

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 June 2014

Subject: De-Regulation Bill 2013

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Government has previously announced that it proposed to undertake wide consultation to introduce legislation which would reduce bureaucracy/red-tape across a wide range of legislation.
2. That Bill has now had its second reading in the House of Commons. Officers were alerted to the context of part of the Bill relating to Taxi & Private Hire Licensing enforcement functions which impact on local Authorities, after it had progressed through two stages of the parliamentary readings.
3. A particular section of the Bill relates to relaxing the law on who can drive a licensed Private Hire vehicle for social, domestic and pleasure purposes. It in effect means that unlicensed people can drive a licensed Private Hire vehicle at any time when not carrying out licensed journeys. This raises significant public safety concerns for this Authority and significant enforcement and legal challenges.

Recommendations

4. That Members consider an appropriate strategy to raise awareness and voice their public safety concerns within the parliamentary process.

1 Purpose of this report

- 1.1 To inform Members of the issues and to enable them to consider what actions they might think appropriate to voice their concerns about this particular proposal.

2 Background information

- 2.1 Members will broadly recall the Law Commission consultation on reforming the Private Hire and Hackney Carriage Licensing legislation. Included in the consultation was a proposal to relax the legislation on who could drive a licensed Private Hire vehicle for social, domestic, pleasure purposes. The proposal and the Licensing Committee's response to that part of the consultation is set out below.

Law Commission Provisional proposal 20 in consultation

Leisure and non-professional use of taxis and private hire vehicles 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. (Page 184)

Formal response of Licensing Committee

Leeds City Council disagrees with this proposal. Licensed vehicles should only be driven by a licensed driver whatever the circumstances as public safety clearly out-weighs family convenience. It is important that drivers of licensed vehicles and other drivers are clearly differentiated and it would prove difficult to enforce if private drivers are found driving licensed vehicles. We already have examples of licensed drivers claiming the journeys are for families or friends when enforcing plying for hire allegations. This would be compounded if the drivers were family members as we would have to prove that the journey was not for leisure or none professional use.

- 2.2 Officers alerted the Licensing Committee to the inclusion of that proposal in the Law Commission's recommendations to Parliament. It was not just this Authority which raised concerns but a wide range of Officers representing other Authorities supported by the National Association of Licensing Officers.
- 2.3 Councillor Charlwood, on behalf of the committee wrote a letter of concern to the Law Commission and an extract of that letter and the Law Commission response is reproduced below

Extract of Councillor Charlwood letter to Law Commission

Use of vehicles for Domestic Use

We understand that for a low income family, a licensed vehicle may be the only vehicle that family can afford to run, and having two vehicles can be out of the question.

At the moment, the law is clear and licensed private hire vehicles can only be used for private and domestic use by a licensed private hire driver. This means that, quite simply, whenever the vehicle is on the road it is being driven by a licensed private hire driver. This makes enforcement and monitoring of the use of these vehicles very clear. Our concerns are for enforcement and monitoring when the vehicle is being used privately by a driver who is not a licensed private hire driver. You can certainly see a situation arising where such a driver visits a hotspot for plying for hire and collects a passenger without any pre-booking. During the investigation the driver can claim that he was using the vehicle privately at the time and was simply giving someone a lift. This will prolong the investigation and dilute the public safety elements that we have built into our local licensing regime.

The dangers to the public from being picked up by unlicensed private hire drivers who have not been through the fit and proper test should not be underestimated. This type of obvious risk to public safety should always be minimised at the core of any revised licensing regime.

Extract of Law Commission response

Use of vehicles for Domestic Use

We appreciate the concerns you raised regarding allowing domestic use of licensed vehicles. It should be possible to presume that licensed taxi and private hire vehicles are being used professionally at any time. However, we think it should be possible for drivers to demonstrate that this is not the case. In London domestic use is permitted and during consultation this was not raised as a problem. We accept that if as a matter of enforcement domestic use became problematic, the Secretary of State and Welsh Ministers should have the ability to prohibit it; and the licensing system should be sufficiently flexible to accommodate this.

- 2.4 The Department for Transport (DfT) has 'extracted' some proposals from the Law Commission paper and, without informing local Authorities, placed them on the Deregulation Bill. The Law Commission reform proposals have not yet started their parliamentary reading stage.

The proposed De-Regulation legislation appears at **Appendix 1**.

- 2.5 Members will note that the thrust of the concerns is about one particular section of the legislation, in summary the other proposals and Officer views are:-

Taxis and private hire vehicles: duration of licences

In the original statute the wording was such that the Council could exercise whatever discretion they wanted for the length of a licence of up to 3 years for Private Hire and Hackney Carriage drivers and 5 years for a Private Hire Operator. The wording of the proposed new legislation seems to move away from complete discretion on the part of the Council to a justifiable discretion within a policy.

It is felt that this issue is already catered for in the policy proposals contained within 3 year licences for Private Hire and Hackney Carriage licences.

Officers feel there may be a need for the introduction of a revised policy in respect of Private Hire Operators but generally having undertaken appropriate training there would be no significant concerns about granting a 5 year licence with reporting safeguards in place.

Private hire vehicles: sub-contracting by Operators

This is a bit of an unknown quantity but is an improvement on what was originally anticipated. The distinction is that journeys can only be passed from one licensed Operator to another where ever those Operators are licensed. This encourages beneficial professional relationships for customers and increased technological solutions using 'apps'. Of course there is more to follow on this but in the interim there is the knowledge that at the very least both Operators are licensed and accountable.

3 Main issues

- 3.1 The Government's position of the purpose of the De-Regulation Bill is perhaps best described by the media statements below, which accompany the proposed Bill.

Press release

Government unveils Deregulation Bill Organisation: Cabinet Office

Published 1 July 2013 Ministers : The Rt Hon Kenneth Clarke QC MP and The Rt Hon Oliver Letwin MP

Public bodies

It reduces bureaucratic requirements on public bodies including:

- *removing prescriptive requirements on local authorities to consult and produce various strategies, giving them more freedom from central control*
- *freeing schools from pointless paperwork and prescriptive central government requirements*

The Bill also brings forward a new mechanism which would allow Parliament to identify and remove uncontroversial legislation more speedily.

The Bill joins other key deregulatory measures introduced by this government including:

- *major simplification of the registration and payment system for company charges, saving businesses more than £21 million*
- *binding new rules to exempt hundreds of thousands of low risk businesses from health & safety inspections*

- *the introduction of a portable Criminal Records check, which employers can view instantly online, saving the need for a new check in the majority of cases*
- *overhauling no-win, no-fee legal claims*
- *increasing the qualifying period for unfair dismissal to two years, saving business £4.7 million*
- *introducing new incentives so that roadworks on the busiest roads are done during quieter times – saving business more than £27 million per year*

3.2 Ken Clarke, Minister without Portfolio, said:

“I am as strongly in favour of sensible regulation as the next man, but only where it is necessary to prevent wrongdoing and protect the public. In recent years a mountain of unnecessary legislation has been piled onto the statute book, usually introduced with the most worthy motives. This regulatory burden wastes time and money for hard-working people and ties honest businesses and public bodies in bureaucratic knots.

“The Deregulation Bill is just the latest offspring of the government’s highly ambitious Red Tape Challenge, which has already identified and removed barriers to the growth of our economy to the tune of £212 million each year. There is much more to come.”

3.3 Oliver Letwin, Minister for Government Policy, said:

“If Britain is to succeed in the global race, we have to make sure that government does not get in the way of hard working business people. Through the Red Tape Challenge we have already been able to remove £212 million worth of burdens per year on business. Some of the key changes we have got in motion include making employment tribunals work for employers as well as employees, hugely simplifying building standards and environmental guidance and getting health and safety law into proper proportion.

“Not only does this Bill bring forward the next tranche of deregulatory legislation, it also creates a new procedure which means that Parliament can identify and remove uncontroversial but burdensome regulations with much greater speed than is currently possible. My hope is that this procedure will become a regular fixture in the parliamentary calendar.”

3.4 Michael Fallon, Minister for Business and Enterprise said:

“Our new growth duty is an important step in changing the mind-set in Whitehall and beyond to focus relentlessly on helping honest businesses to grow. It will help bring the huge resource of more than 50 non-economic regulators with a combined budget of £4 billion to bear on the crucial task of stopping pointless red tape and promoting growth. ”

- 3.5 Officers would say that there is a significant conflict between the purpose of the bill and the inclusion of this particular proposal. Members should consider the potential impact of an influx of unlicensed, unknown drivers from areas throughout West Yorkshire or further. It is a situation that would leave this local Authority in a hopeless position to try and protect citizens in detecting offending, investigatory work and dealing with offenders.
- 3.6 There are no accompanying powers to help local Authorities to control or investigate illegal activity. The proposition that it would be for the intended driver of a licensed vehicle to prove he was behaving lawfully does virtually nothing, in a practical sense, to discourage illegal activity or enable any investigative opportunities. It would not be unreasonable to think the Police would not have the capacity to have a consistent policing strategy in place to deal with such issues 'live' or post incident.
- 3.7 Should the Bill progress through Parliament consideration will be given to information, education, enforcement and multi-agency strategies but in the interim it is recommended that Members consider all opportunities to raise government awareness to these concerns.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Full consultation has previously taken place in the Law Commission consultation exercise. There is no necessity for consultation with the trade on this matter as it is a primary safety consideration for the Council which has previously been expressed in a public document.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 To follow from Kate Coldwell.

4.3 Council policies and City Priorities

- 4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan 2013 -17

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us.

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs,
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

5.4.1 There would be potentially significant issues to address which cannot be quantified at this time.

4.5 Legal Implications, Access to Information and Call In

5.1 There are no issues to address at this stage.

4.6 Risk Management

5.6.1 Officers feel there are potentially significant risks if the proposal was to be enacted but for the purpose of this report a full risk assessment has not been undertaken.

5 Conclusions

5.1 It is felt that a concern should be voiced by the Council in response to the singular concern in the proposed legislation. Undoubtedly this is a public safety issue and not a matter of bureaucracy. It seems without reason that a public safety issue is dealt with in such a Bill and that the proposal itself is in conflict with all the other safeguards in the existing and proposed legislation.

6 Recommendations

- 6.1. That Members consider an appropriate strategy to raise awareness and voice their public safety concerns to the Parliamentary process.

7 Background documents¹

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

8 Private hire vehicles: circumstances in which driver's licence required

(1) Section 46 of the Local Government (Miscellaneous Provisions) Act 1976 (vehicle, drivers' and operators' licences) is amended as follows.

(2) In subsection (1)(b), for "driver of any private hire vehicle" substitute "driver of any vehicle when it is in use as a private hire vehicle".

(3) After subsection (1) insert—

"(1A) For the purposes of this Act, a reference to a vehicle being in use as a private hire vehicle is a reference to a private hire vehicle which—

- (a) is in use in connection with a hiring for the purpose of carrying passengers;
or
- (b) is immediately available to an operator to carry out a booking for a private hire vehicle."

(4) After subsection (2) insert—

"(3) If, in any proceedings for an offence under this section in which it is alleged that the defendant contravened subsection (1)(b), the prosecution prove that a private hire vehicle was at any time being used on a road to carry one or more passengers, it is to be presumed, unless the contrary is shown, that the vehicle was, at that time, in use in connection with a hiring as mentioned in subsection (1A)(a)."

9 Taxis and private hire vehicles: duration of licences

(1) The Local Government (Miscellaneous Provisions) Act 1976 is amended as follows.

(2) In section 53 (drivers' licences for hackney carriages and private hire vehicles)—

(a) in subsection (1)(a), for "for such lesser period as the district council may specify in such licence" substitute "for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case";

(b) in subsection (1)(b), for "for such lesser period as they may specify in such licence" substitute "for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case".

(3) In section 55 (licensing of operators of private hire vehicles), for subsection (2) substitute—

"(2) Every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case."

10 Private hire vehicles: sub-contracting

In the Local Government (Miscellaneous Provisions) Act 1976, after section 55 insert—

“55A Sub-contracting by operators

(1) A person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle may arrange for another person to provide a vehicle to carry out the booking if—

(a) the other person is licensed under section 55 in respect of the same controlled district and the sub-contracted booking is accepted in that district;

(b) the other person is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted in that district;

(c) the other person is a London PHV operator and the subcontracted booking is accepted at an operating centre in London; or

(d) the other person accepts the sub-contracted booking in Scotland.

(2) It is immaterial for the purposes of subsection (1) whether or not subcontracting is permitted by the contract between the person licensed under section 55 who accepted the booking and the person who made the booking.

(3) Where a person licensed under section 55 in respect of a controlled district is also licensed under that section in respect of another controlled district, subsection (1) (so far as relating to paragraph (b) of that subsection) and section 55B(1) and (2) apply as if each licence were held by a separate person.

(4) Where a person licensed under section 55 in respect of a controlled district is also a London PHV operator, subsection (1) (so far as relating to paragraph (c) of that subsection) and section 55B(1) and (2) apply as if the person holding the licence under section 55 and the London PHV operator were separate persons.

(5) Where a person licensed under section 55 in respect of a controlled district also makes provision in the course of a business for the invitation or acceptance of bookings for a private hire car or taxi in Scotland, subsection (1) (so far as relating to paragraph (d) of that subsection) and section 55B(1) and (2) apply as if the person holding the licence under section 55 and the person making the provision in Scotland were separate persons.

In this subsection, “private hire car” and “taxi” have the same meaning as in sections 10 to 22 of the Civic Government (Scotland) Act 1982.

(6) In this section, “London PHV operator” and “operating centre” have the same meaning as in the Private Hire Vehicles (London) Act 1998.

55B Sub-contracting by operators: criminal liability

(1) In this section—

“the first operator” means a person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle and then made arrangements for another person to provide a vehicle to carry out the booking in accordance with

section 55A(1);

“the second operator” means the person with whom the first operator made the arrangements (and, accordingly, the person who accepted the sub-contracted booking).

(2) The first operator is not to be treated for the purposes of section 46(1)(e) as operating a private hire vehicle by virtue of having invited or accepted the booking.

(3) The first operator is guilty of an offence if—

(a) the second operator is a person mentioned in section 55A(1)(a) or (b),

(b) the second operator contravenes section 46(1)(e) in respect of the sub-contracted booking, and

(c) the first operator knew that the second operator would contravene section 46(1)(e) in respect of the booking.”