

Taxi And Private Hire Car Licensing - Consultation on The Impact of Modern Technology

March 2016

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

Background

1. The Civic Government (Scotland) Act 1982 (the “1982 Act”)¹ provides that both a taxi and private hire car are "hire cars". Taxis are able to use taxis ranks and be hailed in the street as well as being pre-booked. However, a private hire car may not ply for hire in this way and must be pre-booked. Drivers of taxis and private hire cars are licensed separately under the 1982 Act.
2. Taxis and private hire cars are licensed by local authorities. The 1982 Act provides the licensing authority is the local authority within whose area the licensed activity takes place. They administer the licensing regime including setting local licensing conditions and, with the assistance of Police Scotland, enforce the licensing regime requirements. Section 3A of the 1982 Act also enables Scottish Ministers to provide mandatory licence conditions for any licensing regime in the 1982 Act.
3. More recently in this area, the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (the “2009 Order”) was introduced to increase control and oversight of offices that take bookings for taxis and/or private hire cars. These arrangements allow local licensing authorities to license and regulate taxis and private hire car vehicles, drivers and booking offices to ensure they provide safe services for the public. Licensing authorities are best placed to take local circumstances into account.
4. The Scottish Government consulted on proposals for change in relation to taxis and private hire cars between 2012/2013² and the Summary of Consultation Responses is available online³. This consultation helped inform the provisions within the recent Air Weapons and Licensing (Scotland) Act 2015⁴ (the “2015 Act”).
5. During the Parliamentary passage of the 2015 Act, concerns were raised about the impact of modern technology such as smartphone apps on the licensing regime for taxis and private hires, and the Cabinet Secretary for Justice made a commitment to undertake further work to address these issues. Scottish Government officials have carefully considered the issues raised during the passage of the 2015 Act, and have met with stakeholders to seek their views.

Other developments in the United Kingdom

¹ <http://www.legislation.gov.uk/ukpga/1982/45/contents>

² <http://www.gov.scot/Publications/2012/11/2484>

³ <http://www.gov.scot/Publications/2013/09/2230>

⁴ <http://www.legislation.gov.uk/asp/2015/10/contents/enacted>

6. In 2014 the Law Commission issued a report on taxi and private hire services in England and Wales (see the summary⁵ and the report⁶). This report discusses the issue of modern technology in paragraph 3.146 – 3.159 and is now being considered by the UK Government.

7. In August 2015, the UK Government House of Commons produced a briefing on taxis and private hire vehicles⁷. This briefing provides a good summary of current issues, with a useful analysis of the position in terms of licensing across the four nations.

8. This demonstrates that there are concerns regarding the impact of modern technology on taxi and private hire car services not only in Scotland but also in the UK. These issues are also attracting attention worldwide and have generated significant political and media interest.

Purpose of Consultation

9. The Scottish Government is undertaking a variety of work in relation to taxis and private hire cars, this consultation is particularly focussed on the impact of modern technology. Modern technology, such as the advent of smartphone apps allowing you to book a taxi or private hire car directly from a mobile phone, is already having a major impact on the way that taxis and private hire cars operate. It is increasingly clear that we face a changing technological environment, which will challenge existing businesses and regulatory models.

10. The licensing and regulation of taxis and private hire cars is there to protect the public, and the Scottish Government will continue to review the existing legislation to ensure that it operates as effectively as possible.

11. There are clear potential benefits for taxi and private hire companies and consumers in modern technology such as using apps. However in order to safely realise these benefits we need to develop an up to date licensing regime that reflects the technology used in smart phone apps. The Scottish Government would expect any taxi or private hire car business operating in Scotland to comply with the existing licensing requirements set out by the 1982 Act and the 2009 Order and to ensure all vehicles and drivers continue to be licensed. We are not contemplating a fundamental revision of the licensing regime for taxis and private hire cars.

12. We are also aware that the interests of public safety need to be balanced with the need for regulations that are proportionate. In particular we would welcome specific evidence of any adverse effect proposals could have on small operators and any ways this can be mitigated or avoided.

⁵ http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services_summary.pdf

⁶ http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services.pdf

⁷ <http://researchbriefings.files.parliament.uk/documents/SN02005/SN02005.pdf>

Consultation sections

13. The proposals are split into the following sections:

- The taking of bookings - review of regulations
- Local presence
- Taxi and private hire car maximum fares
- Other concerns.

The taking of bookings– review of regulations

What activity should be regulated?

14. The 2009 Order was introduced to increase control and oversight of offices that take bookings for taxis and/or private hire cars. The decision was made at the time to limit licensing to physical premises to address concerns that had been raised about enforcement of the regime should a booking office licence not be tied to a specific local authority area. It was also decided to limit licensing to those taking bookings for four or more vehicles to reduce the burdens on business.

15. The 2009 Order has now been in force for 6 years and a variety of concerns have been expressed as to the effectiveness of its provisions:

- It has been suggested the current exemption to the booking office licensing regime, where the number of relevant vehicles in respect of which bookings are taken is three or less, should be amended or removed.
- Views have been expressed that the 2009 Order should now be updated and reviewed to take account of modern technology now used for the taking of bookings. The requirement in the 2009 Order for the use of physical premises in the takings of bookings for the licensing regime to apply the focus on premises, such as booking offices, has presented difficulties where bookings can be taken without the need for any office, as can be the case with smart phone apps and online bookings.

16. However we believe that there does remain the need for the public and regulators to be able to contact a business for the purposes of local regulation and enforcement. There are benefits to customers and others in having a business that is readily accessible, and capable of handling complaints and queries promptly.

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

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

Comments

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

Comments

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

Yes No

Comments

5. What should the limit be amended to?

Comments

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

Comments

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

Yes No

Comments

Local presence:

Where should that activity be regulated?

17. The licensing requirement in the 2009 Order is activated in respect to premises carrying out the activity of taking booking from members of the public for the hire of a relevant vehicle. An alternative of licensing the activity of taking bookings, without the requirement of doing so from a physical premise, was rejected due to concerns raised about enforcement of the licensing regime. For example if the licensed activity was simply the taking of a booking, it may prove difficult to regulate

someone taking bookings by mobile technology, who might easily move between different licensing authority areas. Issues may arise not only with regards to which licensing authority the person requires a licence from but also how the licensing requirements can be enforced by the licensing authority or Police Scotland. These same issues will still need to be considered.

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

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

Comments

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

Taxi and private hire car maximum fares

Should all fares be regulated?

18. Licensing authorities set the scales for taxi and private hire car fares for their area under section 17 and 18 of the 1982 Act. It is an offence for a taxi or private hire car with a taximeter to charge in excess of these fare scales under section 21(5). However this would only apply where the vehicle is fitted with a taximeter, and while taxis will generally have a taximeter, it is not always standard practice for local licensing authorities to require private hire cars to have a taximeter.

19. Concerns have been expressed that operators without a taximeter installed could now increase prices where there is a mismatch of supply and demand, so called surge pricing, resulting in fares far in excess of the usual metered rate. Local

licensing authorities can already agree different fare tariffs to take account of periods such as late night operation or the new year. However surge pricing can result in passengers facing fares many times the usual rate.

20. One option would be for the Scottish Government to apply mandatory conditions such that all relevant vehicles were required to install a taximeter. Alternatively licensing authorities that were concerned about this issue, could impose a condition requiring that a taximeter is installed in all relevant vehicles.

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

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

Yes No

Comments

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

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

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

4. Other Concerns

21. We are keen to hear of any other issues or concerns people may have regarding the impact of modern technology and smart apps on taxis and private hire cars.

Questions: Any additional concerns or suggestions:

18. Do you have any additional concerns regarding the issues raised in this consultation?

Yes No

Comments

19. Do you have any suggestions or are you aware of existing good practice, for addressing the issues raised in this consultation?

Yes No

Comments

Annex A

Responding to this Consultation

We are inviting responses to this consultation by 15 June 2016

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/licensing-unit/taxi-private-hire-modern-technology>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 15 June 2016.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

licensing.consultation@gov.scot

or

Peter Mackenzie Smith
Licensing Team
GWR St Andrew's House
Regent Road
Edinburgh
EH1 3DG

If you have any queries contact Peter Mackenzie Smith on 0131 244 3653.

We would be grateful if you would use the consultation questionnaire provided (at Annex C) or could clearly indicate in your response which questions you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at: <http://consult.scotland.gov.uk>

The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult:

<http://www.scotland.gov.uk/consultations/seconsult.aspx>

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached at Annex B included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Peter Mackenzie Smith at the above address.

Scottish Government consultation process

Consultation is an essential part the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex B

Taxi and Private Hire Car Licensing – Consultation on the impact of modern technology



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Annex C

CONSULTATION QUESTIONS

Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business and regulators as a result of proposed changes including information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.

Questions: the regulation of the taking of bookings:

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

Yes No

Comments

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

Comments

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

Comments

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

Yes No

Comments

5. What should the limit be amended to?

Comments

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

Comments

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

Yes No

Comments

Questions: where should the taking of bookings be regulated:

8. If a business is taking booking, then where should it be registered? For example should it be registered in every local authority where it takes orders, or where the bulk of its business is?

Comments

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

Comments

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

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

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Comments

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

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Comments

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

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

Questions: any additional concerns or suggestions:

18. Do you have any additional concerns regarding the issues raised in this consultation?

Yes No

Comments

19. Do you have any suggestions or are you aware of existing good practice, for addressing the issues raised in this consultation?

Yes No

Comments

ANNEX D

LIST OF CONSULTEES

Responses to this consultation are welcome from any individual or organisation with an interest.

The following will be sent a copy of the consultation directly:

All Scottish Local Authorities
All Scottish MEPs
Capability Scotland
Clerk of the Justice Committee of the Scottish Parliament
Clerk of the Local Government and Regeneration Committee of the Scottish Parliament
Consumer Focus Scotland
COSLA (Convention of Scottish Local Authorities)
Departmental Committee Liaison Officer
Equality and Human Rights Commission
Federation of Small Businesses
Law Society of Scotland
Mobility and Access Committee for Scotland
National Private Hire Association
Police Scotland
Road Safety Great Britain
Scottish Crime and Drug Enforcement Agency
Scottish Government Library
Scottish Human Rights Commission
Scottish Taxi Federation
Scottish Traffic Commissioner
SOLAR (Society of Local Authority Lawyers and Administrators Scotland)
SPICe (Scottish Parliament Information Centre) library
The 6 Legal Deposit or 'Copyright' libraries
Transport Research Institute, Edinburgh Napier University
(UK Government) Department for Transport
Unite Union
Vehicle and Operator Services Agency

The consultation will also be sent to a number of individuals who have expressed an interest.



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