

REPORT TO LICENSING SUB COMMITTEE - 3 JUNE 2016

SCOTTISH GOVERNMENT CONSULTATION ON TAXI AND PRIVATE HIRE CAR LICENSING AND THE IMPACT OF MODERN TECHNOLOGY

1 Recommendations

It is recommended that the Committee considers the proposed consultation response as set out in this report, makes such amendment and/or addition to it as they see fit, and thereafter authorises officers to submit the agreed response to the consultation

2 Background/Discussion

- 2.1 When the Bill that was to become the Air Weapons and Licensing (Scotland) Act 2015 was making its way through its various stages in the Scottish Parliament concern was expressed about the impact of modern technology on the licensing regime for taxis and private hire vehicles. Modern technology such as smartphone apps is having an impact on the way that taxis and private hire cars operate and presents challenges to existing business and regulatory models. As part of its response to the concerns raised the Scottish Government has launched a consultation exercise. The full text of the consultation can be viewed here <https://consult.scotland.gov.uk/licensing-unit/taxi-private-hire-modern-technology>
- 2.2 Officers have considered the consultation and prepared a draft response in the terms set out in the Appendix to this report. The committee are invited to consider the consultation questions and the proposed responses and to either agree them or to agree amendments and /or additions prior to a response being submitted on behalf of the Council to the Scottish Government.
- 2.3 The existing regulatory regime consists of the licensing provisions of the Civic Government (Scotland) Act 1982 as they relate to taxi and private hire vehicle licensing and the regulation of booking offices under the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009. This stipulates that anyone who uses premises within the area of a local authority for the business of taking bookings by any means of communication from members of the public for the hire of a taxi or private hire vehicle requires to obtain a licence from that local authority. Although it applies to any form of communication and so would apply bookings taken by way of smart phone apps it is tied to the use of premises in the local authority area. Most businesses offering a booking service via modern technology will not have a physical presence in the local authority area. One of the fundamental questions to be addressed therefore is whether the existing regulatory regime should be amended in order to extend its application to those businesses which do not have premises in the local authority area. If it is thought that the regime should be amended then the next question is how this should be done.

- 2.4 Considering this from the point of view of providing safeguards for the public the existing regime means that anyone placing a booking through a licensed booking office can expect that the normal pre-application checks into the background of the licence holder will have been carried out and importantly they can expect that the licence holder will take reasonable steps to ensure that the vehicle that is being booked is licensed under the 1982 Act. This duty on the licence holder would help to ensure that extending the existing booking regulatory regime would mean that only licensed vehicles could be booked thus cutting out the practice that is believed to have developed in England whereby smart phone apps are used to take bookings for cars belonging to private individuals who are not licensed taxi or private hire car operators.
- 2.5 Extending the scope of the existing booking office licensing regime beyond the current focus on those who have premises in a local authority area is not however without difficulty and this is discussed further in the proposed response. One of the possible unintended consequences could be that the availability of taxi and private hire car booking services in rural areas diminishes as operators decide that it is not financially worthwhile to be licensed in such areas and instead concentrate their activities in cities and large urban areas.
- 2.6 In addition to questions about the taking of bookings and their regulation the consultation also asks questions about taxi fares and taximeters and whether they should be required on all taxis (but not private hire cars) . In Aberdeenshire all taxis are already required to have taxi meters so that it is difficult to provide an assessment here. The consultation also asks for examples of good practice in relation to fares and the proposed response refers to the practice in Aberdeenshire of consulting taxi operators in advance of formal public consultation as part of a review of taxi fares.
- 2.7 The Council's Finance Officer and the Monitoring Officer within Business Services have monitored this report.

3 Equalities, Staffing and Financial Implications

- 3.1 There are no area, policy, finance, staffing or sustainability implications directly arising from this report.
- 3.2 An Equality Impact Assessment is not needed in this case because carrying out the recommendations will not have a differential impact on the protected characteristics of the applicant or any third parties.

APPENDIX

SCOTTISH GOVERNMENT CONSULTATION ON TAXI AND PRIVATE HIRE CAR LICENSING AND THE IMPACT OF MODERN TECHNOLOGY

Proposed Response to Consultation

Questions: the regulation of the taking of bookings

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

Yes No

Comments: In order to ensure that there is a similar level of regulation for anyone taking a booking by way of modern technology (for example through a smartphone app) as there is for those who take bookings by the more traditional means of a 'phone call to a booking office the system of regulation should in principle be updated. There are however a number of potential obstacles and practical problems which are discussed in the responses to 2 and 3 below. As will be seen it is considered that if the current booking office regime is to be updated the best way may be to amend the definition of the licensed activity.

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

Comments: The current regime depends on the individual or organisation applying for a licence having a physical presence in the licensing authority area. The licensable activity is defined as "the use of premises for the carrying on of a business 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 relevant vehicle". Therefore whilst a person (be they an individual, partnership or limited liability company) may take bookings, and they may do so by any means, unless they have premises in the licensing authority's area there is no requirement to obtain a licence.

It might be possible to require that anyone offering a booking service in a licensing authority area has premises in that area thereby ensuring that they would be caught by the existing legislation. However it is considered that to do so would place a restriction on the way in which a business chooses to organise itself and operate with the likelihood of an attendant cost to the business that might be considered to be unreasonable. There is also the possibility that the introduction of such a requirement would mean that operators choose to confine their activity to those areas where it is most cost effective which would probably mean urban areas to the detriment of the public in rural areas.

The other alternative means to bring operators employing modern technology within the regulatory regime would be to amend the definition of the licensable activity. This could be tied not to premises but to taking bookings for journeys beginning in the area of the local authority. So a possible amended definition might be to "the carrying on of a business 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 relevant vehicle for a journey beginning at a location within the area of the licensing authority". This removes the requirement to have premises in the licensing authority area but would catch bookings for journeys beginning there. It would afford a similar level of protection to the public in as much as the same background checks could be carried out and the licence could also be subject to the mandatory conditions

that presently applies under paragraph 3 of the Licensing of Booking Offices Order 2009. There is a practical problem however in ensuring compliance with the mandatory conditions relating to record keeping if the licence holder does not have premises in the local authority area. .If there were complaints from members of the public about the way in which a licence holder was operating, for example by failing to have bookings honoured then the difficulty in enforcement might lead to a loss of confidence in the licensing system.

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

Comments: If it were to be made essential that anyone taking a booking for a vehicle in a local authority area had to have premises in that area so as to be caught by the current definition of the licensable activity this would be likely to have a considerable impact on those who currently take bookings purely by means of modern technology. For reasons explained at 2 above this might result in the public in urban areas, possibly only the largest Scottish cities, being able to book a taxi or PHV by smart phone app whilst those in rural areas could not.

Amending the definition of the licensable activity would extend a level of protection to the public who make bookings which they do not benefit from at the moment. It would have consequences for licensing authorities in terms of enforcement and there would be questions of jurisdiction in respect of enforcement of conditions and any criminal prosecutions that might result. It would extend the requirements in respect of keeping records and details of bookings and vehicles to operators who currently are not licensed and one could envisage a considerable administrative burden especially if the operator wishes to operate in a lot of different local authority areas.

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

Yes No

Comments: The current threshold would seem to be proportionate. It means that operators of two or three taxis or PHVs do not have to keep records of bookings however any member of the public who tried to book a vehicle operated by such an operator would be able to complain through the general taxi/PHV licensing scheme.

5. What should the limit be amended to?

Comments: n/a

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

Comments: n/a

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

Yes No

Comments: Any change to the lower limit would place an additional burden on small taxi/PHV businesses without any significant additional safeguard for the public. Experience in this local authority area does not suggest that there are any difficulties in relation to bookings

Questions: where should the taking of bookings be regulated

8. If a business is taking bookings where should it be registered? For example

should it be registered in every local authority where it takes bookings?

Comments: See responses given above at 2 and 3

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

Comments: The records required to be kept under the mandatory conditions should be available for inspection by the police and civic licensing enforcement officers. There would be difficulty in enforcement/compliance here however where the licence holder did not have premises in the local authority area.

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

Yes No

Comments

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

Yes No

Comments: The current regime should be extended to take account of the increasingly widespread use of modern technology however this should only be done if difficulties in relation to enforcement can be overcome

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

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

Yes No

Comments: A requirement that all PHVs had meters fitted would place an unreasonable burden on many small operators and could lead to a diminution in the service provided particularly in rural areas. In any case fares for private hire vehicles are a matter of private negotiation between the customer and the operator and whilst a taxi meter might be of assistance it is not essential to this process. Depending on the route and time the operator may wish to offer bespoke prices for different hires.

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

Yes No

Comments: This should be a matter for individual licensing authorities.

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

Yes No

Comments: The local authority in each area is best placed to assess whether taximeters are required on all hire vehicles.

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

Comments: See response to 12

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

Yes No

Comments

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

Yes No

Comments: In this Council a practice has developed whereby a meeting is held with the taxi trade to discuss the review of fares prior to the commencement of the formal statutory process. It is considered that this has been of assistance in the subsequent process.