

The Highland Licensing Committee

Meeting – 5 January 2016

Agenda Item	6
Report No	HLC/004/16

Air Weapons and Licensing (Scotland) Act 2015

Report by the Legal Manager

Summary

This Report advises of the changes to licensing under the Civic Government (Scotland) Act 1982.

1. Background

1.1 The Air Weapons and Licensing (Scotland) Act received royal assent on 4 August 2015.

1.2 The purpose of the Act is to protect public safety by creating a new licensing regime for air weapons to be administered by Police Scotland and to improve aspects of locally led alcohol and civic government licensing in order to preserve public order and safety, reduce crime, and to advance public health.

1.3 The Act provides new provisions relating to:

- The licensing of Air Weapons which is to be administered by Police Scotland;
- Alcohol Licensing;
- Civic Government Licensing relating to Taxis and Private Hire Cars; Metal Dealers, Public Entertainment, Sexual Entertainment Venues, Civic Licensing Standards Officers and electronic communications.

This Report will concentrate on the civic government licensing provisions.

1.4 At the date of writing this Report the first commencement order has been made bringing certain provisions into force on 1 December 2015. However these provisions relate only to interpretation of Part 1 (air weapons licensing), and provisions which will enable subordinate legislation to be made and guidance issued. The remaining provisions relating to civic government licensing have still to be brought into force. This will be done on such day as the Scottish Ministers may appoint. A verbal update will be given.

2.0 Tax and Private Hire Car provisions

2.1 Refusal to grant private hire car licences on grounds of overprovision

This is something that the Committee was not in favour of in its response to the Governments consultation in 2012/13: "Taxi and Private Hire Car Licensing – Proposals for Change".

The Committee's response to the consultation is attached as Appendix 1 and members are referred to pages 3 and 4 of the Appendix in this regard.

If implemented there will be two different criteria for dealing with numbers:

- with regard to taxis the test is and will continue to be whether there is no significant unmet demand;
- for Private Hire Cars, the test will be overprovision;

The cost of carrying out a survey to inform any test as to whether there is no significant unmet demand is high, at least a five figure sum and it is anticipated that costs will be similarly high for carrying out an overprovision survey.

This will give the Committee the power to refuse an application for a private hire car operator's licence provided it has gathered the necessary evidence with regard to overprovision.

2.2 Testing of private hire car drivers

This is something that the Committee was not in favour of in its response to the said consultation - see page 4 of Appendix 1.

However the same knowledge tests which taxi drivers have to pass can be used and there should be few implications for the Council.

Committee may wish to agree that the testing of applicants for a private hire car driver's licence be introduced once this provision is brought into force.

2.3 Removal of contract exemption.

This proposal will remove the exemption for vehicles used for carrying passengers under a contract for hire for a period of 24 hours or more.

This proposal was supported by the Committee in its response to the said consultation - see pages 5 and 6 of Appendix 1 which also sets out the implications not only for licensing but also council contractors for school transport. It is not known how many additional licences this will generate.

One change which will be required is to the taxi/private hire car vehicle inspection contract. At the moment a number of "special event" vehicles such as stretch limos are believed to operate using this exemption. However they will now require to be licensed and inspected. Because of their size not every inspection station will have the ability to test these vehicles. As the inspection contract is due for renewal next year provision will be made to allow for such vehicles to be inspected.

3.0 Metal Dealers

3.1 The Act will make the following changes:

- **Removal of the exemption warrants system;**
- **Limit payment to dealers to prescribed methods i.e bank transfer or cheque;**
- **Amended standards for identification of customers;**
- **Amended standards for record keeping;**
- **Removal of the mandatory requirement that dealers should not process metal for 48 hours after receiving it.**

All of these matters were supported by the Committee in its response in 2013 to the Government Consultation on the Licensing of Metal Dealers. See Appendix 2 attached.

3.2 Indications are that the Government intend that the changes will “go live” as from 1 June 2016, but that the deadline for applications to be lodged in order to preserve trading rights has not yet been set.

3.3 The Government are in the process of finalising guidance which will be issued for a very short period of consultation. The transitional arrangements are currently with their legal team. If the period of consultation is so short that it falls between meetings, Committee might wish to consider granting the Legal Manager delegated powers to respond after consulting with the Chair and Vice Chair.

3.4 Application forms and guidance notes will require to be updated in terms of the guidance and transitional provisions.

3.5 There needs to be a reasonable lead in time between publication of the final guidance and transitional provisions and the deadline for applications to be lodged in order to preserve trading rights. If that date is less than 6 months prior to 1 June, there is the possibility that licences will not be determined in time for 1 June and therefore this would need to be covered in the transitional arrangements. I would hope that all applications would be determined well within the 6 months, but there remains the possibility that this might not be possible.

3.6 Conditions will need to be looked at but it may be that the terms of the Act itself deal with the main issues of concern and that our conditions will focus more on the usual “administrative” issues.

3.7 If required, a further report will be taken to Committee on conditions and any other matter requiring Committee approval.

4.0 Public Entertainment Venues and Theatres

This proposal will abolish Theatre Licences which will be licensed as places of public entertainment. This has already been considered by Committee and theatres have been included in the proposed list of activities requiring a public entertainment licence which is the subject of a separate report to this committee.

The Act also has the effect of removing the exemption from the requirement to hold a public entertainment licence where the premises/venue have been granted an occasional licence under the Licensing (Scotland) Act 2005 for the sale of alcohol. Only those venues which hold a premises licence will be exempt from holding a public entertainment licence.

5.0 Sexual Entertainment Venues

The Bill creates a new licensing regime for sexual entertainment venues by including them as places which the Council can resolve to license under Part III of the 1982 Act which currently relates exclusively to the licensing of sex shops.

5.1 Definitions

“Sexual Entertainment Venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.

“audience” includes an audience of one.

“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment.

“organiser” means the person (“A”) who is responsible for the management of the premises, or the organisation or management of the sexual entertainment, or where A exercises that responsibility on behalf of another person (whether by contract of employment or otherwise), that other person.

“premises” includes any vehicle, vessel or stall but does not include a private dwelling to which the public is not admitted.

“sexual entertainment” means any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

“display of nudity” means (a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus and (b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.

Scottish Ministers also have power to make orders providing for descriptions of performances and displays of nudity which are not to be treated as “sexual entertainment” for the purposes of the Act.

5.2 Exceptions

- A sex shop;
- Such other premises as specified by the Scottish Ministers;
- Premises offering sexual entertainment 4 or less times in a 12 month period.

5.3 Resolution and Numbers of venues

If the Council decides to introduce the licensing of sexual entertainment venues it must pass a resolution to that effect. The resolution cannot have effect before the expiry of the period of 1 year beginning with the day on which the resolution is passed.

The Council will be under a duty from time to time to determine the appropriate number of venues for their area and for each relevant locality.

5.4 Existing Venues

The only existing venues with some similarity to what is proposed and which would probably require a licence (if introduced) are premises licensed under the Licensing (Scotland) Act 2005 which have specified that adult entertainment will take place as part of their Operating Plan. The Act is silent on how such existing premises will be dealt with.

5.5 Further Report

A further report on this matter will be taken to Committee when these provisions are brought into force.

6.0 Procedure for Hearings

The Scottish Ministers will have the power to lay down a procedure for hearings covering: the amount of notice for a hearing; the rules of evidence; representation of parties; times and liability for expenses.

The Committee has, of course, its own hearings procedure and any changes will be reported when known.

7.0 Mandatory Conditions

The Scottish Ministers will have the power to set mandatory conditions for licences.

8.0 Civic Licensing Standards Officers

The Council must appoint such officers. This will be a matter for trading standards and environmental health to take forward. There are a number of existing enforcement officers and roles which can be designated as a civic licensing standards officer.

9.0 Electronic communications under the 1982 Act

These provisions will enable a licensing authority to agree to accept applications for grant or renewal, objections or representations or notifications of change by means of electronic communication. Where a licensing authority so agree then it must specify the form of electronic communication, the electronic address to be used and any means of authentication.

Highland Council already accept electronic applications for certain licences and this has proved successful. However this matter will require further consideration and will be the subject of a separate report to Committee in due course.

10.0 Recommendation

10.1 It is recommended that the Committee:

1. note the Report;
2. Agree that in the event that a Report cannot be prepared for Committee, to grant the Legal Manager delegated powers in consultation with the Chair and Vice Chair to respond to any consultation on guidance for metal dealers or other matters under the Act;
3. agree to introduce a knowledge test for applicants for a private hire driver's licence on similar terms and procedures to the knowledge test for applicants for a taxi driver's licence once the appropriate legislation is brought into force;

Designation: Legal Manager

Date: 10 November 2015

Author: Alasdair Mackenzie

Appendix 1: response to the Government's consultation in 2012/13: "Taxi and Private Hire Car Licensing – Proposals for Change".

Appendix 2: response to the Government's consultation on licensing of metal dealers in 2013.

CONSULTATION QUESTIONS

Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business and regulators as a result of proposed changes including information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.

1. Should local authorities have the power to restrict numbers of private hire cars?

Yes No

The Highland Council (HC) is of the view that the power to restrict the numbers for private hire cars (PHC) should not be implemented. However if it is to be introduced it should be subject to the same provisions that currently apply to taxis, i.e. there being no significant unmet demand.

2. What issues would arise from allowing local authorities to restrict numbers of private hire cars and how could these be resolved? For example, would consideration need to be given to setting percentages for certain vehicle types?

Whilst it appreciated that this would be a discretionary power, Local Authorities who decide to implement this would have to deal with the significant enforcement problems associated with limiting numbers in terms of the time and resources spent dealing with the issue of the 'leasing or renting' of PHC licences/plates.

This was experienced by one of the Highland's former Local Authorities, Inverness District Council, which previously imposed a limit on the number of taxi licences it issued. Taxi licence holders would take the opportunity to rent/lease out their licence for which they would receive an income rather than returning the licence to the Council.

To restrict the licensing of PHC in a similar way would completely close the market to any form of competition and would result in a reduced level of service to the public. For Authorities which currently limit the number of taxi licences the PHC licensing route is the only alternative that someone has if they wish to enter the trade.

As per Section 10(3) of the Act in relation to taxi licences, it is assumed that in order to administer a limit on the numbers of PHCs that a separate survey of unmet demand would require to be undertaken at regular intervals. This would result in additional expenditure which would require to be recovered through the fees. Notwithstanding the proposal "to provide updated, improved guidance on overprovision studies to support local

authorities in conducting timely, cost-effective overprovision studies”, there would still be additional expenditure which would require to be recovered through fees.

The demand for different vehicle types (those with larger seating capacity, disabled friendly etc.) would require to be taken into account when considering restricting numbers with the test for unmet demand being applied to each vehicle type.

There would also be a restriction on the availability of cars for school transport and other contracted transport, and in particular it would become harder for new entrants to compete for tenders.

In terms of strengthening the case for no restriction on PHCs, in 2003 the OFT issued a report following a study carried out into the UK licensed taxi and private hire car services market, which concluded that while some aspects of regulation were entirely sound, other aspects could be improved, and in particular it recommended that quantity regulation should be removed. The report also stated that limiting the number of taxis reduces availability and lowers the quality of service to the public and these restrictions should therefore be lifted.

3. Training:

(a) Is it necessary to specifically allow local authorities to require training of private hire drivers? What evidence is there of local authorities already doing this with their current powers?

(b) What might that training include? Should this be specified in legislation?

(a) HC do not currently require applicants for a private hire car driver’s licence to undergo any formal training at present. It is not felt necessary to require PHC drivers to undertake a knowledge test of the area as the operation of PHC’s means that the start and finish points of the journey are known in advance. This combined with the increased use of satellite navigation in vehicles makes this an unnecessary requirement.

(b) Suggestions for other types of training would include disability awareness and customer care.

It is suggested that if this was to be specifically included in the legislation then the type of training should be broadly referred allowing Licensing Authorities some discretion to decide the exact type of training they would require.

4. What alternative options are there – legislative or non-legislative – that could improve the process of justifying a restriction on numbers of vehicles (taxis and/or private hire cars)?

HC is not aware of any alternative options. It is noted however that in paragraph 21 of the consultation document it states *'We would aim to ensure local authorities had improved guidance on conducting surveys of unmet demand if we extend the provision to restrict numbers of private hire cars using the same grounds.'* It is suggested that this guidance be made available regardless of whether the proposal to restrict the number of private hire cars is implemented as any guidance on this issue would be beneficial for Authorities proposing to or currently restricting the numbers of taxi licences under Section 10(3) of the Act.

5. Inclusion of contract work in licensing:

a) How would the inclusion of contract work within licensing affect:

- i) Those tendering and awarding contracts?**
- ii) Licensing authorities?**
- iii) Those providing driving services which are currently unlicensed?**
- iv) Passengers using a contracted service?**

b) How could issues be resolved?

- (i) The proposal would have a serious effect on Council contracts. Particularly in the more remote areas, the general market for private hire is small but the demand for school transport (and some other Council transport) is significant. In some areas it can be difficult to attract competition for tenders. There is no benefit from requiring operators to go through a licensing regime but there would be an increase in cost and a reduction in the number of available operators. Contracting authorities are able to require and enforce standards appropriate to the contract.

There could be a case for withdrawing the exemption for >24-hour hires made by the general public, while retaining it for all contracts let by public or private sector organisations. Those bodies should be able to set and ensure standards. Another solution would be to allow exemptions from licensing only for those who operate contracts on behalf of the Local Authority or Government Agencies such as the NHS where robust contract conditions are in place to address public safety issues.

- (ii) Contractors would be likely to object to increased bureaucracy if the exemption was withdrawn, and the costs of going through the licensing process would undoubtedly be passed on to Councils in higher contract prices. This would cause an increased workload.

- (iii) More operators would require to go through the licensing process, with extra expense (which would be passed on to the contracting authority) but little perceived or actual benefit.

The control of vehicles and drivers used on contract and currently exempted by Section 22(c) should be improved, but still recognising the need for flexibility to allow those operated under robust contractual terms and conditions to remain outside the licensing system. Currently, licensed vehicles and drivers whose licences are suspended for whatever reason may continue to operate on “contract” work; this is clearly placing the public at risk.

On the other hand, many operators work under detailed and robust contract conditions which equate well with the protection offered by licence requirements, whilst allowing the contracting organisations the flexibility that meets their requirements but would be difficult to address within a licensing regime.

- (iv) There should be no noticeable effect on passengers on Council contracts. Operators offering whole day excursions for holidaymakers currently enjoy the exemption; this has absolutely no justification.

6. Are there any issues that need to be considered with reference to operations not run for profit? (Such as voluntary transport arrangements that are run basically as charitable activity, which will continue to be excluded from licensing.)

Whether operated for profit or by charities, those who use such services deserve the protection of the law.

While not seeking to include voluntary transport arrangements in the licensing requirements, it should be pointed out that there could be a significant gap in scrutiny and standards.

Voluntary sector transport provides important social benefits to many people, and particularly to more vulnerable members of the community. It is right that community transport which is not operated for profit remains out of scope of the licensing regime.

The Transport Act 1985 allows for a Section 19 permit to be held by the operators of not for profit services using cars or minibuses; the permit regime includes maintenance conditions. Funding bodies are able to require appropriate maintenance and other standards, whether or not the service is within scope of the Section 19 Permit.

7. Updating licensing conditions:

(a) Would the use of a combination of mandatory and recommended conditions achieve an appropriate balance between national consistency and local context?

(b) Do different levels of licence (driver, vehicle, booking office) require a different combination of mandatory and recommended conditions?

(c) What issues of national concern could be included in a set of mandatory conditions?

(d) Who should be involved in this work? (Please also indicate if you would be willing to be involved).

(a) Lessons can be learned from the operation of the Licensing (Scotland) Act 2005 which specifies a similar system of mandatory and local conditions. The introduction of mandatory and recommended licence conditions would possibly have the effect of achieving a more consistent approach by all Local Authorities but would depend on what the mandatory conditions were. It is suggested that a large number of Local Authorities will have the same or very similar conditions in relation to aspects of licensing e.g. requirement for the vehicle to be inspected, to hold and maintain adequate insurance & MOT certification, notification of convictions etc.

(b) Yes, the three types of licence mentioned are distinctly different and therefore will require a different combination of mandatory and recommended conditions.

(c) Whilst it does not appear to be an issue at present in Highland the infiltration of organised crime into the taxi and private hire industry is an issue which will be raised by other Authorities. Other than this HC is not aware of any other issues of national concern. There could also be some accessibility requirements, though not necessarily for all vehicles.

(d) Licensing Authorities, Scottish Government, the Scottish Police Service, the Association of Transport Co-ordinating Officers and trade associations should all be part of the stakeholders involved in the drafting of any mandatory and recommended conditions. Highland Council would be willing to be involved in this.

8. Is the extension of the Booking Office Order a proportionate response to concerns at some companies circumventing this layer of licensing?

No, in Highland there does not appear to have been an issue to date of companies either sub-contracting or splitting up businesses in order to avoid the requirement of the booking office licence. It is the view of HC that to

reduce the numbers further i.e. below 4 would cause unnecessary burden and bureaucracy on very small operators who may manage only 2 or 3 vehicles. However there is a need to bring businesses over the 3 car limit, which do not operate out of premises as such but use IT, mobile and smart phone technology, within the Booking Office Order.

Booking offices are not perceived to present the same issues in Highland that appear to exist in the Central belt and consideration should be given to allowing local authorities discretion whether to licence them at all.

9. What specific measures would assist the enforcement of a licensing regime that covers businesses using mobile/smart phone technology?

By removing the words "use of premises for the" from Article 2 (2) of the Booking Office Order.

10. Role of police:

a) How might the role of the police within the 1982 Act be refocussed?

b) What would be an appropriate timeframe for police to respond to a request for information?

c) How well defined should the information be that they should submit?

(a) HC are unaware of what "criticism of this undefined nature" amounts to or what the "perceived inconsistency and randomness" is. However there is no objection to the proposal provided this does not place an undue burden on the Police. It is the experience of HC that the Police presently have great difficulty in fulfilling the requirement under the Licensing (Scotland) Act 2005 to provide details of foreign offences.

(b) HC are of the view that the current timeframe of 28 days for submission of objections would be an appropriate timescale for responding. It is suggested that the views of the Scottish Police Service be sought in relation to such timescales however HC would recommend that the period be no more than 28 days.

(c) HC are of the view that any information submitted should be clear and concise in order that the relevant Local Authority can take this into account when determining the application.

11. Licensing objectives:

a) Is the introduction of statutory licensing objectives a useful tool for local authorities?

b) Who should be involved in the creation of the licensing objectives?

(a) HC are of the view that licensing objectives would not be a particularly useful tool. As indicated in the consultation document the Act states that the intention of licensing is for the preservation of public order and safety and the prevention of crime, which would appear to be fairly clear. However if licensing objectives are to be introduced there could be a broad requirement for Councils to set licensing objectives with reference to the relevant Local and Regional Transport Strategies. As these are not uniform across Scotland, the statutory objective should be simply that the licensing regime should support the relevant Strategies.

(b) If the introduction of licensing objections were to go ahead it is suggested that Licensing Authorities, Scottish Government, the Scottish Police Service, Regional Transport Partnerships, the Association of Transport Co-ordinating Officers and trade associations should all be part of the stakeholders involved in the drafting of any objectives.

12. Should one set of licensing objectives apply to all Civic Government regimes or be specific to taxi and private hire car licensing?

This is something which could probably only be fully answered following detailed consideration as to what such licensing objectives would look like, need to cover and how they would translate into other licensing activities.

Initial thoughts however are that whilst there will be a common theme around all licence activities, e.g. safety of the public and prevention of crime, there may be some objectives which may be associated with individual types of licence activities e.g. transport strategy, and as such there should be one set of licensing objectives applied to taxi and PHC licensing.

13. Guidance on licence application process:

a) Is guidance an appropriate response to this issue?

b) Are there other elements this specific guidance should cover?

c) Should a power be introduced to the 1982 Act (similar to the Licensing (Scotland) Act 2005) to make regulations on hearings procedures?

- (a) HC are of the view that a best practice guidance document in relation to the issues detailed in Proposal 9 would be welcome.
- (b) No, other than it being accurate and precise unlike the Guidance introduced under the Licensing (Scotland) Act 2005.
- (c) Specific Guidance would be the preferred option rather than a regulation as guidance will allow a more flexible approach.

14. Do you agree improved Best Practice Guidance is required?

HC is of the view that improved Best Practice Guidance would be of benefit to Licensing Authorities.

15. Requiring applicant for any level of licence (driver, vehicle, booking office) to prove they are 'fit and proper':

- (a) What would be the effects on the system of requiring applicants to prove they are 'fit and proper'?**
- (b) What would be a suitable set of requirements for applicants to meet?**
- (c) Who would be responsible for setting these?**

- (a) It would place the onus on the applicant to ensure they meet the criteria set out and prove that they are fit and proper. This would include the issue of being physically and medically fit which at present is down to the Licensing Authority to determine.
- (b) It would be very difficult to produce a set of requirements to which an applicant for taxi or PHC drivers licence would either 'pass or fail'. The example provided is the issue of establishing the existence of foreign criminal convictions which the Police have difficulty in fulfilling under the Licensing (Scotland) Act 2005. Declaring all convictions is an obvious requirement. However medical fitness to drive is also an essential requirement and any set of requirements should include evidence that an applicant for a Driver's Licence is medically fit to drive.
- (c) If the introduction of a set of requirements for applicants were to be established it is suggested that Licensing Authorities, Scottish Government, the Scottish Police Service, the Association of Transport Co-ordinating Officers and trade associations should all be among the stakeholders involved in the setting of any requirements.

16. Develop licensing policy network:

(a) Who should be part of this network?

(b) Could this network be used to share information on licence refusals, suspensions and revocations?

(c) What format could a policy network take? E.g. physical meetings, shared web space?

(a) All Scottish Local Authorities should be involved together with representatives from the Scottish Government and the new Police Service of Scotland.

(b) Yes, the HC are of the view that this would be a good way of information sharing between Licensing Authorities.

(c) It is suggested that physical meetings (annual conference) be used together with the suggested web space which would include a forum for information and experience sharing.

17. Taking into account the proposals on the Booking Office Order, updated conditions and contract work and proposals on the licence application process, do you think that these will assist in tackling the presence of organised crime in the industry?

As intimated elsewhere in this response the Highland Council at present are not aware of the presence of organised crime within the taxi/PHC industry in this Local Authority area. If the proposals suggested are to be implemented there will have to be a careful balance between introducing additional requirements which help to assist with the problem and making the process overly cumbersome and bureaucratic.

18. Is there sufficient access for disabled people to taxi and private hire car services? What would make it easier for everyone to access taxis or private hire cars?

From previous experience the % of wheelchair accessible vehicles (WAV) in relation to the total fleet varies greatly throughout the various Licensing Authorities. Highland at present have a very low % of WAV's in relation to its overall fleet numbers and is considerably lower than many other areas, especially city authorities. However Highland are currently in the early stages of considering how the numbers of WAV's can be increased through licensing policy.

A centralised policy which required Licensing Authorities to ensure that either a certain percentage of its fleet are wheelchair accessible together with clear guidance would assist. However a very high percentage requirement may have the unintended consequence of reducing or

eliminating taxi/PHC availability in isolated localities.

19. What measures or support could be implemented that would increase the availability of wheelchair accessible taxi and private hire vehicles, particularly outside of Scotland's cities?

A centralised policy and best practice guidance would assist Licensing Authorities in developing their own policies in relation to trying to increase the numbers of wheelchair accessible taxis and private hire cars.

In addition, feedback from local disability groups has also suggested improvements in relation to:

- Better integrated as well as accessible public transport, including community transport schemes, so that people can plan journeys using more than one form of accessible transport.
- Improved information about the availability of accessible taxis and PHCs.

Local access panels and other groups with an interest in disability issues should be involved in discussions about accessible transport.

20. As well as the specific requirements in relation to taxis and private hire vehicles in sections 160 to 173, the Equality Act 2010 places a general duty on public bodies such as local authorities to advance the equality of opportunity of disabled people. Do you believe that this has had an effect on the provision of wheelchair accessible taxi and private hire vehicles?

All Council services are asked to take account of the general equality duty and to undertake equality impact assessments when developing or reviewing policies, practices and decisions. This should apply in the case of the policy introduction referred to in Q18.

Under the Council's procurement guidance, those commissioning services should also carry out equality impact assessments.

21. Are there any other issues related to taxi and private hire car licensing for people who share other protected characteristics under the Equality Act 2010 (age, race, religion or belief, sex, sexual orientation, gender reassignment, pregnancy or maternity)?

Recognition that accessibility is not only restricted to vehicles being wheelchair accessible. Under the Equality Act, the definition of disability is wide ranging and in addition to covering physical disabilities it also provides protection for, for example, people who are blind or partially sighted, deaf and hard of hearing, learning disability, mental health problems as well as

“hidden” disabilities such as epilepsy (as long as it meets the criteria of having a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities).

There is limited information about any related issues. However, a recent report by Northern Constabulary on hate crimes and hate incidents highlighted that, although the number of reported incidents in Highland is low (and tend to be mostly low-level verbal abuse), taxi drivers appear to be among the victims of the majority of racist incidents. There are opportunities for operators to be aware that incidents can and should be reported to the police, and to promote and encourage reporting.

Licensing bodies need to be aware of the requirements of the Equality Act and in particular the application of the Public Sector Equality Duty. Taxi and private hire operators need to be aware of the scope of the Equality Act, their responsibilities as an employer and service provider. Training should be available and clarification and guidance available about what would be considered reasonable assistance provided by drivers to disabled passengers.

22. Statutory Licensing Enforcement Officer:

a) How would a statutory requirement for local authority enforcement officers work in the context of Civic Government licensing?

b) What would be the potential pitfalls?

(a) Simply by placing a statutory duty on the Local Authority to enforce the provisions of the CG(S)A and to require them to produce an annual plan followed by an annual activity report covering a number of key indicators, licensed vehicle numbers; vehicle test failure rates; FTE enforcement staff; number of S11 suspensions issued; number of reports of licensees to licensing committees; existence of penalty point type schemes, etc.

This approach would provide local authorities the maximum freedom to achieve any desired outcomes using whatever resources they considered appropriate and be subject to public scrutiny on their performance that could be compared with other similar local authorities.

The costs associated with employing enforcement officers would require to be recovered in the licensing fees and therefore this will drive up application fees. The effect on recovery of costs for both administration and enforcement need of the Provision of Services Regulations 2009 (SI 2999 of 2009) needs to be clarified and understood. This is particularly so given the decision in *Hemming and Others –v- Westminster City Council* [2012] EWHC 1260 (Admin) which appears to provide that the European Directive

prohibits recovery of costs incurred in enforcement activities.

23. Are there other solutions to creating increased enforcement/compliance capacity e.g. taxi marshals at night. Who should provide/pay for these?

Potentially yes, in conjunction with the answer to the previous question, by requiring the local authority to review and assess the extent of any problem that may exist and to address this in the regulatory service's operational planning process, meeting any additional cost from increased licence fees.

Failure to do this would simply place additional pressures on other already hard pressed local authority regulatory services with little or no likelihood of any improvement being achieved.

The provision of taxi marshals can be beneficial, but goes far beyond the needs of regulation, being closer aligned to customer services improvement. For this reason, where the demand from the trade existed, the cost should be borne by the taxi trade and/or the town/City centre businesses whose customers provide the taxis with the majority of their customers.

24. Do you know of licensing authorities that currently licence special events vehicles under the 1982 Act?

Not aware.

25. What prevents those authorities who don't licence special events vehicles from doing so?

A number of these operators will be exempt, or claim to be exempt, under Section 22(c) of the Act which relates to exemption where the vehicle is used under a contract for its exclusive hire for a period of not less than 24 hours. There is also confusion over applicability of the law; absence of available vehicle standards; Section 22(c) exemption; non-availability of appropriate vehicle test facilities.

26. Does this issue require a national response and why?

Yes, a national response would be useful to ensure a consistent approach and also to highlight the issue on a national level.

27. What form should a national response take?

Suggestions would include clear Government guidance and Best Practice Documents and amendment of the Section 22 (c) exemption.

28. What effect, if any, would the proposal to bring contract work within the taxi and private hire car licensing regime have on the operation of special event vehicles?

In terms of the Council's contracts this should have no effect. In terms of the licensing of special events vehicles for hires to members of the public it is suggested that this would be fairly significant.

29. How would the weddings exemption within the 1982 Act affect any attempt to specifically licence special events vehicles?

The existing exemption in Section 22(b) could be strengthened by re-wording this section so that a vehicle which is being used exclusively for weddings and/or funerals would be exempt.

30. Do you have any other information or comments related to taxi and private hire car licensing not covered in the consultation document?

It is suggested that Section 13(4) be amended so that the onus is placed on the applicant or licence holder to provide evidence to the Licensing Authority that they are physically fit to drive a licensed taxi or private hire car. The associated costs in relation to medical examinations should also be borne by the applicant or licence holder. From experience HC have found that the cost of a medical examination can vary greatly in different areas. It is also difficult to try and recover these costs through the fees as the it is not known how many new applicants will require to be the subject of an examination and how many existing drivers will during the course of their licence develop conditions which require medical checks.

Appendix 2

Q1.	Do you agree that the exemption warrant system should be removed?
A.	Highland Council (HC) is of the view that the exemption warrant system should be removed. This would create a unambiguous system where anyone dealing in metal would fall within the licensing scheme.
Q2.	Are the existing record keeping requirements suitable to be rolled out to all metal dealers?
A.	HC is of the view that the existing record keeping requirements are suitable to be rolled out to all metal dealers.
Q3.	For what period should records of a transaction be kept?
A.	Records should be retained for the period of the licence and for a 24 month period immediately thereafter.
Q4.	What methods should be used to establish the identity of the customer? Should the methods be specified in legislation?
A.	If the licensing system is to be robust then photographic ID should be specified as the standard method of identifying the customer. If this is made mandatory rather than discretionary for each Authority this will become the recognised practice that the public etc. will require to follow. If this is to become a mandatory condition a national awareness campaign could be undertaken to advise the public/traders etc. that if they are selling metal to licensed metal dealers they should expect to be asked for this form of ID.
Q5.	Should a record be kept of the means used to establish identity and if so, how long should this be kept for?
A.	Records should be retained for the period of the licence and for a 24 month period immediately thereafter.
Q6.	Do you agree that CCTV as a condition should be left as a discretionary matter for local licensing authorities?
A.	Yes, CCTV as a condition should be left as a discretionary matter.
Q7.	Are there other conditions that should be considered as suitable for mandatory specification?
A.	HC is not aware of any other conditions which would be considered or required as mandatory.
Q8.	Do you agree that retention of metal requirements should be removed as a mandatory requirement for a licence.
A.	Yes, in principle it is agreed that the retention of metal requirements should be removed as a mandatory requirement of a licence, however Highland Council would be interested in the view of Police Scotland given that this condition would assist with the enforcement (tracing of metal) of the licensing scheme.

<p>Q9.</p> <p>A.</p>	<p>Would it be reasonable for itinerant dealers to be required to see identification from those who sell them metal?</p> <p>Yes, again to ensure a robust licensing scheme itinerant metal dealers should be the subject of the same mandatory conditions in terms of customer ID as metal dealers.</p>
<p>Q10.</p> <p>A.</p>	<p>Are further controls required on itinerant dealers' onward disposal of metal that comes into their possession?</p> <p>Similar recording requirements as to those detailed in paragraph 16 of the consultation document should be required by itinerant metal dealers for both the buying and re-selling of metal.</p>
<p>Q11.</p> <p>A.</p>	<p><i>Are any special licensing arrangements or mandatory conditions required in respect of metal dealers dealing with scrapping cars?</i></p> <p>HC is not aware of any other conditions which would be considered or required as mandatory.</p>
<p>Q12.</p> <p>A.</p>	<p>Is the requirement to purchase without cash applicable to the right people? Are there other suitable approaches such as a generalised 'whole population' offence?</p> <p>HC is in agreement that the proposal in paragraph 42 be adopted i.e. applying to licensed metal dealers only with no "whole population" offence.</p>
<p>Q13.</p> <p>A.</p>	<p>Should payments of a minimal amount still be allowed in cash? If so, what should the maximum cash payment be set at? What additional regulation may be required to avoid loopholes.</p> <p>HC is of the view that no cash sales be permitted regardless of the maximum amount.</p>
<p>Q14.</p> <p>A.</p>	<p><i>Would an accreditation system be of value?</i></p> <p>It would always be a good thing for a dealer to achieve such accreditation and is something the public can use in deciding on the choice of a dealer. However to be of any use the system must be nationwide and not left to individual Councils. Clarification would also require to be sought as to who would be responsible for promoting/paying for any such system.</p>
<p>Q15.</p> <p>A.</p>	<p>Are there other issues that have not been highlighted in this consultation that responders would like to mention?</p> <p>Any mandatory conditions proposed in relation to the retention of records should reflect the fact that records are now more commonly stored electronically rather than in hand written books.</p>