

Appendix 1

Civic Government (Scotland) Act 1982

Guidance on Power to Refuse to Grant Private Hire Car Licences on Grounds of Overprovision

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Scottish Government
Riaghaltas na h-Alba
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Introduction

1. Taxi and private hire car services play an essential part in local transport networks, providing an invaluable service for both residents and visitors to Scotland. The aim of a licensing regime is amongst other things, the preservation of public safety and order and the prevention of crime. The licensing regime for taxis and private hire cars therefore needs to ensure that customers have a safe, reliable and accessible service.
2. The legislative framework for the optional licensing and regulation of taxis and private hire cars is provided for under sections 10 to 23 and schedule 1 of the Civic Government (Scotland) Act 1982¹ (the “1982 Act”). Scottish local licensing authorities are responsible for the creation, management and enforcement of local taxi and private hire car licensing regimes. Differing approaches to aspects of the regimes are often adopted to allow individual authorities to respond most appropriately to local concerns and apply a regime that best meets the specific needs of their local area.

Guidance

3. This non-statutory guidance relates to the discretionary power of local licensing authorities to refuse to grant private hire car vehicle licences on the grounds of overprovision as provided for in section 10 of the 1982 Act. This power was introduced into section 10 following amendments made by section 63 of the Air Weapons and Licensing (Scotland) Act 2015² (“the 2015 Act”), which came into force on 1 May 2017. These powers do not apply to the renewal of existing licences.
4. As a first step, local licensing authorities will have to decide whether or not they wish to undertake an assessment of overprovision of private hire cars.
5. If it is decided to proceed, the local licensing authority will need to undertake an assessment of whether there is any evidence of overprovision in their localities.
6. This guidance is intended to support licensing authorities in the use of the new power to refuse to grant a private hire car vehicle licence on grounds of overprovision.
7. Where possible the guidance provides examples of good practice for the assistance of local licensing authorities.
8. The guidance should not be taken as an authoritative statement as to the law. Local licensing authorities must ensure that their procedures enable them to comply with the requirements of the legislation. The interpretation of the law is ultimately a matter for the courts. This guidance should not be seen as a replacement for independent legal advice.

¹ <https://www.legislation.gov.uk/ukpga/1982/45/contents>

² <http://www.legislation.gov.uk/asp/2015/10/section/63>

Legislative background

9. During the parliamentary passage of the Bill for the 2015 Act, the Stage 1 report queried the need for different tests to be used for taxis and private hire cars but otherwise supported the proposal. The Scottish Government's response to the Committee explained that different tests were required as private hire cars must be pre booked and cannot be ranked and hailed like taxis. Existing unmet demand tests for taxis rely on the fact that taxis operate from taxi ranks and can be hailed.
10. The Scottish Government also agreed to develop guidance for the local licensing authorities to support the overprovision assessment for private hire cars.
11. The Scottish Government believes that this discretionary power will enable local licensing authorities to ensure the public, when they are customers, can expect a safe and appropriate service.

Deciding whether to undertake an overprovision assessment

12. It is for individual licensing authorities to decide whether they wish to undertake an overprovision assessment. In considering this matter they may wish to take into account factors such as:
 - whether they already restrict taxi vehicle numbers
 - views from the trade, both taxis and private hire car businesses
 - overall trends in vehicle numbers, are private hire car vehicle numbers increasing?
 - churn, with licence holders failing to renew vehicle licences.

Determining localities

13. If it is decided to undertake an overprovision assessment, then the licensing authority will have to determine localities within their area for the purposes of the overprovision assessment. In doing this, the licensing authority may determine that the whole of their area is to be treated as a single locality.
14. For the purposes of undertaking an assessment of overprovision of private hire car services, section 10(3B) of the 1982 Act allows the local licensing authority to determine localities within their area, allowing them to either treat the whole local licensing authority area as one locality or sub-divide it. In setting localities local licensing authorities may wish to distinguish between urban and rural areas, where the need for private hire car provision could potentially be very different.
15. In deciding on localities, the licensing authority may wish to take account of the full geographical extent of their area, the existing trading patterns and consumer behaviour. It should be borne in mind that deciding that there is overprovision within an area or areas, is likely to have an impact on future trading patterns.

Assessing Overprovision

16. Under section 10(3C) of the 1982 Act, when assessing overprovision, the local licensing authority must have regard to the number of private hire cars operating in the locality and the demand for private hire car services in the locality. This should be informed by the need to ensure that customers are provided with a safe and reliable service, and that the full diversity of customers can continue to be provided with a safe and reliable service. This may take account of the provision of accessible vehicles, availability across the week, and at key times.
17. Other considerations could be waiting times for pre-booked private hire cars and whether anyone is likely to be disadvantaged through restrictions on or lack of provision of private hire cars at peak demand times.

Developing an overprovision policy

18. The Scottish Government suggests that local licensing authorities who decide that they wish to use the overprovision power should develop and consult on a formal overprovision policy. This may take account of:
 - evidence of churn in applications, with private hire car vehicle licences not being renewed, which could suggest that there is insufficient trade available
 - evidence from meetings with relevant trade bodies, both taxis and private hire cars, as well as other businesses with an interest
 - evidence from consultation or engagement
 - overall trends in private hire car numbers
 - evidence of poor compliance by private hire cars, seeking to use taxis ranks or be hailed, which may suggest that there is insufficient trade available
 - evidence of private hire car driver hours, drivers working excessive hours in order to make a living or evidence of excess demand
 - overall ratio between the numbers of taxis and private hire car vehicles, many consumers are reliant on taxis to provide accessible vehicles etc. and an overprovision of private hire cars could endanger this
 - evidence of an adverse impact on viability of taxis which provide a vital service to many consumers
 - overall ratio between vehicle numbers and overall population within the area
 - any other additional factors that they consider useful.
19. As a matter of good practice, any evidence gathered in a survey, together with an explanation of what conclusions have been drawn from it (and why) should be published. If private hire car quantity restrictions are to be established, their benefits to consumers and the reason for the particular level at which the number is set should be explained.

20. However, it is not good practice for surveys to be paid for by the trade, except through general revenues from licence fees, as this could cast doubt on the impartiality and objectivity of the process.
21. During the development of this guidance, it became apparent that there is no simple numerical formula for pinpointing the threshold between provision and overprovision. The Scottish Government therefore commissioned Vector Transport Consultancy to provide proposals and specific information that could inform any assessment and how such information might be obtained. Their report, *Private Hire Overprovision Assessment – Potential assessment tools*³, outlines potential tests for overprovision and details sources of information which may be helpful to local licensing authorities in the development of a private hire car overprovision policy.

Refusal on grounds of overprovision

22. Once a local licensing authority has completed its overprovision assessment, it will be in a position to refuse new private hire car vehicle licence applications in line with that policy. However, we would suggest that the policy be capable of exception and that it offers the scope to grant a private hire car vehicle licence in excess of the indicated number where for example, it provides disabled access.

Review of policy

23. We suggest that local licensing authorities undertake a periodical review of their policy with regard to quantity restrictions on private hire car vehicle licences taking into account the wider policy direction. Local licensing authorities will wish to make sure that, in doing so, they regularly review the frequency and component parts of the surveys used to measure overprovision and carry out such surveys with sufficient frequency to ensure they are able to respond to any challenge to the satisfaction of a court. It will be for the individual local licensing authority to determine the timeframe for undertaking the reviews.

Appeals

24. A decision not to grant a licence would be capable of appeal. An appeal can be to the Sheriff in the first instance and could be on the grounds that the authority erred in law, based their decision on an incorrect fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.
25. In the event of a challenge to a decision to refuse a licence, the local licensing authority concerned will be required to establish to the satisfaction of the court that it had satisfied itself that there was overprovision of private hire car services in a given locality or localities.

³ <http://www.gov.scot/ISBN/9781839602405>

Considering the competition impact of overprovision policy

26. Any overprovision policy should balance the need to ensure customer safety alongside the need to ensure that it does not limit the ability of taxi and private car hire businesses to compete. Local licensing authorities may therefore wish to consider whether the refusal to grant a licence is likely to restrict free trade and competition between businesses which could result in a reduction in customer choice and increased costs. It is important that both the taxi and private hire car service being provided is working well and benefits customers in terms of value for money and quality of service. Licensing authorities may wish to be aware that the Competition and Market Authority has published guidance⁴ for local authorities in considering the competition impact of licensing of taxis and private hire cars⁵.

Conclusion

27. There is no obligation on a licensing authority to exercise the power to refuse to grant a private hire car licence on the grounds of overprovision.
28. The licensing authority should consider the facts of individual license applications and make decisions based on local priorities and circumstances.
29. The licensing authority should, where possible, ensure that there is consistency in the decisions made.
30. Any query about any overprovision policy for private hire cars should be directed to the local licensing authority.

⁴ <https://www.gov.uk/government/publications/private-hire-and-hackney-carriage-licensing-open-letter-to-local-authorities>

⁵ Please note that the CMA guidance was produced for licensing authorities in England and Wales, which operate under a similar but different regulatory regime.



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