

THE LAW COMMISSION - REFORMING THE LAW OF TAXI AND PRIVATE HIRE SERVICES

Background

In July 2011 the Law Commission agreed to undertake a law reform project on the law of taxis and Private Hire Vehicles (PHVs). The Department for Transport (DfT) proposed the project, but in such cases the Law Commission is independent of Government.

Consultation

On 10 May 2012 the Law Commission published its provisional proposals along with associated Questions. All parties have until 10 August 2012 to submit responses.

Proposals and Questions

What follows is a summary of the Law Commission's proposals.

Accompanying each proposal is a response by the Welsh Government, drafted by officials. These have not been seen by Welsh Ministers. The Welsh Government looks forward to responding formally to the Commission's consultation on its proposals, planned for later in 2012.

Proposed future action

The Law Commission intends a formal consultation later in 2012, which will be its main information-gathering exercise. After the consultation, the Commission will analyse responses and reconsider this document's proposals. The Commission aims to produce a report containing its final proposals and a draft Bill by November 2013.

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 PHVs, which can only accept pre-booked fares.

This, in effect, represents the retention of the current, “two-tier” system. The main alternative would be a one-tier system in which a single category of vehicle would be able to take pre-bookings, to hail and to rank.

A one-tier system would be simpler because it would avoid the distinction between regulation of taxis and PHVs. However, the Law Commission’s view is that it would require additional regulatory distinctions to be devised to accommodate the different range of services regulated. For example, executive cars and novelty vehicles (“limousines”) would have to come under some different form of control as it would be difficult to impose generic taxi and PHV regulation to these types of services.

The Commission also believes that moving to a single-tier would diminish consumer choice. Regulators would be faced with difficult choices, such as whether fares should be regulated for all journeys (as they may be now for taxis).

WELSH GOVERNMENT RESPONSE

The distinction between taxis and PHVs is meaningless to consumers. Retaining a two-tier system would not in itself result in extra confusion for consumers, but the review provides an opportunity for regulators to take a decision that would help to simplify the industry for consumers. A single-tier system would be preferable. The existence of a two-tier system appears to be a factor more of the age of the extant legislation than any particular merits that system may have.

Should this proposal be retained, and given that executive cars and novelty vehicles represent a far smaller proportion of the total trade than taxis and PHVs, further consideration should then be given to whether executive cars and novelty vehicles should occupy a new class, with taxis and PHVs as another.

PROVISIONAL PROPOSAL 2

London should be included, with appropriate modifications, within the scope of reform.

WELSH GOVERNMENT RESPONSE

This proposal is not significantly relevant to Welsh considerations.

PROVISIONAL PROPOSAL 3

The regulation of taxis and PHVs 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.

The Law Commission's preferred approach is to take a broad view, in the spirit of the current legislation, in which "taxis" are "every wheeled carriage, whatever its form or construction".

Technological developments make it difficult to predict what modes of transport may become common in future. The Law Commission concludes that it would be undesirable to use a definition which might not cover some vehicles that may provide a service similar to that of a taxi or PHV.

Consequently, a greater range of standards would be needed to apply to a broad definition. Possible vehicles include motorbikes, limousines, horse-drawn carriages and Pedi cabs, which call for different sets of safety standards tailored to each. The default inclusion of all vehicles carrying passengers for hire might act as a barrier to entry in respect of novel vehicles that may not fall within a pre-established category with defined standards. Standards of fitness for such vehicles would need to be agreed before they could be allowed to operate. Or the taxi and PHV regime could be restricted to vehicles that require a driving licence – simple and clear. Limiting the definition to "motor vehicles" would be another alternative – so that motorbikes would be covered but Pedi cabs and horse-drawn carriages would not.

Overall, the Commission argues that the power to regulate taxis and PHVs should apply to a wide range of vehicles, providing flexibility to impose different standards for widely-different classes of vehicle, and the possibility of exempting certain types of vehicles or services.

WELSH GOVERNMENT RESPONSE

We endorse the Commission's proposal.

QUESTION 4

Would there be – and if so, what – advantages to restricting licensing to motor vehicles that require a driving licence?

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Overall, the Commission argues that the power to regulate taxis and PHVs should apply to a wide range of vehicles, providing flexibility to impose different standards for widely-different classes of vehicle, and the possibility of exempting certain types of vehicles or services.

WELSH GOVERNMENT RESPONSE

In rural authorities in particular, the fleet can include horse-drawn hackneys, novelty vehicles and Pedi cabs. There are many examples of requests to licence Tuk Tuks and similar vehicles. To restrict licensing to vehicles that require a driving licence would effectively exclude these forms of transport from the licensing regime.

There is already an anomaly in that VOSA will not licence horse-drawn vehicles that carry more than eight passengers because they are not mechanically propelled. These vehicles trade but are not covered by any legislation.

PROVISIONAL PROPOSAL 5

Public Service Vehicles should be expressly excluded from the definition of taxi and PHVs; and taxis and PHVs should only cover vehicles adapted to seat eight or fewer passengers.

Buses – and lorries – are regulated as Public Service Vehicles (PSVs). This covers any vehicle used for hire and reward adapted to seat more than eight passengers. PSVs fall within the scope of mandatory EU Regulations covering drivers' working hours and tachographs. But PSV drivers are not required to undergo criminal record checks.

Private hire regulation expressly excludes PSVs and only applies to vehicles with fewer than nine passenger seats. Taxi legislation predates modern public service legislation and instead of excluding PSVs carves out “stage coaches” or “stage carriages” which charge separate fares. Unlike PHVs, taxis have no limits in primary legislation on their passenger seating capacity, meaning that there is a potential overlap between PSVs and large taxis.

The Commission believes that the considerable discrepancies between PSV regulation compared with taxi and PHVs make it desirable to reduce the area of overlap to avoid providers selecting the licensing regime that is least onerous. The Commission's proposal is therefore to use the number of passenger seats as a way to distinguish between taxi and PHV regulation on the one hand; and PSV regulation on the other.

WELSH GOVERNMENT RESPONSE

The Commission's proposal is sensible, and proportionate.

PROVISIONAL PROPOSAL 6

References to stage coaches charging separate fares should no longer feature as an exclusion from the definition of taxis.
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The current – Victorian – taxi legislation expressly carves out stage coaches (an historical term for PSVs) and stage carriages from licensing requirements. Where passengers pay separate fares in vehicles with fewer than nine passenger seats, the law is unclear about whether or not that should count as a stage coach. This means that the proper scope of taxi licensing is, as a consequence, also unclear.

As an example of this unsatisfactory state of affairs, in London, Pedit cabs are considered to be stage carriages (i.e. cannot be licensed) whereas in the rest of England and Wales Pedit cabs may be licensed as taxis.

WELSH GOVERNMENT RESPONSE

All “horse drawn stage coaches or carriages” should remain within the taxi licensing regime, irrespective of the number of passengers they may carry. However, this sort of historical terminology is both confusing and unnecessary and should be removed.

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.

The Law Commission acknowledges that there is an overlap between the regulation of small PSVs (with fewer than nine passenger seats) and PHVs that can give rise to confusion.

Whereas PSV standards are outside the scope of the Commission’s review, it considers it important to get the relationship right between the standards adopted under the respective licensing regimes. The Commission therefore proposes that limousines should seek licences as PHVs where they have fewer than nine passenger seats. [However, should a local licensing authority refuse to license limousines at all, operators may have little choice but to license their limousines with the Traffic Commissioner as small PSVs.] The Secretary of State has power to issue guidance to the Senior Traffic Commissioner who, in turn, may issue guidance and general directions to Traffic Commissioners and their deputies.

WELSH GOVERNMENT RESPONSE

This is the responsibility of the Secretary of State, to whom Traffic Commissioners are responsible. The Commission’s proposal would assist in clarifying the licensing of limousines and other novelty vehicles, which has been a problem area in the past. Limousines and “novelty” vehicles should be covered by the proposed minimum national standards.

Licensing authorities in Wales argue that all limousines and novelty vehicles should be covered by the proposed minimum standards policy. Also that all vehicles with eight or fewer passenger seats should be the responsibility of local authorities, and not Traffic Commissioners.

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 PHV licensing to exclude genuine volunteers as well as activities where transport is ancillary to the overall service.

The Commission considers it undesirable that the law currently “catches” activities where transporting passengers to a destination is not the principal purpose – e.g. looking after children. Taxi and PHV regulation should aim to cover services that are principally for the purpose of transport and have a commercial element.

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 services may also be provided under a community transport (i.e. Section 19) permit.

Requiring volunteers to hold private hire licences (including a driver, vehicle and operator licence) seems excessively onerous and unnecessary.

WELSH GOVERNMENT RESPONSE

The Commission’s proposal is a proportionate response.

However, it can sometimes be difficult to identify “genuine” volunteers. Hotel transport might need to be exempted. The Commission may deem it necessary to undertake some further work in this area.

QUESTION 9

How, if at all, should the regulation of taxis and PHVs deal with carpooling and members' clubs?

Carpooling is increasingly popular and should continue to be encouraged. Carpooling arrangements where passengers pay separate fares are expressly exempted from the public service licensing regime provided that they are not "in the course of a business of carrying passengers". This is not the case in respect of taxi and private hire legislation.

In carpooling, the vehicle is not for hire in the conventional sense but there is a payment. DfT takes the position that carpooling lacks a commercial element and so is "not for hire" in the terms of the PHV licensing regime. Overall, the absence of profit appears to be the main determinant.

Some private hire services may be offered only to members of a club or to particular sections of the public, such as disabled passengers. In principle, taxi-type services could be similarly restricted.

WELSH GOVERNMENT RESPONSE

Carpooling should continue to be encouraged as a contribution to helping reduce congestion and the environmental impact of transport. Excluding carpooling from regulation is both sensible and proportionate providing that the activity does not result in a profit.

It is understood that the Courts have already determined that members' clubs need to be licensed.

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.

The Law Commission's proposal for broad definitions in respect of vehicles and services to be covered in the regulatory regime means that some activities may be caught which should not be. This is especially true in the case of PHVs, where pre-existing arrangements are in place.

A key rationale for excluding a category of drivers or vehicles from the regulatory framework is where there is an alternative structure already in place to ensure safety and quality controls are met.

This proposal is linked to proposal 11, below.

WELSH GOVERNMENT RESPONSE

The Commission's proposal appears to be sensible and proportionate. Welsh Ministers would expect to consult interested parties as part of any such determination.

PROVISIONAL PROPOSAL 11

Weddings and funerals should no longer be expressly excluded from private hire licensing through primary legislation.

Where a vehicle is hired in connection with a wedding or funeral it is currently exempt from PHV licensing requirements. The Commission has noted that wedding cars could be provided by companies that also provide transport for other occasions which would not give rise to an exemption – e.g. stag or hen parties, or anniversaries. It is not clear why wedding cars should be excluded.

On the other hand, the case for continuing to exclude funeral cars may be stronger because those would usually be provided as part of the broader funeral function and transport in this case might be regarded as ancillary.

This proposal is linked to proposal 10, above.

WELSH GOVERNMENT RESPONSE

Vehicles used only for funerals do seem to constitute a special case. National legislation should provide powers to exclude certain services from the taxi and private hire licensing regimes.

QUESTION 12

Would there be merits in reintroducing the contract exemption, by means of the Secretary of State and Welsh Ministers' exercise of the powers to set national standards? If so, what modifications could help prevent abuse?

The “contract exemption” excluded vehicles under a hire contract for a period of not less than seven days. This was repealed in 2008 to enhance public safety by ending perceived loopholes. The rationale for 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. There is then no need for the burdens of general licensing criteria to be met. Public bodies, in particular the NHS and education authorities, need to set up large contracts for transporting children and vulnerable individuals and are best-placed to set and monitor standards.

The public safety argument in support of repeal is less convincing because the most vulnerable passengers are often cases transported by volunteer or contract drivers outwith the taxi and private hire licensing regime. Where drivers are remunerated, as with care workers, this is typically as part of a wider package, often with carers using their own vehicles. 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.

On balance, the Commission suggests that standard-setting powers of the Secretary of State and Welsh Ministers would be a more appropriate means of addressing the contract exemption. This would allow such powers to be used flexibly – e.g. the exemption might only apply where the customer is a public sector organisation or for a contract period longer than seven days. Alternatively, certain limits on the contract exemption which had been introduced through case law might be made express (e.g. the requirement for the contract to have an end date, or that it relate to a specified vehicle).

Whether a particular activity should be exempted might depend on whether qualifications from certain professional, accredited organisations might be accepted as satisfying taxi and private hire licensing requirements. Overall, any list of exclusions would need to be updated, suggesting that the power to make exclusions is best left to the Secretary of State and Welsh Ministers rather than being set out in primary legislation.

WELSH GOVERNMENT RESPONSE

The purpose of the repeal was to remove the option of unlicensed drivers or vehicles with no formal enhanced CRB check being allowed to transport vulnerable passengers in unregulated vehicles. This remains helpful.

PROVISIONAL PROPOSAL 13

Regulation of the way taxis and PHVs can engage with the public should not be limited to “streets”.

The statutory framework is not consistent in its approach to private land, which can include hospitals, airports, railways, shopping centres and amusement parks. Some aspects of regulation are limited to (public) streets. This is true for plying for hire outside London. “Street” includes any road, square, court, alley and thoroughfare or public passage.

Where a taxi at a stand or in the street accepts a hiring, it is not under a duty to accept any passenger, but once it has accepted the passenger, it must take the passenger anywhere they might wish to go, within a prescribed distance. This concept of compellability is limited to streets in London and in the rest of England and Wales.

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. There is no equivalent provision in respect of airports.

Subject to the need to comply with additional conditions imposed by private landowners, the Commission believes that it would be 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 landowners. This would adopt the current position in London.

WELSH GOVERNMENT RESPONSE

The importance of ensuring adequate public safety in providing services to the public should apply on streets (as currently defined) and elsewhere.

QUESTION 14

Is there a case for making special provision in respect of taxi and private hire regulation at airports?

In particular, where concessionary arrangements 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?

Unlike railways, taxi and private hire legislation does not deal with airports specifically. Airports are mainstream integrated 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 do not have rail links. Particularly vulnerable consumers, such as tourists, are a significant part of the consumer base. This makes information deficits a particular problem. Airports also have limited space which also reduces the scope for competition.

This appears to suggest that the rationale for extending taxi and private hire licensing to railways might similarly apply at airports. Byelaws under the Civil Aviation Act 1986 cover the provision of taxi services. Some airport owners enter into contracts with chosen taxi and private hire companies and restrict access by all other providers. Other vehicles may only park some distance from the terminal.

It is important to consider how regulations can encourage competition and consumer choice. Funding information desks through a levy on the trades can be controversial. A requirement to monitor customer satisfaction according to agreed parameters might be useful. Waiting times and facilities could be rated, and benchmarking used to ensure that if satisfaction fell below agreed levels regulators might intervene.

WELSH GOVERNMENT RESPONSE

Airports are an increasingly significant part of integrated transport networks. They are often the gateway to a region. The provision of taxi and private hire services at airports should be by licensed vehicles and drivers.

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.
- c. appropriate accommodation of the legitimate activities of PHVs.

There is no statutory definition of “plying for hire”, although it is widely accepted as meaning exhibiting a vehicle as available for immediate hire by the public. Given that unlawful plying for hire is a criminal offence, it is important that its meaning should be clear and accessible.

The Commission believes that the central aspects of plying for hire should be put on a statutory footing to be more accessible and better reflect modern understandings of what taxis do.

The Commission suggests that there should be three key elements of a proposed statutory definition:

1. Use of the concepts of ranking and hailing;
2. Reference to a non-exhaustive list of factors relevant to determining plying for hire in grey areas; and
3. Accommodating the legitimate activities of PHVs.

WELSH GOVERNMENT RESPONSE

The Commission’s proposal is supported.

PROVISIONAL PROPOSAL 16

The concepts of hailing and ranking should not cover technological means of engaging taxi services.

The Commission suggests that plying for hire should not be interpreted to extend to novel technological ways of engaging vehicles, through mobile 'phones and internet-assisted applications, which should remain means of pre-booking.

WELSH GOVERNMENT RESPONSE

The Commission's proposal is supported.

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”?

In Scotland, 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 their behalf) and its driver for a journey beginning there and then.”

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”.

The taxi definition retains the idea of immediate availability for hire, but references to a “public place” could cause problems, especially as regards the internet.

WELSH GOVERNMENT RESPONSE

While this approach appears attractive, further information about Scotland’s experience of using such definitions would be helpful. This should be sought as part of the Commission’s formal consultation, later this year.

PROVISIONAL PROPOSAL 18

The concept of compellability, which applies exclusively to taxis, should be retained.

A key feature of taxis is that they are not permitted to refuse jobs once the consumer has engaged them appropriately, either at a rank or by hailing.

WELSH GOVERNMENT RESPONSE

We endorse the Commission's proposal.

PROVISIONAL PROPOSAL 19

Pre-booking would continue to be the only way of engaging a PHV and cover all technological modes of engaging cars. This is without prejudice to the continued ability of taxis to be pre-booked.

Under current law, the key distinction from taxis is achieved through restricting PHVs in how they can be engaged by the consumer. Bookings must be made in advance and through a licensed operator.

WELSH GOVERNMENT RESPONSE

We support the Commission's proposal.

PROVISIONAL PROPOSAL 20

Leisure and non-professional use of taxis and PHVs 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.

Currently, leisure use of licensed taxis and PHVs outside London driven by unlicensed drivers is not allowed. Restricting this sort of use to licensed drivers restricts the scope to use a family vehicle for leisure. On the other hand, enforcing the legislation is difficult if the driver were to argue that the vehicle was being used privately at any time.

The Commission is persuaded that the deregulatory arguments in favour of allowing leisure use are strongest. Experience in London has not shown any particular problems.

WELSH GOVERNMENT RESPONSE

We endorse the Commission's proposal.

PROVISIONAL PROPOSAL 21

The Secretary of State and Welsh Ministers should have the power to issue statutory guidance in respect of taxi and PHV licensing requirements.

The Commission considers that the existence of statutory guidance might be helpful in obliging licensing authorities and judges to consider it when exercising their functions, aiding consistency. The DfT's existing guidance on what could count as a PHV would form the basis of any such statutory guidance.

WELSH GOVERNMENT RESPONSE

We presume that this would be an enabling power, rather than a requirement that statutory guidance be issued.

PROVISIONAL PROPOSAL 22

Reformed legislation should refer to “taxis” and “PHVs”, respectively. References to “hackney carriages” should be abandoned.

This is eminently sensible as a hackney carriage is an historical term now out of date.

WELSH GOVERNMENT RESPONSE

We support the Commission’s proposal.

QUESTION 23

Should PHVs be able to use terms such as “taxis” or “cabs” in advertising provided that they are only used in combination with terms such as “pre-booked” and do not otherwise lead to consumer confusion?

Current law prohibits private hire operators from using the terms “taxi” or “cab” in signs and advertising. Many people use the term “minicab”.

Allowing PHVs to use the term “taxi” would represent a significant change, even if accompanied by a qualifying prefix. On the other hand, many consumers use the term in respect of taxis and PHVs. The key message for consumers is that PHVs can only be pre-booked.

WELSH GOVERNMENT RESPONSE

We support this proposal.

PROVISIONAL PROPOSAL 24

Taxi and private hire services should each be subject to national safety requirements.
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The Law Commission argues that, as a matter of principle, everyone using taxis and PHVs should be entitled to expect the same, basic level of safety. The impact of such a change would be highly deregulatory for PHVs, where a wide range of standards exists at the moment.

In addition, for effective cross-border enforcement by local licensing authorities, the establishment of the same, minimum standards would ensure that each local authority would be applying – at least – the same standards.

WELSH GOVERNMENT RESPONSE

There seems to be merit in requiring that the standards are the same.

PROVISIONAL PROPOSAL 25

National safety standards, as applied to taxi services, should only be minimum standards.

The Commission proposes that taxi regulation would continue to work differently from private hire regulation because consumers are able 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 reflect local conditions is therefore important.

Licensing authorities would therefore retain the ability to impose requirements over and above the national (Welsh) standards to taxis being hailed or using ranks within their licensing area. These could be linked to safety, but the Commission also recognises that authorities might wish to impose other quality standards (e.g. accessibility, colours and signage, CCTV, a “knowledge” test or specific vehicle requirements).

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

PROVISIONAL PROPOSAL 26

National safety standards, as applied to private hire services, should be mandatory standards.
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The Commission proposes that the regulation of private hire services should be limited to addressing safety concerns in accordance with standards set by the Secretary of State and by Welsh Ministers. Licensing authorities in the case of private hire services would not have powers to impose additional standards on private hire drivers, vehicles or operators. Private hire services would be able to exceed the mandatory standards in response to competition.

WELSH GOVERNMENT RESPONSE

There seems to be merit in requiring that the standards are the same for taxis and PHVs. Those could be set in legislation with licensing authorities able to go further, if they considered that necessary.

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.

The Commission has two reasons for treating private hire services differently from taxis. First, for private hire vehicles, all journeys are pre-booked so can be planned in advance. The economic incentive to take the shortest route therefore lies with the provider. Second, a knowledgeable driver is a key example of a quality service but does not affect safety.

Unlike taxis, consumers are able to avoid private hire services – which rely on repeat business - that demonstrate a lack of knowledge, whether through the route chosen or the ability of the driver to plan.

WELSH GOVERNMENT RESPONSE

While there is merit in the Commission's argument in circumstances in which the consumer has access to competing private hire services, that is not always the case. In more rural parts of Wales, for example, it is unlikely that passengers will have access to more than one nearby operator. Those persons should not have to accept potentially poor standards because there is no alternative provider.

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 PHVs are valuable?

The Commission also acknowledges that particular areas of private hire standards can have a local dimension. For example, vehicle signage has an impact on safety. Clear vehicle signage can help to counteract the risk that consumers will get in to an unlicensed vehicle, but such problems do not exist everywhere.

WELSH GOVERNMENT RESPONSE

There should be a national framework for standards, and those should be the same for taxis and PHVs. Local licensing authorities should be able to stipulate their particular requirements using the framework to reflect local circumstances.

Advertising and marketing may also need to be considered as having safety aspects.

QUESTION 29

What practical obstacles might there be to setting common national safety standards for both taxis and PHVs?

By their very nature, private hire standards would apply without geographical variation. At the same time, taxis and PHVs compete for pre-booked journeys. Consequently, if a licensing authority were able to adopt taxi standards lower than those proposed for PHVs, drivers would have an incentive to license in that area even if they had no intention of working there as taxis.

Common safety standards do not require common specifications because different vehicles – of varying design - require different criteria to be met.

WELSH GOVERNMENT RESPONSE

It is difficult to see why safety standards for taxis should be any different to those required of PHVs. Introducing a single set of safety standards for taxis and PHVs would avoid the risk of a mismatch in taxi and private hire standards.

QUESTION 30

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

The safety of taxi and private hire services goes beyond the safety of passengers, and must also address drivers' safety.

WELSH GOVERNMENT RESPONSE

The same conditions and standards should apply.

PROVISIONAL PROPOSAL 31

The powers of the Secretary of State and Welsh Ministers to set standards for taxis and PHVs should only cover conditions relating to safety.

The Commission believes that each of the pillars (driver, vehicle and operator) under the current licensing regime has a role in promoting safety. The Commission proposes that the scope of standard-setting powers granted to the Secretary of State and to Welsh Ministers would only extend to conditions relating to the safety of taxi and private hire services.

WELSH GOVERNMENT RESPONSE

Safety standards should be set nationally, but non-safety standards might be set by licensing authorities consistent with a national framework.

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 requirements to consult refer to a technical advisory panel?

National vehicle standards might include the use of roof signs, signage more generally, taxi-meters, CCTV cameras, tracking systems, driver shields (partitions), or tinted windows.

The Commission believes that the standard-setting powers held by the Secretary of State and Welsh Ministers, along with those of the licensing authorities in setting local standards for taxis, would be sufficiently flexible to deal appropriately with such issues.

WELSH GOVERNMENT RESPONSE

We endorse the Commission's proposal. It would be prudent for the consultation to include technical experts, but it may not be necessary for that to be stipulated on a statutory basis given that it is obvious best practice.

PROVISIONAL PROPOSAL 34

Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards.

Local conditions would continue to apply but exclusively to taxis. Matters relating to quality and fares are key examples where local decision-making for taxis would be valuable (e.g. London's "Conditions of Fitness").

The Commission's provisional view is that licensing authorities should retain the discretion to impose licensing conditions provided that they do not fall below national standards.

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

QUESTION 35

Should there be statutory limits to licensing authorities' ability to set local taxi standards?

The arguments in favour of regulating quality features are inevitably weaker than they are for safety features. A reformed system could be used to limit local licensing authorities' powers in this regard.

In Scotland, the Secretary of State and Scottish Ministers already have powers to make some conditions mandatory and – conversely – to prohibit conditions that are deemed undesirable. These powers may be applied differently reflecting local circumstances, including the type of taxi or PHV. There is also a specific power to set types, sizes and designs of vehicles. Potentially, this could be a useful model for limiting the scope of licensing authorities' discretion to set local standards.

WELSH GOVERNMENT RESPONSE

Further work should be one on the Scottish model, and this should be included as part of the Commission's formal consultation later this year.

QUESTION 36

Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators?

Under the Commission's proposals, nationally-set standards relating to safety would be the only form of regulation affecting private hire services.

Taxis would instead be subject to two distinct sets of standards – one national, and one local. The national standards may – or may not – be the same as those that would apply to PHVs.

Licensing authorities would not be obliged to introduce local conditions but would have the option to do so depending on local circumstances. Local standards could not, however, be any lower than the nationally-set minimum standards relating to safety.

Currently, licensing authorities may set conditions that apply to all licensees generally in their licensing area, as well as tailoring conditions specific to particular licensees. This applies to both taxis and private hire services.

The Commission considers this flexibility to be helpful, and believes that it should be retained for taxis as it is compatible with local licensing – albeit with the presumption that general conditions should be used, and individual conditions would be the exception.

In contrast, the move to national standards for PHVs would be inconsistent with the ability to impose individual conditions. If a PHV or private hire driver failed to satisfy national requirements, the licensing authority would have no option but to refuse the licence (rather than granting the licence subject to an individual condition). The loss in flexibility might nevertheless be outweighed by the benefits of having greater consistency, and transparency.

WELSH GOVERNMENT RESPONSE

National safety standards are required. It is difficult to see why they should be different for taxis and PHV drivers.

QUESTION 37

Should the powers and duties of licensing authorities to co-operate be on a statutory footing, or is it best left to local arrangements?

Some local licensing authorities work together through an integrated regulatory service function within a single management structure. This should reduce management and overhead costs as well as encouraging consistency of standards.

Such arrangements can be made informally, while there are also statutory powers (Section 21 of the Local Government Act 1972) under which local authorities can arrange for certain functions to be discharged by other authorities.

WELSH GOVERNMENT RESPONSE

There should be a statutory requirement set out in primary legislation requiring licensing authorities to establish arrangements and procedures for co-operating.

PROVISIONAL PROPOSAL 38

Neighbouring licensing authorities should have the option of combining areas for the purpose of taxi standard setting.
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Where licensing authorities 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.

The Local Transport Act 2008 introduced powers for the creation of integrated transport authorities and to change the constitutional arrangements in existing ones. Under such arrangements, functions of the Secretary of State or a local authority can be delegated to the integrated authority.

WELSH GOVERNMENT RESPONSE

Where local authorities determine that there are efficiency savings to be made as a result of combining areas – or functions – that should be encouraged where it can be demonstrated that there would be no adverse impact on effectiveness.

PROVISIONAL PROPOSAL 39

Licensing authorities should have the option to create or remove taxi zones within their areas.

DfT recommends the abolition of taxi licensing zones to provide greater benefits to passengers through the greater availability of vehicles and more consumer choice. It also allows taxi drivers to ply for hire in a wider area, promoting more efficient operation.

On the other hand, where licensing authorities have proposed removing existing zones drivers have raised concerns about potentially higher fares through the introduction of blanket tariffs across a then wider area.

The Commission proposes the introduction of more flexible powers enabling licensing authorities to respond more easily to local circumstances. Such powers could allow authorities to create licensing zones or to remove them within their areas.

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

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 the day as prescribed by the licensing authority?

Peak-time licences might offer an attractive, targeted option for ensuring provision at times of perceived, unsatisfied demand. Such a system is used successfully in parts of Australia.

WELSH GOVERNMENT RESPONSE

Additional information about how this would benefit passengers in England and Wales would be helpful.

PROVISIONAL PROPOSAL 41

Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to using drivers or vehicles licensed by a particular licensing authority.

Currently, licensing officers have no enforcement powers in respect of vehicles licensed outside their licensing area. Moving to a common set of safety standards would mean that licensing officers would have a shared set of standards they may apply to any vehicle, driver or operator.

Also under current legislation, taxis may only ply for hire within their licensed area but may undertake pre-booked journeys anywhere. The Commission proposes retaining this. The scope for local variation in taxi standards, and in particular the different fares and accessibility standards, means 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 now.

Private hire 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 PHVs are free to pick up and drop off anywhere.

Taxi drivers undertaking pre-booked journeys have no similar constraints whether taking bookings directly or where a third party may invite or accept bookings on their behalf (thus acting like an operator).

The move to 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.

WELSH GOVERNMENT RESPONSE

We support the Commission’s proposal.

PROVISIONAL PROPOSAL 42

<p>The Law Commission does not propose the introduction of a “return-to-area” requirement in respect of out-of-area drop offs.</p>
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The Commission does not propose the adoption of specific measures aimed to restrict cross-border activities of licensed PHVs or taxis. Introducing a return-to-area requirement would only lead to increased prices and reduced flexibility in the provision of services.

Taxis and PHVs could, after dropping off a passenger, legitimately pick up a different fare outside their licensed 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 required to drive back empty to their own licensing area that would not only be expensive but also environmentally damaging.

The danger that an out-of-area taxi or PHV might illegally ply for hire requires specific action through targeted enforcement.

In addition, the introduction of common safety standards reduces the seriousness of cross-border issues. If a licensed vehicle is illegally plying for hire it may be competing unfairly and breaching various regulatory requirements but it does not present a safety risk.

WELSH GOVERNMENT RESPONSE

We support this proposal.

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.
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Price controls are widely used to address market failure in the taxi rank and hail markets. Most licensing authorities regulate maximum fares determined in accordance with formulae to reflect the cost of running a taxi further to a consultation process.

The private hire market does not require such intervention because of the existence of normal market competition. This does not mean that private hire fares are completely unregulated because general consumer protections do apply. For example, where a PHV has a meter it must comply with the Measuring Instruments Directive and trading standards controls.

Nothing in the Commission's proposals would require local licensing authorities to regulate fares, and local authorities would retain the choice of whether to do so.

WELSH GOVERNMENT RESPONSE

We support this proposal.

QUESTION 44

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

Under current law, taxi fares for pre-booked journeys ending inside the licensing area are capped at what would have been the metered fare. Out-of-area journeys can be subject to a higher fare provided that this is agreed.

Taxis compete directly with PHVs in respect of the pre-booked market, so in effect provide competition in respect of such journeys. The rationale for fare regulation of pre-booked taxi journeys is therefore less strong.

There are 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 PHVs). If a taxi driver were to demand more than the metered fare it would be hard to track down that taxi, whereas if an operator is involved it would be easier to complain.

Requiring details of pre-booked taxi journeys to be kept and a presumption that the metered fare applies could allay concerns.

WELSH GOVERNMENT RESPONSE

Given that this flexibility would apply only to pre-booked journeys, consumers would be able to compare fares with other providers before making a choice.

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?

A “fit and proper” person is not defined in statute. This might include the driver’s medical health as well as their level of training and skills. This is especially relevant in terms of assisting disabled passengers.

While the Commission acknowledges that certain requirements might best be set out in primary legislation, it also recognises that the powers of the Secretary of State and Welsh Ministers to set conditions in respect of bottom-line safety requirements could be sufficiently wide to cover such issues.

WELSH GOVERNMENT RESPONSE

Safety standards for drivers, including the requirement that s/he must be a “fit and proper” person should be set out in primary legislation, ensuring common standards throughout the country. That would guarantee reassurance for consumers.

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.
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Currently, general vehicle requirements for both taxis and PHVs leave much discretion for setting local standards, which can relate to appearance, design and any distinguishing marks. London’s Conditions of Fitness are an example of locally-set conditions and have been adopted by other authorities. PHVs must satisfy licensing authorities in respect of:

- Suitability of type, size and design.
- Sufficient difference to taxis to avoid confusion.
- Suitable mechanical condition.
- Safety.
- Comfort.
- Proper insurance cover.

The Commission has suggested that the Secretary of State and Welsh Ministers should have powers to set national safety-related standards subject to a statutory consultation. In England (outside London) and Wales the owner of a licensed vehicle is not subject to any statutory suitability requirements – there is no express power to refuse a vehicle owner a licence for reasons related to the applicant, as opposed to the vehicle. For taxis, licensing authorities’ byelaws can “regulate the conduct of the proprietors”. They may also suspend or revoke a taxi or private hire licence for any reasonable cause. This may be broad enough to include reasons linked to the licence holder.

Vehicle owners in London 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”.

Owners do not come into public contact so are remote from considerations relating to passenger safety.

WELSH GOVERNMENT RESPONSE

The system in London applies to vehicle owners and reportedly is effective and works well. There appear to be no reasons not to extend that system to the rest of England and Wales. It might also help to address concerns about the alleged links between organised crime and some businesses.

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?

Currently, licensing authorities can take into account a broad range of criteria (beyond safety) in respect of licensing both taxis and PHVs.

The Commission has suggested that national standard setting would only extend to vehicle safety. This would also cover features distinguishing taxis from PHVs. On the other hand, considerations relating to broader quality considerations (e.g. colour or comfort) could only be regulated locally, and then only in respect of taxis.

Appropriate vehicle testing and insurance remain key safety requirements.

WELSH GOVERNMENT RESPONSE

National vehicle safety standards should be set out in primary legislation.

PROVISIONAL PROPOSAL 48

Operator licensing should be retained as mandatory in respect of PHVs.
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Operators have only indirect contact with the public, although this is not the case for pre-bookings. Passengers in the latter circumstances do not know who the driver will be until they are collected. In private hire this is reinforced by the fact that the contract is between the consumer and the operator, not the driver.

Operators should periodically check that drivers and vehicles comply with safety requirements, as well as checking that they continue to satisfy relevant regulatory requirements. Operators' reliance on customer goodwill for repeat business is an important regulatory control.

In Scotland, operator licensing was deemed unnecessary when private hire licensing was introduced. However, because of a perceived increase in concerns about public safety and public order, operator licensing was introduced in 2009.

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

QUESTION 49

Should operator licensing be extended to cover taxi radio circuits and, if so, on what basis?

Unlike private hire drivers, taxi drivers may take 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.

Third-parties taking bookings on behalf of taxi drivers have no formal role in legislation but it may appear that taxi radio circuits – dispatching solely taxis – carry out a very similar function to operators.

If all third parties who invite 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.

WELSH GOVERNMENT RESPONSE

This appears prudent.

PROVISIONAL PROPOSAL 50

The definition of operators should not be extended to include intermediaries.

Intermediaries may have a long-standing contract for particular events. They may also contact an operator to dispatch PHVs or taxis. In such cases, the customer is not in any meaningful way relying on the operator, but rather on the identifiable intermediary. Given this overlap, there is an issue as to whether the definition of operators should be extended to intermediaries.

WELSH GOVERNMENT RESPONSE

Under current arrangements, we understand that customers may still have recourse through contract law if a problem arises. The operator ultimately engaged would remain liable and subject to regulation.

QUESTION 51

Should “fit and proper” criteria in respect of operators be retained?

Currently, licences may only be granted to operators if they are “fit and proper” persons and subject to such conditions as a licensing authority may deem “reasonably necessary”. Operators are directly liable for breaches by their drivers, and vehicles.

There is evidence that initial checks on operators can yield significant intelligence useful to the police.

WELSH GOVERNMENT RESPONSE

It would appear sensible to retain these criteria.

PROVISIONAL PROPOSAL 52

Operators should be expressly permitted to sub-contract services.

Where a customer contacts an operator who is unable to fulfil the proposed booking, that operator may wish to sub-contract the job to another operator.

Currently, it is illegal to sub-contract bookings elsewhere in England and Wales, whereas it is expressly permitted in London – where the original operator remains liable to the customer.

WELSH GOVERNMENT RESPONSE

Subject to the original contractor retaining responsibility.

QUESTION 53

Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply?

The Commission does not suggest that taxi drivers should be required to obtain an operator licence 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.

WELSH GOVERNMENT RESPONSE

Records should be kept in all such circumstances.

PROVISIONAL PROPOSAL 54

Licensing authorities should no longer have the power to restrict taxi numbers.

QUESTION 55

What temporary or permanent problems might arise if licensing authorities lost the ability to restrict numbers?

Under current legislation, licensing authorities have the option to limit taxi numbers, but only in the absence of “unmet demand”.

Restricted numbers limit competition and so consumer choice. Quantity controls also create a market for taxi licences. In some parts of England, there is evidence that a taxi licence can command up to £60,000.

An as yet unimplemented provision of the Equality Act 2010 would further restrain authorities’ scope to limit numbers by preventing the refusal of a licence to a wheelchair-accessible taxi.

As at the end of February 2012, some 93 licensing authorities had quantity controls in place. Approximately 21,000 vehicles are currently operating in areas with quantity controls, accounting for just over ¼ of all taxis operating in England and Wales.

Lack of provision can push consumers into taking unlicensed vehicles.

Taxi representative groups have highlighted the potential benefits to the public through restricting numbers which flow from a more stable and better paid trade. However, those could also be achieved through regulation targeted at ensuring appropriate quality standards.

On balance, the Commission is proposing that arguments in favour of deregulation, and for the abolition of quantity controls, are most convincing.

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

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?

There is some concern that removing quantity restrictions may drive out high skilled drivers as a sudden influx of drivers could force down standards. Even if the new entrants leave after a few years, the overall standards might be lower than before the change. There would be reputational issues, too.

However, the risk of lower standards can be protected against by ensuring that new entrants are required to provide services to an appropriate standard. London is a prime example, as there are no quantity restrictions but there are stringent quality controls. Even in such circumstances, there has to be an adequate enforcement regime to monitor and enforce those standards.

WELSH GOVERNMENT RESPONSE

Transitional measures should be available if licensing authorities assess them as being necessary, following consultation.

QUESTION 57

Should there be a separate licence category for wheelchair accessible vehicles? This could involve:

- a. A duty on licensees to give priority to disabled passengers; and
- b. a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles.

Ensuring proper accessibility is a priority of the Law Commission's review.

Some authorities have a policy requiring all licensed taxis to be wheelchair accessible. This guarantees a disabled person an accessible taxi. Such vehicles may not be ideal for passengers with other disabilities.

The Commission is not arguing that a percentage of taxis should be wheelchair accessible.

The Commission has considered whether a specific accessible taxi licence could be required, so that licence holders would be obliged to prioritise bookings from passengers in wheelchairs. There could be special ranks for such vehicles.

WELSH GOVERNMENT RESPONSE

A separate licensing category would help to determine the availability of accessible vehicles. Legislation already requires that all buses and coaches must be accessible within a specified timeframe. There may be an argument that this should be extended to taxis and PHVs.

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 for catering for the different needs of disabled passengers?

In some countries, the licence fee for a wheelchair accessible taxi is considerably lower than for other vehicle types. This helps to offset the cost of purchasing an accessible vehicle. One option might be, therefore, to introduce a range of fees relating to vehicles that satisfy different accessibility standards.

WELSH GOVERNMENT RESPONSE

This should be a matter for each licensing authority, depending on local circumstances.

All buses and coaches are being required to be accessible over a period of time. This might be applied to taxis and PHVs.

PROVISIONAL PROPOSAL 60

The Commission does not propose the introduction of quotas for wheelchair accessible vehicles.

The Commission is not persuaded of the need for quotas because of the fluidity of the industry and because many drivers and vehicle owners are sole traders. It also recognises that quotas may not help many disabled people in a wheelchair because there is no guarantee that an accessible vehicle would be available at the time and place they required it.

WELSH GOVERNMENT RESPONSE

A 100%-accessible fleet should be made a requirement, phased-in over a period of time sufficient for the industry to take the necessary steps (perhaps five to 10 years). The unit cost of each vehicle would reduce over time.

PROVISIONAL PROPOSAL 61

National standards for drivers of both taxis and PHVs should include recognised disability awareness training.
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There are plenty of examples of disabled people – in particular those in wheelchairs or with assistance dogs – having been refused service or discriminated against in the provision of a service. More needs to be done to eradicate illegal and unacceptable practices.

There should therefore be a national standard requiring all taxi and PHV drivers to complete a recognised accessibility training course as a condition of holding a licence.

Assisting a disabled person also has safety implications.

Some local authorities (e.g. South Ayrshire) have introduced a mandatory requirement for licensed drivers to attend an appropriate course.

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

PROVISIONAL PROPOSAL 62

To better address concerns about discrimination, taxis and PHVs should be required to display information about how to complain to the licensing authority.

This would be consistent with the spirit of the Equality Act 2010, because – regrettably – discriminatory practices are not rare. More can be done at local level to ensure that discrimination is not condoned. Licensing authorities should take appropriate action against licence holders who participate in discriminatory practices.

WELSH GOVERNMENT RESPONSE

We support this proposal.

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?

Legislation already prohibits discrimination against disabled people in the provision of goods and services – including services provided in taxis and PHVs. This includes a requirement to make “reasonable adjustments” in the provision of the service, including the provision of auxiliary aids.

The law provides that there should be no additional charge for carrying an assistance dog, although this is not always followed.

Taxis are not under a general duty to stop when hailed, and the Commission does not seek to change that.

Good practice would suggest that licensing authorities should require taxis to display their availability for hire by some obvious means to the public. This, in turn, could be coupled with a requirement to stop in response to a hailing if free and safe to do so.

WELSH GOVERNMENT RESPONSE

A statutory requirement that all vehicles are accessible within a specified timeframe would address this. An obligation to stop might not help because a reasonable excuse on the basis of safety would – quite reasonably - continue.

QUESTION 64

Should authorised licensing officers have the power to stop licensed vehicles?

Breaches of taxi and PHV legislation are criminal offences enforced through magistrates' courts. Licensing authorities also have powers to suspend, revoke or refuse to renew an existing licence, and to refuse to issue licences.

Licensing officers do not currently have powers to stop a vehicle, although they can inspect licensed vehicles for fitness. This requires them to work closely with the police and the Vehicle and Operator Services Agency.

It would not be possible for a licensing officer to determine that a vehicle and driver are licensed in advance of stopping them. There are questions about the propriety of a licensing officer – rather than a uniformed police officer – approaching members of the public and questioning them about their behaviour. Such powers would have to be proportionate, appropriate and accompanied by safeguards.

WELSH GOVERNMENT RESPONSE

With appropriate safeguards, licensing officers should be empowered to stop licensed vehicles.

QUESTION 65

What more could be done to address touting (the offence in a public place of soliciting persons to hire vehicles to carry them as passengers)?

Touting can be a serious problem at airports and town centres with an active nightlife.

WELSH GOVERNMENT RESPONSE

It should be possible to confiscate vehicles and to sell them.

QUESTION 66

Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules?

The Vehicle and Operator Services Agency and Traffic Commissioners are empowered to impound vehicles in respect of illegally operated public service and goods vehicles. The police have powers to seize vehicles that are operated without insurance.

If a vehicle is impounded it is for the owner to show that the vehicle has not been operated in contravention of the law. Were they unable to do so, the vehicle would be sold or destroyed.

WELSH GOVERNMENT RESPONSE

This would be a welcome addition to tackling such breaches, and a strong disincentive for them to be committed in the first place.

QUESTION 67

Should licensing authorities make greater use of fixed penalty schemes and, if so, how?

A number of road traffic offences are now classed as fixed penalty offences. A Fixed Penalty Notice (FPN) 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. They are only appropriate where the commission of an offence can be assessed objectively.

The recipient may choose to pay the fine or have the matter heard in court.

Making certain breaches of taxi and PHV legislation fixed penalty offences would reduce the number of cases reaching court, and would be consistent with the enforcement of breaches of other professional motoring requirements.

WELSH GOVERNMENT RESPONSE

The Welsh Government is enacting subordinate legislation that will allow local licensing authorities in Wales to adopt civil enforcement powers to tackle bus lane and moving traffic contraventions. This proposal would be consistent with that legislation.

PROVISIONAL PROPOSAL 68

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

Currently, enforcement officers are only able to take enforcement action against vehicles licensed in the authority for which they work. Currently also, PHVs can work legally in authorities other than that in which they are licensed providing the licences held by the operator, driver and vehicle are from the same authority.

The Commission's proposals would enable private hire operators to use drivers and vehicles licensed in another authority to fulfil a booking, and it is important to ensure that enforcement systems sit properly with this greater flexibility.

WELSH GOVERNMENT RESPONSE

We support this proposal.

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?

Non-criminal sanctions can be very effective. Under the current licensing framework, only the home licensing authority has the power to take such action. As this is the licensing authority that originally granted the licence and which holds information on the licensee, this makes sense.

Under a system allowing cross-border enforcement, where a vehicle or driver licensed in one area was found to be in breach of regulations in another area, their home licensing authority would be alerted to this and expected to take appropriate action.

The authority might need to have an incentive to do so. This could be overcome by informal co-operation between licensing authorities; or by formal procedures for cross-border co-operation; or by authorities having full powers to suspend and revoke licences cross-border.

WELSH GOVERNMENT RESPONSE

There should be a statutory requirement on licensing authorities to establish procedures for working closely with others.

PROVISIONAL PROPOSAL 70

<p>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, the holder of the relevant licence.</p>

Currently, there are differences in the rights of appeal available in the taxi licensing regime as opposed to the private hire regime. There are also differences in the regime that applies in London compared to that which applies in the rest of England and Wales.

The Commission's proposals envisage three main types of standards that might apply to any licensee:

- National standards for taxis and PHVs.
- Additional local standards for taxis only; and
- Individual conditions of licence.

In principle, where the challenge is to a general standard the mode of challenge should be a judicial review. A successful challenge would strike down the standard itself.

If the ability to impose individual conditions is retained, an appeal to the magistrates' court in respect of the specific condition would be appropriate.

A licensee may also wish to challenge how a standard had been applied in a particular case. This would again involve a magistrates' court.

The Commission recommends that statutory rights of appeal should be limited to the applicant or licence holder, because general conditions will only be susceptible to challenge via judicial review.

WELSH GOVERNMENT RESPONSE

We support this proposal.

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 licensing authority to reconsider its decision.

London has a statutory right to require a local licensing authority to reconsider its decision. If the applicant remains unhappy they have a right of appeal to a magistrates' court. An application to a magistrates' court can also be made first, bypassing the reconsideration stage.

This option does not exist anywhere else in England and Wales. The applicant must instead appeal directly to the magistrates' court (or Crown Court).

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

PROVISIONAL PROPOSAL 72

Appeals should continue to be heard in the magistrates' court.

This already applies in most cases, although most magistrates have little or no experience of taxi and private hire licensing issues. They are not specialists like the Traffic Commissioners or the First-Tier Tribunal (Transport).

The Commission's proposals are that only complaints about decisions that directly affect individuals (and potentially, individual conditions) would be heard before the magistrates.

WELSH GOVERNMENT RESPONSE

We endorse this proposal.

QUESTION 73

Should there be an outright right of appeal to the Crown Court?

Currently, onward appeals on the merits lie, for the most part, to the Crown Court.

The Commission's proposals provide a two-step appeal system, with decisions first subject to reconsideration by the authority followed by a right of appeal to magistrates. This should provide adequate safeguards, but retaining an onward right of appeal to the Crown Court would be desirable given the possible impact on livelihoods.

WELSH GOVERNMENT RESPONSE

The option to appeal to the Crown Court should be retained.