

# **Legal framework of taxi and PHV licensing in the UK**

**Annexe A**

**November 2003**

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# 1 LEGISLATIVE FRAMEWORK

## Four geographical areas

- 1.1 There are four distinct geographical areas for licensing of taxis and PHVs in the United Kingdom: London; England and Wales outside of London; Scotland; and Northern Ireland. This is because distinct licensing legislation applies in each geographic area.
- 1.2 The legislation for London applies in the geographic area that is made up of the metropolitan police district<sup>1</sup> and the City of London. For simplicity, we will refer to these areas together as London.

## Two tier licensing regime

- 1.3 In the UK (except Northern Ireland, as to which see paragraph 2.3 below), there is a legal distinction between a taxi and a private hire vehicle (PHV)<sup>2</sup>. Both forms of vehicle are subject to a licensing regime, but taxis are licensed to 'ply for hire' whereas PHVs are not. Broadly, this means that taxis can pick up passengers from the street or at a taxi rank and make a contract there and then to carry a passenger, as well as taking passengers who have pre-booked, whereas PHVs can only pick up passengers who have pre-arranged a journey by making a booking, usually by telephone.
- 1.4 We use the term 'licensed taxi' to indicate a vehicle with these distinguishing features, rather than the older expression 'hackney carriage'.

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<sup>1</sup> The metropolitan police district is defined in section 76(1) of the London Government Act 1963, as amended by section 323 of the Greater London Authority Act 1999. Since that provision came into force on 1 April 2000, it has consisted of Greater London, excluding the City of London, the Inner Temple and the Middle Temple. Prior to that date it included small parts of Essex, Hertfordshire and Surrey bordering on it.

<sup>2</sup> Private hire vehicles are known as 'private hire cars' in Scotland. For simplicity, we will use the English expression PHV throughout, and references to PHVs should be interpreted as meaning, or including, Scottish private hire cars where appropriate.

- 1.5 In Northern Ireland the licensing regime applies to all ‘public service vehicles’, which includes buses. However, there are two main types of licence in the taxi and private hire sector: a public hire taxi licence<sup>3</sup> and a private hire taxi licence. A public hire taxi is permitted to ply for hire in the same way as a licensed taxi in the rest of the UK. A private hire taxi offers the same services as a PHV in the rest of the UK. For simplicity, where appropriate, references to ‘licensed taxis’ should be read as including Northern Irish public hire taxis and references to ‘PHVs’ should be taken to include Northern Irish private hire taxis.

### **Types of licence**

- 1.6 For taxis and for PHVs in Scotland and Northern Ireland there are two types of licence: a vehicle licence; and a driver’s licence. For PHVs in England and Wales there are three types of licence: a vehicle licence; a driver’s licence; and an operator’s licence.

#### **The vehicle licence**

- 1.7 A vehicle licence is the licence that is granted to a vehicle’s owner, or proprietor, which allows the vehicle to be operated as a taxi or PHV. It can also be referred to as a taxi or PHV licence.

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<sup>3</sup> There are two categories of public hire licence: one for operating within the City of Belfast (a Belfast Public Hire licence); and one for operating outside Belfast only (a Restricted Public Hire licence).

- 1.8 The licence relates to the specific vehicle in respect of which it is granted. In England and Wales, except for taxi vehicle licences in London, the licence can be sold with the vehicle<sup>4</sup>.
- 1.9 A vehicle can be licensed to someone who is not the driver, as long as it is driven by a licensed driver. A taxi or PHV owner who wants to drive the vehicle as well as owning it will need two licences: a vehicle licence and a driver's licence.
- 1.10 Taxis can pick up passengers that have pre-booked without needing a separate PHV licence. Indeed, case law applicable to England and Wales (outside London) suggests that it is not possible for a vehicle that is licensed as a taxi also to be licensed as a PHV, and nor is it possible for a vehicle that is licensed as a PHV also to be licensed as a taxi.<sup>5</sup> This appears to be the result of the legislative provisions that define taxis and PHVs according to their characteristic use

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<sup>4</sup> In relation to licensed taxis, this principle was established by case law in the case of **R v Weymouth BC ex p. Teletax (Weymouth) Ltd** [1947] 1 All ER 779. It was subsequently recognised in legislation in section 49 Local Government (Miscellaneous Provisions) Act 1976, which requires any taxi or PHV vehicle licence holder who transfers his vehicle to give notice of the transfer to the licensing authority, and to let them know the name of the new proprietor. In London, similar provisions will apply to PHV vehicle licences, when the vehicle licensing provisions are put in place, under section 8(4) Private Hire Vehicle (London) Act 1998. The principle does not, however, apply in Scotland, in London or in Northern Ireland. In Scotland this is as a result of section 10(6) Civic Government (Scotland) Act. It requires taxi and PHV vehicle licence holders to deliver the vehicle licence and licence plate to the licensing authority within 28 days of any sale or disposal of the vehicle. While, in principle, this provision is intended to prevent sales of the licence plate itself, we understand that in some cases, in areas where taxi numbers are restricted, the licence holder and the prospective buyer of a taxi business seek prior confirmation from the licensing authority that the prospective buyer will be granted the one available licence (subject to fit and proper person checks), and the value of this confirmation may be reflected in the price of the taxi business, in the private contract made between buyer and seller. In other cases, the vehicle licence may be held by a company, so that the company can change ownership (subject to fit and proper person checks) without the vehicle licence being transferred. In London, paragraph 14(m) of the London Cab Order 1934 requires taxi vehicle licence holders to return the licence and the taxi licence plates to the licensing authority on any sale or transfer of the taxi. This requirement is relaxed, however, so as to allow the transfer of a taxi vehicle licence by inheritance on the licensee's death or between a husband and wife, or between members of a firm or company (paragraph 20 London Cab Order 1934). In Northern Ireland, under regulation 15 of the Public Service Vehicles Regulations (Northern Ireland) 1985, taxi and PHV licence holders must return their vehicle licences to the Department of the Environment on the sale or other disposal of the vehicle (including by inheritance). The Department of the Environment may then (but does not have to) transfer the licence to the new vehicle owner. Any other method of transfer of the licence is unlawful.

<sup>5</sup> **Hawkins v Edwards** [1901] 2 KB 169 in relation to taxis, and **Benson v Boyce** [1997] R.T.R. 226 in relation to PHVs.

throughout the period of a licence, rather than their specific use on any particular occasion.<sup>6</sup> Effectively, in England and Wales (outside London), once a vehicle is licensed as a taxi or a PHV, it cannot be used for any leisure purposes and can only be driven by a licensed driver. In London, the legislative definition of a PHV makes clear that a licensed taxi will never be a PHV<sup>7</sup>. As a result, a licensed London taxi can carry out private hire bookings without needing a separate PHV vehicle licence. In London, both taxis and PHVs can be used for leisure purposes<sup>8</sup>.

### **The driver's licence**

- 1.11 A driver's licence is a licence to drive a licensed taxi vehicle or PHV.
- 1.12 Generally, taxi and PHV drivers are licensed separately, so a driver who wants to drive both a taxi and a PHV would need two separate driver's licences. However, we are aware that some licensing authorities grant dual licences to drivers, entitling them to drive both a taxi and a PHV.<sup>9</sup>
- 1.13 Inside London, taxi drivers are obliged to carry passengers to any destination within a one mile radius or for a duration of up to an hour.<sup>10</sup> Taxis that are moving along a street are not obliged to stop

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<sup>6</sup> Section 38 Town Police Clauses Act 1847 in respect of taxis and section 80 Local Government (Miscellaneous Provisions) Act 1976 in respect of PHVs.

<sup>7</sup> Section 1 Private Hire Vehicles (London) Act 1998 defines a PHV as 'a vehicle constructed or adapted to seat fewer than nine passengers which is made available with a driver to the public for hire for the purpose of carrying passengers, other than a licensed taxi or a public service vehicle'.

<sup>8</sup> For taxis, this is because of section 8 Metropolitan Public Carriage Act 1869, which states that 'no hackney carriage shall ply for hire...unless under the charge of a driver having a licence...' Transport for London interpret this as meaning that a taxi will not be plying for hire when it is driven by someone other than a licensed driver. For PHVs this is a result of section 12(1) Private Hire Vehicles (London) Act 1998 which states that 'no vehicle shall be used as a private hire vehicle .... Unless the driver holds a ....licence.' Transport for London take the view that this allows for a vehicle not to be used as a PHV when it is being used for social purposes.

<sup>9</sup> We have had an estimate that 30 per cent of licensing authorities license drivers in this way.

<sup>10</sup> Section 7 London Hackney Carriage Act 1853 and paragraph 34 of the London Cab Order 1934, as amended by the London Cab (No. 2) Order 2001. The distance is extended to 20 miles for hirings from Heathrow by London Cab Order 1972, SI 1972/1047.

when hailed, but taxis standing in a public street or place without being hired are deemed to be plying for hire and are obliged to pick up passengers<sup>11</sup>, unless they are parked in a parking place designated under the Road Traffic Regulation Act 1984<sup>12</sup>.

- 1.14 In England and Wales outside London there is a similar rule. Taxi drivers that are standing at a taxi rank or on any street are obliged to carry passengers to any place within the distance prescribed by the licensing authority<sup>13</sup>. Licensing authorities usually provide that the distance within which taxis must operate is the area of the licensing district. Some local authorities, however, are divided into separate licensing zones, and taxi drivers are only obliged to carry passengers within their licensed zone.

#### **The operator's licence**

- 1.15 An operator's licence is a licence to operate PHVs – i.e. to run a PHV business<sup>14</sup>. In the PHV trade, the operator is a distinct person who runs a PHV business from office premises, taking calls and sometimes also walk-in custom. The contract for private hire services is deemed to be made between the customer and the operator<sup>15</sup>, and contractually the PHV driver is obliged to charge any fare quoted by the operator and agreed by the customer in advance. The operator must keep a record of each booking, as set out in the licence conditions imposed by the licensing authority.<sup>16</sup> The licensing of PHV operators was introduced as a measure to protect customers.
- 1.16 In the taxi industry taxi drivers or taxi proprietors themselves often operate the taxi business and there is no separate regime for licensing taxi operators. Nevertheless taxis increasingly carry out

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<sup>11</sup> Section 35 London Hackney Carriage Act 1831.

<sup>12</sup> Section 3 London Cab Act 1968.

<sup>13</sup> Section 53 Town Police Clauses Act 1847.

<sup>14</sup> The expression 'operate' is defined at section 80(1) Local Government (Miscellaneous Provisions) Act 1976 as follows: ' ' operate' means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle'.

<sup>15</sup> By virtue of section 56(1) of the Local Government (Miscellaneous Provisions) Act 1976.

<sup>16</sup> Under section 56(2) of the Local Government (Miscellaneous Provisions) Act 1976, applicable to England and Wales outside London. In London, the records that must be kept by PHV operators are set out in the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (SI 2000/3146).

private hire work as well as picking up passengers from the street or from ranks. There has been some legal uncertainty as to whether a taxi driver, or any other person that arranges a pre-booked journey in a taxi, needs a separate operator's licence.<sup>17</sup> The Department for Transport (DfT) takes the view that a taxi driver who takes a pre-booking does not need a separate operator's licence.

## Structure of regulation

- 1.17 In England and Wales outside London, and in Scotland, there are two levels of regulation: primary enabling legislation grants local authorities licensing powers subject to certain conditions; licensing authorities then set more detailed requirements in byelaws and/or licence conditions. In England outside London the licensing authorities are district councils and unitary councils. In Wales they are county councils and county borough councils, and in Scotland they are councils. For simplicity, this report refers throughout to licensing authorities, rather than to local authorities of a particular type.
- 1.18 In London, separate statutes that deal only with London contain the main provisions relating to taxis, and detailed licensing conditions are set out in London Cab Orders issued by the licensing authority, which is now Transport for London (TfL)<sup>18</sup>. A PHV licensing regime was introduced in London by the Private Hire Vehicles (London) Act 1998. Regulations under this Act set out licensing conditions.
- 1.19 In Northern Ireland, the licensing regime is set out in Orders and Regulations that apply only to Northern Ireland. Licensing is carried out centrally by the Department of the Environment.

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<sup>17</sup> A crown court case, **R v Franklyn and Carter** 27 June 1991, unreported, held that a person who takes a telephone booking for a taxi carrying out private hire work needs to have a PHV operator's licence. A later judicial review case, **R v Doncaster Metropolitan Borough Council ex p. Heath** (2001) ACD 48 concludes that a licensed taxi driver fulfilling contract hire services for the council could not be required to obtain a separate PHV operator's licence.

<sup>18</sup> The London Cab Order 1934 sets out the detail of TfL's powers in respect of licensing of taxi proprietors and drivers.

## Taxi stands

- 1.20 Licensing authorities have the power to appoint stands at which taxis only can stand and pick up customers.<sup>19</sup>
- 1.21 In London, TfL has power to fix stands by London Cab Order under section 9 Metropolitan Police Clauses Act 1869.
- 1.22 In Scotland, the power for licensing authorities to appoint stands (known there as 'stances') is found at section 19 of the Civic Government (Scotland) Act 1982. Stands may only be appointed following consultations with taxi operators.
- 1.23 In Northern Ireland, the Department of the Environment has the power to appoint stands for vehicles by byelaw under article 65 Road Traffic (Northern Ireland) Order 1981.
- 1.24 Railway stations and airports are private property, and the owner of the land may choose to set up a taxi rank there. If a railway station owner does so then, under section 75 of the Public Health Act 1925, all the enforcement provisions with respect to taxi ranks on public streets will apply. There are no equivalent provisions for airports or any other private property on which the owner may choose to establish a taxi rank.
- 1.25 As a matter of convention rather than law, passengers queuing at ranks take the first taxi at the rank<sup>20</sup>.

## Cross border issues

- 1.26 Outside Northern Ireland, taxis and PHVs are licensed within a local authority area. A taxi and its driver must be licensed by the same local authority. Similarly a PHV, its driver and its operator must be licensed by the same local authority.<sup>21</sup> As long as this condition is met, and the operator operates from an office within the licensing

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<sup>19</sup> For England and Wales outside London there is a power to fix stands by byelaw under section 68 of the Town Police Clauses Act 1847, and a power to appoint stands by decision, following consultation, under section 63 of the Local Government (Miscellaneous Provisions) Act 1976.

<sup>20</sup> In Belfast, this is a matter of law. Byelaw 10 of the By-laws Relating to Motor Hackney Carriages, June 1951, as amended, requires taxis at stands to be hired in the order that they arrive at the stand.

<sup>21</sup> **Dittah v DPP** and **Choudhry v DPP** QBD [1993] R.T.R. 356, confirmed in **Murtagh & Ors v Bromsgrove District Council** QBD, Independent, November 29, 1999 and **Shanks v North Tyneside MBC** 29 June 2001, unreported.

area, the PHV firm can advertise and supply private hire services anywhere in the country. The driver and vehicle do not have to restrict their services to the area where they are licensed.<sup>22</sup>

- 1.27 A taxi can only ply for hire inside the local authority area where it is licensed. However, it can supply private hire services on the same basis as a PHV – i.e. it can pick up and drop off anywhere in the country, as long as the order for services comes to a business base within the area where the taxi is licensed. The use of mobile telephones by taxi drivers as a means of accepting private hire bookings is technically not allowed outside the area where the taxi is licensed. However, this is difficult to police and presumably does happen.
- 1.28 Cross-border licence enforcement can be a problem. When a taxi or PHV firm is licensed in district A, but supplies private hire services in district B, licensing officers in district B could not enforce the licence conditions directly. They would need to ask the licensing officers in district A to take enforcement action.
- 1.29 Some licensing districts are divided into zones for taxi purposes (there are no zones for PHVs). This has arisen as a result of the change in local authority boundaries that took place on the reorganisation of local government. Where this is the case, individual zones operate as though they are separate licensing areas. Zones within a single licensing area can be amalgamated with approval from the Secretary of State.

## **History and applicable legislation**

### **Taxi licensing in England and Wales**

- 1.30 Regulation of the taxi industry began in the UK in 1635, when Charles I, reacting in part to complaints by London's watermen and in part also to congestion on London's streets, imposed restrictions on the number of horse drawn hackney coaches operating within

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<sup>22</sup> We have heard, for example, of a PHV firm whose operator, drivers and vehicles are licensed in Luton, but which advertises and provides private hire services in Southampton.

London and Westminster by royal proclamation. Taxi legislation on the statute books now still dates back to the London Hackney Carriage Act 1831, and much of the applicable legislation in England and Wales still refers to 'hackney carriages' rather than 'taxis'.

- 1.31 In London, the main piece of legislation that still applies is the Metropolitan Public Carriage Act 1869 (MPCA 1869). Under this Act, London Cab Orders set out the provisions as to licensing of taxi vehicles (section 6), the licensing of taxi drivers (section 8), and the fixing of fares for taxis (section 9). Under the Greater London Authority Act 1999<sup>23</sup>, responsibility for taxi licensing was transferred from the Commissioners of Police of the Metropolis to Transport for London. The main powers of Transport for London in respect of taxi vehicle and driver licensing are set out in the London Cab Order 1934<sup>24</sup>.
- 1.32 Outside London, the Town Police Clauses Act 1847 (TPCA 1847) still applies, and empowers local authorities to license taxis in parts of England and Wales outside London and in Northern Ireland. Its provisions were applied in individual towns and districts in England and Northern Ireland by local acts. Regulation of licensed taxis under this Act is effected by byelaw. The DfT has issued model byelaws that licensing authorities can use if they choose. These were last updated in 2002.
- 1.33 In 1875 the taxi licensing provisions in sections 37 to 68 of the TPCA 1847 were extended to all urban districts (but not to rural districts) in England and Wales, other than Greater London, by section 171 of the Public Health Act 1875<sup>25</sup>. The Public Health Act 1875 Act also empowered the Home Secretary to put these sections of the 1847 Act in force in rural districts.
- 1.34 When local government was reorganised in 1974, the Local Government Act 1972<sup>26</sup> (the 1972 Act) provided that section 171(4) of the Public Health Act 1875 (and consequently sections

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<sup>23</sup> Section 253 and Schedule 20, Part I, paragraph 1(1).

<sup>24</sup> S.R&O. No 1346 of 1934.

<sup>25</sup> Section 171.

<sup>26</sup> Section 180, Schedule 14, Part II, paragraph 24.

37 to 68 of the TPCA 1847 relating to taxi licensing) would apply to those areas to which they had applied immediately before 1 April 1974. Additionally the 1972 Act<sup>27</sup> allowed local authorities for which the TPCA only applied in a part of their area, with the approval of the Home Secretary, to apply section 171(4) of the Public Health Act 1875 (and consequently sections 37 to 68 of the TPCA 1847 relating to taxi licensing) throughout their areas.

- 1.35 In 1976, supplementary taxi licensing provisions and a new PHV licensing regime were introduced in the Local Government (Miscellaneous Provisions) Act 1976 (LG(MP)A 1976). This Act allowed licensing authorities to pass a resolution to apply its provisions in their area.<sup>28</sup> We are told that the regime in this Act has been adopted by all licensing districts in England and Wales outside London, except Plymouth, which has a separate local licensing regime<sup>29</sup>.
- 1.36 Section 15 of the Transport Act 1985 extended the provisions of the TPCA 1847 as amended to all district and unitary council areas in England and to all county council and county borough council areas in Wales, so that taxi licensing is now mandatory in all areas in England and Wales.

### **PHV Licensing in England and Wales**

- 1.37 The regime for licensing PHV vehicles, drivers and operators was introduced by the LG(MP)A 1976<sup>30</sup>, for those licensing authorities that choose to apply it, in areas of England and Wales outside London. Prior to that Act, a number of licensing authorities had in force local acts to control private hire. A PHV is defined in that Act as a hire vehicle that is provided for hire with the services of a driver for the purposes of carrying passengers, but that is not a hackney carriage.

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<sup>27</sup> Section 180, Schedule 14, Part II, paragraph 25.

<sup>28</sup> Section 45 LG(MP)A 1976.

<sup>29</sup> Under Plymouth City Council Acts of 1975 and 1985 and the TPCA 1847.

<sup>30</sup> Section 46 LG(MP)A1976.

1.38 In London, PHV licensing was not introduced until 1998, under the Private Hire Vehicles (London) Act of that year (PHV(L)A 1998). At present only operator licensing and driver licensing provisions have been introduced.<sup>31</sup> Plans to introduce vehicle licensing are in the second phase of consultation. It is anticipated that vehicle licensing will be introduced in two phases, the first phase beginning in early 2004.

#### **Licensing in Scotland and Northern Ireland**

1.39 In Scotland, local licensing authorities license taxi vehicles and drivers and PHV<sup>32</sup> vehicles and drivers under the Civic Government (Scotland) Act 1982<sup>33</sup> (CG(S)A 1982). In Scotland, there are no provisions for licensing PHV operators. There is no obligation to licence taxis and PHVs in Scotland but in practice all licensing authorities there do so.

1.40 In Northern Ireland, the provisions of the TPCA 1847 originally applied, but have now, in large part, been repealed. Instead, licensing of drivers and vehicles is carried out under the Road Traffic (Northern Ireland) Order 1981<sup>34</sup> (RT(NI)O 1981). Further provision as to the licensing of drivers is made in the Motor Vehicles (Taxi Drivers' Licences) Regulations (Northern Ireland) 1991, and as to the licensing of vehicles under the Public Service Vehicles Regulations (Northern Ireland) 1985 and the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Regulations (Northern Ireland) 1995.

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<sup>31</sup> Operator licensing was introduced from 22 October 2001. Driver licensing was introduced from 1 April 2003.

<sup>32</sup> See footnote 2 above: technically, vehicles licensed in Scotland for private hire are called 'private hire cars'.

<sup>33</sup> Sections 10 and 11.

<sup>34</sup> SI 1981/154 (N.I.), as amended by the Road Traffic (Amendment) (Northern Ireland) Order 1991, which inserted article 79A into the Road Traffic (Northern Ireland) Order, making extra provision for the licensing of taxi drivers by the Department of the Environment.

## **Types of regulation**

- 1.41 This market investigation has focused on three broad categories of regulation that constrain the free operation of the market for taxi and PHV services: quantity regulation; quality and safety regulation; and fare regulation. The next three sections (2, 3 and 4) look at each of these in turn, as they apply to taxis and PHVs.
- 1.42 Section 5 looks at another class of proposed regulation that may in future constrain the free operation of the market: the Disability Discrimination Act 1995. Section 6 looks at the right to protection of property under Article 1 of the First Protocol to the European Convention on Fundamental Rights and Freedoms, and its application to taxi licence shortage premiums.

## 2 QUANTITY REGULATION

- 2.1 Quantity regulation applies only to taxi vehicle licences in certain geographical areas. Licensing authorities are not empowered to restrict the quantity of PHV vehicle licences. Indeed, for England and Wales outside London, section 48 of the LG(MP)A 1976 expressly prohibits the refusal of a PHV vehicle licence for these purposes.

### England and Wales outside London

- 2.2 In England and Wales outside London, section 37 of the TPCA 1847 provided that licensing authorities could licence 'such number of' hackney carriages 'as they [thought] fit'. This was amended by section 16 of the Transport Act 1985, which provides that:

'the grant of a licence may be refused, for the purpose of limiting the number of hackney carriages in respect of which licences are granted, if, but only if, the person authorised to grant licences is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet.'

- 2.3 Since the date that this section of the Transport Act 1985 came into force<sup>35</sup>, it has been a requirement for all licensing authorities that they can only refuse an application for a taxi licence where they are satisfied there is no significant unmet demand. Forty-five per cent of the licensing authorities in England and Wales outside London that responded to our survey use these provisions to limit the numbers of taxi licences in their areas.

- 2.4 Following the Transport Act 1985, the Department of Transport and the Scottish Development Department issued joint Circular 3/85. At paragraph 27, this gave the following guidance on section 16:

'District councils may wish to review their policy on the control of taxi numbers in the light of the section. Limitation of taxi numbers can have many undesirable effects – an insufficiency of taxis, either generally or at particular times or in particular places;

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<sup>35</sup> 6 January 1986.

insufficient competition between the providers of taxi services, to the detriment of their customers; and prices for the transfer of taxi licences from one person to another which imply an artificial restriction of supply. Under the section a district council may refuse a licence to restrict numbers only if *satisfied* that there is not significant unmet demand for taxis in the relevant area. If there is an appeal, it will be for the council to convince the court that they had reasonable grounds for being so satisfied. It will not, in general, be sufficient for a district council to rely on the assertion of existing taxi licence holders that the demand is already catered for....Overcrowding at taxi ranks is not of itself evidence that there is no unmet demand. It may be that the provision of ranks has hitherto been too limited and the council should look actively for sites for further ranks.'

2.5 Licensing authorities where taxi numbers are restricted have adopted the practice of carrying out 'unmet demand surveys' in order to satisfy this requirement. Typically, authorities will carry out a survey once every two to three years.

2.6 There has been a significant volume of case law concerning decisions whether or not to grant further licences on the basis of quantitative restrictions, and the conduct of unmet demand surveys:

- In a 1995 case<sup>36</sup> the Crown Court held that there is a heavy burden on a licensing authority to prove that there is no significant unmet demand. The Court also indicated that the value of a taxi plate on the open market is 'a powerful indication of there being unmet demand'.
- The 1989 case **R v Brighton Borough Council ex p. Bunch**<sup>37</sup> found that the authority need only look at patent demand, and need not consider latent demand in the market place. Also, the authority should limit its consideration to demand for licensed

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<sup>36</sup> **Khalil and Middlesborough Borough Cars v Middlesborough Borough Council 1995**, unreported.

<sup>37</sup> [1989] C.O.D. 558.

taxi. It is not obliged to consider the presence or absence of PHVs in the market.

- In **Sawyer v Great Yarmouth Borough Council**<sup>38</sup> the Court of Appeal held that 'the licensing authority can adopt a reasonably broad approach in asking itself whether or not it is satisfied that there is no significant demand for the hackney carriages within the area to which the licence would apply which is unmet. The authority is entitled to consider the situation in relation to the area as a whole. It does not have to condescend into a detailed consideration as to what may be the position in every limited area of the authority in relation to a particular time of the day.'
- There is some indication from case law that the unmet demand survey should be carried out by an independent body.<sup>39</sup>

2.7 It is open to licensing authorities to alter their policy by lifting quantity restrictions where previously they had restricted the numbers of taxi licences, whether or not there is unmet demand, as long as the decision to do so is reasonable.<sup>40</sup> Conversely, if a council can show that there is no significant unmet demand, it may impose quantity restrictions where previously there was no upper limit on the number of taxi licences. Reliance on unmet demand surveys implies that if the survey concludes that there is unmet demand the licensing authority must issue the number of plates defined as the shortfall.

2.8 Councils can increase their licence fees to cover the costs of unmet demand surveys.

2.9 An applicant whose taxi vehicle licence application is refused under section 16 Transport Act 1985 has a right of appeal to the Crown Court.

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<sup>38</sup>1988, 86 L.G.R. 617, unreported.

<sup>39</sup> In **R v Brighton ex p. Bunch and others**, [1989] C.O.D. 558, Kennedy J said 'It is abundantly clear to me that a competent person was instructed to carry out an independent survey, that he did so with skill and care, and that the respondents then took proper steps to circulate and to receive comments upon the survey which had been produced. No more could reasonably be required of them.'

<sup>40</sup> **R v Gravesham Borough Council ex p. Gravesham Association of Licensed Hackney Carriage Owners; R v Transport Committee of Great Yarmouth ex p. Sawyer** ILR, 14.01.87.

## London

2.10 In London, TfL has no legislative powers to restrict the quantity of taxi vehicle licences that it issues.

## Scotland

2.11 In Scotland, section 10(3) of the CG(S)A 1982 was also amended by the Transport Act 1985, and provides that 'the grant of a taxi licence may be refused by a licensing authority for the purpose of limiting the number of taxis in respect of which licences are granted by them if, but only if, they are satisfied that there is no significant demand for taxis in their area which is unmet'.

2.12 Effectively the test for unmet demand in Scotland is the same as that which applies under section 16 of the Transport Act 1985 in England and Wales outside London. Circular 3/85 was issued jointly by the Scottish Development Department and the Department of Transport, and its guidance was intended to apply in Scotland.

2.13 In the case of **Coyle v City of Glasgow Council**<sup>41</sup> the Court of Session held that a licensing authority's assessment under section 10(3) CG(S)A 1982 has to be made in relation to the situation at the time when the application falls to be considered, and the authority has to be satisfied at that time that there is no significant unmet demand. Glasgow Council had refused an application for a taxi licence in 1996 on the basis of an assessment that it had made in 1991 that the optimum number of taxi licences to satisfy demand was 1,428. It was not entitled to rely on that assessment without reconsidering whether there was unmet demand in 1996. This view was confirmed and applied on 20 May 2003 in the case of **The Dundee Taxi Cab Company Limited v Dundee City Council and Dundee Taxi Association**<sup>42</sup> (now being appealed to the Court of Session). Dundee Council had wrongly failed to consider the demand for taxi services at the date of the hearing of the licensing committee on 5 September 2002, and had refused to issue licences

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<sup>41</sup> 1998 S.L.T. 453.

<sup>42</sup> Unreported.

on the basis of a historic unmet demand survey carried out in June 2001.

- 2.14 These cases suggest that licensing authorities in Scotland do not have to base their decisions on formal unmet demand surveys, but that it will be sufficient for the level of demand to be kept under review by a council official who has the information to judge whether the demand has increased since the matter was last considered.

### **Northern Ireland**

- 2.15 In Northern Ireland there is no quantity regulation of public service vehicles. The Department of the Environment has no powers under the legislation applicable to public service vehicles to refuse taxi licences in order to restrict licensed taxi numbers.

### 3 QUALITY AND SAFETY REGULATION

- 3.1 Quality and safety regulation applies to taxi vehicle and taxi driver's licences, and to PHV vehicle, PHV driver's and PHV operator's licences. Before turning to specific provisions quality and safety provisions in the licensing legislation, we consider separately the powers that licensing authorities have to check the criminal records of licence applicants.

#### **Licensing authorities' powers to check criminal records**

- 3.2 All licensing authorities in the UK have statutory powers to require applicants for taxi or PHV driver's licences to be fit and proper to hold such licences. Accordingly, licensing authorities have powers to request applicants for driver's licences to supply them with information of past offences that would otherwise be spent under the Rehabilitation of Offenders Act 1974. The principle is that members of the public have to place trust in taxi and PHV drivers, and they should be protected from individuals whose criminal record indicates that they might be dangerous. Accordingly, on the basis of past offences, licensing authorities can refuse to grant or renew licences, or suspend or revoke licences. In England and Wales, these powers are provided under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended. In Scotland, equivalent provisions are in the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2003. In Northern Ireland, the relevant Orders are the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979, as amended. In Northern Ireland the legislation applies to taxi and PHV proprietors, as well as drivers.
- 3.3 All licensing authorities in England, Wales and Scotland can carry out a criminal record check on applicants for taxi and PHV drivers' licences under Part V of the Police Act 1997<sup>43</sup>. They do this by countersigning (as a 'registered person' under the Part V of the

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<sup>43</sup> For PHV drivers in London, TfL is proposing to carry out criminal record checks under the new PHV driver licensing regime.

Police Act 1997) an application by the would-be licensee to the Criminal Records Bureau in England and Wales, or Disclosure Scotland, in Scotland. In Northern Ireland, there is no equivalent statutory power to obtain criminal record information, but the Department of the Environment has issued guidelines on the basis for determining convictions. Under these guidelines, the criminal records office of the Police Service for Northern Ireland supplies the Department of the Environment with information about criminal records of vehicle and driver's licence applicants.

### **Quality and safety provisions in the licensing legislation for taxis in England and Wales outside London**

- 3.4 There are two regimes for quality and safety regulation of taxi vehicles and taxi drivers: under the TPCA 1847; and the LG(MP)A 1976. The LG(MP)A 1976 regime supplements that of the TPCA 1847<sup>44</sup>, and licensing authorities can adopt quality and safety provisions under either or both regimes.

#### **Taxi vehicle quality and safety regulation**

- 3.5 Some of the quality and safety regulations relating to the vehicle licence are designed to permit scrutiny of taxi proprietors. For instance, the licensing authority can revoke a taxi vehicle licence under section 50 TPCA 1847 if the proprietor is convicted twice of offences under the TPCA 1847, e.g. employing an unlicensed driver or acting as a driver without a licence (section 47). Another example is section 68 TPCA 1847 which allows licensing authorities to make byelaws for regulating the conduct of taxi proprietors.
- 3.6 Other regulations relate to the quality and safety of the vehicle itself. Under section 68 TPCA 1847, licensing authorities have the power to make byelaws for the purposes of regulating 'the number of persons to be carried by ...hackney carriages....and how... hackney carriages are to be furnished or provided.' The DfT model byelaws set out rules as to the internal furnishing of taxis, and include requirements for a waterproof roof, windows that

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<sup>44</sup> Save in Plymouth, where separate local legislation applies.

open and three working doors. They also make provisions about taximeters, and how they should operate.

- 3.7 Under section 47 LG(MP)A 1976, the licensing authority can 'attach to the grant of a licence of a hackney carriage...such conditions as [it] may consider reasonably necessary', including conditions as to 'design or appearance or... distinguishing marks'. These conditions are known as 'conditions of fitness' for taxi vehicles.
- 3.8 Section 50 LG(MP)A 1976 requires taxi vehicle proprietors to present their vehicles for inspection and testing by or on behalf of the licensing authority up to a maximum of three times per year, as fixed by the licensing authority. Under section 60 LG(MP)A 1976, a licensing authority may suspend or revoke or refuse to renew a vehicle licence on the grounds that the vehicle is unfit for use as a taxi, that the proprietor has committed any offence under the TPCA 1847 or LG(MP)A 1976, or for any other reasonable cause. There is a right of appeal the crown court for any person aggrieved by a decision of a local licensing authority to refuse the grant of a taxi vehicle licence. There is a separate right of appeal to the magistrates' court for any person aggrieved by any condition attached to a taxi vehicle licence, or by a suspension, revocation or refusal to renew a taxi vehicle licence.
- 3.9 Under section 43 TPCA 1847 taxi vehicle licences must be in force for a maximum of one year only. This allows review of the quality and safety of the vehicle at least annually.

#### **Taxi driver quality and safety regulation**

- 3.10 Section 46 TPCA 1847 prohibits any person from acting as a driver of a taxi unless he has first been licensed to do so by the licensing authority. The licensing authority must exercise its discretion to grant driver's licences properly. However there are no express provisions that set out what matters the authority may take into account. Section 47 TPCA 1847 sets out that it is an offence to drive a taxi without a driver's licence, or for a proprietor to employ an unlicensed driver. Under section 50 TPCA 1847, the authority can suspend or revoke a driver's licence on the commission of a second offence under TPCA 1847, e.g. refusing to drive a customer without reasonable excuse (section

53), demanding more than the sum agreed (section 54), and driving a taxi without the authorisation of the proprietor (section 60).

- 3.11 Under section 68 TPCA 1847, the local authority can make byelaws for ‘regulating the conduct of ....drivers’, ‘determining whether ....drivers should wear any and what badges, and for regulating the hours within which they may exercise their calling’. The DfT model byelaws include provisions as to the driver’s use of the taximeter. They also require the driver, when plying for hire and not actually hired, to proceed with reasonable speed to one of the taxi stands appointed by the Council. They regulate how he should park and move forward at a taxi stand, and set out various other provisions concerning conduct.
- 3.12 Under section 59 LG(MP)A 1976, licensing authorities must not grant a taxi driver’s licence ‘unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence’ or to any person who has not had a driving licence for at least twelve months. A right of appeal from any refusal to grant a driver’s licence lies to the magistrates’ court.
- 3.13 Under section 53 LG(MP)A 1976, taxi driver’s licences can remain in force for up to three years or for such lesser period as is set out in the licence.
- 3.14 Under section 57 LG(MP)A 1976 a licensing authority can require any applicant for any taxi or PHV licence ‘to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.’ This includes a power to require the applicant for a taxi driver’s licence to produce a medical certificate, and to submit to a medical examination.
- 3.15 The case of **Wathan v Neath & Port Talbot County Borough Council**<sup>45</sup> confirms, however, that in spite of the reference to attaching conditions to any licence, section 57 LG(MP)A 1976 does not empower licensing authorities to attach conditions to a

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<sup>45</sup> [2002] EWHC 1634 (Admin), 12 July 2002, unreported.

taxi driver's licence. It merely supplements the licensing authority's powers to attach conditions to PHV driver, operator and vehicle licences and to taxi vehicle licences.

### **Quality and safety provisions in the licensing legislation for PHVs in England and Wales outside London**

3.16 For PHVs there is only one regime for regulation of vehicle, driver and operator quality and safety, under the LG(MP)A 1976.

#### **PHV vehicle quality and safety regulation**

3.17 Under section 48 LG(MP)A 1976, licensing authorities must only grant a PHV vehicle licence if they are satisfied that the vehicle is:

- suitable in type, size and design for use as a private hire vehicle
- not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage
- in a suitable mechanical condition
- safe
- comfortable, and
- covered by a suitable insurance policy.

3.18 The section also allows licensing authorities to attach to PHV vehicle licences 'such conditions as they may consider reasonably necessary including....conditions requiring or prohibiting the display of signs on or from the vehicle to which the licence relates.'

3.19 Under section 50 LG(MP)A 1976, PHV proprietors must present their vehicles for inspection by or on behalf of the licensing authority.

3.20 Under section 57 LG(MP)A 1976, a licensing authority can require an applicant to submit such information as the authority may reasonably consider necessary to enable it to determine whether the licence should be granted and whether conditions should be attached to the licence. As noted in paragraph 3.15 above, this applies to any PHV licence, whether a vehicle, a driver's or an operator's licence.

- 3.21 A licence under section 48 LG(MP)A 1976 must be in force no longer than one year. A right of appeal lies, on a refusal of a vehicle licence under this section, or on the basis of any conditions attached to a licence, to the magistrates' court.

**PHV driver quality and safety regulation**

- 3.22 Under section 51 LG(MP)A 1976 licensing authorities must only grant a PHV driver's licence if they are satisfied that the applicant is 'fit and proper' and that he has held a driving licence for at least twelve months. In addition (unlike taxi driver's licences) this section allows licensing authorities to 'attach [to a PHV driver's licence] such conditions as they may consider reasonably necessary'.
- 3.23 Applicants may appeal a refusal to licence, or the conditions of any licence, to a magistrates' court. Under section 53 LG(MP)A 1976, PHV driver's licences can remain in force for up to three years, or a lesser period if this is set out in the licence.

**PHV operator quality and safety regulation**

- 3.24 Section 55 LG(MP)A 1976 provides that licensing authorities must not grant an operator's licence 'unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence.' Authorities can also attach to the grant of a licence 'such conditions as they may consider reasonably necessary.'
- 3.25 Every licence granted must remain in force for up to five years or a lesser period set out in the licence. Refusals to licence, or the conditions attached to any licence, can be appealed to a magistrates' court.
- 3.26 Section 56 LG(MP)A 1976 provides that operators must keep a record of the details of each journey and of the PHVs that they operate – in the form that is required by the licensing authority.

## Quality and safety provisions in the licensing legislation for taxis in London

### Taxi vehicle quality and safety regulation

- 3.27 Under section 6 MPCA 1869, TfL has the function of licensing taxis to ply for hire within London, and a licence under that section can:
- '(a) be granted on such conditions;
  - (b) be in such form;
  - (c) be subject to revocation or suspension in such event, and
  - (d) generally be dealt with in such manner,
- as may be prescribed' under a London Cab Order. Licences granted under this section will be in force for one year, unless revoked or suspended earlier.
- 3.28 Section 2 of the London Hackney Carriages Act 1853 allows TfL to inspect London taxis and to give notice to the proprietor if his vehicle is in a condition unfit for public use. If the proprietor, after receiving such a notice, continues to use the taxi in a condition unfit for public use, TfL has power to suspend the licence.
- 3.29 Under section 9 MPCA 1869, TfL can make regulations by London Cab Order for, among other things, 'regulating the number of persons to be carried in any hackney carriage, and in what manner such number is to be shown on such carriage, and how such hackney carriages are to be furnished or fitted.'
- 3.30 The London Cab Order 1934<sup>46</sup> defines a 'cab licence' as a licence granted under section 6 MPCA 1869.
- 3.31 Under paragraph 7, TfL can in its discretion refuse to grant a taxi licence if:
- the applicant or a partner or company with whom he is associated has been convicted of one of a set of listed offences

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<sup>46</sup> Op. cit. footnote 22 above.

- his licence has previously been revoked or suspended and this makes him unfit

or if he fails to satisfy TfL:

- that the taxi in respect of which the application is made conforms to the conditions of fitness from time to time laid down by TfL and is fit for public use
- that he is of good character, and
- that the owner of the taxi in respect of which the application is made (the applicant in person or the firm or company on whose behalf he has made the application):
  - i) is of good business repute
  - ii) fulfils the requirements for third party liability insurance, and
  - iii) is financially fit and proper to hold a taxi licence.

3.32 Under paragraph 9, TfL can approve the application subject to confirmation as to the vehicle's compliance with the conditions of fitness and the production of proof of insurance, if the applicant satisfies the other requirements under paragraph 7.

3.33 The conditions of fitness are set by TfL. They set out detailed requirements for the construction of a taxi. The content of the conditions of fitness is considered further in paragraph 3.39 below.

3.34 Once conditional approval has been granted under paragraph 9, the Public Carriage Examiner will examine the taxi and the proprietor's tax and insurance documents, under paragraph 10 of the London Cab Order 1934. If the taxi meets the conditions of fitness the Public Carriage Examiner will certify it and fix the licence plates and notices to the vehicle. The plates remain the property of TfL. The certification will be returned to TfL which will then issue the licence (paragraph 12). Without the approval of the Public Carriage Examiner, no licence will be granted, although TfL can direct that the taxi be re-examined if it thinks fit (paragraph 13).

3.35 A taxi licence granted will be in force for one year unless earlier revoked or suspended, and is granted subject to the conditions, inter alia:

- that the licensee must produce the licence and evidence of third party insurance for examination when required to do so by the police or the Public Carriage Examiner, or by authorised TfL staff
- that the licensee will notify TfL of any change of address within seven days
- that the licensee will allow the Public Carriage Examiner to inspect the taxi at all reasonable times
- that the licensee will not remove or conceal the licence plates fixed to the taxi
- that the licensee will not knowingly permit the taxi to be used for any illegal purpose, and
- that the licensee will keep the taxi in good order and repair.

3.36 Under paragraph 19 London Cab Order 1934, taxi vehicle licences can be revoked or suspended if:

- the licence has been obtained by any misrepresentation, fraud or concealment of any material circumstances, or
- TfL is satisfied (as the result of new circumstances or knowledge or as a result of the condition of the taxi) that the licence could not properly be granted to the licensee if he were an applicant for a new licence, or
- the licensee fails to comply with any conditions of the licence, or
- on any of the grounds for revocation or suspension under the MPCA 1869.

There is a right of appeal to the magistrates' court for any person aggrieved by a decision to refuse to grant a taxi licence, or against the suspension or revocation of a licence. A licensee or would-be licensee can opt to appeal to TfL before, or instead of, going to the magistrates' court.

- 3.37 Paragraph 35 of the London Cab Order 1934 requires the owner of every taxi to fit in it an approved and sealed taximeter, and under paragraph 37 the owner or driver must not ply for hire without an approved taximeter, or if the seal of the taximeter is broken, altered, defaced or tampered with.
- 3.38 Under paragraph 38, the taximeter readings must be illuminated so as to be legible at all times.
- 3.39 The conditions of fitness issued under paragraph 7 London Cab Order 1934 are the subject of an ongoing review by TfL. The existing conditions of fitness include a requirement that the turning circle be not more than 7.62 metres (25 feet) kerb to kerb and that the vehicle must be capable of being turned without reversing in a distance of not more than 8.535 metres (28 feet)<sup>47</sup>. In 2002 and 2003 TfL, through its taxi licensing branch the Public Carriage Office (PCO), carried out the first full review of the conditions of fitness since 1961. The results of the review were published in June 2003<sup>48</sup>. Among other things, TfL decide to retain the turning circle requirements in the conditions of fitness, and to impose two new requirements: that sliding doors for disabled access taxis be power operated or power assisted; and that the rear window should be one-piece, and take up the whole width of the vehicle. These three conditions were challenged by Allied Taxis, a company which manufactures taxis that do not comply with the existing turning circle requirements. As a result of this challenge, TfL announced on 29 September 2003 its decision to reconsider these three aspects of the Conditions of Fitness, and to come to a further decision on these three requirements<sup>49</sup>. At the time of going to print this second review is still in progress.

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<sup>47</sup> Construction and Licensing of Motor Taxicabs in London, Conditions of Fitness 2000, ('Conditions of Fitness') paragraph 7.

<sup>48</sup> Public Carriage Office Notice 10/03.

<sup>49</sup> Public Carriage Office Notice 20/03.

### **Taxi driver quality and safety regulation**

- 3.40 Under section 8 MPCA 1869, TfL has the function of licensing London taxi drivers. Again, a licence granted under this section can:
- '(a) be granted on such conditions;
  - (b) be in such form;
  - (c) be subject to revocation or suspension in such event, and
  - (d) generally be dealt with in such manner,
- as may be prescribed' under a London Cab Order. If not suspended or revoked earlier, a driver's licence granted under this section will be in force for three years.
- 3.41 The London Cab Order 1934 provides at paragraph 24 that taxi driver's licences must not be granted to persons under the age of 21.
- 3.42 Paragraph 25 sets out TfL's discretion to refuse a taxi driver's licence on other grounds. These are:
- that the applicant fails to satisfy TfL that he is of good character and fit to act as a taxi driver, or
  - that the applicant has had a previous licence and not used it for a considerable part of the licence period, for reasons other than illness or other unavoidable cause.
- 3.43 Under paragraph 27, the licence may be granted subject to conditions as to:
- the types of taxis which the driver is permitted to drive, and
  - the parts of London in which the driver is permitted to ply for hire, if the licensee has only satisfied TfL that he has adequate knowledge of limited parts of the metropolitan area.
- 3.44 In practice, would-be drivers satisfy the knowledge requirement of the licence application by completing 'the Knowledge' tests. These can be for the whole of London (resulting in the issue of a 'green badge' which allows a driver to operate anywhere in London) or for a restricted area of London (resulting in the issue of a 'yellow badge' which restricts a driver to one or more

designated suburban sectors of London). We understand that completion of the Knowledge takes a minimum of two years.

- 3.45 Under paragraph 30 of the London Cab Order 1934, taxi driver's licences can be revoked or suspended if TfL is satisfied on the basis of new knowledge that the licensee is not a fit person to hold such a licence.

### **Quality and safety provisions in the licensing legislation for PHVs in London**

- 3.46 PHV licensing in London is governed by the Private Hire Vehicles (London) Act 1998 (PHV(L)A 1998). The licensing powers of the Secretary of State under this Act have been delegated to the Public Carriage Office, which is part of TfL.

#### **PHV vehicle quality and safety regulation**

- 3.47 PHV vehicle licensing is not yet in force in London, although the Public Carriage Office plans to begin licensing PHV vehicles in early 2004. This section describes the legislative provisions in the PHV(L)A 1998 that will operate once vehicle licensing is introduced.

- 3.48 Under section 6 PHV(L)A 1998, '[a] vehicle shall not be used as a private hire vehicle on a road in London unless a private hire vehicle licence is in force for that vehicle.'

- 3.49 Under section 7(2) PHV(L)A 1998 TfL must grant a London PHV vehicle licence if it is satisfied:

'that the vehicle –

- (i) is suitable in type, size and design for use as a private hire vehicle;
- (ii) is safe, comfortable and in a suitable mechanical condition for that use; and
- (iii) is not of such design and appearance as would lead any person to believe that the vehicle is a London cab;'

and that there is a suitable insurance policy in place, and that any further requirements that may be prescribed are met.

- 3.50 Under section 7(4) PHV(L)A 1998 the licence may be granted subject to such conditions as may be prescribed, and such other conditions as TfL may think fit.
- 3.51 The licence will be granted for one year or for such shorter period as TfL may consider appropriate in the circumstances of the case.
- 3.52 Under section 15(2) PHV(L)A 1998 TfL can require an applicant to furnish such further information as it considers necessary for dealing with the application.
- 3.53 An applicant can appeal to a magistrates' court against a decision not to grant a licence or against any condition not imposed by regulation to which the licence is subject (section 7(7) PHV(L)A 1998).
- 3.54 Licensed vehicle owners must present their vehicles for testing and inspection when required to do so by TfL, not more than three times in any year.
- 3.55 The police and TfL officers can inspect licensed vehicles to ensure their fitness at any reasonable time. If there is a problem with the vehicle they can either require it to be retested or suspend its licence until satisfied that it is fit (section 9 PHV(L)A 1998).
- 3.56 Licensed vehicles must carry the discs or plates issued to denote that they are licensed (section 10 PHV(L)A 1998).
- 3.57 Under section 16 PHV(L)A 1998, vehicle licences can be suspended or revoked for any reasonable cause, including if TfL is no longer satisfied that the vehicle is fit for use, or if the owner has failed to comply with a licence condition or any other obligation imposed on him. An appeal lies on any suspension or revocation decision to the magistrates' court (section 17(4) PHV(L)A 1998).
- 3.58 The use of taximeters in London PHVs is prohibited (section 11 PHV(L)A 1998).

### **PHV driver quality and safety regulation**

- 3.59 The licensing of PHV drivers in London was introduced on 1 April 2003<sup>50</sup>. From that date until 31 May existing drivers were issued with temporary permits<sup>51</sup>. Temporary permit holders are being invited to apply in batches over a three year period. New drivers after 31 May 2003 need a licence before they can drive.
- 3.60 Section 12 PHV(L)A 1998 provides that '[n]o vehicle shall be used as a private hire vehicle on a road in London unless the driver holds a private hire vehicle driver's licence.'
- 3.61 Under section 13(2) PHV(L)A 1998, TfL must grant a licence to an applicant if it is satisfied that:
- '(a) the applicant has attained the age of 21, is (and has for at least three years been) authorised to drive a motor car and is a fit and proper person to hold a London PHV driver's licence'.
- 3.62 Under section 13(3) PHV(L)A 1998 applicants can be required to demonstrate to TfL's satisfaction appropriate knowledge of London or parts of London and of general topographical skills. At present TfL is not using this provision to require evidence of topographical skills, but it may decide to do so in future.
- 3.63 In addition, under section 13(5) PHV(L)A 1998 the driver's licence may be granted subject to such conditions as TfL may think fit, and shall be granted for three years or such shorter period as TfL considers appropriate. TfL intends to impose additional conditions by way of administrative rules.
- 3.64 Applicants can appeal to a magistrates' court against a decision not to grant a licence, or against any condition set out in administrative rules to which the licence is subject (section 13(6) PHV(L)A 1998).
- 3.65 Under section 15(2) PHV(L)A 1998 TfL can require an applicant to furnish such further information as it considers necessary for dealing with the application. This can include a medical certificate

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<sup>50</sup> Under the Private Hire Vehicles (London) Act 1998 (Commencement No. 2) Order 2003, SI 2003/580.

<sup>51</sup> Under the Private Hire Vehicles (London) (Transitional and Saving Provisions) Regulations 2003, SI 2003/655.

stating that he is physically fit to be a PHV driver and that he meets any prescribed physical fitness requirements. He may also be required to submit to a medical examination.

- 3.66 Under section 16 PHV(L)A 1998, driver's licences can be suspended or revoked for any reasonable cause, including conviction of an offence involving dishonesty, indecency or violence, if TfL is no longer satisfied that the driver is fit to hold the licence, or if the driver has failed to comply with a licence condition or any other obligation imposed on him. An appeal lies on any suspension or revocation decision to the magistrates' court (section 17(4) PHV(L)A 1998).

### **PHV operator quality and safety regulation**

- 3.67 PHV operator licensing began in London in January 2001. It is now an offence to make arrangements to supply a private hire vehicle in London without an operator's licence or a temporary permit.
- 3.68 Section 2(1) PHV(L)A 1998 provides that '[n]o person shall in London make provision for the invitation or acceptance of, or accept, private hire bookings unless he is the holder of a private hire vehicle operator's licence.'
- 3.69 Under section 3(3) PHV(L)A 1998 TfL must grant a PHV operator's licence if it is satisfied that:
- '(a) the applicant is a fit and proper person to hold a London PHV operator's licence: and
  - (b) any further requirements that may be prescribed (which may include requirements relating to operating centres) are met.'
- 3.70 Under section 3(4) PHV(L)A 1998: '[a] London PHV operator's licence shall be granted subject to such conditions as may be prescribed and such other conditions as [TfL] may think fit.'
- 3.71 Section 3(5) PHV(L)A 1998 provides that a PHV operator's licence will last for five years, or such shorter period as TfL considers appropriate.
- 3.72 Applicants can appeal to the magistrates' court in respect of a refusal to grant a licence, a refusal to accept the proposed

operating premises, or a condition (other than a condition set out in regulations) subject to which the licence is granted.

- 3.73 Under section 15(2) PHV(L)A 1998 TfL can require an applicant to furnish such further information as it may consider necessary for dealing with the application. This can include information about the premises he proposes to use as an operating centre, any convictions recorded against him, any previous business activities, and details of any company or partnership under which he proposes to operate the business.
- 3.74 Once licensed, an operator may only accept a booking at the operating centre specified in his licence (section 4(1) PHV(L)A 1998), although he can apply to TfL to vary the licensed operating centre at any time (section 18 PHV(L)A 1998).
- 3.75 It is the operator's responsibility to ensure that all vehicles he uses to carry out bookings in London are either licensed PHVs, driven by licensed PHV drivers, or licensed London taxis, driven by licensed London taxi drivers. The operator must keep prescribed records of all bookings, and produce them for inspection whenever required by the police or a TfL officer.
- 3.76 Under section 16 PHV(L)A 1998, operator's licences can be suspended or revoked for any reasonable cause, including if TfL is no longer satisfied that the operator is fit to hold the licence, or if the operator has failed to comply with a licence condition or any other obligation imposed on him. An appeal lies on any suspension or revocation decision to the magistrates' court (section 17(4) PHV(L)A 1998).
- 3.77 Under section 19 PHV(L)A 1998, TfL can suspend the licence so far as it relates to any operating centre specified in it, or vary the licence by removing the reference to an operating centre if it no longer meets the prescribed requirements. Again, appeal of any such decision lies to the magistrates' court.
- 3.78 The Private Hire Vehicles (London) (Operators' Licences) Regulations 2000<sup>52</sup> provide for further licence conditions, including conditions relating to: insurance; and giving notice of any

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<sup>52</sup> SI 2000/3146.

convictions (regulation 9). They also set out the requirements for record-keeping by the operator (regulations 10 to 16).

## **Quality and safety provisions in the licensing legislation for taxis and PHVs in Scotland**

3.79 In Scotland the quality and safety provisions for taxi and PHV vehicles and drivers are virtually identical, save that a PHV driver does not need to take a knowledge test. There is no licensing regime in Scotland for PHV operators.

### **Taxi and PHV vehicle quality and safety regulation**

3.80 Under section 10 (1) CG(S)A 1982, a taxi or PHV licence is needed for the operation of a vehicle as a taxi or a PHV.<sup>53</sup> Section 10 (2) CG(S)A 1982 requires a licensing authority not to grant or renew a licence unless satisfied that the vehicle to which the licence is to relate is 'suitable in type, size and design for use as a taxi or private hire car, as the case may be, and is safe for that use, and that there is in force in relation to the vehicle such a policy of insurance or such security as complies with Part VI of the Road Traffic Act 1972.'

3.81 Scottish Ministers have a power under section 20(2) CG(S)A 1982 to make regulations as to vehicle type, size and design, compliance with which would have to be recognised by licensing authorities. However, no regulations have yet been made under this provision, so individual licensing authorities' local vehicle quality and safety regulations apply unmodified.

3.82 Section 11 CG(S)A 1982 requires the holder of a taxi or PHV licence to present the vehicle for inspection and testing by the licensing authority on reasonable notice, and empowers the licensing authority to carry out such testing, and to test any taximeter. If the authority is not satisfied as to the safety of the vehicle or as to the fitness or accuracy of the taximeter it can by notice in writing require a further inspection at a reasonable time and place or suspend the licence. There is a right of appeal to a sheriff against a decision to grant, renew or suspend a licence or to refuse to do so under Schedule 1 paragraph 18 CG(S)A 1982.

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<sup>53</sup> Councils have a power, rather than an obligation, to license taxis and PHVs in Scotland, but all 32 councils in Scotland have chosen to licence.

- 3.83 A PHV must not carry a sign or other feature that might suggest that it is available for hire as a taxi (section 14(1) CG(S)A 1982).
- 3.84 Under section 20(1) CG(S)A 1982 Scottish Ministers can make regulations prescribing conditions for the grant of taxi or PHV driver's licences. The Private Hire Cars and their Drivers (Prohibited and Required Conditions) (Scotland) Regulations 1986<sup>54</sup> were made under this power. These include provisions that prohibit licensing authorities from imposing conditions in any vehicle licence which limit the number of vehicles for which a licensee can hold a licence, or require a licence holder to reside in the licensing area, which prohibit or restrict the use of radios in PHVs, or which prevent licence holders from engaging in other businesses or employment.

#### **Taxi and PHV driver quality and safety regulation**

- 3.85 Under section 13(1) CG(S)A 1982, a taxi or PHV driver's licence is needed for driving or otherwise having charge of a taxi or PHV.
- 3.86 Section 13(2) CG(S)A 1982 provides that a licensed taxi driver may drive a PHV without needing a separate PHV driver's licence. A licensed PHV driver would need a separate taxi driver's licence to drive a licensed taxi.
- 3.87 Section 13(3) CG(S)A 1982 sets out that a licensing authority shall not grant a licence to any person unless he has held a driving licence for at least 12 months. Under section 13(4) CG(S)A 1982, a licensing authority may require an applicant to submit to a medical examination for the purpose of satisfying itself that he is physically fit to drive a taxi or a PHV.
- 3.88 Under section 13(5) CG(S)A 1982 a licensing authority can require an applicant for a taxi driver's licence (but not a PHV licence) to take a test of his knowledge of the area to which the licence is to relate, and of other matters relating to the operation of a taxi, and can refuse a licence to any applicant that does not satisfy the authority that he has adequate knowledge of these matters.

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<sup>54</sup> SI 1986/1238.

- 3.89 The Private Hire Cars and their Drivers (Prohibited and Required Conditions) (Scotland) Regulations 1986<sup>55</sup> prohibit licensing authorities from imposing conditions in any vehicle or driver's licence which would require a licensed driver to reside within the area of a licensing authority, or which would prevent a licensed driver from being involved in any other business or employment.

### **Quality and safety provisions in the licensing legislation for taxis and PHVs in Northern Ireland**

- 3.90 In Northern Ireland, there is no licensing regime for PHV operators.

#### **Taxi and PHV vehicle quality and safety regulation**

- 3.91 Under article 60 of the RT(NI)O 1981, taxis and PHVs must be licensed before they can stand or ply for hire and/or carry passengers for hire.
- 3.92 Article 61 RT(NI)O 1981 provides that taxi and PHV vehicle licenses may be granted on such conditions and subject to revocation or suspension in such events, and generally dealt with in such manner as the Department of the Environment may determine. Taxi and PHV vehicle licences shall be in force for a year, unless sooner revoked or suspended. It also requires adequate insurance to be in place in respect of the vehicle. Under article 61(4) RT(NI)O 1981, any condition on which a taxi or PHV vehicle licence is to be granted may either be prescribed or inserted in the licence.
- 3.93 Under article 64 RT(NI)O 1981, authorised officers of the Department or of the Police Service of Northern Ireland can stop and examine any taxi or PHV that is plying for hire or carrying passengers for hire and if the vehicle does not comply with regulations for ensuring the safety of passengers, they may require the passengers to leave the vehicle and require the owner of the vehicle to make suitable arrangements for the conveyance of the passengers to their destination.
- 3.94 Under article 66 RT(NI)O 1981, the Department of the Environment can make regulations for licensed taxis and PHVs,

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<sup>55</sup> SI 1986/1238.

including regulations that govern: distinguishing marks for vehicles; the number of persons who may be carried; the way in which vehicles are to be furnished or fitted; ensuring that vehicles are fit for public hire; ensuring the safety of persons carried in them; providing for the inspection of vehicles to ensure they are fit and safe; and providing for the cessation of use of vehicles if they do not comply with the regulations.

- 3.95 The applicable regulations are the Public Service Vehicles Regulations (Northern Ireland) 1985 (the 1985 regulations) and the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Regulations (Northern Ireland) 1995 (the 1995 regulations).
- 3.96 The 1985 regulations provide that the Department can refuse to grant a licence if the applicant has had a previous licence revoked or suspended, if he has failed to comply with a condition of a previous licence and if he has been convicted of an offence relating to licensing of vehicles. The Department **must** refuse a licence if the applicant is not of good character and business repute or his financial position is such that he is not a fit and proper person to hold a licence or the vehicle does not comply with statutory requirements relating to the construction and condition of motor vehicles, their accessories and equipment, and as to taximeters (regulations 8 and 6(2)).
- 3.97 The conditions of license set out in regulation 13 of the 1985 regulations include requirements that the licensee will:
- not use or permit the use of the vehicle for an illegal purpose
  - produce the vehicle for inspection at reasonable times
  - keep the vehicle, its accessories and equipment in good order and repair, and
  - not employ an unlicensed driver.
- 3.98 The grounds on which Department can revoke or suspend a licence, under regulation 17 of the 1985 regulations include:
- that the licensee fails to comply with a licence condition
  - that the licensee is convicted of an offence under the RT(NI)O 1981

- that the conduct of the licensee has been such as to render him unsuitable to hold the licence, and
  - that the vehicle fails to satisfy the use, construction or condition requirements on any inspection.
- 3.99 Under regulations 35 to 38 of the 1985 regulations there are provisions regarding the testing, sealing, construction, misuse and repair of taximeters.
- 3.100 The 1995 regulations set out prescribed conditions of fitness for taxi and PHV vehicles in Northern Ireland, including rules governing vehicle dimensions, both external (regulations 37 and 38) and internal (regulation 41), vibration and noise (regulation 32), fuel tanks and apparatus (regulation 35), safety of electrical equipment (regulation 34) and exhaust systems (regulation 35), front seats (regulation 36), steps and rails (regulation 37) and general construction and condition of bodywork, upholstery, fittings, doors, windows, seats, roof, springs, wheels, cushions, linings, and bodywork panels (regulations 28 and 39). Under regulation 39 of the 1995 regulations, entrances and exits for passengers must not exceed a maximum height off the ground. Regulation 41 also requires each vehicle to have a solid partition with a sliding window between the passenger and driver's compartment.

#### **Taxi and PHV driver quality and safety regulation**

- 3.101 Article 59 RT(NI)O 1981 provides that taxis and PHVs must not ply for hire or carry passengers for hire unless the driver is licensed.
- 3.102 Under article 70(4) RT(NI)O 1981, taxi and PHV driver's licences may be granted subject to prescribed conditions, liable to be suspended or revoked in prescribed circumstances, and generally dealt with in the prescribed manner.
- 3.103 Under article 79A(1) RT(NI)O 1981, a driver may not drive a taxi or PHV when it is standing or plying for hire or carrying passengers for hire unless he is licensed to do so. Under article 79A(3) RT(NI)O 1981, the Department of the Environment must not grant a driver's licence to any applicant who has not had a driving licence for at least 12 months, and must not grant a licence unless satisfied that the applicant is a fit and proper person

to hold the licence and meets any other prescribed requirements. Driver's licences can, under article 79A(4) RT(NI)O 1981, be granted subject to prescribed conditions, be revoked or suspended by the Department in prescribed circumstances, and will remain in force for a prescribed period unless sooner revoked or suspended, and will generally be dealt with in the prescribed manner.

- 3.104 There is a right of appeal for any person aggrieved by a licence refusal, revocation or suspension to a court of summary jurisdiction.
- 3.105 There are two sets of relevant regulations: the 1985 regulations and the Motor Vehicles (Taxi Drivers' Licences) Regulations (Northern Ireland) 1991 (the 1991 regulations).
- 3.106 Under regulation 25 of the 1985 regulations, a first application for a driver's licence must be accompanied by a medical certificate. Under regulation 28 of the 1985 regulations, the Department can refuse to grant a licence to an applicant who is, inter alia:
- unable to read or write or is not clean in dress or person
  - unfit by reason of infirmity of mind or body, and
  - unable to satisfy the Department that he is of good character and is a fit and proper person to act as a driver of a vehicle.
- 3.107 A driver's licence will last for five years unless earlier suspended or revoked (regulation 29 of the 1985 regulations).
- 3.108 Under regulation 32 of the 1985 Regulations, the Department can suspend or revoke a licence, inter alia on grounds that:
- the licensee fails to comply with a licence condition
  - the licensee has been convicted of an offence under the RT(NI)O 1981
  - the licensee is unable to carry out his duties without risk to the public, and
  - the conduct of the licensee has been such as to render him unsuitable to hold the licence.
- 3.109 The 1991 regulations add a further ground for suspension or revocation of a licence:

- that the Department becomes aware that the licensee is not a fit and proper person to hold the licence.

They also require the Department to refuse a licence if the applicant has one of a number of disabilities that affect sight.

## 4 FARE REGULATION

### England and Wales outside London

- 4.1 In England and Wales outside of London, licensing authorities are empowered to set fixed fares for taxis only (but not for PHVs) in one of three ways:
- by means of a local act incorporating the provisions of the TPCA 1847
  - by byelaw under the TPCA 1847<sup>56</sup>, or
  - by means of a table of fares fixed under section 65 of the LG(MP)A 1976. Under this provision, licensing authorities can fix rates or fares within their district on a time and/or distance basis, and all other charges in connection with the hire of a vehicle. The licensing authority can set or vary a table of fares at any time, in each case after a period of consultation. Tables of fares made under this section take effect as if they were included in hackney carriage byelaws made under the TPCA 1847.
- 4.2 Although these three mechanisms for setting taxi fares exist, in practice those local authorities that regulate fares<sup>57</sup> do so under section 65 of the LG(MP)A 1976. The model byelaws issued by the DfT reflect this, and do not include a table of fares.
- 4.3 The power to fix fares is just that – a power rather than an obligation. There are some local authorities in which fares are not regulated at all. However, over 95 per cent of the local authorities that responded to our survey<sup>58</sup> regulate fares.

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<sup>56</sup> Section 68 TPCA 1847.

<sup>57</sup> Except Plymouth whose licensing regime is created by local act.

<sup>58</sup> We had responses from 243 (71 per cent ) of the 342 local authorities in England and Wales outside London.

- 4.4 According to **R v Liverpool City Council ex p. Curzon Limited**,<sup>59</sup> fares fixed under either the TPCA 1847 or the LG(MP)A 1976 are maximum fares only. Taxi drivers are entitled to charge less than the prescribed rate if they wish. This results in part from section 54 of the TPCA 1847, which entitles a taxi proprietor or driver to agree to take a job for less than the fixed fare<sup>60</sup>.
- 4.5 Where fares are fixed in England and Wales outside London, taxis tend to use taximeters to measure the distance and/or time involved in a journey. There is no provision in the primary legislation that requires the use of a taximeter, but its use is often required by the licensing authority as a condition in the vehicle licence.
- 4.6 Under section 66 LG(MP)A 1976, journeys ending outside the licensing district must be charged at the rate on the table of fares as if they were journeys that ended inside the licensing district, unless a higher fare is agreed in advance.
- 4.7 Under section 67 LG(MP)A 1976, taxis that are used for private hire are required to charge a fare that is not greater than that fixed by byelaws, or under a table of fares fixed under section 65 of that Act. In practice the usual way for drivers to comply with this requirement is to charge the fare that is set on the taximeter.
- 4.8 There is no power for licensing authorities to fix fares for PHVs. The concept is that price competition operates more effectively in this portion of the market because customers pre-book and there are therefore greater opportunities to shop around on price. PHVs may use taximeters, but licensing authorities cannot require them to do so. However, if they choose to use taximeters, these must be tested and approved by or on behalf of the relevant licensing authority.<sup>61</sup>

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<sup>59</sup> 12 November 1993 CO/1338/91 QBD, unreported.

<sup>60</sup> Mr Justice McCullough concluded: 'I am persuaded that the statutes [Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976] do not empower a district council to impose on drivers...a fare structure to which they must adhere. Such doubt as there is should be resolved in favour of the less restrictive construction. It is my view that the statutes prevent a driver from charging more than the fares prescribed, but not less; they do not empower a district council to prevent him from charging less.'

<sup>61</sup> Section 71 LG(MP)A1976.

## London

- 4.9 In London, under section 9 of the MPCA 1869, Transport for London can, with the mayor's approval, fix rates and fares for taxis, by time and/or by distance, by means of a London Cab Order. In practice Transport for London reviews taxi fares annually, applying an agreed formula in consultation with the taxi trade. The most recent London Cab Order concerning fares came into effect on 5 April 2003, when the time at which the higher night rates apply was moved from 6.00 p.m. to 10.00 p.m. to encourage more taxis onto the streets to meet late night demand<sup>62</sup>. Section 1 of the London Cab and Stage Carriage Act 1907 separately empowers Transport for London to use section 9 MPCA 1869 to fix fares for taxis with taximeters. Section 1 of the London Cab Act 1968 allows Transport for London to prescribe fares for the hire of taxis for all journeys in London, whether or not they are journeys which the driver of the taxi is obliged by law to undertake. In TfL's view, fares fixed in London should normally be charged – i.e. taxi drivers have no discretion to adopt a policy of discounting from the fixed fare. Under paragraph 37 of the London Cab Order 1934, taximeters must be used in all licensed taxis in London. Under section 17(1) London Hackney Carriage Act 1853 it is an offence to charge more than the metered fare.
- 4.10 As with the rest of England and Wales, Transport for London has no power to fix fares for PHVs in London. The use of taximeters is prohibited in London PHVs.
- 4.11 The Private Hire Vehicles (London) (Operators' Licences) Regulations 2000<sup>63</sup> set out that where a PHV operator provides a London taxi for the purpose of carrying out any private hire booking, it must charge the private hire fare, unless the fare shown on the taximeter is less. When licensed taxis carry out private hire bookings without going through a licensed private hire operator, in TfL's view they will be bound by the law applying to taxis and obliged to charge the metered fare.

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<sup>62</sup> London Cab Order 2003.

<sup>63</sup> SI 2000/3146, regulation 9(8).

## Scotland

4.12 In Scotland, licensing authorities are required to review and fix taxi fares under section 17, CG(S)A 1982 (unlike in England and Wales, Scottish licensing authorities have no option not to fix fares). Again, fares cannot be fixed for PHVs. The mechanism for fixing fares is for the licensing authority to consult with representatives of the trade and the public and then to notify those who have been consulted of the outcome of the consultation. There is a right of appeal to the traffic commissioners against any fare scale that is fixed.<sup>64</sup> Fares fixed under section 17 CG(S)A 1982 are maximum fares, so taxi drivers can, in principle at least, discount from the fixed fares<sup>65</sup>.

## Northern Ireland

4.13 In Northern Ireland, the Department of the Environment can, by byelaw, fix the maximum and minimum rates or fares for taxis and PHVs within the area and up to a distance of 10 miles beyond their area, and can prevent the driver from demanding more or accepting less than the maximum fare so fixed (Article 65(2)(l) RT(NI)O 1981. In practice, byelaws only fix fares for taxis in Belfast, and the Department of the Environment has fixed maximum and minimum fares at the same level. This means that taxi drivers cannot offer discounts from the fixed fare.

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<sup>64</sup> Section 18 CG(S)A 1982.

<sup>65</sup> Section 17(1) CG(S)A provides that taxi fares 'shall not be greater' than those fixed by the LA.

## 5 THE DISABILITY DISCRIMINATION ACT 1995

- 5.1 The Disability Discrimination Act may in future affect the design of taxi vehicles (but not PHV vehicles).
- 5.2 Under Part V of the Disability Discrimination Act 1995<sup>66</sup> (DDA 1995), the government can make taxi accessibility regulations that apply to England and Wales. The powers to make such regulations are devolved to the national legislatures in Scotland and Northern Ireland, so they will make their own regulations.<sup>67</sup> In certain parts of the UK, e.g. London, Belfast, Edinburgh, taxis are already required by the licensing authorities to be wheelchair accessible. However, regulations under the DDA 1995 would introduce new requirements.
- 5.3 In Scotland, the power to introduce such regulations has been devolved to Scottish Ministers under the powers available to them in the CG(S)A 1982, (as amended by the DDA 1995). However, the power to specify requirements for taxis is reserved to Westminster, so Scottish Ministers will not introduce such regulations until the requirements have been determined by the DfT.<sup>68</sup>
- 5.4 When regulations are introduced, the Secretary of State may<sup>69</sup> adopt separate regulations allowing individual licensing authorities to apply for an exemption order from the taxi accessibility regulations. Under such regulations an order could only be granted if the licensing authority could show that it was inappropriate for the regulations to apply due to circumstances prevailing in its area, and that applying the regulations would result in an unacceptable reduction in the number of taxis in its area. It will also be open to the Secretary of State to require (again by regulation) that any taxi plying for hire in an area in which an exemption order is in force conforms instead to a requirement to have a swivel seat. If regulations are adopted under all of these provisions, there will be a

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<sup>66</sup> Section 32.

<sup>67</sup> Subject to the current arrangements during the suspense of devolution in Northern Ireland

<sup>68</sup> Section 20, as amended by section 39 DDA 1995.

<sup>69</sup> Under section 35.

basic obligation for all taxis to be wheelchair accessible according to a set specification, combined with an ability to obtain an exemption order, but a proviso that any taxis in an area with an exemption order have to have swivel seats instead.

5.5 No regulations have yet been introduced under either provision. A 1997 consultation paper<sup>70</sup> proposed to require all taxis (but not PHVs) to be designed so that they are wheelchair accessible for a specified size of wheelchair. The DfT has since proposed an alternative approach, announced at the end of October 2003, which would require compliance with proposed taxi accessibility regulations by a list of named ' first-phase' licensing authorities during the ten year period from 2010 to 2020.<sup>71</sup> The ' first-phase' licensing authorities have been selected on the basis that they meet one or more of the following criteria:

- a licensing authority population of at least 120,000 people
- a major transport interchange
- a major tourist attraction, or
- an existing mandatory policy resulting in 100 per cent accessible vehicles.

5.6 The intention is that by careful selection of the ' first-phase' licensing authorities, DfT will be able to target those areas where wheelchair accessible taxis will make the biggest impact in meeting the needs of disabled people, and where additional costs involved will not have a major effect. For licensing authorities outside the first phase, DfT proposes initially to issue voluntary guidance on establishing an appropriate mix of vehicles and on design parameters, while keeping under review the need for extending the regulations to those authorities. The DfT's proposals will go out to full consultation in due course. They will apply only in England and Wales. Scotland and Northern Ireland will hold separate consultation processes.

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<sup>70</sup> Disability Discrimination Act 1995 The Government's Proposals for Taxis published in 1997 by the then Department of the Environment Transport and the Regions.

<sup>71</sup> At the time of going to print the list of the selected ' first-phase' licensing authorities was not available.

## 6 THE RIGHT TO PROTECTION OF PROPERTY

6.1 Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) sets out that:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

6.2 Article 1 of the First Protocol is incorporated into UK law in the Human Rights Act 1998 (‘HRA 1998’). Section 6(1) HRA 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Under section 7(1)(a) a ‘victim’ of an act by a public authority that is unlawful because it is incompatible with a Convention right can bring proceedings against that authority or rely on his Convention rights in any legal proceedings. Some cases of the European Court of Human Rights suggest that a licence can be protected as a possession under Article 1 of the First Protocol<sup>72</sup>.

6.3 Where an ‘act’ of a public authority controls the use, or otherwise interferes with, property that is protected under Article 1 of the First Protocol, the public authority must ensure that its act has a legitimate aim and is proportionate – i.e. it must strike a ‘fair balance’ between the rights of individuals and the general interest. Any burdens imposed or harm caused must not be excessive in relation to the importance of the objective to be achieved.

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<sup>72</sup> *Tre Traktorer Aktiebolag v Sweden* (1989) 13 EHRR 309 para 53, *Fredin v Sweden (No 1)* (1991) 13 EHRR 784, para 40, and *Gudmunsson v Iceland* (1996) 21 EHRR CD 89.

6.4 In 2002, in the case of **R (Royden) v Metropolitan Borough of Wirral**<sup>73</sup> (unreported, 18 October 2002) an individual taxi vehicle licence holder brought an unsuccessful challenge, relying in part on Article 1 of the First Protocol, against a licensing authority that lifted quantity restrictions on taxi vehicle licences. The claimant said that his rights under Article 1 of the First Protocol had been unlawfully interfered with because lifting the quantity restrictions that had previously been applied by the licensing authority had the effect of eliminating the shortage premium value of his taxi vehicle licence – the scarcity value of the licence that existed when licence numbers were restricted. The judge hearing the case concluded that the shortage premium value of the applicant’s taxi licence did not amount to property that could be protected under Article 1 of the First Protocol, on the basis:

- first, that taxi licensees who acquired a licence after section 16 of the Transport Act 1985 came into force<sup>74</sup> cannot have had a legitimate expectation that the premium value of their licences would be maintained
- second, that anyone who acquired a licence after section 16 of the Transport Act 1985 came into force did so on the implied understanding that the restriction on the number of licences in issue could lawfully be lifted at any time, and therefore that the lifting of these restrictions does not amount to an ‘interference’ with property, and
- third, that the premium value of the licence is artificial as it has not arisen by virtue of the efforts of licence holders to build reputation or establish clientele. It is also unofficial, in that no statutory provision authorises or envisages its creation.

6.5 The judge also considered the alternative position, if the taxi licence shortage premium were considered to be property within the meaning of Article 1 of the First Protocol, and found that even in

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<sup>73</sup> CO/2348/2002 QBD unreported, 18 October 2002.

<sup>74</sup> Section 16 introduced the requirement that licensing authorities should only restrict taxi licence numbers if they are satisfied that there is no significant unmet demand within their licensing areas.

that case the claimant's challenge would fail, because the licensing authority's interference was justified. The licensing authority had acted proportionately in deciding to lift quantity restrictions in its area, and had struck a 'fair balance' between individual rights and the demands of the general interest. The judge reached this conclusion on the basis of:

- the consultation process employed by the licensing authority
- the thorough report that was prepared for the Licensing Committee, which gave prominence to the question of licence premiums, to the effect on the livelihoods of existing proprietors, and to the need to respect Article 1 of the First Protocol, but which also set out the advantages to the public of de-restriction
- the fact that the Licensing Committee heard five representatives of the trade
- the fact that the Licensing Committee considered other available options, including licensing a further tranche of taxis, and
- the fact that the minute of the decision of the licensing committee and the evidence of the licensing officer enabled the Court to determine the reasons for the decision – to verify that taxi licensees' rights were taken into account and to satisfy itself that the licensing authority carried out a reasonable balancing exercise in deciding which option to adopt.

6.6 On the basis of this case, it seems unlikely that Article 1 of the First Protocol to the Convention would constrain a public authority – whether a licensing authority or central Government – from lifting the quantity restrictions on taxi vehicle licences in licensing areas where they are still applied in the UK.