keen to separate the activities of legitimate minicab and chauffeur operators and drivers from those operating illegally or unsafely. Private hire operator licensing was introduced in London by 2001, but it was 2004 before the legislation was fully in force. The regime is broadly similar to that in the rest of England and Wales, with a requirement for operators, drivers and vehicles to be separately licensed.
- 1.35 Even now there are issues about unlicensed minicab and taxi operations, in particular in major cities late at night where touting can be a key concern. The conflation of legitimate private hire operations which ply for hire unlawfully with the completely unlicensed trade can be a significant cause of confusion when discussing the appropriate level of regulation and the relationship between taxi and private hire services.

PREVIOUS REVIEWS OF TAXI AND PRIVATE HIRE REGULATION

- 1.36 Over the past 20 years there have been various attempts to reform taxi and private hire regulation. The account below sets out some of the more significant instances.

The 1990s: the Government's Green Paper and Transport Select Committee's Report

- 1.37 In 1993, the Department for Transport undertook a wholesale review of taxi and private hire regulation, noting that the law was "too complex, in many respects

¹¹ Local Government (Miscellaneous Provisions) Act 1976, Part II.

¹² Private Hire Vehicles (London) Act 1998.

¹³ Select Committee on Transport, *Taxis and Private Hire Vehicles, Report of the Select Committee on Transport* (1993 – 94) HC 239-I.

¹⁴ Select Committee on Transport, *Taxis and Private Hire Vehicles, Report of the Select Committee on Transport* (1993 – 94) HC 239-I, para 98.

antiquated and contains many anomalies”.¹⁵ The paper considered various options for regulating taxis and private hire vehicles ranging from minimal regulation with no control on vehicles or fares, to a single licensing regime in England and Wales. It also considered whether private hire licensing should be extended to London.

- 1.38 The Transport Select Committee produced a report in response to the government's green paper.¹⁶
- 1.39 A key concern of the Committee was to address the increasing problem of the illegal minicab trade in London, and the risks to public safety arising from the more unscrupulous traders.
- 1.40 The Committee made recommendations concerning the licensing system in England and Wales, with the overarching desire of improving passenger safety and quality of service generally. It recommended retaining the current two-tier licensing system with a presumption in favour of London-style black cabs for taxis for easier identification. It also recommended introducing national standards for private hire operations, working towards a universally accessible vehicle standard¹⁷ and a gradual phasing out of quantity restrictions over 10 years.
- 1.41 The Government responded to the Committee's report in 1995 and largely agreed with its suggestions. Key among these was the extension of licensing controls to London minicabs for reasons of public safety. The Private Hire Vehicles (London) Act 1998 was introduced as a Private Members' Bill by the former Secretary of State for Transport, Sir George Young.¹⁸ This period of reform did not result, however, in any significant changes outside London.

The 2000s: The Office of Fair Trading report on taxi and private hire services

- 1.42 This report by the Office of Fair Trading was published in November 2003.¹⁹ The purpose of the study was to look at the relevant taxi and private hire regulations and their impact on the market and to make any recommendations for reform.
- 1.43 The Office of Fair Trading concluded that “the overall quality of taxi and private hire services ... could be enhanced by reforming elements of the regulatory framework”.²⁰ Its main recommendation related to the removal of quantity restrictions on taxi licences. On the other hand, it recognised compelling reasons for continuing to regulate safety and quality, as well as maximum fares.

¹⁵ Department of Transport, *Taxis and Private Hire Vehicles - a consultation paper on the future of taxi and private hire services* (October 1993), para 156.

¹⁶ Transport Committee, *Fourth Report of session 1993-94, Taxis and Private Hire Vehicles*, HC 239-I.

¹⁷ The Department for Transport should work with the Disabled Persons' Transport Advisory Committee and manufacturers to identify this universally “accessible” vehicle.

¹⁸ The Bill had the support of all political parties and the Labour Government.

¹⁹ Office of Fair Trading, *The Regulation of Licensed Taxi and private hire vehicle services in the UK*, November 2003, http://www.oft.gov.uk/shared_oftr/reports/comp_policy/oft676.pdf (last visited 23 April 2012).

- 1.44 The Office of Fair Trading identified the following benefits from implementation of these recommendations:
- (1) an increase in the number of available taxis;
 - (2) improvement to safety, as the availability of more taxis should reduce the need to use illegal minicabs;
 - (3) reduced waiting times for customers;
 - (4) an increase in choice of services for customers;
 - (5) promotion of best practice in the way local authorities applied quality and safety controls to ensure the needs of local people were met and individuals and businesses not deterred from supplying taxi services; and
 - (6) protection of vulnerable people from overcharging whilst encouraging the benefits of fare competition.
- 1.45 We consider the Office of Fair Trading's recommendations about quantity restrictions in more detail in Chapter 9.
- 1.46 The Office of Fair Trading's analysis identified a substantial variation across local authorities in quality and safety regulation. Concerns were raised by a number of local authorities, about the use of the Metropolitan Conditions of Fitness (these are conditions which apply to the London black cabs for example) which it was feared could increase costs and deter entry to the market. The Office of Fair Trading also found that, whilst black cabs are accessible for some customers in a wheelchair, they are not necessarily suitable for other passengers with reduced mobility or other disabilities.
- 1.47 The Office of Fair Trading's 2003 market study was criticised by the Transport Select Committee in 2004. The Committee contended that the study lacked evidence to support its recommendations against quantity restrictions and that the statistics and survey evidence were flawed.
- 1.48 In 2007, Europe Economics undertook a follow-up study evaluating the impact of the Office of Fair Trading's report.²¹ One third of local authorities had removed quantity restrictions following the Office of Fair Trading's market study. Europe Economics recognised that many of the expected benefits for consumers, such

²⁰ Office of Fair Trading, *The Regulation of Licensed Taxi and private hire vehicle services in the UK*, November 2003, para 1.17.

²¹ Office of Fair Trading, *Evaluating the Impact of the Taxis Market Study: a report for the OFT by Europe Economics* (October 2007), http://www.oft.gov.uk/shared_oftr/reports/Evaluating-OFTs-work/oft956.pdf (last visited 23 April 2012).

as improved availability and reduced waiting times for passengers, had been achieved.²²

2011: The Transport Select Committee

- 1.49 The House of Commons Transport Committee published a report on the taxi and private hire industry in July 2011.²³
- 1.50 The Committee decided to review the law after hearing evidence from various parts of the country about disputes in relation to taxis and private hire vehicles licensed in one area operating in another (cross-border hiring).²⁴ The Committee held two oral evidence sessions and received more than 70 contributions of written evidence.
- 1.51 The Committee concluded that “the case for a thorough overhaul of the legislation relating to taxis and private hire vehicles is irresistible”.²⁵ Further, it noted that the inquiry demonstrated “the clear need for Government to bring taxi and private hire vehicle legislation into the twenty-first century”.²⁶
- 1.52 The Committee proposed a number of principles of new legislation which would
- ...attempt to strike a balance between protecting public safety on a consistent basis across England and Wales and the desirability of maintaining local control over taxis and private hire vehicles, particularly given the Government’s commitment to localism.²⁷
- 1.53 The Committee recommended consolidation of taxi and private hire vehicle legislation into a single Act and the introduction of national standards in respect of public safety, although it recommended that licensing should remain local. It proposed that in order to address cross-border problems, taxi and private hire vehicle licences should include a condition that the vehicle must principally be operated in the district in which it is licensed.²⁸ The Committee suggested that the Government should engage with the trade, local authorities and users about the

²² Europe Economics did, however, note that driver waiting times increased proportionately more than the reduction in passenger waiting time. This led to an overall loss in productive efficiency for the taxi industry. The study also noted little change in fare regulation and an unwillingness to charge beneath maximum fares were important factors in creating the efficiency loss.

²³ Select Committee on Transport, *Taxis and Private Hire Vehicles: the road to reform, Report of the Select Committee on Transport* (2010 – 12) HC 720.

²⁴ Although the Committee asked for evidence about any issues about taxi and private hire vehicle licensing, the majority received related to cross-border issues. The review concentrated on the legislation which applies in England and Wales, outside London and Plymouth.

²⁵ Select Committee on Transport, *Taxis and Private Hire Vehicles: the road to reform, Report of the Select Committee on Transport* (2010 – 12) HC 720, para 14.

²⁶ Select Committee on Transport, *Taxis and Private Hire Vehicles: the road to reform, Report of the Select Committee on Transport* (2010 – 12) HC 720, para 32.

²⁷ Select Committee on Transport, *Taxis and Private Hire Vehicles: the road to reform, Report of the Select Committee on Transport* (2010 – 12) HC 720, para 32.

²⁸ Select Committee on Transport, *Taxis and Private Hire Vehicles: the road to reform, Report of the Select Committee on Transport* (2010 – 12) HC 720, para 30.

objectives of future legislation on taxis and private hire vehicles.²⁹ Further, the Committee suggested that the Government should commit to overhaul the legislation during the course of this Parliament directly rather than through the Law Commission.³⁰ Although the Government accepted the desirability of this aim, it noted that the Law Commission, as an independent body with a statutory remit to modernise and simplify the law, was a sensible way to proceed.³¹

THE INDUSTRY TODAY

- 1.54 The taxi and private hire vehicle industry today is a significant contributor to UK economic activity. The Department for Transport's latest statistics indicate that there are nearly 300,000 licensed taxi and private hire vehicle drivers in England and Wales driving 78,000 taxi vehicles and 155,000 private hire vehicles.³² Total revenue is estimated at £1.4 billion a year.³³ In 2011 London, with an estimated 29% of taxis and 33% of all private hire vehicles, accounted for a disproportionately large share of industry activity.
- 1.55 The taxi and private hire vehicle markets differ not only in proportionate size but also in having divergent growth trends. Since 1999 the number of taxis has increased by an estimated 27%.³⁴ Evidence suggests private hire vehicles may have increased even more.³⁵ Such figures do not necessarily correlate to changes in patterns of demand for the different services offered by taxis and private hire vehicles. The relative numbers of each category in an area will depend in part on whether quantity restrictions are in place on taxis and how tight those restrictions are, and so are sensitive to changes in the incidence of quantity control.
- 1.56 Taxis and private hire vehicles are a staple element of the transport network in England and Wales, and indeed in most countries in the world. Demographically, the largest market for taxi services is the 18 to 29 age group who make an estimated 20 trips per year as against an annual average of 11 trips.³⁶ People in the lowest 20% of incomes are 40% more likely to use taxis and private hire vehicles than those in the highest 20%.³⁷ Taxi and private hire point to point services are essential for passengers with disabilities. For many people, taxis and

²⁹ Select Committee on Transport, *Taxis and Private Hire Vehicles: the road to reform*, Report of the Select Committee on Transport (2010 – 12) HC 720, p 16.

³⁰ Select Committee on Transport, *Taxis and Private Hire Vehicles: the road to reform*, Report of the Select Committee on Transport (2010 – 12) HC 720, para 33.

³¹ See the government's response at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/1507/150704.htm> (last visited 23 April 2012).

³² Department for Transport, Taxi and Private Hire Statistics 2011, at <http://assets.dft.gov.uk/statistics/releases/taxi-private-hire-vehicle-statistics-2011/taxi-2011.pdf> (last visited 23 April 2012). The statistics apply as at 31 March, 2011.

³³ IBISWorld Industry Report H49.320, Taxi Operation in the UK, January 2012, p 11.

³⁴ Department for Transport Taxi and Private Hire Statistics 2011, <http://www.dft.gov.uk/statistics/tables/taxi0101/> (last visited 23 April 2012).

³⁵ Department for Transport statistics do not track private hire vehicles growth figures.

³⁶ IBISWorld Industry Report H49.320, Taxi Operation in the UK, January 2012, p 12.

³⁷ Department for Transport: *Travel by Taxi and Private Hire Vehicle in GB*, January 2003. All the figures refer to the years 1999-2001.

private hire vehicles provide an essential form of transport enabling them to travel to work and to vital amenities such as shops and medical facilities, as well as leisure activity.

- 1.57 The overwhelming majority of taxi and private hire drivers are self employed. In the pre-booked market, however, drivers largely rely on a separate company to take bookings by telephone (or, increasingly, using smartphone apps). These separate companies are required to be licensed as private hire vehicle operators. There are a variety of contractual relationships between drivers and operators. Some operators charge a fixed fee for the use of their services, while others take a percentage of the driver or vehicle's earnings. The equivalent services for taxis in the pre-booked market are often referred to as radio-circuits. Many licensed private hire operators have mixed fleets of private hire vehicles and taxis. Some of the largest operators provide the vehicles themselves, usually by requiring their drivers to lease the vehicles from an associated company, but the large majority of drivers own their own vehicles.
- 1.58 The largest operators are major players in their regions, but none have a truly national reach. The largest is the Greater London company Addison Lee plc, with 9.5% of the UK market, followed by ComfortDelGro Corporation (which runs Computer Cab in London, Liverpool and Scotland) with 6.4%. A London taxi company, the Radio Taxis Group, has 2.6%. Significant operators in the north and north east, for example include Delta Taxis and Blueline.³⁸
- 1.59 Larger operators have been in the forefront of introducing technologically advanced systems for dispatching, booking and record keeping. It has been estimated that 11% of Addison Lee's total bookings are now via smartphone applications.³⁹ Nevertheless, the bulk of the market nationwide is still primarily occupied by small operators, with the average firm employing 7 people.⁴⁰

WALES

- 1.60 Since the Government of Wales Act 2006 came into force, the National Assembly for Wales has had general legislative competence in relation to "transport ... services".⁴¹ Welsh Ministers had previously exercised equivalent functions to those exercised in England by the Secretary of State, such as approving by-laws regulating taxis. In our proposals in this paper, we aim to reflect the responsibilities of the Welsh Government in relation to the regulation of taxis and private hire vehicles. In particular, we provisionally propose that the standard setting function in relation to both taxis and private hire vehicles should be exercised by the Secretary of State for England and Welsh Ministers in Wales.

³⁸ But there are notable exceptions to this pattern including other larger operators such as Delta Taxis and Blueline with fleets counting hundreds of cars.

³⁹ <http://realbusiness.co.uk/news/addison-lee-exceeds-1m-per-month-in-app-bookings> (last visited 23 April 2012).

⁴⁰ IBISWorld Industry Report H49.320, Taxi Operation in the UK, January 2012, p 20-21.

⁴¹ Government of Wales Act 2006, sch 7, para 10.

THE STRUCTURE OF THIS CONSULTATION PAPER

- 1.61 This consultation paper is divided into three parts.
- 1.62 Part 1 includes this introduction to the consultation paper; and sets out the key elements of the current law and regulatory framework. This includes an overview of the local licensing system (Chapter 2), key definitions and scope (Chapter 3), licensing controls relating to drivers, vehicles and operators (Chapter 4), enforcement (Chapter 5) and hearings and appeals (Chapter 6).
- 1.63 Part 2 identifies problems in the current law and the case for reform. We discuss the regulatory principles and the two-tier debate (Chapter 7) followed by an analysis of problems with the law and the case for reform (Chapter 8). We look at quantity restrictions (Chapter 9) and cross-border issues (Chapter 10). We consider equality and the concerns of disabled passengers (Chapter 11) as well as the impact of technology (Chapter 12).
- 1.64 Part 3 sets out our provisional proposals for reform, starting with an overview (Chapter 13), followed by the core definitions and scope of reform (Chapter 14) and the reformed regulatory framework (Chapter 15). We then consider reforms in respect of driver, vehicle and operator licensing (Chapter 16), quantity restrictions (Chapter 17), equality (Chapter 18) and enforcement (Chapter 19). We conclude discussion of reform proposals by considering possible changes to hearings and appeals (Chapter 20).

CHAPTER 2

THE LICENSING FRAMEWORK

INTRODUCTION

- 2.1 In this Chapter we provide an overview of the regulatory framework governing taxi and private hire services in England and Wales.

KEY REGULATORS

- 2.2 The licensing of taxis and private hire vehicles for use by the general public is undertaken by a number of bodies with various responsibilities for different aspects of the overall regime.
- 2.3 The Department for Transport has responsibility for legislation in England and Wales in relation to taxis and private hire vehicles. The Department and its executive agencies issue guidance to local authorities and other relevant stakeholders on the application of legislation.
- 2.4 Day to day responsibility for taxi and private hire licensing lies with local authorities.¹ The licensing responsibilities of local authorities are wide ranging. It is for individual local authorities to determine the extent to which powers are delegated. Many have a licensing committee, and perhaps sub-committees, with general responsibility for all licensing functions, whilst others delegate decisions to officers. Councils can lay down licensing policies. They can also determine the application procedure and the circumstances in which a licence may or may not be granted.²
- 2.5 The many distinctive features of the capital are reflected in its unique approach to transport regulation. London has unique governance arrangements, with a dedicated authority for transport, and the Mayor has a much more direct role in setting transport policy.³ The legislation provides that the licensing authority is Transport for London⁴ (formerly the Secretary of State and the Commissioner of the Metropolitan Police) and the licensing functions are devolved to London Taxi and Private Hire, which is part of Transport for London.

¹ In England and Wales, these may be district councils, metropolitan district councils or unitary authorities. In Wales, licensing responsibility lies with county councils or county district councils.

² Local authorities can form Integrated Transport Authorities, formerly known as Passenger Transport Executives, but they are generally not responsible for taxis and private hire vehicles which remain in the hands of District Councils. However, see initiatives such as MerseyTravel which coordinate public transport in partnership with bus and rail operators but also cover taxi and private hire, <http://merseytravel.gov.uk/Pages/Home.aspx> (last visited 23 April 2012).

³ Greater London was excluded from the general reorganisation of local government in England and Wales, effected by the Local Government Act 1972. The more recent reorganisation of London government under the Greater London Authority Act 1999 created a new type of organisation that has no parallel elsewhere, the Greater London Authority. Under the 1999 Act, the Mayor is under a general duty to promote safe, integrated, efficient and economic transport facilities and services through publishing a transport strategy.

⁴ Metropolitan Public Carriage Act 1869.

- 2.6 The Traffic Commissioners are responsible for licensing public service vehicles. Where such vehicles have less than nine passenger seats, there is some overlap in respect of private hire licensing functions.⁵

A LOCAL LICENSING REGIME

- 2.7 Licensing is primarily the responsibility of local authorities. The Department for Transport issues best practice guidance to help bring consistency across licensing authorities but this is not binding.⁶ This results in considerable geographical variation in how the legislation is interpreted and discretionary powers are used. This has led to significant uncertainty and a proliferation of litigation in respect of basic questions such as what falls within the scope of regulation and what does not.
- 2.8 The very local nature of the application of taxi and private hire licensing itself raises certain issues. Most taxi journeys are short, but many private hire vehicles are used on longer trips (for example airport drop-off and pick-ups). Devolved decision making on the application of the legislation is beneficial in that local authorities are in the best position to determine what is needed most in their area and what the main problems and issues are. It is also consistent with the current drive towards localism. However, opponents argue that application of the law is inconsistent, fragmented and patchy, increasing complexities for those who provide services in more than one local authority area.

OVERVIEW OF THE STATUTORY FRAMEWORK

- 2.9 The licensing functions devolved to local authorities are subject to a national statutory framework (with the exception of London and Plymouth where different statutes apply).

Taxis

- 2.10 The Town Police Clauses Act 1847, supplemented by the Local Government (Miscellaneous Provisions) Act 1976, provides the principal legislation governing the licensing and regulation of taxis (referred to as “hackney carriages” in the legislation). The basic requirements are that both the vehicle⁷ and the driver⁸ must be licensed and the vehicle must carry plates displaying the vehicle licence number.⁹

⁵ The Traffic Commissioners for England and Wales cover six traffic areas: eastern; north eastern; north western; West Midlands and Wales; western; and south eastern and the Metropolitan area. <http://www.dft.gov.uk/topics/tpm/traffic-commissioners/profiles/> (last visited 23 April 2012).

⁶ Department for Transport, *Taxi and private hire vehicle licensing: Best Practice Guidance* (March 2010).

⁷ Town Police Clauses Act 1847, ss 37 and 45. Section 37 empowers the authority to license hackney carriages.

⁸ Town Police Clauses Act 1847, s 46.

⁹ Town Police Clauses Act 1847, ss 41 and 52.

- 2.11 “Plying for hire” involves picking up passengers from the street or from ranks, and it is the exclusive domain of licensed taxis.¹⁰ Plying for hire without a licence is a criminal offence.¹¹
- 2.12 Taxis standing at a rank or stationary in a public place, and which are not already hired, are under an obligation to accept a fare unless they have a reasonable excuse.¹² This is also referred to as “compellability”.¹³

Private hire vehicles

- 2.13 Vehicles (other than licensed taxis) doing pre-booked work must have private hire licences,¹⁴ as must their driver.¹⁵ In addition, the operator who took the booking requires a licence.¹⁶ This is unlike the position for taxis where there is no requirement for a separate operator licence even when advanced bookings are undertaken. The 1976 Act prescribes the relevant licensing obligations and penalties for breach of the statutory requirements.¹⁷
- 2.14 The key difference between a taxi and a private hire vehicle is that a private hire vehicle cannot be used to ply for hire. This means that a private hire vehicle is not available for immediate hire and cannot be hailed on the public highway. Instead, private hire vehicles can only be booked through a licensed operator. The scope of what can count as a private hire vehicle, and the limits of how they are entitled to operate, has given rise to a considerable body of case law and is considered further in Chapter 3 below.
- 2.15 Operators are the lynchpin of the current private hire vehicle licensing system. Operators in the practical sense of taking bookings are of course not unique to private hire vehicles. Intermediaries and radio circuit operators for taxis play a similar role in respect of arranging pre-booked journeys. The role and justifications of operator licensing will be considered further in Chapter 4.
- 2.16 In London, the Private Hire Vehicles (London) Act 1998 provides the legal power for the licensing and regulation of private operators, drivers and vehicles in a broadly similar way to that which applies in the rest of England and Wales. It empowers Transport for London to make regulations relating to private hire vehicles. As in the rest of England and Wales, private hire licensees may not ply for hire and can only accept bookings made through a licensed operator.

¹⁰ “Plying for hire” has developed a technical legal meaning which can only be fully explored by reference to case law. We discuss this in more detail in Chapter 3 below.

¹¹ Town Police Clauses Act 1847, s 45.

¹² Town Police Clauses Act 1847, s 53; for London, see the London Hackney Carriage Act 1831, s 35, although this does not provide any “reasonable excuse” exceptions within the applicable radius.

¹³ Compellability is discussed further below in Chapter 3.

¹⁴ Local Government (Miscellaneous Provisions) Act 1976, s 48.

¹⁵ Local Government (Miscellaneous Provisions) Act 1976, s 51.

¹⁶ Local Government (Miscellaneous Provisions) Act 1976, s 55.

¹⁷ Local Government (Miscellaneous Provisions) Act 1976, s 46.

- 2.17 London is different in that responsibility for licensing rests with a body dedicated to transport, whereas elsewhere the functions generally reside within a unit dealing with a wide range of licensing matters.¹⁸

OVERVIEW OF LICENSING AUTHORITIES' POWERS

- 2.18 Within the statutory framework relating to taxis and private hire vehicles, local authorities have considerable discretion in imposing local standards and requirements. We will consider the scope for local licensing conditions in Chapter 4 but provide here an outline of some of the key elements of regulation.
- 2.19 Local authorities have the power to make byelaws¹⁹ for regulating hackney carriages; similarly, Transport for London has the power to issue London Cab Orders.²⁰ Local authorities can also attach to the grant of a taxi or private hire licence such conditions as they consider reasonably necessary.²¹ Such powers can be used to regulate drivers and proprietors of vehicles, the placing of plates, the fixing of taxi fares, and the way in which lost property is dealt with. Local authorities may specify a shorter duration of driver licences than the three years maximum specified in the statute.²² It seems that most local authorities have standard conditions which all licensees are required to adhere to. Individual conditions can, however, also be imposed.²³
- 2.20 Applicants for taxi or private hire driver licences must disclose convictions, both spent and unspent.²⁴ Authorities may therefore require licence applicants to apply for Criminal Records Bureau checks. The way in which authorities apply the findings (for example, the period of time which must elapse between the commission of a certain type of offence and when a licence might be granted) is a matter for individual local authorities to determine.
- 2.21 Local authorities have discretion to impose restrictions on the number of taxis operating in their area. The grant of a taxi licence may be refused if the council is satisfied that there is no significant unmet demand for taxis in its area.²⁵
- 2.22 Guidance issued by the Department for Transport suggests that most authorities do not impose quantity restrictions.²⁶ According to the Institute of Licensing, just

¹⁸ We also note the practical difficulties that would arise if responsibility for licensing functions rested with the London boroughs because of their small geographical size and the fact that most journeys are likely to pass through more than one borough.

¹⁹ Town Police Clauses Act 1847, s 68. Whether licensing authorities can attach conditions to taxi driver licences is a contentious issue and is discussed in Chapter 4.

²⁰ Under the Metropolitan Public Carriage Act 1869, s 9(3) and under the London Cab and Stage Carriage Act 1907.

²¹ Local Government (Miscellaneous Provisions) Act 1976, ss 47 and 48.

²² Local Government (Miscellaneous Provisions) Act 1976, s 53(1)(a).

²³ Local Government (Miscellaneous Provisions) Act 1976, ss 47 and 48.

²⁴ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 SI 1975 No 1023, reg 4(1).

²⁵ Town Police Clauses Act 1847 as modified by Transport Act 1985, s 16.

²⁶ Department for Transport, *Taxi and private hire vehicle licensing: best practice guidance* (March 2010), para 47.

28% of local authorities limit taxi numbers.²⁷ The Office of Fair Trading has recommended that restrictions on the quantity of taxis in any area should be removed.²⁸

- 2.23 Local authorities also have the power to set maximum taxi fares,²⁹ although no such power exists in respect of private hire vehicles. Operators are free to negotiate the fare for the journey with the would-be passenger. However, we understand that many consumers are unaware that it is possible to negotiate a price. In London, where meters on private hire vehicles are prohibited, an operator is obliged to quote a price if someone making a booking asks them to do so.³⁰

ZONING

- 2.24 Some local authority licensing areas are broken down into zones for the purposes of taxi and private hire vehicle licensing. This is the result of local authority reorganisation or the creation of a number of unitary authorities in England in 2009.³¹
- 2.25 Unitary authorities generally involve an amalgamation of former district councils into one (or in some cases two) county-wide unitary authorities. The powers of the former district councils in respect of taxi and private hire vehicle licensing transfer to the new unitary authorities. However, because the licensing policies and practices of the various district authorities may differ, sometimes quite markedly, new councils may comprise a number of taxi zones based on the boundaries of the former district councils for a specified period of time.³² This enables the status quo to be maintained in each former district council area until such time as the new authority decides how it wishes to organise its licensing functions in the future. Where a council proposes to amalgamate zones, it also enables it to consult on the policies which should apply.
- 2.26 The issue is more important for taxi than private hire service providers. A key restriction on the provision of taxi services is that a licensed driver may only ply for hire in the area in which their licence is held. Where zones are in place they will be limited to working in the zone corresponding to their former district licensing authority. Therefore, the smaller the area, the more restricted the scope of potential operations. It would be a breach of the licence to accept a fare

²⁷ Institute of Licensing, *Taxi Reform Consultation* (2009). This figure is similar to that given by the Department for Transport. See Chapter 9 for further discussion of quantity restrictions.

²⁸ Office of Fair Trading, *The regulation of licensed taxi and PHV services in the UK* (November 2003).

²⁹ In London, Transport for London sets a mandatory tariff rather than a maximum: London Cab Order 1934, para 40.

³⁰ Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146, reg 9(3).

³¹ Nine new county-wide unitary authorities were created in 2009 in Cornwall, Durham, Northumberland, Shropshire, Wiltshire, Cheshire and Bedfordshire.

³² For example, following the creation of the new Cheshire East and Cheshire West Councils, Cheshire East decided to have three zones mirroring the former district council areas, http://www.cheshireeast.gov.uk/business/licensing/taxi_and_private_hire/hackney_carriage_licence.aspx (last visited 23 April 2012).

outside the zone in which they are licensed (other than if it had been pre-booked). This can also be inconvenient and confusing for potential customers who do not understand why they are refused by the driver of an apparently free taxi. It may also effectively reduce the number of available taxis in any particular area.

- 2.27 Local authorities have the power to amalgamate zones.³³ Before doing so the authority must consult and give proper notice.³⁴ There is no power to reinstate zones once they have been amalgamated, or for an authority to set up new zones. Therefore, once a resolution has been passed to amalgamate zones, it cannot be reversed.
- 2.28 The Department for Transport recommends that zones should be abolished, chiefly for the benefit of the travelling public because zoning may diminish the supply of licensed taxis and reduce consumer choice.³⁵ The Department also notes that removal of the zones may reduce costs for the authority through simpler administration, and enable more fuel efficient use of taxis by not requiring them to return empty to their licensed area.
- 2.29 These provisions do not apply in London. However, London is in effect divided into zones as drivers must either have an “All London” or a “Suburban” licence. The All London licence allows drivers to work anywhere in London, including Heathrow Airport. The Suburban area is divided into nine sectors and drivers may only work in the sector in which they are licensed. They can, however, be licensed to work in more than one sector.³⁶

FARE REGULATION

- 2.30 In this section we will consider the role of local licensing authorities in regulating taxi fares. There is no power for authorities to regulate fares for the hiring of a private hire vehicle. This is a matter for individual operators, perhaps following negotiation with passengers.

Why regulate taxi fares?

- 2.31 Nearly all licensing authorities in England and Wales regulate fares, whereas private hire prices are left to the free market. The question of whether fares should be regulated at all, rather than dictated by market forces (as in most other industries) is an important one.
- 2.32 Fares are a particularly acute example of how market failures in the rank and hailing market for taxis, which prevent normal competition, can hurt consumer

³³ Local Government Act 1972, sch 14, paras 24 and 25. The initial purpose of these powers was to enable authorities to extend provisions of the Town Police Clauses Act 1847 (as incorporated into the Public Health Act 1875) throughout their area.

³⁴ Notice of the intention to pass the resolution must be advertised for two consecutive weeks in a local newspaper circulating in the relevant area and must be served on every parish council in the affected area. Local Government Act 1972, sch 14, para 25(5).

³⁵ See Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010), paras 89 – 91.

interests. Consumers are generally in a weak bargaining position and have limited choice, with taxis exercising something akin to monopoly power. By contrast, when a consumer pre-books a journey, competition between different providers can work effectively to prevent excessive fares.³⁷

- 2.33 Controlling fares charged by taxis in the rank and hailing market has been an obvious and non-contentious solution to these perceived market failures all over the world. The notoriously bad experience in the Netherlands,³⁸ where prices rose dramatically following the removal of price controls, illustrates how socially desirable outcomes may be lost in the absence of fare regulation.³⁹

Statutory powers

- 2.34 Licensing authorities have the power to regulate taxi fares but are not obliged to do so. In practice around 95% of authorities elect to regulate fares.⁴⁰ Although the power to regulate fares through byelaws exists,⁴¹ in general licensing authorities do so by drawing up a table of fares.⁴² In London, Transport for London has similar powers to regulate fares by cab orders.⁴³

Publication requirements

- 2.35 Local authorities are required to publish a notice of fare changes in at least one local newspaper, and copies must be made available for inspection to the public. Procedures are also put in place to deal with possible objections to the variation in fares.
- 2.36 There is, however, no formal requirement for consultation with the trades, consumer panels or focus groups. Some stakeholders have expressed the view that the statutory publication requirements are outdated and fail to ensure sufficient public engagement. We understand that many authorities choose to go beyond the statutory requirements and consult closely with the trades and the general public through customer panels or focus groups.⁴⁴
- 2.37 We understand that the majority of authorities review tariffs on an annual basis, but some only do so following representations from the industry for an increase. The general practice in most areas is for representatives of the industry to propose fare increases to the local licensing committee. The committee will then

³⁶ For information on the arrangements, see <http://www.tfl.gov.uk/businessandpartners/taxisandprivatehire/1408.aspx> (last visited 23 April 2012).

³⁷ Office of Fair Trading, *The Regulation of Licensed Taxi and private hire vehicle Services in the UK* (November 2003) OFT 676 and discussion in the Transport Committee's Fourth Report, paras 43 to 44.

³⁸ We note that the Netherlands are peculiar in not having a hailing market.

³⁹ See discussion in Chapter 9.

⁴⁰ Office of Fair Trading, *The Regulation of Licensed Taxi and private hire vehicle Services in the UK* (November 2003) OFT 676, ch 6.

⁴¹ Town Police Clauses Act 1847, s 68.

⁴² Local Government (Miscellaneous Provisions) Act 1976, ss 65 and 66.

consider the proposals and consult as required by statute, before reaching a decision as to whether to accept, reject or modify the proposals. In London, an annual tariff revision takes place on the first weekend of April each year pursuant to a fare consultation process overseen by the Transport for London Board.⁴⁵

Fare structures

- 2.38 As we have seen, it is for local authorities to decide whether or not to regulate taxi fares and, if they do, to determine how that should be done and the levels that should be set. It is also for authorities to decide whether, for example, higher fares should apply at peak hours in order to encourage greater availability of taxis at those times.
- 2.39 Typically, the maximum fare payable depends on the time of day and consists of an initial hiring charge⁴⁶ plus the applicable rate. The rate is usually based on the distance travelled or on time for any part of the journey where the speed drops below a threshold amount.⁴⁷

What level of fare?

- 2.40 The general fragmentation of the industry means that local authorities may have little information available to them on which to base their decisions, and fare levels appear to vary quite considerably from area to area. It can also be difficult for authorities to strike an appropriate balance. If fares are too low, demand may outstrip supply, whereas if fares are too high, there may be insufficient custom for the available taxis.
- 2.41 In London, fare increases are calculated using a formula based on an index reflecting operating costs. The index includes the costs of the vehicle, parts, insurance, servicing and the Knowledge. Changes, such as making vehicles wheelchair-accessible or bringing them up to required Euro emissions standards, can have significant cost implications. Such one-off increases are accommodated outside of the general cost index formula. Fuel costs, which are difficult to predict, are also a key factor impacting fares.⁴⁸ Ultimately, costs are passed on to the consumer.

⁴³ Metropolitan Public Carriage Act 1869, s 9; London Cab and Stage Carriage Act 1907; London Cab Order 1934.

⁴⁴ The Office of Fair Trading, *The Regulation of Licensed Taxi and private hire vehicle Services in the UK* (November 2003) OFT 676 refers to such methods being used in Bristol, but there may be more recent examples.

⁴⁵ See for example in respect of tariff changes to take effect in April 2012, <http://www.tfl.gov.uk/assets/downloads/businessandpartners/taxi-tariff-consultation-2012.pdf> (last visited 23 April 2012).

⁴⁶ In most areas this is £2.20.

⁴⁷ A table of fares may specify, for example, a general daytime tariff, a higher tariff in the evenings and on Sundays, and a further tariff for bank holidays and over Christmas and New Year. A charge may also be specified for any time in which the driver is waiting at the customer's request (for example to collect an item from a shop).

⁴⁸ We note that in London, for example, since 2008, Transport for London has been able to adjust taxi fares directly in response to rising fuel costs.

A maximum tariff

- 2.42 Tariffs set by licensing authorities represent the maximum which can be charged.⁴⁹ Taxi proprietors may charge less, perhaps for competitive purposes.

Taxi meters

- 2.43 Taximeters are widely recognised as a distinctive feature of taxis, and indeed, the word “taxi” stems from it.⁵⁰ In London, taxis must be fitted with taximeters.⁵¹ Conversely, private hire vehicles are expressly prevented from being fitted with taximeters.⁵² There is no such prohibition in the rest of England and Wales where local authorities have discretion as to whether or not to allow private hire vehicles to have meters. We also note that taximeters are subject to European regulation in order to ensure harmonised standards and consumer protection.⁵³

Fares in the pre-booked market

- 2.44 Taxis are allowed to agree a fixed price for journeys but this can be no higher than the metered fare.⁵⁴ Transport for London has considered relaxing this requirement to allow taxi radio circuits more flexibility in charging fixed fares.⁵⁵

Office of Fair Trading review of fare regulation

- 2.45 The Office of Fair Trading reviewed the regulation of taxi fares as part of its market study of the regulatory framework governing licensed taxis and private hire vehicles.⁵⁶ Whilst it found arguments for removing fare regulation, the case for retaining controls was considered to be much stronger. The nature of the taxi business, where the majority of hiring is made at ranks or by hailing a vehicle on the street, means that it is difficult for passengers to negotiate on price. This contrasts with private hire vehicle bookings which are made over the telephone or

⁴⁹ This was established in the case of *R v Liverpool City Council ex p. Curzon Limited* 12 November 1993 CO/1338/91 QBD, unreported. There was some confusion about whether this also applied to London, and the tariff regulations were amended in 2005 to make clear that the tariffs set were only maxima.

⁵⁰ See the definition of a taximeter in the Local Government (Miscellaneous Provisions) Act 1976, s 80(1). See also *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin); [2011] RTR 23 by Lord Justice Munby at para 3.

⁵¹ London Cab Order 1934, art 35.

⁵² Private Hire Vehicles (London) Act 1998, s 11.

⁵³ See the Measuring Instruments Directive (MID) 2004/22/EC (implemented by Measuring Instruments (Taximeters) Regulations 2006, SI 2006 No 2304). It establishes the essential requirements that the measuring instruments will have to satisfy if they are subject to legal metrological control in a Member State and the conformity assessment that they have to undergo prior to their placing on the market and putting into use.

⁵⁴ Local Government (Miscellaneous Provisions) Act 1976, s 67; and *Stratford-on-Avon District Council v Dyde* [2009] EWHC 3011 (Admin). In London, see the London Cab Order 1934, paras 39 and 40. Private hire vehicle operators who use London taxis are also not allowed to charge any more than the fare shown on the meter, see Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, reg 9(8).

⁵⁵ Transport for London/LTPH, *Consultation on taxi fares* (November 2011) section 8. See also <http://www.tfl.gov.uk/assets/downloads/businessandpartners/taxi-tariff-consultation-2012.pdf> (last visited 23 April 2012). A similar approach was trialled in 2010.

⁵⁶ Office of Fair Trading, *The Regulation of Licensed Taxi and private hire vehicle Services in the UK* (November 2003) OFT 676, ch 6.

in person, providing the customer with an opportunity to negotiate before the journey begins. The Office of Fair Trading was concerned that deregulating fares could lead to higher prices. This could have a particular impact on those who have no alternative form of transport, including older or disabled persons, or those who rely on taxis for personal safety (for example, travelling home late at night).

- 2.46 The report recommended local authorities should only set maximum tariffs, rather than fixed or minimum fares. Further, it recommended that it should be made clear to customers that they can negotiate fares if, for example, they are booking by telephone. The Office of Fair Trading also recommended local authorities should actively facilitate more price competition in the market. The recommendations in respect of fares were endorsed by Europe Economics' follow-up review in 2007.⁵⁷ In this review we acknowledge the powerful arguments in favour of retaining fare regulation and our provisional proposals do not propose any substantial change in this regard.
- 2.47 In the next section we discuss the definition and scope of core legal concepts used in taxi and private hire licensing.

⁵⁷ Europe Economics, *Evaluating the impact of the taxis market study* (October 2007) paras E.22 to E.27.

CHAPTER 3

DEFINITIONS AND SCOPE

INTRODUCTION

- 3.1 In this chapter we consider the legal definitions of taxis and private hire vehicles. There is a multitude of statutes dating back to the Victorian era, and they can often only be understood by reference to case law. The piecemeal development of the regulation of taxis has created significant inconsistencies, and indeed determining the proper definition of a taxi or private hire vehicle is at times very difficult.
- 3.2 What follows is our analysis of some of the core elements defining taxis and private hire vehicles. Unlike elsewhere in this paper, we have followed the terminology in the relevant legislation and case law, which in the main refers to "hackney carriages" rather than "taxis".

TAXIS

- 3.3 The term "taxi" first appears in legislation in the Transport Act 1980. Under this Act, a taxi is defined in the same terms as a "hackney carriage".¹ Most of the legislation and case law still refers to taxis as "hackney carriages".
- 3.4 A hackney carriage is defined by section 38 of the Town Police Clauses Act 1847 in the following terms:

Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage.

This definition was adopted by section 80(1) of the Local Government (Miscellaneous Provisions) Act 1976.

- 3.5 The wording of the Town Police Clauses Act 1847 is cumbersome and cannot be understood without reference to case law. As will be discussed below, the case law itself is complex, and at times conflicting.
- 3.6 The wording of the relevant definition in London is more streamlined but shares the same key elements:

¹ Transport Act 1980, s 64(3).

“Hackney carriage” shall mean any carriage for the conveyance of passengers which plies for hire within the limits of this Act, and is [neither a stage carriage nor a tramcar].²

- 3.7 The expression “London cab” is also found in the legislation. It is always defined by reference to the definition of a hackney carriage,³ and is therefore no different in legal terms. The term expressly includes:

Any such vehicle, whether drawn or propelled by an animal or mechanical power.⁴

Leisure use of taxis

- 3.8 We saw above that a hackney carriage is defined by its characteristic use in plying for hire rather than by its design.⁵ However, a hackney carriage does not stop being a hackney carriage just because it is not being used as such at any particular moment.⁶
- 3.9 This has been interpreted by the courts to mean that, in England and Wales (outside London), leisure use is not allowed, creating the concept of “once a taxi, always a taxi”.⁷ This means that family members, for example, cannot in theory drive the vehicle unless they hold a hackney carriage licence. It also means that anyone wanting to work in the hackney trade has to buy a vehicle dedicated to the job rather than using their existing car.
- 3.10 Transport for London, however, takes the view that London taxis and private hire vehicles can be driven by unlicensed drivers.⁸

² Metropolitan Public Carriage Act 1869, s 4. This definition was also adopted by s 64(3) of the Transport Act 1980. Regarding the interchangeability of the concepts of “plying for hire” under the 1847 Act and the 1869 Act, see for example *Chorley Borough Council v Thomas* [2001] EWHC Admin 570, by Mr Justice Maurice Kay at para 10. See also J Button, *Button on Taxis: Licensing Law and Practice* (3rd ed 2009) p 162.

³ London Cab and Stage Carriage Act 1907, s 6(1), referring to the Metropolitan Public Carriage Act 1869; London Cab Act 1968, s 2(1), referring to the London Hackney Carriage Act 1853; Local Government (Miscellaneous Provisions) Act 1976, s 80(1), referring to the Metropolitan Public Carriage Act 1869.

⁴ London Cab and Stage Carriage Act 1907, s 6(2).

⁵ *Young v Scampton* [1989] RTR 95, by Mr Justice Auld at 106.

⁶ *Hawkins v Edwards* [1901] 2 KB 169 by Lord Chief Justice Alverstone at p 173. The driver of a hackney carriage was accused of failing to properly display the license plate whilst undertaking a journey. Lord Chief Justice Alverstone rejected the argument that the vehicle was not a hackney carriage at the relevant moment.

⁷ *Yates v Gates* [1970] 2 QB 27, *R (on the application of Newcastle City Council) v Berwick-upon-Tweed BC* [2008] EWHC 2369 Admin; [2009] RTR 34, by Mr Christopher Symons QC at 10; and for private hire vehicles see *Benson v Boyce* [1997] R.T.R 226.

⁸ For taxis, this is in reliance on Metropolitan Public Carriage Act 1869, s 8, which states that “no hackney carriage shall ply for hire ... unless under the charge of a driver having a licence ...”. Transport for London interprets this as meaning that a taxi will not be plying for hire when it is driven by someone other than a licensed driver. For private hire vehicles reliance is placed on the Private Hire Vehicles (London) Act 1998, s 12(1) which states that “no vehicle shall be used as a private hire vehicle ... unless the driver holds a ... licence”. Transport for London takes the view that this enables a vehicle not to be used as a private hire vehicle when it is being used for social purposes.

Taxis travelling cross-border

- 3.11 A taxi that travels outside the area in which it is licensed continues to be a hackney carriage subject to the requirements of its own licensing authority. A taxi has the right to pass through an area for which it does not hold a licence but it cannot ply for hire in that area.⁹ As succinctly put by Mr Justice Auld,

A Birmingham licensed taxi does not lose its character as a Birmingham taxi when it enters Solihull, but it does not thereby become, in addition, a Solihull taxi.¹⁰

Can a pedicab be a hackney carriage?

- 3.12 Pedicabs, also referred to as trishaws, are three-wheeled vehicles propelled by a cyclist and a familiar sight in many cities around the world. Under the current law, pedicabs can be licensed as hackney carriages in England and Wales but not in London.
- 3.13 Remarkably, the legal issue turns on whether a pedicab can be classified as a “stage coach” (or “stage carriage” in London).¹¹ This is because stage coaches are expressly carved out from the definition of a hackney carriage. In the leading case on the matter outside London, the notion that a pedicab could be a stage coach was found to be laughable, and as such, pedicabs can be classified as hackney carriages outside London.¹²
- 3.14 The leading London case reached the opposite conclusion and, as a consequence, pedicabs in London were not subject to a licensing regime.¹³ Mr Justice Pitchford commented that in his view “primary legislation will probably be required”.¹⁴
- 3.15 Although pedicabs may be covered by hackney carriage licensing in the rest of England and Wales, in practice, they are effectively banned in many areas. This is because typically pedicabs cannot satisfy licensing conditions (in respect of vehicle specifications, for example which may require a certain number of seats or wheels) and because they are technically hackney carriages, they would commit an offence if they plied for hire without a licence.
- 3.16 London has recently attempted to apply aspects of road traffic legislation to pedicabs. A proposed registration scheme for them has been dropped due to opposition from both the pedicabs trade, which sought a distinct licensing scheme,

⁹ *Young v Scampion* [1989] RTR 95, 105-106.

¹⁰ *Young v Scampion* [1989] RTR 95, 105.

¹¹ Town Police Clauses Act 1847, s 38; Metropolitan Public Carriage Act 1869, s 4.

¹² *R v Cambridge City Council ex parte Lane* [1999] RTR 182; in particular Sir Richard Scott VC at 189.

¹³ *Oddy v Bugbugs Ltd* [2003] EWHC 2865 (Admin), [2003] All ER (D) 156 (Nov) by Mr Justice Pitchford at para 32.

¹⁴ *Oddy v Bugbugs Ltd* [2003] EWHC 2865 (Admin), [2003] All ER (D) 156 (Nov) by Mr Justice Pitchford at para 34.

and the taxi trade, which did not wish to see pedicabs legitimised in this way.¹⁵ It was announced that the Bill's promoters intended to withdraw the clause on pedicabs because of the opposition it had faced and that the pedicabs industry intended to take steps towards self-regulation.¹⁶

PLYING FOR HIRE

- 3.17 Only hackney carriages have the right to ply for hire.¹⁷ The right to ply for hire only extends to a hackney carriage's area of license but they can undertake pre-booked work outside of their licensing area (on the same basis as private hire vehicles).¹⁸ It is an offence for the proprietor,¹⁹ or driver,²⁰ of an unlicensed taxi to allow it to ply for hire and most of the case law about plying for hire concerns prosecutions of private hire vehicles or unlicensed vehicles.
- 3.18 There is no statutory definition of plying or standing for hire. In this section we consider a working definition as developed by case law.²¹

Factors suggesting plying

- 3.19 *Cogley v Sherwood*²² concerned an arrangement whereby a private hire firm contracted with an airport to provide vehicle services for arriving passengers. Passengers made a booking within the terminal and were then shown to their car. The cars were not visible from the terminal and this was key to the finding there had been no plying for hire.
- 3.20 Lord Chief Justice Parker undertook a thorough review of the existing case law and stated:

It was of the essence of plying for hire that the vehicle in question should be on view, that the owner or driver should expressly or impliedly invite the public to use it, and that the member of the public should be able to use that vehicle if he wanted to.²³

¹⁵ London Local Authorities and Transport for London (No2) Bill 2007. See also petition by Bugbugs Media Ltd & Reliable Rickshaws Ltd, <http://www.publications.parliament.uk/pa/cm201011/cmprbill/llaatf12/pet1.pdf> (last visited 23 April 2012).

¹⁶ *Hansard* (HC), 6 March 2012, vol 541, col 792.

¹⁷ Town Police Clauses Act 1847, ss 38 and 45; Metropolitan Public Carriage Act 1869, ss 4 and 7.

¹⁸ *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin); [2011] RTR 23.

¹⁹ Town Police Clauses Act 1847, s 45; Metropolitan Public Carriage Act 1869 s 7.

²⁰ Town Police Clauses Act 1847 ss 45 and 46; Metropolitan Public Carriage Act 1869 s 8.

²¹ We will explore the cross-border question in Chapter 10.

²² [1959] 2 QB 311.

²³ *Cogley v Sherwood* [1959] 2 QB 311 at 325.

- 3.21 Whether or not a vehicle is plying for hire is a question of fact and degree.²⁴ Although there is a great deal of case law on “plying for hire”, none of it is of particularly strong authority since the question has to be decided on the merits in each case.²⁵

Immediate availability

- 3.22 Immediate availability is the key aspect of standing and plying for hire. In *Case v Storey*, Chief Baron Kelly stated:

[It] must mean that the carriage is to be at the disposal of any one of the public who may think fit to hire it.²⁶

- 3.23 The requirement of immediate availability is closely connected with the notion that a hackney carriage is not deemed to be plying for hire while in motion. London Taxi and Private Hire suggests that an unhired taxi passing along a street is not legally bound to stop when hailed as it is not legally plying for hire when it is in motion. Somewhat confusingly, it may be deemed to be in motion for these purposes even when actually stationary providing that it becomes stationary due to prevailing traffic conditions.²⁷ This means that a hackney carriage is not technically “standing” when it stops at traffic lights or at a petrol pump.²⁸

Exhibition of the vehicle and advertising

- 3.24 The requirement that the vehicle, whose services are being advertised, be on display has long been considered an important aspect of plying for hire.²⁹ However, this is not an absolute requirement. In *Gilbert v McKay*,³⁰ a line of cars was parked outside an office advertising cars for hire. Passengers paid their fare in the office before getting into the car. The court found the contract was made with the operator rather than the driver, but it was still held to be an unofficial rank and illegal plying for hire. Lord Chief Justice Goddard noted that:

It is quite possible that there can be a plying for hire when it [the vehicle] is not exhibited, but where it is being exhibited it is an important factor.³¹

- 3.25 *Nottingham City Council v Woodings*³² concerned a private hire driver who parked his vehicle in order to use nearby public toilets. Upon leaving the public toilets, he

²⁴ *Cogley v Sherwood* [1959] 2 QB 311 by Lord Chief Justice Parker at pp 323 to 324; *Chorley Borough Council v Thomas* [2001] EWHC Admin 570 by Mr Justice Kay at para 7.

²⁵ S Mehigan, J Phillips, The Hon Mr Justice Saunders, *Paterson's Licensing Acts 2011* (119th ed 2011) p 1770.

²⁶ *Case v Storey* (1868-69) LR 4 Ex 319 by Chief Baron Kelly at 323.

²⁷ London Taxi and Private Hire, *Abstract of Laws, General guidance on hackney carriage law for London's licensed taxi drivers, Form 4324* (June 2011).

²⁸ *Hunt v Morgan* [1949] 1 KB 233 by Lord Chief Justice Goddard at p 238; and *Eldridge v British Airports Authority* [1970] 2 QB 387 by Mr Justice Donaldson at 396.

²⁹ *Cavill v Amos* (1900) 16 TLR 156.

³⁰ [1946] 1 All ER 458.

³¹ [1946] 1 All ER 458 at 459.

³² [1994] RTR 72.

sat in the car and was approached by two plain clothes police officers who asked whether he was available for hire. It was held that when the driver responded that he was then, bearing in mind the location and the appearance of the car, he was plying for hire.³³

- 3.26 The difference between “exhibition” and mere presence is not obvious and this factor can cause particular problems in the context of private hire vehicles wishing to advertise their services by markings on their vehicles. In *Vant v Cripps*,³⁴ a private hire vehicle was left stationary and unattended outside the owner’s home. It carried a sign with the name of the business and the phone number, and there was a sign advertising the service attached to the house. It was held that this could amount to plying for hire.

No prior contract

- 3.27 If the driver picks up a passenger pursuant to a prior arrangement that is generally not plying for hire.³⁵ A very general prior arrangement, like picking up a passenger who happens to hold a previously purchased ticket, might still count as plying for hire.³⁶ If the arrangement is very general, for example, to pick up “staff” from a hotel to such destination “as may be directed”, it is not clear whether this would be certain enough to give rise to any contract. This means that the contractual relationship between the passenger, driver and operator can be unclear.³⁷

The impact of private hire regulation on the meaning of “plying for hire”

- 3.28 In the 1970s a licensing regime for the regulation of private hire vehicles in England and Wales (excluding London) was brought into force, with London getting its own legislation in 1998. Prior to this, minicabs had no legal recognition and existed on the fringes of taxi regulation. As noted by Lord Chief Justice Parker in *Cogley v Sherwood*, the legislature of 1869 could not have envisaged how business models would develop, adding that:

Indeed today, as a matter of common sense, I do not think that anyone would say that vehicles belonging to the many car hire concerns are plying for hire in the ordinary sense of the word.³⁸

- 3.29 Mr Justice Donovan also recognised that the advent of the private hire business had rendered the legislation out of touch with reality.³⁹

³³ [1994] RTR 72 by Lord Justice Rose at 78.

³⁴ [1964] Crim LR 594.

³⁵ *Allen v Tunbridge* (1871) LR 6 CP 481.

³⁶ Contrast *Sales v Lake* [1922] 1 KB 553 where passengers had purchased tickets for a particular journey, with the more general arrangements in *Armstrong v Ogle* [1926] 2 KB 438; and *Griffin v Grey Coaches Ltd* (1928) 27 LGR 39.

³⁷ *Gilbert v McKay* [1946] 1 All ER 458 (the contract was between the passenger and operator). The existence of a contract and when it is formed and what its terms are also depends on questions of implied and unilateral contracts, which are the subject of entire chapters in contract law textbooks.

³⁸ *Gilbert v McKay* [1946] 1 All ER 458 at 324.

³⁹ *Gilbert v McKay* [1946] 1 All ER 458 at 328.

- 3.30 There is a significant change in tone to be found in the case law on plying for hire which followed this legislative change.⁴⁰ Prior to the regulation of private hire vehicles, the courts had been eager to outlaw any vehicles carrying passengers for reward other than licensed taxis, and had given a broad reading of “plying for hire”. This is reflected in earlier cases, such as *Cogley v Sherwood* and the cases which followed it that focused on the vehicle. By contrast, more recent cases place greater emphasis on the intention of the driver rather than what the vehicle could be said to be doing.⁴¹

Conclusions

- 3.31 Although the definition of “plying for hire” as developed by case law is workable, it leaves considerable grey areas particularly in the interface with licensed private hire vehicles. For example, over 60 years ago the judiciary already felt that the legislation was dated, with Lord Chief Justice Goddard remarking that:

It may not be inappropriate to hope that this matter will receive the attention of the appropriate authority which, in relation to cabs, is the Home Secretary. Conditions in 1948 are very different from what they were in 1853, when taxi-cabs were unknown.⁴²

- 3.32 The most recent significant case on plying for hire is that of *Chorley Borough Council v Thomas*,⁴³ where a private hire vehicle parked outside a pub. When asked if he was free, the driver responded that he was. Once the passengers had entered the vehicle, the driver contacted the operator via radio to make the booking. It was held that the evidence could show plying for hire.⁴⁴ The fact the booking was made by the driver, rather than the passenger, was critical and illustrates the heavily fact-based and difficult determinations which can arise in borderline cases.

COMPELLABILITY

- 3.33 Where a taxi at a taxi stand or in the street accepts a hiring, they are not under a duty to accept any passenger; but once they have accepted, they must take the passenger anywhere they might wish to go, within a prescribed distance.⁴⁵ This is generally the whole licensing district, or in London a 12 mile radius from the point of pick up,⁴⁶ or a journey of up to an hour.⁴⁷
- 3.34 Although members of the public often believe that a taxi which has its sign illuminated is obliged to carry them, this is not the case. Moreover, even when a hackney carriage is “standing”, its obligation to take a fare is not an absolute one. It

⁴⁰ J Button, *Button on Taxis: Licensing Law and Practice* (3rd ed 2009) p 161.

⁴¹ *Nottingham City Council v Woodings* [1994] RTR 72.

⁴² *Hunt v Morgan* [1949] 1 KB 233 by Lord Chief Justice Goddard at 239.

⁴³ [2001] EWHC Admin 570.

⁴⁴ *Chorley Borough Council v Thomas* [2001] EWHC Admin 570 by Mr Justice Maurice Kay at para 17.

⁴⁵ Town Police Clauses Act 1847, s 53; and in London the London Hackney Carriages Act 1831, s 35.

⁴⁶ Or 20 miles if the journey starts at Heathrow, London Hackney Carriage Act 1953, ss 7 and 17(2) and London Cab Order 1972, SI 1972/1047.

⁴⁷ London Cab Order (No 2) 2001; London Hackney Carriage Act 1853, ss 7 and 17(2).

does not apply if the taxi is already hired, or if the driver has a “reasonable excuse”.⁴⁸ Reasonable excuse could cover situations where the prospective passenger was smoking, drunk, or carrying food, for example. By contrast, refusing to take a fare because the distance is too short is unlawful.

PRIVATE LAND

- 3.35 Where a hackney carriage is working on private land, it may come outside the scope of regulation because it is not technically plying for hire “in the street”.⁴⁹ The early case law took the view that the public would be amply protected by the terms imposed by railway companies on cab drivers wishing to ply for hire on their land,⁵⁰ an approach which may appear more questionable now.⁵¹
- 3.36 The word “street” includes “any road, square, court, alley, and thoroughfare, or public passage”.⁵² Whether private land should be treated as a street is a question of fact and degree. Like plying for hire, each case turns on its own facts so precedent can only provide limited guidance.
- 3.37 Case law in respect of the status of private land developed mainly in respect of ranks at railway stations.⁵³ The courts consistently found that hackney carriages which plied for hire exclusively on private land did not require any form of licence, provided they did not draw custom from the general public in any adjoining street. Pertinent factors in deciding whether plying had extended to a street included such matters as how visible the vehicle was from a public place, its proximity to a public place, and whether the passengers actually came from an adjacent public place.⁵⁴

Railways

- 3.38 Although railway stations are typically private land, licensing requirements were extended in 1925 to those vehicles which ply for hire at railway stations. This did not alter the fact that a hackney carriage would still require the permission of the railway station in order to ply for hire on its land.⁵⁵ Taxis wishing to ply for hire at some

⁴⁸ Town Police Clauses Act 1847, s 53; and London Hackney Carriage Act 1853, ss 7 and 17(2).

⁴⁹ This is a requirement under the Town Police Clauses Act 1847, s 38 and the London Hackney Carriage Act 1935, s 35. But contrast the Metropolitan Public Carriage Act 1869, s 4 which does not limit plying for hire to activities on streets as discussed below at para 3.42.

⁵⁰ *Case v Storey* (1868-69) LR 4 Ex 319, by Baron Bramwell at 325.

⁵¹ *White v Cubitt* [1929] 1 KB 443.

⁵² Town Police Clauses Act 1947, s 3.

⁵³ As discussed below, at para 3.38, railway stations are now deemed to be “streets” by virtue of the Public Health Acts 1925.

⁵⁴ *Case v Storey* (1868-69) LR 4 Ex 319; *Curtis v Embery* (1871-72) LR 7 Ex 369. For a difficult borderline case, where there was no offence of plying for hire despite a public footpath, see *Jones v Short* [1900] 2 KB 473. More recently, see *Eastbourne Borough Council v Stirling* [2001] RTR 7, at para 19.

⁵⁵ *Hulin v Cook* [1977] RTR 345.

railway stations may only be allowed access if they have purchased a permit from Network Rail or the train operating company.⁵⁶

Airports

- 3.39 Major airports are typically regulated by byelaws containing, among other things, provisions relating to taxis and private hire vehicles.⁵⁷ Airports are private land, and where it is clearly separated from the public road, there are no restrictions on plying for hire.⁵⁸ Bearing in mind the approach to railway stations, if vehicles at an airport attracted custom from public streets this would perhaps amount to plying for hire. As with railways, the justification for exempting vehicles which ply for hire at airports is based on the regulations put in place by airports themselves.⁵⁹
- 3.40 Unlike railway stations, licensing requirements have never been extended to airports. The position is further complicated by the interaction between airport byelaws and the general licensing requirements applicable in the relevant district.⁶⁰
- 3.41 Airports typically exercise strong contractual control over taxi and private hire service provision on their premises and undertake formal tender processes. Gatwick Airport, for example, is entirely serviced by a single fleet of private hire vehicles.⁶¹

London

- 3.42 Unlike the rest of England and Wales, the definition of a hackney carriage and the requirement to hold a licence for plying for hire is not, in London linked to a street. Therefore, a vehicle can be a hackney carriage even where it plies for hire on private land.⁶²
- 3.43 On the other hand, some offences only apply where the vehicle is on the street.⁶³ For these purposes, railway stations and airports are deemed to be a “street or place” through specific legislation or private Acts.⁶⁴

⁵⁶ The Office of Rail Regulation has recently undertaken a study which concluded that the use of such permits does not have a detrimental effect on consumers, <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10816> (last visited 23 April 2012).

⁵⁷ See, for example, Heathrow's byelaws and detailed provisions in respect of its feeder park, http://www.heathrowairport.com/static/Heathrow_Airside_and_baggage/Downloads/PDF/HAL_Byelaws.pdf (last visited 23 April 2012); and those of Gatwick airport, http://www.gatwickairport.com/Documents/business_and_community/Publications/2010/Gatwick_byelaws.pdf (last visited 23 April 2012).

⁵⁸ *Young v Scampion* [1989] RTR 95 by Mr Justice Auld at 110.

⁵⁹ *Young v Scampion* [1989] RTR 95, by Mr Justice Auld at 110.

⁶⁰ See, for example, *R v BAA ex parte Wheatley* [1983] RTR 466.

⁶¹ See Gatwick airport's taxi information website, <http://taxis.gatwickairport.com/> (last visited 23 April 2012).

⁶² Metropolitan Public Carriage Act 1869, s 4.

⁶³ London Hackney Carriage Act 1831, s 35.

⁶⁴ See for example the Airport Act 1986, s 65(5) for the purposes of extending compellability. For a general summary see also Transport for London Abstract of Laws at p 26, <http://www.tfl.gov.uk/assets/downloads/businessandpartners/taxi-driver-abstract-of-laws.pdf> (last visited 23 April 2012).

- 3.44 We also note that where a vehicle is in a designated parking space there is no plying for hire.⁶⁵ There are no equivalent provisions in the legislation applicable outside London.

PRIVATE HIRE VEHICLES

- 3.45 A “private hire vehicle” is defined as:

A motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers.⁶⁶

- 3.46 The definition in London is substantially the same:

A vehicle constructed or adapted to seat fewer than nine passengers which is made available with a driver for hire for the purpose of carrying passengers, other than a licensed taxi or a public service vehicle.⁶⁷

- 3.47 “Vehicle” means a mechanically propelled vehicle (other than a tramcar) intended or adapted for use on roads.⁶⁸

Vehicle

- 3.48 Unlike the definition of a hackney carriage, the definition of a private hire vehicle is limited to motorised vehicles. The definition expressly excludes hackney carriages, as well as public service vehicles and tramcars; this means that the same vehicle cannot carry both a hackney carriage and a private hire licence.

- 3.49 The term “vehicle” is broad enough to include motorbikes, although a local authority is entitled to refuse to license motorbikes on grounds of safety and suitability.⁶⁹ A safe motorbike might nonetheless be unsafe as a private hire vehicle. Licensing authorities can grant licences to motorbikes and their riders should they see fit. There is evidence that at least one licensing authority is currently doing so.⁷⁰

- 3.50 In London, a private hire vehicle must have four wheels, thus excluding motorbikes from the licensing regime and effectively allowing them to operate without a licence.⁷¹ A number of taxibike firms operate in London.⁷² Transport for London

⁶⁵ London Cab Act 1968, s 3(2); Road Traffic Regulations Act 1984.

⁶⁶ Local Government (Miscellaneous Provisions) Act 1976, s 80(1). In Plymouth, it is defined as a vehicle constructed or adapted to seat fewer than eight passengers; see Plymouth City Council Act 1975, s 2(1).

⁶⁷ Private Hire Vehicles (London) Act 1998, s 1(1)(a).

⁶⁸ Private Hire Vehicles (London) Act 1998, s 36.

⁶⁹ Local Government (Miscellaneous Provisions) Act 1976, s 48.

⁷⁰ Chauffeur Bikes Ltd, as licensed by Canterbury City Council, <http://www.chauffeurbikes.co.uk/Home.html> (last visited 23 April 2012).

⁷¹ Private Hire Vehicles (London PHV Licences) Regulations 2004 and Road Traffic Act 1998, sch 1 para 1.

licensed these vehicles under temporary licences which have since been renewed indefinitely. However, Transport for London cannot issue any such new licences as regulations now require private hire vehicles to have four wheels.⁷³

- 3.51 In November 2011, the Department for Transport asked for comments on licensing motorcycles as private hire vehicles. It looked firstly at the whether this should be allowed in principle. Secondly, it sought views on the standards which should be applicable to motorbikes licensed as private hire vehicles, looking at issues such as protective clothing and instructing passengers. The consultation closed in December 2011 and the Department is currently analysing responses.

“Provided for hire”

- 3.52 The courts have taken a broad view of what can count as a hiring. In *St Albans District Council v Taylor*,⁷⁴ the Divisional Court held that payment was not necessary to constitute a hiring. It was sufficient that the provider had obtained a commercial benefit by maintaining his firm’s goodwill.⁷⁵

Leisure use of private hire vehicles

- 3.53 In *Benson v Boyce*,⁷⁶ Mr Justice Mance held that the definition of a private hire vehicle depended upon the characteristic use of the vehicle as “provided for hire”. This was much in the same way a vehicle is a “hackney carriage” regardless of whether it is plying for hire at any particular moment.⁷⁷ His Lordship was concerned that important obligations, like the requirement to notify the licensing authority of a transfer of interest in the vehicle,⁷⁸ or to present the vehicle for inspection and testing,⁷⁹ would be useless if a vehicle was taken to change its status on a frequent basis. This resulted in the conviction of a licensed hackney carriage driver for driving a private hire vehicle in a private capacity.⁸⁰
- 3.54 The effect of *Benson v Boyce* is that a private hire vehicle may only be driven by a licensed private hire vehicle driver, in the same way that a hackney carriage can only be driven by a licensed hackney carriage driver. This is perhaps particularly

⁷² See, for example, <http://www.passengerbikes.com/index.html> (last visited 23 April 2012); <http://www.virginlimobike.com/> (last visited 23 April 2012); <http://www.fabgranadacars.com/taxybike.html> (last visited 23 April 2012).

⁷³ Private Hire Vehicles (London PHV Licences) Regulations 2004, sch 1 para 1.

⁷⁴ [1991] RTR 400.

⁷⁵ *St Albans District Council v Taylor* [1991] RTR 400 at p 404. In this case, an operator had asked his wife to drive her own unlicensed vehicle when his firm was short-staffed. When she undertook these journeys, passengers were informed that the vehicle was not licensed and were not charged.

⁷⁶ [1997] RTR 226

⁷⁷ *Benson v Boyce* [1997] RTR 226 by Mr Justice Mance at 230. Although the phrase “provided for hire” may suggest a more time-limited approach, he found that to allow a vehicle to sometimes be a private hire vehicle but sometimes be an ordinary passenger vehicle would render other legislative provisions redundant or easily avoidable.

⁷⁸ Local Government (Miscellaneous Provisions) Act 1976, s 49.

⁷⁹ Local Government (Miscellaneous Provisions) Act 1976, s 50(1).

⁸⁰ As criminalised by Local Government (Miscellaneous Provisions) Act 1976, s 46(1)(b).

damaging in the case of private hire drivers, who might wish to employ their family car or work only part-time.

For the purpose of carrying passengers

- 3.55 *Arun District Council v Spooner*⁸¹ concerned a pet ambulance service. The court held that a private hire licence was not necessary where the carriage of passengers (the owners of the pets) had been merely incidental to the purpose for which carriage was intended.⁸² This was notwithstanding the rare occasions where owners might also be transported; what mattered was the characteristic use for the carriage of pets.

The requirement for an operator

- 3.56 A private hire vehicle cannot undertake work except through a licensed operator.⁸³ The requirement for the operator to be licensed separately from the driver is one of the distinctions between the private hire and taxi licensing regimes. This reflects the different method of carrying out the business, as the restrictions on plying for hire meant that the private hire industry evolved via the use of telephone bookings. There is nothing to prevent a licensed hackney carriage operation from accepting bookings in advance, but there is no requirement for a separate operator and the booking can be arranged direct with the driver.
- 3.57 "Operate" is defined as "in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle".⁸⁴ The definition of "operator" in London is substantially the same.⁸⁵

The boundaries between private hire regulation and public service vehicles

Small public service vehicles under the Traffic Commissioners

- 3.58 The statutory definition divides public service vehicles into two categories, depending on size. Large public service vehicles (those which carry more than eight passengers)⁸⁶ are not relevant for the purposes of this review. However, a small public service vehicle is a vehicle which carries eight or fewer passengers for separate fares in the course of a business of carrying passengers.⁸⁷ There is therefore at least potential overlap in the vehicles covered by both licensing regimes.
- 3.59 The key difference between a small public service vehicle and a private hire vehicle is that passengers travelling in a small public service vehicle must pay separate fares, as on a bus, rather than pay a fare for the hire of the vehicle and driver for the journey undertaken, regardless of the number of passengers carried.

⁸¹ [2007] EWHC 307 (Admin).

⁸² *Arun District Council v Spooner* [2007] EWHC 307 (Admin) at para 19.

⁸³ Local Government (Miscellaneous Provisions) Act 1976, s 55 and Private Hire Vehicles (London) Act 1998, s 2.

⁸⁴ Local Government (Miscellaneous Provisions) Act 1976, s 80(1).

⁸⁵ Private Hire Vehicles (London) Act 1998, s 1(1)(b).

⁸⁶ Public Passenger Vehicles Act 1981 s 1(1)(a).

⁸⁷ Public Passenger Vehicles Act 1981, s 1(1)(b).

- 3.60 A small public service vehicle must be licensed.⁸⁸ Licences are granted by a Traffic Commissioner⁸⁹ and local authorities have no remit here. The holder of a taxi or private hire vehicle licence can apply to the Traffic Commissioner for a restricted public service vehicle operators' licence.⁹⁰ This enables the holder of such a licence to operate "local services" akin to bus services.⁹¹

Small part exemption

- 3.61 Where a small bus is provided for hire with the services of a driver for the purpose of carrying passengers otherwise than at separate fares, the private hire licensing regime applies.⁹² The legislation stipulates that this does not apply where the main service provided by the operator involves large buses and the small bus is only a small part of the operation. The term "small part" is not defined in the legislation, although guidance is available.⁹³

Specific exemptions from private hire licensing

Weddings and funerals

- 3.62 Vehicles used wholly or mainly in connection for funerals are exempt from private hire licensing, as are vehicles whilst they are used in connection with a wedding.⁹⁴ That the exemption is wider for funeral vehicles than for wedding vehicles appears to reflect the traditional usage of these types of vehicles.
- 3.63 This is a potential loophole in the licensing regime. Companies which provide limousines for hire for a range of events, including weddings or funerals, will need to comply with the appropriate licensing regime. However companies which only provide vehicles for weddings or funerals and not for other events do not need to be licensed. There is also some debate as to the extent of the meaning of "being used in connection with a wedding". For example where it is customary for wedding celebrations to last for several days, should the exemption apply for the extended period, or just the wedding day itself?

Repeal of the contract exemption

- 3.64 Until 2006, vehicles used under contracts lasting seven or more days were exempt from the requirements of private hire licensing.⁹⁵

⁸⁸ Public Passenger Vehicles Act 1981, s 12(1).

⁸⁹ Public Passenger Vehicles Act 1981, pt 1.

⁹⁰ Public Passenger Vehicles Act 1981, s 12.

⁹¹ Public Passenger Vehicles Act 1981, s 2.

⁹² Public Passenger Vehicles Act 1981, s 79A; see definition of small bus in Public Passenger Vehicles Act 1981, s 1(1)(b).

⁹³ Vehicle and Operator Services Agency, *Public Service Vehicle Operator Licensing, Guide for Operators* (revised November 2010) PSV 437-02, p 7.

⁹⁴ Local Government (Miscellaneous Provisions) Act 1976, ss 75(1)(c) and (cc); Private Hire Vehicles (London) Act 1998, s 29.

⁹⁵ Local Government (Miscellaneous Provisions) Act 1976, s 75(1)(b).

In London, the private hire licensing provisions only applied where the services were “made available to the public”.⁹⁶ These provisos were removed by the Road Safety Act 2006.

- 3.65 The Department for Transport has made it clear that the simultaneous repeal of the so-called “contract exemption” and the alteration to the definition of a private hire vehicle in London were designed to have the same effect.⁹⁷ The main reason given was improving public safety by ensuring that all vehicles providing a similar kind of service would be licensed. By extending licensing requirements to a number of services bearing little resemblance to the traditional private hire vehicle, the removal of the contract exemption created significant confusion.

Grey areas in private hire licensing

- 3.66 The Department for Transport issued guidance about the repeal of the contract exemption,⁹⁸ and reviewed its effect in 2009.⁹⁹ The review found that only 50% of those who commented thought the aim had been achieved. The review also identified a number of grey areas where licensing authorities were taking different approaches, including:

licensing stretch limousines and chauffeur services; care services and childminders; and rental car (or other) services where a lift might be provided to a customer as an ancillary service; prison transport, but in particular the licensing of “ambulances” which covered a variety of modes of operation. The issue of “volunteers” was also raised – in relation to health and other transport.¹⁰⁰

- 3.67 The Department for Transport subsequently identified a number of key questions to be considered in determining whether or not a transport operation should be subject to the private hire licensing regime:

- (1) Is there a commercial benefit?
- (2) Is the carriage of passengers an ancillary, or main, part of the overall service?
- (3) Has the driver of the vehicle been vetted to provide the wider service of which the driving is a part?
- (4) Is the driver under any explicit or implicit obligation to undertake any duties or tasks beyond driving?

⁹⁶ These words were removed from s 1(1)(a); see Road Safety Act 2006, explanatory notes, para 198.

⁹⁷ Department for Transport, *Guidance note on Road Safety Act 2006: Private Hire Vehicles*, http://www2.dft.gov.uk/pgr/regional/taxis/rso06privatehirevehicles_pge_1-.html?page=1#a1000 (last visited 23 April 2012).

⁹⁸ Department for Transport, *Road Safety Act 2006: Private hire vehicles guidance note* (26 November 2007).

⁹⁹ J Rogers and S Ridley, *Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption* (4 November 2009).

¹⁰⁰ J Rogers and S Ridley, *Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption* (4 November 2009) p 4.

- (5) Does the service require specific qualifications which go beyond the driving and courtesy skills associated with conventional private hire?
- (6) Would Parliament have had the particular service in mind when passing the private hire vehicle licensing legislation?

3.68 The Department's view was that the private hire vehicle regime would normally apply to a service, the main part of which is the carriage of passengers for commercial gain, and that service is one which Parliament would most likely have had in mind when passing the legislation. Operations which require drivers to be subject to additional vetting or training, or include imposition of additional obligations over and above driving, are less likely to be subject to the private hire vehicle licensing regime.

Intermediaries and event management companies

3.69 Event packages often include the provision of dedicated transportation as part of a wider service. The Department for Transport takes the view that companies which specialise in providing transport services for events, or who specialise in the management and organisation of events, including the provision of transport services, should properly be licensed under current law.¹⁰¹ This is because the company is acting as an operator in terms of arranging the hiring, even where a specialist transport company is used actually to provide transport services.

Driver guides

3.70 The Department for Transport guidance does not address the position of driver guides (tourist guides who also provide transport). However, stakeholders have told us the private hire licensing regime poses significant problems for them. Not only are the services they provide very different to those envisaged by the private hire licensing regime, but they are particularly affected by the ban on private use, given the mostly part-time nature of the job. We note that driver guides are subject to specific regulation in France.¹⁰²

Car sharing

3.71 Car sharing arrangements, also referred to as carpooling, are not dealt with in taxi or private hire legislation. By contrast, such arrangements are expressly exempt from public service vehicle licensing.¹⁰³ In general, the fact that passengers pay separate fares would place a service outside the private hire regime. However, amendments to this section mean that some types of operation where separate fares are paid but which are exempt from the public service vehicle licensing regime are no longer exempt from the private hire licence requirements. These include arrangements for passengers to share a taxi or private hire vehicle, and pre-arranged trips or tours involving the hiring of a vehicle and driver.¹⁰⁴

¹⁰¹ Department for Transport, *Private hire vehicle licensing: a note for guidance from the Department for Transport* (August 2011), paras 41 – 45.

¹⁰² Driver guides must be accredited and are not allowed to ply for hire, see A L231-1 – 4 Code du tourisme.

¹⁰³ Public Passenger Vehicles Act 1981, s 79.

¹⁰⁴ Transport Act 2000, s 265(1); Transport Act 1985, s 11.

Clubs and groups

- 3.72 A relatively recent case highlights the difficulties in establishing the boundaries between community transport and private hire. A Warrington-based organisation called Pink Ladies was set up with a view to providing transport services only to women and with all female drivers. The company initially operated under the private hire vehicle licensing regime. When the licences expired they operated subject to the contract exemption. When the contract exemption was repealed, the district council took successful enforcement action against the company for breach of the private hire vehicle licensing requirements.
- 3.73 The company, which operated without a view to profit, claimed that they were not a taxi firm and that only members of a club were eligible to use the services. However, they were convicted in the magistrates' court of breach of the licensing requirements, and that decision was upheld on appeal.¹⁰⁵

London private hire vehicle consultation 2010

- 3.74 Transport for London launched a consultation on the London private hire legislation in October 2010.¹⁰⁶ It followed commitments in the Mayor of London's Transport Strategy to support improvements to private hire services, in particular as part of improvements to the safety of night time public transport and provision of better information about, and better access to, safer transport options.¹⁰⁷ This follows on from a report by the Transport Committee of the London Assembly in 2008 which considered progress made by the specialist Cab Enforcement Unit, established in 2003 to tackle taxi toutting.¹⁰⁸
- 3.75 The consultation document highlights continuing major concerns about the dangers of travelling in un-booked minicabs. It stated that, despite progress in recent years, illegal cabs remained a serious problem in London and represented an under-rated problem of night life in the capital. It highlighted that such services were unregulated and uninsured for the purposes of carrying fare-paying passengers and, in some cases, linked to more serious crimes such as rape, robbery and use of weapons and drugs. It also referred to the fact that illegal services presented an economic threat to licensed taxi and private hire service providers by intercepting customers and representing unfair competition.

¹⁰⁵ The company was subsequently granted a permit under s 19 of the Transport Act 1985 and is now regulated by the Vehicle and Operator Services Agency. Services are only available to members of the club. See, Warrington Guardian, http://www.warringtonguardian.co.uk/news/5024705.Pink_Ladies_loses_taxi_licence_appeal/ (last visited 23 April 2012).

¹⁰⁶ Transport for London, London Taxi and Private Hire, *Private Hire Consultation* (October 2010), <http://www.tfl.gov.uk/assets/downloads/businessandpartners/private-hire-consultation.pdf> (last visited 23 April 2012).

¹⁰⁷ <http://www.london.gov.uk/publication/mayors-transport-strategy> (last visited 23 April 2012).

¹⁰⁸ London Assembly Transport Committee, *Tackling taxi toutting in London* (March 2008). The 2008 Report found that while good progress had been made, toutting remained a significant and widespread problem.

- 3.76 The consultation document made a number of proposals for change relating to private hire licensing.¹⁰⁹ The consultation closed in January 2011. Transport for London has indicated that, as a result of consultation, it intends to bring into force new policies that broaden the range of relevant licensing criteria for private hire operator licensing. In particular, these measures are aimed at bringing activities associated with private hire operating centres in late night venues under better control.

LIMOUSINES AND OTHER NOVELTY VEHICLES

- 3.77 There has been an increase in recent years in the use of so-called “novelty vehicles” to carry fare-paying passengers. These range from stretch limousines and converted fire engines to horse-drawn carriages. There have been numerous debates about whether such vehicles should be licensed and, if so, whether any of the current licensing regimes are appropriate. Similarly, there have been discussions about the licensing of drivers of such vehicles. Stakeholders have raised concerns about safety, in particular in relation to unlicensed limousine operations used to transport young people late at night. There have also been issues about road safety in respect of the use of limousines, or other novelty vehicles such as fire engines or party buses, which may not satisfy the relevant construction and use regulations.¹¹⁰
- 3.78 We will consider the difficult position of limousines as well as other non-standard private hire vehicles, focusing on the current law and how it might apply to the different types of service.
- 3.79 Traditionally limousines carry more passengers than a standard motor car and may seat between eight and eighteen passengers. The correct licensing regime, as between private hire vehicles and public service vehicles depends on the number of passenger seats (above or below eight) and the way in which payment is made for the services provided (whether it is an exclusive hiring or involves the payment of separate fares).

Should a limousine be licensed under the public service vehicle or private hire vehicle regime?

- 3.80 A limousine adapted to carry more than eight passengers and used for carrying passengers for hire or reward must be operated under a public service operator’s licence.¹¹¹ It must have the appropriate certification of fitness¹¹² and, before granting

¹⁰⁹ These included additional licensing requirements and assessments for new drivers, visible ID and a prohibition on drivers making remarks of a sexual nature. On vehicles, proposals included a restriction on the types of vehicles which can be licensed as private hire vehicles and other measures to clarify the distinction between private hire vehicles and taxis. The proposals also included a number of restrictions on operators.

¹¹⁰ Road Vehicles (Construction and Use) Regulations 1986, SI 1986 No. 1078 made under the Road Traffic Act 1988, s41. If the vehicle is adapted to seat more than eight passengers it must also satisfy the relevant requirements prescribed in Public Passenger Vehicles Act 1981, s6.

¹¹¹ Public Passenger Vehicles Act 1981, s 1(1)(a) defines a public service vehicle as “a vehicle adapted to carry more than eight passengers, [which] is used for carrying passengers for hire or reward”. Public Passenger Vehicles Act 1981, s 12(1) provides that a public service vehicle must not be used on a road for carrying passengers for hire or reward except under public service vehicle operators’ licence.

a standard licence,¹¹³ the Traffic Commissioner must be satisfied as to the suitability of the operator, transport manager and available servicing facilities.¹¹⁴ However, no Criminal Records Bureau check is required.

- 3.81 While the law is clear that a limousine adapted to carry more than eight passengers must be licensed as a large public service vehicle, the position with vehicles adapted to carry less than nine passengers is less clear cut. The general rule is that if it is an exclusive hiring (where the vehicle and driver are hired out as a whole for a single fee, regardless of the number of passengers or duration of journey) the operation will be subject to the private hire regime.¹¹⁵ Where separate fares are charged, a public service vehicle licence will be required.¹¹⁶
- 3.82 Government guidance suggests that limousines are generally operated in a way that means those adapted to carry fewer than nine passengers fall within the requirements of the private hire licensing regime.¹¹⁷ That said, in practice a significant number of limousines do not hold a private hire licence. There are various reasons given for this. Some local authorities have a policy not to license such vehicles as private hire vehicles, so operators apply for public service vehicle licences or work unlicensed. Some operators consider the licensing requirements for private hire vehicles to be more stringent because three separate licences are required and all drivers are subject to a Criminal Records Bureau check, and take advantage of the flexibility in the system to become licensed as public service vehicles.¹¹⁸
- 3.83 Safety is one of the main concerns about vehicles either not holding the correct licence or remaining unlicensed. The licensing system provides a means of excluding those vehicles which may not meet the standards of construction and use or otherwise be unsafe.¹¹⁹ Many limousines are imported from the USA where very different construction standards, which do not match EU requirements, apply and some vehicles are assembled from the parts of two or more other vehicles and may not be roadworthy. Concerns have also been raised about groups of potentially

¹¹² Public Passenger Vehicles Act 1981, s 6 sets out the fitness requirements which must be satisfied in respect of a public service vehicle adapted to carry more than eight passengers.

¹¹³ Public Passenger Vehicles Act 1981, s13(2). Less onerous requirements apply in the case of a restricted licence (defined in s 13(3)); see, ss 14ZB and 14ZC.

¹¹⁴ Public Passenger Vehicles Act 1981, ss 14ZA(2), s14ZA(3), 14ZC and sch 3.

¹¹⁵ Guidance for operators of stretch limousines, published by the Vehicle & Operator Services Agency (March 2011), <http://www.dft.gov.uk/vosa/repository/Guidance%20for%20Operators%20of%20Stretch%20Limousines.pdf> (last visited 23 April 2012).

¹¹⁶ Public Passenger Vehicles Act 1981, s 1(1)(b) defines a public service vehicle in relation to a vehicle not adapted to carry more than eight passengers as a vehicle which "is used for hire or reward at separate fares in the course of a business of carrying passengers".

¹¹⁷ Vehicle and Operator Services Agency, *Guidance for operators of stretch limousines* (March 2011).

¹¹⁸ Office of the Traffic Commissioners, *Traffic Commissioners' annual reports*, 2009-10, p 48, <http://assets.dft.gov.uk/publications/traffic-commissioners-annual-report-2009-10/trafficcommissioners0910.pdf> (last visited 23 April 2012).

¹¹⁹ Public Authority Transport Network and Freight Transport Association, *Hackney carriage and private hire vehicle national inspection standards: a best practice guide produced by the hackney carriage and private hire inspection technical officer group*, paragraph 1.7.

vulnerable young people being transported late at night.¹²⁰ One of the reasons for the Mayor of London making tackling taxi touting a priority is to reduce the number of sexual offences against women at night in the capital. Similar risks may arise from the use of unlicensed limousine operations.

- 3.84 We also note that a number of other jurisdictions place limousines in a separate licensing category. This is the case in Ireland¹²¹ and in Queensland, Australia.¹²²

EXCLUSIVE IDENTIFIERS FOR TAXIS

Use of the word “taxi”

- 3.85 In more recent legislation, references to “taxis” are synonymous with “hackney carriages”.¹²³ Private hire vehicles cannot refer to themselves as “taxis” or “cabs” to the extent the vehicles are not permitted to be “of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage”.¹²⁴
- 3.86 In London, advertisements including the words “taxi” or “cab”, or words so closely resembling them that they are likely to be mistaken for them, are prohibited on vehicles other than London cabs.¹²⁵ The word “minicab” is, however, permitted.¹²⁶
- 3.87 Licensing authorities can also impose specific licensing conditions prescribing the use of certain words in respect of private hire vehicles. For example, East Devon District Council provides that no use shall be made of the words “taxi”, “cab” or “kab” or any phonetically or visually similar words or names on the car or on any advertisements attached thereto. Moreover, the names of all private hire firms must be agreed by the council before the licence is issued.¹²⁷ Similarly, the following condition applies in Scarborough: the word “taxi”, “cab” or “kab” or similar words

¹²⁰ Go Stretch Ltd was fined after an investigation by VOSA into a stretch limousine which caught fire with 13 passengers inside. The operator was convicted of a series of offences, including having no operator’s licence, no certificate of initial fitness, no test certificate, no tachograph and no insurance, <http://www.thisisbristol.co.uk/Bristol-limo-firm-fined-blaze/story-11270903-detail/story.html> (last visited 23 April 2012).

¹²¹ <http://www.nationaltransport.ie/taxi-and-bus-licensing/taxi/spsv-vehicle-licensing/apply-for-an-spsv-vehicle-licence/> (last visited 23 April 2012).

¹²² Transport Operations (Passenger Transport) Act 1994 (Qld), schs 3 and 5.

¹²³ Transport Act 1980, s 64(3); Disability Discrimination Act 1995; Equality Act 2010; and Private Hire Vehicles (London) Act 1998.

¹²⁴ Local Government (Miscellaneous Provisions) Act 1976, s 48(1)(a)(ii). Legislation also requires all licensed vehicles to carry a plate which distinguishes the vehicle as either a hackney carriage or a private hire vehicle. In respect of taxis see Town Police Clauses Act 1847, s 38; London Cab Order 1934, paras 16 and 18; and in respect of private hire vehicles see Local Government (Miscellaneous Provisions) Act 1976, s 48(3)(b) and (6)(a); Private Hire Vehicles (London) Act 1998, s10(1) and (2).

¹²⁵ Private Hire Vehicles (London) Act 1998, s 31.

¹²⁶ Private Hire Vehicles (London) Act 1998, s 31(3).

¹²⁷ East Devon District Council, <http://www.eastdevon.gov.uk/bookletph-04web.pdf> (last visited 23 April 2012).

shall not be permitted on any advertising material (including the internet), name plates or notices related to private hire vehicles.¹²⁸

Roof signs

- 3.88 Primary legislation does not require a taxi to have a roof-sign, but many local authorities make this a licence condition.¹²⁹ In London, there is a requirement for the fitting of a “taxi sign”, clearly visible both by day and night when the vehicle is available for hire.¹³⁰
- 3.89 The use of a roof-sign which displays the word “taxi” or “cab”, or any other feature which might suggest the vehicle is a taxi, on any vehicle which is not a taxi is prohibited in England (outside London) and Wales.¹³¹ A similar prohibition applies in London.¹³²

Taximeters

- 3.90 In London all taxis must be fitted with a taximeter,¹³³ but the fixing of such a meter in a private hire vehicle is prohibited.¹³⁴ Elsewhere in England and Wales the requirement, or otherwise, for a taximeter is a matter for the local authority to determine and there is no legislative prohibition on a taximeter being fitted in a private hire vehicle.¹³⁵
- 3.91 In the next chapter we consider the more detailed requirements of the taxi and private hire regime including the key rules applicable to vehicles, drivers and operators.

¹²⁸ Scarborough Borough Council,
[http://www.scarborough.gov.uk/pdf/Taxi%20&%20Private%20Hire%20Policy%202009%20\(Final\).pdf](http://www.scarborough.gov.uk/pdf/Taxi%20&%20Private%20Hire%20Policy%202009%20(Final).pdf) (last visited 23 April 2012).

¹²⁹ See, for example, Malvern Hills District Council Taxi Handbook,
<http://www.malvern hills.gov.uk/cms/pdf/Taxi%20handbook%202009%20complete%20WEB.pdf> (last visited 23 April 2012). Section 22 stipulates that hackney carriages must display an illuminated roof sign of an approved design and specified size. The colour of the background and lettering is specified, as is the information which may be displayed.

¹³⁰ Construction and Licensing of Motor Taxis for use in London: Conditions of Fitness 1 January 2007, para 25. These conditions are made under paras 7 and 14, London Cab Order 1934.

¹³¹ Transport Act 1980, s 64(1).

¹³² Private Hire Vehicles (London PHV Licences) Regulations 2004, reg 8.

¹³³ London Cab Order 1934, para 37.

¹³⁴ See Private Hire Vehicles (London) Act 1998, s 11.

¹³⁵ Where a meter is fitted, it must be tested and approved by or on behalf of the licensing authority. See Local Government (Miscellaneous Provisions) Act 1976, s 71.

CHAPTER 4

DRIVER, VEHICLE AND OPERATOR LICENSING

INTRODUCTION

- 4.1 In this section we will consider the core legal controls on taxis and private hire vehicles. The vehicle and driver each need to be licensed independently.¹ This is true for both the taxi and private hire trades. The owner of the licensed vehicle may also drive it, so the same individual can (and often does) hold both licences.² In addition, for private hire, the operator needs to be licensed.³
- 4.2 There are two key elements to being a driver. The first is the Driver and Vehicle Licensing Authority driving licence which everyone driving a motorised vehicle on the road is required to hold. The second is the special licence that is, by statute, needed to drive a taxi or private hire vehicle, issued by the relevant local licensing authority.⁴
- 4.3 It is an offence to drive a taxi or private hire vehicle without first obtaining a licence from the local authority.⁵

Attaching conditions to drivers' licences

- 4.4 Licensing authorities have an interest in ensuring that drivers meet certain criteria before issuing a licence. Whereas legislation expressly allows licensing authorities to attach conditions to private hire driver licences,⁶ case law suggests there is no such power in relation to taxi drivers, and conditions must be imposed by way of byelaws.⁷ Byelaws cannot, however, be tailored to impose particular conditions on individual taxi driver licences. This creates a significant anomaly in the treatment of taxi drivers compared with private hire drivers. We note however

¹ It is the owner of the vehicle who holds the licence, referred to as the "proprietor" of the hackney carriage or private hire vehicle in the relevant legislation, as discussed below at para 4.35.

² Owner drivers are said to form the largest group in the industry: see GoSkills, *Skills development in the hackney carriage and private hire vehicle industry* (September 2005) p 9.

³ Local Government (Miscellaneous Provisions) Act 1976, s 46(1)(d); Private Hire Vehicles (London) Act 1998, s 2.

⁴ References in this chapter to driver licences are to the latter specialised licence unless we specify otherwise.

⁵ In respect of taxis, see Town Police Clauses Act 1847, s 46 as supplemented by the Local Government (Miscellaneous Provisions) Act 1976, ss 57 and 59; and in London Metropolitan Public Carriage Act 1869, s 8(2). For private hire vehicles, see Local Government (Miscellaneous Provisions) Act 1976, s 51; and in London, Private Hire Vehicles (London) Act 1998, s 12(1).

⁶ Local Government (Miscellaneous Provisions) Act 1976, s 51(2); and for London, Private Hire Vehicles (London) Act 1998, s 13(5).

⁷ *Wathan v Neath and Port Talbot County Borough Council* [2002] EWHC 1634 (Admin).

that the issue is not clear cut and the Department for Transport takes the view that the power to impose conditions on taxi drivers can be implied.⁸

Dual driver licensing

- 4.5 In 2003, the Office of Fair Trading found that 56% of licensing authorities automatically issued dual licences; that is to say, licences which allow the holder to drive both taxis and private hire vehicles.⁹ Stakeholders have also told us that operators with mixed fleets comprising taxi and private hire vehicles and drivers are common.¹⁰

Basic criteria

- 4.6 The basic requirements for obtaining a taxi or private hire driver's licence can be split between statutory requirements and local authority requirements. Licensing authorities impose a variety of conditions on drivers applying for a taxi or private hire vehicle licence. We discuss the core requirements below.

DRIVERS: STATUTORY REQUIREMENTS

The Driver and Vehicle Licensing Authority driving licence

- 4.7 Drivers must have held a full driving licence, issued by the Driver and Vehicle Licensing Authority for at least a year (or for London private hire drivers, three years).¹¹

“Fit and proper” person test

- 4.8 The licensing body must be satisfied that taxi and private hire drivers are “fit and proper” persons.¹² This is a statutory test but the expression is not defined in statute. Licensing authorities thus have broad discretion to spell out specific requirements for drivers through imposing local conditions. Unsurprisingly, certain criteria, such as medical fitness and criminal record checks, are found across most licensing authorities;¹³ however, there is considerable variation in the

⁸ Department for Transport, *Guidance note and model byelaws* (July 2005).

⁹ Office of Fair Trading, *The regulation of licensed taxis and PHV services in the UK* (November 2003) p 6.

¹⁰ See also Office of Fair Trading, *The regulation of licensed taxis and PHV services in the UK* (November 2003) p 6.

¹¹ For taxi drivers, see Local Government (Miscellaneous Provisions) Act 1976, s 59(b). For private hire drivers, see Local Government (Miscellaneous Provisions) Act 1976, s 51(1)(b) and Private Hire Vehicles (London) Act 1998, s 13(2)(a). The obligation for London taxi drivers to hold a DVLA licence is not found in primary legislation and is not subject to any time requirement; see Transport for London, *Abstract of Laws: general guidance on hackney carriage law for London's licensed taxi drivers* (June 2011) p 5.

¹² For taxi drivers, see Local Government (Miscellaneous Provisions) Act 1976, s 59(1)(a); in London, para 25 of the London Cab Order 1934 refers to a requirement to be satisfied that an applicant is of “good character and fit to act as a cab-driver”. For private hire drivers, see Local Government (Miscellaneous Provisions) Act 1976, s 51(1)(a); in London, Private Hire Vehicles (London) Act 1998, s 13(2)(a).

¹³ See, for example, Local Government Regulation, *Taxi and PHV licensing criminal convictions policy* (September 2010).

interpretation of these requirements. Guidance published by the Department for Transport addresses these issues but it is not mandatory.¹⁴

DRIVER CONDITIONS SET BY LICENSING AUTHORITIES

- 4.9 What follows is a discussion of those requirements imposed by licensing authorities in order to assess whether an applicant is indeed a fit and proper person to hold a licence.

Medical fitness

- 4.10 The medical fitness of a driver is assessed when applying for a standard driving licence. The applicant must disclose specified illnesses and disabilities.¹⁵ The Driver and Vehicle Licensing Agency also issues guidance about medical standards of fitness to drive.¹⁶
- 4.11 Many licensing authorities require taxi and private hire drivers to satisfy more onerous Group 2 criteria which apply to professional public service vehicle drivers.¹⁷ The Transport Select Committee, considering the issue in the mid-1990s, recommended that taxi and private hire drivers should pass a medical examination similar to that required for bus and coach drivers.¹⁸ Imposing Group 2 requirements can, however, be perceived as overly restrictive, in particular in respect of certain medical conditions like diabetes.¹⁹

Standard and Enhanced Criminal Records Checks

- 4.12 The nature of the work of taxi and private hire drivers means they come into regular contact with members of the public, often on a one-to-one basis. This is of even more concern where the passenger is vulnerable, for example a child, a

¹⁴ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010).

¹⁵ Road Traffic Act 1988, s 92.

¹⁶ Driver and Vehicle Licensing Authority, *At a glance guide to the current medical standards of fitness to drive* (December 2011), <http://www.dft.gov.uk/dvla/medical/ata glance.aspx> (last visited 23 April 2012).

¹⁷ Road Traffic Act 1988, s 92(2) and (3). See also Driver and Vehicle Licensing Authority, *At a glance guide to the current medical standards of fitness to drive* (December 2011). In London, for example, satisfying a Group 2 medical is a requirement for both taxi and private hire drivers. See the Private Hire Vehicle (London PHV Driver's Licence) Regulations 2003, reg 3(2) made under the Private Hire Vehicles (London) Act 1998, s 13(2)(b). There is no specific statutory provision for taxi drivers but it is a requirement under the general requirement of the London Hackney Carriages Act 1843 and London Cab Order 1934.

¹⁸ Taxis and Private Hire Vehicles, *Report of the Select Committee on Transport* (1993-94) HC 239-I, para 123 and recommendation xv(ii).

¹⁹ Prior to 15 November 2011, drivers with insulin-treated diabetes were barred from Group 2 driving. Amendments to the regulations mean that drivers with diabetes can now be considered for any category of Group 2 licence, Principal Regulations, reg 73(6A), (6B) and (6C), inserted by the Motor Vehicles (Driving Licences) (Amendment) Regulations 2011 (SI 2011 No 2516). These regulations implement the minimum standards of medical fitness required for diabetes mellitus, as specified in Directive 2009/112/EC of 25 August 2009 and Directive 2009/113/EC of 25 August 2009 ("the Medical Directives") (OJ No L 223, 26.8.09, p 26 and p 31) which amend respectively the Second and Third Directives on driving licences.

lone passenger or someone who is intoxicated. Sadly, there have been a number of high-profile cases where drivers have attacked their passengers.²⁰ These factors make the driver's criminal record a particularly important factor in ensuring passenger safety and deciding whether the driver is a "fit and proper person".

- 4.13 The Rehabilitation of Offenders regime allows for the removal of certain offences from an individual's criminal record after a designated period of time. Since 2002, taxi and private hire drivers have been exempt from this, meaning that any conviction, regardless of its age, will be revealed by a criminal record check. Vehicle proprietors and operators remain within the scheme.²¹
- 4.14 Standard criminal records checks can reveal details of a person's spent and unspent convictions held on the Police National Computer, cautions, reprimands and warnings.²² The Criminal Records Bureau can indicate whether an applicant is on the two lists administered by the Independent Safeguarding Authority of those who are banned from working with children or the vulnerable.²³
- 4.15 There is no statutory requirement for criminal records checks to be carried out in respect of taxi or private hire drivers, but they are entitled to a standard check because they are in a listed occupation.²⁴ The Department for Transport recommends that licensing authorities obtain criminal record checks and, although each case should be considered on its merits, "they should take a particularly cautious view of any offences involving violence, and especially sexual attack".²⁵ The Department for Transport also recommends that licensing authorities adopt clear policies in respect of criminal records checks including, for example, "the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence".²⁶

²⁰ See, for example, <http://www.guardian.co.uk/world/2001/mar/01/gender.uk1> (last visited 23 April 2012), http://www.lancashiretelegraph.co.uk/news/blackburndarwenhyndburnribble/9540149.Taxi_driver_jailed_for_Accrington_sex_attack_on_passenger/ (last visited 23 April 2012) and <http://www.hounslowchronicle.co.uk/west-london-news/local-hounslow-news/2012/02/27/hounslow-unlicensed-cabbie-jailed-for-sex-attacks-109642-30418098/> (last visited 23 April 2012).

²¹ Some more serious convictions can never be "spent". The Legal Aid, Sentencing and Punishment of Offenders Bill 2010 – 2012 contains provisions reducing both the number of convictions which fall into this category and the time which must elapse before other convictions are spent.

²² See <http://www.homeoffice.gov.uk/agencies-public-bodies/crb/services/crb-checks-fees/> (last visited 23 April 2012).

²³ These lists cover both children and vulnerable adults. These ISA-barred lists replaced the three government lists – Protection of Children Act, Protection of Vulnerable Adults and List 99 (a list of people considered unsuitable for work with children) – on 12 October 2009.

²⁴ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

²⁵ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 59.

²⁶ Department for Transport, *Taxi and private hire vehicle licensing: best practice guidance* (March 2010) para 59. See also Local Government Regulation, *Taxi and PHV licensing criminal convictions policy* (September 2010).

- 4.16 Enhanced criminal records checks include the same information as a standard check, but also allegations and other non-conviction information on the Police National Computer.²⁷ Non-conviction information includes fixed penalty notices, acquittals, and the cautions and convictions of anyone the applicant lives with.²⁸ It can also reveal information from lists held by the Independent Safeguarding Authority.²⁹ Occasionally, the Chief Police Officer may decide it is necessary in the interests of the prevention or detection of crime to release additional information.
- 4.17 The Home Office has introduced secondary legislation establishing licensing authorities' rights to require an enhanced criminal records check in respect of taxi and private hire drivers.³⁰ We note that even prior to the Home Office regulations, some drivers qualified for enhanced checks under the current law if they were carrying out a "regulated activity".³¹ This will be the case if they are driving a vehicle carrying children or vulnerable adults and any person supervising or caring for them under arrangements made with schools, hospitals or in similar circumstances.³² Licensing authorities are not, however, required to seek enhanced checks. This can lead to the undesirable situation where an applicant who is unable to gain a licence in one area, can instead obtain a licence in another authority which only requires a standard criminal record check. Although such an individual could not work as a taxi driver in the original area there is nothing to stop such a person from picking up passengers pursuant to pre-booked work.
- 4.18 The licensing authority's duty to balance the interests of the applicant with the interests of the general public raises separate issues.³³ If the authority obtains additional information in connection with an enhanced check, such that it cannot be released to the driver, it may be difficult for the decision to refuse the licence to be fair in law.³⁴ This is because a key aspect of the duty to act fairly is the

²⁷ <http://www.homeoffice.gov.uk/agencies-public-bodies/crb/services/crb-checks-fees/> (last visited 23 April 2012).

²⁸ <http://www.unlock.org.uk/xoffenders.aspx?sid=188> (last visited 23 April 2012).

²⁹ <http://www.homeoffice.gov.uk/agencies-public-bodies/crb/services/crb-checks-fees/> (last visited 23 April 2012).

³⁰ The Police Act 1997 (Criminal Records) (Amendment) Regulations 2012.

³¹ Safeguarding Vulnerable Groups Act 2006, sch 4 paras 2(1)(f) (children) and 7(1)(f) (vulnerable adults).

³² Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2009/1548, regs 3 and 4.

³³ See *A v B Council* [2007] EWHC 1529 (Admin) para 85. As a practical matter, if the police refuse to back up notes or statements included in the enhanced Criminal Records Bureau check, it will be difficult for the licensing officer to justify their decision. This difficulty becomes more pronounced if the driver's right to private and family life is engaged because in such cases the reasons for refusal need to be scrutinised more closely.

³⁴ Lord Woolf, J Jowell and L LeSueur, *De Smith's Judicial Review* (6th ed 2007) 7-009. The right to engage in a commercial activity, like taxi and private hire vehicle driving, constitutes a "civil right or obligation" protected by Article 6. See *Pudas v Sweden* (1988) 10 EHRR 380.

requirement to give reasons so the claimant has the opportunity to challenge a decision affecting them.³⁵

- 4.19 Overall, there can be no blanket rule about the relevancy of enhanced Criminal Records Bureau information and how it should be used by licensing authorities. The legality of decisions taken on the basis of enhanced check information will depend on the fairness of the decision-making process as part of licensing authorities' general policies.³⁶

What other evidence can be used in assessing suitability to hold a license?

- 4.20 As well as explicit statutory grounds, a licensing authority can suspend or revoke a license for "any other reasonable cause" or, in London, where the licensing authority is no longer satisfied that the license holder is fit to hold such a licence.³⁷ This confers a wide discretion on local authorities with regards to factors they can take into account and would include, for example, evidence which may be revealed by an enhanced Criminal Records Bureau check. Hearsay evidence is also admissible.³⁸ In deciding whether to suspend or revoke a licence, an authority is right to focus on the impact of the holder's vehicle and character on members of the public; there is no requirement to consider the personal circumstances of the driver.³⁹

Background checks on foreign drivers

- 4.21 Gaining reliable information about drivers who come from outside the UK poses additional challenges.⁴⁰ The Department for Transport Best Practice Guidance⁴¹

³⁵ *R v Secretary of State for the Home Department, ex p. Doody* [1993] UKHL 8; [1994] 1 AC 531.

³⁶ Finally, the fifth data protection principle under the Data Protection Act 1998 provides that personal data, such as information obtained from Criminal Records Bureau checks, should not be kept for longer than is necessary for the purpose it was originally obtained for. There is no hard and fast rule about how long this should be. The Information Commissioner guidance suggests that licensing authorities should have a policy in respect of how they process and retain personal data but it is not mandatory. This can lead to considerable variation between licensing authorities' practices regarding how long they hold records when the nature of the personal data held is, for all purposes, identical.

³⁷ Local Government (Miscellaneous Provisions) Act 1976, ss 60(1)(c) (vehicle licence) and 61(1)(b) (drivers licence); Private Hire Vehicles (London) Act 1998, s 16.

³⁸ The Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999.

³⁹ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin).

⁴⁰ We note that licensing authorities may consider prospective drivers' immigration status and right to work in the UK as a licensing condition and the Department for Transport recommends this should be the case, see Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 66. See also London Taxi and Private Hire, *Private hire consultation* (October 2010) driver proposal 1 at p 10, <http://www.tfl.gov.uk/assets/downloads/businessandpartners/private-hire-consultation.pdf> (last visited 23 April 2012).

⁴¹ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010).

suggests that certificates of good conduct, or similar documents, authenticated by the relevant embassy can be obtained for a number of countries.⁴²

Minimum age requirements

- 4.22 Minimum age is a common requirement. In London, for example, drivers must be at least 21 years old.⁴³

Driver skills and knowledge requirements

- 4.23 There is a large degree of variation in both the content and difficulty of the requirements set by local authorities.

Driver ability

- 4.24 Some local authorities require certain qualifications but generally it is the decision of the driver or operator. The Sector Skills Council for passenger transport, GoSkills, develops National Occupational Standards, which cover road passenger transport.⁴⁴ GoSkills are currently consulting on developing National Occupational Standards exclusive to the taxi and private hire industries.⁴⁵ These qualifications can educate drivers on the proper limits of their role, for example by helping private hire drivers to understand what is meant by “plying for hire”.⁴⁶
- 4.25 An important part of making national qualifications effective is ensuring they can be verified and accessed with reasonable certainty and accuracy. People 1st have recently been successful bidding for funding from the Employer Investment Fund. A portion of this money will be used to develop and maintain a database for taxi and private hire drivers to register their training and qualifications.
- 4.26 Some licensing authorities require drivers to pass the Driving Standards Agency’s vehicle driving assessment.⁴⁷ The test is administered by the Driving Standards

⁴² Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 60.

⁴³ For taxi drivers, see London Cab Order 1934, para 24; for private hire drivers, see Private Hire Vehicles (London) Act 1998, s 13(2)(a).

⁴⁴ Sector Skills Councils are licensed by the government through the UK Commission for Employment and Skills covering specific Standard Industry Classification Codes (SIC codes). GoSkills merged with People1st on 4 July 2011. See GoSkills, *National Occupational Standards for Road Passenger Vehicle Driving* (May 2007), http://www.goskills.org/index.php/standards_qual/50/54 (last visited 23 April 2012).

⁴⁵ http://www.goskills.org/index.php/standards_qual/48/58 (last visited 23 April 2012).

⁴⁶ National Occupation Standards are the basis of Vocationally Related Qualifications, which looks at basic driving knowledge and disability awareness, and the National Vocational Qualifications, which focus on “soft skills” such as customer service.

⁴⁷ The test was first introduced in response to a request from the Leeds licensing authority in 2001 and has since been rolled out nationwide. London Taxi and Private Hire’s Private Hire Consultation (October 2010) proposed making the enhanced DSA test a requirement for all applicants for a private hire vehicle driver licence: London Taxi and Private Hire, *Private hire consultation* (October 2010) driver proposal 2, at p 11.

Agency's examiners and covers specialist elements like taxi manoeuvres. The enhanced assessment includes a practical wheelchair exercise.⁴⁸

Topographical knowledge

- 4.27 Some licensing authorities impose topographical tests only for taxi drivers. Others require both taxi and private hire drivers to pass the same test, while others impose a less stringent test on private hire drivers. The Department for Transport's guidance highlights that the topographical knowledge test should not be too burdensome, in particular for private hire drivers, as they have the possibility of checking the pre-booked route before the start of the journey.⁴⁹
- 4.28 The London "knowledge" is the best-known, with different requirements for drivers of taxis⁵⁰ and private hire vehicles.⁵¹ The All London taxi drivers' knowledge can take up to four years to learn.⁵²

Equality and disability awareness training framework for transport staff

- 4.29 Disability awareness training is commonly required by licensing authorities. The Disabled Persons Transport Advisory Committee has developed a training resource that focuses on good customer service for disabled people. This is integrated into elements of the Vocationally Related Qualifications and National Vocational Qualifications.⁵³ We consider equality and accessibility issues in Chapter 11 below.

Additional local requirements

- 4.30 Some licensing authorities work in conjunction with local tourism boards, Regional Development Agencies⁵⁴ and other interested parties in providing additional skills development. Taxi drivers are often tourists' first point of contact with a city and can make a strong impression. Many cities therefore regard customer service and tourism-oriented training as an important requirement for applicant drivers.

⁴⁸ http://www.direct.gov.uk/en/Motoring/Drivingforaliving/DG_182835 (last visited 23 April 2012).

⁴⁹ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) paras 75-76.

⁵⁰ <http://www.tfl.gov.uk/assets/downloads/businessandpartners/knowledge-examinations-system.pdf> (last visited 23 April 2012).

⁵¹ <http://www.tfl.gov.uk/assets/downloads/businessandpartners/ph-vehicle-drivers-topographical-skills-specs.pdf> (last visited 23 April 2012).

⁵² It covers 320 routes, 25,000 streets and 20,000 landmarks within a six mile radius of Charing Cross. Passing the full topographical test entitles the driver to work across London. A reduced version of the test is available for drivers wishing to work in the suburbs. Applicants can choose from nine suburbs and must learn between 30 and 51 runs, and know all streets, landmarks and places of interest in that sector. These drivers obtain a yellow badge which entitles them to work only in the sector in which they are licensed. They are not allowed to work within six miles of Charing Cross or at Heathrow Airport.

⁵³ <http://dptac.independent.gov.uk/education/stafftraining/index.htm> (last visited 23 April 2012).

⁵⁴ The nine Regional Development Agencies will close during the course of 2012.

Duration of licence

- 4.31 Taxi and private hire driver licences issued by licensing authorities last up to a maximum of three years.⁵⁵ Many licensing authorities apply shorter renewal periods than three years. The Department for Transport guidance suggests shorter periods should not generally be imposed in light of the increased burden these place on drivers.⁵⁶ The standard duration of licences provides a safety net for picking up important changes in the drivers' circumstances such as criminal offences or health issues.⁵⁷

VEHICLE REQUIREMENTS

- 4.32 As with the licensing of drivers, basic vehicle controls are imposed by statute. These are then added to by individual licensing authorities. It is the proprietor of the vehicle who holds the licence and against whom any breaches will be enforced.⁵⁸

OWNERS OF TAXI AND PRIVATE HIRE VEHICLES: STATUTORY REQUIREMENTS

- 4.33 In England and Wales, excluding London, the owner of the taxi or private hire vehicle does not have to satisfy the licensing authority that they are a "fit and proper" person. Button takes the view that the general discretion of licensing authorities in issuing taxi and private hire licences allows the proprietor's conduct to be taken into account.⁵⁹
- 4.34 Taxi and private hire vehicle licences can be suspended or revoked on one of three grounds, namely:

- (1) that the vehicle is unfit for use as a taxi or private hire vehicle;

⁵⁵ For taxi and private hire vehicle drivers, see Local Government (Miscellaneous Provisions) Act 1976, s 53(1)(a) and (b) respectively. In London, for taxis see the Metropolitan Public Carriage Act 1869, s 8(7) and the London Cab Order 1934, para 27, and for private hire vehicles see the Private Hire Vehicles (London) Act 1998, s 13(5)(c).

⁵⁶ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) paras 55-56.

⁵⁷ With regards to the standard Driver and Vehicle Licensing Agency driver's licence, it is a European requirement that the frequency of obligatory medical checks should coincide with the administrative renewal of the driver licence. See Directive 2006/126/EC, para (9) of the Preamble.

⁵⁸ For taxis, see Town Police Clauses Act 1847, s 41, and for private hire vehicles, see Local Government (Miscellaneous Provisions) Act 1976, s 48. Section 80(1) of the 1976 Act contains a definition of "proprietor" which includes "a part-proprietor and, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the vehicle under that agreement". For London taxis, the London Hackney Carriages Act 1843 defines "proprietor" as including "every person who, either alone or in partnership with any other person, shall keep any hackney carriage or who shall be concerned otherwise than as driver or attendant in employing for hire any hackney carriage". For London private hire vehicles, see the Private Hire Vehicles (London) Act 1998, ss 7 and 8 which enable the "owner" of a vehicle to apply for a licence, and places certain obligations on that owner.

⁵⁹ See J Button, *Button on taxis: licensing law and practice* (3rd ed 2009) paras 8.135 to 8.140.

- (2) any offence or non-compliance with the taxi and private hire vehicle legislation by the *operator or driver*;
 - (3) any other reasonable cause.⁶⁰ (*emphasis added*)
- 4.35 There are no references to the conduct of the proprietor. However, “any other reasonable cause” has been interpreted broadly to include grounds considered to make the proprietor unsuitable to hold a licence, for example, convictions for receiving stolen goods.⁶¹ It should be noted that this is only possible in relation to suspension and revocation, and not refusal of a licence.
- 4.36 In London, Transport for London can refuse to grant a taxi vehicle licence if the owner of the vehicle does not satisfy certain conditions. These include that the applicant “is of good character”, is of good business repute, and “is, having regard to his general financial position, a fit and proper person to hold a cab licence”.⁶²
- 4.37 Transport for London also has discretion to refuse to grant a taxi vehicle licence if the applicant has been convicted of any indictable offence or if the applicant appears to Transport for London “to be unfit to hold a cab licence” by reason of certain convictions relating to road vehicle legislation (including that relating to hackney and stage carriages and public service vehicles).⁶³ The convictions can relate directly to the applicant or to anyone in business with them.⁶⁴ By contrast with the taxi legislation, London private hire legislation does not single out the proprietor’s fitness to hold a licence as an independent factor. The owner has certain obligations⁶⁵ and is liable for breaches of the legislation.⁶⁶

Liabilities of proprietors

- 4.38 Registered proprietors of taxis are liable for the actions of drivers plying for hire as if the relationship of “master and servant” or “employer and employee” existed between them.⁶⁷

TAXI VEHICLES: STATUTORY REQUIREMENTS

- 4.39 In England and Wales, the legal definition of a taxi does not specify the criteria that need to be met by vehicles used as taxis. Local authorities have discretion to impose relevant conditions, including design or appearance and distinguishing marks.⁶⁸ They can also issue byelaws regulating the use of taxis, and many do so rather than impose conditions.

⁶⁰ Local Government (Miscellaneous Provisions) Act 1976, s 60(1).

⁶¹ *Norwich City Council v Thurtle and Watcham*, 21 May 1981, DC (unreported).

⁶² London Cab Order 1934, article 7(3).

⁶³ London Cab Order 1934, articles 7(1) and (2).

⁶⁴ London Cab Order 1934, article 7(2)(a).

⁶⁵ Private Hire Vehicles (London) Act 1998, s 8.

⁶⁶ See for example Private Hire Vehicles (London) Act 1998, ss 6(3) and 9.

⁶⁷ *Bygraves v Dicker* [1923] 2 KB 585.

⁶⁸ Local Government (Miscellaneous Provisions) Act 1976, s 47(2).

- 4.40 Historically, taxis could carry any number of passengers. However, the introduction of European requirements in respect of public service vehicles has meant that most vehicles with more than eight passenger seats fall within the public service vehicle licensing requirements.

The London Conditions of Fitness

- 4.41 In London, applicants for a taxi licence must comply with the conditions of fitness issued by Transport for London.⁶⁹ The London Conditions of Fitness⁷⁰ require all taxis to be wheelchair accessible and have a taximeter. Other notable features include the turning circle of 7.62 metres, a partition separating driver from passenger, an overall length which must not exceed five metres and a flat floor in the passenger compartment for which there are minimum height limits. Although these conditions were developed for London, they have also been adopted by ten other local authorities in England and Wales.⁷¹
- 4.42 Only two companies currently produce vehicles which satisfy the conditions: LTI's "black cab", and Mercedes-Benz's Vito. In 2002, the Public Carriage Office (now London Taxi and Private Hire) undertook a full review of the Conditions of Fitness, which was completed in June 2003. Allied Vehicles, a major supplier of taxi vehicles outside of London, challenged the necessity of the turning circle requirement in particular, as the cost of developing this prevents other providers from entering the market.⁷² Although Transport for London modified some requirements, it retained the turning circle requirement on the basis that its research indicated it was useful.⁷³ Such purpose-built vehicles are more expensive than regular cars, retailing at over £30,000.⁷⁴

⁶⁹ Metropolitan Police Carriage Act 1869, s 6, the London Cab Order 1934, para 7(3)(a), and Transport for London, *Construction and Licensing of Motor Taxis for Use in London, Conditions of Fitness* (1 January 2007), <http://www.tfl.gov.uk/assets/downloads/businessandpartners/taxi-conditions-of-fitness.pdf> (last visited 23 April 2012).

⁷⁰ Transport for London, *Construction and Licensing of Motor Taxis for Use in London, Conditions of Fitness* (1 January 2007), <http://www.tfl.gov.uk/assets/downloads/businessandpartners/taxi-conditions-of-fitness.pdf> (last visited 23 April 2012).

⁷¹ For example, Basingstoke and Deane Borough Council <http://www.basingstoke.gov.uk/browse/business/licensing/licence-private-hire-drivers/Vehicle%20Standards%20Inspection%20Manual.htm> (last visited 23 April 2012); Chichester District Council <http://www.chichester.gov.uk/index.cfm?articleid=3730> (last visited 23 April 2012) and Burnley Borough Council http://www.burnley.gov.uk/site/scripts/documents_info.php?documentID=1181&categoryID=200063&pageNumber=2 (last visited 23 April 2012).

⁷² Colin Buchanan and Partners Ltd, *Review of licensing conditions for taxis, private hire cars, taxi drivers and private hire car drivers* (March 2006) and Frontier Economics, *Introducing competition into the London taxi vehicle market* (June 2005).

⁷³ <http://www.tfl.gov.uk/static/corporate/media/newscentre/archive/3813.html> (last visited 23 April 2012).

⁷⁴ See, for example, LTI's website: <http://www.london-taxis.co.uk/new> (last visited 23 April 2012).

- 4.43 Although vehicles conforming to the Conditions of Fitness are said to be wheelchair accessible, there is no single standard-sized wheelchair, therefore inevitably certain wheelchairs cannot be accommodated. Issues that may arise for users include the impossibility of securing their chair, that they may be required to travel facing forwards or sideways (rather than the recommended backwards), and that users may not be accompanied by more than one other person.⁷⁵
- 4.44 Given that a number of authorities have adopted the London Conditions of Fitness or similar requirements for their own taxi fleet, disabled passengers travelling in taxis in a wheelchair elsewhere in England and Wales may experience the same problem. Liverpool City Council was successfully challenged on its use of such a policy by Mrs Lunt, who used a larger-than-average wheelchair and found she was unable to travel safely or comfortably in a London-style taxi.⁷⁶ The court recognised that some passengers in wheelchairs could not access the approved type of taxi, and that the council's decision was based on a fundamental misunderstanding of the true factual situation. Whilst the approved style of taxi was suitable for many disabled passengers in a wheelchair, the evidence before the committee clearly showed that there was a class of passenger, such as that represented by Mrs Lunt, which had serious difficulties with it. The licensing committee had failed to address this.

PRIVATE HIRE VEHICLES: STATUTORY REQUIREMENTS

- 4.45 The definition of a private hire vehicle specifies that it is a vehicle “constructed or adapted to seat fewer than nine passengers”.⁷⁷ Before a licensing authority may grant a private hire vehicle licence, it must be satisfied that the vehicle is:
- (1) suitable in type, size and design for use as a private hire vehicle;
 - (2) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
 - (3) in a suitable mechanical condition;
 - (4) safe; and
 - (5) comfortable.⁷⁸
- 4.46 In addition, the vehicle must be properly insured.⁷⁹

⁷⁵ Lowland Market Research, *Wheelchair user experience: taxi survey* (March 2008).

⁷⁶ *R (on the application of Lunt) v Liverpool City Council* [2009] EWHC 2356 (Admin).

⁷⁷ For England (outside London) and Wales see the definition of “private hire vehicle” in Local Government (Miscellaneous Provisions) Act 1976, s 80(1); and in London, Private Hire Vehicles (London) Act 1998, s 1(1)(a).

⁷⁸ Local Government (Miscellaneous Provisions) Act 1976, s 48; Private Hire Vehicles (London) Act 1998, s 7(2).

Duration of licences and vehicle testing

- 4.47 Vehicle licences are granted for a maximum of one year.⁸⁰ Given the considerable mileage and wear and tear associated with transporting passengers, it is best practice to test vehicles at least annually, if not more.⁸¹

CONDITIONS SET BY LICENSING AUTHORITIES: TAXIS AND PRIVATE HIRE VEHICLES

- 4.48 Licensing authorities' have considerable scope for setting vehicle conditions, and their use of this power is varied. We consider a non-exhaustive list of common features specified by licensing authorities below.

The types of vehicles licensed

- 4.49 Many local authorities have policies regarding the types of vehicles they are willing to licence. At the extreme end are requirements for purpose-built vehicles such as the London Conditions of Fitness.⁸² Other licensing authorities may require a minimum number of wheels,⁸³ passenger carrying-capacity,⁸⁴ or dimensions which can effectively rule out categories of vehicle such as motorbikes or stretch limousines.
- 4.50 Some local authorities require vehicles to have a physical partition separating drivers from passengers.⁸⁵ Oxford County Council made headlines with its decision to introduce a requirement that all taxis be fitted with CCTV cameras, although controversy has led it to suspend the implementation of this policy.⁸⁶ The Department for Transport's Best Practice Guidance suggests that licensing authorities should look sympathetically on or "actively encourage" the installation of such devices.⁸⁷ Further, some local authorities prohibit tinted windows.⁸⁸

⁷⁹ The vehicle must be covered by an insurance policy which satisfies the Road Traffic Act 1988, Part 6: Local Government (Miscellaneous Provisions) Act 1976, s 48(1)(b); Private Hire Vehicles (London) Act 1998, s 7(2)(b).

⁸⁰ Town Police Clauses Act 1847, s 43 (taxis) and the Local Government (Miscellaneous Provisions) Act 1976, s 48(4)(c) (private hire vehicles). Metropolitan Public Carriage Act 1869, s 6(4) and London Cab Order 1934, article 14 (taxis) and Private Hire Vehicles (London) Act 1998, s 7(6) (private hire vehicles).

⁸¹ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 32.

⁸² See discussion at para 4.43 above.

⁸³ The effect of the Private Hire Vehicles (London PHV Licences) Regulations 2004 is to exclude motorbikes from the definition of a vehicle which can be licensed (see sch 1, para 1).

⁸⁴ The maximum passenger carrying capacity of the taxi must be painted on the vehicle – see Town Police Clauses Act 1847, s 51.

⁸⁵ Transport for London, *Construction and Licensing of Motor Taxis for Use in London, Conditions of Fitness* (1 January 2007) condition 14.1.

⁸⁶ http://www.oxfordmail.co.uk/news/9625640.Brakes_put_on_city_taxi_CCTV_scheme/ (last visited 23 April 2012).

⁸⁷ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) paras 34-37.

- 4.51 Foreign vehicles imported to the UK have to be approved upon first registering with a GB licence plate.⁸⁹ Vehicles which have been converted may not have had this work approved.⁹⁰ This can be a particular issue for limousines or wheelchair accessible vehicles. Such a vehicle will usually need to provide its licensing authority with proof that the conversion has been carried out correctly. This may be satisfied by certification from the Vehicle Inspectorate or other recognised body, but different licensing authorities' policies on the matter vary considerably.

External signage

- 4.52 It is common practice for licensing authorities to prescribe signage for taxi vehicles. Whilst this is not controversial, the conditions can be extremely prescriptive with regards to size, font type and size of lettering. A number of local authorities have introduced requirements that private hire vehicles display certain signs on their vehicles to indicate they are appropriately licensed. This could improve public safety by enabling members of the public to recognise unlicensed vehicles easily. Moreover, it was argued that signage could help distinguish private hire vehicles from taxis and thereby reduce the aggravation of members of the public where private hire drivers refuse to pick them up from the street. These signs may, for example, say "pre-booked only" and have a recognisable logo. Other stakeholders have, however, argued that signage can be easily replicated and used to encourage passengers into unlicensed vehicles. Some licensing authorities have exemptions where it would be inappropriate for the type of service, for example, chauffeur-driven vehicles or limousines.
- 4.53 In London, all private hire vehicles must have Transport for London discs in the top nearside corner of the front and rear screens.⁹¹ An exemption from the requirement to display such discs can be granted if the licence authority considers that they would be inappropriate in respect of that service.⁹²
- 4.54 There is considerable variation between different local authorities' approaches to roof signs. The Department for Transport's Best Practice Guidance discourages the use of roof signs on private hire vehicles because of the potential for confusion with taxis.⁹³

⁸⁸ The Department for Transport's Best Practice Guidance advises authorities to be mindful of the costs and inconvenience of replacing glass which is fitted into vehicle as manufactured when considering this type of condition. See Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 30.

⁸⁹ The criteria and testing are aimed to ensure that vehicles meet certain minimum safety standards and environmental specifications.

⁹⁰ A lesser standard is Low Volume Type Approval for production or conversion of up to 500 vehicles per year certificate from the Vehicle Certification Agency.

⁹¹ Private Hire Vehicles (London) Act 1998, s 10 and the Private Hire Vehicles (London PHV Licences) Regulations 2004. See also Transport for London, *Guidelines for Displaying Stickers and Official Signs in Licensed London Taxis* (November 2011), <http://www.tfl.gov.uk/assets/downloads/businessandpartners/guidelines-for-displaying-stickers-and-official-signs-in-taxis.pdf> (last visited 23 April 2012).

⁹² Private Hire Vehicles (London) Act 1998, s 10(3).

⁹³ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 38.

- 4.55 For operators of private hire vehicles advertising is also an important tool in promoting their services and encouraging recognition and the development of goodwill. Many licensing authorities either require approval of advertisements displayed on the vehicle, or may ban them altogether. In London, for example, advertisements can only be carried on taxis with the permission of Transport for London.⁹⁴ On private hire vehicles, only limited signage is permitted.⁹⁵ Advertising is an important source of revenue for taxi providers.

Colours

- 4.56 Some licensing authorities impose standard colours and livery on their taxi and private hire vehicle fleets.⁹⁶ This frequently includes the local authority crest. Such requirements are often opposed by the trades on the basis that they incur additional cost.⁹⁷
- 4.57 Colour requirements for private hire vehicles are less common. However, in its latest consultation on private hire vehicles, Transport for London asked for views on a requirement for taxis and private hire vehicles to be different colours, for example, all taxis to be black and private hire vehicles to be silver.⁹⁸ Logo requirements may be particularly problematic for luxury hire car services as the nature of the service they deliver may be incompatible with their being recognisable as hired vehicles.

Age limits

- 4.58 Age limits can operate as a proxy for governing the overall quality of a vehicle. It is more likely that an older vehicle may have mechanical failings, have damage associated with wear and tear, and be less environmentally friendly. A locality wishing to project a new and modern image of its public transport may regard its taxi and private hire vehicle fleets as a part of that strategy. However, an older vehicle may be well-maintained and in good working order. Department for Transport guidance suggests that the setting of an age limit may be arbitrary and inappropriate, although it may be appropriate to require more frequent testing for older vehicles.⁹⁹

⁹⁴ London Cab Order 1934, art 14(k) and (l).

⁹⁵ Private Hire Vehicles (London PHV Licences) Regulations 2004, reg 8.

⁹⁶ In Bristol, taxis sport "Bristol blue" livery; in Leeds, taxis are white with black bonnets; and in Eastbourne taxis are white.

⁹⁷ See <http://www.bbc.co.uk/news/uk-england-bristol-11486084> (last visited 23 April 2012).

⁹⁸ London Taxi and Private Hire, *Private Hire Consultation* (October 2010) Vehicle Proposal 2 at p 17, <http://www.tfl.gov.uk/assets/downloads/businessandpartners/private-hire-consultation.pdf> (last visited 23 April 2012).

⁹⁹ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 32.

- 4.59 As part of the Mayor's Air Quality Strategy¹⁰⁰ Transport for London has recently introduced age limits.¹⁰¹ There are a limited number of exemptions from the age-based limits and related emissions standards for licensed taxis and private hire vehicles.¹⁰²
- 4.60 Licensing authorities may also impose minimum standards for emissions. EU legislation imposed air quality targets that became mandatory in 2010.¹⁰³ Separate legislation regulates pollutant emissions from road vehicles.¹⁰⁴ In London, from 1 April 2012, Euro 5 emissions standards have applied to new taxis and Euro 4 to new private hire vehicles.¹⁰⁵

Mechanical tests

- 4.61 Taxis and private hire vehicles are subject to annual testing by their licensing authority up to a maximum of three times a year.¹⁰⁶ Taxis and private hire vehicles can be exempted from annual MoT testing.¹⁰⁷ There is little consistency between licensing authorities both in terms of the content and the frequency of testing. Department for Transport guidance suggests that an annual test for vehicles of any age seems appropriate in most cases unless local conditions suggest that more frequent tests are necessary.¹⁰⁸ The Technical Officer Group of the Public Authority Transport Network has issued guidance on national inspection standards for taxis and private hire vehicles. These are recommended by the Department for Transport.¹⁰⁹

¹⁰⁰ The Mayor's Air Quality Strategy consultation was first published on 14 December 2010, <http://www.london.gov.uk/publication/mayors-air-quality-strategy> (last visited 23 April 2012).

¹⁰¹ The limits are 15 years for taxis, and, for private hire vehicles, five years for newly licensed vehicles and 10 years for renewals. The changes took effect on 1 January 2012. The age limit for new private hire vehicles and renewal applications for private hire vehicles is 10 years but, from 1 April 2012, no new private hire vehicles that are more than five years old can be licensed.

¹⁰² These include vehicles with historic value or which use alternative fuels, <http://www.tfl.gov.uk/businessandpartners/taxisandprivatehire/21358.aspx> (last visited 23 April 2012).

¹⁰³ Air Quality Standards Regulations 2010, implementing Directive 2008/50/EC on ambient air quality and cleaner air for Europe, and Directive 2002/3/EC relating to ozone in ambient air.

¹⁰⁴ EU Directive 70/220/EEC on the approximation of the laws of the Member States on measures to be taken against air pollution by emissions from motor vehicles, as amended.

¹⁰⁵ We consider the environmental impact of taxis and private hire vehicles further in our impact assessment, available at www.lawcom.gov.uk.

¹⁰⁶ Local Government (Miscellaneous Provisions) Act 1976, s 50 and Private Hire Vehicles (London) Act 1998, s 8(2).

¹⁰⁷ Motor Vehicles (Tests) Regulations 1981, regs 6(1)(xviii) and (xiv) and (4).

¹⁰⁸ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 32.

¹⁰⁹ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 33.

Taximeters

- 4.62 Outside London there is no statutory requirement for taxis to have a taximeter, although most licensing authorities make this a requirement. In London, taximeters are required for taxis but prohibited in private hire vehicles.¹¹⁰

Equality and accessibility

- 4.63 We consider accessibility, and its important interface with the Equality Act 2010, in detail in Chapter 11 below.

Other miscellaneous conditions

- 4.64 Licensing authorities set a wide variety of licensing conditions, such as requirements in respect of seat dimensions or the height of the step into the vehicle. Stakeholders in the taxi and private hire vehicle industries expressed some frustration at the considerable variation, and in some cases perceived overly prescriptive requirements, set by different licensing authorities.

LOCAL CONDITIONS AND COMPATIBILITY WITH EUROPEAN LAW

- 4.65 In *R v Wirral BC Ex p Wirral Licensed Taxi Owners Association*,¹¹¹ the court considered the compatibility with European law of imposing restrictions on the types of vehicles which may be used as taxis. The case arose when the Metropolitan Borough of Wirral considered passing a resolution under which all taxis operating in the district would have to be the London-style hackney carriage, manufactured by one British manufacturer.
- 4.66 The authority received a warning from the Home Office that this would be contrary to European law¹¹² as it would prevent manufacturers from other European countries selling taxis in the Wirral. In the light of this advice, the council adopted a more generally worded resolution which described the London-style of taxi and excluded other types of car, but which enabled any willing European manufacturer to make and sell the vehicles to the Wirral. The court found that whilst the earlier resolution would have breached European law, the wider wording was acceptable.

OPERATOR REQUIREMENTS

- 4.67 An operator is defined as someone who is in the business of making provision to invite or accept bookings for private hire vehicles.¹¹³ The legislation in both London and the rest of England and Wales makes it an offence to operate private hire vehicles without a licence.¹¹⁴ This means that private hire drivers cannot accept pre-booked journeys directly but rather must take them through an operator licensed in their same area. There is nothing to prevent a driver

¹¹⁰ London Cab Order 1934, article 37(i); and Private Hire Vehicles (London) Act 1998, s 11.

¹¹¹ *R v Wirral BC Ex p Wirral Licensed Taxi Owners Association* [1983] CMLR 150.

¹¹² Article 34 TFEU. This article prohibits quantitative restrictions on imports and all measures having equivalent effect.

¹¹³ Local Government (Miscellaneous Provisions) Act 1976, s 80(1); and in London Private Hire Vehicles (London) Act 1998, s 1(1) (b).

¹¹⁴ Local Government (Miscellaneous Provisions) Act 1976, ss 46(1)(d); and in London Private Hire Vehicles (London) Act 1998, s 2(1).

obtaining an operator's licence. By contrast, taxi drivers are allowed to accept bookings directly.¹¹⁵

Rationales for operator licensing

First-in-line enforcement and economies of scale

- 4.68 Requirements such as the obligation that operators have to ensure that drivers and vehicles are effectively insured and licensed can be extremely effective. The threat of loss of licence is a powerful incentive to make sure regulatory requirements are complied with.¹¹⁶ Whereas a single driver may not have invested much in obtaining a private hire vehicle licence, setting up a business involves many sunk costs which could be forfeited if licensing requirements are breached.
- 4.69 In addition, given limited resources, licensing officers are not in a position to control the potentially large numbers of drivers working in their area. The fact that premises are geographically fixed is an obvious but important factor in making enforcement easier in respect of operators rather than drivers. Checking operators is more manageable as a single operator may be responsible for tens, hundreds, or in a few cases, thousands of cars and drivers, making enforcement against these drivers and vehicles far easier.

Combating crime and intelligence gathering

- 4.70 Stakeholders have told us that the intelligence gathered in respect of operators is helpful to the police as it is a high-risk area for organised crime.¹¹⁷ Operators can be useful logistically and the cash-rich nature of the business is said to make it more susceptible to money laundering and other criminal activities.¹¹⁸

OPERATORS: STATUTORY REQUIREMENTS

“Fit and proper person”

- 4.71 Operators must satisfy the licensing authority that they are fit and proper to hold such a licence.¹¹⁹ The term is not defined in the relevant legislation and it is for each authority to determine how this is to be assessed.
- 4.72 Licensing authorities in England (outside London) and Wales have a general and open-ended power to require licence applicants to submit information to assist the authority in determining whether or not to grant the licence, and whether any conditions should be applied.¹²⁰ Similar information can be requested in respect

¹¹⁵ This applies to all journeys, both hail, rank and pre-booked.

¹¹⁶ *Hansard* (HL), 29 June 1976, vol 372, col 700.

¹¹⁷ The experience in Scotland highlights the importance of these considerations, discussed further in Chapter 16.

¹¹⁸ See, for example, Office of the Traffic Commissioners, *Traffic Commissioners' Annual Reports 2009 – 10*, p 48.

¹¹⁹ Local Government (Miscellaneous Provisions) Act 1976, s 55(1) and Private Hire Vehicles (London) Act 1998, s 3(3)(a).

¹²⁰ Local Government (Miscellaneous Provisions) Act 1976, s 57. This section sets out a non-exhaustive list of information which a licensing authority may require, and includes previous businesses, previous applications and any convictions at s 57(2)(b).

of related companies.¹²¹ Any person knowingly or recklessly providing false information, or omitting to provide material, is guilty of a criminal offence.¹²²

- 4.73 Standard or enhanced Criminal Records Bureau checks cannot be required as part of the application process because operators (unlike drivers) are not exempted from the Rehabilitation of Offenders Act 1974. Guidance issued by the Department for Transport¹²³ refers to additional checks which authorities may wish to perform. It suggests overseas applicants may be asked to provide a certificate of good conduct from the relevant embassy if they have only been in the UK for a short period of time. It also suggests authorities may wish to require applicants to provide a reference, for example, about the applicant's financial record.

OPERATORS: STATUTORY OBLIGATIONS

- 4.74 Below we consider operators' obligations to licensing authorities. We note however that operators are also liable for breaches of regulatory requirements in respect of their vehicles and drivers.¹²⁴ An operator can only be accountable in respect of secondary liability for "knowing" breaches,¹²⁵ and in London operators have a due diligence defence.¹²⁶ In England and Wales (but not London) a deemed contract exists between the operator who takes the booking and the passenger, meaning the passenger has recourse against the operator should something go wrong.¹²⁷ The London legislation does not contain a similar legal fiction but it appears to assume that the hirer's contract is with the operator.¹²⁸

Record-keeping

- 4.75 Both inside and outside London, operators are subject to various record-keeping requirements.¹²⁹ A person who contravenes these requirements is guilty of an offence.
- 4.76 Operators are obliged to keep records in a form prescribed by the relevant licensing authority. Practices can vary considerably, with generic identifiers such as "staff" for the hirer and destinations "as directed" being of borderline acceptability. The Department for Transport's Best Practice Guidance refers to more specific identifiers and states that it is good practice to require operators

¹²¹ Local Government (Miscellaneous Provisions) Act 1976, s 57(2)(c).

¹²² Local Government (Miscellaneous Provisions) Act 1976, s 57(3).

¹²³ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 32.

¹²⁴ Local Government (Miscellaneous Provisions) Act 1976, ss 46(1)(e); and in London, the Private Hire Vehicles (London) Act 1998, s 4(2).

¹²⁵ Local Government (Miscellaneous Provisions) Act 1976, ss 46(2).

¹²⁶ Private Hire Vehicles (London) Act 1998, s 4(6).

¹²⁷ Local Government (Miscellaneous Provisions) Act 1976, s 56(1).

¹²⁸ Private Hire Vehicles (London) Act 1998, s 5(5) whereby the contract between the hirer and London operator "remains in force" despite any sub-contracting arrangements.

¹²⁹ Local Government (Miscellaneous Provisions) Act 1976, s 56 (2); in London, Private Hire Vehicles (London) Act 1998, s 4(3)(c).

To keep records of each booking, including the name of the passenger, the destination, the name of the driver, the number of the vehicle and any fare quoted at the time of booking.¹³⁰

- 4.77 The approach taken to identifiers may depend on how the function of operator licensing is perceived. Records can have a useful function in deterring illegal plying for hire, as the absence of a record suggests there was no pre-booking, and in maintaining the integrity of the distinction between taxis and private hire vehicles. Safety of passengers can also be promoted by effective record-keeping, logging journeys and the whereabouts of members of the public. Record-keeping also helps to ensure the basic requirements for the deemed contract between the operator and passenger are met.
- 4.78 The Department advises that operators should be required to retain the information for six months.¹³¹ London has regulations setting out detailed record-keeping requirements.¹³² Records must be kept in writing and set out particulars as to the bookings, vehicles and drivers.¹³³ The London regulations also require records to be kept about complaints¹³⁴ and lost property and how they were handled or resolved.¹³⁵

LIMITS ON SUB-CONTRACTING OUTSIDE LONDON

- 4.79 Operators' ability to sub-contract work is curtailed by legislation. In England and Wales (excluding London), operators cannot sub-contract work to operators outside of their licensing area.¹³⁶ The operator's licensing area must be where the premises are located, bookings are made and from which vehicles are dispatched.¹³⁷ This has caused considerable problems in respect of cross-border work, as we discuss more fully in Chapter 10 below. By contrast, in London, sub-

¹³⁰ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 32.

¹³¹ See for example London, Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146, reg 16.

¹³² Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146, Part 4.

¹³³ Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146, reg 10(b) to reg 13. The details required on vehicles include the make, colour, model and licence number together with copies of relevant documents such as insurance and (where applicable) MoT test certificate. The particulars which must be recorded about drivers include name, address, date of birth, national insurance number, copies of driver and private hire driver's licence and a photograph.

¹³⁴ Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146, reg 14.

¹³⁵ Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146, reg 15. On complaints, details must be recorded about the booking to which the complaint relates, or the nature of any other complaint about the undertaking, and details of any investigation carried out and subsequent action taken as a result. The regulations require records to be kept of any property lost or found at the operating centre or in a vehicle operated from that centre. These include a description of the item, where and when it was lost/ found, evidence to show that, where practicable, steps had been taken to find/ return the item and, where any found item had been disposed of, how this was done.

¹³⁶ *Dittah v Birmingham City Council and Choudry v Birmingham City Council* [1993] RTR 356.

¹³⁷ *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87; and *Shanks v North Tyneside MBC* [2001] LLR 776.

contracting out of area, to anywhere in England, Wales or Scotland, is expressly permitted,¹³⁸ and operators can receive sub-contracted work from operators outside of London.

OPERATOR CONDITIONS SET BY LICENSING AUTHORITIES

- 4.80 Outside London, local authorities have the power to “attach to the grant of a licence ... such conditions as they may consider reasonably necessary”.¹³⁹ Most local authorities have a standard set of conditions which apply to all applicants. Examples of conditions imposed by licensing authorities include punctual service, maintaining a certain standard in premises to which the public has access and detailed conditions on record keeping and the avoidance of nuisance. Some authorities impose only the most basic conditions¹⁴⁰ whereas others may be relatively detailed.
- 4.81 In London, an operators' licence is granted subject to such conditions as may be prescribed by the Secretary of State and such other conditions as the licensing authority considers appropriate.¹⁴¹ The conditions require operators to fulfil numerous important functions that are key to ensuring the day to day manageability and quality of private hire services. These include obligations in regard to insurance of the operating centre, driver misconduct, record-keeping, and complaints procedures. Importantly, the conditions require operators to agree fares with passengers in advance or provide an estimate of the fare, where requested.

OPERATOR LICENSING IN OTHER COUNTRIES

- 4.82 In Scotland, operator licensing was not considered necessary when private hire car licensing was first introduced. However, in the following years there was a perceived increase in criminal activity linked to booking offices. This led to the introduction of operator licensing in 2009.¹⁴²
- 4.83 A licence is required for any premises where a business is carried on which consists to any extent of the taking of bookings, by any means of communication, from members of the public for the hire of a taxi or a private hire car.¹⁴³ It is restricted, however, to those operating three or more vehicles.¹⁴⁴ Licensees are

¹³⁸ Private Hire Vehicles (London) Act 1998, s 5(1).

¹³⁹ Local Government (Miscellaneous Provisions) Act 1976, s 55(3).

¹⁴⁰ See, for example, South Oxfordshire District Council which imposes only three conditions, two of which concern records and another which requires operators to comply with the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976.

¹⁴¹ Private Hire Vehicles (London) Act 1998, s 3(4) and Private Hire Vehicle (London) (Operators) Regulations 2000, SI No 2000, No 3146, reg 9.

¹⁴² The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009, SSI 2009 No 145.

¹⁴³ The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009, SSI 2009 No 145, regs 2(2) and 1(2).

¹⁴⁴ The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009, SSI 2009 No 145, reg 2(1)(b). Some authorities may charge lower licensing fees to small operators. For instance in London, operators with less than two vehicles pay a lower licensing fee, <http://www.tfl.gov.uk/businessandpartners/taxisandprivatehire/1356.aspx> (last visited 23 April 2012).

required to keep records of bookings, as well as the vehicle and driver which fulfilled each booking. They must also take reasonable steps to ensure that every booking is fulfilled by a licensed vehicle and driver.¹⁴⁵

- 4.84 In Ireland, anyone who takes bookings for a small passenger service vehicle (that is, taxi or private hire) which is delivered by someone else requires a dispatch operator licence. This is issued by the centralised National Transport Authority. To qualify for a dispatch operator license, the applicant must pass an entry test, prove that they have no outstanding tax liabilities and fulfill obligations relating to records and staff training.¹⁴⁶
- 4.85 The structure of the taxi and hire car industries in Australia is very different. In all the states we have looked at, operators require some form of accreditation and operators are often required to undergo training.¹⁴⁷ The definition of operator, however, is broader than that used in the UK. Although the precise definition varies from state to state, in general it includes anyone holding a taxi licence, anyone who runs a booking service and anyone who leases a licence but employs other people to drive the vehicle. In New South Wales, the role of the operator is recognised and regulated, but operators are required to be affiliated to a network. The public has no communication with operators: all bookings and dispatches are done through a network. Networks are commercial entities and as such are also subject to regulation. For example, potential licensees must show that they are fit and proper to operate a taxi network and they have the requisite financial and managerial competence. Potential operators must show that they are of good repute, are fit and proper, and meet requirements relating to financial viability, driver safety and vehicle maintenance.¹⁴⁸
- 4.86 In the Netherlands, every operator must have a licence and one or more licence certificates. Along with the operator's licence, the operator receives certificates for the number of cars for which he can prove the long-term availability for taxi transport.¹⁴⁹ Operators must hold a competence certificate and a certificate of good behaviour.¹⁵⁰
- 4.87 As regards all of the examples given above, the extent to which licensing or accreditation requirements extend to bookings taken through technological platforms is not quite clear. In Scotland, the requirement that premises be

¹⁴⁵ The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009, SSI 2009 No 145, sch 1 para 3(c).

¹⁴⁶ <http://www.nationaltransport.ie/taxi-and-bus-licensing/taxi/spsv-dispatch-operator-licensing/> (last visited 23 April 2012).

¹⁴⁷ See, for example, Transport (Taxi-cab accreditation and other amendments) Act 2006 (Victoria) and http://www.tmr.qld.gov.au/~media/1d1276f1-9e5c-4715-8976-f6afdf4fdbdd/pdf_pt203_operator_accreditation_for_taxis.pdf (Queensland) (last visited 23 April 2012).

¹⁴⁸ <http://www.transport.nsw.gov.au/content/taxi-operator-accreditation> (last visited 23 April 2012).

¹⁴⁹ P Bakker, "Deregulation of the Taxi Industry: Experiences in the Netherlands", in Organisation for Economic Co-operation and Development, *Deregulation of the Taxi Industry* (2007) p 66.

¹⁵⁰ P Bakker, "Deregulation of the Taxi Industry: Experiences in the Netherlands", in Organisation for Economic Co-operation and Development, *Deregulation of the Taxi Industry* (2007) p 66.

licensed could potentially exclude websites and mobile phone apps if it is not possible to link them with a fixed location within Scotland. On the other hand, the broad range of operators to whom Australian accreditation and Irish licensing requirements apply would be likely to capture these booking platforms.

THE RELATIONSHIP BETWEEN DRIVER AND OPERATOR

- 4.88 Employment law does not form part of the Law Commission's remit in reviewing the regulation of taxis and private hire vehicles. That said, it is clear that understanding the relationship between the driver and the operator, legally and in practice, is very important.

The legal status of drivers

- 4.89 Drivers of both taxis and private hire vehicles are generally held out as being self-employed. This is often clearly the case, particularly with solo taxi and private hire owner-drivers. Large fleets with significant uniformity of standards and close control over drivers lie at the other end of the spectrum and are much closer to a classic employment relationship.¹⁵¹
- 4.90 The following aspects of the operator-driver relationship have a significant impact on the way regulation can work in practice. They are also closely tied to considerations relevant to whether there may be a contract of service as a matter of employment law. These factors include the following:
- (1) Vehicles: although most drivers own their own vehicles, some larger firms require drivers to lease vehicles from them. Other firms may impose an age limit on vehicles. It remains the driver's choice as to whether he or she invests in a newer vehicle, but sometimes this may be the only way to continue working.
 - (2) Fares: most private hire firms set fares in advance and have standardised fares across the fleet. Thus the driver's potential to control his or her earnings is limited. This also applies where an operator requires vehicles to be fitted with meters.
 - (3) Multiple operators: theoretically, a licensed driver is free to work for as many or as few operators as he or she wishes. However, many operators place restrictions on this.
 - (4) Hours worked: whilst drivers are generally free to work hours of their choosing, some firms, particularly larger ones, control working hours. This may be through shifts or simply by requesting that drivers work at particular times. Many drivers work on a shift pattern in order to ensure the vehicle is in constant use.

¹⁵¹ These issues tend to primarily affect private hire drivers because they are entirely reliant on the operator for work. This makes them potentially more vulnerable. By contrast, taxi drivers can work independently at ranks and be hailed by passengers. However, many taxi drivers work as part of radio circuits and cooperatives which could control working time, or rent their vehicle from the proprietor. Many taxi proprietors impose shifts in order that the vehicle is kept in constant use and thus constantly generating income. This is particularly true in areas where taxi numbers are limited.

- (5) Earnings: operators will set out how drivers' earnings are to be ascertained. This may be by means of radio or vehicle rental, a standard charge, a "split bag" or commission.
 - (6) Jobs: operators specify which car undertakes each job. In some firms drivers have the ability to refuse jobs, but even where this is the case they may be reluctant to do so in case it impedes their future flow of work. In some firms refusal is punishable by suspension.
 - (7) Monitoring: firms which use sophisticated data heads are able to track vehicles, recording not only location and mileage, but such information as speed, braking force and how the engine is working. Some drivers have reported that they are unable to switch off these facilities, even when using their vehicle privately.
 - (8) Sanctions: operators apply rules and conditions and can use sanctions such as suspension or removal from their fleet, which is often referred to in the employment-like language of dismissal.
- 4.91 Although the factors discussed above refer primarily to private hire operators, some of the same considerations may apply to firms that dispatch taxis. Many stakeholders have pointed out that private hire drivers lack an organised voice, for example. Whereas both taxi and private hire drivers are typically self-employed, private hire drivers depend on operators for all their work, yet they lack the employment protection in terms of hours and pay, for example.
- 4.92 It is not for the Law Commission to take a view on whether or not taxi and private hire drivers are employed or self-employed. Indeed, it would not be possible for us to do so as the question of whether or not an individual is employed is a question of fact.¹⁵² However, the foregoing discussion suggests that operators play a critical role in ensuring regulatory compliance and highlights the importance of operator licensing as further discussed in our provisional proposals for reform in Chapter 16.
- 4.93 In the next chapter we consider enforcement powers and sanctions under the current licensing system.

¹⁵² See, for example, *O'Kelly v Trusthouse Forte Plc* [1983] ICR 728 and *Carmichael and Leese v National Power plc* [2000] IRLR 43.

CHAPTER 5

ENFORCEMENT

INTRODUCTION

- 5.1 In this chapter we consider how the regulatory framework is enforced.

LOCAL AUTHORITIES

- 5.2 Many authorities appear to have a licensing unit or section which has responsibility for the range of licensing functions undertaken by the authority. The licensing units in some smaller district councils are being incorporated into a larger county-wide unit to increase efficiency and cost effectiveness.¹
- 5.3 Unlike other local authorities in England and Wales,² London has a separate agency, Transport for London, with responsibility for transport in London and for implementing the Mayor's transport strategies. London Taxi and Private Hire, formerly the Public Carriage Office, was originally a civilian branch within the Metropolitan Police but was transferred to Transport for London in 2000 to become part of an integrated strategic transport service.
- 5.4 Many breaches of the taxi and private hire licensing legislation are also criminal offences, and as such can be enforced by the police.³ Licensing officers are unable to undertake enforcement against vehicles, drivers and operators licensed in another area. We discuss this in greater detail in Chapter 8 below.

APPROACHES TO ENFORCEMENT

- 5.5 The approach to enforcement taken by different licensing authorities can vary considerably. It is for each authority to determine how enforcement should be organised and resourced internally, as well as the policy to be applied. This includes the times of day at which enforcement officers work and the areas targeted. The Department for Transport's guidance suggests that at least some enforcement activity should be carried out in the late evenings when the level of unlicensed or illegal activity may be greater.⁴
- 5.6 Many local authorities start by seeking to raise awareness of the legal requirements, and hold informal discussions with potential offenders. Authorities

¹ Many authorities have formal or informal ways of working together, for example Worcestershire Regulatory Services - see <http://www.worcestershire.gov.uk/cms/communications/news/2010/june/reg-service.aspx> (last visited 23 April 2012) - and MerseyTravel - see www.merseytravel.gov.uk (last visited 23 April 2012).

² Local authorities can form Integrated Transport Authorities, formerly known as Passenger Transport Executives, but they are generally not responsible for taxis and private hire vehicles which remain in the hands of District Borough Councils. However, see initiatives like MerseyTravel which coordinate public transport in partnership with bus and rail operators but also cover taxi and private hire, <http://merseylearn.merseytravel.gov.uk/Pages/Home.aspx> (last visited 23 April 2012).

³ See, for example, the Local Government (Miscellaneous Provisions) Act 1976, s 46.

⁴ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) para 85.

may also follow up on complaints from members of the public or others within the profession. The legislation provides powers of inspection which can help identify potential breaches of the law and enable targeted action to be taken.⁵ The authority can require vehicles to be produced for inspection, and inspect them at the premises at which they are kept.

- 5.7 Authorities have powers to suspend or revoke licences, or to refuse to renew them.⁶ Licensing authorities can bring criminal charges against a suspected offender.⁷ Penalties are relatively standard in England and Wales generally,⁸ but vary greatly in London. There is no default level of fine and there is greater variation amongst offences, both within London-specific legislation and in comparison to elsewhere in England and Wales. For example, whilst the failure to return a driver's badge following revocation of a licence attracts a maximum fine of £200 elsewhere in England and Wales,⁹ in London a private hire driver who fails to do so could face a fine of up to £1,000.¹⁰ As London legislation contains different regulatory offences, such as giving false statements and obstructing authorised officers, the maximum fines are higher.¹¹

THE POLICE

- 5.8 Transport for London is expressly empowered to appoint officers of the Metropolitan Police to assist with enforcement.¹² Transport for London enforcement teams work in tandem with police officers, as this gives the group powers to stop vehicles, seize property and tackle other offences such as plying for hire without insurance.
- 5.9 Whilst this sort of partnership working does exist outside of London, its extent is not clear.¹³ Furthermore, local authorities have no distinct powers like those of Transport for London. Enforcement officers often require the presence of police officers in order to ensure effective working; for example, enforcement officers are unable to stop vehicles. There may also be competing priorities between the police and local licensing officers. The police may want to clear town centres as quickly as possible late at night, whereas local licensing officers need to ensure that all providers of taxi and private hire services are properly licensed, and that they are acting within the constraints of their licence.

⁵ Local Government (Miscellaneous Provisions) Act 1976, ss 50 and 68; Private Hire Vehicles (London) Act 1998, s 8(2).

⁶ Local Government (Miscellaneous Provisions) Act 1976, ss 60 – 62; London Hackney Carriages Act 1843, s 25; London Cab Order 1934, para 30; Private Hire Vehicles (London) Act 1998, s 16. Suspension or revocation is subject to rights of appeal as discussed in Chapter 6.

⁷ Local Government Act 1972, s 222(1)(a).

⁸ The standard maximum fine under the Local Government (Miscellaneous Provisions) Act 1976 is £1,000. This applies to all but one of the offences under that Act.

⁹ Local Government (Miscellaneous Provisions) Act 1976, s 61(2)(b).

¹⁰ Private Hire Vehicles (London) Act 1998, ss 22(3) and (6).

¹¹ Private Hire Vehicles (London) Act 1998, ss 27 and 28; maximum fines of £5,000.

¹² Metropolitan Public Carriage Act 1869, s 12.

¹³ For example, Maidstone Borough Council, Sevenoaks District Council and Tunbridge Wells Borough Council have formed an enforcement partnership in which they work closely with the police.

Anecdotal evidence suggests that the police may lack enthusiasm for this kind of work, particularly where it is unlikely that perpetrators are committing offences unrelated to licensing.

ENFORCEMENT POWERS

- 5.10 A police constable in uniform has a general power to stop a vehicle on a road.¹⁴ Constables also have other road traffic functions and powers; for example, they can require a driver to produce a licence¹⁵ and certain other documentation and they can test a vehicle for roadworthiness.¹⁶ Accredited Vehicle and Operator Services Agency officials have some of the powers of a constable in uniform to stop a vehicle on a road for the purposes of testing the vehicle.¹⁷
- 5.11 By contrast, local authority licensing officers do not have powers to stop a vehicle on a road. Authorised council officials have other tools available to them. They can inspect the licences of drivers¹⁸ and operators,¹⁹ and the licences and insurance policies of vehicles.²⁰ They can also inspect and test taxis (and taximeters) and private hire vehicles for fitness.²¹ If they are not satisfied, they can require further inspections and testing and, until such time as that is completed satisfactorily, they can suspend the licence. If, at the end of a two month period, the officer is still not satisfied as to the fitness of the vehicle, the licence is deemed to be revoked. Where a licence has been revoked, the licensing authority may require the identification plate to be returned.²²

BREACH OF LICENSING REQUIREMENTS

- 5.12 This category consists of acts which can be enforced by licensing officers, but are not criminal offences and as such cannot be enforced by the police. It includes breaches of licensing regulations, breaches of conditions set down by the licensing authority, and breaches incurred where the licensee's circumstances change over the duration of the licence, for example, those who are convicted of an offence, or whose vehicles are no longer fit for purpose.
- 5.13 It is for the licensing authority to administer a sanction in cases such as these. Many licensing authorities use an escalated approach, beginning with calling the licence holder in to speak with licensing officials, perhaps employing a penalty points scheme and finally resorting to the suspension or revocation of a licence. The procedure for suspension or revocation of a licence is discussed from paragraph 5.25 below.

¹⁴ Road Traffic Act 1988, s 163.

¹⁵ Road Traffic Act 1988, s 164.

¹⁶ Road Traffic Act 1988, s 67.

¹⁷ We note that stopping officers appointed under the Road Traffic Act 1988, s 66B only have limited powers to stop certain commercial vehicles (including Heavy Goods Vehicles) for specific checks. See also Road Traffic Act 1988, s 67 and Police Reform Act 2002, s 41.

¹⁸ Local Government (Miscellaneous Provisions) Act 1976, s 53(3).

¹⁹ Local Government (Miscellaneous Provisions) Act 1976, s 56(4).

²⁰ Local Government (Miscellaneous Provisions) Act 1976, s 50(4).

²¹ Local Government (Miscellaneous Provisions) Act 1976, s 68.

²² Local Government (Miscellaneous Provisions) Act 1976, s 58(1).

OFFENCES OF TOUTING AND ILLEGALLY PLYING FOR HIRE

- 5.14 There are two broad areas of enforcement. First, against those who purport to provide taxi or private hire vehicle services but who are not licensed at all. Second, against those operators who are licensed but who operate in contravention of the terms of their licence. The first group pose a greater threat as they are completely outside the licensing system and are also harder to enforce against. Enforcement officers have very limited powers in relation to people who do not hold licences, and require police intervention if they suspect these activities to be taking place.
- 5.15 In urban areas, in particular London and at certain focal points like night clubs and airports, taxi toutting and illegal plying for hire can be a particular concern. Touts target times and locations where licensed taxis and private hire vehicles are less likely to be available and where people are anxious to get home quickly. These people may also be more vulnerable, for example, if they have consumed alcohol or if they are travelling alone or late at night. The level of this activity raises concerns about public safety, and also threatens the livelihood of legitimate operators.
- 5.16 It is important to distinguish between the everyday usage of the term “toutting”, where what is really meant is illegal plying for hire, and the criminal offence which has a narrower and more specific meaning. The criminal offence of taxi toutting consists of soliciting persons to hire vehicles to carry them as passengers.²³ It is designed to tackle behaviour such as drivers shouting to prospective passengers and approaching people on the street, in particular outside transport hubs and entertainment venues.²⁴ It can apply to licensed and unlicensed vehicles. Toutting does not include the mere display of a sign stating that a vehicle is for hire.²⁵ It is not enough that a vehicle is available for hire; there must be some form of invitation to a prospective hirer.²⁶ Prior to 2003, local authorities brought prosecutions for toutting to tackle problems of illegal plying for hire, but this ceased when the Administrative Court held that the scope of the offence was narrower. Although soliciting for business can be evidence of plying for hire, the two are not the same, and soliciting requires more than a vehicle simply waiting in the street.²⁷ The essential difference is that, whilst illegally plying for hire is reactive, toutting is proactive.
- 5.17 The offence can be prosecuted by the police or local authorities. Toutting is perceived as not only a nuisance, but potentially very dangerous, particularly in London. Proposals to make toutting offences subject to fixed penalties were strongly opposed by Transport for London, who believed this would undermine the severity of the offence.

²³ Criminal Justice and Public Order Act 1994, s 167.

²⁴ Although it does not apply to marshals operating shared taxi schemes: Criminal Justice and Public Order Act 1994, s 167(3).

²⁵ Criminal Justice and Public Order Act 1994, s 167(2).

²⁶ Licensed private hire drivers sometimes offer a service by picking people up in the street, or responding to being hailed, rather than accepting bookings through an operator as they are required to do by law. The offence may take the form of unlicensed drivers or vehicles unlawfully plying for hire.

- 5.18 Illegal plying for hire can be committed by both an unlicensed vehicle and/or driver, or by a licensed private hire vehicle. It may be said that illegal plying for hire or touting by entirely unlicensed vehicles and drivers is of greater concern, as although private hire drivers who ply for hire do so illegally, they and their vehicles have at least undergone some safety checks.
- 5.19 That said, unlawful plying for hire by private hire drivers may invalidate their insurance, thus placing passengers at risk. This in turn gives rise to the offence of having no insurance, as private hire insurance generally only covers where the vehicle is used lawfully.²⁸
- 5.20 In response to concerns in London, a specialist Cab Enforcement Unit was set up in 2003.²⁹ It is part of the Transport Operational Command Unit, a part of the Metropolitan Police Service, but is funded by Transport for London. The unit focuses on, but is not limited to, dealing with illegal taxi and private hire activity at identified hotspots in London.
- 5.21 The Transport Committee of the London Assembly investigated the success of this initiative and published a report, including recommendations, in 2008.³⁰ The investigation found that, whilst good progress had been made by the unit, touting still represented a significant and widespread problem. This report made a number of recommendations, including the introduction of a requirement for applicants for a private hire vehicle and driver licence to provide evidence as to the operator they work for. The Committee also commented on the general leniency of penalties imposed and on inconsistencies in sentencing. Specific guidelines on penalties for touting are now included in the Magistrates' Courts Sentencing Guidelines.³¹ The report also recommended that the Public Carriage Office should use their powers to revoke driver licences after three convictions for touting, following similar approaches in Leeds and Birmingham.
- 5.22 The Mayor of London's strategy on transport safety and security in London aims to reduce touting and sexual offences involving unlicensed providers.³² The issue of taxi touting clearly remains a problem in London, and evidence suggests it is also an issue in other major cities.³³

²⁷ *Oddy v Bugbugs Ltd* [2003] EWHC 2865 (Admin); 2003 WL 22477363, by Mr Justice Pitchford at paras 51 to 52.

²⁸ B Denby and J Thompson, *The Book* (14th ed 2008) pp 16, 22 and 33.

²⁹ See <https://www.tfl.gov.uk/corporate/about-tfl/19382.aspx> (last visited 23 April 2012).

³⁰ Transport Committee of the London Assembly, *Tackling taxi touting in London* (March 2008).

³¹ Sentencing Guidelines Council, *Magistrates' Court sentencing guidelines: definitive guideline* (May 2008) p 98.

³² Greater London Authority, *The Right Direction – the Mayor's strategy to improve transport safety and security in London, 2010-2013* (November 2010). *Safer Travel at Night*, an initiative between the Mayor, Transport for London, the Metropolitan Police Service and the City of London Police aims to improve the safety of people travelling at night, with a particular emphasis on women and the dangers posed by unlicensed cabs.

³³ See http://www.bbc.co.uk/insideout/northwest/series10/week8_bogus_taxis.shtml (last visited 23 April 2012).

SANCTIONS

Fines

- 5.23 The maximum fine available for most breaches of taxi and private hire legislation is £1,000.³⁴ However, the current maximum penalty for touting is a fine of £2,500.³⁵
- 5.24 If a person is also convicted of other licensing offences, or related offences such as failure to have proper insurance, the overall fine may be higher. However, anecdotal evidence suggests that the likelihood of being caught, coupled with the fines likely to be imposed, provides a weak deterrent against the possibility of significant financial gain through illegal operation. As noted at the outset, powers to suspend or revoke a licence are of little assistance where the offender has no licence.

Suspension and revocation of licence

- 5.25 In addition to seeking criminal sanctions, local authorities have the power to suspend, revoke or refuse to renew vehicle, driver or operator licences. Where a licensee breaches licensing conditions set by the licensing authority, and there is no criminal offence, recourse to revocations and similar powers are the licensing authority's main compliance tool.
- 5.26 In the case of a vehicle, it may be because the vehicle is unfit for use, the operator or driver has committed a relevant offence, or for any other reasonable cause.³⁶ In the case of a driver, action may be taken where a relevant offence has been committed, the driver has failed to comply with relevant legislation, or for any other reasonable cause.³⁷ In the case of private hire operators, action may be taken in a range of circumstances, for example, where the operator has committed an offence or failed to comply with the relevant legislation; if the council considers that the operator's conduct renders the operator unfit to hold a licence; where there has been a relevant material change in circumstances; or for "any other reasonable cause".³⁸
- 5.27 If the licensing authority suspends, revokes or refuses to renew a licence, it must give the driver notice of the grounds for its decision within 14 days. The decision to suspend or revoke takes effect 21 days from the date the driver is given notice unless there are public safety grounds for the licensing authority's decision.³⁹ In such cases immediate suspension can apply.
- 5.28 In England and Wales (excluding London) taxi and private hire *driver* licences can be suspended with immediate effect where this is in the interests of public

³⁴ Local Government (Miscellaneous Provisions) Act 1976, s 77.

³⁵ Criminal Justice and Public Order Act 1994, s 167(5).

³⁶ Local Government (Miscellaneous Provisions) Act 1976, s 60.

³⁷ Local Government (Miscellaneous Provisions) Act 1976, s 61.

³⁸ Local Government (Miscellaneous Provisions) Act 1976, s 62.

³⁹ Local Government (Miscellaneous Provisions) Act 1976, s 61(2B); in London, see Private Hire Vehicles (London) Act 1998, s 17(2) which has the same effect for private hire vehicles.

safety.⁴⁰ Immediate suspension does not apply to other types of licences. As such, an unroadworthy vehicle cannot be taken off the road immediately following a licensing officer's decision, and this can be a cause for concern.⁴¹ By contrast, the London legislation allows for the immediate suspension of any type of licence if there are public safety concerns.⁴²

- 5.29 The suspension or revocation of a licence is an effective and drastic remedy. The threat of loss of a licence (and livelihood), often after a considerable investment, can pose an effective deterrent. However, it can only work against individuals who are within the licensing system. It does not help in addressing the problem of completely illegal activity which poses the biggest risk to the public.

Seizure of vehicle

- 5.30 The police can seize a vehicle which is being driven without insurance.⁴³ This is of interest as many public hire insurance policies are invalidated where a vehicle is used to illegally ply for hire.⁴⁴

Fixed penalties

- 5.31 The Road Safety Act 2006 introduced powers to enable both police constables and Vehicle and Operator Services Agency examiners to:

- (1) issue fixed penalties in respect of certain offences; and
- (2) immobilise vehicles in any cases a driver or vehicle has been prohibited from continuing a journey or in any case where a driver declines to pay the requested deposit.⁴⁵

- 5.32 Not all offences are suitable for fixed penalties. They have to be relatively simple and there can be no doubt as to whether or not the conduct has taken place. In respect of public service vehicles, such offences include failing to have a tachograph⁴⁶ installed, driving on the pavement, and using a public service

⁴⁰ Local Government (Miscellaneous Provisions) Act 1976, s 61(2B).

⁴¹ J Button, *Button on taxis: licensing law and practice* (3rd ed 2008) para 3.10.

⁴² See Private Hire Vehicles (London) Act, s 17(2). In respect of London taxis, the suspensory power under the Transport Act 1985, s 17(9) is discretionary so the problem does not arise.

⁴³ Road Traffic Act 1988, s 165A.

⁴⁴ See *Telford and Wrekin Borough Council v Ahmed and Others* [2006] EWHC 1748 (Admin); [2006] All ER (D) 222 (Jun).

⁴⁵ Road Traffic Offenders Act 1988, ss 51 to 55. Immobilisation is currently not available in respect of taxi or private hire offences, although such vehicles could be immobilised for contravening other road traffic regulations. These powers are available in respect of parking contraventions, bus lane contraventions, London lorry ban contraventions and moving traffic contraventions (see the Traffic Management Act 2004) and unlicensed vehicles (see the Vehicle and Excise Registration Act 1994, s 29 and the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997, SI 1997 No 2439).

⁴⁶ A tachograph is a device fitted in a vehicle that measures the speed and distance of a driver and other activity.

vehicle without the relevant licence.⁴⁷ The Secretary of State can add to those offences which are currently subject to fixed penalty notices.⁴⁸

- 5.33 The amount of the penalty can be varied depending on the circumstances of the case, including the nature of the contravention or offence, the area or place where it occurred, the seriousness of the offence, and “whether the offender appears to have committed any offence or offences of a description specified in the order during a period so specified”.⁴⁹
- 5.34 Precedents exist for allowing local authorities to use fixed penalty notices as an enforcement tool. For example, fixed penalty notices can be used in relation to the offence of abandoning a vehicle.⁵⁰
- 5.35 The Transport for London Act 2008 introduced powers enabling the imposition of fixed penalty notices for offences relating to the use of taxis and private hire vehicles.⁵¹ The powers are only available in respect of relatively minor offences, for example a driver not displaying the correct badge, and not for breach of the licensing requirements. These powers are not yet in force.⁵²

Penalty points schemes

- 5.36 Some local authorities have introduced penalty points systems as a means of taking non-statutory enforcement action against drivers, vehicle owners and operators who are in breach of the licence conditions.⁵³ The purpose of such systems is to work alongside other enforcement options and provide a record of the licence holder's behaviour and conduct. Such schemes also have the potential to make enforcement both more effective and more proportionate.

⁴⁷ For a list of offences which can be subject to fixed penalty notices see Road Traffic Offenders Act 1988, s 51 and schedule 3.

⁴⁸ Road Traffic Offenders Act 1988, s 51(3).

⁴⁹ Road Safety Act 2006, s 3.

⁵⁰ See Refuse Disposal (Amenity) Act 1978. The power resides with an “authorised officer of the local authority”, which is defined as “an employee of the authority who is authorised in writing for the purposes of giving notices under this section”.

⁵¹ Transport for London Act 2008, s 17.

⁵² The powers to impose such notices are conferred on an “authorised officer”, defined as a person authorised in writing by Transport for London.

⁵³ For example, we are aware of such schemes in Rossendale, <http://www.bbc.co.uk/programmes/p00f0rf8> (last visited 23 April 2012); Epsom, <http://www.epsom-ewell.gov.uk/NR/rdonlyres/D1E082EA-6376-400B-8DDA-F3E6CE510CFB/0/PenaltyPointsScheme.pdf> (last visited 23 April 2012) and Worcester, http://www.worcesternews.co.uk/news/5052592.Taxi_drivers_could_be_banned_if_they_clock_up_too_many_penalty_points/ (last visited 23 April 2012).

- 5.37 Currently the only real sanction licensing officers possess is the suspension or revocation of a licence. This may be rather draconian in some instances. By adopting a penalty points scheme, the licensing authority can call the driver, vehicle owner or operator to account for more minor breaches, whilst having a structure in place which allows for more severe sanctions in the case of multiple breaches. An example of such a scheme can be found on the website of Charnwood Borough Council.⁵⁴
- 5.38 We note that the legality of such schemes is currently being challenged on the basis that local authorities lack the power to create such a scheme. Permission to seek judicial review was granted by the Administrative Court at Cardiff on 13 February 2012.⁵⁵
- 5.39 In the next chapter we consider the procedures for hearings and appeals against decisions made by licensing authorities.

⁵⁴ See http://www.charnwood.gov.uk/pages/licence_private_hire_drivers (last visited 23 April 2012).

⁵⁵ *R (on the application of Singh and Supatax Ltd v Cardiff City Council* CO/10807/2011.

CHAPTER 6

HEARINGS AND APPEALS

INTRODUCTION

- 6.1 This chapter considers how licensees or applicants for a licence who are aggrieved by a decision of a local authority can appeal that decision. There are three main routes available: statutory rights of appeal, judicial review and internal reconsideration.

APPEALS AGAINST WHAT?

- 6.2 There are two broad sets of provisions. The first deal with refusals of initial licences and challenging conditions imposed on these. These are appeals against decisions that provide a barrier to entry to the trades. The second set deals with suspensions, revocations and refusals to renew existing licences.¹ In these circumstances the licensing authority's decision threatens the existing livelihood of the applicant.
- 6.3 A further distinction can be drawn between decisions of general application, such as where conditions are imposed on all licences of a particular type, and situations where specific conditions are imposed on an individual licence holder. The appropriate method of challenge may differ between the two.
- 6.4 Where a licensing committee makes a decision in respect of refusing, suspending, revoking or refusing to renew a licence it is exercising an administrative function.² This means that although it has to act fairly it does not have to hold a court-like hearing or comply with strict rules of evidence.

STATUTORY RIGHTS OF APPEAL

- 6.5 Any applicant who is unhappy with a decision to refuse to grant a licence, or with conditions attached to the licence, benefits from a statutory right of appeal.³ Complaints must be filed within 21 days.⁴ With limited exceptions, noted below, all appeals are to the magistrates' court. Statutory appeals to the magistrates' court are appeals on the merits of the licensing authority's decision and amount to a fresh hearing of the issue. Strict rules of evidence do not apply in this type of hearing; consequently hearsay evidence is admissible, for example.⁵ There is no set procedure on how appeals to magistrates' courts on taxi and private hire matters should be conducted.

¹ For further discussion of these powers see Chapter 5.

² *R v Liverpool Corpn, ex p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 307 by Lord Denning MR.

³ Local Government (Miscellaneous Provisions) Act 1976, s 77; Public Health Act 1936 ss 300 to 302.

⁴ Public Health Act 1936, s 300.

⁵ *Westminster City Council v Zestfair* [1989] 153 JP 613 and *McCool v Rushcliffe* [1998] All ER 889.

Drivers

- 6.6 Both taxi and private hire drivers have a right to appeal to the magistrates' court if they are refused a licence.⁶ Where a private hire driver is granted a licence, he or she can also challenge any conditions attached to the grant of that licence.⁷ There is no express power to attach conditions to taxi driver licences, although there may be an implied power.⁸ Licensing authorities can pass byelaws to prescribe conditions to be met by taxi drivers,⁹ which can only be challenged by way of judicial review.¹⁰
- 6.7 In England and Wales, excluding London, the power to challenge a refusal or conditions extends to "any person aggrieved" by the decision.¹¹ This can include a local authority and other drivers.¹² The right to bring a statutory appeal is defined broadly in respect of initial refusals of licences and the imposition of conditions on licences. It is defined more narrowly when it comes to challenging suspensions, revocations and refusals to renew existing licences, which can only be challenged by the applicant.¹³ This correlates with the fact that conditions can apply to a whole class of persons and should therefore be amenable to challenge by the broader category of persons potentially affected. The decision to suspend or revoke a licence with immediate effect on the grounds of public safety cannot be appealed.¹⁴
- 6.8 In London, an applicant or licence holder can appeal conditions or a decision by Transport for London to refuse, suspend or revoke a taxi driver licence to a magistrates' court.¹⁵ However, an additional remedy exists as regards taxi licensing. This enables the applicant to request that Transport for London reconsider its decision before proceeding to court.¹⁶

⁶ Local Government (Miscellaneous Provisions) Act 1976, ss 52 and 59(2); Transport Act 1985, s 17; Private Hire Vehicles (London) Act 1998, s 13(6).

⁷ Local Government (Miscellaneous Provisions) Act 1976, s 52; Private Hire Vehicles (London) Act 1998, s 13(6).

⁸ See *Wathan v Neath & Port Talbot County Borough Council* [2002] EWHC 1634 (Admin); also discussed in Chapter 4 above, and Department for Transport, *Hackney Carriage Byelaws* (July 2005).

⁹ Town Police Clauses Act 1847, s 68. Transport for London is empowered to make regulations known as London cab orders: Metropolitan Public Carriage Act 1869, s 9.

¹⁰ See para 6.20 below.

¹¹ Local Government (Miscellaneous Provisions) Act 1976, ss 52 and 59(2);

¹² *Cook v Southend Borough Council* [1990] 2 QB 1; *Swansea City and County Council v Davies* [2001] RTR 6.

¹³ See Local Government (Miscellaneous Provisions) Act 1976, ss 60(3), 61(3) and 62(3); *Swansea City and County Council v Davies* [2001] RTR 54, paras 21 and 22 by Mr Justice Munby.

¹⁴ Under Local Government (Miscellaneous Provisions) Act 1976, s 61(2B); in London, see Private Hire Vehicles (London) Act 1998, s 17(2) which has the same effect for private hire vehicles. For further discussion of the immediate effect of suspension or revocation see Chapter 5.

¹⁵ Transport Act 1985, s 17; Private Hire Vehicles (London) Act 1998, ss 13(6) and 17(4).

¹⁶ Transport Act 1985, s 17(2)(a).

This is unique to London. It should be noted that in London the right of appeal extends only to the applicant or holder of the licence rather than the broader “person aggrieved” elsewhere in England and Wales.

Vehicles

- 6.9 In England and Wales, but not London, a refusal to grant a taxi vehicle licence gives the proprietor a direct right of appeal to the Crown Court.¹⁷ By contrast, a person aggrieved by the refusal of a private hire vehicle licence, or conditions imposed on such a licence, can appeal to the magistrates’ court.¹⁸ The difference in rights of appeal does not appear to be intentional. It arises from the failure of the 1976 Act to cover rights of appeal against refusals of taxi licences. Thus, the pre-1976 regime applies by default.¹⁹ In London, an applicant can appeal a refusal or the imposition of conditions to the magistrates’ court.²⁰
- 6.10 In England and Wales generally, the refusal of a taxi or private hire licence, as well as any conditions attached to the grant of a licence, can be appealed by any person aggrieved by the decision.²¹ The right of appeal is limited to the applicant in London.²² A decision to suspend, revoke or refuse to renew existing taxi and private hire vehicle licences can be appealed to the magistrates’ court.²³ Thus in London the same rights of appeal apply in respect of vehicles as in respect of driver licences.²⁴

Operators

- 6.11 All decisions in respect of operator licences, or conditions imposed on such licences, can be challenged before the magistrates’ court, as can a decision to suspend, revoke or refuse to renew such a licence.²⁵ Similar provisions apply in London.²⁶

Conditions

- 6.12 It is possible to appeal the imposition of conditions on any licence, in relation to both taxis and private hire vehicles. In general, conditions must be reasonable

¹⁷ Public Health Acts Amendment Act 1907, s 7.

¹⁸ Local Government (Miscellaneous Provisions) Act 1976, s 48(7).

¹⁹ For discussion of this anomaly see J Button, *Button on taxis: licensing law and practise* (3rd ed 2008) para 3.18.

²⁰ For taxis, see Transport Act 1985, s 17; for private hire vehicles, see Private Hire Vehicles (London) Act 1998, s 7(7).

²¹ Public Health Amendment Act 1907, s 7; Local Government (Miscellaneous Provisions) Act 1976, ss 47(3) and 48(7).

²² For taxis, see Transport Act 1985, s 17; for private hire vehicles, see Private Hire Vehicles (London) Act 1998, s 7(7).

²³ Local Government (Miscellaneous Provisions) Act 1976, ss 60 and 68; Transport Act 1985, s 17; Private Hire Vehicles (London) Act 1998, s 17(4).

²⁴ For taxis see Transport Act 1985, s 17(1); and for private hire vehicles see Private Hire Vehicles (London) Act 1998, ss 7(7) and 17(4).

²⁵ Local Government (Miscellaneous Provisions) Act 1976, ss 55 and 62.

²⁶ Private Hire Vehicles (London) Act 1998, ss 3(7) and 25(6).

and appeals are to the magistrates' court by any person aggrieved.²⁷ In London, appeals against refusals lie to the magistrates' court but are available only to the applicant.²⁸ The right to appeal to the magistrates' court does not extend to conditions prescribed by the Secretary of State, which would have to be judicially reviewed.

Challenges to licensing fees

- 6.13 The Audit Commission has powers to review local authorities' accounts. Although its findings are not directly binding on the local authority, a district auditor has the option to exercise formal audit powers.²⁹ These powers include seeking a court declaration to support its findings³⁰ or to issue a report in the public interest.³¹
- 6.14 In London, the only avenue to challenge licensing fees would appear to be judicial review as the fees are determined in regulations made by the Secretary of State.³²

Delaying suspensions and revocations

- 6.15 Decisions to suspend or revoke taxi and private hire driver licences, and, in London, private hire driver, vehicle and operator licences, cannot be enforced until the 21-day window for appealing the decision has expired.³³ If the decision is appealed, the suspension or revocation will not take effect until the determination by the magistrates' court, or the Crown Court if further appealed.³⁴ This could be a considerable amount of time.

Proceedings under the Local Government Act 1972

- 6.16 Local authorities may prosecute, defend or bring legal proceedings if they consider it to be "expedient for the promotion or protection of the interests of the inhabitants of their area".³⁵ This can trump the delay which would ordinarily ensue from a licensing officers' decision to suspend or revoke a vehicle licence by allowing a licensing authority to apply for an injunction against a licence holder.

²⁷ Local Government (Miscellaneous Provisions) Act 1976, ss 47(3), 48(7), 52(2) and 55(4). See also *The Queen on the application of Leeds City Council v Taxi Centre (Newcastle-upon-Tyne) Ltd* [2005] EWHC 2564 (Admin) at para 10.

²⁸ We also note that in London the right to appeal to the magistrates' court does not extend to conditions prescribed by the Secretary of State under regulations issued pursuant to Private Hire Vehicles (London) Act 1998, s 32. See Private Hire Vehicles (London) Act 1998, ss 3(7), 7(7) and 13(6).

²⁹ See generally Audit Commission Act 1998.

³⁰ Audit Commission Act 1998, s 17(1).

³¹ See the discussion in Chapter 2.

³² See discussion of licensing fees in Chapter 2.

³³ Local Government (Miscellaneous Provisions) Act 1976, s 61 (2A); Private Hire Vehicles (London) Act 1998, s 17.

³⁴ In England and Wales, under Local Government (Miscellaneous Provisions) Act 1976, s 77(2); in London under Private Hire Vehicles (London) Act 1998, s 26. In respect of London taxis the suspensory power under s 17(9) of the Transport Act 1985 is discretionary.

³⁵ Local Government Act 1972, s 222.

- 6.17 When Lord Justice Bingham was a Court of Appeal judge, he noted that local authorities should, however, only use their powers to seek an injunction in exceptional circumstances and with “great caution” in cases where there is

The need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them.³⁶

- 6.18 Button notes that although there are no reported taxi or private hire injunction cases, uncontested injunctions have been obtained using these powers.³⁷

FURTHER RIGHTS OF APPEAL

- 6.19 Outside London, decisions of the magistrates' courts can be appealed to the Crown Court.³⁸ From the Crown Court it is possible to appeal to the High Court by way of case stated.³⁹ In London, where no right of appeal to the Crown Court exists, it is still possible to appeal from the magistrates' court to the High Court by case stated.⁴⁰ In both instances, the appeal must be on the grounds that the decision was wrong in law or in excess of jurisdiction. The council is required to give effect to a decision of the court.⁴¹

JUDICIAL REVIEW

- 6.20 Decisions of a local authority can also be subject to judicial review. Unlike statutory appeals, where any aspect of the licensing authority's decision can be challenged, judicial review can only be brought on specified grounds. Judicial review is not concerned with challenging the merits of the decision, and whether it was right or wrong.⁴² Instead judicial review focuses on how the decision was reached. Key grounds for complaint include that there was an error of law or that the procedure that a licensing authority took in reaching the decision was not fair.
- 6.21 A decision can also be challenged on the basis that it was not within the council's power to make it, that it breached a legitimate expectation, or that it was unreasonable. Only persons with standing can bring proceedings, and applicants must apply to the High Court.⁴³ These grounds for review are not as straightforward as challenging the correctness of a decision through a simple

³⁶ *City of London Corp v Bovis Construction Ltd* [1992] 3 All E.R. 697.

³⁷ J Button, *Button on Taxis: licensing law and practise* (3rd ed 2008) para 3.13.

³⁸ Public Health Act 1936, s 301. For procedure in the magistrates' courts more generally, see Courts Act 2003, Part 3.

³⁹ Senior Courts Act 1981, s 28.

⁴⁰ Magistrates' Court Act 1980, s 11.

⁴¹ Public Health Act 1936, s 302.

⁴² Except in limited circumstances where the decision is so unreasonable that no reasonable local authority properly exercising its discretion could have reached it, *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223.

⁴³ The Senior Courts Act 1981, s 31(3) refers to persons the court considers to have a “sufficient interest in the matter to which the application relates”. As noted at para 6.7 above, this has some parallels to the “persons aggrieved” criterion of the Local Government (Miscellaneous Provisions) Act 1976.

statutory appeal. Further, the courts have expressed dissatisfaction with using judicial review to challenge conditions of licence given that statutory means of appeal are available.⁴⁴

- 6.22 Licensing authorities are entitled to adopt policies in respect of their licensing functions.⁴⁵ Licensing authorities may use licensing policies which have a very similar effect to imposing conditions. For example, they may set an age limit for vehicles or specifying certain aspects of their appearance.⁴⁶ Judicial review may be the only route for challenging a decision based on a policy.
- 6.23 Even if the underlying policy is lawful, an applicant may still object to the manner in which it was applied, which may result in a refusal to grant a licence, for example.⁴⁷ As a matter of administrative law, policies must not be applied blindly and routinely without the possibility of exception.⁴⁸ It should also be noted that the time-limit for bringing a judicial review case can be extended, whereas that for case stated appeals to the High Court cannot.
- 6.24 Judicial review is also more expensive and not available as of right in challenging a decision. Applications for judicial review must be filed promptly and in any event not later than three months after the grounds to make the claim first arose.⁴⁹ The time limit for judicial review is therefore longer than the 21-day time limit applicable to statutory appeals.

INTERNAL RECONSIDERATION BY THE LICENSING AUTHORITY

- 6.25 Some authorities, notably London, provide that where an application is refused, the applicant has the right to request a reconsideration of the matter before lodging an appeal with the magistrates' court.⁵⁰

⁴⁴ *The Queen on the application of Leeds City Council v Taxi Centre (Newcastle-upon-Tyne) Ltd* [2005] EWHC 2564 (Admin) para 21 by Mr Justice Lloyd Jones. The case concerned Leeds County Council's refusal to license the applicant's vehicle, a Fiat Doblo wheelchair accessible car, because it was not on its approved list for use as a taxi and did not comply with new conditions of licence introduced after its initial application. The High Court upheld the Crown Court's decision order for the council to reconsider its decision on the basis of the old conditions of licence.

⁴⁵ *R v Torbay Licensing Justices ex parte White* [1980] 2 All ER 25 and *R v Chester Crown Court ex parte Pascoe and Jones* (1987) 151 JP 752.

⁴⁶ Magistrates' courts hearing appeals against licensing authorities' decisions are directed to take the licensing authority's policies into account. In *R (on the application of Westminster City Council) v Middlesex Crown Court* [2002] EWHC 1104 (Admin), the applicant challenged Westminster City Council's policy restricting the grant of late night public entertainment licences. This policy was adopted to tackle considerable nuisance problems in the West End and the global effect of these licences on the area as a whole. The "impeccable" credentials of the applicant were not an exceptional consideration given the underlying policy goal of limiting overall growth so the judicial review failed.

⁴⁷ A statutory right of appeal remains in respect of the individual refusal of licence, but magistrates may be reluctant to review a decision made on the basis of policy, *Southampton City Council v May* (17 November 2011) (unreported).

⁴⁸ The licensing authority must not shut its ears to an application, *British Oxygen Co v Board of Trade* [1971] AC 610, 625, by Lord Reid.

⁴⁹ Civil Procedure Rules, r 54 5(1).

- 6.26 Authorities which operate a penalty points scheme may provide a right of appeal to an officer of an appropriate level within the authority, against a decision to issue penalty points. If a decision is taken to suspend or revoke a licence because the specified number of penalty points has been issued, the licensee would have the right to appeal to the magistrates' court. Some stakeholders have raised concerns as to the legitimacy and fairness of penalty points systems. We are aware that permission has recently been granted for judicial review of such a scheme in Cardiff.⁵¹
- 6.27 In the next part we discuss problems with the law and the case for reform.

⁵⁰ Transport Act 1985, s 17(2)(a).

⁵¹ *R (on the application of Singh and Supatax Ltd) v Cardiff County Council* CO/10807/2011.

CHAPTER 7

REGULATION AND THE ONE OR TWO TIER DEBATE

INTRODUCTION

- 7.1 In this chapter, we first discuss the fundamental approach we take to the regulation of economic markets in general. We apply this to the markets for taxi and private hire services, and draw provisional conclusions about the broad scope of regulation. Finally, we apply this approach to the question of the basic structure of the industry – should there be two tiers (taxis and private hire vehicles) or one?¹

REGULATORY PRINCIPLES

Markets and regulation

- 7.2 We live in a market economy. On the one hand, sellers of goods or services choose freely whether to enter a market, and at what level of quality and price to make their offering. On the other, consumers choose between competing sellers on the basis of price or quality, and, generally, there is an *efficient* outcome. Why, then, should the state intervene in a market?
- 7.3 What is meant by “efficient” in this sense is a complicated matter much discussed in economics. The core idea is that a perfect market will result in things being allocated in such a way that no change is possible that makes a person better off, without someone else being made worse off.² This approach to efficiency does not imply any particular pattern of allocation to individuals. A distribution between individuals can be very unequal, and still be, in this sense, efficient. While in practice hardly any real-world markets are perfect in this sense, many markets are close enough for the market to be a more accurate and reliable way to distribute goods and services than bureaucratic decision-making.
- 7.4 However, sometimes markets do not produce the best results, even in this real-world approximate sense. “Market failure” describes the situation in which some flaw in the operation of the market means that the outcomes are not the optimal ones that economic theory would predict, if the market was working properly. A flawed market may mean that consumers pay higher prices, quality is lower or there is less supply than would be the case if the market was working properly.
- 7.5 It is in situations like this, where the market is not working properly, that it may be necessary for the state to regulate the market, to make up for the market failure. There might also be a decision to intervene in a market because we value some non-efficient outcome more than the efficient one – for instance, a more equal

¹ This chapter draws heavily on material discussed at an event hosted by Warwick Law School in association with the Law Commission, entitled “Symposium on law reform and regulation”, which took place on 13 and 14 September 2011. We would like to thank Warwick Law School and all involved, and in particular Professor Anthony Ogus.

² An alternative way of looking at it is that a change is only justified if the advantage to the better-off person is greater than the disadvantage to the worse-off one, so the latter can be compensated.

distribution of income, or combating unjust discrimination. In these cases, the justification for intervention is a normative one – one based on value judgements rather than pure economic considerations. Both of these possible justifications for intervention in the market are relevant to a consideration of regulation in the market for taxis and private hire vehicles.

- 7.6 As we outlined in Chapter 1, in this project we are taking a deregulatory approach, that is, an approach which insists that any regulatory intervention must be properly justified, and the intervention must match the justification. In this chapter, we will consider the justifications for such interventions.

Competition and taxi and private hire markets

- 7.7 As we have seen, there are three ways in which consumers of taxi/private hire services can engage suppliers – pre-booking, shared between taxis and private hire vehicles, and the taxi-only methods of hailing and ranking.
- 7.8 In both the private hire and taxi markets, the vast majority of drivers are self-employed, and most own their own vehicle. However, on the private hire side, both as a matter of practice and of law, the consumer deals with the operator, not individual drivers. In the pre-booked market, there is a very diverse range of market providers, from big regional operators like Addison Lee or Delta to small local operators and independent driver/operators. On the taxi side, radio networks take pre-bookings for taxis and independent taxi drivers may also take pre-booked work directly.
- 7.9 When pre-booking, consumers can shop around for the best deal in selecting their ride. The normal market mechanism of advertising operates, providing consumers with information on quality and price. Competition can be on the basis of offering a better price, or in respect of features which consumers would be willing to pay for if given a choice. A consumer who is a repeat player may try various providers, and make an informed decision based on factors important to him or her. A consumer can in future avoid an operator if he or she is unsatisfied with the quality of car or driver. This might include a cheaper price, better perceived safety features, or purely quality based considerations such as the comfort of the vehicle or its appearance, and customer service.
- 7.10 By contrast, in the taxi hailing and ranking markets, competitive market forces cannot work effectively. Since a consumer is unlikely to get in the same cab twice through either hailing or going to a rank, taxis have no incentive to raise standards (at least beyond a minimum mandated by regulation). Raising standards is a cost to each individual taxi yet they are not in a position to reap the benefits. This is because the next taxi may not adopt these higher standards and consumers have no obvious way of distinguishing between them. This means that innovation and improvement of standards in matters such as safety and quality, and cheaper prices, will not happen as a result of competition in the taxi market even if consumers have a demand for it.
- 7.11 In the on-street hail market, once a cab has been stopped the seller is in the position of a temporary monopolist. There is no real competitive pressure in relation to price – under monopoly conditions, prices will generally be higher than where competition prevails. If the customer refuses the offered fare he or she

faces an uncertain waiting time before repeating the same negotiation with another cab.³

- 7.12 At ranks, it is a generally accepted social practice that customers will engage the first taxi in the rank, without negotiating on price, and without consideration of safety or quality. The result is that there is no place for competition between providers.⁴ In some cases, reformers have sought to change this social practice in order to encourage competition, but apparently without success.⁵ We take the view that we should take such practices as independently fixed in assessing the need for regulation, rather than relying on people changing their behaviour to suit economists' prescriptions.

The implications for regulation

- 7.13 The difference between the pre-booked market on the one hand and those for hailing and ranking on the other has important implications for the way in which taxis and private hire vehicles should be regulated. There is a reasonably effective competitive market in pre-booked services. In relation to ranking and hailing, however, it can be seen that there is thoroughgoing market failure. Indeed, it can almost be said that, at the point of sale, there is no real market at all. However, before we consider the implications of these differences, there is one important common feature which should be addressed.

Safety standards

- 7.14 One particular source of market failure is where there are imbalances between the information available to one side or the other in the transaction. Such imbalances can arise where a consumer cannot be expected to have specialist technical knowledge. As the economist Dr Darryl Biggar notes,

It is often pointed out that the typical customer is not able to assess how well the taxi vehicle has been maintained and whether or not it is safe and roadworthy. Neither can the customer assess whether or not the driver is competent and safe, nor whether he/she has a history of criminal tendencies. (To an extent, these concerns also apply to the driver – who usually cannot determine in advance whether the customer is unreliable or dangerous).⁶

³ D Biggar, *Why and how should we regulate taxis?* (2011) p 5.

⁴ We have been told that on some occasions, in some places, the practice of customers not necessarily engaging the first taxi has developed. Customers may either go to the first taxi from a preferred supplier, or go down the rank seeking to negotiate on price. We are not aware of any research on behaviour in ranks, but our impression is that this form of engagement is unusual, and confined to particular ranks in some areas. For present purposes, we discount it as having a significant effect on the behaviour of taxis in the general ranking market, but would be interested in any further information on the practice.

⁵ See the example of herring-bone patterned ranks in the Netherlands, where taxi drivers continued to direct passengers to the "first" taxi in the line, even when to do so was unlawful: A Baanders and M Canoy *Ten Years of Taxi Deregulation in the Netherlands – The Case for Re-Regulation and Decentralisation* (2010), <http://etcproceedings.org/paper/ten-years-of-taxi-deregulation-in-the-netherlands-the-case-for-re-regulation-a> (last visited 23 April 2012).

⁶ D Biggar, *Why and how should we regulate taxis?* (2011) p 15.

- 7.15 Unlike the other failures we outlined above, this problem affects both the taxi and private hire markets. Indeed, it is a general issue. Safety involves assessing technical matters beyond the knowledge of the large majority of consumers. It is therefore generally accepted that the state will regulate to ensure at least the minimum safety of products and services. This includes cars. Regulation ensures that cars are safe, not only at the point of manufacture, but on an on-going basis via the annual MOT test (after an initial three year period).⁷ Drivers' safety is assessed by the driving test and enforced by criminal law. Taxis and private hire vehicles are used much more intensively than ordinary vehicles. There is also a further layer of information imbalance between the driver of a taxi and his or her customer, as compared with the driver of a private car. There is, therefore, a compelling case for minimum safety standards to be set for both private hire vehicles and taxis, over and above those pertaining to private cars and drivers.

Price and quality

- 7.16 However, if we are right that the pre-booked market operates reasonably competitively and the hailing and ranking markets do not, then there is a compelling case to regulate both the price and quality of taxi services, but neither in respect of private hire vehicles.
- 7.17 This accords with the current system in relation to fares, which are regulated for taxis but not for private hire vehicles. On the other hand, the current system allows for conditions to be set for private hire vehicles as well as taxis, and these are frequently used to impose quality standards on private hire vehicles.
- 7.18 If quality regulation is not justified in respect of private hire vehicles, there would seem to be two consequences. First, customers are potentially being prevented from choosing to pay a discounted price for a scruffy but safe private hire vehicle. In a competitive market, there seems no reason to prevent consumers making that choice. Many markets for personal services have a discounted bottom-end, which generally serves a purpose. Whether there would in fact be effective demand for such services we do not know, but there does not seem to be any reason why the state should exclude the possibility, provided that customers who want higher quality standards can effectively procure them. Our working hypothesis is that the pre-booked market is sufficiently competitive to allow for that.
- 7.19 The second point is that it may well be that the market would, generally, set a higher standard of quality than that required by the existing quality conditions. We are not aware of any empirical evidence one way or the other, and would be grateful if we could be provided with any. But if that were the case, then the whole process of setting conditions (and "enforcing" them) is misplaced and wasteful, and could sensibly be dispensed with.

Higher safety standards for taxis

- 7.20 We have argued that minimum safety standards are necessary for both taxis and private hire vehicles. Above that line, regulation is still necessary for taxis on both

⁷ http://www.direct.gov.uk/en/Motoring/OwningAVehicle/Mot/DG_4022109 (last visited 23 April 2012). For the legal basis of this regime, see Road Vehicles (Construction and Use) Regulations 1986 SI 1986 No 1078, as amended, and Road Traffic Act 1988, s 45.

price and quality. So the question arises: should we allow the imposition of higher than minimum safety standards on taxis too?

- 7.21 We can see that there are good arguments against doing so. Once we have judged that the minimum standard is an appropriate safeguard, why should we allow higher standards to be imposed locally by licensing authorities? Is it right that a member of the public should be safer in a taxi in Solihull than in Birmingham? Or a Birmingham taxi should have to be safer than a Birmingham private hire vehicle?
- 7.22 Attractive though this argument is, on balance we think that it would be preferable to allow licensing authorities to impose higher than the minimum safety standards on taxis. We are, provisionally, persuaded by two linked considerations.
- 7.23 In the first place, above a certain minimum level of mechanical soundness, there appears to be a very close relationship between safety and quality in any event. Quality conditions will tend to be expressed in terms of the description of the vehicle, such as the number of doors, its size and age. All of these will also tend to be indicative of a safer vehicle. This is not to suggest that there is no possibility of making a distinction between quality and higher safety standards, but rather that the two will tend to be broadly similar and will often be indistinguishable. And if this were so, then it is arguable that they fall into the category of features for which there would be demand if a properly functioning market existed in taxi services. These are the sorts of qualities that are not difficult to understand and are not beyond the competence of most consumers in the way that mechanical matters and technical specifications may be. If this is so, then the justification flows from the specific market failure attributable to hailing and ranking rather than the common information deficiency identified as the justification for minimum safety standards above.
- 7.24 Further, if it is in practice often difficult to distinguish between quality and enhanced safety standards, then, if quality conditions were to be permitted, but do not enhance safety conditions, there may be scope for conflict and litigation. The risk is that particular conditions could be challenged as being *really* about safety rather than quality, and therefore beyond the power of the licensing authority to impose. The courts would then be asked to attempt to distinguish the two. We see this as an unfortunate potential development.

Uniformity and colour conditions

- 7.25 How far should conditions on taxis go? At present, some towns and cities impose conditions the effect of which is to create a uniform taxi fleet. The London cab conditions apply, of course, in London, but have also been imposed in a number of other provincial cities. It is also common for towns or cities to impose colour conditions, sometimes in addition to the London cab conditions.
- 7.26 One possible argument for such conditions is that it is necessary for the hailing and ranking markets that taxis be readily recognisable. But that all taxis should be a particular shade of blue in Bristol, green in Nottingham or black and white in Cardiff appears to go well beyond the basic level of signage necessary for recognition, even where there is a significant hailing trade.

- 7.27 There may be answers to this objection, however. First, it may be argued that a civic pride motivated condition is an acceptable form of intervention. It is, it could be argued, a proper expression of local democracy to allow local authorities to reflect civic pride in the appearance of the taxi fleet.⁸ This would imply that it is worth some reduction in the efficiency of the market to allow for this positive, essentially non-economic, advantage.
- 7.28 Secondly, there may be purely economic justifications, although they are almost impossible to quantify. It could be that colour conditions reap positive economic benefits to the city or town in question.⁹ It seems probable that the classic London black cab is one part of the overall tourist experience in London, for instance. If so, a requirement that maintains a fleet of black cabs in place would be creating additional benefit beyond the private cost associated with the transaction by advancing the tourist trade to the benefit of the London economy as a whole. This effect is perhaps less obvious in other cities and towns, but may nonetheless be evident. To similar effect, if there is an assumption that a uniform taxi fleet is a status attribute of a city or town once it achieves a certain size or significance, then such statements of status might have an effect in encouraging inward investment or other economically useful objectives. It is noteworthy that uniformity and colour conditions are very widespread in big cities worldwide, which tends to support the argument that big cities benefit from a uniform fleet.
- 7.29 These are well balanced arguments. Overall, we think that it is likely that uniformity conditions are a reasonable form of intervention in the taxi market.

Quantity restrictions

- 7.30 We deal extensively with the arguments for and against quantity restrictions – limits on the numbers of taxis permitted to operate in a licensing area – in Chapter 9 below. For current purposes, we note that it is difficult to justify, from a regulatory perspective, restrictions on the number of people entitled to trade as taxi drivers on the basis of a lack of un-met need. If there is un-met need, we would expect new entrants to come into the market until the point at which needs were met (at the price and quality that customers were prepared to pay). It is difficult to see a justification for determining demand on the basis of a survey and a subsequent bureaucratic decision, rather than a market mechanism.
- 7.31 That is not to say that there may not be good arguments for quantity restrictions. The principal purely economic argument would be one based on the notion of external costs. An external cost is a cost that is imposed on those outside the immediate transaction in question. The presence of significant external costs is an imperfection in the market which can justify regulatory intervention.
- 7.32 The principal external costs that can be prayed in aid of quantity restrictions are the external costs of congestion, and/or environmental pollution. Both congestion

⁸ The uniformity of a taxi fleet can therefore have objective quality implications that go beyond economic analysis. Recognition of the value of uniformity, and its link with aesthetics, has long-standing roots in classical philosophy dating back to Plato and is also reflected in the modern-day approach to branding and franchises for example.

⁹ We mean here an economic benefit that is *external* to the transaction itself – that is, it does not benefit (directly) either the taxi driver or the passenger, but has its effects on others. These are “positive externalities”.

and pollution impose costs on those outside the immediate customer/supplier relationship, and thus might provide an independent argument for quantity restrictions. It may be possible to argue that taxis are more relevant to this issue than private hire vehicles. Taxis may contribute more to environmental pollution by idling at ranks. The activity of driving around seeking to be hailed may have a greater effect on congestion than point-to-point pre-booked journeys. Against this, it could be said that the fact that private hire vehicles cannot enter the hail and rank markets means they create unnecessary pollution and congestion when returning from a pre-booked job; and there are about twice as many private hire vehicles as taxis in England and Wales.

Other environmental conditions

- 7.33 In some areas, specific conditions have been imposed to tackle emission levels. The control of pollution is the classic example of regulation justified by the external costs imposed by a particular economic activity.
- 7.34 In London, for example, the majority of fine particulate emissions from within central London come from road transport. Within central London, taxis account for over 30% of exhaust emissions (based on 2008 figures).¹⁰ The Mayor of London's Air Quality Strategy therefore includes age limits for taxis, on the basis that older taxis emit considerably more harmful pollutants than newer vehicles.¹¹ It is now a mandatory requirement for all new London taxi drivers to take an eco-driving course and this will be introduced for private hire drivers from 2013.¹² It is noteworthy that, in London, policy makers have used other policy levers to attempt to reduce emissions attributable to taxis, rather than relying exclusively on conditions on vehicle licences. These include, for instance, working with industry to introduce better taxi designs, and providing financial incentives to taxi drivers to acquire less-polluting vehicles.¹³

THE STRUCTURE OF THE REGULATED INDUSTRY: ONE TIER OR TWO?

- 7.35 One possible form of reform would be to move away from the current distinction between taxis and private hire vehicles to what is described as a "one tier" system.
- 7.36 This option would provide for a single form of vehicle, subject to the same restrictions and conditions. The single tier vehicle would be able to take pre-bookings, to be hailed and to wait on ranks. Variants of this option would introduce some modifications to the basic model. James Button, for instance, the author of the principal legal text on the law relating to taxis and private hire vehicles, has suggested a one tier system, but in which only vehicles with full

¹⁰ Clearing the Air: Executive Summary – the Mayor's Air Quality Strategy, published December 2010, <http://www.london.gov.uk/sites/default/files/MAQS%20Executive%20Summary%20FINAL.pdf> (last visited 23 April 2012).

¹¹ Clearing the Air: Executive Summary – the Mayor's Air Quality Strategy, published December 2010, p 92.

¹² Clearing the Air: Executive Summary – the Mayor's Air Quality Strategy, published December 2010, appendix B, p 4.

¹³ See <http://www.tfl.gov.uk/businessandpartners/taxisandprivatehire/21354.aspx> (last visited 23 April 2012).

wheel-chair accessibility would be able to wait at certain particularly desirable ranks.¹⁴

- 7.37 There are significant advantages in a one tier system, some of which we discuss below. But it will be seen from our discussion above that we see the market in, on the one hand, pre-booking, and, on the other, hailing and ranking, as having very different characteristics. These characteristics suggest the imposition of basic safety standards on private hire vehicles, but no more. By contrast, there is a need for much more thoroughgoing intervention into the taxi market, to regulate fares, quality, additional safety provision and what we have described as uniformity conditions.
- 7.38 It follows, in our view, that the economics of the market in which taxis and private hire vehicles operate, and the regulatory implications thereof, support a distinction between those vehicles and drivers who should be permitted to undertake only pre-booking, and those who should also be able to engage in the hailing and ranking markets.
- 7.39 If greater intervention is needed in one market and not the other, then a one tier approach necessarily implies that either one market will be over-regulated, or the other under-regulated. Either we accept unnecessary and anti-competitive restrictions on pre-booking, such as fare regulation and higher quality standards; or we fail to properly regulate fares and quality in the hailing and ranking markets. Either way, consumers lose. In the first situation, they are faced with inflated prices (and, possibly, less choice in respect of quality) in the pre-booked market. In the second situation, they face exploitative monopoly fares and poor quality provision in the hailing and ranking markets.
- 7.40 So consideration of the regulatory imperatives suggests retention of a two tier structure. We must therefore consider whether the arguments for a one tier system are such as to overcome that starting point.

Arguments for a one tier system

Reducing customer confusion

- 7.41 The overwhelming evidence we have received from stakeholders thus far suggests that most consumers are unaware of the distinction between taxis and private hire vehicles. The terms “taxi” or “cab” are commonly used to refer to both sides of the trade.
- 7.42 This confusion can, it is argued, favour licensed private hire vehicles that break the rules by accepting passengers without pre-bookings. If they do so, they evade fare regulation, for instance, and compete unfairly with licensed taxis. By the same token, customers may be baffled and frustrated when told they are required to pre-book his or her services by a private hire driver they approach.
- 7.43 But the fact it is not well understood does not, of itself, invalidate the regulatory distinction. Consumers may be frustrated when told they need to pre-book private hire vehicles; on the other hand, they may appreciate the added protections they

¹⁴ See for example J Button, James Button & Co Solicitors, “A New Taxi Bill?”, *Institute of Licensing Taxi Reform Conference, Public Health Legal Information Unit* (2010).

can expect from taxis such as maximum fares and regulated quality standards, the one being the necessary implication of the other. There may also be a role for licensing authorities or others in improving public awareness of the distinction. We discuss the current approach to terminology and identifiers used in the trade in Chapter 3 above, and possible reforms in Chapter 14.

Better provision

- 7.44 The shortages of taxis at peak times and late at night can be a significant problem particularly for urban areas. Licensing officers have told us of that when young people pour out of night clubs at closing time there is often a shortage of taxis. There may however be lines of parked private hire vehicles (forming unofficial ranks) ready to take people home. If the private hire driver allows the passenger to get into the vehicle without making a pre-booking they are breaking the law and could lose their licence. The car's insurance cover might be invalidated. These can appear draconian consequences for what can appear to be an innocent and sensible course of action. The requirement to pre-book the vehicle in these circumstances can seem technical and unhelpful.
- 7.45 The assumption in the above argument is that all vehicles would be allowed to do what current taxis do and pick people up directly from the street. But that leads us back to the fundamental argument that ranking requires greater regulatory protections than pre-booking. The passenger may be glad to find a vehicle that will carry them, but if one tier protections are set at the current private hire level, they will be inadequately protected against an exorbitant fare once they are in the car. Alternatively, if the regulatory level is set at that for taxis, to protect these customers, it will be at the expense of normal pre-booking customers at other times, who may face higher prices and the other downsides of over-regulating pre-booking.

Technological change

- 7.46 It has been argued that technological change is, or will, erode the distinction between pre-booking and hailing and ranking. Thus, it is argued, the fundamental distinction between the markets is undermined, strengthening the argument for a single tier. The continuing relevance of the hailing market in particular may be challenged by the increasing prevalence of other instantaneous means of engaging vehicles. Smart phone apps, for instance, allow customers to book cars at the touch of a button and to visualise surrounding provision on a screen.
- 7.47 The difference in timing of a pre-booked journey compared with traditional hailing may therefore become insignificant. Both modes are near-instantaneous. But this is not necessarily the key distinction, from a competition point of view. The way the consumer engages with the two types of market remains very different. Even where the consumer orders a car at the touch of a button they will have previously downloaded the app. The consumer will have selected it on the basis that it trusted the relevant provider more than others offering competing apps. There will be a record of the journey. By contrast, where the car is hailed from the street there is no relevant choice of provider. The consumer knows nothing of the car they will be getting into.

- 7.48 The effect, in other words, is to increase what is, in competitive terms, the pre-booked market. It is true that, in time, these advances *may* mean that the pre-booked market (defined in this way) becomes so large that it dwarfs other forms of engagement. But that is not obviously something that should worry policy makers, provided that we retain the right level of regulatory control over both market segments.
- 7.49 We should add a caveat. We have described the effect that we think currently available and reasonably foreseeable technological change will have. But predicting the future course of technology is notoriously difficult. If technology allows engagement between customers and taxis or private hire vehicles to develop in radically unforeseen ways, then these conclusions would have to be reconsidered. But our underlying message is that it is the effect of technological change on competition that is the key issue, not whether it superficially looks rather like one or other of the existing market structures.

Provisional conclusion

- 7.50 We provisionally conclude, therefore, that the current basic structure of the industry, which divides regulatory intervention by distinguishing between the pre-booked and hailing/ranking markets, is to be preferred to a one tier approach. This underpins our approach to law reform as developed in Part 3 of this consultation paper. We invite views on this approach in Chapter 13, provisional proposal 1.
- 7.51 In the next chapter we consider some specific problems with the current law and the case for reform.

CHAPTER 8

PROBLEMS WITH THE LAW AND THE CASE FOR REFORM

INTRODUCTION

- 8.1 Our analysis of the current law highlighted the complexity and fragmentation of the current legal framework. In this section we consider how these high-level problems impact users on the ground and support the case for reform in respect of:

- (1) public safety;
- (2) excessive burdens on business; and
- (3) ensuring availability.

PUBLIC SAFETY

- 8.2 Ensuring public safety when travelling in taxis and private hire vehicles has been the primary concern of modern regulation and reviews considering reform.¹ It is widely recognised that taxi and private hire passengers are often in a particularly vulnerable position.
- 8.3 Transport for London reported 111 cab-related sexual offences in 2010 alone,² and Greater Manchester Police recorded 98 offences of rape or sexual assault linked to taxis and private hire vehicles in the same period.³ The infamous case of John Worboys illustrates the extent to which taxi services can be abused by sexual predators.⁴ The black cab driver was convicted of 12 sexual assaults in 2009 but police believed this was only a fraction of the actual offences he had committed. There are also frequent allegations of theft, assault and other offences.⁵

No national minimum standards

- 8.4 The current system requires local decision making in respect of standards for both taxis and private hire vehicles. Even safety, an area in which passengers

¹ See, for example, Taxis and Private Hire Vehicles, Report of the Select Committee on Transport (1993 - 94) HC 239-I, para 13.

² See <http://www.tfl.gov.uk/corporate/media/newscentre/archive/21165.aspx> (last visited 23 April 2012).

³ Freedom of Information request submitted by Mr L Reid to Greater Manchester Police, 3 January 2011, reference 10/11.

⁴ See <http://www.guardian.co.uk/uk/2009/mar/13/taxi-driver-sex-attacks> (last visited 23 April 2012).

⁵ See http://menmedia.co.uk/macclesfieldexpress/news/s/1487886_despicable-taxi-driver-from-macclesfield-stole-from-women-aged-82-and-95 (last visited 23 April 2012); http://menmedia.co.uk/manchestereveningnews/news/s/1488034_taxi-driver-dragged-droylsden-woman-down-the-street-in-bust-up-over-fare (last visited 23 April 2012) and <http://www.coventrytelegraph.net/news/coventry-news/2012/03/08/coventry-taxi-driver-three-times-over-drink-drive-limit-92746-30484710/> (last visited 23 April 2012).

can legitimately expect uniform minimum standards, can be subject to widespread variation. This can cover critical decisions such as the appropriate approach to drivers' previous convictions, or the frequency of vehicle testing. For example, some licensing authorities require an enhanced Criminal Records Bureau check before issuing a licence, whereas others do not. Up to 10% of licences in London are refused on the basis of information disclosed by enhanced checks.⁶ Whereas it is now clear that licensing authorities are allowed to request such checks, they are not required to, and there is no consistent policy about how such information should be treated.⁷

- 8.5 The lack of a common core of standards means that a driver that is refused a licence because he or she is not a "fit and proper person" following an enhanced Criminal Records Bureau check may try their luck in a neighbouring authority which may well take a different view, and perhaps on the basis of only a standard check. Licensing officers that refused a licence may then find that same individual picking up passengers in their area. If the journeys were pre-booked then there is nothing the licensing officers may do to prevent this.
- 8.6 The intense localism of the current licensing system means that areas which require lower standards, have lower fees or less enforcement may attract licensees who have little other connection with that licensing authority. This can be a particular problem for authorities that are perceived as "honey-pots", like London or Liverpool for example, which attract vehicles licensed elsewhere.
- 8.7 There is little uniformity in the content and frequency of vehicle testing by local authorities and stakeholders have told us it varies considerably. In London, for example, mid-year MoT checks were scrapped for taxis in 2008 but kept for private hire vehicles.⁸ Different licensing authorities set different requirements for the internal condition of their vehicles, for example. Some may be as specific as determining the width of passenger seats or the size of a roof sign.

Enforcement

- 8.8 It was impressed upon us during our pre-consultation meetings that enforcement was key to ensuring public safety. The widespread perception of a lack of enforcement activity by licensing authorities and the police may be partly due to the lack of funds but is also partly attributable to the lack of sufficient powers in legislation.
- 8.9 Under current law licensing officers cannot stop unlicensed vehicles unless accompanied the police. They also lack the power to enforce against vehicles licensed in different licensing authorities. Licensing officers are virtually powerless when confronted with entirely unlicensed drivers and vehicles. In particular, where a driver cannot prove that they or the vehicle are licensed, enforcement officers cannot prevent them from continuing to work. Licensing

⁶ *Hansard* (HL), 6 December 2011), vol 733, col 678.

⁷ The Local Government Association has produced national guidelines on convictions policies but these are not binding. Local Government Regulation, *Taxi and PHV licensing criminal convictions policy* (September 2010).

⁸ See <http://www.tfl.gov.uk/corporate/media/newscentre/archive/10322.aspx> (last visited 23 April 2012).

officers are also unable to take action against licensed vehicles which come from outside their area.⁹

- 8.10 It may be difficult for local authority enforcement officers, even with the help of the police, to provide a sufficiently high profile presence in town and city centres late at night so as to deter illegal operations, in particular illegal plying for hire and touting.¹⁰ Enforcement of taxi and private hire law is often not a police priority. Licensing officers have noted that their on-street presence would be greater were they not frequently caught up in lengthy investigations and court hearings.
- 8.11 Outside of London, the position is made even more difficult because of the uncertainty about how enforcement activity against drivers and operators may be funded as it is not expressly covered in legislation.¹¹ As put by Button,

In relation to drivers, the costs of issue and administration can be covered; in relation to vehicles, the costs of inspection, ranks, control and supervision (including enforcement), the administration connected with it, can be covered; and, in relation to operators' licences, it appears that only the costs of administration can be covered.¹²

- 8.12 In London, the statutory provisions in respect of licensing fees are broader and do not give rise to any problems.¹³
- 8.13 The inability to tackle persistent offending and remove some of the economic incentives to break the law is also a problem. Fines are considered by many to be inadequate in deterring habitual offenders and it may be relatively easy for breaches of the law to continue undetected for some time. Licensing authorities have powers to suspend or revoke licences, but the effect of this is delayed pending appeal and is of no assistance in dealing with unlicensed operations. In Chapter 19 we make provisional proposals relating to enforcement powers.

⁹ For further discussion see Chapter 10.

¹⁰ For further discussion of these offences, see Chapter 5.

¹¹ See Local Government (Miscellaneous Provisions) Act 1976, s 53; and the Guildford Auditor case at www.guildford.gov.uk/cHttpHandler.ashx?id=6647&p=0 (last visited 23 April 2012).

¹² J Button, *Button on Taxis: Licensing Law and Practice* (3rd ed 2009) para 4.17.

¹³ Metropolitan Public Carriage Act 1869, ss 6 and 8; and Private Hire Vehicles (London) Act 1998, s 20 and Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000 No 3146.

Novelty vehicles

In or out?

- 8.14 The lack of clarity surrounding key aspects of the current law, particularly in respect of the proper scope of private hire licensing, has given rise to large areas where licensing officers, taxi and private hire providers and the public are unsure whether they are covered by the licensing regime.
- 8.15 Passenger safety can be compromised because vehicles and drivers that perhaps should be licensed (like limousines) are not. Some operators are able to choose between the private hire regime and the public service regime. The standards applied within these vary greatly; for example, public service drivers are not required to undergo a criminal record check. Many operators are thus attracted by the simpler and less costly regime.
- 8.16 Judicial attempts to determine whether a pedicab could be a hackney carriage, which depends on whether it can count as a “stage coach”, have taken the courts on a rather odd journey of legal interpretation, and this led to different results in London compared with the rest of England and Wales. Licensing authorities’ powers to ensure the safety of passengers should not turn on different approaches to statutory interpretation.

Increasing consumer choice

- 8.17 We also note that licensing authorities have vastly different approaches to dealing with such vehicles; some will refuse to license them, often by imposing a condition which effectively excludes such vehicles from the licensing regime. Alternative vehicles like motorbikes and pedicabs could be more effectively allowed to provide services, for example where the journey involves a single passenger. This would allow for a more effective service and greater consumer benefit, as well as positive environmental impact. Some motorbike services are currently licensed in London and appear to be popular.¹⁴ The provider of a private hire service using a two-seater recently faced difficulties in obtaining a licence, illustrating the restrictive effect licensing practices can have both on consumer provision and business innovation.¹⁵

Applying appropriate safeguards

- 8.18 Such vehicles are more likely to have been heavily modified or have been imported. They may lack certified vehicle approval.¹⁶ Moreover, because such vehicles may be unusual or highly specialised, licensing officers may lack proper expertise and training to appropriately check them. Bringing novelty vehicles more clearly within the licensing regime could make journeys considerably safer. Furthermore, an unlicensed driver or one who carries a public service vehicle licence is not subject to a Criminal Records Bureau check.

¹⁴ See <http://www.chauffeurbikes.co.uk/> (last visited 23 April 2012) and <http://www.virginlimobike.com/> (last visited 23 April 2012).

¹⁵ See Private Hire and Taxi Monthly, “Green Means Go” (February 2012) issue 233 p 60.

¹⁶ EU law requires all vehicles to have type approval, <http://www.dft.gov.uk/vca/vehicletype/type-approval-for-ca.asp> (last visited 23 April 2012).

Safety for disabled passengers

- 8.19 Disability groups have highlighted the lack of training and disability awareness among taxi and private hire drivers. Disabled persons can be at increased risk of injury through their wheelchairs not being properly secured.¹⁷ Disabled passengers have been fatally injured due to such failings.¹⁸ Drivers may also injure themselves in trying to help disabled passengers inexpertly.
- 8.20 Persons with hearing, visual or learning disabilities may not be treated in the manner that should be expected. The lack of education among drivers can also have the insidious consequence of increasing discrimination, through lack of awareness of how to accommodate disabled passengers or the belief that to do so is difficult and time consuming.¹⁹ In Chapter 18 we provisionally propose national disability training standards and ask how the experience of disabled passengers may be improved through better regulation.

Lack of insurance cover

- 8.21 We have explored those situations where it is unclear whether a vehicle requires a private hire licence at all, or where a private hire vehicle engages in behaviour that may spill over into (illegal) plying for hire. These grey areas can have grave consequences for passengers. If a private hire driver is found to be illegally plying for hire, the journey will no-longer be insured.²⁰ If the car has an accident this can have disastrous consequences for the passenger who will only have the limited coverage provided by the safety net of the Motor Insurance Bureau.²¹

EXCESSIVE BURDENS ON BUSINESS

Restrictive local licensing of private hire vehicles

- 8.22 Stakeholders have raised concerns about licensing authorities' imposition of over-prescriptive or seemingly arbitrary conditions, as well as conditions which place a heavy financial burden on owners, such as colour and age policies. Certain licensing conditions are a cost to the trade and may not yield a corresponding benefit to consumers. Our provisional proposals try to ameliorate this in respect of private hire vehicles by providing for mandatory standards that cannot be gold-plated by local licensing authorities. These are discussed in Chapter 16.

¹⁷ This was highlighted in the case of *Lunt v Liverpool City Council* [2009] EWHC 2356 (Admin); [2010] RTR 5, discussed below at Chapter 11.

¹⁸ See <http://www.birminghammail.net/news/top-stories/2009/07/08/girl-s-death-sparks-taxi-safety-call-97319-24102815/> (last visited 23 April 2012) and <http://www.examiner.co.uk/news/local-west-yorkshire-news/2011/06/09/parents-plea-for-taxi-safety-after-death-of-huddersfield-student-kristian-holgate-86081-28847019/> (last visited 23 April 2012).

¹⁹ The BBC has reported on the experiences of Baroness Chapman, <http://news.bbc.co.uk/1/hi/magazine/7294746.stm> (last visited 23 April 2012).

²⁰ *Borough of Telford and Wrekin v Ahmed* [2006] EWHC 1748 (Admin); <http://www.manchesterconfidential.co.uk/News/Tough-Penalties-For-Illegal-Ply-For-Hire-Driver> (last visited 23 April 2012).

²¹ See <http://www.mib.org.uk/> (last visited 23 April 2012).

Preventing cross-border services

- 8.23 We consider cross-border services in detail in Chapter 10 as they raise complex issues. However, here we highlight some of the key problems associated with cross-border services.
- 8.24 In respect of pre-booked work the pick up and drop off can happen anywhere across England and Wales regardless of where the vehicle and driver are licensed. However, drivers, vehicles and operators are artificially bound to a particular licensing authority through the requirement that their licences must come from the same locality. The borders between different localities do not correspond with the way people use private hire services. For example, current regulation may stop an operator from providing a free-phone at a supermarket or at a hospital in a different licensing area (which may be just across the road from the operator's premises) since this can be regarded as inviting bookings out of area and is therefore not permitted. The advent of the telephone and the internet arguably makes this kind of restriction, based on the way in which private hire services were engaged over 30 years ago, unnecessary and artificial.
- 8.25 The "triple licensing" requirement places a serious limit to the services private hire operators may provide. Not only will certain licensing authorities not allow a provider to serve a particular locality unless they take a local licence, many licensing authorities refuse to license private hire vehicles licensed in more than one area. This means that operators may not be able to effectively serve their desired customer base.²²

Ban on sub-contracting outside of London

- 8.26 Under the current law it is illegal for operators outside of London to sub-contract any of their services. This means that an operator cannot ask another operator to fulfil a booking where the original car becomes unavailable or breaks down, or where it would simply be more efficient for another vehicle to undertake the journey.

Over-inclusive licensing

Where driving is an ancillary part of the overall service

- 8.27 It is often unclear whether childminders, care and support workers, driver guides and other occupations where driving is an ancillary part of the service provided require a licence. Although the Department for Transport published guidance²³ suggesting that such activities would typically not require a licence, this is not binding nor consistently applied.

The voluntary sector

- 8.28 The Department for Transport's guidance on private hire licensing noted that licensing law is unclear as regards services provided by volunteers. Volunteers

²² For further discussion see Chapter 10, and in particular *Murtagh v Bromsgrove District Council* (15 October 1999) QB (unreported), discussed at paras 8.29 to 8.31.

²³ Department for Transport, *Private Hire Vehicle Licensing – A note for guidance from the Department for Transport* (August 2011), <http://assets.dft.gov.uk/publications/phv-licensing-guidance-note/phv-licensing-guidance.pdf> (last visited 23 April 2012).

provide valuable services to the community and it is highly undesirable that they should be deterred from such activities through the expense of having a licence. A review of the impact of the repeal of the contract exemption noted the chilling effect on the third sector of potentially being subjected to private hire licensing requirements.²⁴

The impact of over-inclusive licensing

- 8.29 Over-zealous licensing can place undesirable costs and restrictions on businesses which would be ultimately paid by consumers. Moreover the lack of clarity can have insurance implications if the vehicle is found to be used for hire and reward. In Chapter 14 we consider ways that the scope of licensing may be kept within appropriate bounds in order to avoid such undesirable chilling effects. We suggest, for example, clearer definitions in respect of private hire services and consider the possible reintroduction of the contract exemption.

Barriers to entry: quantity controls

- 8.30 Where licensing authorities limit numbers this artificially limits the supply of taxis. The discussion in Chapter 7 about the justifications for regulation focussed on economic arguments to show how the current law can lead to inefficient outcomes for the trades, consumers and the wider public. Such barriers to entry need positive justification and highlighting this issue is at the heart of our deregulatory approach. The market, rather than regulators, is better placed to decide how many taxis there should be. We discuss quantity controls in detail in Chapter 9 below. Here we highlight problems that may stem from quantity controls.
- 8.31 According to the main economic literature, quantity controls are bad for consumers because they limit provision and prices are higher than they need to be.²⁵ Proper quality controls and fare regulation can ensure that the vehicles provided are adequate. We will, however, be seeking further evidence as part of our consultation, in particular, in respect of externalities – and above all, congestion – which may be best addressed through quantity controls, as opposed to other forms of regulation.
- 8.32 Quantity controls also artificially increase barriers to entry for would-be taxi drivers who are unable to enter the sector. This contrasts with the private hire sector which has relatively low barriers to entry and no numerical restrictions. Most licensing authorities have removed quantity controls for taxis and, where they are in place, the danger of regulatory capture is significant. This is a distortion that can lead to adverse outcomes for both consumer and industry.
- 8.33 Crucially, quantity controls can give rise to safety concerns. If supply is overly restricted the scope for unlicensed vehicles to pick up passengers is greater. Passengers who are unable to hail a taxi may use a private hire vehicle without a pre-booking (and not be insured) or worse, take a completely unlicensed car.

²⁴ J Rogers and S Ridley (In House Policy Consultancy), *Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption* (4 November 2009).

²⁵ See, for example, OECD/ECMT, *(De)regulation of the taxi industry – Round Table 133* (2007).

- 8.34 We also note that the current statutory criterion for imposing quantity controls, based on the concept of “unmet demand”, and the practice of carrying out specified surveys to support these are burdensome, costly and of doubtful utility.

Archaic legislation stifling innovation

- 8.35 Although we accept that the 19th century definitions of a hackney carriage have proved to be flexible enough to accommodate many modern developments, concerns do arise as a result of the age of the legislation governing both taxis and private hire vehicles. A key problem is lack of clarity, particularly as regards modern methods of communication such as mobile phones and the internet. Surprisingly, this has been more problematic for the 1976 private hire legislation than the taxi legislation which was first introduced 170 years ago.
- 8.36 For private hire vehicles, the place where the bookings are invited and accepted is critical. It is an offence for an operator to do this outside their licensing area.²⁶ However, this can be difficult to apply in respect of automated and internet bookings as well as mobile phones used to make calls and internet bookings.
- 8.37 As regards taxis, the traditional concept of plying for hire does not sit comfortably with developments both in technology and in the regulatory landscape. The speed of modern booking methods puts a strain on defining plying for hire in terms of the immediate availability for hire, and threatens the distinction between hailing and pre-booking. An example of this is the “hailing” of taxis using an app which allows consumers to monitor approaching vehicles on screen.²⁷ The definition of pre-booked vehicles must take into account existing and ongoing technological developments. The meaning of plying for hire was substantially developed before the introduction of private hire licensing.²⁸ Modern plying for hire needs to be interpreted in a way that allows for the legitimate activities of private hire vehicles. Elements of the definition, such as exhibition of the vehicle, have the potential to be interpreted oppressively against appropriately licensed private hire cars.
- 8.38 The age of the legislation can be problematic in respect of vehicle specifications; for example, giving rise to the problem with pedicab licensing.²⁹ There is also excessive reference to provisions only relevant to horse-drawn carriages, although this is a stylistic, as opposed to practical, problem.

Use of the word “taxi” in promoting private hire services

- 8.39 The current law is highly restrictive in how private hire services may be advertised.³⁰ “Taxi” is a simple, user-friendly term for describing private hire services. That they are unable to use it can disadvantage such services by

²⁶ *East Staffordshire Borough Council v Rendell* [1995] WL 1084118. See discussion in Chapter 9.

²⁷ For example, Hailo <https://www.hailocab.com/?gclid=CJik-J7rrq8CFYEKfAod7EFfpw> (last visited 23 April 2012).

²⁸ For further discussion see Chapter 3.

²⁹ See paragraph 8.16 above, and Chapter 3.

³⁰ Local Government (Miscellaneous Provisions) Act 1976, s 48(1)(a)(ii); Private Hire Vehicles (London) Act 1998, s 31.

making it harder to promote their business. This is particularly problematic as most members of public are unaware of the distinction between a taxi and private hire vehicle. In Chapter 14 we explore ways in which private hire operators may better advertise their services without leading to confusion with taxis and their unique ability to ply for hire at ranks and through hailing.

Improved enforcement and protecting legitimate businesses

- 8.40 Improved enforcement powers are also important in protecting the livelihood of legitimate businesses. Enforcement can help to guarantee a level playing field where those that ignore the rules are prevented from providing unfair competition to law-abiding operations.

Hearings and appeals

- 8.41 Remedies for aggrieved licensees are often unclear.³¹ It appears particularly unsatisfactory that where a licensing authority imposes a condition of general application, it is up to individual licensees to either seek judicial review or to challenge the decision not to issue their licence. If the latter route is taken no precedent is set and the condition can, in principle, continue to stand for other licensees. There are also historic anomalies, such as taxi drivers' direct recourse to the Crown Court which private hire drivers do not benefit from.³²

Costly litigation

- 8.42 Litigation and uncertainty are costly and have a chilling effect. Licensing officers are not clear about what they should require by way of specifications and conditions, and licensees similarly cannot predict whether certain conditions might be lawful or not, nor whether or not they must get a licence. Our provisional proposals aim to improve the clarity of regulation and to promote consistency though more nationalised standards. This can help to limit the grey areas where disputes about licensing requirements are most likely to arise.

ENSURING AVAILABILITY

- 8.43 In major city centres and at key transport interchanges it can be relatively easy to hail a taxi or find a rank. There may also be a private hire vehicle booking office close at hand where a booking can be made in person, or an information board containing the contact details of operators in the area. This may not be the case in smaller towns and villages, and at less busy or remote locations such as railway stations without a taxi rank.
- 8.44 There may also be times when very few vehicles are available for hire, such as early morning or late at night, or when the weather is poor. Such periods are also likely to coincide with the times when there are no other transport services available. People wishing to travel at such times may therefore find it very hard to find any form of transport, thus reducing accessibility.

³¹ For further discussion see Chapter 6.

³² Public Health Acts Amendment Act 1907, s 7.

- 8.45 Ensuring availability is closely linked with securing public safety. The late night economy revolves around drinking. Taxis and private hire vehicles can reduce the temptation for customers to drive under the influence of alcohol, as well as protecting the vulnerable. Conversely, passengers who have been drinking are more likely to pose a threat to drivers. Finally, if customers cannot get home and congregate at certain key venues, public disorder and nuisance are more likely to occur.
- 8.46 London Chamber of Commerce's investigation into taxi touting found that nearly two-thirds of licensed taxi drivers did not work past 9pm and almost four-fifths did not work past midnight.³³ This was not just because of the anti-social hours and risks of dealing with potentially difficult passengers, but also because of the ageing taxi driver population.
- 8.47 Finally, it is essential to ensure adequate services for disabled passengers. Whilst market forces generally bring about positive results in the private hire sector, the same incentives do not exist in the taxi industry. The importance of the joined-up journey and the immediate availability of a vehicle, particularly at transport hubs, suggest that regulation should play a role here. Furthermore, disabled users are often faced with a severe lack of awareness on the part of drivers, which can in turn lead to discriminatory or dangerous behaviour.³⁴ We discuss the equality impact of taxi provision in Chapter 11. The public transport dimension of taxis becomes most prominent in these scenarios and, in our provisional proposals for reform, we ask questions about the ways licensing authorities can better address these needs.
- 8.48 In the next chapter we consider the complex issues raised by quantity restrictions.

³³ London Chamber of Commerce and Industry, *The London Taxi Trade: a Report by the London Chamber of Commerce* (June 2007) p 15, <http://www.londonchamber.co.uk/docimages/2519.pdf> (last visited 23 April 2012)

³⁴ See paragraphs 8.19 to 8.20 above.

CHAPTER 9

QUANTITY RESTRICTIONS

INTRODUCTION

- 9.1 In this section we consider the options available to local authorities to impose limits on the number of taxis licensed to operate in their area, since there is no power to restrict the number of licensed private hire vehicles.¹

STATUTORY PROVISIONS

- 9.2 The effect of the original licensing regulation was to enable the licensing authority to impose any limits it saw fit on the number of taxis licensed, without any obligation to provide a justification.² Quantity controls date back to the 1630s and one of its purposes was to restrict the number of hackney carriages in London where complaints had been made about street congestion.³ The ability to control numbers was extended to the rest of England and Wales in 1847, alongside provisions tackling “obstructions and nuisances”.
- 9.3 Since 1985, the ability to restrict the number of taxi licences granted has been restricted. Licensing authorities can only do so where they are satisfied that there is no significant unmet demand for taxis in the area.⁴ This created a presumption against restriction of numbers and in favour of allowing market forces to take their course.⁵

No statutory power to restrict numbers in London

- 9.4 Perhaps ironically, given that number controls were originally introduced in order to manage congestion in the capital, there is no statutory power to control taxi numbers in London. The power to limit numbers in London was first abolished in 1833 upon consolidation of the taxi legislation.⁶ On the other hand, the stringent knowledge tests required of drivers in London and the costly vehicles required to meet the conditions of fitness constitute a significant barrier to entry and are widely regarded as achieving an equivalent result to quantity regulation.⁷
- 9.5 Moreover, although Transport for London has no legislative powers to control numbers of taxi licences issued, its licensing policies have included direct

¹ See Local Government (Miscellaneous Provisions) Act 1976, s 48(1), the closing words of which expressly prevent the licensing authority from refusing to grant a licence for the purpose of limiting the number of licensed vehicles.

² See Town Police Clauses Act 1847, s 37.

³ The first of the Royal Proclamations was “A Proclamation for the restraint of excessive carriages to the destruction of the High Wayes” (1 November 1635) Proclamations, II Chronological Series, Charles I (1625-1649).

⁴ Transport Act 1985, s 16.

⁵ This was recognised in the leading case on quantity restrictions: *R (on the application of Royden) v The Wirral Metropolitan Borough Council* [2002] All ER (D) 256 at para 153.

⁶ See London Hackney Carriage Act 1831, s IX: “after 5 January 1833 licences to be granted without limitation of number”. Although this provision has since been repealed, the power to limit numbers was never reintroduced.

⁷ See discussion on these matters in Chapter 9.

references to quantity controls. It has, for example, recently given notice that it will no longer process new applications for suburban taxi licences in some areas due to significant increases in numbers in the past ten years and the high level of applicants on the waiting list.⁸

- 9.6 In the discussion that follows we consider the workings of quantity controls within the statutory framework outside London and some of the difficulties this has caused.

The statutory concept of unmet demand

- 9.7 Unmet demand is a problematic and complex concept. It can also appear counter-intuitive because case law makes it clear that licensing authorities have an unfettered discretion to *deregulate* if they so choose. Licensing authorities do not need to consider demand when deciding whether or not to remove restrictions.⁹
- 9.8 Where a licensing authority wishes to impose numerical restrictions, it is asked to look for something (unmet demand) which it almost invariably does not wish to find so that it *may* use its discretion to restrict numbers. Yet the stated purpose of unmet demand surveys is, in principle, neutral and only meant to take into account the interests of the travelling public.¹⁰ By contrast, the practical decision will more often be taken in the context of vocal representations of the trades organised through trade unions. This is understandable as decisions on de-restriction have a direct impact on the financial interests of persons working in the trades and they tend to be more organised than consumer interest groups. This ties in with the political dimension of decisions about whether to de-restrict and it is difficult to unbundle these difficult and competing considerations into a transparent and balanced process.

Department for Transport guidance and demand surveys

- 9.9 On 16 March 2004, following the Office of Fair Trading's 2003 market study (discussed further below), the Department for Transport wrote to those licensing authorities operating quantity restrictions. It asked them to justify their policy publically by 31 March 2005 and every three years thereafter. This has become the usual period for reassessing unmet demand. The Department also said it expected the justification for any such policy to be included in the local transport planning process.¹¹ The criterion of unmet demand has given rise to the practice of commissioning demand surveys, endorsed by the Department for Transport in order to defend decisions to limit numbers.

⁸ See <http://www.tfl.gov.uk/assets/downloads/businessandpartners/13-11-suburban-taxi-driver-licence-applications.pdf> (last visited 23 April 2012).

⁹ See *R v Great Yarmouth Borough Council ex parte Sawyer* [1989] RTR 289.

¹⁰ See Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010).

¹¹ See Transport Act 2000, ss 108 to 113B.

- 9.10 In March 2010, the Department issued new best practice guidance reaffirming its stance against quantity restrictions.¹² Where such restrictions are in place, the Department urges authorities to reconsider them on a regular basis and, in particular, consider whether they are necessary. It recommends that the matter should be approached in terms of the interests of the travelling public rather than the trades. This approach echoes views expressed by the courts. Case law has acknowledged that a shift to de-restricted taxi vehicle licences could lead to hardship but this factor should not be determinative.¹³
- 9.11 The Department considers the following to be the key points to be considered in designing a survey:
- (1) waiting times at ranks;
 - (2) waiting times for street hailings and telephone bookings;
 - (3) latent demand, by assessing people who do not use taxis to find out why not;¹⁴
 - (4) peaked demand – the Department does not agree that delays at peak times are not “significant” for the purposes of the unmet demand test;
 - (5) consultation with a wide range of people and organisations, including other transport providers; and
 - (6) publication of evidence and an explanation of the conclusions.¹⁵
- 9.12 The financing of surveys raises difficult issues. Although cost varies depending on the size of the locality, surveys are generally expensive. As licensing functions are self-funding, surveys are sometimes paid for via licensing fees. If surveys are not to be financed by the trades (and the Department for Transport’s Best Practice Guidance suggests it should not) then surveys are to be paid out of increasingly tight council budgets. Such expenditure could appear to be wasted unless the council decides to restrict numbers. This is because, as we have seen, local authorities can de-restrict or continue an existing policy of not controlling numbers for free.

Wheelchair accessibility

- 9.13 The power to restrict the number of taxi licences issued will be further restricted by the bringing into force of provisions in the Equality Act 2010.¹⁶ The effect will be to prevent refusal of a licence application in respect of a wheelchair accessible

¹² See Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) paras 45 to 51.

¹³ *R v Great Yarmouth Borough Council ex parte Sawyer* [1989] RTR 289, p 302 to 303.

¹⁴ This marks a policy shift from the position that latent demand did not need to be taken into account, see *R v Brighton Borough Council ex p. Bunch and others* [1989] COD 558.

¹⁵ See Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010) annex A.

¹⁶ See Equality Act 2010, s 161. This provision is in force only insofar as it confers a power to make regulations.

taxi¹⁷ on grounds of a numerical limit where the proportion of wheelchair accessible vehicles in that licensing authority area is less than the proportion prescribed by the Secretary of State. We understand that many licensing authorities already set aside policies of quantity restrictions in order to license wheelchair accessible vehicles.

- 9.14 Such a policy was challenged when put in place by Newcastle City Council.¹⁸ The judge concluded that there were cogent arguments in favour of saying that new licences should only be issued in respect of wheelchair accessible vehicles to ensure that there was adequate service for all.¹⁹

Key arguments against quantity controls

The Office of Fair Trading's 2003 market study

- 9.15 In 2003 the Office of Fair Trading published a market study considering the impact of quantity restrictions on taxi and private vehicle hire regulation.²⁰ At the time of that report, the Office of Fair Trading found that 45% of UK²¹ local authorities imposed quantity restrictions,²² of which 72% were in urban areas. This enabled the Office of Fair Trading to consider the effects in areas where controls existed, as against those where they did not. They were also able to consider the effect in local authority areas where quantity restrictions had been removed.
- 9.16 The Office of Fair Trading found that quantity controls had the following effects on the supply of taxis:
- (1) fewer taxis per head of population;
 - (2) people waited longer for taxis;
 - (3) increased use of less suitable alternative modes of transport, with potential safety implications;
 - (4) creation of a shortage premium on taxi licences; and
 - (5) long waiting lists for taxi licences.
- 9.17 Where quantity controls were in place, any shortfall in taxi licences often gave rise to an increase in the number of private hire vehicle licences. Furthermore,

¹⁷ This is defined as a vehicle in which it is possible for a disabled person (i) to get in and out of the vehicle in safety (ii) to travel in the vehicle in safety and reasonable comfort, and (iii) to do the things mentioned in (i) and (ii) while in a wheelchair of a size prescribed by the Secretary of State.

¹⁸ *R v City of Newcastle ex parte James Michael Blake* CO/470/97.

¹⁹ The policy included protection for those who had held a licence for a number of years from a requirement for replacement vehicles also to be wheelchair accessible.

²⁰ Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) - in particular chapter 4.

²¹ We note that this figure includes Scotland (there is no power to impose restrictions in Northern Ireland) which is, however, outside the scope of this review.

areas where limits on the number of taxi licences were removed saw a shift from private hire to taxi licences, meaning the increase in the overall number of licensed vehicles was relatively small. For example, in Bristol, following de-restriction, the number of taxi licences increased by 150%, whilst the size of the overall fleet only increased by 4%. Similarly, Cambridge and Sheffield saw virtually no change in the number of licensed vehicles following de-restriction.²³ The shift from private hire to taxi licences may benefit customers as taxis offer greater flexibility because they can be hailed in the street and hired at taxi ranks as well as ordered over the phone.

- 9.18 The Office of Fair Trading expressed concern that a restriction in the number of taxis may result in people using alternative and less safe modes of transport.²⁴ For example, concerns were raised that a shortage of taxis could push users towards unlicensed vehicles. It also impacted the time taken to clear town centres at night. Potential customers are deterred by waiting times, and areas which removed restrictions found a substantial increase in the number of taxis hailed in the street and hired on ranks.²⁵
- 9.19 The Office of Fair Trading also expressed concerns that the effect of restrictions may be to prevent some people entering the market. This is evidenced both by the high cost of licences in restricted areas,²⁶ and the fact that many areas which impose restrictions have long waiting lists for licences.
- 9.20 The conclusion reached by the Office of Fair Trading was that quantity restrictions do not serve the best interests of consumers, and in fact have a “clear detrimental impact on the public”.²⁷ This is because they restrict customers from securing the services they require, and also impede those wishing to become taxi drivers from doing so. Such restrictions fail to address any problems in the market which could not be addressed more effectively by other means. The report recommended that the legislative provisions which enable authorities to impose quantity restrictions should be removed and that, until such time as they are, authorities which impose such restrictions should remove them.

Responses to the Office of Fair Trading's 2003 market study

- 9.21 The Office of Fair Trading's 2003 market study received critical responses from the Select Committee on Transport in 2004. The Committee suggested that the study lacked evidence to support its recommendations against quantity

²² Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) annex B.

²³ Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) para 4.20.

²⁴ Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) paras 4.35 to 4.39.

²⁵ Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) paras 4.31 to 4.34.

²⁶ The cost of a licence in a restricted area averages £16,500, with some licences attracting values of up to £50,000.

²⁷ Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003), para 4.82.

restrictions and that the statistics and survey evidence were flawed. The failure to consider the inter-relationship between taxis and private hire vehicles (rather than each trade separately) was also considered a major weakness in the approach.

- 9.22 In 2007, Europe Economics undertook a follow-up study evaluating the impact of the Office of Fair Trading's report.²⁸ Europe Economics recognised problems with the way the original study was conducted, in particular in respect of market definition, interactions between different regulations, and inadequate assessment of consumer detriment and benefit. Overall, Europe Economics found that although customer waiting times decreased more as a result of de-restriction (a key consumer benefit), driver waiting times rose disproportionately leading to an overall decrease in productive efficiency in the industry. On the other hand, de-restriction resulted in increased utility through additional taxi journeys and an overall consumer benefit.²⁹
- 9.23 The Government did not remove the power of licensing authorities to impose quantity restrictions. Instead, it "strongly encouraged" licensing authorities to remove such restrictions.
- 9.24 In summary, the premise of the policy arguments in favour of de-restricting taxi licences relies on market forces operating to yield the best outcome. This is said to lead to a better and fairer result than licensing authorities artificially limiting the number of taxis plying for hire. Indeed, there are no powers to restrict private hire vehicles and that might suggest a similar approach could work for taxis. Most licensing authorities, London amongst them, appear to cope without numerical limits.³⁰ The international experience of de-regulation has been mixed but in Europe there is a definite trend towards de-restriction of taxi numbers.³¹ As discussed at the outset of this Consultation Paper, de-restricting numbers also appears to be in line with the current UK Government's "Red Tape Challenge" and its drive to remove unnecessary regulatory burdens.

Key arguments in favour of quantity controls

Congestion and environmental considerations

- 9.25 The key argument in favour of maintaining a power to restrict taxi vehicle numbers lies in tackling congestion. This is closely related to environmental concerns about air pollution. On the other hand, evidence suggests that, where taxis are not available, most people will opt to use a car rather than other forms of public transport³² and, in many instances, there may not be a public transport option. Congestion and emissions may also be controlled through other means.

²⁸ Europe Economics, *Evaluating the impact of the taxis market study, a report for the OFT* (October 2007) OFT 956.

²⁹ Europe Economics, *Evaluating the impact of the taxis market study, a report for the OFT* (October 2007) OFT 956, see in particular paras 1.48 to 1.54.

³⁰ See further our discussion of current statistics at para 9.37 below.

³¹ For discussion of comparative regulation of taxis and private hire vehicles see below.

³² Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) para 4.73.

Over-ranking

- 9.26 The trades have emphasised the problem of too many taxis lining up at ranks, particularly in city centres and at transport hubs. Ranks compete with parking spaces and bus lanes and there is therefore limited scope for increasing provision. Limiting the number of licences reduces congestion at taxi ranks. However, there is evidence to suggest that removing restrictions increases the availability of taxis elsewhere in the district, with taxis congregating in town centres.³³ Local authorities could address this through innovative approaches such as use of temporary ranks at peak times.

Stability of the trade

- 9.27 Stakeholders have highlighted that restricting access to the taxi trade could have significant positive repercussions for the public. If, for example, an uncontrolled increase in taxi numbers leads to a drastic reduction in drivers' earnings, many will work longer hours to maintain income levels, with potential safety risks for passengers. Pressure for fare increases could also follow. Alternatively, drivers may take other work to supplement their income, thus only providing taxi services at profitable times (such as late night and weekends).
- 9.28 Where numbers are de-restricted, drivers and owners are more likely to cut corners in order to make ends meet. Drivers and vehicle owners will have less incentive to invest in better vehicles. Other aspects geared towards quality of service and which do not yield an immediate return may suffer, such as developing proper local knowledge. This could also affect public safety. That said, negative impact on standards can be regulated via the imposition of minimum standards.
- 9.29 On the other hand, areas which have de-restricted have not had uniform experiences, with some areas enjoying improved provision. However, changes to licensing policies are rarely about numbers alone and include other variations to licensing conditions, for example, in respect of standards. This makes it hard to establish and isolate the relationship between a change in numbers policy and the impact on provision.

Decreased night time provision

- 9.30 Anecdotal evidence suggests that increased taxi numbers can result in decreased provision at the times when taxis are most needed. This is because where plate numbers are restricted, drivers who wish to enter the trade are forced to take less popular shifts in order to use the vehicle. Maximum use is made of the vehicle and night time provision is increased.
- 9.31 By contrast, where taxi numbers are not restricted, stakeholders have told us that unpopular shifts remain unfilled. A lack of numerical limits therefore exacerbates the problems of over-provision during the day (leading to increased traffic and congestion) and under-provision at night. Alternative ways of attempting to improve provision at night, such as graduated fare increases, have been widely regarded as a failure by stakeholders. We have been told that, in London, provision decreased as drivers could earn their daily target more quickly.

Hardship to existing drivers

- 9.32 Many stakeholders representing the taxi trade have highlighted the perceived unfairness of de-restricting to those who have paid a shortage premium³⁴ in order to obtain a licence. In areas where the number of licences is restricted, existing licences attract a high value when traded. Many licence holders have made a significant investment and taken out loans, and for many it represents a nest egg which can be called on later in life. Many licence holders make money through renting out their vehicle. Indeed, in Ireland the financial detriment to individual drivers upon de-restriction was such that a hardship panel was put in place to help deal with the problem.³⁵
- 9.33 Given this background it is unsurprising that the trades have sought to resist licensing authorities' decisions to de-restrict, arguing that to do so would breach their human right to the peaceful enjoyment of property.³⁶ Such legal challenges have, however, been unsuccessful.³⁷
- 9.34 In 2002, a taxi driver challenged Wirral Borough Council's decision to deregulate numbers as an unlawful interference with his right to peaceful enjoyment of his property.³⁸ The driver argued that the council's decision had eliminated the premium value of his licence,³⁹ and threatened his ability to make a living using his licensed vehicle.
- 9.35 The judge rejected the driver's argument that his property rights applied.⁴⁰ Even if they had,⁴¹ the judge was satisfied that there had been no breach.⁴² Public

³³ Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) para 4.70.

³⁴ This is a premium over and above the cost of a vehicle and taxi licence fee which is paid by a driver for a licensed taxi in areas where licence restrictions are in force.

³⁵ See <http://www.independent.ie/national-news/taxi-deregulation-hardship-fund-pays-out-17m-to-drivers-261482.html> (last visited 23 April 2012).

³⁶ The right is protected under article 1 of the First Protocol to the European Convention of Human Rights. The protocol states that: "every natural or legal person is entitled to the peaceful enjoyment of his possessions. No person shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

³⁷ The political implications of quantity controls are, by contrast, a different matter. We consider these further below.

³⁸ European Convention on Human Rights, First Protocol, article 1.

³⁹ The claimant had not paid a premium for the licence, but expected in due course to be able to charge such a premium to sell it if licence restrictions were in place. See the discussion on licence premiums later in this section.

⁴⁰ [2002] All ER (D) 256, para 145. Also following *Tre Traktörer Aktiebolag v Sweden* (1991) 13 EHRR 309 (loss of alcohol licence was not a "deprivation" of property because the underlying leasehold and physical assets of the building remained; they would just be worthless).

⁴¹ Some European case law suggests that this may be the case, see for example *Fredin v Sweden* (No. 1) [1991] 13 EHRR 784; and in the context of the security industry, *Nicholds, Thorpe and Hancock v Security Industry Authority* [2007] 1 WLR 2067 (permissions to work as door supervisors under the original arrangements amounted to "possessions").

⁴² *R (Royden) v Wirral Metropolitan Borough Council* [2002] EWHC 2849 Admin; [2002] All ER (D) 256 (Oct) para 165.

authorities can take action qualifying rights to property provided they do so in the public interest and proportionately. Here the council had acted within its powers and not in a way which was arbitrary or oppressive.⁴³

- 9.36 The related argument that the council's decision-making process was flawed and breached taxi plate-holders' right to a fair trial⁴⁴ was also rejected. The judge found that no "civil rights and obligations" were determined by the Wirral's policy decision to de-restrict.⁴⁵ This case is particularly interesting given Wirral's recent decision to re-restrict its taxi vehicle licences in January 2012.⁴⁶

Where we are now

- 9.37 In 2004, 146 licensing authorities in England and Wales regulated the number of taxi licences, out of a total of 352 authorities – around 45%.⁴⁷ By 2007, 48 of those councils had decided to remove licensing restrictions, meaning that 98 councils still regulated numbers.⁴⁸ This meant that the percentage of councils continuing to regulate had fallen to around 27%.
- 9.38 At the time of writing, 92 councils regulate the number of taxi licences, which constitutes around 26.7% of licensing authorities in England and Wales. Some councils which have de-regulated have now taken the decision to reintroduce limits (for example, Cardiff, Chesterfield, Coventry and most recently, Wirral). We note however that the reasons for re-introducing quantity restrictions may also include political factors.⁴⁹

QUANTITY RESTRICTIONS IN OTHER COUNTRIES

- 9.39 A number of countries give licensing authorities the ability to restrict taxi numbers. Those who do not have generally removed the power to do so recently and their experiences provide interesting examples of the result of numerical de-regulation. It should be noted that the examples of numerical restrictions referred to below apply only to taxis and not to other forms of hire vehicles. Furthermore, in all quantity restricted areas, licences attract a scarcity value. This value varies between jurisdictions: from a few thousand pounds in the UK, to \$500,000 AUS in the Australian state of Victoria.⁵⁰ This then leads to trading in licences, sometimes with a handful of individuals owning a large number of licences. Whilst

⁴³ *R (Royden) v Wirral Metropolitan Borough Council* [2002] EWHC 2849 Admin; [2002] All ER (D) 256 (Oct), para 156.

⁴⁴ European Convention on Human Rights, article 6.

⁴⁵ *R (Royden) v Wirral Metropolitan Borough Council* [2002] EWHC 2849 Admin; [2002] All ER (D) 256 (Oct), para 91.

⁴⁶ See <http://www.national-taxi-association.co.uk/?p=2412> (last visited 23 April 2012).

⁴⁷ Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003) para 1.9.

⁴⁸ Europe Economics, *Evaluating the impact of the taxis market study, a report for the OFT* (October 2007) OFT 956, paras 1.14 – 1.19.

⁴⁹ See for example <http://www.oecd.org/dataoecd/49/27/41472612.pdf> (last visited 23 April 2012).

⁵⁰ Victoria Taxi Inquiry, *Setting the Scene*, p 14, <http://www.taxiindustryinquiry.vic.gov.au/publications/setting-the-scene>, (last visited 23 April 2012).

this is not illegal in any of the states studied, it often takes place at least partially on the black market, for example, in order to avoid tax implications.

Quantity restrictions in France

- 9.40 In France, local authorities have placed strict limits on the number of taxi licences available, and licensing authorities actively discourage applications for private hire licences.⁵¹ The restricted numbers mean that supply is significantly lower than demand, particularly at peak hours.⁵² This in turn allows taxis to charge more than the regulated fare,⁵³ with some radio circuits creating premium memberships which, for a high price, give callers priority when booking a taxi.⁵⁴ In 2007 there were 6,000 people on the waiting list for Parisian taxi licences, with the longest waiting period extending to over 12 years.⁵⁵

Quantity restrictions in Australia

- 9.41 New South Wales, Victoria and Queensland all put in place quantity restrictions. The decision-making process behind numerical restrictions is not clear, but it would appear to be a political decision and part of the discretion of states, rather than a power expressly granted in legislation. Quantitative restrictions on entry to the taxi market have been criticised by the Australian Productivity Commission on the grounds that they benefit licence holders in terms of licence value, but not consumers. They reduce competition and inhibit innovation within the market.⁵⁶

De-restriction in the Netherlands

- 9.42 The Dutch taxi industry was subject to numerical restrictions on licences until 2000. Limits were set by local authorities, based on an estimate of demand for taxi services and the potential to operate a profitable service.⁵⁷ This led to a mismatch of supply and demand which gave too much protection to operators, who enjoyed very high licence values, without benefitting consumers.

⁵¹ R Darbéra, *When the regulator acknowledges the existence of two distinct markets for taxi services, Report of the 133rd Roundtable on Transport Economics on (De)regulation of the taxi industry* (2007) p 121. In 2005 there were only 94 private hire vehicles in the Ile de France area, with none in Paris itself: R Darbéra, *Taxicab regulation and the evolution of communication technology: a tale of three cities* (2005) p 6.

⁵² OECD policy roundtable, *Report on taxi services in France, Taxi services: competition and regulation* (2007) p 113.

⁵³ R Darbéra, *When the regulator acknowledges the existence of two distinct markets for taxi services, Report of the 133rd Roundtable on Transport Economics on (De)regulation of the taxi industry* (2007) p 128.

⁵⁴ R Darbéra, *Taxicab regulation and the evolution of communication technology: a tale of three cities*, 2005, p 6.

⁵⁵ OECD policy roundtable, *Report on taxi services in France, Taxi services: competition and regulation* (2007) p 110.

⁵⁶ Productivity Commission, *Regulation of the taxi industry* (1999). Available at: http://www.pc.gov.au/__data/assets/pdf_file/0019/8281/taxiregulation.pdf (last visited 23 April 2012).

⁵⁷ A Baanders and M Canoy *Ten Years of Taxi Deregulation in the Netherlands – The Case for Re-Regulation and Decentralisation* (2010) p 8, <http://etcproceedings.org/paper/ten-years-of-taxi-deregulation-in-the-netherlands-the-case-for-re-regulation-a> (last visited 23 April 2012).

- 9.43 Reform was brought in via primary legislation with a number of provisional measures put in place.⁵⁸ The number of taxis in the Netherlands increased by 50% in four years. The government felt obliged to give tax reductions to existing licence holders who felt they had suffered due to the loss of the value of their licence.⁵⁹
- 9.44 Problems have particularly arisen over fares in the Netherlands. The new regime attempted to introduce competition in the hail and rank market. This review has accepted that scope for this is very limited. As regards pre-booked taxis, it is not possible for a passenger in the Netherlands to exercise consumer choice. In most cases vehicles are booked through central dispatch centres, which group together different operators. These operators are then not allowed to fix prices in relation to one another (but are subject to a regulated maximum fare), so the dispatcher cannot tell the passenger how much the journey will be. This precludes competition and creates uncertainty.
- 9.45 It has been suggested that de-restriction effectively led to the authorities losing control of the taxi industry. In Amsterdam particularly, de-restriction led to conflict between drivers, and between drivers and passengers.⁶⁰ This has led to the authorities resorting to measures such as parking and road traffic regulation to control the behaviour of taxi drivers.

De-restriction in Ireland

- 9.46 In 1999 the High Court found that the imposition of a numerical restriction on licence numbers was not within the powers of the Irish Government, adding that such a restriction had a negative impact not only those wishing to work in the industry, but also the public.⁶¹ This decision resulted in the overnight de-restriction of the Irish taxi market. No transitional measures were put in place and there was no opportunity for a wholesale review of the law.

⁵⁸ Wet Personenvervoer (Passenger Transport Act) 2000.

⁵⁹ A Baanders and M Canoy *Ten Years of Taxi Deregulation in the Netherlands – The Case for Re-Regulation and Decentralisation* (2010) p 2, <http://etcproceedings.org/paper/ten-years-of-taxi-deregulation-in-the-netherlands-the-case-for-re-regulation-a> (last visited 23 April 2012).

⁶⁰ A Baanders and M Canoy *Ten Years of Taxi Deregulation in the Netherlands – The Case for Re-Regulation and Decentralisation* (2010) p 10, <http://etcproceedings.org/paper/ten-years-of-taxi-deregulation-in-the-netherlands-the-case-for-re-regulation-a> (last visited 23 April 2012).

⁶¹ *Humphrey v Minister for the Environment and Local Government* [2000] IEHC 149; [2001] 1 ILRM 241.

- 9.47 By 2008, taxi numbers had increased from 3,913 to almost 20,000.⁶² This figure is often presented as an indictment of de-restriction, but although the increase was dramatic it at the very least suggests that previous limits were overly restrictive. Evidence of overcrowding at ranks does exist, and this is often an indicator of over-supply; however, in some locations this is because there were few or no ranks prior to deregulation.⁶³
- 9.48 For new entrants to the taxi sector, the removal of quantitative restrictions significantly reduced market entry costs. The cost of a licence fell from over €100,000 to €6,300.⁶⁴ However, owners of existing licences felt that they lost the value of their investment (often obtained through remortgaging their home) and claimed to have thus acquired property rights, although this argument was rejected by the High Court.⁶⁵ Some were, however, awarded damages for disappointment.⁶⁶ The payments ranged from €3,000 to €15,000.⁶⁷
- 9.49 The effects of such a dramatic shift soon made it apparent that existing regulation on standards needed to be reviewed. It is said that drivers work longer hours in less safe cars, and are more willing to entertain risk in order to earn a sufficient living. Moreover, there are just nine inspectors policing 25,000 vehicles and 42,000 drivers across 26 counties, potentially a key factor in the decline in quality.⁶⁸ Reforms in 2003 included the tightening up of driver and vehicle standards and the shift from discrete taxi zones to one single national taximeter area, with all journeys covered by the same regulated tariff.⁶⁹
- 9.50 The main consumer benefit of de-restriction was, inevitably, reduced waiting times. The number of consumers waiting less than five minutes for a taxi increased from 23% in 1997 to 50.3% in 2008. Demand for hail and rank services rose, but the preference has now returned to pre-booked vehicles. It is, however, notable that journeys by passengers in wheelchairs have decreased, although it is not clear that this is directly linked to de-restriction.

⁶² S D Barrett, "The Sustained Impacts of Taxi Deregulation" (March 2010) Vol 30 *Economic Affairs* 61-65.

⁶³ Goodbody Economic, "Economic Review of the Small Public Sector Vehicle Industry" (2009) 80, http://www.taxi-library.org/ireland-taxi-economic-review_2009.pdf (last visited 23 April 2012).

⁶⁴ See <http://www.europarl.europa.eu/sides/getDoc.do?type=QT&reference=H-2004-0198&language=EN> (last visited 23 April 2012).

⁶⁵ *Gorman v Minister for the Environment and Local Government* [2001] IEHC 47; [2001] 2 IR 414 at [46].

⁶⁶ S D Barrett considers this to be "compensation under a new name". For more, see S D Barrett, "Regulatory Capture, Property Rights and Taxi Deregulation – A Case Study" (2003) Vol 23 *Economic Affairs* 7-8.

⁶⁷ See <http://www.dttas.ie/viewitem.asp?id=5280&lang=ENG&loc=1712> (last visited 23 April 2012).

⁶⁸ RTE News, "Prime Time Investigates". You can view the programme here: <http://www.rte.ie/news/av/2011/0516/primetimeinvestigates.html#> (last visited 23 April 2012).

⁶⁹ The Irish National Transport Authority has informed us that the decision to abolish the 34 existing areas was primarily to simplify and streamline fare setting. As the Commission for Taxi Regulation (the Authority's predecessor) had a national remit, it was considered more efficient to introduce a single national taximeter area.

- 9.51 De-restriction and subsequent reforms have not only affected consumer engagement but also the structure of the industry. Many drivers who leased vehicles, and as such were subject to the terms of the licence holder, were able to get vehicle licences and shifted to part-time work in order to respond to peak demand. Many pre-book only licence holders shifted to the taxi market,⁷⁰ and it has been suggested the changes in numbers reflect a previous imbalance between vehicles in the two markets.⁷¹
- 9.52 Although the industry has been very vocal about the effect of de-restriction on earnings, studies show that overall earnings have not decreased significantly. It has also been argued that claims as to lack of stability within the industry were exaggerated, and that entry rates are in decline, suggesting that the market could be on track to stabilise.⁷² The Irish Government is currently undertaking a review of taxi regulation.⁷³ The Irish National Transport Authority has also imposed a temporary suspension on the issuance of non-wheelchair accessible taxi and pre-booked only vehicle licences in order to even-out numbers.⁷⁴

Deregulation in Sweden

- 9.53 Historically, Swedish local authorities had to estimate demand for services in their area, and applicants had to satisfy a means test. Furthermore, taxis were required to be affiliated with a dispatch centre, and by law there could only be one of these in each local authority area.⁷⁵ Following encouragement by competition authorities, both of these barriers to entry were removed in 1990, with the simultaneous removal of fare regulation, geographically restricted operating areas, regulated operating hours and the requirement that taxis be affiliated to a dispatch service.⁷⁶
- 9.54 These profound parallel changes, which were accompanied by little in the way of transitional measures, led to serious problems within the industry. Falling standards led to the introduction of tighter controls in 1995; this included the introduction of criminal record checks and assessment of suitability with

⁷⁰ OECD Policy roundtable, "Taxi services: competition and regulation" (2007) 139.

⁷¹ Goodbody Economic, "Economic Review of the Small Public Sector Vehicle Industry" (2009) p 88, http://www.taxi-library.org/ireland-taxi-economic-review_2009.pdf (last visited 23 April 2012).

⁷² Goodbody Economic, "Economic Review of the Small Public Sector Vehicle Industry" (2009) p 48 and 85, http://www.taxi-library.org/ireland-taxi-economic-review_2009.pdf (last visited 23 April 2012).

⁷³ See <http://examiner.ie/ireland/taxi-industry-to-face-full-review-154971.html>; <http://www.irishtimes.com/newspaper/frontpage/2011/0518/1224297223110.html>; <http://www.irishtimes.com/newspaper/frontpage/2011/0518/1224297223110.html> (all last visited 23 April 2012).

⁷⁴ It does not appear that this temporary suspension has been formally announced on the National Transport Authority's website or reported in the media – we were informed about it during a telephone call with the Irish National Transport Authority on 27 September 2011. The Taxi Regulation Directorate's website only shows prices for wheelchair accessible vehicle licences, <http://taxiregulation.nationaltransport.ie/for-operators/spsv-vehicle-licensing/list-of-vehicle-licensing-fees/> (last visited 23 April 2012).

⁷⁵ K Choong-Ho, "Taxi deregulation: international comparisons" (1998), <http://www.taxi-library.org/kang0898.htm> (last visited 23 April 2012).

⁷⁶ OECD Policy roundtable, "Taxi services: competition and regulation" (2007) 173.

reference to financial status and personal attributes, as well as a topographical knowledge test.⁷⁷ Special regulation has had to be introduced to govern transport hubs such as railway stations and airports, as these areas experienced significant over-provision and huge overcharging.⁷⁸

- 9.55 The industry has been vociferous in its criticism of the deregulated regime. Many existing licence holders lost out on investments, both with regards to licences and investment in vehicles and technology. Profitability was seriously impacted, and it has been suggested that up to 1,000 firms may have gone out of business within the first five years of deregulation.⁷⁹ Others struggled to earn a living, which it has been suggested led to an increase in tax evasion. It is unclear, however, how consumers feel about reforms which have led to better supply, shorter waiting times and a broader variety of vehicles, standards and prices being available.
- 9.56 The most telling aspect of Swedish deregulation, however, has been the effect of deregulating fares. The Swedish Competition Authority seems to suggest that the majority of change is as a result of fare deregulation, rather than numerical de-restrictions.⁸⁰ This is clearly the case as regards pricing and, in many ways, standards. There appears to have been a transitional period during which fares rose, the taxi fleet did not diversify and, although customers believed taxis to have better availability, demand did not increase.⁸¹ Overall though, it would seem that the effects settled in such a way as to produce better supply, steady fares and greater diversity in services. In particular, deregulating fares has led to the creation of many more vehicle providers, a significant change given that prior to deregulation there was only one major taxi company in Stockholm.⁸²
- 9.57 Our studies of Ireland and Sweden suggest that although those within the industry are often dissatisfied following deregulation, consumers generally benefit. This has not been, however, the experience in the Netherlands, where users, particularly in cities, have developed a very negative view of taxis. It should be noted, however, that taxis already suffered from a poor reputation due to disputes amongst operators prior to deregulation.⁸³ Moreover, de-restriction in the Netherlands failed to take into account the distinction between hail and rank

⁷⁷ OECD Policy roundtable, "Taxi services: competition and regulation" (2007) 174; K Choong-Ho, "Taxi deregulation: international comparisons" (1998), <http://www.taxi-library.org/kang0898.htm> (last visited 23 April 2012).

⁷⁸ OECD Policy roundtable, "Taxi services: competition and regulation" (2007) 174.

⁷⁹ K Choong-Ho, "Taxi deregulation: international comparisons" (1998), <http://www.taxi-library.org/kang0898.htm> (last visited 23 April 2012).

⁸⁰ OECD Policy roundtable, "Taxi services: competition and regulation" (2007) 175.

⁸¹ T Garling et al, "A note on the short-term effects of deregulation of the Swedish taxicab industry" (1995) *Journal of Transport Economics and Policy* 209.

⁸² P Arninge, "Before and after deregulation", *Call-Sign Journal of Dial-a-Cab* (1998), <http://www.taxi-library.org/sweden.htm> (last visited 23 April 2012).

⁸³ A Baanders and M Canoy *Ten Years of Taxi Deregulation in the Netherlands – The Case for Re-Regulation and Decentralisation* (2010) p 5 to 6, <http://etcproceedings.org/paper/ten-years-of-taxi-deregulation-in-the-netherlands-the-case-for-re-regulation-a> (last visited 23 April 2012).

taxis and pre-book only taxis.⁸⁴ Studies of other experiences of deregulation have shown that taking this distinction into account is essential to the successful removal of restrictions.⁸⁵

PROVISIONAL CONCLUSIONS

- 9.58 The studies above illustrate the complexity of regulatory reform and the difficulties inherent in predicting the outcome of changes. Rarely, if ever, does numerical restriction occur on its own. Whilst quantitative deregulation is often criticised for giving rise to such problems as over-ranking, congestion, higher fares and lower standards, the comparative studies above show that often these effects can be linked to other reforms, such as the removal of fare regulation and changes to standard-setting. Furthermore, accompanying reforms can rectify damage caused by de-regulation, for example by ensuring standards and service levels. Studies show that the balance of regulatory and deregulatory instruments is essential to the outcome, and that it is vital that the structure of the industry and the way in which individuals work are understood and taken into account. Each element of regulation must be considered both individually and in conjunction with other elements of regulation.

TRANSITIONAL ISSUES

- 9.59 Any reform of the taxi and private hire vehicle industries needs to take into account the way in which such reforms will be implemented. At opposite ends of the spectrum one finds the so-called “cold-turkey” approach where change is introduced swiftly “overnight”, as opposed to a more gradual transition over a period of time. If compensation is to be paid, the question arises of how much this should be and who should pay for it. Our provisional proposals to remove quantity controls, which add a “scarcity” value to taxi vehicle plates, raises the question of whether compensation arrangements should be put in place for those plate-owners who may have invested a lot of money in obtaining a vehicle licence. Individuals may have taken out secured loans on these assets and relied on them as a pension.
- 9.60 In Australia’s Northern Territory, compensation was based on the highest licence sale price.⁸⁶ In Ireland, a hardship panel was established to pay compensation on certain criteria, but the payments fell far below the value of licences prior to de-restriction.⁸⁷ Generally the Organisation for Economic Cooperation and Development argues against paying compensation and no UK local authority has ever done so in these circumstances.
- 9.61 In the next chapter we highlight the regulatory issues raised by cross-border activity by taxis and private hire vehicles.

⁸⁴ A failure which was later recognised by the Dutch government. A Baanders and M Canoy *Ten Years of Taxi Deregulation in the Netherlands – The Case for Re-Regulation and Decentralisation* (2010) p 11, <http://etcproceedings.org/paper/ten-years-of-taxi-deregulation-in-the-netherlands-the-case-for-re-regulation-a> (last visited 23 April 2012).

⁸⁵ R Darbéra, “When the regulator acknowledges the existence of two distinct markets for taxi services”, in “(De)regulation of the taxi industry”, Round Table 133, ECMT, Paris (2007).

⁸⁶ OECD policy roundtable, *Taxi services: competition and regulation* (2007) p 40.

⁸⁷ See <http://www.dttas.ie/viewitem.asp?id=5280&lang=ENG&loc=1712> (last visited 23 April 2012).

CHAPTER 10

CROSS-BORDER ISSUES

INTRODUCTION

- 10.1 Issues surrounding cross-border hire cause confusion and animosity, as well as severe enforcement difficulties. It is an area where the law is clearly out-of-date, overly complex and in many instances unnecessarily restrictive.
- 10.2 Cross-border issues have received a great deal of attention, not least as the primary focus of a Transport Select Committee review of taxis and private hire vehicles.¹ The Committee noted that the law is unclear in this area, and that its effects may be unfair on some within the industry.²
- 10.3 In general it can be said that the term “cross-border hire” applies where a taxi or private hire vehicle operates in an area other than that for which it holds a licence. At the outset, it is important to distinguish between cross-border hire as it affects taxis and as it affects private hire vehicles. Plying for hire is never allowed outside of a taxi’s licensing area. To this extent, cross-border work is illegal. By contrast, pre-booked work can be undertaken starting or ending outside of area provided certain conditions are met. As both taxis and private hire vehicles can undertake pre-booked work, this element of cross-border applies to both sides of the trade, albeit in different ways.
- 10.4 We discuss the genesis of local licensing, mostly undertaken by local authorities, in detail in Chapter 2. As we have seen, these borders represent political, rather than geographical, divides, and they often do not reflect the way in which consumers actually travel. The relatively small size of many licensing areas also increases the incidence of cross-border situations. Cross-border is not limited to long journeys but can also happen when going to the local supermarket or on a school run.

A LEGAL ANALYSIS OF CROSS-BORDER ISSUES

- 10.5 This section will focus on cross-border as it arises in three different legal contexts:
- (1) taxis plying for hire;
 - (2) private hire vehicles; and
 - (3) taxis undertaking pre-booked work.
- 10.6 We will also consider the serious enforcement problems associated with cross-border work.

¹ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, p 9.

² House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, pp 6 - 7.

TAXIS

- 10.7 This section will look at the cross-border implications of taxis undertaking hail and rank work (or, in legal terminology, “plying for hire”).³
- 10.8 It is clear from the statutory language that the taxi licensing regime envisages taxis being able to ply and stand for hire only within the area for which they hold a licence.⁴ The Town Police Clauses Act 1847 gives local authorities the power to license taxis to ply for hire “within the prescribed distance”.⁵ Today, the prescribed distance is the area governed by the licensing authority, or a zone within this area.⁶ Thus a local authority may only grant a licence covering its own area. As a local authority can only issue a licence valid within its jurisdiction, a taxi licence entitles you to work only within that area.
- 10.9 The situation in London is very similar, with the only difference being that the licensing area is far larger, as the limits are presently those of Greater London.⁷
- 10.10 The legal position is therefore relatively simple: a licensed taxi and driver can only ply or stand for hire within the district for which it is licensed. This is widely recognised. It has been judicially noted that,

It was thus decided by Parliament, from the outset of the licensing of hackney carriages, that licensing should be dealt with locally rather than nationally. The right to ply for hire is limited, by the licence, to the immediate locality and no right to ply for hire is given for any wider area.⁸

Double plating

- 10.11 It is possible for a vehicle or driver to be licensed as a taxi or private hire vehicle in two or more districts, although the vehicle cannot hold both a hackney carriage and a private hire vehicle licence.⁹ The term “double plating” is used to describe the situation where a vehicle is licensed in two authorities. This is generally discouraged due to differing standards between local authorities.¹⁰

³ We will consider pre-booked taxis once we have set out the regimes governing taxis and private hire vehicles in their traditional forms, as it is at this point that the two legal regimes meet. See paragraph 10.39 below.

⁴ James Button describes this as a “common understanding” and an “inherent right [which] existed before the introduction of the Town Police Clauses Act 1847. See J Button, *Button on taxis: licensing law and practice* (3rd ed 2009) p xiv.

⁵ Town Police Clauses Act 1847, s 37.

⁶ Public Health Act 1875, s 171; Local Government Act 1894; Local Government Act 1933; Local Government Act 1974, para 2 of sch 14; Transport Act 1985; see also *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin); [2009] RTR 34, para 11. For more detail on the creation of zones, see Chapter 2.

⁷ Metropolitan Public Carriage Act 1869, ss 4, 6 and 8; Greater London Authority Act 1999, s 343.

⁸ *R (on the application of Newcastle City Council v Berwick upon Tweed Borough Council* [2008] EWHC 2369 (Admin); [2009] RTR 34, by Christopher Symons QC at para 11.

⁹ See Chapter 3.

¹⁰ B Denby and J Thompson, *The Book* (14th ed 2008) p 12.

Taxis and localism

- 10.12 The connection between taxis and their locality is broadly recognised. Taxis are integral to a local transport networks. Many cities have distinctive taxi fleets; for example, the iconic black cab in London and other major cities. Colour policies and liveries including the council's crest are common and valued by many local authorities.
- 10.13 Historically, the local identity of taxis can be traced back to the early days of licensing, when a horse-drawn hackney carriage could not travel much further than the length or breadth of a district. Although cross-border issues doubtlessly existed in the era of the horse-drawn hackney carriage, an increasingly mobile population has exacerbated the issue.

London green and yellow badges

- 10.14 London taxi drivers are able to hold either an All London (green) licence or Suburban (yellow) licence.¹¹ This effectively creates licensing zones within the larger area controlled by Transport for London. It is both easier and quicker to obtain a licence in a suburban area because the topographical knowledge test is less demanding. We have been told that it is not uncommon for suburban drivers to (illegally) ply for hire in central London.¹² This is particularly true where they have brought a fare into central London, and do not wish to return to their licensing area empty. The problem is said to be particularly acute at London City Airport.

“Planet Heathrow”

- 10.15 Heathrow Airport falls just inside the Greater London boundary. Given that taxi drivers have to both pay a fee and wait a considerable amount of time before gaining a fare, they are often reluctant to take passengers who want to go into the next licensing area but only on a short journey. Taxis are not compellable past the Greater London boundary, and will sometimes refuse to take passengers. The fact that when a taxi crosses into a neighbouring area it cannot pick up any passengers on its return is a further disincentive to taking the fare.

PRIVATE HIRE VEHICLES

- 10.16 It is a significant requirement of private hire regulation that the driver, vehicle and operator are licensed by the same authority.¹³ London also has the base requirement that the driver, vehicle and operator should all be licensed in London.¹⁴ On the other hand, a licensed private hire driver can take jobs starting

¹¹ See Chapter 3.

¹² Conversely, we understand some suburban drivers feel the licensing structure whereby green badge drivers can ply for hire in the suburbs is unfair as they do not have appropriate knowledge of these sectors.

¹³ See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356. This follows from the definition of a “licence” under the Local Government (Miscellaneous Provisions) Act 1976, which ties it to the controlled district where it was issued (under s 80(2) of the 1976 Act) combined with the requirement that operators only work with such “licensed” vehicles and drivers (under section 46(1)(e) of the 1976 Act).

¹⁴ Private Hire Vehicles (London) Act 1998, s 4 requires London operators to use London-licensed drivers and vehicles.

or ending in anywhere in England and Wales.¹⁵ Reciprocal provisions provide that vehicles licensed under the Local Government (Miscellaneous Provisions) Act 1976, and in London under the Private Hire Vehicles (London) Act 1998, can work cross-border.¹⁶ By contrast, however, operators remain subject to cross-border restrictions.

Private hire vehicle operators and cross-border hire

- 10.17 Although operators can arrange bookings to pick up and drop off passengers in any district (provided they use cars and drivers licensed by the same licensing authority), they can only operate in their own licensing area. This places considerable stress on the meaning of “operate” and consequently what operators are and are not allowed to do in the course of (cross-border) business.
- 10.18 The key here is that an individual is “operating” where he or she makes provision for the invitation or acceptance of bookings. The placing of advertisements, or making a contract, in another area does not amount to operating.¹⁷ It has been noted that a broader interpretation of “operating” would be unworkable and “nonsensical”.¹⁸ Telephone operators receiving calls would have to ascertain whether the operator was licensed in the relevant area. Furthermore, an operator who foresaw his or her vehicles making journeys which crossed borders would have to acquire licences in other licensing areas, not only for the operator, but also for vehicles and drivers.
- 10.19 Pre-booked journeys taking place entirely out of area (such that the pick up and drop off are both outside the operators’ licensing district) are also lawful.¹⁹ It would seem odd that Parliament should require operators to hold licences for all areas from which they might receive bookings and through which the vehicles they dispatch might pass, whilst not requiring the same of vehicles and drivers.²⁰
- 10.20 It is important to recognise that the cross-border problem is thus very different as between taxis and private hire vehicles: taxis which pick up outside their licensing area (other than through pre-bookings) are acting illegally, while private hire

¹⁵ See also *Adur District Council v Fry* [1997] RTR 257 by Lord Justice Leggatt at 262; and Local Government (Miscellaneous Provisions) Act 1976, s 75(2).

¹⁶ See the following saving provisions: Local Government (Miscellaneous Provisions) Act 1976, s 75(2B) which allows drivers and vehicles licensed in London to pick up and drop off anywhere in England and Wales; and Private Hire Vehicles (London) Act 1998, s 6(6)(b) which allows vehicles licensed under the 1976 Act to work in London. The 1998 Act goes further and also clarifies that if a vehicle and driver are just passing through Greater London they are of no concern to London’s licensing regime. See Private Hire Vehicles (London) Act 1998, ss 6(7) and 12(7) exempting journeys beginning outside London and in areas not subject to the 1976 Act from the requirement for a London private hire vehicle driver and vehicle licences.

¹⁷ *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87.

¹⁸ *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87 by McCollough J at 93.

¹⁹ *Adur v Fry* [1997] RTR 257. This is the case provided that the requirement that all three licences be granted by the same authority is fulfilled. Here the operator was licensed in Hove and used drivers and vehicles also licensed in Hove, thus it did not matter that the relevant journey took place entirely in the Adur area.

²⁰ See the exemption under the Local Government (Miscellaneous Provisions) Act 1976, s 75(2) discussed above at para 10.15.

vehicles are not. However, the private hire vehicle cross-border problem continues to attract a great deal of attention.

- 10.21 We also note that taxi radio circuit operators are outside the licensing regime, given that the work is pre-booked,²¹ and as such not subject to geographical restrictions. The current state of affairs can give rise to an unfair advantage and distortion in the market in favour of taxis in respect of the pre-booked market. As we have seen, the greatest restrictions relate to the operator licences and these do not even exist for taxis. We consider the issues raised by pre-booked taxis further below.

Views and myths about cross-border issues

- 10.22 Some of the cross-border problems discussed stem from licensing practices which do not necessarily stem from the legislation itself. We noted there is a widespread belief that private hire vehicles do not have the right to pick up in areas other than their own. This is not correct. Although there is much talk of cross-border problems within the private hire vehicle industry, closer inspection often reveals disagreements about what is regarded as fair competition between licensees of neighbouring districts, and between taxis and private hire vehicles. This is particularly the case where it is claimed that private hire vehicles, as well as out-of-area taxis, wait for pre-booked work in an area which is not their own. Although highly unpopular with the trades in the “host” area, it is unclear what legal rules are being breached. And, from a consumer’s point of view, properly managed cross-border services may increase choice and decrease waiting times.

The practical impact of cross-border issues

- 10.23 Although private hire vehicles are legally permitted to work cross-border, neighbouring licensing authorities and their licensees can be very unhappy about having out-of-area cars working “on their turf”. The licensing authority may resent having cars licensed to lower standards than they themselves impose working in their area, and they have no enforcement powers in respect of such cars.²² Moreover, the licensing authority does not receive any licensing fees from such out-of-area cars thus draining their resources which stem from their local trade. Similarly, the local taxi and private hire vehicle trade may feel they are subsidising enforcement on out-of-area vehicles and suffering from unfair competition (to the extent that standards might be lower). Of course, the neighbouring trade may resent cross-border private hire vehicles because they compete for custom.
- 10.24 This is particularly evident from the report of the Transport Select Committee on taxis and private hire vehicles.²³ Many of those giving evidence saw this as a serious problem, and spoke specifically of private hire vehicles waiting in an area in which they are not licensed in order to fulfil bookings more easily. This practice is said to be particularly prevalent in city centres, with Liverpool suffering from

²¹ See Chapter 3.

²² Unless they have a specific agreement permitting them to do so with the neighbouring authority.

²³ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720.

particular problems with out-of-area private hire drivers waiting for work and, it is alleged, illegally plying for hire. It was felt that private hire vehicles doing this undermined local licensing.²⁴

- 10.25 The local licensing of private hire vehicles appears to have been the product of following the model of local private legislation, and giving the task to licensing private hire vehicles to the same small authorities which already license taxis. Certain restrictions may have been justifiable at a time when the legislation was adoptive and thus private hire vehicles were not regulated in all areas. It seems curious, however, that with all private hire vehicles now subject to licensing controls, there should continue to be such concerns about the safety of vehicles and drivers from neighbouring districts. Vehicles may have different features or be more or less recognisable, but they are, with the exception of touts, at least licensed to a minimum standard.²⁵
- 10.26 On the other hand, vehicles conforming to different sets of standards operating in one area could lead to confusion for consumers. Questions also arise around the local knowledge of drivers who work like this.
- 10.27 Although it may be said that in general private hire vehicles are far less restricted by the borders of licensing authorities than taxis, significant problems do arise for private hire vehicle operators. These problems can prevent operators from working in a more efficient or more business-minded fashion.

SUB-CONTRACTING BY PRIVATE HIRE VEHICLE OPERATORS

- 10.28 Operators may sometimes wish to sub-contract work to a different operator. The original operator may not be able to fulfil the booking due to high demand or because the designated vehicle may have broken down mid-journey; the third party operator may have a more suitable vehicle, for example, where a disabled passenger has requested a specific kind of car; or subcontracting may simply allow the booking to be fulfilled more quickly. Of course, the original operator could always refuse the booking, but subcontracting provides a better service to the passenger. The original operator may know better which of his or her contacts could most easily take the booking, thus saving the passenger time and effort. Furthermore, where sub-contracting permits efficient working, this can have a positive environmental impact. An operator with vehicles based closer to the passenger accrues less dead mileage.

Sub-contracting under the Local Government (Miscellaneous Provisions) Act 1976

- 10.29 Limited sub-contracting is permitted in England and Wales, outside London.²⁶ Passengers are provided with two levels of protection. Firstly, the operator is liable to the passenger even if he or she does not own the vehicle which undertakes the journey. Secondly, the operator with whom the booking was made

²⁴ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720.

²⁵ Whilst variations do of course exist between licensing authorities, cases where a licensing authority regulates at such a low level as to render vehicles and drivers licensed by them unsafe would be exceedingly rare.

²⁶ See Local Government (Miscellaneous Provisions) Act 1976, s 56(1).

remains liable even if he or she passes the work to another operator. The requirement to keep records applies to both operators.²⁷

10.30 However, the sub-contract is highly restricted as it can only be made to another operator in the same district.²⁸ This has been recognised in a number of cases, and is problematic both in terms of restricting business expansion and preventing the efficient provision of a service.²⁹

10.31 In evidence to the Transport Select Committee, the Department for Transport recognised that the prohibition on sub-contracting was anomalous, and that sub-contracting could be useful.³⁰

Subcontracting in London

10.32 London takes a relatively liberal approach. Private hire vehicle operators are able to sub-contract in three specific instances:

- (1) to another London private hire vehicle operator;
- (2) to a licensed Scottish operator;³¹ and
- (3) to an operator licensed under the Local Government (Miscellaneous Provisions) Act 1976.³²

10.33 The prohibition on sub-contracting out-of-area which applies outside London means that private hire vehicle operators licensed outside of London cannot enter into reciprocal arrangements and pass on work to London private hire vehicle operators.³³ We understand that an operator in Stevenage is currently in talks with Stevenage Borough Council as to the legality of sub-contracting in this manner.

Restrictions on business

10.34 Unsurprisingly, the problems with cross-border hire arise most prominently at the borders themselves, particularly where the operator is located on the other side of the border to many of his or her clients. Cross-border restrictions on operators can have a particularly negative impact on businesses wishing to expand or work more efficiently. The simple practice of re-directing calls to premises located in a neighbouring district can lead to breach of the legislation through making

²⁷ See Local Government (Miscellaneous Provisions) Act 1976, s 56(2).

²⁸ This follows from the well-accepted requirement of private hire vehicle regulation that the operator, vehicle and driver must all be licensed by the authority in which the booking is accepted. See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356.

²⁹ *Bromsgrove District Council v Powers* (16 July 1998) (unreported).

³⁰ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, p 7.

³¹ Civic Government (Scotland) Act 1982.

³² Private Hire Vehicles (London) Act 1998, s 5.

³³ There are, however, no cases on this matter; other than the authority we have already cited above in respect of the "triple-licence" requirement set out in *Dittah*.

“provision” for bookings outside of the licensing area.³⁴ It is illegal for an operator to install free-phones at a supermarket in a neighbouring district (for which the operator does not hold a separate licence).³⁵ Lord Justice Kennedy recognised the unjust nature of this decision, describing the criminalisation of the use of the dedicated phone line by a licensed operator as “absurd”.³⁶ In noting that avoidance of the offence would require the operator to obtain a new suite of licences, he added:

This cannot be what Parliament originally envisaged ...The problem is to some extent the result of improved technology since the statute was passed, but the law needs to reflect the current state of technology and not be 23 years behind it.³⁷

- 10.35 We are aware that some licensing authorities may require drivers and vehicles that operate between two areas to hold dual licences, and that they switch plates when entering the Birmingham area.³⁸ The Transport Select Committee has acknowledged the potentially unfair impact of existing restrictions where an operator is situated close to a border and wishes to work predominantly in the neighbouring district.³⁹
- 10.36 In another case, a firm had two branches, each in a different but adjoining licensing area and each with its own operator's licence. Sometimes the vehicle and driver dispatched would not be licensed by the same authority which licensed the operator which dispatched them.⁴⁰ Hearing the appeal, Lord Justice Latham recognised the benefits of providing this sort of service:

³⁴ In *East Staffordshire Borough Council v Rendell* [1995] WL 1084118 an operator licensed in Derbyshire Dales entered into an agreement with an operator in the neighbouring district of East Staffordshire. The premises of the two operators lay approximately 25 yards apart and were separated only by the river which formed the boundary between the two districts. Under the terms of this agreement, telephone calls made to premises in Derbyshire Dales were redirected to the East Staffordshire office. The Divisional Court held that a common-sense interpretation of the definition of “operate” resulted in a finding that provision for the invitation or acceptance of bookings had been made in East Staffordshire, where the operator was unlicensed.

³⁵ See *Murtagh v Bromsgrove District Council* (15 October 1999) QB (unreported).

³⁶ *Murtagh v Bromsgrove District Council* (15 October 1999) QB (unreported).

³⁷ *Murtagh v Bromsgrove District Council* (15 October 1999) QB (unreported).

³⁸ This is notwithstanding the savings provisions discussed under Local Government (Miscellaneous Provisions) Act 1976, section 75(2) and that nothing in the legislation imposed such an obligation.

³⁹ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, p 4.

⁴⁰ *Shanks v North Tyneside Borough Council* [2001] EWHC Admin 533; [2001] All ER (D) 334.

Clearly, this system has advantages for customers in that it is likely to afford them a better service. It also has advantages for the firms and for their drivers because it is more efficient for drivers in that they can utilise their time more efficiently and, in particular, make fewer journeys without passengers.⁴¹

- 10.37 Notwithstanding the consumer benefits arising, the judge felt compelled to find that the cross-border operations were indeed illegal.

PRE-BOOKED TAXIS

- 10.38 In this section we discuss taxis working as private hire vehicles on a pre-booked basis.⁴² Legislation expressly allows taxis to accept pre-bookings in addition to the right to ply for hire.⁴³

Taxis operating as private hire vehicles outside their licensing area

- 10.39 Licensed taxis can work as private hire vehicles in three main ways:

- (1) with drivers acting as sole operators taking bookings directly;
- (2) through a third party (unlicensed) taxi radio circuit taxi operator; or
- (3) through a (licensed) private hire vehicle operator.⁴⁴

- 10.40 The latter case will involve operators using a “mixed fleet” of vehicles with both taxis and private hire vehicles. This can cause considerable confusion in cases where the driver may also hold a dual taxi and private hire vehicle licence.⁴⁵

- 10.41 It is settled law that taxis do not require a private hire vehicle licence to undertake pre-booked work.⁴⁶ This does not however mean that the law is clear or coherent or even desirable and the difficulty in reconciling the different cases in the area is apparent.⁴⁷ The current position has paved the way for a significant number of taxis working as private hire vehicles outside the area for which they held a

⁴¹ *Shanks v North Tyneside Borough Council* [2001] EWHC Admin 533; [2001] All ER (D) 334, para 4.

⁴² We also discuss the legal implications of pre-booked taxis and their overlap with private hire vehicles in Chapters 3 and 14.

⁴³ Local Government (Miscellaneous Provisions) Act 1976, s 67.

⁴⁴ J Button, *Button on Taxis: licensing law and practice* (3rd ed 2009) para 13.90.

⁴⁵ See, for example, *Stratford-on-Avon District Council v Dyde* [2009] EWHC 3011 Admin, where the fare charged for the pre-booked journey would have been legal as a private hire vehicle driver but illegal as a taxi driver, and Mr Dyde held both licences.

⁴⁶ See *Britain v ABC Cabs (Camberley) Ltd* [1981] RTR 395; *Brentwood Borough Council v Gladden* [2004] EWHC 2500 (Admin). In these cases, however, the *booking* had been made in the taxi’s licensing area. But this fact was not considered determinative, see *Stockton-on-Tees Borough Council v Fidler* [2010] [2010] EWHC 2430 (Admin), discussed below.

⁴⁷ See Mr Christopher Symons QC in *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin) paras 42 and 57: “... I am not prepared to do other than follow *Gladden* which is a decision of this Court which I am certainly not prepared to say is obviously wrong” - hardly a ringing endorsement. The decision is considered further below.

hackney carriage licence.⁴⁸ For example, it was alleged that applicants were choosing to obtain hackney carriage licences in Berwick-upon-Tweed due to lower costs and less burdensome conditions and subsequently operating as private hire vehicles exclusively in other licensing areas.⁴⁹

- 10.42 Newcastle City Council unsuccessfully tried to challenge Berwick's policy of licensing "remote" taxis working as private hire vehicles.⁵⁰ Although the court was careful not to direct how Berwick, or any licensing authority, should exercise its discretion to grant licences, it did comment that it would be "difficult" to justify granting a taxi licence where a licensing authority knows the applicant has no intention of plying for hire in its area.⁵¹
- 10.43 Although the court was not prepared to say that Berwick's actions were unlawful, the judge voiced serious concern about Berwick's licensing practices, particularly the lack of control over vehicles working remotely.⁵² Ultimately, though, Berwick had discretion as to whether or not to license such a vehicle but, to remain within the spirit of the Local Government (Miscellaneous Provisions) Act 1976, the authority should investigate the intended use of the licence.⁵³
- 10.44 However, the matter was felt sufficiently serious to merit investigation by the Transport Select Committee in 2011⁵⁴ which suggests that the decision did not have the restrictive effect intended.
- 10.45 Not all the cases had been consistent with the view that taxis are completely immune from private hire vehicle licensing requirements. It has been argued that it is a defence to a charge of operating a private hire vehicle without a licence that the vehicle was licensed as a hackney carriage.⁵⁵ Mr Justice Buxton provided a detailed judgment, preferring a functional approach to the hackney carriage definition rather than the well-established "characteristic use" approach. Furthermore, the court felt that to allow otherwise would have been to go against the spirit of the legislation.⁵⁶ The High Court has declined to follow this decision,

⁴⁸ *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin) by Mr Christopher Symons QC at para 42.

⁴⁹ In *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin), note 5, the judge noted (and was critical of the fact) that Berwick had testing stations in Newcastle, Alnwick and as far afield as Birmingham.

⁵⁰ *R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council* [2008] EWHC 2369 (Admin).

⁵¹ *R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council* [2008] EWHC 2369 (Admin) by Mr Christopher Symons QC para 34.

⁵² *R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council* [2008] EWHC 2369 (Admin) para 34.

⁵³ *R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council* [2008] EWHC 2369 (Admin) p 11.

⁵⁴ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720.

⁵⁵ *Kingston-upon-Hull City Council v Wilson* 1995 WL 1082181.

⁵⁶ *Kingston-upon-Hull City Council v Wilson* 1995 WL 1082181 by Mr Justice Buxton at 7.

with Lord Justice Munby preferring the interpretation set out above.⁵⁷ It has also been argued that a taxi does not require a private hire licence where it is used for private hire, but only within the area of the authority which granted the taxi licence.⁵⁸ The accuracy of this statement was again doubted by the High Court.⁵⁹

- 10.46 In 2010, in the case of *Stockton-upon-Tees Borough Council v Fidler*,⁶⁰ the court undertook a thorough review of the case law, and Lord Justice Munby re-affirmed the central submission that:

... a hackney carriage is always a hackney carriage, no matter what it is doing, or where, and that its use, for whatever purpose, can never make it a private hire vehicle in the statutory sense.⁶¹

- 10.47 In the same case, Mr Justice Langstaff acknowledged that:

There are nonetheless tensions between any policy of local licensing and regulation on the one hand, and the proper interpretation of the wording of statute as determined in this case.⁶²

- 10.48 The Transport Select Committee recommended that local authorities have the power to impose conditions to the effect that taxis, private hire vehicles and their drivers must work principally in district they are licensed by.⁶³

RELATED ISSUES

Enforcement

- 10.49 Cross-border work causes significant problems in terms of enforcement. This is not to suggest that all cross-border work requires enforcement on the grounds that it is illegal: enforcement is also important in terms of safety, for example in making sure vehicles and drivers are indeed licensed and complying with requirements such as roadworthiness and insurance.

⁵⁷ *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin) by Lord Justice Munby at para 63.

⁵⁸ On the basis of *Kingston upon Hull City Council v Wilson* The Times, 25 July 1995.

⁵⁹ *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin) by Lord Justice Munby at para 63.

⁶⁰ *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin).

⁶¹ *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin) by Lord Justice Munby at para 56. Local Government (Miscellaneous Provisions) Act 1976, s 80(1) expressly excludes hackney carriages and London Cabs from the definition of a private hire vehicle. They are also expressly excluded from the offence of using a private hire vehicle without a licence under Local Government (Miscellaneous Provisions) Act 1976, s 46(1)(a). It has been pointed out that the remaining provisions in s 46 do not expressly carve out hackney carriages and London cabs so that taxis might be covered, see *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin) at para 45. However, this argument was not ultimately accepted.

⁶² *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin) by Mr Justice Langstaff at para 78.

⁶³ We discuss the recommendations of the Transport Select Committee further below, at paragraph 10.74.

- 10.50 Under the current regime, licensing officers only have limited enforcement powers to rely on, and are constricted in their work by the application of varying standards across the country. Furthermore, enforcement is paid for by licence holders in that area.⁶⁴
- 10.51 As regards licensed vehicles, operators or drivers, the powers of enforcement officers only extend to enforcement against vehicles licensed by their own authority. This clearly presents problems in terms of cross-border work.
- 10.52 Even the simplest power, that of inspecting licences, is only available where the enforcement officer is an authorised officer of the council.⁶⁵ Section 53(3) of the Local Government (Miscellaneous Provisions) Act 1976 deals with the duty to produce a drivers' licence.
- 10.53 The statutory language makes clear that the officer must be authorised by the district council which issued the licence. Licensing officers can, in principle, be authorised by licensing authorities other than their own,⁶⁶ but in practice this does not happen often. The language is almost identical in terms of inspecting vehicle and operators' licences.⁶⁷ Similar restrictions are in place in terms of powers to inspect vehicles and suspend licences.⁶⁸
- 10.54 Furthermore, the fact that taxis working out-of-area as private hire vehicles are entirely unregulated equally hinders the activities of enforcement officers. They cannot enforce against them because they are not licensed in their area, and because there is no framework through which to enforce.⁶⁹
- 10.55 The local standard-setting which underlies the current licensing framework itself hinders proper enforcement. The standards which can apply to vehicles and drivers vary between licensing authorities; this means that enforcement officers do not necessarily know which rules to apply to vehicles licensed outside their own area.⁷⁰

Funding

- 10.56 Enforcement against vehicles is funded via licensing fees.⁷¹ Locally licensed drivers, proprietors and operators often feel resentful at seeing their licence fees and the funds of their local authority spent on enforcement against out-of-area vehicles. There are also the associated costs of enforcement should a driver, operator or proprietor be taken to court. Finally, given that they are set on a cost-

⁶⁴ We discuss these issues in detail in Chapter 2.

⁶⁵ Local Government (Miscellaneous Provisions) Act 1976, ss 50(4), 53(3) and 56(4).

⁶⁶ Local Government Act 1972, s 101.

⁶⁷ Local Government (Miscellaneous Provisions) Act 1976, ss 50(4) and 56(4).

⁶⁸ Local Government (Miscellaneous Provisions) Act 1976, s 68.

⁶⁹ Enforcement difficulties were recognised in *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin) by Mr Christopher Symons QC at para 23.

⁷⁰ Of course, officers can and do use informal methods of enforcement, such as requesting that vehicles move on. They could also ask the police to become involved, although this may not always be a practicable solution.

⁷¹ See Local Government (Miscellaneous Provisions) Act 1976, s 70. See also Chapter 2.

recovery basis, where a local authority spends a great deal on enforcement, this will be reflected in future fees. During evidence to the Transport Select Committee, it was pointed out that:

We end up paying more money to enforce [drivers from other authorities] or trying to enforce those drivers. Even if, for example, a driver is found plying for hire, the local authority never gets back the full costs of taking that driver to court. In turn, this puts up our costs, while these other operators carry on working for free.⁷²

- 10.57 Enforcement difficulties can also lead to extra costs. For example, Liverpool City Council pays for dedicated police officers, who have much broader powers than enforcement officers. This would appear to be as a result of the difficulties it faces in enforcing against vehicles from neighbouring areas.

Communication and co-operation

- 10.58 Anecdotal evidence suggests that local authorities are often reluctant to work together, perhaps due to the fact that they are led by different political parties, or perhaps because they are susceptible to pressure from the trade. On the other hand, there are significant technical and legal data protection issues which prevent effective information sharing between local authorities, as well as with the police.⁷³
- 10.59 Stakeholders have told us they perceive a general lack of communication between local authorities and other enforcement agencies, such as the police, and this in turn is a significant impediment to a more joined-up and effective system of cross-border enforcement.⁷⁴

Local authority co-operation

- 10.60 Stakeholders have made us aware of examples of licensing authorities working together to improve enforcement.
- 10.61 This often takes the form of informal, cooperative arrangements. In Kent, for example, the licensing authorities of Maidstone, Sevenoaks and Tunbridge Wells organise joint enforcement operations, manned by officers from the different districts, in order to have enforcement powers against vehicles from across the area. These operations usually take place in conjunction with the police. Operations such as this are used to target large events which are likely to attract a number of out-of-area vehicles.
- 10.62 Local authorities also have the ability to delegate functions, including enforcement powers, to officers of other authorities.⁷⁵ This has been used by a number of local authorities to effectively create larger enforcement areas. For example, enforcement officers across the district councils making up the

⁷² House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, Ev 3 Q15.

⁷³ We further discuss information sharing issues in Chapter 10.

⁷⁴ See Chapter 10.

⁷⁵ Local Government Act 1972, s 101(1)(b).

Merseyside area are empowered to work across the vehicles of the five licensing authorities within Merseyside, and a concordat on enforcement has been established between these authorities. We believe that similar arrangements are in place in Greater Manchester and within the local authorities neighbouring Gatwick Airport.

A “return-to-area” requirement?

- 10.63 In a campaign spearheaded by Unite and Liverpool City Council, the idea has been mooted of an obligation on vehicles to return to their own area following an out-of-area drop-off.⁷⁶ Provisions having a similar effect are in place in Scotland.⁷⁷ The initiative was supported by a number of trade organisations, including the National Private Hire Association.⁷⁸

Licensing conditions

- 10.64 Issues with out-of-area private hire vehicles led Newcastle City Council to require, in their standard conditions for private hire vehicle operators, that:

Any hackney carriage used to undertake a private hire booking under this operator’s licence must be one that is licensed by this authority pursuant to section 37 of the Town and Police Clauses Act 1847 [sic].

Any hackney carriage used to undertake a private hire booking under this operator’s licence must be driven by a person holding a licence issued by this authority pursuant to section 46 of the Town and Police Clauses Act 1847 [sic].⁷⁹

- 10.65 It has recently been found that, in imposing these conditions, Newcastle City Council was “taking their powers of regulation too far”.⁸⁰ The judge noted that it was established law that where duly licensed hackney carriages operated as private hire vehicles in another area they were entirely outside the licensing regime.
- 10.66 In that case, however, Newcastle City Council had also included the following conditions of licence in order to limit cross-border private hire vehicle operations. Under these conditions, the firm Blueline was obliged to:

⁷⁶ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, Ev 1.

⁷⁷ See Civic Government (Scotland) Act 1982, s 21(2).

⁷⁸ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, Ev w46.

⁷⁹ *Blueline Taxis (Newcastle) Limited v The Council of the City of Newcastle upon Tyne* (10 January 2012) (unreported).

⁸⁰ *Blueline Taxis (Newcastle) Limited v The Council of the City of Newcastle upon Tyne* (10 January 2012) (unreported) by District Judge Earl at para 20.

- (1) maintain an independent operation in Newcastle by the installation of a dedicated telephone line to the Newcastle office with its own unique number; and
 - (2) the telephone number used must be exclusive to this Operator's Licence.⁸¹
- 10.67 Blueline challenged these conditions on the basis that they constituted a restraint of trade. Unlike the taxi-restricting conditions set out above, these conditions were upheld. The purpose of the phone-related conditions was to ensure that bookings received from Newcastle and involving journeys within Newcastle were undertaken by Newcastle licensed private hire vehicles and drivers.
- 10.68 The judge found that Blueline knew what was expected of them under the conditions and that this was for the purposes of public protection and identity. He stated that:
- People place faith in the licensing system of the local council and I am satisfied that this is a proper set of conditions with a legitimate aim. I am also satisfied that the conditions are not a restraint of trade ... as they strike at the heart of the licensing matters, that of the nature of operating drivers and vehicles licensed by Newcastle City Council.
- 10.69 It is not clear whether this case will be appealed; however, were this finding to be upheld it would allow other cities, such as Liverpool, to restrict the influx of private hire vehicles from neighbouring areas.

London

- 10.70 As noted above, London has far larger boundaries, and neither Transport for London nor industry groups within London perceive serious issues with cross-border hiring. We are also aware that transport planning is undertaken on a wider geographical basis than district councils, which may also contribute to problems experienced with borders.⁸²

Unitary authorities

- 10.71 2009 saw the creation of five unitary authorities.⁸³ Their experience in centralising licensing functions, driven by considerations of efficiency and costs savings not least in respect of procurement contracts, has received mixed reactions. The areas available to taxis and private hire vehicles are much larger, although some unitary authorities have put in place zoning to ensure sufficient supply across their area.⁸⁴

⁸¹ *Blueline Taxis (Newcastle) Limited v The Council of the City of Newcastle upon Tyne* (10 January 2012) (unreported), para 14.

⁸² House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, p 13.

⁸³ Cornwall, Durham, Northumberland, Shropshire and Wiltshire.

⁸⁴ For example, Durham County Council and Cornwall Council.

- 10.72 The experience of Shropshire and its 400% rise in licensing applications since 2009⁸⁵ is largely attributed to Birmingham-based drivers choosing to license in Shropshire, seeing it as a “soft” option.
- 10.73 In respect of Durham, trade associations have emphasised the increased problems of over-ranking, as well as congestion in the city centre. Local drivers have complained of a significant drop in earnings since moving to a unitary authority.⁸⁶

THE TRANSPORT SELECT COMMITTEE

- 10.74 Cross-border work was a central issue examined by the Transport Select Committee in 2011.⁸⁷ The Committee heard a great deal of evidence on the issues, particularly concerning the problem in Liverpool and the proposed return-to-area requirement. The Committee chose not to endorse the proposal. A key objection to the proposal is that it would be very difficult to enforce, as it is difficult to ascertain whether or not a vehicle is returning to its licensing area. Moreover, such a requirement is inefficient, would have a negative environmental impact and could raise prices.
- 10.75 Instead, the Committee recommended a condition of licence requiring that the vehicle must be principally operated in the licensing district.⁸⁸ The Department for Transport was not in favour of this, as it would have restricted the ability of drivers and operators to work in a way which is both lawful and efficient. The Department noted potentially damaging environmental effects, and stated that such conditions would “confuse and unfairly penalise passengers who would be unable to use the operator of their choice.” Finally, it would be difficult and costly to enforce.⁸⁹
- 10.76 The Committee further proposed that enforcement officers have the power to impose fixed penalty notices on drivers who have worked, or were seeking to work, in that district for a specified period of time. This proposal was accompanied by the ability to prosecute out-of-area operators who routinely send cars to work in their area. This proposal has been criticised on the grounds that it would simply move cross-border issues to the boundaries of these new areas.⁹⁰

⁸⁵ See <http://www.bbc.co.uk/news/uk-england-shropshire-16544634> (last visited 23 April 2012).

⁸⁶ The National Private Hire Association submitted the following anecdotal evidence from two Durham-licensed taxi drivers: “BC claims that the first two weeks of de-zoning has lead to a fall of between £230-£250 per week on the hours he works. BJ noticed that in the hours he works Saturday 16.00-03.00 he used to average around 23-25 jobs. In the first two weeks of de-zoning averaging 16 jobs in the same period of time”.

⁸⁷ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720.

⁸⁸ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, p 14.

⁸⁹ The Government’s response to the Transport Select Committee’s recommendations, available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/1507/150704.htm> (last visited 23 April 2012).

⁹⁰ House of Commons Transport Committee, *Taxis and private hire vehicles: the road to reform* (12 July 2011) HC 720, p 13.

- 10.77 The Committee also proposed that local authorities have the ability to combine their licensing areas. Many stakeholders, both from the trade and licensing authorities, have raised a key concern around extending licensing areas which they refer to as the “honey-pot” effect. This refers to the strong draw that lucrative city centres have on the trades which can result in massive over-provision in city centres (with the related problems of congestion), and conversely, massive under-provision of suburban and rural areas. This is because, it is suggested, if vehicles from rural areas gained the right to operate in towns and cities, they would flood these areas and provision in rural areas would suffer. This applies both to taxis, which currently do not have the right to work outside their licensing area, and private hire vehicles, which do.⁹¹
- 10.78 Newly-created unitary authorities, discussed above, are in some respects microcosms of what can happen when (some) borders between licensing authorities are removed.⁹² But it is difficult to tell how the market would react within a broader context of reform, and whether the situation might settle to a new equilibrium after a transitional period where provision may indeed become imbalanced.⁹³
- 10.79 In the next chapter we discuss the implications of taxi and private hire regulation for disabled users.

⁹¹ The argument has been put to us that by removing barriers, private hire vehicle drivers will be further encouraged to work in city centres.

⁹² See discussion in Chapter 2.

⁹³ Further, regulation targeted to deal with the transition, as well as a re-adjustment of standards to better deal with the new conditions, could also help address these issues.

CHAPTER 11

EQUALITY AND TAXIS IN THE COMMUNITY

INTRODUCTION

- 11.1 In this chapter we consider the importance of taxi and private hire vehicle services as a mode of transport used by disabled persons, and look at some of the difficulties faced in accessing and using such services. We also consider the way in which different local authorities use regulation as a tool in improving the provision of accessible taxis and private hire vehicles.

ACCESSIBILITY REQUIREMENTS

- 11.2 It is estimated that around one-fifth of the population of the UK is disabled – over 10 million people.¹ Approximately 4.6 million of them are over the state pension age and this number is likely to rise. Disabled persons are reported to travel approximately a third less than those who are not disabled, but use taxis and private hire vehicles approximately 67% more.² The Disabled Persons Transport Advisory Committee report that:

... for a large and growing number of elderly and disabled people, they are quite literally a lifeline. Often taxis provide the only means of accessible local transport, or the only accessible link to long distance transport, for example, by rail or air. In fact, they are the most flexible form of public transport there is.³

- 11.3 A key aspect of providing an accessible transport system is ensuring access for disabled persons in wheelchairs. However it is important to remember that there are many forms of disability or reduced mobility which may have an impact on the ability of people to use public transport. A policy which improves accessibility is therefore beneficial to a wide range of people, including the elderly.
- 11.4 There are many different designs of wheelchair with varying dimensions suitable for people with different disabilities, or degrees of disability,⁴ and a vehicle which is accessible for one such design may not be suitable for others. So a vehicle in which one passenger in a wheelchair may be able to travel in safety and comfort may not provide the same experience to a passenger in a different wheelchair.

¹ This statistic was taken from Department for Transport, *Consultation on Improving Access to Taxis* (February 2009) para 1.5, bullet 2. The source is not attributed.

² Disabled Persons Transport Advisory Committee, *Attitudes of Disabled People to Public Transport – a research study conducted for the Disabled Persons Transport Advisory Committee* (November 2001).

³ Disabled Persons Transport Advisory Committee, *Advice for taxi drivers – meeting the needs of disabled passengers*, <http://dptac.independent.gov.uk/pubs/taxiadvice/index.htm> (last visited 23 April 2012).

⁴ A survey by the Department for Transport in 2005 found a range of wheelchair lengths from 775mm to 1604mm. In the *Lunt* case the issue was that, because of her disability and particular medical history, it was necessary for the claimant to distribute her weight by reclining the back of the wheelchair and using footrests.

- 11.5 Stakeholders have emphasised that wheelchair accessible vehicles are not suitable for all disabled users, and could in fact inhibit some people's ability to travel. Some people might prefer a lower, saloon-type vehicle which is easy to get into and where they can sit in a normal car seat. Others might prefer the handrails available in a wheelchair accessible vehicle, as well as the additional space.
- 11.6 Hearing-impaired users can have difficulties in vehicles with dividers between driver and passenger, as they are unable to lip-read. Passengers with impaired vision may need prominent signage or tactile surfaces.
- 11.7 We are aware that disabled passengers, in particular if travelling in a wheelchair, may be subject to direct discrimination in a number of forms. These include taxi drivers refusing to stop when hailed, moving away from the rank if a disabled person approaches them, running the meter while they help the passenger into the vehicle, or increasing the fare for carrying a wheelchair or an assistance dog. Such practices may be in clear contravention of anti-discrimination law but taking appropriate legal action can be difficult.
- 11.8 Where drivers refuse to take disabled passengers they may be motivated by a variety of reasons. These include concerns about potential loss of earnings because helping a disabled passenger into and out of a vehicle may take longer, and a lack of training in how to assist disabled passengers. Some local authorities require taxi drivers to attend the enhanced Driving Standards Agency course, which includes a practical wheelchair exercise.⁵

HOW TO ENSURE ACCESSIBILITY

- 11.9 It is generally acknowledged, both within licensing authorities and the trade itself, that provision for disabled persons is essential. How this can be properly achieved is, however, a very difficult question. This section will set out existing means of tackling the issue, and survey additional and alternative suggestions.

Targeting regulation

- 11.10 Accessibility regulation is generally considered to be more important in the taxi market. Market forces within the private hire vehicle industry mean that many private hire vehicle drivers and operators recognise the benefit of providing accessible vehicles. The fact that private hire vehicles are hired in advance means that it is easier for potential passengers to shop around and find an operator capable of providing a suitable vehicle for their particular needs. Frequent travellers can also often build up a relationship with a particular company and therefore receive an appropriate level of service.
- 11.11 The opportunity to select a particular service rarely exists with taxis. The Disabled Persons Transport Advisory Committee places particular emphasis on the idea of the joined-up journey and the ability to travel from door to door.⁶ It is important for

⁵ See our discussion in Chapter 4.

⁶ Disabled Persons Transport Advisory Committee, *Advice for taxi drivers – meeting the needs of disabled passengers*, <http://dptac.independent.gov.uk/pubs/taxiadvice/index.htm> (last visited 23 April 2012),

a disabled person to know that if, for example, they arrive at a railway or bus station, they will be able to procure a suitable taxi within a sensible period of time.

- 11.12 The suggestions detailed below relate, for the most part, solely to taxis. Licensing authorities have fewer powers in relation to numbers and vehicle specification of private hire vehicles, and it is not envisaged that existing powers in relation to taxis be extended to private hire vehicles, due to the broadly successful operation of market forces in this sector.

Universal vehicle

- 11.13 It is generally recognised that it would be impossible to design a vehicle suited to the needs of all disabled people given the wide and disparate variety of needs present within the disabled community.⁷ It is perhaps more important to consider the range of vehicles available in an area, in order that disabled passengers can exercise choice over how they travel.⁸

Licensing incentives

- 11.14 Some local authorities which impose quantity restrictions on licences relax these in relation to wheelchair accessible vehicles. The Equality Act 2010 contains provisions, not yet in force, to make this compulsory.⁹
- 11.15 Some jurisdictions use licensing incentives to encourage the uptake of wheelchair accessible vehicles. In Ireland, for example, licences for wheelchair accessible taxis and private hire vehicles are far cheaper than other licences.¹⁰ They are also currently the only licences available, as the National Transport Authority has imposed an informal moratorium on licensing non-wheelchair accessible vehicles.¹¹ In order to obtain one of these licences, the applicant must show that his or her vehicle meets certain specifications. The licensee is then under a duty to prioritise journeys taken by disabled persons.¹² Wheelchair accessible taxis are not allowed to stand or ply for hire.
- 11.16 In New South Wales, it is possible to obtain a specialised wheelchair accessible taxi licence. The driver must undergo special training and the vehicle must meet certain specifications, for example, it must be able to accommodate at least one

⁷ The failure to implement taxi accessibility regulations is a testament to how difficult it is to determine universal specifications of accessibility. We discuss this further at paragraph 11.30 below.

⁸ Office of Fair Trading, *The regulation of licensed taxi and PHV services in the UK*, (November 2003) para 7.38.

⁹ Equality Act 2010, s 161.

¹⁰ See <http://taxiregulation.nationaltransport.ie/for-operators/spsv-vehicle-licensing/list-of-vehicle-licensing-fees/> (last visited 23 April 2012).

¹¹ It does not appear that this temporary suspension has been formally announced on the National Transport Authority's website or reported in the media – we were informed of it during a telephone call with the National Transport Authority on 27 September 2011.

¹² See <http://taxiregulation.nationaltransport.ie/for-operators/spsv-vehicle-licensing/spsv-categories/> (last visited 23 April 2012).

wheelchair.¹³ Whilst a standard taxi can have no more than 12 seats, there is no such limit on wheelchair accessible taxis.

Financial incentives

- 11.17 A number of jurisdictions have put in place grant schemes to assist drivers with the cost of adapting their vehicles to meet wheelchair accessible standards.¹⁴
- 11.18 In France, local authorities can assist disabled persons with the cost of taking taxis.¹⁵ The local authority responsible for Paris has entered into an agreement with a large taxi cooperative in order to ensure continual provision of accessible taxis with specially qualified drivers, but this initiative does not appear to have a regulatory basis.¹⁶
- 11.19 In Australia, the Victorian government has also created a subsidy scheme in order to encourage their uptake, including higher fares for journeys involving wheelchairs. The corollary of this is that wheelchair accessible taxis are subject to performance monitoring and a different booking system in order to ensure sufficient supply.¹⁷

100% accessibility

- 11.20 Current statistics show that 62 local authorities (around 18%) require all licensed taxis to be wheelchair accessible.¹⁸ In England, in 2011, there were 44,300 wheelchair accessible taxis. This represented 61% of the entire fleet, up from 56.5% in 2005. Outside London the percentage of wheelchair accessible taxis in an area varies considerably from 72% in the West Midlands¹⁹ to only 26% in the South East.²⁰

¹³ See <http://www.transport.nsw.gov.au/content/wheelchair-accessible-taxis> (last visited 23 April 2012).

¹⁴ Ireland: <http://taxiregulation.nationaltransport.ie/for-operators/wheelchair-accessible-vehicle-grant-scheme/> (last visited 23 April 2012). France, Institut d'aménagement et d'urbanisme, "Les services franciliens de transports specialises" (2007) p 13, http://www.iau-idf.fr/fileadmin/Etudes/etude_501/Les_services_franciliens_de_transport_specialise.pdf (last visited 23 April 2012). Queensland, Australia, <http://www.tmr.qld.gov.au/Travel-and-transport/Disability-access-and-mobility/Taxi-subsidy-scheme.aspx> (last visited 23 April 2012) and <http://www.tmr.qld.gov.au/Travel-and-transport/Qconnect/Accessible-taxis.aspx> (last visited 23 April 2012).

¹⁵ Article 138 of law n°98-657, 29 July 1998.

¹⁶ Institut d'aménagement et d'urbanisme, "Les services franciliens de transports specialises" (2007) p 13, http://www.iau-idf.fr/fileadmin/Etudes/etude_501/Les_services_franciliens_de_transport_specialise.pdf (last visited 23 April 2012).

¹⁷ See <http://www.transport.vic.gov.au/taxis/projects-and-programs/initiatives-to-improve-victorias-taxi-services> (last visited 23 April 2012).

¹⁸ See Department for Transport, *Taxi statistics* (15 December 2011), <http://www.dft.gov.uk/statistics/series/taxis/> (last visited 23 April 2012).

¹⁹ This refers to the wider West Midlands, consisting of Stoke, Staffordshire, Shropshire, Telford and the Wrekin, Herefordshire, Worcestershire and Warwickshire.

²⁰ See Department for Transport, *Taxi statistics* (15 December 2011), <http://www.dft.gov.uk/statistics/series/taxis/> (last visited 23 April 2012).

- 11.21 The requirement for all taxis to be wheelchair accessible may not be entirely beneficial. Full accessibility may not be right for every area, depending on the needs of the local population. A requirement for all licensed taxis to be wheelchair accessible imposes a financial burden on the industry. Anecdotal evidence gathered during our preliminary meetings with stakeholders suggests that, where such requirements are imposed, a number of taxi drivers transfer to the private hire vehicle trade. This in turn may be detrimental to the population at large as it may reduce availability.

Quotas

- 11.22 During the preparation of this review some user groups have suggested that setting a quota for the number of wheelchair accessible vehicles in any fleet (including private hire vehicles) would be a good solution. Different approaches might apply to quotas, over an entire licensing area, zones within such an area, or for firms of vehicle providers. Trade groups have highlighted formidable practical difficulties in implementing and maintaining any system based on quotas. This is due to the fluidity of the trade and the fact that many taxi and private hire vehicle drivers are sole traders.
- 11.23 These difficulties have been recognised judicially, where a policy allowing new licences to be granted only in respect of wheelchair accessible vehicles was challenged.²¹ Mr Justice Jowitt noted the difficulty of deciding which applicants should have wheelchair accessible vehicles, and as such be subject to an increased financial burden.²² He also recognised that quotas would not necessarily ensure that a wheelchair accessible vehicle would be available when needed.²³

Sub-contracting

- 11.24 Allowing private hire vehicle operators to sub-contract work could lead to more efficient provision of accessible vehicles. It would allow a firm which is unable to satisfy a booking to use one of its own vehicles to pass the work on to another firm. This could also provide a further incentive to private hire vehicle drivers to invest in accessible vehicles.

Training

- 11.25 We are aware that many of the problems disabled users encounter stem from a lack of awareness as to how to transport disabled passengers. Attitudinal problems could account for issues such as drivers failing to stop for a disabled passenger, being unable to assist them in an appropriate manner or failing to treat them with dignity. Training on how to approach and assist disabled passengers could be a valuable addition to the licensing regime.

²¹ *R v City of Newcastle, ex p Blake* [1997] EWHC Admin 162.

²² *R v City of Newcastle, ex p Blake* [1997] EWHC Admin 162, para 27.

²³ *R v City of Newcastle, ex p Blake* [1997] EWHC Admin 162, para 29.

EQUALITY LEGISLATION

Equality Act 2010

- 11.26 Statutory guidance contains a broad variety of impairments from which a disability may arise. These range from sensory impairments, to chronic illness, learning difficulties and mental health conditions.²⁴ The breadth of the definition of disability illustrates the wide range of specific requirements which may be applied to transport vehicles, and the different “impairments” which they are designed to address.

Legislation applicable to taxis and private hire vehicles

- 11.27 There are two duties under the Equality Act 2010 which apply directly to taxis and private hire vehicles. The first is the general requirement not to discriminate against a disabled person in the provision of goods and services, and the second concerns accessibility. Legislation relating to the first is fully in force, whereas that relating to the second is only partially so.

Provision of goods and services

- 11.28 It is unlawful for a provider of services to discriminate against a disabled person in the provision of that service.²⁵ The service provider is under a duty to make “reasonable adjustments”²⁶ in the provision of the service. The duty to make reasonable adjustments consists of three requirements:

- (1) changing the way in which the service is provided;
- (2) making physical adjustments to the way in which the service is provided; and
- (3) providing auxiliary aids to enable a disabled person to use the service.

- 11.29 The duty is qualified in relation to certain types of transport.²⁷ The qualifications provide that it would never be reasonable for the provider of a taxi or private hire vehicle service to have to take steps which would involve the alteration or removal of a physical feature of a vehicle used in providing the service.²⁸ The duty to provide auxiliary aids is also qualified with regards to anything which would require a permanent alteration to the interior or exterior of the vehicle.²⁹

Accessibility regulations for taxis and private hire vehicles

PROVISIONS WHICH ARE NOT IN FORCE

- 11.30 The Secretary of State can make taxi accessibility regulations so as to ensure

²⁴ Equality Act 2010, s 6(5); Office for Disability Issues, *Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability* (August 2010) para A6.

²⁵ Equality Act 2010, s 29.

²⁶ See Equality Act 2010, s 20.

²⁷ Equality Act 2010, s 31 and sch 2, para 3.

²⁸ Equality Act 2010, s 31 and sch 2, para 3.

²⁹ Equality Act 2010, sch 2, para 3(9).

that it is possible for disabled persons, including a disabled person in a wheelchair, to get into and out of taxis in safety, and to travel in safety and reasonable comfort.³⁰

- 11.31 If such regulations were in force, which currently they are not, the grant of a taxi licence would be conditional on the vehicle conforming to the relevant provisions in the taxi accessibility regulations.³¹
- 11.32 Drawing up an acceptable specification for an accessible taxi has proved to be very complex, not least because it is difficult to identify a design which would work for different people with different disabilities. Most stakeholders we have spoken to agreed that the goal of a single universally accessible vehicle is, for all the reasons we have considered so far, misguided. In May 2011, transport minister Norman Baker MP announced that the Government had no intention of making such regulations.³²
- 11.33 The Secretary of State's powers to make accessibility regulations do not extend to private hire vehicles. However, the Secretary of State can make regulations applying taxi accessibility regulations to private hire vehicles used in the provision of services under a franchise agreement (for example at a railway station or airport).³³
- 11.34 The power of local authorities to refuse to grant a taxi licence in order to restrict the number of taxis in the area is limited.³⁴ If an application relates to a wheelchair accessible taxi, and if the proportion of such taxis in the area is smaller than the number prescribed in regulations made by the Secretary of State, the local authority cannot refuse the licence. Although this provision is not yet in force, we understand that even where authorities impose a limit on the number of licensed taxis in the area, those limits are in many areas not applied in relation to wheelchair accessible vehicles. Newcastle operates such a policy, but has granted "grandfather"³⁵ rights to owners of saloon cars, who can continue to hold a taxi licence even upon renewal.³⁶ In addition, if taxi accessibility regulations were introduced, local authorities could apply for an exemption order if the effect of the regulations would be to reduce the number of taxis in the area to an unacceptable level.³⁷

³⁰ Equality Act 2010, s 160.

³¹ Equality Act 2010, s 163.

³² *Hansard* (HC), 16 May 2011, vol 527, col 4W.

³³ Equality Act 2010, s 162.

³⁴ Equality Act 2010, s 161. This provision disapplies the Transport Act 1985, s 16 which modifies the effect of the Town Police Clauses Act 1847, s 37. See Chapter 9 for a full discussion of quantity restrictions.

³⁵ Although such licensees would not be able to get new licences if they applied under the new policy, by virtue of being "grandfathered" in, existing licensees would continue to be subject only to the old policy.

³⁶ *R v City of Newcastle, ex p Blake* [1997] EWHC Admin 162.

³⁷ Equality Act 2010, s 164.

11.35 The Equality Act allows local authorities to draw up lists of designated taxis and private hire vehicles.³⁸ The drivers of these vehicles must, when carrying a person in the wheelchair:

- (1) carry the person in the vehicle whilst in the wheelchair;
- (2) make no additional charge for so doing;
- (3) if the person chooses to travel in a passenger seat, carry the wheelchair;
- (4) take such steps as are necessary to enable the person to travel in safety and reasonable comfort; and
- (5) give the passenger such mobility assistance as may be reasonably required.³⁹

PROVISIONS WHICH ARE IN FORCE

11.36 The Equality Act imposes duties on taxi drivers, private hire vehicle drivers and private hire vehicle operators to carry assistance dogs at no additional charge.⁴⁰ Licensing authorities can exempt individual drivers on medical grounds.⁴¹ A number of stakeholders who use assistance dogs have raised concerns that these provisions are not sufficiently enforced, and that licensing authorities lack awareness of them.

SCOTLAND

11.37 Very similar provisions exist in Scotland, but have also not been brought into force, other than with regards to assistance dogs.⁴² The general provisions of the Equality Act discussed above also apply.

Legislation applicable to local authorities

11.38 Public authorities must have due regard to the need to

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

³⁸ Equality Act 2010, s 167.

³⁹ Equality Act 2010, ss 165-167.

⁴⁰ Equality Act 2010, ss 168 and 170. See also the Disability Discrimination Act 1995 (Taxis) (Carrying of guide dogs etc) (England and Wales) Regulations 2000/2990. An assistance dog is defined as a dog trained to guide a blind person or assist a deaf person, dogs trained by a prescribed charity to assist people with a disability consisting of epilepsy or which otherwise affects a persons mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects, and dogs of a prescribed category to assist a disabled person with a prescribed disability.

⁴¹ Equality Act 2010, ss 169 and 171.

⁴² Civic Government (Scotland) Act 1982, s 20(2A)-(2AA); Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations, SSI 2002 No 500; Taxi Drivers' Licences (Carrying of Guide Dogs and Hearing Dogs) (Scotland) Regulations, SSI 2003 No 73.

- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.⁴³
- 11.39 These provisions have been used as a basis to challenge the use of licensing powers by local authorities.

Case law

- 11.40 The actions of a local licensing authority in refusing to authorise a particular type of wheelchair accessible taxi were challenged in the High Court.⁴⁴ The licensing committee of Liverpool City Council had a general policy of only licensing taxis which satisfied the London Carriage Office standards, although licence applications in respect of other vehicles would be considered on their merits. The committee rejected an application for a licence in respect of an E7 wheelchair accessible taxi which did not meet the London Carriage Office standards.
- 11.41 This decision was challenged by a local resident who was unable to travel safely in the London-style vehicles because, due to the length of her wheelchair, she had to be positioned either sideways or diagonally and therefore could not be adequately secured. She found, however, that she could travel safely and more comfortably in the larger E7 vehicle, and was also able to be accompanied by more than one other person. Evidence was given to the licensing committee to that effect. She argued that the committee's decision constituted a breach of the council's duty as described above at paragraph 11.37.
- 11.42 The court found there was sufficient evidence before the committee to demonstrate that some passengers in wheelchairs could not access the approved type of London taxi for space reasons, and that their decision was based on a fundamental misunderstanding of the true factual situation. Whilst the approved style of taxi was suitable for many disabled passengers in a wheelchair, the evidence before the committee clearly showed that there was a class of passenger, such as that represented by Mrs Lunt, which had serious difficulties with it. The licensing committee had failed to address this
- 11.43 That said, the duty to have due regard does not create a duty as to outcome. Where a licensing authority had taken into account the issue that wheelchair vehicles may not be accessible to all disabled users, there was no breach of the statutory duty.⁴⁵
- 11.44 At the time it was believed that the judgment in *Lunt* would encourage other licensing authorities operating similarly restrictive conditions to reconsider their policy on wheelchair accessible vehicles.⁴⁶

⁴³ Equality Act 2010, s 149. Disability is such a protected characteristic: see Equality Act 2010, s 149(7).

⁴⁴ *R (on the application of Lunt) v Liverpool City Council*, [2009] EWHC 2356 (Admin).

⁴⁵ *R (on the application of 007 Stratford Taxis Ltd) v Stratford-upon-Avon District Council* [2011] EWCA Civ 160.

⁴⁶ See <http://www.disabilitynow.org.uk/living/motoring-section/taxi-victory-opens-door-to-rights> (last visited 23 April 2012).

- 11.45 This has not been the case and a number of local authorities still require taxi proprietors to invest in vehicles which, although wheelchair accessible, restrict access to a large section of wheelchair users.⁴⁷

The European dimension

- 11.46 There is a proposal for a European Directive on “implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation”. The proposals would provide a right for disabled persons to have access to and supply of goods and services which are available to the public, including housing and transport, and would impose a requirement for appropriate modifications or adjustments to be made. This would be qualified so as not to impose disproportionate burdens or require major changes to be made to goods and services.⁴⁸

THE ROLE OF TAXIS IN THE COMMUNITY

Introduction

- 11.47 The rising demand for transport means a sustainable transport network is vital for the economy. The rise in car ownership has led to reduced provision of some traditional forms of public transport. There are also significant differences between the provision of public transport in rural and urban areas. In some areas, taxi and private hire operations play an important role in the provision of rural transport. Measures to enable more flexible use of taxis and private hire vehicles can support this, and we will consider these later in this chapter.
- 11.48 People on low incomes make up a higher than average percentage of the market for such services.⁴⁹ People without access to a car may also be proportionately higher users of taxi and private hire services.
- 11.49 In what follows we will look at ways in which the licensing regimes enable more innovative working and ways of encouraging availability and accessibility. We recognise the need for regulation which is able to respond to evolving demands and requirements of transport services.

⁴⁷ For example, London and Manchester. For further details on the experience of wheelchair users in London-type taxis, see Lowland Market Research, *Wheelchair User Experience: Taxi Survey* (March 2008).

⁴⁸ The proposals appear broadly consistent with provisions on access to goods and services in the Equality Act 2010. See http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/em0008_en.htm (last visited 23 April 2012).

⁴⁹ Department for Transport: *Travel by Taxi and Private Hire Vehicle in GB*, January 2003. All the figures refer to the years 1999-2001.

LOCAL TRANSPORT AUTHORITIES – TRANSPORT PLANNING

- 11.50 Local transport authorities in England and Wales⁵⁰ are under a duty to develop policies for the promotion of safe, integrated, efficient and economic transport systems. Local transport authorities must publish local transport plans setting out their policies and proposals for implementing them.⁵¹
- 11.51 Many local transport authorities recognise the importance of the role of taxis and private hire vehicles in providing public transport services.⁵² This is particularly true in areas, and at times, where bus services are not available. They may also play an important role in school transport (both privately and publically funded) and social care transport.

FLEXIBLE TRANSPORT SERVICES

- 11.52 In recent years, legislation has been introduced to enable the more flexible use of licensed taxis and private hire vehicles. We will consider some of the more important examples below.

Shared vehicles

- 11.53 There are two ways in which taxis can be shared by passengers paying separate fares without a public service vehicle licence being required: immediate hiring and advance bookings.
- 11.54 Legislation allows an authority to make a scheme for the hiring of taxis at separate fares and, where 10% or more of the holders of taxi licences in the area request a scheme, the local authority is under an obligation to make one.⁵³
- 11.55 Where an authority has made a scheme, up to eight people (depending on the size of the vehicle) can make an immediate hiring and pay separate fares for their journey from specified, authorised places. This might be used, for example, by a group of people who travel into a city by train and need to get to offices outside the centre. The taxi would be able to take each person to their place of work and each would pay a separate fare (which would be less than the metered fare) for the journey. This can be particularly useful where there are long queues for taxis, for example, at railway stations. Other benefits include a reduction in passenger waiting times, lower fares for individual passengers, environmental benefits, and the ability for drivers to earn more than the metered fare for the total journey.

⁵⁰ Local transport authorities in England are county councils, metropolitan district councils (where there is no county council) and integrated transport authorities. In Wales they are county councils or county borough councils.

⁵¹ Transport Act 2000, s 108.

⁵² Tyne and Wear Integrated Transport Authority, *Third Local Transport Strategy 2011 – 2021* (March 2011) p 177, <http://www.tyneandwearltp.gov.uk/wp-content/uploads/2011/04/TW-LTP3-Strategy-Mar-2011-for-upload.pdf> (last visited 23 April 2012); Plymouth City Council, *Plymouth Passenger Transport Strategy: Taxi and Private Hire Vehicle Strategy Local Transport Plan 2 – 2006-2011*, http://www.plymouth.gov.uk/ppts8_-_taxi_strategy___private_hire.pdf (last visited 23 April 2012).

⁵³ Transport Act 1985, s 10; Taxis (Schemes for Hire at Separate Fares) Regulations 1986, SI 1986 No 1779; and London Taxi Sharing Scheme Order 1987, SI 1987 No 1535.

- 11.56 A number of fixed fare schemes currently operate in London, for example, from Paddington and Euston stations to central London.⁵⁴ Other schemes in operation include those at Heathrow Airport and in areas of Bristol, where the scheme is designed to service the night time economy.⁵⁵
- 11.57 Where certain conditions are met, taxis and private hire vehicles can be used for the carriage of passengers at separate fares without the need for a public service vehicle operators' licence.⁵⁶ Some operators advertise the availability of taxi sharing and invite passengers when they book to indicate whether they would be content to share. The information is then made available to other potential passengers. Other operators or local authorities advertise regular services which must be pre-booked, for example, from a village to a local town centre and back. Where no bookings are received, the service does not operate. These are in effect a hybrid between shared taxi services and taxibuses.

Taxibuses

- 11.58 Taxis and private hire vehicles may to be used to provide local bus services under a special restricted licence granted by a Traffic Commissioner.⁵⁷ This scheme is aimed at increasing flexibility in the provision of local bus services, in particular in areas where demand for a service does not justify the use of a minibus or larger vehicle. Passengers benefit from the retention of a local service which would otherwise be lost.
- 11.59 Legislation on the registration of bus services was amended in 2004⁵⁸ to introduce the concept of a "flexible service".⁵⁹ In rural communities it may not be practical to run a daily service, nor operate on the same days along the same route. A more flexible operation means that the service can run on the days when people want it, and the route can be adapted to suit the needs of those travelling on any particular day. There is no reason why such services should not be operated by taxibuses. The use of a smaller vehicle may suit such an operation better than a larger vehicle and be more cost effective.
- 11.60 It is open to a special restricted licence holder to bid to operate subsidised local transport services.⁶⁰ There are examples of such services in Plymouth,⁶¹ Stowmarket,⁶² Durham⁶³ and South Tyneside.⁶⁴

⁵⁴ See <http://www.tfl.gov.uk/modalpages/1144.aspx> (last visited 23 April 2012).

⁵⁵ See <http://www.travelbristol.org/nightflyer> (last visited 23 April 2012).

⁵⁶ Transport Act 1985, s 11.

⁵⁷ Transport Act 1985, ss 12 and 13A.

⁵⁸ Public Services Vehicles (Registration of Local Services) Regulations 1986 as amended by SI 2004 No 10.

⁵⁹ Public Services Vehicles (Registration of Local Services) Regulations 1986, reg 2(2A).

⁶⁰ Transport Act 1985, s 63.

⁶¹ 223 St Budeaux Taxibus (Circular).

⁶² See http://www.onehouse.org.uk/html/local_services.html (last visited 23 April 2012).

⁶³ See <http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=901> (last visited 23 April 2012).

Community transport

- 11.61 Legislation on community transport is intended to enable voluntary and charitable groups to provide transport without the need to have a public service vehicle operators' licence.⁶⁵ Operating services under a community transport permit exempts the operator from the public service vehicle, rather than taxi or private hire vehicle, licensing regime. It remains relevant to this review, however, as vehicles adapted to carry fewer than nine passengers can now be used to provide certain types of community transport services.

Section 19 permits

- 11.62 Services can be operated under such a permit using a vehicle not adapted or constructed to seat more than eight passengers.⁶⁶ Operators must have a permit granted either by the Vehicle and Operators Service Agency or by a designated body.⁶⁷ Services are not open for use by the general public. The vehicle must not be used for profit, nor be incidental to an activity which is carried on with a view to profit, although passengers may pay fares. Services can be provided by bodies concerned with education, recreation, religion, social welfare or other activities of benefit to the community. Drivers of such vehicles can be paid although some restrictions apply to the drivers of larger vehicles, depending on the driving licence held.

Taxi vouchers or taxi card schemes

- 11.63 Some local authorities have a taxi voucher or taxi card scheme. These schemes can be used towards the payment of taxi fares for residents with a disability who are unable to use local bus services.
- 11.64 The above provisions illustrate the innovative ways in which services outside of the taxi and private hire licensing regime can help address important community needs. In the next chapter we consider new technology and its potential impact on taxi and private hire regulation.
- 11.65 In the next chapter we discuss the impact of technology on taxi and private hire services.

⁶⁴ See <http://www.nexus.org.uk/news/2010/three-new-taxi-bus-routes-south-tyneside> (last visited 23 April 2012).

⁶⁵ See generally, Transport Act 1985, ss 18 to 23A.

⁶⁶ Local Transport Act 2008, ss 57 and 58.

⁶⁷ Transport Act 1985, s 19(7).

CHAPTER 12

TECHNOLOGY

INTRODUCTION

- 12.1 The use of technology in the taxi and private hire vehicle market is widespread. It ranges from developments in communications technology such as the mobile phone, to changes in vehicle specification. The core legislation regulating taxis pre-dates the invention of both the telephone and the car, and the central tenets of private hire regulation came into force many years before the widespread use of mobile phones and the internet.¹
- 12.2 This chapter focuses on the many ways in which technology has impacted consumer engagement with taxi and private hire services. We recognise that, although premised on the use of horse-drawn carriages, taxi vehicle regulation has proved remarkably flexible and poses fewer problems. Paradoxically, the more recent private hire regulation has encountered greater difficulties, as it is premised on a particular model of pre-booking which has since been superseded by the widespread use of mobile phones and the internet.
- 12.3 Whereas out-dated terminology can be quaint and gaps and grey areas can be overcome, the legislation's chilling effect is not so harmless. The disconnect between the context in which the legislation arose and where the industry is now can be so large that the trades and those enforcing them have little guidance about what side of the line their activities lie. Licensing authorities have told us they can be reluctant to license activities that do not fit the standard model of taxi or private hire vehicle operations. Licensing authorities may also be reluctant to take on additional responsibilities in overseeing the use of new technology and as a result may have a hostile attitude towards licensing operations that would require them to do so. The industry may understandably be reluctant to go to the difficulty and expense of innovating for fear of legal repercussions. For example, an operator seeking to license a two-seater Smart car in order to provide an efficient solution to the number of solo passenger journeys faced great difficulty in assuring the licensing authority that this unusual vehicle was suitable.²
- 12.4 Technology has revolutionised the way consumers engage with taxi and private hire vehicle services. As illustrated by the mobile phone, the rate of change can be fast, and bring changes that are difficult to imagine without hindsight. Without reform, these problems would be certain to increase both in volume and frequency as the gap between the legislation and the industry widens. Not only does this risk the creation of greater confusion and complexity, it threatens to place an unnecessary brake on innovation and the adoption of new technology within the taxi and private hire vehicle industries.
- 12.5 Whilst this section deals primarily with communications systems, the relevance of technological advances to the taxi and private hire vehicle industries is much more far-reaching. With environmental matters an ever-present concern, it is

¹ Although the London legislation came into force in 1998, it was based on the model of the Local Government (Miscellaneous Provisions) Act 1976, albeit with significant variations.

² Private Hire and Taxi Monthly, "Green Means Go" issue 228, September 2011, p 34.

likely that developers and proprietors will seek to invest in greener technology. It is important that the regulatory framework is flexible enough to allow and encourage such developments.

COMMUNICATIONS TECHNOLOGY

Telephone communications

- 12.6 The latter half of the 20th century saw a number of major developments in communications technology. The widespread use of landline telephones was a primary driver in the growth of the pre-booked market, and the effect of this was compounded by the development of mobile phone technology.
- 12.7 The legal framework governing purely pre-booked work by private hire vehicles was designed to regulate an industry in its existing form. In 1976, there were two methods of booking a private hire vehicle: by visiting the operator's office, and by making a (landline) telephone booking. Both these methods were anchored to a particular location. These days many, if not most, bookings are made using mobile phones and the internet. Although the legislation seems to require it, there is no clear need for the operator to be based in a specified location.
- 12.8 We also note that although it may seem that technology primarily impacts the private hire vehicle market, as pre-booking is their sole means of operation, taxi drivers are increasingly turning to radio circuits as a means of working effectively. These frequently use technology such as GPS tracking and vehicle monitoring systems.

The hailing/pre-booked distinction

- 12.9 Developments in the manner and immediacy of pre-bookings are one of the more potent factors contributing to the blurring of the taxi and private hire vehicle distinction. If the defining feature of taxis is their ability to ply for hire, meaning their *immediate* availability for hire, then technology is closing the gap between hailing and pre-booking.
- 12.10 A typical pre-booked journey is generally envisaged as one where a customer requests to be picked up from a particular location, either straight away or at a given time. Private hire vehicles may only undertake this sort of work and may not pick up from the street (hailing) or on ranks.³ Mobile phones blur the boundaries between the two. A mobile phone user who sees a private hire vehicle carrying company livery can instantly phone the number provided and be directed to the vehicle in question. The driver, if approached, can inform the potential passenger that they are unable to carry them without a booking, but the passenger can make an on-the-spot booking and be carried by that driver.
- 12.11 Smartphone applications - or "apps" - and Twitter feeds⁴ further blur the distinction between pre-booking and hailing. Some apps allow users to see which vehicles are in their area and select one of them, sometimes allowing them to

³ In legal terminology, private hire vehicles are prohibited from "plying for hire", as discussed in detail in Chapter 3.

⁴ See www.twitter.com/cabup (last visited 23 April 2012).

then track the vehicle's progress.⁵ This is comparable to hailing, as it provides an almost instant service, with most providers advertising the immediate availability of vehicles booked through their service.⁶

- 12.12 This way of booking is also said to have led to a growth in unofficial ranks. Private hire vehicles will sometimes gather outside venues such as bars and clubs. Customers who mistake the vehicles for taxis plying for hire on a rank might be told to phone the operator number, and the operator will direct them to the nearest available car. Some within the taxi industry feel that this amounts to plying for hire. When a booking is made for a "Smith" picking up from a busy night club, for example, it may be difficult to make sure the person who enters the car is the right person. Whereas a driver is not allowed to make a booking for a passenger once they have already boarded the car,⁷ and it is true that vehicles waiting in usual taxi pick-up points have been convicted of unlawfully plying for hire,⁸ cases are not usually so clear-cut.
- 12.13 Many stakeholders have expressed the view that the increased use of technology will lead to passenger preferences shifting in favour of pre-booking. Most people carry their mobile or other means of communication with them at all times, and operators can make use of technology to ensure the quick, at times almost instant, arrival of a vehicle. Furthermore, passenger choice will be greatly increased by the ability to compare at a glance multiple operators.

Dispatch systems

- 12.14 Mobile phone technology has had a significant impact on dispatch systems, with operators able to contact drivers and passengers on mobile phones, and sole operators able to take bookings whilst on shift. Although we have been told this is common practice, the legality of taking bookings on a mobile phone, or routing calls from landlines to mobile phones, is doubtful. It is certainly difficult to square with the language of the Local Government (Miscellaneous Provisions) Act 1976 which restricts operators to making provision for the invitation or acceptance of private hire vehicle bookings only in their licensed area.⁹ Stakeholders have also expressed concern that it is easier for bogus, completely unlicensed, drivers to work in a regulatory environment where mobile phones are commonplace. Many people within the industry believe that bookings must be made through a landline. The National Association of Licensing Enforcement Officers believes that an operator without set premises but who accepts bookings solely through an in-car mobile phone would require an operator's licence.¹⁰
- 12.15 Operators are able to transmit journey information to drivers using mobile phone technology, and can contact passengers – for example, to tell them their vehicle is waiting or to give a description of the vehicle which has been dispatched.

⁵ See, for example, Get Taxi: www.gettaxi.co.uk, (last visited 23 April 2012).

⁶ See <http://www.taxi-app.co.uk/> (last visited 23 April 2012).

⁷ See, for example, *Chorley v Thomas* [2001] EWHC (Admin) 570.

⁸ See, for example, *Rose v Welbeck Motors Ltd* [1962] 2 All ER 801; and *Pettigrew v Barry* The Times, July 12 1984.

⁹ We explore the many difficulties raised by cross-border questions in Chapter 9.

¹⁰ J Thompson (ed), *Bryan Denby's "The Book"* (14th ed 2008) p 142.

- 12.16 Overall, the legal position here is not clear and causes a great deal of confusion. It also leads to animosity within the trade, as drivers and operators accuse competitors of flouting the rules. In Chapter 9 we examined instances in which the use of technology had led to the criminalisation of operators. These included where calls were transferred between premises a short distance apart but which were located in different licensing districts.¹¹ A further example arose where an operator installed freephones at supermarkets with a direct line to their premises, where the supermarket was in a different licensing area to that for which the operator held a licence.¹² In both cases the court recognised the restrictive effect outdated legislation was having on those who wished to expand their businesses.¹³ We discuss these issues below, at paragraph 12.32.

Internet

Internet bookings

- 12.17 It is now widely possible to book both taxis and minicabs using the internet.¹⁴ Placing this function on a website could well be considered to be making provision for the invitation and acceptance of bookings, just as placing a direct telephone line in a supermarket was in *Murtagh v Bromsgrove District Council*.¹⁵ To an even greater extent than mobile phones, the internet allows an operator to work remotely from vehicles and drivers. The legal status of bookings taken over the internet is unclear. In such cases, where the website is hosted would appear an even more tenuous and artificial link than the location of the operator's premises.
- 12.18 The prevalence of internet bookings raises the question of the need for the operator to be in a fixed geographical location. This is often a legal fiction, given the prevalence of web-based booking systems and internet phones, and it is important that the law fits with reality.¹⁶

Intermediaries

- 12.19 Widespread use of the internet has given rise to the creation of a number of intermediaries or brokerage systems. These web-based platforms provide a point of contact between the individual passenger and a number of taxi and private hire vehicle providers. The passenger is able to input details of their journey, for example the pick-up point, destination, route and number of passengers, and choose a provider based on price, arrival times, standards of service and sometimes passenger reviews.

¹¹ *East Staffordshire Borough Council v Rendell* 1995 WL 1084118.

¹² *Murtagh v Bromsgrove Borough Council* 1999 WL 1019610.

¹³ See *East Staffordshire Borough Council v Rendell* 1995 WL 1084118 by Mr Justice Sedley at 5; *Murtagh v Bromsgrove Borough Council* 1999 WL 1019610 by Lord Justice Kennedy, at 6.

¹⁴ See <http://www.addisonlee.com/> (last visited 23 April 2012); and <http://www.comcablondon.com/> (last visited 23 April 2012).

¹⁵ *Murtagh v Bromsgrove District Council* (5 October 1999) QB (unreported).

¹⁶ See provisional proposal 41.

These systems can also allow passengers to monitor the progress of a booked vehicle in real time,¹⁷ creating an unbroken information chain.¹⁸ This leads to greater consumer choice and control.

- 12.20 Intermediaries are, however, unlicensed, although most claim to use only licensed vehicles, drivers and operators.¹⁹ On the other hand, they often keep records of journeys booked through them and provide customers with the opportunity to give feedback,²⁰ thus providing an element of safety and quality control. Intermediaries' practices would appear to be mainly shaped by competitive forces.
- 12.21 Intermediaries need not simply be price comparison platforms. For example, the TAXILIGHT service introduced reduced, fixed rate fares for passengers using taxis returning from a drop-off, where the driver would have otherwise incurred dead mileage.²¹ Although this service no longer exists, it is evidence of the diverse uses technology can be put to.

Other technological advances

Effective working

- 12.22 Although not all consumers have access to internet and smartphone-based technologies, similar systems can give added value on the operator side, which is then passed on to the consumer. Taxi and private hire companies are increasingly making use of technology to improve the way in which they operate. GPS allows drivers to be tracked and the location of passengers to be ascertained. Data-collection services allow greater analysis of performance, the market and passenger needs, and there is the potential to transmit information on the quality of service to consumers.
- 12.23 Both taxi and private hire vehicle drivers are increasingly relying on GPS technology to assist them in making journeys. Questions have been raised as to whether this lessens the need for topographical knowledge tests, as required by some licensing authorities. On the other hand, many also feel strongly that although satellite navigation systems can be a useful aid to local knowledge, they are no substitute for it.
- 12.24 Taxi sharing services can be facilitated by the use of technology. For example, a firm called Texxi²² is currently operating a demand responsive transit exchange in Liverpool. Individuals or small groups wishing to use a taxi can send an SMS message to the system indicating when they want to leave a particular venue and

¹⁷ See www.gettaxi.co.uk (last visited 23 April 2012).

¹⁸ P Warman, "Tracking systems offer key to personal service" (November/December 2010) *New Transit*, p 37.

¹⁹ See http://www.kabbee.com/?page_id=106 (last visited 23 April 2012); <http://hailocab.com/> (last visited 23 April 2012); <http://www.minicab4you.com/> (last visited 23 April 2012).

²⁰ See <http://support.hailocab.com/customer/portal/articles/217169-can-i-see-a-list-of-trips-i%E2%80%99ve-taken-> (last visited 23 April 2012); <http://ticktocktaxi.co.uk/reviews/> (last visited 23 April 2012).

²¹ See <http://theandersonshelter.blogspot.com/2010/05/taxilight-introductionby-terry-runham.html> (last visited 23 April 2012).

their destination. They are then put in contact with others at the same location with similar requirements, and a suitable vehicle is provided. User groups have told us that this has proved particularly popular with teenagers and customers that are familiar with social networking sites.

Ranks and pick-up points

- 12.25 Technology provides increased possibilities for organising taxi ranks. Marshalling systems could be adapted in such a way as to transmit data on the number of passengers waiting and on destinations, whilst receiving data about vehicles in the area.
- 12.26 Technology could allow for the creation of town centre pick-up points. An electronic system could allow passengers to order a taxi or private hire vehicle at the touch of a button, or to choose between different providers.

Safety and enforcement

- 12.27 Technology is increasingly useful in ensuring effective enforcement. It allows easier and instant identification of licensed vehicles and can give passengers the opportunity to check the licensing status of a vehicle. Using the smartphone application “Am I Safe”,²³ passengers can input the vehicle registration in order to check whether it is licensed. A message can also be sent to a nominated person informing them that the passenger is taking the vehicle.
- 12.28 Scan codes and Q-readers are being increasingly used by private hire vehicle operators as identifiers for their companies. Customers can use the cameras in their smartphones to instantly acquire details about the relevant provider.²⁴ These codes have been used for marketing purposes by private hire vehicle companies and their use could be developed further in terms of vehicle identifiers for safety, for example.
- 12.29 Lack of communication between agencies involved in enforcement presents a significant problem. Increased data-sharing between agencies such as licensing authorities, the police and the Vehicle and Operator Services Agency would lead to more effective enforcement and could provide an incentive to undertake more enforcement. This is currently hampered by those agents involved having different levels of access to records. Improved means of recording information may assist operators in fulfilling their record-keeping obligations. That councils can prescribe record-keeping methods²⁵ could potentially place restrictions on business models.

Vehicle technology

- 12.30 It is important that future regulation be capable of adaptation to new vehicle technology, particularly given the types of innovation which may come about as a

²² See www.texxi.com (last visited 23 April 2012).

²³ See www.amisafe.co.uk (last visited 23 April 2012).

²⁴ See, for example, Addison Lee advertisements on cigarette bins in London.

²⁵ Local Government (Miscellaneous Provisions) Act 1976, s 58(2).

result of environmental concerns. The history of hackney carriage legislation has seen the move from horse-drawn travel to motorised vehicles. It is important that any reformed definitions are able to accommodate future developments in vehicle specification so as not to penalise innovation.

TECHNOLOGY AND CROSS-BORDER PRIVATE HIRE OPERATIONS

12.31 Technological advances have caused a number of problems for private hire operators who work across licensing areas. In *East Staffordshire Borough Council v Rendell*,²⁶ an operator licensed in Derbyshire Dales entered into an agreement with an operator in the neighbouring district of East Staffordshire. Under the terms of this agreement, telephone calls made to premises in Derbyshire Dales were redirected to the East Staffordshire office. The Divisional Court held that a common-sense interpretation of the definition of operate resulted in a finding that provision for the invitation or acceptance of bookings had been made in East Staffordshire, where the operator was unlicensed.

12.32 In coming to this conclusion, Mr Justice Sedley recognised that:

It is quite true that modern technology may not fit easily into the statutory provisions. In 1976, mobile phones as well as the automatic switching of calls were unknown, at least to ordinary telephone users.²⁷

12.33 He further acknowledged that:

This construction of section 46(1)(d) at least in some cases will criminalise licensed drivers [who] either directly or by diversion of calls... take bookings on their mobile phones while they are in a controlled district other than their own.²⁸

12.34 However, he felt that this was a preferable outcome on the grounds that to hold otherwise would allow a driver equipped with a mobile phone to operate anywhere in the country, even if he or she were based in an area without licensing controls on private hire vehicles, such as London (before the Private Hire Vehicles (London) Act 1998). Admittedly, the alternative approach would subvert local licensing.

12.35 As the facts of this case illustrate, the current law provides an undesirable restriction on business expansion, as the respondent would be required to go to the expense and trouble of obtaining a second operator's licence, a fleet of cars and drivers licensed in the second area in order to operate lawfully.

12.36 The mismatch between developing business practices including satellite offices and alternative means of making provision for bookings was illustrated in *Murtagh v Bromsgrove District Council*.²⁹ Here an operator installed telephones at supermarkets in one licensing district which connected with her premises in a

²⁶ *East Staffordshire Borough Council v Rendell* 1995 WL 1084118.

²⁷ *East Staffordshire Borough Council v Rendell* 1995 WL 1084118.

²⁸ *East Staffordshire Borough Council v Rendell* 1995 WL 1084118.

²⁹ 15 October 1999 QB (unreported).

neighbouring district, where she held the appropriate licence. The court noted that it was obliged to take the same common-sense approach as in *East Staffordshire Borough Council v Rendell*.³⁰ This resulted in it finding that provisions had been made for the making of bookings at the supermarket, and as such the operator, vehicles and drivers used to fulfil these bookings must be licensed in the same district. However, Lord Justice Kennedy recognised the unjust nature of this decision, describing the criminalisation of the use of the dedicated phone line by a licensed operator as “absurd”.³¹ In noting that avoidance of the offence would require the operator to obtain a new suite of licences, he added:

This cannot be what Parliament originally envisaged... The problem is to some extent the result of improved technology since the statute was passed, but the law needs to reflect the current state of technology and not be 23 years behind it.³²

- 12.37 This case arose over ten years ago, and since then communications technology has become even more sophisticated. It is easy to envisage the restrictive effect this situation would have on businesses wishing to expand, as well as sole operators who do not wish to employ office staff. Indeed we understand it is common for licensing authorities to have policies and conditions whereby licences can be refused if the operator or vehicle is licensed in another authority. Although this is understandable given the difficulties in complying with two sets of conditions and the potential difficulties in enforcement it places a strong burden on businesses.
- 12.38 It would appear that the geographical restrictions on operators’ licences were put in place to prevent rogue operators from setting up in areas where private hire vehicles were not licensed and thus subvert the licensing requirements of the areas they worked in. With private hire vehicle licensing now in place throughout England and Wales (although at admittedly different standards), it would appear that the contemporary effect of this restriction is to place an undue burden on legitimate operators and restrict and deter those within the market or considering entering it. Vehicles and drivers are already able to pick up and set down passengers wherever they please.
- 12.39 Overall, the “triple licence” and geographical restrictions on operators wishing to take advantage of technology available to them, and which would allow them to run their business more effectively, appear increasingly difficult to justify.

THE INTERFACE WITH OTHER TRANSPORT SYSTEMS

- 12.40 Technology is being used increasingly across all modes of transport, from bus tracking at bus stops to online live departure boards.³³ Technological developments have the potential to permit greater interface between taxis, private hire vehicles and other forms of transport, in particular public service vehicles.

³⁰ 1995 WL 1084118.

³¹ *Murtagh v Bromsgrove District Council* 15 October 1999 QB (unreported), p 6.

³² *Murtagh v Bromsgrove District Council* 15 October 1999 QB (unreported), p 6.

³³ P Warman, “Tracking systems offer key to personal service” (November/December 2010) *New Transit*, p 36.

Greater integration is well-suited to the notion of taxis and private hire vehicles filling gaps left by the remainder of the public transport network.

- 12.41 It has been argued that technology is causing the distinction between public and private modes of transport to fade. Private modes of transport are increasingly being used in a more public way, for example car-sharing schemes. The converse is also true, with the growth of taxi-bus and “dial-a-ride” services. These provide examples of technology allowing for the more efficient provision of transport. Advances in payment methods could further increase this overlap, particularly with the Government providing financial incentives for operators to move to swipe-card type systems.³⁴ For example, stakeholders have told us attempts are being made in Liverpool to have taxis included in the pre-paid “Walrus card”, a payment device similar to London’s Oyster card, which was launched in 2012.³⁵

THE FUTURE

- 12.42 It is clear that the taxi and private hire vehicle industries have developed and taken advantage of new technology regardless of its compatibility with the legislation. It may well be that developments would have gone further or been more widespread were it not for the restrictive effect of the legislation. It would seem that technology companies are also keen to investigate how they could work with transport providers, with the potential for “hitherto unrecognisable product offers and buying decisions”.³⁶ These developments are certain to continue, and as such it is essential that new regulation be sufficiently flexible to encourage innovation and sustainable transport, whilst retaining high safety standards.
- 12.43 The next part of this consultation paper sets out provisional proposals for reform.

³⁴ P Warman, “Tracking systems offer key to personal service” (November/December 2010) *New Transit*, p 37.

³⁵ See <http://www.liverpooldailypost.co.uk/liverpool-news/regional-news/2011/09/20/merseytravel-launches-walrus-smartcards-92534-29451836/> (last visited 23 April 2012)

³⁶ J Dark and P Stonham, “Major new players line up to lead the Passenger Travel Revolution” (October 2011) *New Transit*, p 11.

CHAPTER 13

OVERVIEW OF PROVISIONAL REFORM PROPOSALS

INTRODUCTION

- 13.1 We propose a new Act to regulate the provision of taxi and private hire vehicle services in England and Wales.
- 13.2 We provisionally propose that London should be included within the general framework of reform. We recognise that the taxi market in London is unique but our provisional view is that the framework we are proposing would be sufficiently flexible to accommodate the undoubted differences between London and elsewhere, as well as the differences between different parts of England and Wales.
- 13.3 In this chapter we provide a brief overview of our provisional proposals. In the next seven chapters we set out our provisional proposals in more detail and ask questions about the best way forward. Chapter 14 sets out key definitions and scope. Chapter 15 describes the main features of the reformed regulatory framework and standard-setting powers. Chapter 16 focuses on the three pillars of licensing: drivers, vehicles and operators. Chapter 17 considers our provisional views in respect of quantity restrictions. Chapter 18 looks at the equality implications of reform. Chapter 19 discusses how the new regulatory framework could be enforced. Chapter 20 looks at how the hearings and appeals system may be improved. Finally, we include a list of all our provisional proposals and questions in an appendix.

THE KEY FEATURES OF A REFORMED TWO TIER SYSTEM

- 13.4 As noted in the introduction, the changes made to the taxi industry would not be substantial except in relation to those localities where quantity restrictions would be removed. Taxi standards would remain local although subject to a national minimum. The suggested changes to the regulation of the private hire trade, reflecting mandatory national standards, are more substantial.
- 13.5 We highlight below some of the more significant aspects of the reforms that we propose to develop during the course of this consultation. The leading justification for regulating taxi and private hire services is to correct market failures. Information deficits for consumers apply both in respect of taxis and private hire vehicles and can compromise public safety. This justifies a common bottom layer of regulation. However, the taxi market is subject to specific market failures which justify considerable regulation beyond safety; to cover aspects such as accessibility and quality. By contrast competition, rather than regulation, would be the main means of improving standards within the private hire industry.
- (1) Common national safety standards, set by the Secretary of State and Welsh Ministers, would be adopted for drivers and vehicles across the taxi and private hire industries. These would take effect as minimum standards for taxi services; and national standards for private hire services.

- (2) Local standard-setting, above the national minimum standards, would only continue to apply in respect of taxis, although we also ask if there should be some limited scope for private hire local conditions, such as signage.
 - (3) Clarification of the scope of regulation, in respect of, for instance, limousines and novelty vehicles.
 - (4) Provisions aimed at ensuring better disabled access.
 - (5) Future-proofing provisions taking into account technological developments.
 - (6) Removal of quantity restrictions on taxis. We consider transitional issues.
 - (7) Expansion of the tools available for enforcement.
 - (8) Harmonisation and streamlining of hearings and appeals.
- 13.6 In all instances the administration and enforcement of taxi and private hire licensing would remain a local function. Where national standards apply these would be determined by the Secretary of State and Welsh Ministers.
- 13.7 In addition, it may be argued that taxis have a primary and direct role in supplementing public transport and supporting accessibility. Taxis have a strong local nexus through the rank and hail markets and decisions about taxi provision are therefore best taken at a local level. This justifies licensing authorities' powers of intervention across all aspects of regulation including fare regulation and additional passenger safety and quality requirements over and above the nationally applicable standards.

THE ALTERNATIVE ONE TIER SYSTEM

- 13.8 The key alternative to our preferred proposals is to introduce a one-tier system. A one-tier model would (broadly) allow a single category of vehicle to take pre-bookings, to hail and to rank. The fundamental challenge for proponents of a one-tier approach is to justify a level of regulation that is appropriate to both the competitive pre-booked market and the uncompetitive hail and rank market.
- 13.9 A one-tier system could be simpler than a two-tier approach in that it avoids the distinction between regulation of taxis and private hire vehicles. However, it would inevitably require additional regulatory distinctions to be devised in order to accommodate the different range of services regulated. For example, executive cars and novelty vehicles would have to come under some different form of control as it would be difficult to impose generic taxi and private hire regulation to these types of services.
- 13.10 Regardless of the standard adopted, and whether it may be more similar to current taxi standards or to current private hire vehicle standards, moving to a single tier would reduce consumer choice. Regulators would have to make difficult choices such as whether fares should be regulated for all journeys.
- 13.11 Moreover, if regulation adopted the current standards applied to taxis, the completely unlicensed market would be likely to grow. Establishing an all-

encompassing one-tier system would go even further than re-institutionalising the situation that existed before the introduction of private hire licensing. Purely pre-booked vehicles would not be merely operating without regulation as they did before the 1970s (1998 in London) but would become actively illegal. A one-tier reform could therefore facilitate the re-emergence of a hidden economy in purely pre-booked journeys in response to public demand for less regulated, cheaper vehicles. This could leave a significant section of the public that have no alternative to taxis (because they are unable to access other forms of transport) having to pay more than they would under competitive conditions. Users who could switch to other modes of transport where taxis might, however, have been more convenient.

- 13.12 Our preferred approach also has the benefit of not having to second-guess technology and possible changes in the provision of taxi services. The relative size of the pre-booked market compared to ranks and hailing can be left to market forces. It is sufficient that the regulatory framework be flexible enough to be able to respond to it through adjusting the respective standards applied.

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.

Our proposals as an opt-in one tier system

- 13.13 Our preferred provisional proposals are premised on a reformed two-tier system. There are many common elements. Bottom-line safety would be the same (or equivalent) for both taxis and private hire vehicles. Local requirements for taxis, over and above the common safety features, would be optional. This means that if a licensing authority wished for a single class of vehicle to service its community this would be possible. It would be enough for it not to exercise its powers to impose additional local conditions on its taxis. The common, basic safety standard applicable nationally could apply to all vehicles in that locality.
- 13.14 For example, a small rural authority might opt to only apply the national bottom-line standards for both taxis and private hire vehicles. No additional local regulation would apply to taxi drivers and vehicles. Such a local authority may or may not choose to regulate fares at all. If such a local authority chose to regulate taxi fares the only difference between taxis and private hire vehicles, apart from signage, would be the presence of a meter. Applicants for a licence could decide whether the limited rank and hailing work would justify seeking a taxi licence; or instead whether a private hire licence would make more sense.¹
- 13.15 In the next chapter we consider the scope and key definitions that would apply within a reformed licensing system for taxis and private hire vehicles.

¹ Enforcement of the distinction between taxis and private hire vehicles would not be problematic for such a licensing authority because there would be no hailing market to monitor and it would be simple to verify whether any private hire vehicle was illegally using a rank.

CHAPTER 14

REFORM OF DEFINITIONS AND SCOPE

INTRODUCTION

- 14.1 In this chapter we consider the central elements used to define the scope of taxi and private hire regulation. We will set out possible revised definitions of taxis and private hire vehicles.

A note of caution

- 14.2 In light of the wide-ranging nature of this review, which impacts on both the structure and content of taxi and private hire regulation, consideration of each individual element separately (although necessary) can be misleading. Each part of the provisional reform proposals affects the whole. For example, the judgment of what should or should not be included in the licensing regime also partially depends on how onerous and appropriate the relevant standards may be.
- 14.3 In addition, no matter what framework we adopt for regulating taxis and private hire vehicles, there will always be actors who ignore the rules. Completely unlicensed taxis or private hire services cannot be completely prevented. The appropriate regulatory regime therefore also needs to provide effective sanctions against illegal touts and others acting outside of the licensing regime. It is also important that licensing barriers to entry are not set so high that large sections of the market are effectively pushed into a hidden economy.

LONDON

- 14.4 London's taxi and private hire industries differ significantly from the rest of England and Wales. The size of the taxi and private hire markets as well as the particular cultural heritage and significance of the London black cab stand out as examples where this is the case. Transport for London's responsibility for licensing in London compared with local authorities in the rest of England and Wales is also a very important difference.¹
- 14.5 We acknowledge that there are strong arguments for keeping London outside of the general proposals for reform. As we noted in the introduction we take the view that our provisional proposals are sufficiently flexible to accommodate the many and important differences present in London. Moreover, although London has always had separate legislation governing taxi and private hire licensing our analysis in this review highlighted that the substance is largely the same. In significant areas where there are differences, for example, in respect of private

¹ See Chapter 2.

hire sub-contracting or the leisure use of vehicles, we have generally proposed that the London approach be rolled out more generally.

- 14.6 Given that the aim of this review is to introduce a more simple and coherent system across England and Wales, leaving out the most prominent and important market might undermine this objective and re-introduce further complexity in the interactions of the licensing regimes. Many of the problems we discuss in this review not only exist in London but are most problematic there. Reforms geared towards enhancing enforcement powers and clarifying grey areas such as the approach to internet and mobile phone bookings could be highly beneficial in London.

Provisional proposal 2

London should be included, with appropriate modifications, within the scope of reform.

- 14.7 Although we do not ask a separate question in respect of London for each of our provisional proposals and questions we invite interested consultees to tell us whether there is a case to treat London differently. This applies in respect of all issues raised throughout this consultation paper.

WALES

- 14.8 As we indicated in Chapter 1, transport services, which include taxis and private hire vehicles, are now the responsibility of the National Assembly for Wales and the Welsh Government. It is therefore appropriate for the power to set minimum safety standards for Wales to fall to Welsh Ministers. Taxis and private hire vehicles from Wales would of course continue to be able to take bookings in England and vice versa. We appreciate that there might be undesirable consequences if the standards set in each country were to be substantially different, but we provisionally consider that the consultation requirements we suggest in the next chapter go a considerable way to mitigate this risk. It might, however, also be appropriate for the Secretary of State and Welsh Ministers to be under a statutory duty to consult each other on the standards, and to have regard to the need to ensure compatibility between the standards in each country.

DEFINITIONS

- 14.9 The carriage of persons in a vehicle for reward, a common feature of both taxis and private hire vehicles, can cover a wide range of arrangements. The aim of promoting safety suggests a wider scope for the services and vehicles to be covered in this review. The flexibility of a broad approach is, however, at the expense of some certainty in respect of services which don't fit the description of a standard taxi or private hire operation. Mechanisms to deal with such areas of uncertainty therefore need to be put in place. Our discussion of scope is split into two main sections.
- 14.10 First we consider common questions relating to the proposed coverage of the regulatory regime for taxis and private hire vehicles. This covers the types of vehicles that could be covered and the proper scope of the element of hire and reward. In this context we look at the interface with public service vehicle

licensing. We also discuss how certain categories of services or vehicles could be carved out of any general definition. Secondly we consider the distinctive features of taxis and private hire vehicles within the reformed two tier system.

WHAT VEHICLES SHOULD BE COVERED?

- 14.11 Our preferred approach is to take a broad view in respect of road vehicles covered, following the spirit of the current legal definition of a taxi which covers “every wheeled carriage, *whatever its form or construction ...*”² (emphasis added). The London taxi legislation refers to “any carriage for the conveyance of passengers”.³
- 14.12 Advances in technology mean it is more difficult to predict what modes of transport may become common (or return to vogue) in the future. As we aim to create simple, flexible and future-proof legislation, it would be undesirable to use a definition which might not cover some vehicles which may provide a service like that of a taxi or private hire vehicle.
- 14.13 Two key consequences flow from a broad definition of vehicle. Firstly, a greater range of standards would have to be applied. The expansive list of possible vehicles covered, including motorbikes, limousines, horse-drawn carriages and pedicabs, calls for different sets of safety requirements tailored to different vehicles. Secondly, the broad approach may be over-inclusive. Exemptions may be needed. The default inclusion of all vehicles carrying passengers for hire can act as a barrier to entry in respect of novel vehicles which may not fall within a pre-established category with defined standards. Standards of fitness would have to be agreed in respect of such vehicles before they would be allowed to operate.⁴
- 14.14 Alternatively the taxi and private hire regime could be restricted in application to vehicles that require a driving licence. This would have the benefit of simplicity and clarity. Limiting the definition to “motor vehicles”, like the current private hire vehicle definition used in statute in England and Wales (outside London) discussed in Chapter 3, is a similar alternative.⁵ Motorbikes would still be included; however pedicabs and horse-drawn carriages would not be. Such non-

² Town Police Clauses Act 1847, s 38.

³ Metropolitan Public Carriage Act 1869, s 4.

⁴ This could be similar to the way in which modified vehicles with more than eight passenger seats currently require a Certificate of Initial Fitness, <http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1082022271> (last visited 13 April 2012).

⁵ See Local Government (Miscellaneous Provisions) Act 1976, s 80(1). By contrast the London private hire vehicle definition is not restricted to motor vehicles but refers to “a vehicle ...”, see Private Hire Vehicles (London) Act 1998, s 1(1).

motorised vehicles may be less dangerous generally having more limited speeds and passengers might more easily abandon them if needed. However passengers are still being driven by a third party on a public road. Pedicabs in particular have caused considerable concerns in many town centres. Although this is also a traffic-control issue there are important safety implications.⁶

- 14.15 Overall, we suggest that the power to regulate taxi and private hire services should apply to a wide range of vehicles. This would give flexibility and scope for imposing different standards in respect of widely different classes of vehicle, and the possibility of exempting certain types of vehicles or services.

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.

Question 4

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

The interface with public service vehicles

- 14.16 Buses and lorries are regulated as “public service vehicles”. The definition of “public service vehicles” covers any vehicle used for hire and reward adapted to seat more than eight passengers. Public service vehicles fall within the scope of mandatory EU regulations including requirements in respect of drivers’ working time and tachographs for example.⁷ On the other hand drivers of public service vehicles are not required to undergo criminal record checks.
- 14.17 Private hire regulation expressly excludes public service vehicles and only applies to vehicles with less than nine passenger seats. Taxi legislation pre-dates modern public service legislation and instead of excluding public service vehicles carves out stage coaches (or “stage carriages” in London) which charge separate fares, as well as tramcars. Unlike private hire vehicles taxis have no limits in primary legislation on their passenger seating capacity. This means there is a potential overlap between public service vehicles and large taxis. We are not

⁶ Department for Transport statistics for the year ending September 2011 showed a 4% rise in pedal cycle casualties from the previous year, whereas every other group (including pedestrians) saw a reduction. See generally our discussion of pedicabs in Chapter 3.

⁷ A vast array of legislation covers such requirements. See for example Council Regulation (EEC) No 3821/85 on recording equipment in road transport (as amended).

aware that this overlap has given rise to practical issues. This is likely to be because public service regulation is sufficiently flexible to cover the role of what would otherwise be a large capacity taxi.⁸ With the exception of systematic sharing arrangements it would be rare for taxis to pick up a sufficient number of passengers to justify using a larger vehicle.

- 14.18 The considerable discrepancies between public service vehicle regulation compared with taxi and private hire services make it desirable to reduce the area of overlap in order to avoid “regime shopping” (where providers might select the licensing regime that appears least onerous rather than that which is most appropriate). We therefore propose to use the number of passenger seats as a way to mark as clear a border as possible between taxi and private hire regulation on the one hand; and public service regulation on the other.

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.

The exclusion of “stage coaches” and “stage carriages” charging separate fares

- 14.19 The Victorian taxi legislation expressly carves out stage coaches and stage carriages from licensing requirements. The stage coach is an old-fashioned term for what are now referred to as public service vehicles. The problem is that stage coaches and stage carriages are not defined in legislation and their meaning is unclear. Where passengers pay separate fares in vehicles with less than nine passenger seats the law is unclear about whether or not that should count as a “stage coach”.⁹ This means that the proper scope of taxi licensing is, as a consequence, also unclear.

⁸ Moreover, taxi regulation is typically more onerous than public service regulation, hence providers have had no incentive to attempt to license as taxis rather than public service vehicles.

⁹ Taxis can charge separate fares in limited situations, see the Transport Act 1985, ss 11 to 13A. Private hire vehicles can also now operate as “taxibuses”.

- 14.20 Pedicabs are a vivid illustration of how references to the out-dated concept of a stage coach causes practical problems in respect of taxi licensing. The courts have taken opposite views when interpreting the London legislation compared with the legislation in force in the rest of England and Wales. In London, pedicabs are considered to be stage carriages and therefore cannot be licensed whereas the opposite view has been taken in the rest of England and Wales so that pedicabs can be licensed as taxis. Significantly the ability to licence pedicabs correlates with the power to ban them because otherwise they would be illegally plying for hire.
- 14.21 References to “stage coaches” and “stage carriages” charging passengers separate fares no longer play a useful role in defining the limits of taxi licensing and give rise to undesirable uncertainty. We suggest that the exclusion of public service vehicles, suggested in provisional proposal 5 above, is sufficient.

Provisional proposal 6

References to stage coaches charging separate fares should no longer feature as an exclusion from the definition of taxis.

The boundaries between private hire and public service vehicles

- 14.22 We recognise that the overlap between the regulation of small public service vehicles (having eight or fewer passenger seats) and private hire vehicles can give rise to certain undesirable grey areas.¹⁰ The proper scope and effect of the small part exemption is also unclear.¹¹
- 14.23 Whereas public service vehicle standards are outside the scope of this review it is important to get the relationship between the standards adopted under the respective licensing regimes right. This is necessary in order to avoid undesirable incentives and perceived loopholes which might defeat the safety objectives of taxi and private hire regulation. As discussed in Chapter 3 the preferred view is that operators using limousines should in principle seek licences as private hire vehicles where they have less than nine seats.¹² Guidance in this area is, however, not binding. Where local licensing authorities refuse to license limousines *at all* operators may have little choice but to license their limousines with the Traffic Commissioners as small public service vehicles.

¹⁰ See for example the discussion related to provisional proposal 5 above.

¹¹ Public Passenger Vehicles Act 1981, s 79A(4) which provides that, for these purposes “small bus” takes the definition in s1(1)(b) of that Act, and is a vehicle which is not adapted to carry more than eight passengers. It is therefore a vehicle with fewer than nine passenger seats.

¹² VOSA, *Guidance for operators of stretch limousines* (March 2011), p 7.

- 14.24 The Secretary of State has powers to issue guidance to the Senior Traffic Commissioner.¹³ In turn the Senior Traffic Commissioner can issue guidance and general directions to Traffic Commissioners and deputies.¹⁴

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.

WHAT SERVICES SHOULD BE COVERED?

“For hire in the course of business of carrying passengers”

- 14.25 Under current law the element of “hire” is a common feature of both taxi and private hire legislation and this implies that the service involves commercial gain. It is usually obvious.

Where driving is an ancillary part of the service

- 14.26 Where the driver provides other valuable services, such as childminding services, the position becomes less clear in law. In these examples the emphasis of such services lies in looking after children, rather than in transporting passengers to a destination.
- 14.27 We take the view that it is undesirable for such activities to be potentially caught by private hire licensing requirements.¹⁵ Taxi and private hire regulation should aim to cover services that are principally for the purpose of transport and have a commercial element. Activities where transport is an ancillary part of the broader service provided should be excluded. The Department for Transport’s guidance on private hire licensing uses these questions to help define the proper scope of licensing.¹⁶

Volunteers

- 14.28 Volunteers would automatically be excluded by an “in the course of business” definition. Volunteers may be subject to registration under the Vetting and Barring Scheme under the auspices of the Independent Safeguarding Authority. Some

¹³ Public Passenger Vehicles Act 1981, section 4D.

¹⁴ Public Passenger Vehicles Act, section 4C.

¹⁵ See discussion of the complex position of childminders in J Rogers and S Ridley, *Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption*, (4 November 2009) at p 81.

¹⁶ Department for Transport, *Private Hire Vehicle Licensing, a note for guidance from the Department for Transport* (August 2011).

services may also be provided under a community transport permit.¹⁷ The organisations that work with such volunteers are often best placed to address the concerns specific to their way of working.

- 14.29 Requiring volunteers to hold private hire licences (including a driver, vehicle and operator licence) appears excessively onerous and unnecessary. The “in the course of business” concept is already used to define operators in England and Wales but not in the London legislation.¹⁸ Public service vehicle regulation also uses the concept of services provided for hire “in the course of a business of carrying passengers”.¹⁹ This qualifier could be helpful in defining the appropriate limits of regulation.

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.

Non-business hire

- 14.30 On the other hand, services may be provided for profit without necessarily being in the course of business. It may not be easy to decide what frequency of activity is enough to cross such a threshold. Although a business does not have to be full time it should be more than a hobby. The issue has arisen in the consumer sales context in respect of eBay sellers passing themselves off as consumers when in fact they are businesses.²⁰ In the context of taxi and private hire licensing this might be relevant to the owners of classic taxis who might occasionally hire them to the public; if done at an amateur level and only in order to maintain the vehicle, it may not amount to business use. Generally, such activities would not be caught by licensing requirements.

¹⁷ See Transport Act 1985, ss 19 to 21.

¹⁸ See Local Government (Miscellaneous Provisions) Act 1976, s 80(1). In Scotland see also the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009, SSI 2009, No 145, reg (2).

¹⁹ See Public Passenger Vehicles Act 1981, s 1(1)(b).

²⁰ Directorate-General for Internal Policies, Internal Market and Consumer Protection (IMCO), *Misleading Advertising on the internet* (July 2010) p 12. Guidance from HM customs can be helpful but this is usually very fact specific.

Carpooling

- 14.31 We note that carpooling schemes, where a person driving their car with free seats may offer others a ride, are increasingly popular.²¹ They can be a way of sharing resources in a responsible way and should be encouraged. The internet has opened up many possibilities in this regard.²² Interesting developments abroad include the development of platforms like Australia's "Avego Driver" which allows individuals to advertise free seats in their car in real time and effectively trade car spaces.²³ This is advertised as allowing commuters to save money.
- 14.32 Carpooling arrangements where passengers pay separate fares are expressly exempted from the public service licensing regime provided they are not "in the course of a business of carrying passengers".²⁴ This is not the case in respect of taxi and private hire legislation.
- 14.33 In carpooling schemes the vehicle is not for hire in a conventional sense but there is payment. The Department for Transport's guidance suggests that carpooling lacks the commercial element and is therefore not "for hire" within the private hire vehicle licensing regime. The guidance suggests using the rates set out by HM Revenue and Customs for taxation purposes in order to assess the profitability of the arrangements.²⁵ The issue has also arisen in respect of insurance cover, as most car insurance excludes using the vehicle for hire or reward.²⁶ Overall, the absence of profit appears to be the determinant.

Club membership and access to private hire services

- 14.34 The correct approach to private hire licensing as applied to clubs may raise discreet issues. Some private hire services may be offered only to members of a club or to particular sections of the public such as disabled passengers or women.²⁷ The concept is already familiar in respect of women-only private hire

²¹ We only refer to institutionalised sharing rather than private arrangements between passengers which can, of course, occur independently.

²² See for example <https://carshare.liftshare.com/default.asp>, <http://www.carpooling.co.uk/> and <http://www.nationalcarshare.co.uk/> (last visited 13 April 2012).

²³ This was considered during the course of the Victorian Taxi Inquiry; see Dr D Biggar, *Taxi Industry Roundtable* (2 September 2011).

²⁴ In order to come under this exemption the aggregate fares need to be less than the running costs of the vehicle for the journey and the arrangements must be made in advance, see section 1(4) of the Public Passenger Vehicles Act 1981.

²⁵ See the Department for Transport, *Private Hire Vehicle Licensing, A note for guidance from the Department for Transport* (August 2011) at para 57.

²⁶ See the Standing Joint Committee of the Association of British Insurers and Lloyds Motor Underwriters' Association's Undertaking, June 1998.

²⁷ The potential significance of clubs has been enhanced by social networking through the internet and other multimedia. Membership can be both extensive and fluid.

services: female passengers or drivers may feel safer by restricting public access in this way.²⁸ In principle “taxi-type” services could be similarly restricted: certain vehicles could, for example, only respond to hailing by women.²⁹

Question 9

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

(a) carpooling; and

(b) members clubs?

MAKING EXCLUSIONS FROM THE REGULATORY REGIME

- 14.35 The wide and purposive definitions we suggest in respect of the vehicles and services to be covered mean that, inevitably, some activities may be caught within the general regime which should not be. This is particularly true of private hire vehicles where pre-existing arrangements are in place.
- 14.36 A key rationale for excluding a category of drivers or vehicles from the regulatory framework is where there are alternative structures already in place to ensure safety and quality controls are met. For example, accredited tour guides have to comply with their own set of requirements: in some respects they are more onerous and in others less so, and this is tailored to what they actually need to do.

The role of the Secretary of State and Welsh Ministers

- 14.37 In the next chapter we will suggest that the Secretary of State and Welsh Ministers should have certain standard setting powers in respect of safety-related conditions for the purposes of taxi and private hire regulation. The Secretary of State and Welsh Ministers may make different provisions, or none, for different types of activity or descriptions of vehicles.
- 14.38 A similar approach has been taken in Ireland. Here primary legislation defines large and small public service vehicles and the centralised licensing authority has broad discretionary powers to make regulations governing different classes of vehicles.³⁰ In Australia, the state of Victoria has taken a similar approach.³¹ In

²⁸ See for example the Pink Ladies case discussed in Chapter 3 above.

²⁹ The way such services are promoted and provided may also raise equality considerations. We discuss the provisions and impact of the Equality Act 2010 in Chapter 9 above.

³⁰ Road Traffic Act 1961, ss 3 and 82.

³¹ Transport (Compliance and Miscellaneous) Act 1983 (Vic), s 86.

France some fringe services are regulated separately. These include taxi-bikes and driver guides.³²

- 14.39 As standards for private hire vehicles could only be set at a national level any exemptions from regulation would also have to be nationally set. On the other hand, because taxis would remain subject to additional local standards, the decision whether to make exclusions from licensing could also be a local decision.

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.

Primary legislation

- 14.40 We suggested above that the Secretary of State and Welsh Ministers should have the power to make exclusions from the scope of regulation for private hire only. The suggested approach departs from the current law in respect of private hire vehicles where certain categories of services are excluded in primary legislation. We consider the merits of this alternative approach within the reformed licensing regime below.

The exemption for weddings and funerals

- 14.41 Where a vehicle is hired in connection with a funeral or a wedding it is currently exempt from private hire vehicle licensing requirements.³³ This exemption can appear arbitrary. Safety-related regulation would appear no less justified in respect of these sectors compared with any other ceremony or event. Some stakeholders have also pointed out that what may be covered by “being used in connection with a wedding” is not clear.

³² Code des transports, article L3123-1 and code du tourisme A L231-4.

³³ Local Government (Miscellaneous Provisions) Act 1976, ss 75(1)(c) and (cc).

- 14.42 We note that wedding cars could be provided by companies that also provide transport for other occasions which would not give rise to an exemption, for example, stag parties, anniversaries or proms. It is not clear why weddings should be singled out. On the other hand the case for continuing to exclude funeral cars may be stronger because they would usually be provided as part of the broader funeral service and transport may be regarded as an ancillary function.
- 14.43 Whether wedding and funeral cars should be regulated or not may well be dependent on factual contingencies about the organisation of the industry, which may change over time. We therefore think it is sensible to include these particular situations within the broad scope of the regulatory regime, and then look to the Secretary of State and Welsh Ministers to exercise his or her power to not make substantive provision in relation to them if that is the right approach in accordance with our provisional proposal 10 above.

Provisional proposal 11

Weddings and funerals should no-longer be expressly excluded from private hire licensing through primary legislation.

Reinstating the contract exemption?

- 14.44 The so-called contract exemption excluded vehicles under a contract of hire for a period of not less than seven days. This was repealed in 2008. The purpose of the repeal was to enhance public safety through ending perceived loopholes; however, an independent review of the effects of the repeal found that only half of respondents felt the original aims had been achieved.³⁴
- 14.45 The rationale for the contract exemption was that where long-term contractual arrangements are in place the contracting parties can put in place sufficient safeguards in respect of vetting vehicles and drivers on their own terms. In these cases there is no need for the burdens of general licensing criteria to be met. Public bodies in particular, such as the NHS and education authorities, need to set up large contracts for transporting children and vulnerable individuals. Such organisations are best placed to set standards and monitor their attainment.

³⁴ Local Government (Miscellaneous Provisions) Act 1976, s 75(1)(b), repealed Road Safety Act, s 53 (for England and Wales except London); and s 54 (for London). The review is J Rogers and S Ridley, *Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption* (4 November 2009).

Unlike most pre-bookings, such contracts will typically be subject to negotiations and be in writing. Stakeholders have told us that public sector bodies have dedicated teams overseeing such contracts. There may therefore be some doubling-up of oversight and requirements.

- 14.46 The public safety argument in support of the repeal is less convincing because the most vulnerable passengers are in many cases transported by volunteer or contract drivers that would fall outside the taxi and private hire licensing regime anyway. Where services are remunerated, as with care workers for example, this is typically as part of a wider package, often with carers using their own vehicles.³⁵
- 14.47 The review of the impact of the repeal of the exemption also pointed out that public spirited individuals, some of whom had been offering long-term services based on lasting relationships, had been put off by the extra costs of licensing.
- 14.48 Where longer term contracts are in place the market failures related to asymmetry of information are less likely to exist. The customer is in a much stronger bargaining position; indeed the more sophisticated public sector organisations can organise tenders in order to select their providers and, depending on the size of the contract, may be required to do so under European law.³⁶ On the other hand we recognise the reasons for the original repeal, including concerns that it was being abused by unscrupulous providers. Unfair competition by providers of similar services, but which do not have the same licensing costs as the licensed trade, may also raise concerns.
- 14.49 On balance we suggest that the Secretary of State and Welsh Ministers' standard-setting powers would be the more appropriate means of addressing the contract exemption. The advantage of using such powers would be the flexibility in amending the terms of the exemption in response to developing needs and perceptions. For example the exemption might only apply where the customer is a public sector organisation or for a contract period longer than 7 days. Alternatively certain limits on the contract exemption which had been introduced

³⁵ See the evidence from the UK Home Care Association, in J Rogers and S Ridley, *Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption* (4 November 2009), at pp 42 to 44.

³⁶ Directive 2004/18/EC of the European Parliament and Council of 31st March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts. This Directive was implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2006 (SI 2006 No 5) and Utilities Contracts Regulations 2006 (SI 2006 No 6).

through case law might be made express, including for example the requirement for the contract to have an end date, or that it relate to a specified vehicle.³⁷

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?

Other specific exclusions

- 14.50 Whether any particular activity should be exempted is inevitably fact-based. Qualifications from certain accredited professional organisations might, for example, be accepted as satisfying the taxi and private hire licensing requirements. This might be true, for example, of the blue-badge tour guides. A list of such organisations could be set up. The Department for Transport's guidance on private hire licensing provides another source of potential exemptions from regulation, for example in respect of ambulance services.³⁸
- 14.51 Overall any list of specific exclusions would inevitably require some regular updating and be heterogeneous in nature. This suggests that the power to make exclusions is best left to the Secretary of State and Welsh Ministers rather than setting out specific exclusions in primary legislation.

Other limits on the reach of licensing

Streets and private land

- 14.52 The statutory framework does not take a consistent approach towards private land. Significant areas, such as hospitals, airports, railways, shopping centres and amusement parks, can fall within this category.
- 14.53 Some aspects of regulation are limited to (public) streets. This is true of plying for hire outside London for example. On the other hand, the concept of compellability is limited to streets in both London and the rest of England and Wales.³⁹ Other licensing requirements applicable to drivers and vehicles apply independently of the public/private land divide within a licensing area. Similarly fare regulation applies "within the prescribed distance" and therefore applies no differently on

³⁷ See for example *Crawley Borough Council v Ovenden* [1992] RTR 60.

³⁸ Ambulances are exempted from road tax and readily identifiable, as defined through Schedule 2 of the Vehicle Excise Registration Act 1994.

³⁹ However London airports are expressly covered, see the Airport Act 1986, s 65(5) which extends compellability to any road or place within an airport in the metropolitan police district for the purposes of the London Hackney Carriage Act 1831, s 35.

public or private land. The issue has arisen as a cross-border problem in respect of out-of-area taxis perceived to be picking up illegally.⁴⁰ This in turn has affected the ability to enforce licensing standards (which we have seen are limited in respect of out-of-area vehicles and drivers).⁴¹

- 14.54 Railways, which are on private land, have been dealt with specifically by statute so that licensing authorities' requirements can apply to the railway station precinct as if it were a street or rank.⁴² There is no equivalent provision in respect of airports.
- 14.55 Subject of course to the requirement to comply with additional conditions imposed by private land owners, it would appear desirable to remove restrictions on the applicability of regulation by reference to streets. The imperative of public safety applies no differently whether services to the public are being provided on public or private land. The general law would therefore apply as a default minimum standard which could be raised by private land owners. This adopts the current position in London.

Provisional proposal 13

Regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to "streets".

Airports

- 14.56 Unlike railways, taxi and private hire legislation does not deal with airports specifically. Airports are now mainstream transport hubs and market failures in airport settings are, if anything, more extreme than those at railway stations. Consumer transport options at airports for onward travel can be limited and some

⁴⁰ *Young v Scampion* [1989] RTR 95. See also our discussion in Chapter 8 above.

⁴¹ See Chapter 10.

⁴² See the Public Health Act 1925, s 76.

do not have rail links. Particularly vulnerable consumers, such as tourists, are a significant part of the customer base. This makes information deficits a particular problem. Airports also have limited space which in turn also reduces the scope for competition.⁴³

- 14.57 If passengers have a problem, the airport authority may be the first point of contact to make a complaint. We understand this was a key factor for Gatwick airport in moving to a single private hire contractor. This allows scope for the airport to prescribe detailed conditions on the level of service they expect.⁴⁴
- 14.58 The above factors suggest that the reasons for extending taxi and private hire regulation to railways might similarly apply in respect of airports. Airports are subject to complex and comprehensive regulation by the Civil Aviation Authority.⁴⁵ Byelaws under the Civil Aviation Act 1986 also cover the provision of taxi services.⁴⁶ Some airport owners enter into contracts with chosen taxi and private hire companies and restrict access for all other providers. Other vehicles may only park some distance from the airport terminal, in the car park, for example.⁴⁷
- 14.59 It is important to consider how regulation can encourage competition and consumer choice. Funding information desks through a levy on the trades can be controversial.⁴⁸ A requirement to monitor customer satisfaction according to agreed parameters could prove useful. Waiting times and facilities could be rated, and benchmarking could be used to ensure that if satisfaction fell below agreed levels regulators might intervene.⁴⁹

⁴³ See generally Margaret Arblaster (TransAv), "The 'Airport Problem'", Victorian Taxi Inquiry Roundtable (2 September 2011).

⁴⁴ Airports can award contracts by a process of competitive tender. See also the procedures required in New Zealand.

⁴⁵ See <http://www.caa.co.uk/default.aspx?catid=78&pagetype=90&pageid=68> (last visited 24 April 2012).

⁴⁶ Aviation Act 1986, ss 63 and 64.

⁴⁷ See http://www.heathrowairport.com/static/Heathrow_Airside_and_baggage/Downloads/PDF/HAL_Byelaws.pdf (last visited 23 April 2012).

⁴⁸ See, in respect of the Heathrow Taxi Information desk, http://www.caa.co.uk/docs/5/erg_ercp_heathrowtaxidecision.pdf (last visited 24 April 2012).

⁴⁹ See the monitoring conducted by the Australian Competition and Consumer Commission, which carries out annual surveys.

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?

THE TWO TIERS - DEFINING TAXIS

- 14.60 The defining feature of taxis under the current law is the ability to “ply for hire”.⁵⁰ Plying for hire means, at its most basic, exhibiting a vehicle as available for immediate hire by the public. The term “plying for hire” has been used in all major legislation concerning taxi regulation for hundreds of years. Its endurance and flexibility are anchored in practice and experience.
- 14.61 On the other hand our analysis of the current law highlighted three key issues relating to “plying for hire”. First, it lacks a statutory definition. The meaning of “plying for hire” can only be understood by reference to a long and not entirely consistent line of cases. Given that unlawful plying for hire is a criminal offence it is important that its meaning should be clear and accessible.
- 14.62 Secondly, the key criteria used in the case law, which refer to “exhibition” of the vehicle and to the immediacy of availability for hire, do not clearly distinguish taxis and private hire vehicles. The difference between exhibiting a vehicle and merely driving around or parking is not obvious. Advances in technology mean that the difference in timing between a hailing and a pre-booking could become negligible.
- 14.63 Thirdly, and connected with the above, the concept of plying for hire does not take into account the legitimate activities of licensed private hire vehicles, pre-dating, as it does, the licensing of private hire services.
- 14.64 We acknowledge that whether any vehicle is plying for hire is a question of fact and degree and the criteria developed in case law are useful in determining borderline cases. However we suggest that the central aspects of plying for hire should be put on a statutory footing in order to be more accessible and better reflect modern understandings of what taxis do.
- 14.65 The exact terms of a statutory definition would be a matter for the person drafting the legislation. But we suggest three key elements of a proposed statutory definition: use of the concepts of ranking and hailing, reference to a non-

⁵⁰ Nothing in this section casts any doubt on the continuing ability of taxis to undertake pre-booked work.

exhaustive list of factors relevant to determining plying in borderline cases, and accommodation of the legitimate activities of private hire vehicles. We consider each of these elements in more detail below.

Ranking and hailing

- 14.66 First, we suggest a statutory definition should use the concepts of ranking and hailing. This is important because it also reflects the reasons for regulating taxis differently to private hire vehicles.
- 14.67 In Chapter 7 we discussed how the rank and hail markets are markedly distinct from the pre-booked market. In the rank and hail markets competitive forces which typically protect consumers do not function properly. By contrast when pre-booking consumers can make more meaningful choices. No-matter how fast the pre-booking might be the consumer is selecting a provider. Providers can build goodwill which can generate more bookings. This initial choice is itself open to competitive market forces like price competition, prior experiences and advertising. The key distinction relevant in this respect is therefore the lack of competition between different taxi service providers.⁵¹ There is no meaningful consumer choice as between different taxis.⁵²
- 14.68 The market failures described above, which justify different regulation for taxis compared with private hire vehicles, are of central importance and should be clearly reflected in the definition which divides the two sides of the trades. We also note that the distinction between rank and hail work and pre-booked work is recognised by the licensing regimes of many other jurisdictions, including Ireland, France and New York.⁵³ It is also interesting to note that in some locations, taxis are excluded from pre-booked work.⁵⁴

⁵¹ The problem of asymmetry of information is present on both sides of the trades although in the pre-booked market consumers have better means of accessing reliable information.

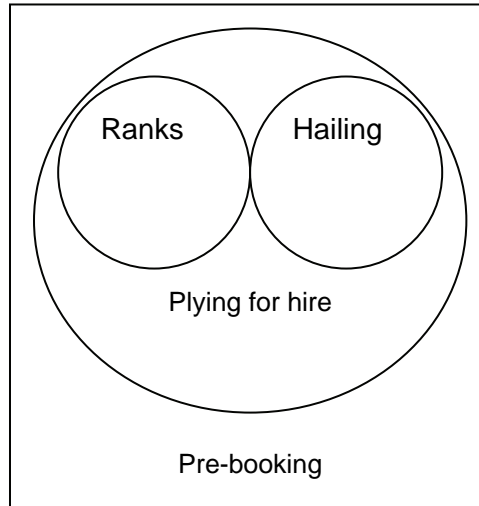
⁵² The category of "taxi" service provision stems from regulation, which creates something akin to a generic" brand. Consumers perceive taxis as a uniform service when in fact it is more like a franchise with individual providers having a limited common interest and the risk of free-riding on the general reputation is greater.

⁵³ See <http://taxiregulation.nationaltransport.ie/for-operators/spsv-vehicle-licensing/spsv-categories/> (last visited 13 March 2012); Code des transport articles L3121-1 and L3122-1; and R Darbera, "Taxicab regulation and the evolution of communication technology: the tale of three cities" (2005) p 3.

⁵⁴ This is the case in New South Wales (see Passenger Transport Act 1990 (NSW) s 3) and in New York: R Darbera, "Taxicab regulation and the evolution of communication technology: the tale of three cities" (2005) p 4.

A statutory list of factors suggesting plying

- 14.69 Second, the statutory definition needs to address behaviour not strictly linked to formal ranks or hailing but which is associated with accepting passengers without a pre-booking. This can be illustrated in the following diagram:



- 14.70 The area represented in the large circle above includes equivocal behaviour which amounts to plying for hire through actions like the exhibition of the vehicle and implied invitations to the public to engage the vehicle without a pre-booking (more directly linked to the driver's intentions and behaviour).
- 14.71 So-called “unofficial” or “illegal” ranks are sometimes formed by private hire vehicles waiting in the proximity of ranks and other popular pick-up spots, and can be perceived as unfairly competing for custom by the taxi trade.⁵⁵ The dividing line between mere parking in public view (“exhibition” in the case law) and forming an illegal rank is notoriously difficult. The intention of the driver has played a significant role in the case law.⁵⁶

⁵⁵ See for example *Ogwr Borough Council v Baker* [1989] COD 422; and *Rose v Welbeck Motors Ltd* [1962] 2 All ER 801.

⁵⁶ See discussion in Chapter 3 above.

14.72 We suggest that a statutory definition could refer to a non-exhaustive list of factors relevant to plying for hire. This could build on current case law, and because plying for hire remains a question of fact and degree, licensing officers' discretion would remain crucial. The same is true of judicial discretion in deciding relevant cases. However, listing the factors could have the advantage of greater clarity and accessibility.

14.73 As an example, Paterson's Licensing Acts gives a useful summary of the types of factual situations which may amount to plying for hire:

- (1) inviting and attracting customers for immediate hire whilst driving around;⁵⁷
- (2) stopping on a taxi rank to pick up customers;
- (3) stopping on a street in order to attract customers; and
- (4) picking up customers who approach the vehicle in the street.⁵⁸

Legitimate activities of licensed private hire vehicles

14.74 A statutory version of plying for hire would have the advantage of being able to take into account the legitimate activities of private hire vehicles. The scope of what is legitimate correlates directly with what is not plying for hire and is (to that extent) circular. The exact wording of the definition would be for the Parliamentary draftsman, but we see it as desirable that it clearly delineates the boundary between taxis and private hire in a way that clarifies the relationship.

⁵⁷ We note that this does not sit well alongside *Hunt v Morgan* [1949] 1 KB 233 (as discussed above at Chapter 3); however, this element corresponds most closely to public perception of what taxis do.

⁵⁸ S Mehigan, J Phillips and The Hon Mr Justice Saunders, *Paterson's Licensing Acts 2011* (119th ed 2011), p 1770.

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;⁵⁹

(b) a non-exhaustive list of factors indicating plying for hire; and

(c) appropriate accommodation of the legitimate activities of private hire vehicles.

Plying for hire and technology

- 14.75 We suggest that plying for hire should not be interpreted to extend to novel technological ways of engaging vehicles, through mobile phone and internet-assisted applications for example, which should remain means of pre-booking. We recognise that technology means taxis and private hire vehicles can be engaged with very quickly, sometimes almost immediately. However, the critical factor distinguishing plying for hire from pre-booking is the method of engagement, rather than the speed of engagement.

Provisional proposal 16

The concepts of hailing and ranking should not cover technological means of engaging taxi services.

Possible alternatives to “plying for hire”

- 14.76 We also consider further alternatives for describing taxi services, other than through references to plying for hire, ranking and hailing. In Scotland, for example, taxis are defined as

A hire car which is engaged, by arrangements made in a public place between the person to be conveyed in it (or a person acting on his behalf) and its driver for a journey beginning there and then.⁶⁰

⁵⁹ Both the concepts of “ranking” and “hailing” are further discussed below.

⁶⁰ Civic Government (Scotland) Act 1982 s 23(1).

- 14.77 Private hire cars (as they are known in Scotland) are any kind of vehicle which is, with a view to profit, available for hire by the public for personal conveyance, but is not a taxi.⁶¹
- 14.78 The taxi definition retains the idea of immediate availability for hire, but balances the difficulty of ascertaining this with a functional approach and a move away from looking at the intention of the driver, to an objective assessment of how the arrangement was made. However, references to “arrangements made in a public place” could give rise to difficulties particularly in respect of the internet.
- 14.79 Another alternative would be to adopt a taxi definition linked to the privilege of direct on-the-spot hiring which is not shared by private hire vehicles. Private hire vehicles could be defined by the fact that they require a third party in order to be booked. However there are significant drawbacks to this approach. In particular, what can count as on-the-spot hiring does not necessarily distinguish between competitive and non-competitive markets. Smartphone apps linked to a particular operator may be regarded by many as a direct, on-the-spot, booking; as may certain taxi pre-booking platforms and yet these booking methods are pre-eminently competitive, giving consumers ample choice.

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”?

Compellability

- 14.80 Another key feature of taxis, to be contrasted with private hire vehicles, is that under current law they are not permitted to refuse jobs once the consumer has engaged them appropriately, either at a rank or as a result of hailing. As well as a legal requirement, this is a deeply-rooted custom, and effective (in combination with other measures) at combating discrimination. We propose to retain compellability in substantially the same form as under current law.

Provisional proposal 18

The concept of compellability, which applies exclusively to taxis, should be retained.

⁶¹ Civic Government (Scotland) Act 1982 s23(2).

DEFINING PRIVATE HIRE SERVICES

- 14.81 Under current law the key distinction from taxis is achieved through restricting private hire vehicles in how they can be engaged by consumers.⁶² Bookings must be made in advance and through a licensed operator. We do not propose to change this. Our discussion of the impact of technology on taxi and private hire services in Chapter 12 illustrates that it is critical that the concept of pre-booking should be flexible and broad enough to cover innovative ways of engaging taxis and private hire vehicles. We discuss operator licensing in Chapter 16 below.

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.

LEISURE USE OF VEHICLES

- 14.82 There is a divergence under current law in respect of whether licensed taxis and private hire vehicles can be used for leisure purposes and be driven by unlicensed drivers. In England and Wales outside London leisure use is not allowed, case law having created the concept of “once a taxi, always a taxi”.⁶³ The position is different in London. Transport for London takes the view that London taxis and private hire vehicles can be driven by unlicensed drivers.⁶⁴
- 14.83 We note that both approaches have some draw-backs: restricting use to only licensed drivers is very onerous as it means the family car cannot, for example, double-up as a taxi or private hire vehicle.

⁶² Nothing in our provisional proposals seeks to limit the ability of taxis to continue to undertake pre-booked work.

⁶³ For taxis see *Hawkins v Edwards* [1901] 2 KB 169 and *Yates v Gates* [1970] 2 QB 27, and for private hire vehicles see *Benson v Boyce* [1997] RTR 226.

⁶⁴ For taxis, this is in reliance on Metropolitan Public Carriage Act 1869, s 28, which states that “no hackney carriage shall ply for hire ... unless under the charge of a driver having a licence ...” Transport for London interprets this as meaning that a taxi will not be plying for hire when it is driven by someone other than a licensed driver. For private hire vehicles reliance is placed on Private Hire Vehicles (London) Act 1998 section 12(1) which states that “no vehicle shall be used as a private hire vehicle ... Unless the driver holds ... a licence.” Transport for London takes the view that this enables a vehicle not to be used as a PHV when it is being used for social purposes.

- 14.84 On the other hand, it makes it difficult to enforce the legislation if the driver can argue the vehicle was being used privately at any time.⁶⁵
- 14.85 On balance we are persuaded that the deregulatory arguments in favour of allowing leisure use are strongest. Transport for London's approach has not led to any obvious problems. Any difficulties in enforcement can be overcome by reversing the burden of proof. The presumption could be that a taxi or private hire vehicle is being used professionally, but it would be open to a driver to show that in fact the vehicle was being used recreationally.

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.

STATUTORY GUIDANCE

- 14.86 Many of the concepts used in taxi and private hire licensing are highly fact-specific. They require the licensing authority to make an assessment of the circumstances of the particular case. There is limited scope for any clear-cut definitions. We suggest that a power to issue statutory guidance should be provided in legislation. It could then be up to the Secretary of State and Welsh Ministers whether to make guidance or not as they chose. However if such statutory guidance was in place, licensing authorities, and judges deciding cases, would be obliged to consider it in exercising their functions. This could help clarify the scope of the legislation and aid consistency in the application of the legislation across different licensing areas.
- 14.87 The Department for Transport's existing guidance on what can count as a private hire vehicle could, with appropriate adjustments, be used as a basis for such guidance, but with enhanced effect because licensing authorities would be obliged to take it into account.⁶⁶

⁶⁵ We note that a public service vehicle remains such until the use is permanently discontinued (see Public Passenger Vehicles Act 1981 s1(2)). That is probably less problematic than with a car as it is more likely to be a dedicated vehicle.

⁶⁶ See the current guidance by Department for Transport, *Private hire vehicle licensing: a note of guidance from the Department for Transport*, 3 August 2011.

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.

TERMINOLOGY

- 14.88 The current position in respect of labelling taxis and private hire vehicles is in some respects unsatisfactory. We suggest that legal language should abandon the hackney carriage definitively in favour of “taxi” as used in the Transport Acts.⁶⁷ On the other hand references to “private hire vehicles” in legislation provide a helpful technical term with the benefit of marking a clear distinction between such pre-booked services and taxis. We therefore suggest there are no compelling reasons to abandon the current division between taxi and private hire terminology.

Provisional proposal 22

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

- 14.89 Every-day usage of the words “taxi” and “private hire vehicle” raises different issues. Current law prohibits private hire operators from using the word “taxi” or “cab” in signage and advertising. “Taxi” signage is internationally recognised and firmly established, whereas culturally there is no uniform and easy way for people to correctly refer to private hire vehicles. Although “private hire vehicle” provides a useful technical term it is alien to most users’ vocabulary. Users of private hire services may refer to the company’s name if it is well-known but there is a gap in respect of correctly referring to the category of pre-booked vehicles. Many users will use the term minicab, or may simply (incorrectly) refer to such vehicles as taxis.
- 14.90 We suggest for consideration the idea that advertising for private hire services could include use of the word “taxi” or “cab” provided it was in combination with “pre-booked” or equivalent qualifying language to signal the limited way consumers could engage them. The London legislation for example specifically allows private hire vehicles to refer to themselves as “minicabs”,⁶⁸ reflecting popular usage. Our suggestion would have the added bonus of making clear how

⁶⁷ The Transport Acts 1962, 1980 and 1985 all use the term “taxi”.

⁶⁸ Private Hire Vehicles (London) Act 1998, s 31(3).

passengers could properly use private hire services. This in turn could reinforce, rather than damage, the distinction between taxis and private hire vehicles.

- 14.91 If private hire vehicles were allowed to be referred to as “pre-booked taxis” other practical provisions would be needed in order to avoid customer confusion. For example, the Secretary of State and Welsh Ministers might prohibit the use of roof signs and roof lights on private hire vehicles in order to avoid confusion. This could help avoid the impression that private hire vehicles could be hailed. The application of local standards could also assist in making the demarcation between taxis and private hire vehicles obvious, for example through imposing a specific colour scheme or signage on taxis.
- 14.92 We recognise that allowing private hire vehicles to use the term “taxi”, even if in combination with a qualifying prefix, would be a significant change, and more controversial than the less specific word “cab” for example. On the other hand many consumers use the term taxi in respect of both sides of the trade. For such consumers the key message is that private hire vehicles can only be pre-booked. The proper role of regulation should arguably be to prevent customer confusion.

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?

- 14.93 The next chapter sets out our provisional proposals in respect of the regulatory licensing framework.

CHAPTER 15

A REFORMED REGULATORY FRAMEWORK

INTRODUCTION

- 15.1 In this chapter we discuss the central features of our provisional proposals for a reformed licensing framework for taxis and private hire vehicles. In particular we consider the appropriate approach to setting national standards and the balance between national and local standard-setting.
- 15.2 We suggest that licences should continue to be issued by local licensing authorities and Transport for London. In respect of standard-setting, geographic options for splitting responsibilities might include:
- (1) uniform national standards;
 - (2) completely local standards (over 342 different standards);¹
 - (3) national standards but excluding London; or
 - (4) regional standards.
- 15.3 The current framework of regulation for both taxis and private hire vehicles follows the second option which allows for maximum local variation in standards. Our provisional proposals suggest national standard-setting for private hire vehicles (option one) and broadly local standards for taxis (option 2), but subject to minimum national safety standards. We also consider the possibility of combining licensing areas for various purposes (approximating option 4 above). As noted in the previous chapter the underlying possibility of excluding London is actively considered although we do not recommend it.

LOCAL LICENSING AND ENFORCEMENT

- 15.4 Licensing is currently carried out by local authorities and Transport for London and we do not propose any change to this allocation of responsibility as part of our reforms. The cost of setting up an independent body to oversee licensing would not be a viable option for the foreseeable future. Moreover, the nature of taxi and private hire services is such that it is ideally suited in many ways to local decision-making. Although we will recommend that some nationally set standards may be appropriate, the delivery of licensing functions and decisions would remain firmly at a local level.

NATIONAL SAFETY STANDARDS FOR TAXI AND PRIVATE HIRE SERVICES

- 15.5 We suggest that as a matter of principle people should be able to expect the same basic level of safety regardless of where they are. Moreover, in respect of the pre-booked market, vehicles and drivers can pick up and drop-off anywhere in England and Wales. Our provisional proposals would not change this. There is therefore already a common market (including both taxis and private hire vehicles) in respect of pre-booked journeys. This suggests that some common

¹ There could be as many standards as there are licensing authorities.

safety standards for taxis and private hire vehicles should apply across both England and Wales subject to proper debate and scrutiny at a national level. We discuss below how licensing authorities might decide that higher standards are appropriate in their area in respect of taxis, but we suggest there should at least be a lowest common denominator applicable to both categories of services.

- 15.6 The impact of this approach is highly deregulatory in respect of private hire vehicles, where the current multitude of variable standards would be replaced by national standards. The deregulatory effect is also visible in respect of taxis to the extent that additional local regulation would only be put in place pursuant to local decision-making.
- 15.7 The approach to safety standards also has an important impact on the one or two-tier debate. An advantage often claimed in respect of a one-tier system is improved safety for consumers as it removes the need to distinguish licensed taxis from licensed private hire vehicles. We suggest this is not a powerful argument, first and foremost because the biggest worry relates to consumers mistakenly taking completely unlicensed vehicles. Unfortunately regulation cannot exclude such bogus vehicles from circulation, a function which can only be undertaken by enforcement bodies.
- 15.8 On the other hand, we note that an important effect of our provisional proposals for a reformed two-tier system would be to reduce the gravity of the consequences for consumers mistaking a licensed private hire vehicle for a taxi. Our provisional proposals envisage common bottom-line safety requirements for both taxis and private hire vehicles. A consumer that mistakes a licensed private hire vehicle for a taxi would at least not have to worry about strict safety issues, such as Criminal Record Bureau checks for drivers and the roadworthiness of the vehicle.²
- 15.9 Finally, we note the importance of national standards in order to facilitate effective cross-border enforcement. Unless there are some common standards licensing officers could not enforce against vehicles and drivers licensed by other authorities because they would not know which standards might apply.

Provisional proposal 24

Taxi and private hire services should each be subject to national safety requirements.

Minimum national safety standards for taxis

- 15.10 We propose that taxi regulation would continue to work differently from private hire regulation due to consumers' ability to engage taxis at ranks and by hailing. The local nexus is strong. The ability of licensing authorities to control pricing and apply extra local standards to match local conditions is therefore important. Licensing authorities would retain the ability to impose requirements over and above the national standards to taxis being hailed or using ranks within their

² This does not mean that customer confusion is harmless. Passengers travelling in private hire vehicles without pre-booking could lead to any number of problems like excessive fares; a driver getting lost; and unfair competition suffered by the legitimate trades. These are all serious issues but not as critical as safety considerations.

licensing area. These could be linked to increased safety, but we also recognise that licensing authorities may wish to impose other quality standards, for example in order to promote civic pride or meet the needs of a specific community.³ Examples of these higher standards could include requirements in respect of wheelchair accessibility, colours and signage, CCTV, topographical knowledge tests or specific vehicle requirements such as the turning circle. We therefore suggest that some additional standards by licensing authorities should be allowed.

Provisional proposal 25

National safety standards, as applied to taxi services, should only be minimum standards.

Mandatory national safety standards for private hire services

- 15.11 We propose that the regulation of private hire services should be limited to addressing bottom-line safety concerns in accordance with standards set by the Secretary of State and Welsh Ministers. Licensing authorities would not have the power to impose additional requirements on private hire drivers, vehicles or operators. We refer to private hire services standards as *mandatory* because they act as both a minimum and maximum regulatory standard. Of course private hire companies would be free to offer services above the levels required by regulation, but this would be a choice in response to competitive forces rather than to artificially imposed regulatory standards.⁴

Provisional proposal 26

National safety standards, as applied to private hire services, should be mandatory standards.

- 15.12 A significant consequence of our provisional proposals is that topographical knowledge tests could no-longer be required for private hire drivers. Whereas a drivers' topographical knowledge is a key aspect of the *quality* of service it is not obviously a *safety* feature.
- 15.13 As also explained in Chapter 7 discussing the regulatory principles guiding this review, the reasons for treating private hire vehicles differently are two-fold. First, for private hire vehicles, all journeys are pre-booked and therefore in principle can be planned in advance. As journeys are not subject to metered fares (or at least are not required to be metered), the economic incentive to take the shortest route lies with the provider. Second, having a driver who knows where they are going is a quintessential example of providing a good quality service but does not

³ An example of a standard which could arguably relate to both safety and civic pride is the imposition of a particular kind of signage.

⁴ This follows from our discussion of the justifications for regulation tied to market failures. Although asymmetry of information and welfare considerations mean that certain basic safety features should be the subject of regulation, the other features of the competitive market in private hire services obviate the need for additional local regulation. This model assumes that private hire operators adopt higher standards but in response to competitive forces and consumer preferences rather than regulation.

affect the safety of the passenger. Given prevailing competitive conditions in the private hire market, if an operator had drivers who routinely got lost such an operator would not only lose money (through inefficient routes) but also lose customers. Unlike taxis, consumers can choose to avoid particular providers, so that private hire vehicles rely on repeat custom. These factors point against the necessity of requiring a topographical knowledge test for private hire vehicles.

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.

- 15.14 On the other hand, we also recognise that particular areas of private hire standard-setting may be regarded as having a significant local dimension. For example vehicle signage, which relates directly to the interface with taxis and the recognisability of licensed vehicles (with important repercussions on passenger safety), may warrant the continued application of local standards.
- 15.15 In respect of safety considerations, some may regard signage on private hire vehicles as a critical way of promoting consumer awareness of legitimate providers. Others may regard signage as confusing to the public and encouraging passengers to board cars without a pre-booking. Some differences of opinion may stem from genuine differences in the problems faced in different localities. For example, where illegal touting by unlicensed vehicles is the main concern signage (distinguishing licensed vehicles from completely unlicensed ones) may be a good thing; however, in localities that do not have such a problem but rather experience difficulties with licensed private hire vehicles illegally plying for hire (picking up passengers without pre-booking), signage may be less relevant. This suggests that local decision-making in respect of signage may be preferable.

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?

The relationship between national safety standards for taxi and private hire services

- 15.16 We suggest that both taxi and private hire services should be subject to national standard-setting. The question arises as to the proper relationship between national taxi safety standards on the one hand, and national private hire safety standards on the other.
- 15.17 As private hire standards would apply without geographical variation, we suggest that taxi standards would have to be at least as high as, if not higher, than private hire safety standards. This is because taxis and private hire vehicles compete in respect of the pre-booked market. If a licensing authority could adopt taxi standards that were lower than the proposed mandatory private hire standards

drivers would have an incentive to license in that area even if they had no intention of working there as taxis.⁵ This would undermine the objectives of private hire vehicle licensing and distort the licensing regime.

- 15.18 We note that a common set of bottom-line safety standards does not translate to a common set of specifications. Different types of vehicle will, for example, require different criteria to be met, and indeed, passengers taking certain modes of transport may implicitly undertake a greater degree of acceptable risk, as in respect of motorbikes, for example. We would expect the Secretary of State and Welsh Ministers to issue a range of requirements in respect of different categories of services and vehicles.
- 15.19 Introducing a single set of bottom-line safety standards for taxis and private hire vehicles would be the easiest way to avoid the risk of a mismatch in taxi and private hire standards. However, we realise that the different ways of working of taxis and private hire vehicles may make it impractical to use the same standards across both.

Question 29

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

Driver safety

- 15.20 Safety goes beyond passenger safety to include the safety of drivers.⁶ Attacks on drivers are a significant concern. Many such attacks have been racially motivated.⁷ Indeed the recent murder of a taxi driver in Bedford led to a parliamentary debate on the subject.⁸
- 15.21 The London Conditions of Fitness require a partition between the driver and passenger. This could be regarded as primarily for the protection of the driver. A panic button is another example of a potential requirement enhancing driver safety. Oxford City Council's plans in late 2011 to require taxis to have CCTV, including recording all audio conversation raised great controversy and media interest.⁹ The council hoped such measures might provide better evidence of attacks on drivers and help resolve allegations of driver misconduct more fairly.

⁵ See *R (on the application of Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin); [2009] RTR 34; and the discussion in Chapter 10 above.

⁶ On the other hand there are considerable differences between passenger safety and driver safety. In particular, the reasons that prevent passengers from adequately protecting themselves do not apply in the same way to drivers. Drivers are also in a comparatively less vulnerable position compared to the passenger in light of their control of the vehicle.

⁷ See, for example, <http://www.gazettelive.co.uk/news/teesside-news/2012/01/12/billingham-man-locked-up-for-race-attack-on-taxi-driver-84229-30104510/> (last visited 23 April 2012) and <http://www.hampshire.police.uk/Internet/news/releases/taxiattack.htm> (last visited 23 April 2012).

⁸ *Hansard*, HC, 29 February 2012, vol 541, col 399.

⁹ See http://www.oxfordmail.co.uk/news/9361537.Taxi_CCTV_breaks__rights_to_privacy/ (last visited 23 April 2012).

The policy was due to come into force on 1 April 2012 but at the time of writing has been placed on hold.¹⁰ We also note that Southampton City Council is conducting a review of its policy to install image and sound recording devices in taxis, which was challenged in court.¹¹ We also note that this may be an area where different safety standards could apply to taxis compared to private hire vehicles.¹²

Question 30

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

THE APPROPRIATE SCOPE OF NATIONAL STANDARDS

- 15.22 We take the view that each of the three pillars of licensing under the current regime (drivers, vehicles, and operators) has a role in promoting safety. Under our provisional proposals the scope of standard setting powers granted to the Secretary of State and Welsh Ministers would only extend to conditions relating to the safety of taxi and private hire services.

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.

How to determine national standards

- 15.23 Very important substantive issues exist regarding what safety standards should be covered and their level.¹³ In respect of vehicles for example national standards might cover a broad range of conditions such as the permissible use of roof-signs, signage, taxi-meters, CCTV cameras, tracking systems, driver shields or tinted windows. Professional opinion and evidence can be divided as to how safety can best be promoted. Technological developments and changes in vehicles, including the specific considerations which may apply to novelty vehicles, present further challenges in ensuring regulation is workable.
- 15.24 We consider the standard setting powers held by the Secretary of State and Welsh Ministers; as well as licensing authorities (in respect of local standard setting for taxis) to be sufficiently flexible to deal with these issues appropriately.
- 15.25 The debate on proper standards is critical. We will discuss some of the key areas of coverage as part of our discussion of the content of driver, vehicle and operator licensing in the next chapter for example. However, we do not consider

¹⁰ See http://www.oxfordmail.co.uk/news/9625640.Brakes_put_on_city_taxi_CCTV_scheme/?ref=nt (last visited 23 April 2012).

¹¹ See *Southampton City Council v Kevin May*, unreported, 17 November 2011 and http://www.dailyecho.co.uk/news/9627511.Taxi_spy_cams_under_review/ (last visited 23 April 2012).

¹² For example pre-booked journeys might present fewer risks than hail and rank journeys because traceability leads to a better chance of accountability.

¹³ We discuss many of the problem areas in the body of our Consultation Paper.

the Law Commission as the appropriate forum for making such critical judgments. Our proposals relate to the parameters and procedures that may be used to appropriately set standards.

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.

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?

ADDITIONAL LOCAL STANDARDS FOR TAXIS

- 15.26 Local conditions would continue to apply but exclusively to taxis.¹⁴ Matters relating to quality and fares are key examples where local decision-making for taxis would be valuable. The London Conditions of Fitness, including the turning circle, are an eminent example.
- 15.27 There are divided views upon the extent to which imposing licensing conditions can be justified. As further discussed below such conditions may be regarded as overly restrictive. However, our provisional view is that licensing authorities should retain the discretion to impose such requirements, provided they do not fall below national standards, and subject to the constraints of general public law principles and judicial review.

Provisional proposal 34

Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards.

- 15.28 In Chapter 7 we noted that the justifications for regulating quality features which are purely aesthetic are weaker than those relating to strict safety requirements and come at a potentially high cost to consumers. Local conditions which specify particular roof-sign dimensions or colours have proved controversial and caused anger in the trades for example.¹⁵ A reformed system could limit licensing authorities' powers.
- 15.29 In Scotland, the Secretary of State and the Scottish Ministers have the power to make some conditions mandatory and, conversely, to prohibit conditions that are deemed undesirable. These powers can apply differently depending on the area

¹⁴ As discussed above, standard-setting would not, however, be a purely local matter. Our provisional proposals above fore example introduce *minimum* safety standards so that local variation could only be above an agreed minimum level.

¹⁵ http://www.thecabbie.co.uk/index.php?Page=NewsItem&News_ID=151 (last visited 23 April 2012) and <http://www.taxi-driver.co.uk/phpBB2/viewtopic.php?f=2&t=17538> (last visited 23 April 2012).

or type of taxi or private hire vehicle.¹⁶ There is also a specific power to set types, sizes and designs of vehicles, which can also be used in a way which differentiates between different localities.¹⁷ This could potentially provide a useful model for limiting the scope of licensing authorities' discretion to set local standards.

Question 35

Should there be statutory limits to licensing authorities' ability to set local taxi standards?

The relationship between national and local taxi standards

- 15.30 Nationally set standards relating to safety would be the only form of regulation affecting private hire services. Taxis would instead be potentially subject to two distinct sets of standards: one national and the other local. The national standards may or may not be the same as those applicable to private hire vehicles.¹⁸ Licensing authorities would not be obliged to introduce local conditions but would have the option of introducing such requirements depending on their local needs.¹⁹ Local standards could not, however, be any lower than the nationally set minimum standards relating to safety.

Licence conditions of general application and individual conditions

- 15.31 Under current law licensing authorities can set conditions that apply to all licensees generally in their licensing area, as well as tailoring conditions specific to particular licensees. Currently this applies both to taxi and private hire services. We regard this flexibility as useful and this could be retained in respect of taxis as it is compatible with local licensing. However, the presumption should be that general conditions should be used, and individual conditions should be exceptional. The move to national standards for private hire vehicles would, by contrast, appear to be inconsistent with the ability to impose individual conditions. If a private hire vehicle or driver failed to satisfy the national requirements the licensing authority would have no option but to refuse the licence (rather than to grant the licence but subject to an individual condition). The loss in flexibility might, however, be outweighed by the advantages of having more consistency and transparency.

Question 36

Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators?

¹⁶ Civic Government (Scotland) Act 1982, s 20(1).

¹⁷ Civic Government (Scotland) Act 1982, s 20(2).

¹⁸ See Question 29 above.

¹⁹ See also discussion in Chapter 13 regarding the potential for an opt-in one tier system.

LICENSING AUTHORITIES WORKING TOGETHER

Administration and enforcement of taxi and private hire services

- 15.32 We have seen that some authorities, for example district councils within a county council area, have joined forces to develop an integrated regulatory services function with a single management structure.²⁰ This can reduce administrative and overhead costs, and provide some consistency of standards across the whole area. One of the benefits may be a joined up and targeted approach to enforcement, with costs reduced through economies of scale.
- 15.33 Such arrangements can be made informally. There are also statutory powers under which local authorities can arrange for certain functions to be discharged by other authorities.²¹
- 15.34 We see advantages in such arrangements in terms of pooling resources, costs and expertise across a wider area. Amalgamation on a county-wide basis may also make it simpler to effect proposals such as new taxi ranks which require the agreement of the local highway authority, as there would be closer alignment with the licensing authorities. We would like to explore ways of facilitating such arrangements where they make sense locally.

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?

Cooperation in setting local taxi standards

- 15.35 Where licensing authorities may have combined resources in administering and enforcing taxi and private hire functions they may also wish to combine their remaining licensing activities relating to taxi standard-setting.²² The rapidly changing shape of local conurbations, for example with the creation of new towns and urban extensions in coming years, makes flexibility in the licensing framework even more important.²³
- 15.36 There are precedents for amalgamating local authorities in respect of particular functions and boundaries do not necessarily have to be the same for all functions of local authorities. The Local Transport Act 2008 introduced powers for the creation of new Integrated Transport Authorities and to change the constitutional arrangements in existing ones. Under such arrangements functions of the Secretary of State, or of the local authority, can be delegated to the Integrated Transport Authority. A key benefit of this system is that it provides an integrated

²⁰ For example, Worcestershire Regulatory Services, which is an integrated regulatory services unit covering the seven councils which make up the county area and dealing with environmental health, licensing and trading standards. See also our discussion in Chapter 2 above.

²¹ See Local Government Act 1972, s 101.

²² As we noted there would be no outstanding local standard setting functions in respect of private hire vehicles.

²³ For example Cranbrook, Monkerton and Newtown near Exeter. See <http://www.exeterandeastdevon.gov.uk/Housing/> (last visited 23 April 2012).

approach to public transport across a larger conurbation. This facilitates a more coherent provision of public transport across a larger area than would be possible by individual councils. A new broader power is conferred on Integrated Transport Authorities by the Localism Act 2011.²⁴ The idea of combining local authorities for particular purposes was also a feature of the Local Democracy, Economic Development and Construction Act 2009.

Provisional proposal 38

Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting.

ZONING

- 15.37 In our review of the regulatory framework we considered the zoning arrangements in some local authority areas, and the powers which authorities have to amalgamate zones.²⁵ Whilst zones can be removed there is no power for an authority to reinstate zones once amalgamated or to create new zones.
- 15.38 The Department for Transport recommends the abolition of zones.²⁶ This is chiefly to bring benefits to passengers through greater availability of vehicles and more consumer choice. It also means that taxi drivers can ply for hire in a wider area, which may enable a more efficient way of operating, and could lead to administrative savings for local authorities. On the other hand where licensing authorities have proposed to remove existing zones drivers have raised concerns about potentially higher fares through the proposed introduction of blanket tariffs across a wider area.²⁷
- 15.39 We propose the introduction of more flexible powers enabling licensing authorities to respond more easily to local needs. Such powers could allow authorities to create licensing zones, or remove them, within their area. For example, in large metropolitan areas it may be advantageous to be able to follow the London model and create central and outer zones. Such an approach could assist in tackling concerns over the “honeypot” effect of city centres which may leave suburban areas with insufficient provision.

Provisional proposal 39

Licensing authorities should have the option to create, or remove, taxi zones within their area.

²⁴ See Localism Act 2011, s11.

²⁵ See Chapter 2.

²⁶ See Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (March 2010), paras 89 – 91.

²⁷ Proposals to amalgamate five zones in Shropshire were abandoned following protests by taxi drivers. See <http://www.shropshirestar.com/news/2011/06/17/shropshire-council-backs-down-over-taxi-changes/> (last visited 23 April 2012).

PEAK TIME LICENCES

- 15.40 In this review we considered different ways of addressing the problem of ensuring adequate provision of taxi services. Quantity restrictions, discussed in detail in Chapter 9, are a blunt instrument. Stakeholders have highlighted that this does not ensure vehicles are present where they are most needed.
- 15.41 The possibility of introducing peak-time taxi licences, which could only be used at specific times of day as determined by the local licensing authority, provide an attractive targeted option for ensuring provision at times of perceived unsatisfied demand. It can be regarded as a temporal version of geographical zoning.
- 15.42 Peak time licences are used in Victoria, Australia, where “green top” taxis can only work between 3pm and 7am, and 24 hours a day during specified events.²⁸ Such vehicles are clearly recognisable due to their green tops, and they considerably boost late night and early morning provision. This could have useful applications in England and Wales.
- 15.43 We note that New York is considering the more radical option of allowing private hire vehicles to act in a more taxi-like manner to address a lack of provision in suburban areas. The New York Taxi Licensing Commission is currently consulting on allowing private hire vehicles to respond to hailing but only outside Manhattan.²⁹

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?

CROSS-BORDER HIRING

- 15.44 Our proposed changes to the regulatory framework address some of the underlying problems related to cross-border hire.

Enforcement

- 15.45 Under current law, licensing officers have no enforcement powers in respect of vehicles licensed outside their licensing area. In Chapter 19 we set out our provisional proposals to remove this restriction on licensing officers’ powers. Licensing officers would, for example, be able to enforce against out-of-area taxis that may be illegally plying for hire within their licensing district. In addition, the move to a common set of safety standards means that licensing officers would have a shared set of standards they may apply to any vehicle, driver or operator.

Taxis

- 15.46 Under current law taxis may only ply for hire within their licensed area but may undertake pre-booked journeys anywhere in the country. We do not propose to change this. The scope for local variation in taxi standards, and in particular the

²⁸ See <http://www.transport.vic.gov.au/taxis/projects-and-programs/peak-service-taxis> (last visited 23 April 2012).

²⁹ See <http://www.nyc.gov/html/tlc/html/home/home.shtml> (last visited 23 April 2012).

different fares and accessibility standards that may apply, mean that they should be restricted to working on ranks and to hailing passengers located in their licensing area. On the other hand taxis would continue to be able to do pre-booked work “out of borough” as they can under current law.

Private hire services

- 15.47 Under the current law operators are restricted to inviting and accepting bookings within their licensed area, and using vehicles and drivers licensed within the same licensing area. This is notwithstanding that private hire vehicles are free to pick up and drop off anywhere in the country. Taxi drivers undertaking pre-booked journeys have no similar constraints whether taking the bookings directly or where a third party may invite or accept bookings on their behalf and thus act like an operator.
- 15.48 The move to a set of mandatory national standards would mean that although licences would be issued locally, by different licensing authorities, their requirements would be the same. Cross-border restrictions, and the so-called “triple licensing” requirement whereby the operator, driver and vehicle must all be licensed by the same licensing authority, would therefore fall away in respect of private hire services. This would further erode the significance of cross-border issues in respect of private hire vehicles.

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.

Rejection of a “return to area” requirement

- 15.49 We do not propose to adopt specific measures aimed to restrict cross-border activities of licensed private hire vehicles or taxis. We have considered the possible requirement that, upon dropping off passengers out of their licensing area, drivers should come under a duty to return to their licensing area within a reasonable time.
- 15.50 We regard the key problem with this option to be that it brings no consumer benefit whatsoever. On the contrary, introducing a return-to-area requirement would only lead to increased prices and reduced flexibility of provision. We consider that a return to area requirement is not justified as it is both inefficient and environmentally damaging. Both taxis and private hire vehicles could, after dropping off a passenger, legitimately pick up a different fare outside of their area pursuant to a pre-booking. Increasingly intelligent dispatch systems make the likelihood of matching up passengers with proximate vehicles a reality. If drivers were forced to drive back to their licensing area empty this would not only be expensive but also environmentally damaging as adding to dead mileage. Such a requirement would also be very difficult to enforce as a matter of evidence.³⁰

³⁰ For example, it would be almost impossible to prove that a driver was failing to return to his or her licensing area, rather than simply taking a detour in order to, say, run an errand.

- 15.51 The danger that an out-of-area taxi, or a private hire vehicle, may illegally ply for hire is a problem which requires specific action through targeted enforcement. If a driver wants to illegally ply for hire they are unlikely to be deterred through such an equivocal additional requirement. Scarce enforcement resources are unlikely to be most effectively deployed in enforcing such requirements.
- 15.52 As also noted above the introduction of common safety requirements reduces the seriousness of the cross-border problem. If a licensed vehicle illegally plies for hire it may be competing unfairly and breaching various regulatory requirements but it does not present a safety risk. Minimum safety requirements that apply to both taxis and private hire vehicles mean that in certain key respects the vehicle is safe. The more serious safety problems relate to completely unlicensed vehicles. The cross-border issue in fact diverts potential resources from addressing this much more dangerous phenomenon.

Provisional proposal 42

We do not propose to introduce a “return to area” requirement in respect of out-of-area drop offs.

FARE REGULATION

- 15.53 Price controls are a widely utilised solution to address market failures in the taxi rank and hail markets. Most licensing authorities regulate maximum fares determined in accordance with formulas to reflect the cost of running a taxi further to a consultation process.³¹
- 15.54 On the other hand, the private hire market does not require price intervention in light of normal competitive forces operating more effectively.³² This does not mean, however, that private hire fares are completely unregulated. General consumer protections still apply. For example where private hire vehicles have a meter (as can happen outside of London) it must comply with the Measuring Instruments Directive and trading standards’ controls to ensure consumers are not cheated.³³
- 15.55 We note that Sweden does not have fare regulation but instead imposes strict price information requirements that enable consumers to make an informed choice. Norway also has fare regulation only in some cities.³⁴ The freedom to set fares in accordance with local needs would, we suggest, be retained. On the other hand, nothing in our proposals would require a licensing authority to regulate fares and the choice would remain to have unregulated fares.

³¹ See Chapter 2 above.

³² See Chapter 7 above.

³³ OECD, *Taxi services: competition and regulation*, (2007), p 9.

³⁴ See JT Bekken, *Taxi regulation in Europe – Final Report* (2003).

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.

Pre-booked taxi fares

- 15.56 Under current law, taxi fares for pre-booked journeys ending inside the licensing area are capped at what would have been the metered fare. There are reported cases of undercover licensing officers, posing as consumers, catching taxi drivers acting on a pre-booked basis charging more than the metered fare.³⁵ Out-of-area journeys can, however, be subject to a higher fare provided this is agreed.³⁶
- 15.57 Taxis compete directly with private hire vehicles in respect of the pre-booked market. Private hire vehicles therefore provide effective competitive pressure on taxis in respect of such journeys. The rationale for fare regulation of pre-booked taxi journeys is therefore less strong.
- 15.58 There are however particular advantages to regulating pre-booked taxi fares. Taxis can be booked without operators and under current law they are not required to keep records of pre-booked journeys (unlike private hire vehicles).³⁷ There may be little evidence to distinguish a pre-booked journey (and which may be unregulated) from one originating through hailing or a rank (which would continue to be regulated). Moreover, if a taxi demanded more than the metered fare it would be hard for the consumer to track down that taxi, whereas if an operator is involved it is easier for the consumer to complain.³⁸
- 15.59 On the other hand possible record-keeping requirements for pre-booked taxi journeys (as suggested in Question 53 below); and a presumption that the metered fare applies³⁹ could partly allay concerns regarding possible abuse and confusion were taxis allowed to deviate from metered fares.

Question 44

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

- 15.60 In the next chapter we discuss reforms relating to the three pillars of the licensing framework: drivers, vehicles and operators.

³⁵ See for example *Stratford-on-Avon District Council v Dyde* [2009].

³⁶ See the Local government (Miscellaneous Provisions) Act 1976, s 66 and 67.

³⁷ But see Question 53 below where we ask whether record-keeping obligations may be extended in respect of pre-booked taxi journeys.

³⁸ If a council chooses to regulate fares, as most do, the licensing conditions may require all taxi journeys to always have a running meter. The taxi driver can of course agree less in advance but at least the consumer could look at the meter. If the licensing conditions did not have such a requirement and a consumer felt they had been overcharged, then they could query the amount they paid for the journey with the licensing authority and the authority could follow that up.

³⁹ Unless the taxi driver could provide suitable evidence that the passenger agreed a higher fare.

CHAPTER 16

REFORM OF DRIVER, VEHICLE AND OPERATOR LICENSING

INTRODUCTION

- 16.1 In this chapter we consider some of the central issues concerning driver, vehicle and operator licensing. We provisionally recommend the continuance of licensing for all three categories. However we recognise that operator licensing raises some different issues as operators do not come into direct contact with the public and we therefore expressly consider the justifications for continued licensing. We note at the outset that this chapter does not propose to cover all possible obligations and conduct-related offences relating to taxi and private hire services. Rather, we set out the main, but non-exhaustive, sets of obligations that might apply within a reformed system.

DRIVERS

- 16.2 Under the current law, licences can only be granted to drivers:
- (1) who are “fit and proper” persons;¹
 - (2) have held a driver’s licence under the Road Traffic Act 1972 for at least one year (three years for private hire vehicle drivers in London);² and
 - (3) subject to such conditions as the licensing authority may consider reasonably necessary (for private hire),³ or the requirements set out in byelaws regulating, among other things, the conduct of drivers and the hours within which they may exercise their calling (for taxis).⁴ These can cover aspects such as medical fitness for example.
- 16.3 All three elements can clearly promote passenger safety but can also go considerably further. We consider some of the key areas below.

¹ Local Government (Miscellaneous Provisions) Act 1976, ss 59(1)(a) and 51(1)(a); London Cab Order 1934, para 25; Private Hire Vehicles (London) Act 1998, s 13(2)(a).

² Local Government (Miscellaneous Provisions) Act 1976, ss 59(b) and 51(1)(b); Private Hire Vehicles (London) Act 1998, s 13(2)(a); Transport for London, *Abstract of Laws: general guidance on hackney carriage law for London’s licensed taxi drivers* (June 2011), p 5.

³ Local Government (Miscellaneous Provisions) Act 1976, s 51(2) and Private Hire Vehicles (London) Act 1998, s 13(5)(a).

⁴ *Wathan v Neath and Port Talbot County Borough Council* [2002] EWHC 1634 (Admin). The Department for Transport takes the view that conditions can be applied to taxi drivers’ licences: Department for Transport, *Guidance note and model byelaws* (July 2005).

DRIVER REQUIREMENTS

Fit and proper person

- 16.4 Whether a driver is a fit and proper person is a question of fact not defined in statute. We noted that under current law, criminal records⁵ and medical conditions lie at the heart of what it means to be a “fit and proper” driver. National standards in respect of such matters could assist in ensuring consistency and improved passenger safety.

Medical fitness

- 16.5 The more intense driving activity, and carrying a paying passenger who has no means of meaningfully assessing the health of the driver, means that extra medical requirements might justifiably apply to drivers.⁶

Safety skills training

- 16.6 Driver competence can cover a broad range of skills. National standards would however be solely concerned with those skills having a direct impact on safety.⁷ For example, elements such as safely picking up and setting down passengers, and knowledge of the differences between what taxis and private hire vehicles are allowed to do, would be likely to feature in such a test. We expect such a test would be of considerably narrower remit than some current qualifications.
- 16.7 A particularly important aspect of driver skills training relates to disability awareness. This has direct safety implications, for example, where drivers do not know how to properly secure a wheelchair passenger.⁸ This encompasses practical skills, such as how to properly secure a wheelchair, as well as awareness of the wide range of disabilities passengers may have and the relevant Equality Act 2010 obligations. We will discuss the equality aspect of national training standards in more detail in Chapter 18 discussing provisional proposals related disabilities.

Insurance cover

- 16.8 The requirement for proper insurance cover for drivers would also appear to be a key safety requirement. We understand that it is often difficult for licensing authorities to monitor whether insurance payments have been kept up. Where insurance premiums lapse, insurance cover ceases.

⁵ See the Police Act 1997 (Criminal Records) (Amendment) Regulations 2012 which give licensing authorities the power, but not the obligation, to seek enhanced CRB checks on drivers of taxis and private hire vehicles.

⁶ Local Government (Miscellaneous Provisions) Act 1976, s 57(2) allows licensing authorities to require drivers to satisfy requirements of medical fitness for both taxi and private hire drivers. For example, we understand that most licensing authorities require DVLA Group 2 medical standards (required for public service vehicle drivers) of their taxi and private hire drivers.

⁷ Existing qualifications such as the Driving Standards Agency taxi driver test and Vocationally Related Qualifications and National Vocational qualifications are pertinent.

⁸ See discussion in Chapter 11. A driver may also hurt themselves if doing it inexpertly.

- 16.9 The Secretary of State and Welsh Ministers' powers to set conditions in respect of bottom-line safety requirements, considered in the previous chapter, could be wide enough to cover all the above issues to the extent that they are clearly linked to the objective of promoting safety in taxi and private hire services. We recognise however that there may be benefits in including certain requirements in primary legislation.

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?

VEHICLES

- 16.10 Under current law, general vehicle requirements for both taxis and private hire vehicles leave much discretion for setting local standards, which can relate to design, appearance and any distinguishing marks.
- 16.11 In respect of taxis the London Conditions of Fitness are the most prominent example of locally-set conditions and they have also been adopted by other authorities outside of London.
- 16.12 Private hire vehicles must satisfy licensing authorities in respect of the following features:⁹
- (1) suitability of type, size and design for use as a private hire vehicle;
 - (2) sufficient difference to taxis in order to avoid confusion;
 - (3) suitable mechanical condition;
 - (4) safety;
 - (5) comfort; and
 - (6) proper insurance cover.
- 16.13 We have suggested that the Secretary of State and Welsh Ministers would have the power to set national safety-related standards subject to a statutory consultation requirement.¹⁰

VEHICLE OWNER REQUIREMENTS

- 16.14 In England and Wales outside London, the owner of a licensed vehicle is not subject to any statutory suitability requirements. There is no express power to

⁹ See the Local Government (Miscellaneous Provisions) Act 1976, s 48(1); in London see the Private Hire Vehicles (London) Act 1998, s 7.

¹⁰ See provisional proposals 31, 32 and question 33.

refuse a vehicle owner a licence for reasons related to the applicant, as opposed to the vehicle. In respect of taxis, licensing authorities can, however, issue byelaws “regulating the conduct of the proprietors ... “. ¹¹ They also have the power to suspend or revoke a taxi or private hire licence for any reasonable cause; ¹² this may be broad enough to include reasons linked to the holder of the licence.

- 16.15 In London, vehicle owners must satisfy Transport for London that they are of good character, good business repute and, having regard to their financial position, are “fit and proper”. ¹³
- 16.16 Vehicle owners do not come into any contact with the public, either directly or indirectly, in their capacity as owners. ¹⁴ We therefore suggest that although vehicle owners would continue to hold the vehicle licence, the requirements imposed on the vehicle owners themselves are be too remote from passenger safety considerations and should be abandoned.

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.

VEHICLE REQUIREMENTS

- 16.17 Under current law, licensing authorities can take into account a broad range of criteria (beyond safety considerations) in respect of licensing both taxis and private hire vehicles.
- 16.18 In the previous chapter we provisionally proposed that national standard setting would only extend to conditions related to vehicle safety. This would also cover features distinguishing taxis from private hire vehicles. On the other hand considerations relating to broader quality considerations (such as colour requirements or features affecting comfort) could only be regulated locally, and then only in respect of taxis.

Vehicle testing

- 16.19 On the other hand, the mechanical condition of taxis and private hire vehicles is pre-eminently a safety issue. Such vehicles do a lot more mileage than regular

¹¹ See the Town Police Clauses Act 1847, s 68.

¹² Local Government (Miscellaneous Provisions) Act 1976, s 60(1)(c) and Private Hire Vehicles (London) Act 1998, s 16(1). For London taxis, the grounds for revocation and suspension can be prescribed by Transport for London: Metropolitan Public Carriage Act 1869, s 6(2)(c).

¹³ London Cab Order 1934, para 25.

¹⁴ Owner-drivers would, of course, have contact with the public but that would be in their capacity as a driver.

cars and more frequent testing is therefore important.¹⁵ As with other technical standards, we expect that a technical panel could be appointed to determine such matters as the proposed frequency and modality of such testing.

Insurance cover

- 16.20 Appropriate hire and reward insurance cover for taxi and private hire vehicles would, we suggest, remain a key safety requirement.

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?

ADDITIONAL LOCAL STANDARDS FOR TAXI VEHICLES AND DRIVERS

- 16.21 Under our provisional proposals local authorities would retain the flexibility to introduce enhanced requirements. We understand that retaining the discretion to introduce further quality controls could be important for many licensing authorities. Taxis are often the first point of contact for tourists coming to a new city and for visitors generally. Topographical knowledge, a modern and clean vehicle, or perhaps additional training in respect of customer service and tourist attractions may all be relevant. What is appropriate for one locality may be completely unsuitable somewhere else. Such decisions are of a quintessentially local nature and properly within licensing authorities' discretion to set local standards. We set out proposals and questions about the proper scope of local standards in the previous chapter.

OPERATORS

The role of operators

- 16.22 Drivers and vehicles come into direct contact with the public and therefore licensing requirements aimed at promoting safety are justified, although their extent may be debated.
- 16.23 Operators, on the other hand, have only indirect contact with the public through inviting or accepting bookings, yet operators play a central role in the current pre-booked private hire market. In pre-booking situations, the passenger interfaces with the person inviting or accepting the booking. Reliance is placed on the operator rather than the driver, and typically passengers are unaware of the identity of the driver until the moment they are picked up. In private hire this is reinforced by the fact that the contract of hire is between the operator and

¹⁵ The laws and requirements of MOT testing under Part II of the Road Traffic Act 1988 can therefore be made more onerous for taxis. In July and November 2000, the Department for Transport requested that licensing authorities apply the same standards to taxis and private hire vehicles. See also J Thompson (ed), *Bryan Denby's "The Book"* (14th ed 2008) p 13.

passenger rather than with the driver.¹⁶

- 16.24 Operators control the provision of the pre-booked service through recording passenger and journey details, and selecting the relevant driver and vehicle. We also note that record-keeping is important in promoting safety through traceability of bookings.

The capabilities of real-time tracking mean that record-keeping can play a preventative safety role, rather than being limited to after-the-fact considerations.

Justifications for operator licensing

- 16.25 Operators are uniquely placed to make sure that the drivers and vehicles are compliant with public safety objectives. The operator should periodically check whether drivers and vehicles continue to satisfy the relevant regulatory requirements. In practice operators are the first line of enforcement on vehicles and drivers: for example, if they are not compliant, the operator can refuse to pass on any further jobs.
- 16.26 In addition, economies of scale are significant because drivers can only transport one set of passengers at a time, while operators can be dealing with multiple bookings. Whereas drivers and vehicles are always moving, the operator's base can be stable. It is often easier for enforcement officers to target operators, who have responsibility for a number of drivers and vehicles, than to target individual license holders. The above factors make effective enforcement against operators more likely than enforcement against individual drivers and vehicles. The greater investment that is typically associated with setting up an operator's business means it is typically a less transient occupation than being a private hire driver. Operators' reliance on customer's goodwill for continued business means operators have a particularly strong vested interest in making sure regulatory requirements are complied with. This is a highly effective form of regulatory control.
- 16.27 In Scotland, operator licensing was not considered necessary when private hire car licensing was first introduced. However, in the following years there was a perceived increase in public safety and public order concerns, as well as criminal activity linked to booking offices.¹⁷ This led to the introduction of operator licensing in 2009.¹⁸
- 16.28 Operators are such an important pillar of the private hire trade that it is difficult to predict what the consequences of removing operator licensing would be. The day to day control of licensing requirements in respect of vehicles and drivers in the private hire trades falls to operators. The more light touch regulation which applies to private hire drivers and vehicles, even under our reformed system, only

¹⁶ Local Government (Miscellaneous Provisions) Act 1976, s 56(1). In London, the Private Hire Vehicles (London) Act 1998 appears to assume that the contract is between hirer and operator, see s 5(5). See also Chapter 4.

¹⁷ Scottish Government, *Consultation on licensing of taxi/private hire car booking offices* (June 2005), <http://www.scotland.gov.uk/Resource/Doc/54357/0014338.pdf> (last visited 16 April 2012).

¹⁸ The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009, SSI 2009 No 145.

emphasises the benefits of a more stable and centralised party holding longer term accountability.

- 16.29 While accepting there are arguments on both sides, we consider that those in favour of retaining operator licensing are more powerful.

Provisional proposal 48

Operator licensing should be retained as mandatory in respect of private hire vehicles.

Possible extensions of operator licensing

- 16.30 If operators continue to be licensed there are three main ways this could be applied:

- (1) to retain operators only in respect of private hire vehicles;
- (2) to extend the operator licence requirement to taxis in respect of all pre-booked work; or
- (3) to continue to allow taxis to take pre-booked journeys directly but provide that if they go through a third party, such third party must be licensed as an operator.

- 16.31 The first option reflects the current law and we are not aware it has caused problems. The second option would significantly limit what taxi drivers can do as they would no-longer be allowed to take pre-bookings directly. This would be very restrictive. Scotland has adopted this approach, whereby both taxi and private hire booking offices require a licence, but only where they have three or more vehicles.¹⁹ The third option would not limit what taxi drivers could do independently but it could add extra regulatory requirements where third parties were involved in the booking process. We explore some of the implications below.

Licensing taxi radio circuits

- 16.32 Unlike private hire drivers, taxi drivers can take pre-bookings directly. Third parties taking bookings on behalf of a taxi driver have no formal role in legislation although it may appear that taxi radio circuits, dispatching solely taxis, carry out a very similar function to operators.
- 16.33 From the consumer's point of view the function of a taxi dispatcher may be indistinguishable from that of a private hire operator. The consumer may request a vehicle and the dispatcher may provide details of the vehicle and driver that will be sent as well as an estimated arrival time. Operators working with mixed fleets of taxis and private hire vehicles have different legal exposure in respect of dispatched private hire vehicles compared with taxis although both are carrying out a purely pre-booked function. Such differences may be perceived to be arbitrary.

¹⁹ The Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009, SSI 2009 No 145, reg 2(1)(b).

- 16.34 On the other hand there may be sound legal reasons why taxis might not need to be dispatched through a licensed operator. As already noted above, taxi drivers are able to accept pre-bookings directly. This means that a third party who arranges a pre-booking can, in principle, act merely as an agent and take no direct responsibility in respect of the booking.
- 16.35 The pre-booking contract may be with the taxi driver. By contrast a private hire driver lacks the legal capacity to enter a pre-booked contract because the legal obligations to the customer are required to reside with operator.²⁰
- 16.36 If all third parties who invited bookings for taxis had to be licensed that would effectively ban agency arrangements. The third party would, by statute, have to take substantial legal responsibilities in respect of the taxi service provided. Such a blanket approach may not be desirable. In some cases customers may expect to have direct recourse to the third party (for example a corporate client having an account with the radio taxi circuit). In such cases it may make sense for the third party to be directly responsible for the fleets' compliance. However in other cases this may not be the case; for example, where a consumer uses a smartphone app to find a taxi in a one-off transaction. In that respect the current position, whereby a radio taxi circuit does not require a separate licence, is more flexible and may better reflect the range of customer expectations.

Question 49

Should operator licensing be extended to cover taxi radio circuits and if so on what basis?

Intermediaries

- 16.37 Sometimes customers might not contact an operator directly but instead engage the services of an intermediary transport services company.²¹ An intermediary may be asked to organise all aspects of an event or have a long-standing contract with a corporate customer for example. Events like Wimbledon, London fashion week or the Chelsea flower show might typically organise their transport through intermediaries. The intermediary may in turn contact an operator to dispatch private hire vehicles or taxis. In such cases the initial customer (the event organiser) does not rely on the operator in any meaningful sense but rather on the intermediary.
- 16.38 Given the overlap in function between intermediaries and operators the question is whether the definition of operators should be extended to cover such services. Intermediaries can, and sometimes do, have operator licences. We suggest it is not necessary to extend the definition of operators so as to cover indirect provision or acceptance of bookings. Customers who choose to use the services of an intermediary can protect themselves through contractual arrangements. The operator that would be ultimately engaged would remain liable and subject to regulation. There would be little added benefit, but only more red tape, in

²⁰ This is the "deemed contract" provisions of private hire legislation, see the Local Government (Miscellaneous Provisions) Act 1976, s 56; and as assumed under the Private Hire (London) Act 1998, s 5(5). The driver can hold an operator's license themselves, but this is an extra layer of regulation.

requiring a licence for intermediaries who engaged licensed operators. If licensing applied to any person who made arrangements related to the provision of vehicles for hire, we would have a potentially infinite and repetitive licensing requirement.

- 16.39 In addition, we note that the definition of “operator” is already extremely broad. It covers any person who invites or accepts bookings for a private hire vehicle. Where intermediaries directly provide vehicles and by-pass licensed operators, they are already committing an offence under current law through acting as operators without holding an appropriate licence.²² The question would appear to be one of enforcement rather than a need to extend the law. Overall it appears that the current definition of operators is appropriate.

Provisional proposal 50

The definition of operators should not be extended in order to include intermediaries.

NATIONAL OPERATOR STANDARDS

- 16.40 Under the current law, licences can only be granted to operators if they are “fit and proper” persons and subject to such conditions that a licensing authority may deem “reasonably necessary”.²³ These requirements do appear to promote the primary safety rationales for licensing operators that we identified at the outset.
- 16.41 Operators are directly liable for breaches by their drivers and vehicles.²⁴ Record-keeping and the threat of removal of licence for lack of compliance by the operator or any member of their fleet are key advantages of operator licensing which may significantly enhance passenger safety. This suggests that the emphasis should be in respect of monitoring performance, ensuring that adequate records and information are provided as necessary to licensing officers. Insurance cover should also be a priority.
- 16.42 On the other hand, stakeholders have noted the importance of ensuring that only reputable operators are licensed. Initial checks on operators can also have significant intelligence-gathering functions useful to the police. This can be important because we understand that private hire operations are especially at risk of being used as a front for organised crime.²⁵ These concerns suggest that the “fit and proper” requirement for operators should be retained.

²¹ See for example One Transport <http://www.one-transport.com/> (last visited 23 April 2012)

²² See the Local Government (Miscellaneous Provisions) Act 1976, s 46 (1)(d); and in London, the Private Hire Vehicles (London) Act 1998, s 2.

²³ Local Government (Miscellaneous Provisions) Act 1976, s 55; Private Hire Vehicles (London) Act 1998, s 3.

²⁴ See the Local Government (Miscellaneous Provisions) Act 1976, s 46(e); and in London, Private Hire Vehicles (London) Act 1998, s 4.

²⁵ The Scottish experience of operator licensing illustrates this; see Scottish Government, *Consultation on licensing of taxi/private hire car booking offices* (June 2005), <http://www.scotland.gov.uk/Resource/Doc/54357/0014338.pdf> (last visited 23 April 2012).

Question 51

Should “fit and proper” criteria in respect of operators be retained?

SUB-CONTRACTING

- 16.43 Where a customer contacts an operator who is unable to fulfil their proposed booking the operator might wish to sub-contract the job to another operator. This can benefit the customer because their service need is fulfilled efficiently, and it benefits the operator as they may also make some profit through arranging the transaction, as well as retaining the goodwill of the consumer. This can happen at the outset, when the original booking is made, but it can also happen unexpectedly, as when a vehicle might break down and the operator may not have any replacement readily available.
- 16.44 Under current law, it is illegal to sub-contract bookings elsewhere in England and Wales, whereas it is expressly permitted in London. In such cases, the original operator remains liable to the customer. We understand the London provisions have worked well and suggest this approach should be adopted nationally. Under this system, the original operator would remain liable to the passenger, in addition to any liability which the sub-contractor may have incurred directly to the passenger.

Provisional proposal 52

Operators should be expressly permitted to sub-contract services.

RECORD-KEEPING REQUIREMENTS FOR PRE-BOOKED TAXI JOURNEYS

- 16.45 We do not suggest that taxi drivers should be required to obtain an operator licence in order to take pre-bookings. However a requirement to keep records of pre-booked journeys might be reasonable, particularly if fare regulation did not apply to such journeys (as we ask in question 44 above).

Question 53

Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply?

- 16.46 In the next chapter we consider the reform of quantity controls which can currently apply to taxi services.

CHAPTER 17

REFORMING QUANTITY CONTROLS

INTRODUCTION

- 17.1 Under current law licensing authorities have the option of limiting taxi numbers, but only in the absence of “unmet demand”. Our provisional reform proposals therefore consider two main questions:

- (1) whether quantity restrictions should be abolished; and
- (2) whether there should be any transitional arrangements.

THE ECONOMICS OF QUANTITY CONTROLS

- 17.2 Quantity controls are a direct barrier to entry into a market and have the main purpose of limiting the number of sellers that can compete within the market. A direct result of the quota is that sellers within the market have less competition for customers than would otherwise be the case.¹ As a consequence customers have a more restricted range of choice and existing licence holders have a monopoly on fares.
- 17.3 Quantity controls introduce a further market, as there is a market for taxi licences as well as for taxi journeys. The market for licences reflects the earnings that accrue from having the valuable right to ply for hire in a restricted area and attracts a premium value. Stakeholders have identified premium values of up to £60,000 for licences in the York area.
- 17.4 Historically quantity controls were a key driver in the regulation of taxis. The Transport Act 1985 considerably curtailed licensing authorities’ ability to control numbers: quantity controls could only be introduced where licensing authorities were satisfied there was no “unmet demand”. Following the Office of Fair Trading’s 2003 report² the Department for Transport issued clear guidance asking local authorities to consider whether quantity controls are indeed necessary. A provision, as yet unimplemented, of the Equality Act 2010 would further restrain licensing authorities’ scope to limit numbers, preventing the refusal of a licence to a wheelchair accessible taxi.³
- 17.5 At the end of February 2012 an estimated 93 licensing authorities had quantity controls in place restricting the number of licensed taxis. About 21,000 vehicles are currently operating in areas with quantity controls, accounting for just over one-quarter of all taxis operating in England and Wales.⁴

¹ The assumption being that there are other sellers who wish to enter the market, otherwise there would be no need for quantity restrictions.

² Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003).

³ Equality Act 2010, s 161.

⁴ Based on statistical evidence received from the National Private Hire Association.

- 17.6 We recognise that the decision to restrict numbers has a direct impact on the livelihood of the taxi trade. As quotas provide for a protected income this makes quantity controls particularly susceptible to political considerations that bear no relationship to resolving a problem caused by market failure. This can lead to licensing authorities being accused of “regulatory capture”. This term describes the situation where regulatory decision-making has been disproportionately influenced by the relationship between regulator and regulatee.⁵
- 17.7 The main advantage of de-regulating taxi numbers is the opportunity for improved provision. It is almost always the case that the removal of quantity controls leads to an increase in taxi numbers.⁶ We understand that having more taxis does not guarantee more taxis when and where they are needed, but it is a step in the right direction. There is the further potential benefit for would-be taxi drivers who are currently denied access to the industry. The extent to which increased taxi numbers leads to long-term decline in taxi revenue is unclear.
- 17.8 Lack of provision can push passengers to take unlicensed vehicles. Removing quantity controls and increasing the number of legal taxis can therefore reduce the scope for illegal activities. This reduces the risks to passengers and can ease the burden on enforcement.

PROBLEMS WITH “UNMET DEMAND”

- 17.9 The statutory concept of unmet demand, which determines whether licensing authorities can impose quantity restrictions, raises various problems. Licensing authorities almost invariably commission unmet needs surveys, usually from independent consultants, to establish whether the pre-condition of the absence of unmet need is satisfied. The extent to which the survey provides an accurate depiction of demand conditions has been criticised. In particular there is concern about an insufficient acknowledgement of latent demand, that is, hidden demand that typifies users’ decisions to not use ranks because of lengthy waiting times. Moreover the focus on rank-based demand ignores demand at the street level, potentially further underestimating the true value.⁷
- 17.10 The practice of commissioning periodic unmet demand surveys is also open to criticism. Survey costs can be quite expensive – as high as £40,000.⁸ There is the further difficulty of how the survey should be funded.⁹
- 17.11 More fundamentally, it appears conceptually flawed that unmet demand, which is itself a market-based concept, should be used by regulators to control numbers. The market ought to automatically adjust to unmet demand through increased supply. Interposing regulation, as an imperfect proxy to the response which the

⁵ S Barrett, “Regulatory Capture, Property Rights and Taxi Deregulation – a case study”, in OECD, *(De)regulation of the taxi industry – round table 133* (2007), p 133.

⁶ See generally OECD, *(De)regulation of the taxi industry – round table 133* (2007).

⁷ See Office of Fair Trading, *The regulation of licensed taxi and private hire vehicle services in the UK* (November 2003).

⁸ See, for example, Coventry City Council, Report: Cabinet Member, City Services, <http://cmis.coventry.gov.uk/CMISWebPublic/Binary.ashx?Document=18303> (last visited 23 April 2012).

⁹ Increasingly licensing authorities are funding the cost of the survey through higher license fees.

market would provide to meet an unmet demand, appears both inefficient and subject to error.

CONGESTION AND OTHER EXTERNALITIES

- 17.12 The main arguments in favour of retaining quantity controls relate to the detrimental impact of negative externalities, such as congestion and environmental pollution, which can result from having an excessive number of taxis on the road. Rank spaces are limited. If all taxis sought to work at ranks at the same time problems of over-ranking would quickly arise, and indeed already do in many places. On the other hand, the experience of licensing authorities which have removed quantity restrictions and subsequently reintroduced them – at considerable expense – suggests they are considered valuable by certain licensing authorities.¹⁰
- 17.13 Taxi representative groups have also highlighted the potential benefits to the public through restricting numbers which flow from a more stable and better paid taxi trade. However, these could also be achieved through regulation targeted at ensuring suitable quality standards. Moreover, any perceived improvement in quality comes at a cost and consumers pay correspondingly higher fares. This may be appropriate but these issues need to be addressed transparently rather than through the opaque lens of quantity controls.
- 17.14 We recognise that arguments in respect of the impact of quantity controls are complex and that further evidence is required in order to properly assess how quantity controls affect externalities. However at this stage of the review we suggest that arguments in favour of deregulation, and for the abolition of quantity controls, are most convincing.

Provisional proposal 54

Licensing authorities should no longer have the power to restrict taxi numbers.

Question 55

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

TRANSITIONAL ISSUES

The long-term dangers of removing quantity controls

- 17.15 We are aware of the potential long-term dangers associated with removing quantity restrictions. In Chapter 9 we considered three jurisdictions that had negative experiences in the removal of quantity restrictions and some of the factors that may have caused this to be the case.¹¹
- 17.16 For example there is concern that removal of quantity restrictions may drive out higher skilled drivers as the sudden influx of drivers may force down standards

¹⁰ For discussion see Chapter 9 above.

¹¹ See Chapter 9 above, discussing experiences in Ireland, Sweden and the Netherlands.

and render it impossible to make a sustainable living. Even if the new entrants eventually leave the market, the mix of licensees left at the end may well be lower than the standards which existed before. This could take years to redress and standards may never be what they used to be.

- 17.17 There is also the associated danger that the reputation of the trade may be damaged by new entrants to the market who do not match up to desired standards. Again such reputational damage can be very difficult to repair and consumers may be unwilling to trust taxis. This could damage the law-abiding taxi (and even private hire) drivers and drive them out of business. However, the imposition of minimum standards, and the ability of local authorities to impose additional standards relating to, for example, the quality of the service provided, can mitigate this.

Hardship to existing taxi drivers

- 17.18 Following the removal of quantity controls, the premium value of licences is effectively removed. The issue then arises as to whether compensation should be paid, and if so, what determines the value of such compensation. We recognise that any change in the law in this regard would have a significant impact on those members of the taxi trade who may have invested considerable sums in their taxi licence and relied on it, for example, as a retirement fund.
- 17.19 As a matter of law the owners of taxi vehicle licences have no clear legal rights to compensation in respect of the loss of plate value that would be associated with the removal of quantity restrictions. As quantity restrictions are already subject to potential removal, the value of the plates should already reflect the risk that numerical restrictions might be lifted. Licensing authorities that have removed quantity restrictions so far have not paid any compensation to licence holders and it would be difficult to introduce any such system at this stage.
- 17.20 In other countries the issue has been approached in various ways. In the Netherlands taxi licence holders were offered an extra tax reduction. However this was not valued by taxi drivers who saw the premium as a retirement fund. In Australia, compensation was based on the highest licence sale price. In Ireland a hardship panel was established to pay compensation where taxi licence holders could demonstrate extreme financial hardship on the basis of certain criteria.¹² Generally the Organisation for Economic Co-operation and Development argues against paying compensation. In New York, on the other hand, a compensation scheme was set up in different circumstances. Here private hire vehicles were given a monopoly on telephone bookings, but to compensate taxi drivers who stood to lose out, taxi licence numbers were frozen for a number of years, in order to raise and protect their value.¹³

¹² Barrett notes that the Taxi Hardship Panel recommended paying a total of 12.6 million euros in compensation: S Barrett "Regulatory capture, property rights and taxi deregulation – a case study" OECD, (De)regulation of the taxi industry, Round table 133, (2007) p 145.

¹³ R Darbera, "Taxicab regulation and the evolution of communication technology: the tale of three cities" (2005) p 4.

Managing the transition

- 17.21 The above factors suggest that any changes which may de-stabilise the market need to be carefully managed. Where the risks relate to a feared reduction in standards these dangers can be partly averted by ensuring that any new entrants are required to provide services of an appropriate standard. London is an obvious example where stringent quality controls mean that although quantity restrictions are not in place, entry to the taxi trade is carefully managed. However, the pressures on enforcement can mean that it may be difficult to ensure that quality standards are respected in practice if numbers were to spike significantly over a very short period of time. This suggests that in any event a managed transition, with gradual entry over a scheduled period of time is most likely to lead to better outcomes.

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?

- 17.22 In the next chapter we consider reforms relating to equality and accessibility.

CHAPTER 18

TAXI AND PRIVATE HIRE REFORM AND EQUALITY

INTRODUCTION

- 18.1 In this part we set out our provisional proposals to improve accessibility to taxi and private hire vehicle services for disabled passengers.
- 18.2 Ensuring proper accessibility is a priority of this review. As we discussed in Chapter 11, many disabled people and people with reduced mobility rely on taxis and private hire vehicles for their everyday transport needs. Whilst notable improvements have been made in the last twenty years, improvements can still be made.

A SPECIFIC WHEELCHAIR LICENCE

- 18.3 Some local authorities adopt a policy which requires all licensed taxis to be wheelchair accessible. This means that a person in a wheelchair wishing to hail a taxi in the street or hire a vehicle at a rank, rather than pre-book, is guaranteed an accessible vehicle. Conversely, as we have seen, such vehicles may not be suitable for all passengers.¹ The requirement also imposes additional costs on the owner of the vehicle.
- 18.4 We have considered whether our proposed national standards for taxis and private hire vehicles should include a requirement for quotas of vehicles to be wheelchair accessible. On balance, we provisionally reject such a course. We explain our thinking in more detail below.
- 18.5 We have considered whether a specific, accessible taxi licence could be required to be made available by licensing authorities. Holders of such licences would be under an obligation to prioritise bookings from passengers in a wheelchair.² There could be specially designated ranks for accessible taxi licence holders, and licensing authorities would be required to incentivise these. Licensing fees for accessible vehicles could, for example, be lower. We discuss this further below. We note that specifications beyond wheelchair accessibility, to accommodate different disabilities, could also be issued in this category.

¹ Although we note that whereas wheelchair users have no choice but to travel in a wheelchair accessible vehicle, persons with other disabilities may nonetheless travel in a less-than-ideal vehicle.

² There is a system similar to this in Victoria, Australia, which is a requirement of the taxi accreditation scheme. See http://www.transport.vic.gov.au/__data/assets/pdf_file/0009/31401/Taxi_industry_accreditation_brochure.pdf (last visited 23 April 2012).

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.

INCENTIVES

- 18.6 We have considered whether it would be appropriate to introduce incentives encouraging the use of accessible taxi and private hire vehicles. In Ireland the licence fee for a taxi which is wheelchair accessible is considerably cheaper than that for other types of vehicle.³ An incentive such as this may help to offset the additional cost of purchasing a wheelchair accessible vehicle, and encourage more providers to consider using such a vehicle.
- 18.7 Given our inclination towards having a range of vehicles which meet different needs, one option might be to introduce a range of fees relating to vehicles which satisfy different accessibility standards. This would mean that any vehicle which satisfied particular standards would benefit from a lower licence fee. Greater discounts could be available for the more specialised vehicles, or those including bespoke adjustments.
- 18.8 We have seen the effect of market forces in the private hire industry, which can incentivise providers to explore innovative ways of supplying a particular need. This can benefit both those who wish to travel and those who provide the services. The presence of greater consumer choice for users of private hire vehicles makes it easier and more effective to encourage innovation. Offering financial incentives through reductions in fees may be an alternative way of providing suitable incentives for that side of the industry. We are interested in hearing views on this, and any other suggestions.

Question 58

Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards?

Question 59

Do you have any other suggestions for increasing the availability of accessible vehicles, and catering for the different needs of disabled passengers?

³ Ireland has five basic types of taxi licence – taxis, wheelchair accessible taxis, hackneys, wheelchair accessible taxis and limousines. Fees are lower for wheelchair accessible vehicles, see <http://taxiregulation.nationaltransport.ie/for-operators/spsv-vehicle-licensing/list-of-vehicle-licensing-fees/> (last visited 23 April 2012).

Quotas

- 18.9 We have considered whether to recommend setting quotas for the number of wheelchair accessible vehicles in any fleet (perhaps including private hire vehicles), and this is a solution advocated by a number of users. This could be a more flexible tool than a requirement for all vehicles to be wheelchair accessible, covering a varied range of different designs.
- 18.10 However, we recognise that there could be significant practical difficulties with such a requirement, in particular given the fluidity of the trade and the fact that many drivers and vehicle owners are sole traders. This makes it difficult to impose a wheelchair accessibility requirement on one driver as opposed to another.
- 18.11 We also recognise that quotas may not be of assistance to many disabled people in a wheelchair because the availability of a suitable vehicle at the time and in the place they wanted to travel could not be guaranteed.⁴ We therefore do not recommend that national standards should include fixed quotas for accessible vehicles.

Provisional proposal 60

We do not propose to introduce national quotas of wheelchair accessible vehicles.

ACCESSIBILITY TRAINING

- 18.12 Although provisions in the Equality Act 2010 prohibit discrimination in the provision of goods and services, there continue to be reports of problems for people with disabilities with taxi and private hire services. In Chapter 11 we consider equality issues. Many disabled people, in particular those using a wheelchair or people with assistance dogs, have either been refused service or have been unfairly discriminated against in the provision of the service. Whilst we know that many taxi and private hire vehicle providers give an exemplary service, we are of the view that more needs to be done to eradicate illegal and unacceptable practices.
- 18.13 We therefore propose the introduction of a national standard requiring all taxi and private hire vehicle drivers to complete a recognised accessibility training course as a condition of holding a licence.
- 18.14 Discriminatory practices frequently arise from lack of knowledge rather than a wish to discriminate. Drivers may not be sure how to help someone with reduced mobility, or a person in a wheelchair, to access their vehicle. They may not know how best to communicate with someone with learning difficulties, or someone with a hearing impediment. And they may be concerned that carrying a disabled person in a wheelchair will lead to a reduction in earnings because it may take longer for that person to get in and out of the vehicle.

⁴ See the comments made by Mr Justice Jowitt in *R v City of Newcastle, ex p Blake* [1997] EWHC Admin 162, paras 27 to 29.

- 18.15 There is also a safety aspect. Assisting a disabled person may require particular skills in lifting or supporting that person to ensure that both the driver and the passenger avoid injury. Drivers need to know how to secure wheelchairs properly in the vehicle. There is also the need to ensure that disabled passengers can travel comfortably and with dignity. Training should be able to assist with all of these skills. Some local authorities have already introduced a mandatory requirement for licensed drivers to attend an appropriate course.⁵ Appropriate training could increase awareness of the needs of disabled people and help reduce instances of drivers failing to stop or refusing to accept a booking from a disabled person, and other discriminatory practices.

Provisional proposal 61

National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training.

LOCAL AUTHORITY RESPONSIBILITIES

- 18.16 We also believe more needs to be done to enforce the spirit of the Equality Act 2010. Despite the fact that it is unlawful to discriminate against a disabled person in the provision of goods and services, stakeholders have told us such discriminatory practices are not rare. The Equality and Human Rights Commission is the regulator and has a range of enforcement powers.⁶ The regulator will consider complaints and seek in the first instance to work with organisations to ensure compliance with legal requirements.⁷ In the most serious cases the Commission can seek an injunction to prevent illegal practices, or intervene in an action for judicial review.⁸
- 18.17 In our view more can also be done at a local level to ensure that discriminatory practices are not condoned. Licensing authorities should take appropriate action against license holders who participate in discriminatory practices.

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.

⁵ A similar approach has been taken in Scotland, eg, South Ayrshire includes a disability awareness module as part of the Taxi Drivers Course.

⁶ See Equality Act 2006, ss 20 to 32.

⁷ See <http://www.equalityhumanrights.com/legal-and-policy/enforcement/legal-enforcement-case-studies/> (last visited 23 April 2012) for examples of the use of these powers.

⁸ The Commission intervened in *R (on the application of Lunt) v Liverpool City Council*, [2009] EWHC 2356 (Admin) [2010] RTR 5.

TAXIS AND DISCRIMINATION

- 18.18 Legislation already prohibits discrimination against disabled persons⁹ in the provision of goods and services, including services provided in taxis and private hire vehicles.¹⁰ This includes a requirement to make reasonable adjustments in the provision of the service, including the provision of auxiliary aids.¹¹ We are aware of incidences of drivers avoiding taking disabled passengers by claiming to not have ramps. The law provides for assistance dogs to be carried at no extra charge, although we are aware that this is not always followed.¹² The public sector equality duty also applies to local authorities in the carrying out of their functions.¹³
- 18.19 Notwithstanding such general protections we are aware of concerns about taxis refusing to take disabled passengers, particularly those who use wheelchairs. It can be clear whether a taxi at a rank is illegally refusing to take a disabled passenger given the clear conventions involved. The position in respect of hailing is, however, not so simple. Taxis are not under a general duty to stop when hailed and our proposals would not seek to change this. On the other hand disabled passengers have frequently reported being ignored when hailing.
- 18.20 To help discourage discrimination it could be good practice for licensing authorities to require taxis to display their availability for hire by some obvious means to the public.¹⁴ This in turn could be coupled with a requirement to stop in response to a hailing if it is free and safe to do so. Although hard to enforce, such a requirement could at least provide some safeguards for disabled users.

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?

- 18.21 In Chapter 11 we noted that the divergence of disability needs means that it is difficult to even conceive of a truly universally accessible vehicle. Local licensing requirements whose effect is to stop willing market participants from providing vehicles that cater for (even rare) disabilities require careful scrutiny.¹⁵
- 18.22 In the next chapter we consider reform proposals relating to enforcement.

⁹ See Equality Act 2010, s6(1) for a definition of a person who has a disability and a power in subsection (5) to issue statutory guidance about matters to be taking into account in deciding whether a person has a disability.

¹⁰ Equality Act 2010, Pt 3.

¹¹ Equality Act 2010, s20 and Sch 2.

¹² Equality Act 2010, ss 168 to 172.

¹³ Equality Act 2010, s 149.

¹⁴ For example, a local requirement for a roof sign and the use of lights to display the vehicles availability to be hailed.

¹⁵ See for example *R (on the application of Lunt) v Liverpool City Council* [2009] EWHC 2356 (Admin).

CHAPTER 19

REFORMING ENFORCEMENT

INTRODUCTION

- 19.1 In this part we set out our provisional proposals for improving enforcement of taxi and private hire law and seek views on the options for change.
- 19.2 We have identified a number of areas for potential reform:
- (1) enhancing licensing officers' enforcement powers;
 - (2) the use of penalty point schemes to target enforcement at persistent offenders;¹
 - (3) improved powers to deal with touts and providers of unlicensed services;
 - (4) cross-border enforcement; and
 - (5) funding enforcement action.
- 19.3 Breaches of the taxi and private hire vehicle legislation are criminal offences enforced through the magistrates' courts. Licensing authorities also have powers to suspend, revoke or refuse to renew an existing licence, and to refuse to issue licences.²

ENHANCING LICENSING OFFICERS' ENFORCEMENT POWERS

- 19.4 Enforcement officers have expressed frustration at the limited scope of their enforcement powers. We have been told they can often feel powerless to enforce licensing regulations even in the face of flagrant breaches. The perceived lack of effective enforcement is of extreme practical importance. Limited resources, with only a few licensing officers typically covering a large number of licensees, is one factor.³

Powers to stop vehicles

- 19.5 Local authority enforcement officers do not have powers to stop a vehicle, although they do have powers to inspect licensed vehicles for fitness.⁴ This means that to take effective enforcement action authorities frequently need to work with the police and perhaps the Vehicle and Operator Services Agency.

¹ The schemes discussed in this chapter are distinct from penalty points schemes administered by the Driver and Vehicle Licensing Agency which affect general driving licences, as opposed to taxi and private hire driver licences.

² See discussion in Chapter 5.

³ See discussion in Chapter 5.

⁴ Local Government (Miscellaneous Provisions) Act 1976, s 68, London Hackney Carriages Act 1853, s 2 and Private Hire Vehicles (London) Act 1998, s 8.

This form of working is very important for ensuring vehicle standards are maintained.⁵

- 19.6 We recognise there are significant practical difficulties, however, in giving licensing officers an extended right to stop any vehicle. Licensing officers could not determine whether a vehicle and driver are licensed in advance of stopping them. Whereas the power to stop a taxi or private hire licensee is unproblematic, the power to stop a member of the general public is a sensitive issue that raises civil liberties concerns. Similar powers are already available to enforcement officers from the Vehicle and Operator Services Agency in relation to public service vehicles and heavy goods vehicles. There may be a perceived difference in that buses and lorries are more often driven in a professional capacity, and the private versus professional distinction is less clear with an ordinary car. As with touting, also considered below, there are questions about the propriety of having a licensing officer, rather than a uniformed police officer, approaching members of the public and questioning them about their behaviour.⁶ Such powers would have to be proportionate, appropriate, and accompanied by safeguards and measures to ensure accountability and to avoid endangering the public.

Question 64

Should authorised licensing officers have the power to stop licensed vehicles?

- 19.7 Enforcement against completely unlicensed vehicles is also a serious problem. Areas where there is a high demand for taxis are at a high risk of touting.⁷ This is true of airports and town centres with a lively night-time culture for example. Whilst in any regulated trade there will always be a degree of illegal activity by those who refuse to come within the regulatory boundaries, we appreciate that touting is currently difficult to enforce against and to deter, at least in some situations.

⁵ For example, random checks in Malvern town centre in February 2012 found that 44% of the licensed vehicles stopped had problems so serious that they would not have passed a MOT test. See http://www.malverngazette.co.uk/news/malvern/9524130.Sting_op___s_taxi_safety_bombshell/ (last visited 23 April 2012). Statistics provided by the National Private Hire Association show that enforcement shows up significant levels of non-compliance across the country: Private hire and taxi monthly, "Swoop's gone mad!!" (issue 233, February 2012) p 18.

⁶ On the other hand enforcement activity could most likely be targeted at individuals realistically suspected of having committed an offence rather than powers being used to stop people at random.

⁷ See Chapter 5 above.

- 19.8 The offence of touting criminalises soliciting passengers to hire vehicles for carriage as passengers.⁸ There is limited case law in respect of touting prosecutions and stakeholders have indicated the touting offences are rarely used in practice. On the other hand, the offence of illegally “plying for hire” is more frequently enforced.⁹

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”.

The power to impound vehicles

- 19.9 We have also considered the option of granting local authorities powers to impound unlicensed vehicles used to provide taxi or private hire vehicle services. There are two current examples of such powers. The Vehicle and Operator Services Agency and the Traffic Commissioners are empowered to impound vehicles in respect of illegally operated public service¹⁰ and goods vehicles.¹¹ The police have the power to seize vehicles which are operated without insurance.¹² The latter is particularly applicable to vehicles which are used to illegally ply for hire, as under many policies this invalidates the insurance.
- 19.10 If a vehicle is impounded, it is for the owner to show that the vehicle had not been operated in contravention of the law.¹³ Where they were unable to do so, the vehicle would be sold or destroyed.
- 19.11 Targeting enforcement on the vehicle, rather than the driver alone, could have a significant deterrent effect and encourage those who operate on the margins of the system to obtain the necessary licences. There appear, however, to be significant practical drawbacks to this approach. In many instances the driver will be inside the vehicle to be impounded. Licensing officers, unlike the police, lack the power to order the driver to leave the vehicle and it is unclear what the appropriate basis for such a power would be.¹⁴

Question 66

Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules?

⁸ Criminal Justice and Public Order Act 1994, s 167.

⁹ See discussion of the meaning of “plying for hire” in Chapter 3.

¹⁰ Public Passenger Vehicles Act 1981, s 12A and Schedule 2A.

¹¹ Goods Vehicles (Licensing of Operators) Act 1995, s 2A and Schedule 1A.

¹² Road Traffic Act 1988, s 165A.

¹³ The legislation includes safeguards for vehicle owners. Enforcement officers would need to have some evidence that the vehicle was being used illegally. See Chapter 5.

¹⁴ See discussion in Chapter 5.

FIXED PENALTY SCHEMES

- 19.12 A number of road traffic offences are now classed as fixed penalty offences.¹⁵ A fixed penalty notice may be given on the spot by authorised persons where that person has reason to believe that someone is committing, or has committed, a fixed penalty offence.¹⁶
- 19.13 The recipient of a fixed penalty notice can choose to pay the fine or have the matter heard in court. If they choose to pay the fine but do not do so by the end of the specified period, the financial penalty is increased by 50%.
- 19.14 The use of a public service vehicle on a road except under an operator's licence;¹⁷ and using a goods vehicle on a road for the carriage of goods except under an operator's licence;¹⁸ have recently become fixed penalty offences.¹⁹ This provides a precedent for professional licensing contraventions to be enforced using fixed penalty notices. Steps have also been taken to enable authorised officers in London to issue fixed penalty notices for certain offences though they are not yet in force.²⁰
- 19.15 There would be a number of advantages in making certain breaches of taxi and private hire vehicle legislation fixed penalty offences:
- (1) it would reduce the number of cases reaching court; and
 - (2) it would be consistent with enforcement of breaches of other professional motoring requirements (for example public service and goods vehicle licensing).
- 19.16 Fixed penalties are only appropriate where the commission of an offence can be assessed objectively; for example, whether or not a driver is wearing his or her badge or whether a vehicle on a stand is a licensed taxi. Fixed penalties would not be appropriate for offences such as illegal plying for hire, where there is likely to be some argument as to whether the behaviour amounted to plying for hire.
- 19.17 Moreover we are aware of the risk that, in a professional context, fixed penalty schemes may be perceived as merely an added business cost for drivers rather than effective tools encouraging compliance. We note that some licensing authorities are currently already using informal penalty points schemes. The legal basis of such schemes may not always be clear and they are very controversial with the trades.²¹

¹⁵ Road Traffic Offenders Act 1988, s 51 and Sch 3.

¹⁶ A constable in uniform or a vehicle examiner who produces their authority can exercise this power, see Road Traffic Offenders Act 1988, s 54. For the definition of a vehicle examiner see Road Traffic Act 1988, s 66A.

¹⁷ Contrary to Public Passenger Vehicles Act 1981, s 12.

¹⁸ Contrary to Goods Vehicles (Licensing of Operators) Act 1995, s 2.

¹⁹ Fixed Penalty Offences Order 2009, SI 2009 No 483.

²⁰ Transport for London Act 2008, ss 17 to 21.

²¹ Permission has recently been given for judicial review of such a system in Cardiff, with the case due to be heard in late May 2012.

- 19.18 A key consideration is who should have the authority to impose such penalties. Currently such powers only extend to the police and specified authorised officers. The key issue is therefore whether this power should be granted to licensing officers.

Question 67

Should licensing authorities make greater use of fixed penalty schemes and if so how?

CROSS-BORDER ISSUES

New cross-border enforcement powers

- 19.19 Enforcement officers are only able to enforce against vehicles licensed in the district for which they work. This leaves them unable to take action against vehicles and drivers from other areas, even those who hold licences. This has been one of the driving factors behind the growth of cross-border problems.²² Our proposal to extend enforcement powers is consistent with our proposals to simplify the law on cross-border working by private hire vehicles.²³ Currently private hire vehicles can work legally in districts other than the one in which they are licensed provided the licences held by the operator, driver and vehicle are from the same district. Our proposals would enable private hire operators to use drivers and vehicles licensed in another district to fulfil a booking, and it is important to ensure that enforcement mechanisms sit properly with this greater flexibility.

Provisional proposal 68

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

Powers to suspend and revoke licences cross-border

- 19.20 Extending the powers of licensing officers could, however, encounter some problems. Whilst criminal prosecutions can be brought anywhere and by any licensing authority, we note that non-criminal sanctions such as revoking a licence are frequently the most effective. Under the current licensing framework only the home licensing authority has the power to take such action. As this is the licensing authority which initially granted the licence and which holds the information about the licensee, this allocation of responsibility makes sense.
- 19.21 Where a vehicle or driver licensed in one area was found to be in breach of regulations in another area, under the reformed system allowing cross-border enforcement, their home licensing authority would be alerted to this and expected to take appropriate action.
- 19.22 There are however some concerns regarding the workability of such a system. The home licensing authority might have little incentive to take action against a driver or vehicle that is working remotely from its area. For instance London will

²² See discussion in Chapter 10.

²³ See discussion in Chapter 16.

attract cars licensed in many different areas. In an extreme case, some could be from a considerable distance. The distant licensing authority may have little incentive to incur the cost of enforcing breaches by their licensed cars so far away. This could leave the licensing authority in London where the breach took place with little recourse.

- 19.23 We consider three possible ways of addressing the problems raised by the London hypothetical above.

Informal cooperation between licensing authorities

- 19.24 Licensing authorities could be encouraged to enter into agreements with one another as a matter of best practice. In addition, statutory guidance could indicate how and when licensing authorities are to communicate such issues to other authorities, and how the receiving authority should act on this information. The most effective and coherent approach would be for the receiving authority to act on the information as though it had come from its own licensing officers. We recognise this could give rise to issues such as officers travelling to give evidence.

Formal procedures for cross-border cooperation

- 19.25 Alternatively the licensing system could provide formal procedures whereby the licensing authority where the problem occurred would give the licensee's home licensing authority a notice, the effect of which would be to generate a response there. The minimum response could be a requirement for the receiving authority to consider the infraction. In addition the notice could include a recommendation as to the appropriate sanction. If the receiving authority did not implement that sanction, then it would have to explain its reasons in writing. If the recommended sanction included revocation or suspension, the notice itself could activate an interim suspension, for a reasonable time; alternatively the suggested sanction could take effect by default unless the receiving authority vetoed it.

Full powers to suspend and revoke licences cross-border

- 19.26 A further, and more radical approach, would be to allow the licensing authority where the infraction happened to take corrective action directly. It could, for example, strip the driver and vehicle of their licences, even if these licences had been issued elsewhere.
- 19.27 We suggest that the appeal should by default be heard at the home licensing authority but there may be circumstances where it may be appropriate for the appeal to be heard in the place where the wrong occurred.
- 19.28 We suggest the intermediate option might be the better approach, appropriately balancing local licensing with the need for effective cross-border deterrence, but we welcome views on the best approach more generally.

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?

FUNDING LICENSING AND ENFORCEMENT

- 19.29 Funding is a key element of effective enforcement. Under the current law licensing is generally self-funding.²⁴ We noted in Chapter 2 that the law on licence fees is in some respects unclear and leaves gaps. For example the legislation governing license fees in England and Wales (outside of London) does not expressly cover enforcement costs in respect of drivers and operators (although it does for vehicles). This may be regarded as an anomaly. On the other hand, the distinction between administration costs and enforcement can be useful. Administration costs could be more uniform across England and Wales (and more amenable for example to a national fee) compared to enforcement costs which will necessarily vary significantly between licensing authorities. This can be particularly significant because our provisional proposals envisage mandatory national standards for private hire services and the facilitation of cross-border work. Larger urban authorities that attract work from neighbouring rural licensing areas will have significantly greater enforcement costs. Appropriate funding arrangements will be heavily influenced by broader budgetary considerations across local government.
- 19.30 We recognise the importance of funding for effective administration and enforcement of taxi and private hire licensing. However the above considerations suggest it would be both premature at this stage of the project, and beyond the scope of this consultation paper, to make specific recommendations in respect of licensing fees.
- 19.31 In the next chapter we set out our provisional reform proposals in respect of hearings and appeals.

²⁴ In England and Wales (excluding London) see the Local Government (Miscellaneous Provisions) Act 1976, ss 53(2) and 70; in London see the Metropolitan Public Carriage Act 1869, ss 6 and 8; and the Private Hire Vehicles (London) Act 1998, s 20. We highlight also the grey areas and gaps highlighted in Chapter 3 above.

CHAPTER 20

REFORM OF HEARINGS AND APPEALS

INTRODUCTION

- 20.1 In Chapter 6 we identified a number of differences and inconsistencies in the existing appeal systems. We found differences in the rights of appeal available in the taxi licensing regime, as opposed to private hire system. We also found significant differences in the regime which applies in London, compared to that which applies in the rest of England and Wales. Our recommendations aim to simplify the system whilst ensuring aggrieved parties can seek adequate redress.
- 20.2 Our proposals regarding hearings and appeals are formulated against the backdrop of our broader proposals for reform of the taxi and private hire licensing system. Three main types of standards might apply to any licensee within our licensing framework:
- (1) national standards for taxis and private hire vehicles;
 - (2) additional local standards for taxis only; and
 - (3) individual conditions of licence.
- 20.3 A licensee may wish to challenge the standard itself; or the way the standard was applied to their particular case. Standards in turn can be general or specific to the applicant (in the form of an individual condition of licence). The appropriate route to a remedy will vary in each case.

Standards of general application

- 20.4 In principle where the challenge is to a general standard the mode of challenge should be judicial review. This is because the standard does not just affect an individual applicant but is of broad application. This would apply whether the standard had been set by the Secretary of State, in the case of national standards, or the local authority, as with additional standards for taxis. Any successful challenge should strike down the standard itself.

Individual conditions of licence

- 20.5 If the ability to impose individual conditions is retained, an appeal to the magistrates' court in respect of the specific condition would be the appropriate remedy. We propose that the appeal would be on the merits of the condition, as individual conditions would need to be reasonable.¹ This would essentially amount to a fresh hearing of the issue.

¹ See discussion in Chapter 15.

Challenging how a standard was applied in a particular case

- 20.6 A licensee may wish to challenge the application of a standard, for example in a decision to refuse, suspend or revoke a license. As this involves an individual decision taken by the licensing authority, rather than the underlying standard, the appropriate remedy would again be an appeal on the merits. Again, this would be to the magistrates' courts and would amount to a fresh hearing.

National standards

- 20.7 Our provisional proposals include the introduction of national safety standards for taxis and private hire vehicles and their drivers.² This could be accompanied by statutory guidance on how licensing authorities should apply these standards. Both the standards and the statutory guidance would be issued by the Secretary of State or the Welsh Ministers. Licensing authorities would be required to have regard to such statutory guidance in exercising their functions; and greater consistency in licensing could lead to a reduction in the number of appeals.
- 20.8 National standards and statutory guidance would be subject to extensive consultation and discussion with the taxi and private hire trades and local licensing authorities as well as disability and consumer interest groups. This approach would mean that questions about the propriety and suitability of standards were subject to full discussion before any decisions were taken.
- 20.9 Not only would a reduction in appeals be indicative of an improved system, but it would result in considerable savings, both financially and in terms of court and stakeholder time.

Policies

- 20.10 Under the current licensing framework licensing authorities routinely adopt local licensing policies in respect of how licensing discretion should be exercised. For example a licensing authority could adopt a policy whereby left hand drive vehicles or tinted windows are not considered sufficiently safe.³ Policies on the relevance of convictions are also desirable.⁴ The effect of such policies on licensees is virtually indistinguishable from a statutory standard. Certain drivers and classes of vehicle may never be licensed for failure to satisfy the relevant policy, and anecdotal evidence suggests that policies are sometimes used to avoid licensing groups of vehicles such as stretch limousines or pedicabs.

² Licensing authorities would have the ability to impose additional local standards in respect of taxis. See Chapter 16 for a fuller discussion of our provisional proposals in this regard.

³ Vehicles with these characteristics would be consistently denied a licence although there were no official set of criteria it did not meet. Limousines are particularly vulnerable to such policies and their application can result in de facto exclusion of this type of vehicle from the private hire vehicle licensing regime in certain licensing authorities. Applicants could challenge the refusal of a licence however magistrates might be reluctant to second-guess a licensing authority's policy.

⁴ See consultation on proposed guidance on the relevance of convictions, <http://www.malvern hills.gov.uk/cms/business/licensing.aspx> (last visited 23 April 2012).

- 20.11 Under the current law such local policies can only be challenged by judicial review.⁵ This would not change under the reformed system. Under our provisional proposals local licensing policies would continue to apply but only in respect of taxi licensing.⁶

WHO CAN APPEAL

- 20.12 Under the current law there are various differences in who has the right to appeal. The right of appeal can lie with the applicant or relevant licence holder; or it can be broader and apply to “any person aggrieved”.⁷
- 20.13 Under our reformed system, national standards will have been subject to rigorous consultation before being adopted. Similarly, local safety standards would be subject to a local consultation requirement. Such standards should only be challengeable by judicial review.
- 20.14 We recommend that statutory rights of appeal should be limited to the applicant or licence holder. This is because general conditions will only be susceptible to challenge via judicial review, which is available to a broad category of interested parties. Statutory rights of appeal will only exist in relation to licensing decisions affecting individuals and individual conditions. This should apply throughout England and Wales, and in respect of both taxi and private hire licences.

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.

DUTY TO RECONSIDER

- 20.15 As noted in Chapter 6, in London there is a statutory right to require a local licensing authority to reconsider a decision to refuse to grant, or to suspend or revoke, a taxi vehicle or drivers’ licence.⁸ If the applicant or licence holder is unhappy with the reconsidered decision of the authority, they have a right of appeal to the magistrates’ court. Alternatively, the appeal can be made to the magistrates’ court in the first instance, bypassing the reconsideration stage.⁹ This option is not available elsewhere in England or Wales. The applicant or licence holder must instead appeal directly to the magistrates’ court (or Crown Court).

⁵ This is discussed further in Chapter 6.

⁶ In Chapter 15 we ask whether licensing authorities’ powers to set local conditions should be subject to statutory limitations.

⁷ See Local Government (Miscellaneous Provisions) Act 1976, s 52 (Any person aggrieved by the refusal to grant a private hire vehicle drivers’ licence, or the conditions attached to such a licence, can appeal to the magistrates’ court); and s 59(2) (the right of appeal against a decision to refuse to grant a taxi drivers’ licence is limited to “any *applicant* aggrieved” by the refusal, and only then where the refusal is on the grounds that the applicant is *not a fit and proper person to hold such a licence*) (our emphasis).

⁸ See Transport Act 1985, s 17(2). See also our discussion of this in Chapter 6.

⁹ Transport Act 1985, s 17(2)(b).

- 20.16 The ability to require a licensing authority to reconsider its original decision is an attractive option. It is a cheaper and easier mechanism for obtaining an initial review and would enable genuine errors to be rectified easily. It would benefit applicants and authorities who would be spared the need to go to court, and it would remove a number of cases from the court system. We recommend that this right should be introduced for the whole of England and Wales. Appropriate safeguards would be needed to provide for a fair hearing before people not involved in the making of the original decision. We recommend that this should be a mandatory stage in the process, so that all applications for reconsideration would be considered by the local licensing authority in the first instance.
- 20.17 In London, the right to request reconsideration is open to any applicant who has been refused a licence or has had their licence suspended or revoked.¹⁰ We propose that this should remain the trigger for reconsideration. We recognise that such a procedure will increase demands on the time and resources of licensing authorities, but we believe this will be balanced by a reduction in cases which go to court. Furthermore, the proposed system of national safety requirements and statutory guidance should limit the number of cases in which an applicant or licensee feels they have been treated unfairly. Subject to recommendations elsewhere in this part, there would be an onward right of appeal to the magistrates' court.

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.

- 20.18 One of our proposals for reforming enforcement of taxi and private hire licensing is that certain, less serious, breaches of the law should become fixed penalty offences.¹¹ This regime brings with it the option to either pay the penalty or elect for the matter to be heard in the magistrates' court. We discuss the magistrates' court's role below.

¹⁰ See Transport Act 1985, s 17(2). See also our discussion of this in Chapter 6.

¹¹ See Chapter 19.

APPEAL TO THE MAGISTRATES' COURT

- 20.19 In most instances the right to appeal against taxi and private hire licensing decisions is to the magistrates' court.¹²
- 20.20 One of the concerns about the current system is that magistrates have little or no experience of taxi and private hire licensing issues. They are not a specialist tribunal like the Traffic Commissioners¹³ or First-Tier Tribunal (Transport).¹⁴ Magistrates may have difficulty mastering the complex and technical aspects of the taxi and private hire legislation. On a wider scale this lack of expertise can also lead to the introduction of inconsistencies into the licensing regime.
- 20.21 We understand the concerns expressed about the suitability of magistrates to hear appeals and have considered whether it would be more appropriate for cases to be referred to a specialist tribunal. However, in the light of our other proposals, we do not consider this to be necessary.
- 20.22 As discussed earlier in this part we believe that our proposals for a reformed two-tier regime would make the legislation simpler to apply. Moreover, the appropriateness of any decision would be largely lifted outside the scope of the statutory appeals mechanism. Only complaints about decisions which directly affect individuals (and potentially individual conditions) would be heard before the magistrates. These are usually determined on questions of fact, which magistrates are well qualified to consider.
- 20.23 For these reasons, we are satisfied that the magistrates' court is the appropriate level for the remaining appeals.

Provisional proposal 72

Appeals should continue to be heard in the magistrates' court.

¹² Appeals against a refusal to grant a taxi vehicle licence lies to the Crown Court. The absence of any specific appeal right means that Public Health Acts Amendment Act 2007, s 7 applies by default.

¹³ Traffic Commissioners are appointed under the Public Passenger Vehicles Act 1981, s 7.

¹⁴ Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009, SI 2009 No. 1885.

ONWARD APPEALS

- 20.24 Under the current regime onward appeals on the merits lie, for the most part, to the Crown Court.¹⁵
- 20.25 Our proposals provide a two-step appeal system, with decisions first subject to reconsideration by the authority followed by a right of appeal to the magistrates' court. This is consistent with the current regime for taxi driver and vehicle licences in London, and should provide adequate safeguards against unfair, unreasonable or unlawful decisions. However given the importance of the rights at stake which affect peoples' livelihoods we understand that retaining an onward right of appeal to the Crown Court may be desirable.

Question 73

Should there be an onward right of appeal to the Crown Court?

¹⁵ The exception is appeals against decisions relating to taxi driver and vehicle licences in London, where there is no right of appeal to the Crown Court and the only option for redress is to the Divisional Court by way of case stated. This is the standard position on a point of law raised by the magistrates' court in other areas of civil law and we do not propose to change this.

APPENDIX A

LIST OF PROVISIONAL PROPOSALS AND QUESTIONS

CHAPTER 13 - 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)*

CHAPTER 14 – REFORM OF DEFINITIONS AND SCOPE

Provisional proposal 2

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

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)*

Question 4

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

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)*

Provisional proposal 6

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

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)*

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)*

Question 9

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

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

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)*

Provisional proposal 11

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

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)*

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)*

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)*

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)*

Provisional proposal 16

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

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)

Provisional proposal 18

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

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)

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)

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)

Provisional proposal 22

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

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)

CHAPTER 15 – A REFORMED REGULATORY FRAMEWORK

Provisional proposal 24

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

Provisional proposal 25

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

Provisional proposal 26

National safety standards, as applied to private hire 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)*

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)*

Question 29

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

Question 30

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

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)*

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)*

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)*

Provisional proposal 34

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

Question 35

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

Question 36

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

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)*

Provisional proposal 38

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

Provisional proposal 39

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

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)*

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)*

Provisional proposal 42

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

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)*

Question 44

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

CHAPTER 16 – 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)*

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)*

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)*

Provisional proposal 48

Operator licensing should be retained as mandatory in respect of private hire vehicles. *(Page 207)*

Question 49

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

Provisional proposal 50

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

Question 51

Should "fit and proper" criteria in respect of operators be retained? *(Page 210)*

Provisional proposal 52

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

Question 53

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

CHAPTER 17 – REFORMING QUANTITY CONTROLS

Provisional proposal 54

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

Question 55

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

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)*

CHAPTER 18 – 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)*

Question 58

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

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)*

Provisional proposal 60

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

Provisional proposal 61

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

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)*

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)*

CHAPTER 19 – REFORMING ENFORCEMENT

Question 64

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

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)*

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)*

Question 67

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

Provisional proposal 68

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

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)*

CHAPTER 20 – 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)*

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)*

Provisional proposal 72

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

Question 73

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