

# Local Government Association briefing: Taxi and Private Hire Vehicle clauses in the Deregulation Bill

17 October 2014

## KEY MESSAGES

- **The LGA welcomes the announcement this week that the Government has dropped clause 10 of the Deregulation Bill.** Alongside other organisations, including the Suzy Lamplugh Trust, children's charities, police and crime commissioners and driver associations, we had raised repeated concerns that the measure, which would have enabled anyone to drive a licensed private hire vehicle (PHV) when it was off duty, would put passengers, and particularly women, children and disabled people, at greater risk.
- **The LGA is now urging government to drop the remaining two deregulation measures relating to taxi and PHV licensing (clauses 11 and 12). We are not in principle opposed to deregulation,** but this should be implemented as part of a package of reforms covering all aspects of taxi and PHV licensing, rather than through a piecemeal approach.
- The Law Commission recently set out proposals for a much needed overhaul of taxi and PHV licensing, following full engagement with councils and trade bodies. **The Commission's report provides a solid foundation for the reform of taxi licensing, following further consultation** with taxi and PHV drivers and firms, licensing authorities and those who use taxis and PHVs. We note that the proposals in the Deregulation Bill were subject to an extremely limited informal consultation with just eight organisations over a ten day period.
- The Law Commission report does advocate the measures included in the Deregulation Bill in Clauses 11 and 12, however it also attaches to them a number of safeguards which have not been included in the current proposals. More broadly, **the Commission's report makes these recommendations as part of a much wider reform of taxi and PHV enforcement powers for licensing authorities, which would give them more effective powers to take action when problems occur, as well as reducing burdens on responsible operators and drivers.**
- Recent child sexual exploitation cases have sadly highlighted the way in which the trust that people place in taxi and PHV drivers can be abused. Rather than implementing isolated deregulation measures, our focus now must be on preventing taxis and PHVs from being used in this way in the future, so that that taxis and PHVs can fulfil their essential role in our transport network and – equally importantly – so that those using them can feel confident and safe in doing so. **Therefore, we urge government to delete these clauses until such time as a comprehensive package of reform can be implemented.**

## CLAUSE 11 – DURATION OF LICENCES

- Clause 11 of the Bill would extend the standard duration of a minicab or hackney carriage licence to three years.
- **The LGA is in principle supportive of this proposal and the objective of reducing burdens for the vast majority of law-abiding firms and drivers who provide a quality service.** The proposal is consistent with our Rewiring Licences proposal for licences to be issued for life, providing there are appropriate safeguards in place, including powers to check, suspend and

revoke them if required. **However, we do not support Government's approach of bringing forward isolated measures such as this in advance of the wider reforms envisaged in the Law Commission report.**

- **We have some concern about whether existing safeguards in this area are being applied effectively.** Although courts should already notify councils about any convictions affecting licences, many local courts have failed to ensure this notification system is effectively implemented, leaving councils unaware of convictions that could affect an individual's fitness to hold a PHV driver's licence. Failure to implement this safeguard increases the risk to passengers and **we urge government to work with local courts to ensure that this important check is properly implemented regardless of whether or not this change is introduced.**
- **It will be important that councils are able to retain valid checks on drivers. The reformed Disclosure and Barring Scheme (DBS) now offers the opportunity for councils to be alerted to new convictions when they occur, but only if the individual driver voluntarily signs up to that service.** If the driver does not sign up to that additional service, we believe that it would be appropriate to retain more frequent licence renewals to ensure that drivers do not persist in driving after they have been convicted of a relevant offence.

#### **CLAUSE 12 – SUB-CONTRACTING**

- Clause 12 of the Bill would enable minicab firms to sub-contract bookings to firms licensed in a different district. Currently sub-contracting can only take place between firms licensed in the same district. The clause does not specify how many times a booking could be sub-contracted.
- **The LGA opposes this clause on the grounds that it is being brought forward without the necessary accompanying safeguards proposed by the Law Commission,** such as creating an offence to sub-contract bookings to an operator or driver who a person has reason to suspect is operating unlawfully (recommendation 14 of the Law Commission report). Again, this highlights the risks in bringing forward isolated aspects of the Law Commission report in advance of a full programme of reform based on the full report.
- There appears to be **no requirement for the firm with whom the booking is made to advise the customer if it is being sub-contracted,** or to ensure an audit trail of the process of doing so. Opinion polling undertaken for the LGA indicated that 80 per cent of women would be concerned if they booked a journey with one firm and another turned up.
- When people get into a PHV driven by someone they do not know, they are placing a great deal of trust in both the driver and the operating company. Customers should be advised if the service is to be provided by a different company, particularly if the firm is from a different area, and note that the Law Commission report included this recommendation as part of its proposals (recommendation 19).<sup>1</sup>
- The LGA is also extremely **concerned at the proposal to allow sub-contracting across different licensing districts when there are still limitations on licensing authorities' enforcement powers in regard to drivers and companies that are licensed in other districts.**
- Currently, licensing authorities can only take enforcement action against drivers and firms they themselves licence; yet this proposal creates new opportunities for drivers and firms to operate outside the district where they

are licensed. This means that **licensing authorities in the area where a booking is made would not have the power to take enforcement action against a driver from another district in the event of a problem with the journey.**

- **The Law Commission proposals aimed to address this issue.** The Commission's report proposed that licensing authorities should be able to take non-criminal enforcement action or suspend the licences of vehicles, drivers and operators operating in their areas but licensed by another authority, as well as having the power to make recommendations about appropriate sanctions to the home licensing authority (recommendations 77 and 78).
- There are unanswered questions about who would retain responsibility in the event that the sub-contractor was unable to deliver the contract (for instance, in the event of a breakdown or puncture), as well as consumer protection issues surrounding the question of how a passenger can identify and complain to the correct licensing authority, which could be on the other side of the country.
- The Law Commission proposals for reform address our concerns about the current Clause 12. **We strongly believe that the Clause in the current Bill should not be implemented.**

## IMPACT ASSESSMENT

- In March 2014, government introduced clauses 10, 11 and 12 to the Deregulation Bill. The clauses were **added to the Bill ahead of the publication in May of the Law Commission's comprehensive review of taxi and PHV licensing**, which it undertook at the request of the government. The report contains proposals for full reform of this area, as well as an outline Bill.<sup>ii</sup>
- The Department for Transport appeared not to follow proper procedure and only **published the impact assessment for the proposals in October, more than six months after the clauses were added** to the Bill.
- Despite the inherent public safety link associated with taxi licensing, the impact assessment reveals that the Department **undertook only an 'informal ten day' consultation with 'eight principal stakeholders'** who have not been identified.
- Of these eight stakeholders, two chose not to participate in the consultation because they felt so strongly that the Department should not introduce isolated measures in advance of comprehensive reform of taxi licensing based on a Law Commission review of this area, which was published in May 2014. This means that these measures have been introduced on the basis of a 10 day consultation with six organisations.
- The impact assessment reveals that Government has chosen to ignore advice that it would be wrong to introduce these measures in advance of a broader reform package: ***'One key theme which emerged from this exercise was a feeling on the part of stakeholders that it would be preferable to wait for the dedicated Taxi Bill arising from the Law Commission's review of taxi and PHV legislation and that taking forward these measures in isolation would be a mistake.'***<sup>iii</sup>

## LAW COMMISSION REPORT

- The Law Commission Report is the most detailed and comprehensive review of taxi and PHV licensing to date. It is clear that the whole system needs updating; the impact assessment for clause 11 and states that '***the primary legislation governing the licensing of taxis and PHVs...is archaic and complex and...in need of modernisation and reform.***' Furthermore, recent cases have highlighted that more needs to be done to protect passengers and the reputation of the majority of responsible taxi and PHV drivers who provide a vital service for members of the public.
- The LGA and council representatives have worked closely with the Law Commission throughout the review. While there are aspects that we do not agree with, and some elements that we believe would introduce an unacceptable administrative burden on councils, there are core aspects that need to be urgently introduced if councils are to genuinely have the tools they need to protect the public.
- **Revised versions of clauses 11 and 12 should be brought forward as part of a comprehensive reform package in the next Parliament following a detailed consultation with all stakeholders.**

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<sup>i</sup> [http://lawcommission.justice.gov.uk/docs/lc347\\_taxi-and-private-hire-services\\_summary.pdf](http://lawcommission.justice.gov.uk/docs/lc347_taxi-and-private-hire-services_summary.pdf)

<sup>ii</sup> <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>

<sup>iii</sup> <http://www.legislation.gov.uk/id/ukia/2014/295>