

20 March 2017

Taxi and Private Hire Vehicle (PHV) licensing

Purpose

For discussion and direction.

Summary

In spring 2014, the Law Commission published a report into its review of taxi and PHV licensing, including a draft reform Bill. The Government is now planning to respond to the review in spring and has sought the LGA's view on the Law Commission's proposals. This paper seeks the Board's view and updates the Board on our ongoing work to improve taxi and PHV licensing.

Recommendations

1. That the Safer and Stronger Communities Board approves the proposed position outlined in the report, and;
2. Notes the additional work included in the report.

Action

Officers to action as necessary.

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Taxi and Private Hire Vehicle (PHV) licensing

Background

1. In spring 2014, the Law Commission published a report into its review of taxi and PHV licensing. The report included a draft Bill with a comprehensive set of proposals to completely update and replace the various pieces of legislation covering London, the rest of England and Wales and (separately) Plymouth.
2. The Government has yet to respond to the Law Commission's report, although the Deregulation Act controversially introduced a small number of the Law Commission's proposals independently of the wider reforms. The key impact of this was to increase the flexibility for PHV drivers to operate outside the specific licensing authority area in which they are licensed.
3. Since the Commission's report was published, the Jay and Casey reviews into Rotherham have highlighted the links between child sexual exploitation and taxi/PHV licensing and the need for councils to have robust procedures in place for managing them. Alongside this, the increasing popularity of apps such as Uber, and concerns about how they fit in the current framework, has also emphasised the problems of operating under outdated legislation.
4. We understand that Government is intending to formally respond to the Law Commission's report in spring, and it has sought the LGA's view on the proposals. This is unlikely to be an immediate precursor to introducing new legislation, given the pressures on parliamentary time and the certainty that a taxi/PHV reform Bill would be an extremely difficult process to manage.
5. However, in light of the Government's request and our ongoing work to improve taxi/PHV licensing, this appears to a useful point to consider the Board's position on some key issues. Subject to the Board's views, we propose to provide a response to the Government outlining the LGA's views on the Law Commission's proposals in the context of new challenges noted above.

Issues

6. The Law Commission report is nearly 300 pages long and extremely detailed, and we are therefore only seeking the Board's views on the main principles underpinning the proposals.

Local versus national standards

7. A major concern in taxis/PHVs is the fact that different councils apply different standards for securing a taxi/PHV vehicle or drivers licence, yet taxis/PHVs can effectively operate anywhere. 'Out of area' cabs operating within other licensing authority areas has increased as a result both of the Deregulation Act and the proliferation of app based systems such as Uber, and is causing huge frustration to councils and local drivers who have applied, or had to comply with, more rigorous standards.

8. The problem is compounded by the fact that licensing authorities can only take enforcement action against drivers and vehicles that they have themselves licensed, rather than out of area drivers. This leaves local licensing authorities unable to take action against some of the drivers and vehicles operating in their areas and, again, causes significant frustration to locally licensed drivers who feel they are not competing on a level playing field.
9. There are two broad ways of addressing this issue:
 - 9.1. Restricting the ability of cabs to operate in areas where they aren't licensed, or
 - 9.2. Ensuring that everyone operates to the same standard, and that licensing authorities can take action against any vehicle or driver operating in their area.
10. The Law Commission proposed that there should be a single national standard for Private Hire Vehicle vehicles and drivers. In contrast, the national standards for taxi (Hackney carriage) vehicles and drivers would be a minimum standard to which licensing authorities could add their own local conditions.
11. The proposal for a national standard for PHVs is controversial. Licensing authorities expect to be able to apply local conditions, and even the Department for Transport has questioned how national standards would be consistent with devolution. However, while taxis and PHVs have the flexibility to operate outside of the area they are licensed, a framework with differing local standards may continue to cause issues if drivers are licensed at different standards. A single national standard for vehicles and drivers, set at a suitably high level would be likely to remove some of the challenges, although it clearly goes against a localist approach.
12. In terms of the alternative approach of restricting the ability for taxis/PHVs to operate outside of their licensing area, it may be politically difficult for Government to row back from the current flexibility for taxis/PHVs to operate out of area. However, Transport for London (TfL) have recently called for a new requirement that taxi or PHV journeys must start or end in the area where the driver and vehicle are licensed, which would control cross-border hiring without completely reducing flexibility. TfL also support national minimum standards for taxis and PHVs, rather than a single national standard.
13. On enforcement, it seems clear that whatever the framework, licensing authorities should have the ability to take enforcement action against any taxi or PHV operating in their area. There are potentially challenges around ensuring that fee income is collected in the areas incurring enforcement costs, but introducing the use of Fixed Penalty Notices in taxi/PHV licensing enforcement would help to address this.

Two-tier framework for taxis and PHVs

14. A further component of the Law Commission proposals is to maintain the current two-tier framework for regulating taxis and PHVs, and recognise the differences in the London market compared to the rest of the country. From a licensing authority perspective, the key

point about the two-tier approach is that authorities would retain greater local flexibility in relation to taxis. Under the Law Commission proposals, licensing authorities would still be able to impose quantity restrictions on taxis, regulate taxi fares and supplement national minimum standards with local conditions.

Bringing in other vehicles to the framework

15. The LGA has received representations from councils on the fact that drivers of public carriage vehicles (which have more than eight seats) are not subject to the same checks as taxi/PHV drivers; there is evidence that individuals who have been refused a taxi/PHV licence or had one revoked have subsequently received a public carriage vehicle (PCV) licence from the Traffic Commissioners and continued to operate in the same area.
16. The Law Commission included proposals to bring novelty vehicles such as pedicabs and limousines within the scope of the framework. However, in light of the concerns raised with the LGA, there is a case for arguing that any vehicle, of any form or size, which operates by providing private transport services for the public, should be within the taxi/PHV regulatory framework. At the very least, it would seem there is a need for a further look at this area.

Developing an LGA view

17. All these issues were raised with lead members at their most recent meeting. In the discussions the balance between local flexibility and national minimum standards was considered important, and it was felt that LGA member authorities would favour taxis and PHVs predominantly operating in the areas where they are licensed.
18. The Board are therefore invited to discuss and agree the following outline position:
 - 18.1. The LGA believes that the framework for both taxis and PHV should be based upon a national minimum standard with flexibility for licensing authorities to impose additional local requirements.
 - 18.2. Taxis and PHVs should start or end a journey in the licensing authority area where they are licensed.
 - 18.3. Licensing authorities should be able to take enforcement action against any vehicle or driver that operates in their area.
 - 18.4. The LGA accepts the retention of the two-tier framework for taxis and PHVs, but there is a need to ensure that the legislation is fit for purpose with regard to app-based businesses.

Wider work to support taxi licensing

19. As the Board will be aware, there continue to be media reports of issues and safeguarding concerns linked to taxi and PHV licensing. In light of this, the LGA recently ran a series of

taxi/PHV licensing workshops across the country to promote best practice in this area. We have also updated both our councillor handbook and example convictions policy. We are also updating a guidance note for councils exploring the introduction of a mandatory CCTV/taxi camera policy.

20. The Department of Transport is expected to publish new statutory/ best practice guidance on taxi/PHV licensing shortly. With no legislative change expected in the next few years, we are also working with the Institute of Licensing to explore the scope for a voluntary national database that shares information about taxi/PHV licences that have been revoked, as well as considering a more targeted approach for checking whether councils have updated their licensing policies in light of the safeguarding concerns that have come to light in recent years.
21. We will also be meeting with Uber in the coming weeks, to highlight concerns raised about the company by a number of authorities. In practice, many of these concerns link back to wider frustration at the differing standards attached to licences in different areas, and the inability to take action against out of area drivers.

Implications for Wales

22. Although there have been suggestions that taxi licensing will be devolved, this is currently a reserved matter with the same framework applying to England and Wales.

Financial Implications

23. Work will be covered within existing budgets.

Next steps

24. Members are asked to:
 - 24.1. Discuss and approve the proposed position outlined above, and;
 - 24.2. Note the additional work highlighted in the report.