



Chartered Institute of
Environmental
Health

Sefydliad Siartredig
Iechyd yr
Amgylchedd

TAXI AND PRIVATE HIRE VEHICLE LICENSING IN WALES

Response to consultation to consider proposals published by the Law Commission for England and Wales in May 2014 for the reform of taxi and private hire vehicle licensing

8 September 2017

Sefydliad Siartredig Iechyd yr Amgylchedd

Fel **corff proffesiynol**, rydym yn gosod safonau ac yn achredu cyrsiau a chymwysterau ar gyfer addysg ein haelodau proffesiynol ac ymarferwyr iechyd yr amgylchedd eraill.

Fel **canolfan wybodaeth**, rydym yn darparu gwybodaeth, tystiolaeth a chynngor ar bolisiau i lywodraethau lleol a chenedlaethol, ymarferwyr iechyd yr amgylchedd ac iechyd y cyhoedd, diwydiant a rhanddeiliaid eraill. Rydym yn cyhoeddi llyfrau a chylchgronau, yn cynnal digwyddiadau addysgol ac yn comisiynu ymchwil.

Fel **corff dyfarnu**, rydym yn darparu cymwysterau, digwyddiadau a deunyddiau cefnogol i hyfforddwyr ac ymgeiswyr am bynciau sy'n berthnasol i iechyd, lles a diogelwch er mwyn datblygu arfer gorau a sgiliau yn y gweithle ar gyfer gwirfoddolwyr, gweithwyr, rheolwyr busnesau a pherchnogion busnesau.

Fel **mudiad ymgyrchu**, rydym yn gweithio i wthio iechyd yr amgylchedd yn uwch ar yr agenda cyhoeddus a hyrwyddo gwelliannau mewn polisi iechyd yr amgylchedd ac iechyd y cyhoedd.

Rydym yn **elusen gofrestredig** gyda 8,000 o aelodau ledled Cymru, Lloegr a Gogledd Iwerddon.

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with 8,000 members across England, Wales and Northern Ireland.

The Chartered Institute of Environmental Health (CIEH) is pleased to contribute to the Welsh Government consultation on the review of taxi and private hire licensing.

Having considered the consultation document, we are disappointed that the Welsh Government has not taken this opportunity to consider integrating other important policy matters into the review of taxi and private hire vehicle licensing which would benefit the environment and public health. Most notable is the absence of proposals to reduce emissions from taxis and private hire vehicles and failure to provide clarity on the position in respect of smoking in private hire vehicles.

We would be pleased to provide further written or oral input if that is helpful.

Vehicle Emissions

Air pollution is a public health crisis in Wales. Public Health Wales has reported that it causes 2,000 deaths a year - 6% of Wales' total.

Motor vehicles are an important source of air pollution and exposure to traffic related air pollution e.g. nitrogen dioxide and particulates is linked to a range of adverse health outcomes.

It has been recognised by Welsh Government that reducing emissions will require joint working across government. We urge the Welsh Government as a consequence of this review, to introduce requirements which will reduce emissions from taxis and private hire vehicles.

Smoking

Smoking is the leading single cause of serious illness and avoidable early death in Wales. It accounts for around 5,500 deaths every year

Legislation to ban smoking in enclosed public places was introduced in 2007 to protect the public from second-hand smoke. The legislation was strengthened in 2015 when, amongst other things it became illegal to smoke in private vehicles when someone under the age of 18 is present.

The question as to whether the smoking ban applies to private hire vehicles used only occasionally to transport the public needs to be addressed. We would urge the Welsh Government to use this review as an opportunity to clarify the position and ensure private hire vehicles come within the scope of the smoking ban regardless of how often they are used to convey passengers.

Question 1: Should the two-tier system be retained in Wales or should a single tier model be developed for the taxi and private hire vehicle sector in Wales?

Taxis and private hire vehicles provide a means of conveying passengers from A to B. It makes no difference to the public or enforcing authorities as to whether a vehicle is booked via telephone, internet, an “App” or whether it is simply hailed down in the street or waiting at a taxi rank; the safeguards that are needed apply equally to both.

Existing legislation is already in place that provides for a two-tier system. However, any new primary legislation which is designed to replace the existing out-dated legislative structure, will provide an ideal opportunity to put in place a system which is fit for purpose in a modern world.

A one tier system could place additional pressure on rank space, particularly in busy towns and city centres. However, the way people book taxis is changing and with the ever-increasing move to electronic booking systems, taxis would not necessarily be required to be positioned in traditional places. Such options might include consideration of electric vehicles and associated charging points acting as a catalyst for further change.

The benefits of a one tier system:

- A level playing field for the trade;
- Simplified insurance policies as only public hire and public liability would be required;
- De-criminalisation of private hire vehicles plying for hire;
- Easier for the public to understand.
- It will remove inconsistent fares between private hire (agreed at the point of hire) and hackney carriages (maximum set by the local authority).
- Enables simplification, improved understanding and maintained safeguards on fare setting
- Ensures consistent minimum standards for drivers and vehicles
- Does away with the terms hackney carriage and private hire and introduces the term “taxi”, (which the public already recognise).

Question 2: Should the arrangements in Wales require taxi drivers to maintain accurate records of:

a. all journeys undertaken in taxis;

b. Only journeys that have been pre-booked or started out of the taxis licensing area; or

c. Not to require taxi drivers to maintain records

Ideally records should be kept for every journey undertaken. However, there are practical difficulties with taking this approach. Attempting to obtain a passenger's name and address at the end of an evening might not only be difficult (refusals, false names etc.), but could put the driver in a confrontational situation.

The purpose of record keeping is primarily for safeguarding reasons. We believe that basic records should be retained, such as start and finish locations and date and time and cost of the journey on completion (to also assist HMRC).

We recognise that such records might prove unreliable and an option might be to use technology to improve the safeguarding processes. The use of CCTV, trackers and GPS systems might provide a more robust system for record keeping.

Question 3: Should the arrangements for licensing taxis in Wales require any persons handling personal information to be licenced or not?

The nature of the work provides a knowledge of regular movements, working patterns, holiday absences from home and other information about individuals that could be useful to criminals / place vulnerable persons at risk from potential offenders if not properly vetted.

Those issued a proprietor/driver licence are ultimately responsible for taking or holding an individual's personal information and therefore should be vetted to ensure they are "fit and proper" persons. Any new legislation should place an obligation on those licence holders who keep such records to comply with data protection requirements. The licence holder must have a legal responsibility to ensure that bookings are carried out by a suitable person.

Question 4: Should a person taking a booking for a private hire vehicle require to be licenced?

Yes. As stated in question 3 above.

Question 5: Should the "fit and proper persons" test for the application and issue of licences be retained in Wales?

Yes

Safeguards are important to protect the public. Taxis often convey vulnerable people: older people, people with disabilities, the unwell and vulnerable to and from hospital appointments, those vulnerable because of alcohol, people travelling late at night, lone passengers, children and young people and others. The public would not expect their children, a vulnerable person (or anyone else for that matter) to be

picked up and taken on a lone car journey by an alcoholic, drug addict, sex offender, thief or violent offender.

The tried and tested fit and proper person test is an important and essential safeguard to help ensure that taxi travel is safe.

The fit and proper test should be retained for all licence holders - drivers and proprietors - if a one-tier system is introduced. If two tier system remains then a Private Hire Operator should also have the fit and proper test, for reasons given in question 3 and 4 above.

A Hackney proprietor and Private Hire Operator would not require DVLA checks and medicals if the person has no intention of driving a vehicle themselves.

Some suggest that the fit and proper person test should be strengthened further by requiring an element of safeguarding training.

Question 6: Do you agree that local authorities should have the discretion, within certain constraints, to impose conditions on individual licence holders to meet additional local requirements and standards where there is a reason to do so?

Yes. Local authorities should be able to impose additional conditions. Drivers who have certain medical conditions for example may require additional conditions to ensure that they remain safe to drive. Another example would be disciplinary requirements, where the local authority, as a result of a complaint / conviction, may wish to attach a condition to a driver licence for them to attend a specific local course.

Local authorities have experience of applying license conditions and the flexibility to do so allows them to deal proportionately with issues that arise.

Local licensing authorities should have some flexibility to add additional requirements and standards that are both relevant and appropriate to meet the needs of the local area.

Question 7: In relation to setting fees for the licensing of taxis and private hire vehicles, do you agree that:

- a. **The fees for the licensing of private hire vehicles should be set by the Welsh Ministers with fees for taxis being set by local licensing authorities at a rate not less than those applied to private hire vehicles – as recommended by the Law Commission; or**
- b. **Local licensing authorities be required to set all fees in their areas, exercising their functions having due regard to guidance issued by the Welsh Ministers?**

We recommend option b. above. The fee setting power included in any new legislation, should allow local authorities to recover all costs associated with administration and enforcement of the regime.

Local authorities have experience in setting fees locally – something they are required to do for a broad range of services.

Nationally set fees present some concerns as is the case with the Licensing Act 2003 where nationally set fees have not been reviewed by central government since November 2005. They do not reflect actual costs to local authorities or individual circumstances. With nationally set fees the legislation needs to establish a review mechanism – something that is cumbersome and not without difficulties.

Consideration should also be given to enabling authorities to utilise fees to provide services that have a direct impact on the taxi trade and protection of the travelling public, e.g. the employment of taxi marshals, providing electric charging points the upkeep of signage and road markings at ranks. Furthermore, if a one tier system is created, that authorities could provide appropriate waiting / rank areas for vehicles to prevent illegal ranking and parking.

Question 8: Do you agree that: a. Local licensing authorities should be required to publish driver, vehicle and operator licensing data information as prescribed by the Welsh Ministers as recommended by the Law Commission, or b. Local licensing authorities should be required to share information about any enforcement action that has taken place and resulted in the removal or suspension of a licence, and that licensing authorities required to consult that information prior to any application for a licence being granted.

Publication of information about licence holders is not supported as it would be of limited value and would also have data protection implications. A national database maintained and accessed by licensing authorities would be an excellent tool to prevent unsuitable drivers from obtaining or retaining licences.

If such a database were developed it could be hosted by one of the local authorities in Wales subject to funding.

We believe that it would be helpful if information could be shared between licensing authorities, although it is recognised that this is not without challenge, not least because of different data systems across Wales (although we recognise that consideration needs to be given to England too). A framework setting out a prescribed manner in which to share this information might be helpful.

Question 9: If required, should the Welsh Ministers have the power to make a scheme that: a. Allows taxi licences to be traded between licence and perspective licence holders; or b. Requires licences to be returned to the local licensing authority for reissue but allow for a compensation scheme to be

established ensuring that licence holders that have traded plates previously in relation to Wales to be compensated for any potential loss.

Many authorities already have procedures in place to allow taxi licences to be transferred from one proprietor to another, in much the same way that alcohol and entertainment licences under the Licensing Act 2003 are transferred between licence holders. However, the existing process set out in the Local Government (Miscellaneous Provisions) Act 1976 requires tightening up, to include a prescribed application process, including requirements on new owners (if that continued to be permitted) and the ability for local authorities to charge a fee.

Compensation payments would not be supported.

Question 10: Do you consider that equality requirements proposed by the Law Commission can be met under the requirements imposed by the general public sector equality duty (s149) and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011?

The proposals are not sufficiently clear.

The preferred approach would be to consider whether specific requirements should be made in relation to taxis and if so for these to be set these out (specifically) in a proposed taxi licensing regime rather than rely upon more general requirements that would be open to interpretation and inconsistent application.

Question 11: Do you agree that applicants or existing licence holders must first allow a review of a refusal, suspension or revocation by a person not involved with the initial decision to be undertaken within a reasonable timeframe before an appeal to magistrates' courts can be made?

No. It would not be sensible to have another elected member or officer review a decision that was already determined by a Committee consisting of between 3 and 15 elected members.

We are concerned that such an approach would:

- Add additional costs and time delays;
- Be overly bureaucratic;
- Undermine the integrity of the process;
- Weaken the existing process by having to separate out members from the initial decision-making process. As a general approach an appeal should be heard by persons that are more experienced / more expert than those that made the initial decision. In respect of this process we believe that accommodating such a characteristic in the process would be unhelpful –

particularly given the need to accommodate existing natural turnover of elected members.