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Consultation Document

TAXI AND PRIVATE HIRE VEHICLE LICENSING IN WALES

Date of issue: 12 June 2017

Action required: Responses by 8 September 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

OVERVIEW

The purpose of this consultation is to consider proposals published by the Law Commission for England and Wales in May 2014 for the reform of taxi and private hire vehicle licensing.

HOW TO RESPOND

The consultation period begins on 12 June 2017 and ends on 8 September 2017. Please ensure that your response reaches us before the required closing date.

The document is available on the internet: consultations.gov.wales.

Please respond by:

- Completing the consultation response form at Annex A; or
- Emailing or posting your response to the contact details below.

FURTHER INFORMATION AND RELATED DOCUMENTS

Large print, Braille, audio CD and alternative language versions of this consultation document can be made available on request.

CONTACT DETAILS

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DATA PROTECTION

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, although we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published.

The law however, also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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FOREWORD

Taxis and private hire vehicles provide a vital public service connecting people to places when alternative public transport services are not available or viable. The contribution that the sector makes to the night time and tourism economy in many of our communities cannot be under-estimated and the industry is a vital component in our ambitions for public transport in Wales.



Taxis and private hire vehicles are an important method of transport in enabling disabled vulnerable people in our society to maintain independent living in the community. Travel by taxis and private hire vehicle is simply the only transport option for many people.

Despite the importance of this sector to our public transport ambitions, the industry remains governed by laws made when the horse drawn hackneys were a common feature on our streets. Put simply, the law is complicated, outdated and is in need of reform.

The commencement of certain provisions in the Wales Act 2017 will for the first time bring the licensing regime for taxis and private hire vehicles within the legislative competence of the National Assembly for Wales.

It is on this basis, that I am considering afresh the significant work undertaken by the Law Commission for England and Wales for the reform of the law in relation to the licensing of taxis and private hire vehicles.

I am keen to work with the industry, local licensing authorities and users to develop arrangements that may be introduced in Wales to ensure that taxis and private hire vehicles continue to contribute to our ambitions for a connected and sustainable society.

A handwritten signature in black ink, appearing to read 'Ken', enclosed within a thin black rectangular border.

Ken Skates AM/AC

Cabinet Secretary for Economy and Infrastructure

EXECUTIVE SUMMARY

In May 2014, the Law Commission for England and Wales published its proposals for the reform of the legislative framework governing the licensing of taxis and private hire vehicles in England and Wales. Following commencement of relevant provisions of the [Wales Act 2017](#), licensing of taxis and private hire vehicles will be a matter within the legislative competence of the National Assembly for Wales.

It is under this new devolved settlement that the Welsh Government has again considered the proposals for the framework for licensing taxis and private hire vehicles put forward by the Law Commission, for the purpose of bringing new arrangements into effect in relation to Wales.

The proposed arrangements would:

- a. See the introduction of national standards for all taxis and private hire vehicles, set by the Welsh Ministers, with the power for local licensing authorities to set additional standards where it is appropriate to do so;
- b. Local licensing authorities would, however, remain responsible for issuing licences and enforcement for both taxis and private hire vehicles;

- c. Make it easier for providers of taxis and private hire services to work across local authority boundaries and will give licensing officers new enforcement powers to deal with vehicles and drivers licensed in different areas. Tougher penalties on touting are also proposed (actively soliciting customers), including impounding vehicles;

- d. Bring pedi-cabs and novelty vehicles, including stretch limousines within the scope of taxi and private hire regulation, but the exemption applied to wedding and funeral cars as part of primary legislation being retained, and

- e. Retain the ability of local licensing authorities to limit the number of taxis working in their licensing area.

The Welsh Government considers that the majority of the recommendations put forward by the Law Commission would, if introduced, clarify and simplify the legislation governing the licensing of taxis and private hire vehicles.

On this basis we are supportive in principle of the majority of the proposals in relation to taxi and private hire vehicle regulation in Wales.

There are however, some recommendations that, in our opinion, require further detailed consideration. The purpose of this policy consultation is

to seek views on these specific recommendations set out in the following paragraphs.

Opinions from stakeholders on the total package of measures proposed by the Law Commission in relation to Wales, whilst not specifically requested, will also be welcome.

A copy of the full recommendations published by the Law Commission for England and Wales, that need to be read in conjunction with this consultation document, can be accessed by visiting [consultations.gov.wales](https://www.consultations.gov.wales).

INTRODUCTION

1. In May 2014, the Law Commission for England and Wales published its proposals for the reform of the legislative framework governing the licensing of taxis and private hire vehicles in England and Wales.
2. The proposals were developed as part of the Law Commission's Eleventh Programme of law reform, commissioned by the Department for Transport as the UK Government's department with responsibility for taxi and private hire vehicle licensing.
3. The terms of reference were to review the law relating to the regulation of taxis and private hire vehicles with a view to its modernisation and simplification, having due regard to the potential advantages of deregulation in reducing the burdens on business and increasing economic efficiency.
4. In May 2012, the Law Commission published a paper setting out its draft proposals, which were subject to a public consultation between May and October 2012.
5. More than 3000 written responses, including more than 800 replies to a survey undertaken by the Private Hire and Taxi Monthly magazine were received. Respondents included individuals to representative organisations, including taxi and private hire drivers and private hire operators, licensing officers, disability groups, specialist consultants, trades unions and the police.

6. Meetings were held with Traffic Commissioners and the Driver and Vehicle Standards Agency at different stages of the project.
7. In developing the final proposals, the Law Commission also conducted various site visits, including major taxi radio circuits and private hire operators' headquarters, touring with the taxi and private hire trades both inside and outside London, observing ranks and entertainment venues with a history of enforcement difficulties. This approach highlighted the very local and case-specific nature of some of the issues encountered by the taxi and private hire sector.
8. As part of the new devolved settlement for Wales to be introduced through the Wales Act 2017, the regulation of taxis and private hire vehicles will become a matter within the legislative competence of the National Assembly for Wales.
9. It is under this new devolved settlement that the Welsh Government is again considering the proposals for the framework for licensing taxis and private hire vehicles put forward by the Law Commission in relation to Wales.

SUMMARY RECOMMENDATIONS MADE BY THE LAW COMMISSION FOR ENGLAND AND WALES

10. A full copy of the final proposals put forward by the Law Commission have been republished and can be viewed at: consultations.gov.wales as part of this consultation exercise.
11. Under current law, separate statutes regulate taxi and private hire vehicles respectively. The Law Commission has proposed a new single legal framework that retains the current two-tier system, distinguishing between taxis and private hire vehicles. Only taxis should be allowed to be hailed or pick up passengers from ranks.
12. If adopted, the proposed arrangements would:
 - a. See the introduction of national standards for all taxis and private hire vehicles, set by the Welsh Ministers, with the power for local licensing authorities to set additional conditions where it is appropriate to do so;
 - b. Local licensing authorities would, however, remain responsible for issuing licences and enforcement for both taxis and private hire vehicles;

- c. Make it easier for providers of private hire services to work across local authority borders and will give licensing officers new enforcement powers to deal with vehicles and drivers licensed in different areas. Tougher penalties on touting are also proposed (actively soliciting customers), including impounding vehicles;
- d. Bring pedi-cabs and novelty vehicles, including stretch limousines within the scope of taxi and private hire regulation, but the exemption applied to wedding and funeral cars being retained, and
- e. Retain the ability of local licensing authorities to limit the number of taxis working in their licensing area.

13. The introduction of mandatory disability awareness training for all taxi and private hire drivers was part of the package of proposed measures designed to improve the accessibility of services for disabled people. The Law Commission recommended that local licensing authorities should have the power to introduce a duty on taxis to stop when hailed, to help address the problem of certain drivers passing by disabled people.

14. The Law Commission's proposals also recommended that local licensing authorities should be required to review accessibility needs in their area every three years, and take accessibility issues into account when installing taxi ranks.

15. Furthermore, in order to help address the lack of accessible vehicles, it was recommended that the Secretary of State for Transport should have the power to require large operators (or dispatchers, as they would be referred under the proposed reforms) to meet certain quotas of accessible vehicles which must be available to them.

WELSH GOVERNMENT PROPOSED APPROACH

16. In summary, the Welsh Government considers that the majority of the recommendations put forward by the Law Commission would, if introduced, clarify and simplify the legislation governing the licensing of taxis and private hire vehicles. On this basis we are supportive in principle of the majority of the proposals in relation to taxi and private hire vehicle regulation in Wales.

17. There are however, some recommendations that, in our opinion, require further detailed consideration. The purpose of this policy consultation is to seek views on these specific recommendations set out in the following paragraphs. Opinions from stakeholders on the total package of measures proposed by the Law Commission in relation to Wales, whilst not specifically requested, will also be welcome.

Recommendation 1

18. The Law Commission recommended retaining the two tier system, distinguishing between taxis which can be hailed or use taxi ranks and private hire vehicles that must be pre booked prior to a journey being undertaken.
19. As highlighted in the Law Commission's report, a number of persuasive arguments were advanced in favour of removing the distinction between taxis and private hire vehicles. There is recognition that the public does not understand the distinction and advancement in technology means that a booking for a journey can be made within minutes of the journey taking place. Moving to a single tier regime can also better simplify licensing arrangements, the setting of national standards whilst making enforcement more straightforward.
20. In London for example, the distinction between the taxi that can be hailed on the street and private hire vehicles is perhaps more understood, with London taxis providing the convenience of immediate hire using fares that are regulated.
21. Moving to a single tier system could however, combine the characteristics of both taxis and private hire vehicles, enabling pre-booked and "there and then" hires both operating under a regulated fares model.

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

Recommendation 8

22. The Law Commission proposed not introducing record-keeping by taxi drivers except in respect of taxis picking up passengers outside their licensing area.

23. In principle, the Welsh Government supports the maintenance of accurate record keeping by taxi drivers for the purpose of safeguarding passengers, but it is recognised requiring records for journeys that are not pre arranged may be unreasonable.

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

- a. all journeys undertaken in taxis;**
- b. Only journeys that have been pre booked or started out of the taxis licensing area; or**
- c. Not to require taxi drivers to maintain records**

Recommendation 15

24. The Law Commission proposed not to require intermediaries working solely with licenced taxis (which are referred to as “radio circuits”) to be licenced.
25. Given the potential role any person could have organising taxi bookings and in doing so, would be responsible for handling potentially sensitive and personal information, the Welsh Government considers that requiring any person that is responsible for taking bookings and handling personal information should be licenced.

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

Recommendation 17

26. The Law Commission proposed that operator licensing should only cover dispatch functions and no longer apply to the invitation or acceptance of bookings.
27. The definition of operator for the purpose of licensing has been narrowed to that of ‘dispatcher’. This is on the grounds that it is the dispatcher that has the responsibility to pass the booking onto a licensed vehicle and the person taking the booking plays no more role than smart phone and internet sites that collate and pass on

bookings to operators presently. Unless a person taking a booking, who would not be required to be licenced under the proposals, is able to demonstrate that they had passed the booking onto a licenced dispatcher, then they will be presumed to be the ‘dispatcher’ in respect of that relevant journey. The dispatcher must be licenced.

28. The Welsh Government considers that any person who is responsible for the handling of personal information from any person seeking to make a booking for a taxi or private hire booking should be licenced to do so to so.

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

Recommendation 36

29. The Law Commission proposed that applicants for vehicle licences should not be subject to a “fit and proper” person test.

30. During the public consultation undertaken by the Law Commission, licensing authorities in Wales argued that the provision provided a reasonable safeguard for passengers’ protection and should be retained on that basis.

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

Recommendations 37/40

31. The Law Commission proposed that licensing authorities should not have a general power to impose individual conditions on the holders of taxi or private hire licences.
32. The Welsh Government considers that it is sensible that minimum standards are set to improve consistency of service across local authority areas in Wales. Arrangements need to be in place whereby local licensing authorities have the flexibility to add appropriate conditions on individual licence holders where the imposition of any condition is justified, reasonable and proportionate.
33. Similarly, the Law Commission proposed that private hire services should be subject only to national standards and that licensing authorities should no longer have the power to impose local conditions.
34. The Welsh Government considers that arrangements need to be in place whereby local licensing authorities have the flexibility to add additional requirements and standards that are relevant and appropriate to meet the needs of the local area, if such requirements are not featured within the national standards.

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

Recommendation 53

35. The Law Commission proposed the setting of private hire licensing fees nationally which could not be varied locally. Taxi licensing fees should continue to be set locally, but at a level no lower than the national private hire fee.
36. The Commission acknowledged that fees are currently set locally on the basis of full cost recovery. It argued that the introduction of national standards for private hire vehicles could potentially reduce the variation of fee levels between neighbouring authorities.
37. The Law Commission has suggested also that national authorities should have the power to establish a scheme enabling local authorities to pool private hire licence fees for the purpose of enforcement.
38. An alternative arrangement may be to allow local licensing authorities to set fees for licensing taxis and private hire vehicles locally, but in exercising this function, having due regard to guidance issued by the Welsh Government.

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

- a. The fees for the licensing of private hire vehicles should be set by the Welsh Ministers with fees for taxis being set by local licensing authorities at a rate not less than those applied to private hire vehicles – as recommended by the Law Commission; or**

- b. Local licensing authorities be required to set all fees in their areas, exercising their functions having due regard to guidance issued by the Welsh Ministers?**

Recommendation 56

39. The Law Commission recommended that local licensing authorities should be under a duty to publish their driver, vehicle and operator licensing data in such form as the national authority may require, on the basis that sharing of information between licensing authorities appeared to be a gap in the current arrangements.

40. The Law Commission concluded that there is no recognised mechanism enabling licensing authorities to check whether an applicant for a licence in one area has been subject to enforcement action in another area that has resulted in a licence being revoked.

41. It is unlikely that simply publishing information will resolve the shortcomings identified by the Law Commission and the publication of information would be of limited value to the general public. It is accepted however, that local licensing authorities should be required to record enforcement action that has resulted in removal or

suspension of a taxi or private hire licence and that this information should be made available and accessible to other licensing authorities, who shall be required to consult the information prior to an application for a licence being granted.

Question 8: Do you agree that:

- a. Local licensing authorities should be required to publish driver, vehicle and operator licensing data information as prescribed by the Welsh Ministers as recommended by the Law Commission, or**

- b. Local licensing authorities should be required to share information about any enforcement action that has taken place and resulted in the removal or suspension of a licence, and that licensing authorities required to consult that information prior to any application for a licence being granted.**

Recommendation 61

42. In licensing areas where quantity restrictions already exist, the Law Commission proposed that vehicle licence holders should continue to be able to transfer their taxi licences at a premium. The consultation undertaken by the Commission revealed that in those areas where taxi numbers are restricted, a trade in plate values has developed, costing thousands of pounds, noting that this cost can be a financial barrier to new entrants into the market and does nothing

to encourage investment in the sector. During the consultation, some had argued that plate premiums encouraged professionalism in the taxi industry.

43. The Law Commission accepted that the trade in plate values should not be a feature of the licensing regime, but recognised that removing these values will cause financial hardship and would simply be unfair. It was proposed therefore, that regulations may make provision for establishing a procedure whereby the holder of a taxi licence may transfer his or her obligations as the holder of the licence to another person. Maintaining the value of plate fees by way of this regulation would serve to maintain the practice, accepted as unwelcome, in areas where limits on the number of taxis able to operate is currently in place.
44. An alternative approach to that proposed by the Law Commission is that any scheme designed to safeguard investment made in the transfer of licence plates should focus on 'buying out' the financial commitment for the purpose of eradicating the plate value practice.
45. Local licensing authorities in areas where the practice of buying plates is active could be allowed to use licensing fee income to fund a 'buy out' scheme. The ability to 'pool' licensing fee income could provide a funding solution for such a compensation scheme,
46. Taxi plates should be returned to the licensing authority for re-issue and are not traded between licence and prospective licence holders.

Question 9: If required, should the Welsh Ministers have the power to make a scheme that:

- a. Allows taxi licences to be traded between licence and perspective licence holders; or**
- b. Requires licences to be returned to the local licensing authority for reissue but allow for a compensation scheme to be established ensuring that licence holders that have traded plates previously in relation to Wales to be compensated for any potential loss.**

Recommendations 65/67/68/69

47. As part of its proposals, the Law Commission made a series of recommendations about how local licensing authorities should exercise their functions to enable better performance of the duties set out in the Equality Act 2010. The proposals included requirements on local licensing authorities to:

- a. Conduct an accessibility review at three year intervals;
- b. Review taxi rank design to ensure compliance with the Equality Act 2010; and

- c. Provide information about the licensing authority and local operators in alternative formats, as well as information about the types of vehicle available in their area.

48. It was proposed also that the Secretary of State for Transport should have the power to impose accessibility requirements on large operator/dispatchers. In particular, the power should permit the setting of quotas of accessible vehicles which must be available to such dispatchers.

49. In Wales, licensing authorities are subject to the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, which impose requirements on public authorities in Wales designed to assist them to comply with the general public sector equality duty introduced by s149 of the 2010 Act. If local licensing authorities are given the flexibility to add local conditions or requirements on licence holders in their areas, then taken together with the public sector equality duty and associated Regulations, the objectives of these recommendations can arguably be achieved under existing arrangements.

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

Recommendation 80

50. The Law Commission recommended that the first stage in the appeal process in relation to refusals, suspensions or revocations of licences should be the right of an applicant or current licence holder to require licensing authorities to reconsider the original decision. The Law Commission recommended also that appellants should have the right to bypass this stage and proceed direct to magistrates' courts.
51. The Welsh Government agrees that the first stage of an appeal process should be the right of an applicant or a licence holder to seek a review of the initial decision by a person independent of the initial decision, so as to ensure that any review undertaken is impartial if not fully independent. If the appellants remain dissatisfied with the outcome on an appeal, which must be dealt with within a reasonable timeframe, then the right to proceed to the magistrates' courts will become available.
52. We believe however, that appellants should allow a review of the decision to take place before appeals are lodged with magistrates' courts. This has the virtue of allowing remedies to be made without referring the matter to the courts and can reduce the number of cases that may otherwise be considered by magistrates.

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

SUMMARY OF QUESTIONS

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

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

- a. all journeys undertaken in taxis;

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

- c. Not to require taxi drivers to maintain records

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

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

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

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

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

- a. The fees for the licensing of private hire vehicles should be set by the Welsh Ministers with fees for taxis being set by local licensing authorities at a rate not less than those applied to private hire vehicles – as recommended by the Law Commission; or

- b. Local licensing authorities be required to set all fees in their areas, exercising their functions having due regard to guidance issued by the Welsh Ministers?

Question 8: Do you agree that:

- a. Local licensing authorities should be required to publish driver, vehicle and operator licensing data information as prescribed by the Welsh Ministers as recommended by the Law Commission, or

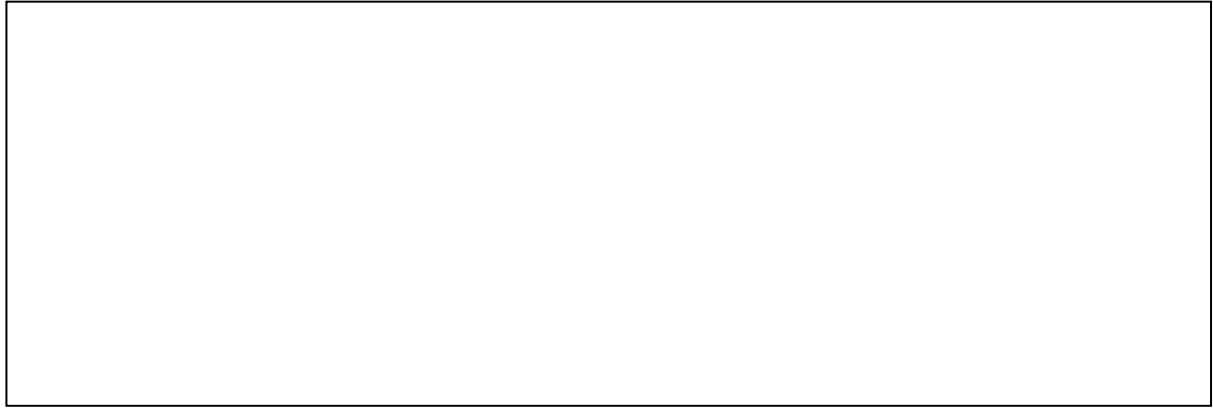
- b. Local licensing authorities should be required to share information about any enforcement action that has taken place and resulted in the removal or suspension of a licence, and that licensing authorities required to consult that information prior to any application for a licence being granted.

Question 9: If required, should the Welsh Ministers have the power to make a scheme that:

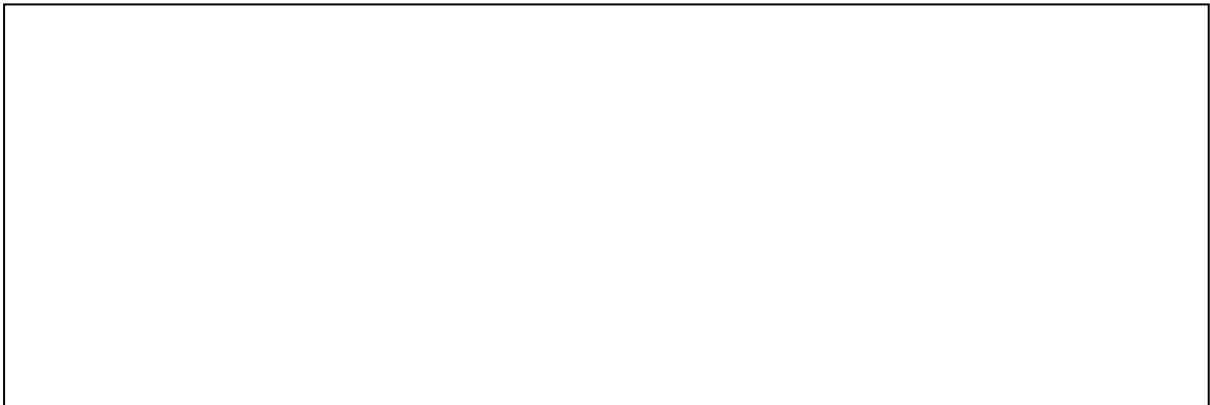
- a. Allows taxi licences to be traded between licence and perspective licence holders; or

- b. Requires licences to be returned to the local licensing authority for reissue but allow for a compensation scheme to be

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

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

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

Your name/organisation and postal/email address

Please tell us which group you are responding on behalf of? (tick one)

Central Government		Public Transport User Groups	
Local Authority (Wales)		Environmental Groups	
Local Authority (England)		Disability Groups	
Taxi PHV sector		Community Groups	
Commissioners / Ombudsman		Freight Operators / Users	
Advisory Groups		Bus Industry / Operators	
Media		Air Industry / Operators	
Emergency Services		Sea Industry / Operators	
Health Sector		Trade Unions	
Other (Please state)			