

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Hire or Reward/Taxi Licensing
Paper No: 136/12
Date: 25 April 2012
Report of: Attorney General
Inspector, Royal Falkland Islands Police

1.0 Purpose

The purposes of this paper are:

- (a) To seek Executive Council's views on the public consultation that took place in relation to the proposed Hire and Reward permit scheme laid out in Exco paper 255/11, especially about whether it should extend to those driving tourists as well as to taxi drivers (and about where the line between these two groups should be drawn); and
- (b) To seek Executive Council's approval for an interim permit scheme, (supplementing the existing provisions for public service vehicle licensing) for taxi drivers but not for others (such as tourist drivers) driving passengers for hire or reward;
- (c) To seek Executive Council's views on the priority to be given to drafting the subsidiary legislation needed to implement this.

2.0 Recommendations

- (1) Executive Council is recommended to approve the proposed requirements for an interim permit scheme – these are modified to some extent from the original proposals to reflect issues that emerged during public consultation.
- (2) Executive Council is asked to approve a recommendation that the interim scheme should only apply to taxi drivers for the time being.
- (3) Executive Council is asked to note that the situation in relation to tourist drivers will be kept under review and that further research on visitor confidence will be carried out during the next tourist season.

3.0 Summary of Financial Implications

None

4.0 Background

4.1 When considering legislative drafting priorities at the start of 2011, Executive Council indicated that taxi licensing was one of the matters that needed to be given priority ahead of the rest of the Road Traffic project.

4.2 Recommendations and a proposal were laid out in Exco paper 225/11 and Executive Council approved a period of consultation with the public (especially with those potentially affected by the proposals) in order to find out what views there were about the proposals.

4.3 A period of public consultation took place between 2 February and 1 March 2012, with Inspector Len McGill being the main specified point of contact during the consultation. The consultation was given publicity in the media and Inspector McGill gave a presentation about the proposals at the Public Meeting on 20 February. The consultation process was a huge success and a total of 41 written responses were received.

4.4 The responses of the consultation period were collated, with issues raised from the public meeting also included. An analysis of the responses can be found at Annex A. A copy of the complete set of responses has been made available to Members at Gilbert House.

4.5 Taking into account all of the points made and issues raised during the consultation process, it seems that there are still three options:

Option 1:

- There should not be a permit scheme at all.

Option 2 (the recommended option):

- There should be a permit scheme (but in a modified form).
- It should only apply to taxi drivers and not to those driving tourists.

Option 3:

- There should be a permit scheme (but in a modified form).
- It should apply to all those driving for hire or reward - not only to taxi drivers but also to those driving tourists.

Option 1:

4.6 If no scheme at all was introduced the present risk to the public would remain the same as it is at the moment. This is not a recommended option, as it would not deal with the clear policy objectives indicated by Executive Council in the past.

Choice between Options 2 and 3:

4.7 It is still recommended that there should be a permit scheme. It is recommended that, for now, it should only apply to taxi drivers and not to those driving tourists) and that, between Options 2 and 3, Option 2 should be chosen.

4.8 The proposals that went out to consultation were for an interim scheme that, it was intended, would evolve over time and would be reviewed as part of the longer term project for new Road Traffic legislation. Even though it is no longer proposed to include tourist drivers in the interim permit scheme, it is intended to keep this under review and research on visitor perceptions will be carried out during the next tourist season.

4.9 Over 50% of those who responded to the consultation expressed views in favour of a “taxi only” permit scheme that would apply to taxi drivers but not to tourist drivers – (although it may be significant that many of those who expressed this view most vocally were those who would be affected by a scheme that applied to tourist drivers but not one that only applied to taxi drivers). Though this is not the best reason for choosing Option 2 over Option 3, it indicates that Option 2 would follow the line of least resistance.

4.10 There would be some practical difficulties in distinguishing between the two categories of driver, especially at the margins:

- In the UK, there is a clear distinction between taxis (which can ply for hire in the street or at ranks) and private hire vehicles (which have to be booked in advance) and different regimes clearly apply to each.
- Here, however, although there is a limited element of plying for hire, taxis tend to be booked by phone. If anything, there is more plying for hire by those driving tourists than by taxi drivers.

4.11 It does have to be recognised that there will be difficulties in translating the distinction between the two categories into a watertight legal definition – further work would need to be done on this. However, as an indication, the proposed distinction would be between:

- Taxis, which would be vehicles used to collect passengers from a taxi rank or in the street or which can be ordered by telephone or hailed in the street¹.
- Tourism vehicles, which would be those booked in advance (and not just called for at the time) or those operating on cruise-ship days from the Public Jetty.¹

¹ Although slightly different, there is already a precedent for laws being relaxed on cruise-ship days: the Licensing Ordinance allows for licensing hours to be extended in certain circumstances for the benefit of cruise ship passengers.

4.12 It would also be necessary to justify the difference in treatment on objective grounds² - the following are possible factors that might justify the difference:

- A scheme covering taxi drivers only would protect many residents of Stanley that use this service as their main source of transportation.
- Taxis provide a service during the hours of darkness, for unaccompanied children of all ages, the elderly and people under the influence of intoxicating liquor. In contrast, tourist driving tends to take place during daylight hours; there is more than one passenger at a time and no unaccompanied children.
- At least some tourist driving takes place on undesignated roads and private land, which would not be covered by the proposed permit scheme (already defeating its object to that extent).
- At this stage, there is no more than limited anecdotal evidence that concerns exist among visitors about their safety – it is intended to carry out additional research on this during the next tourist season.

Proposed modifications to permit scheme in Options 2 and 3:

4.13 An issue that did emerge clearly during the consultation process is that the requirement for drivers to produce proof of insurance would not be workable. Many drivers do not drive for themselves but rely on the operator's (or operators') insurance. Also, many drivers do not drive for a single operator.

4.14 For that reason, it is proposed to remove the requirement to produce proof of insurance from the proposed permit scheme but to carry out separate checks that hire and reward insurance is in place.

4.15 In relation to convictions, it is proposed to distinguish between sexual offences and other offences:

- Sexual offences would normally be regarded as grounds for revoking and a bar to obtaining a permit at any time in the future.³
- For other offences, the rehabilitation of offenders provisions of the Criminal Justice Ordinance would initially be adopted, so convictions could be treated as spent after a period that varies according to the seriousness of the offence.⁴

² Although it would be unlikely that there could be a challenge under the discrimination provision in the Constitution, there would be a risk that the subsidiary legislation could be challenged on administrative law grounds or that a complaint could be made that ultimately reached the Complaints Commissioner.

³ A relatively simple order under the Criminal Justice Ordinance would need to be made to require the disclosure of convictions that would otherwise be spent.

⁴ This is less stringent than the position in the UK, where "enhanced disclosure" applies and even spent convictions can be taken into account.

5.0 Proposed interim permit scheme (as modified)

5.1 It is proposed that subsidiary legislation should be introduced to make it a requirement to have a permit issued by the RFIP Licensing Bureau (on behalf of the Chief Police Officer) to drive a vehicle carrying passengers for hire or reward.

5.2 Although a more permanent system might involve more stringent requirements (such as advanced driving tests and/or medical examinations and/or formal criminal records checks), it is suggested that the interim scheme should be administered as far as possible on the basis of self-certification by applicants.

5.3 It is suggested that, for applicants who meet the following requirements, permits could be issued by the RFIP Licensing Bureau purely administratively:

- they already hold a driving licence *and have held it for a minimum of three years*;
- they self-declare that they are fit to drive;
- they have no unspent driving convictions;
- they self-declare that they have not been to blame for a road traffic accidents in the last 3 years;
- they have no convictions for sexual offences⁵ or unspent convictions for offences involving violence⁶ or dishonesty⁷; and
- they give consent for a criminal records check and for enquiries to be made to their insurers and about their health.

5.4 These would be administrative criteria, so they could easily be kept under review – however, it is assumed that major changes to these would have to be referred to Executive Council for approval and that Executive Council would be notified about other significant changes made to them.

5.5 Applications that require further consideration would have to be referred to an appropriate level within the RFIP and cross-checks could be carried out on some self-certified applications to ensure compliance.

5.6 It is suggested that permits should have to be renewed each year and that permit holders should be under an ongoing duty to disclose changes during the year.

5.7 If a change is disclosed, consideration would need to be given at an appropriate level within RFIP to whether the permit should be revoked (or suspended pending further consideration, possibly following appropriate enquiries). The same should apply if the RFIP becomes aware of a change that has not been declared or that a self-declaration was not correct.

⁵ Any sexual offence would result in an immediate revocation of licence or one initially being issued.

⁶ According to the rehabilitation of offender provisions of the Criminal Justice Ordinance.

⁷ According to the rehabilitation of offender provisions of the Criminal Justice Ordinance.

5.8 There would have to be provision for appeals if permits are refused, revoked or suspended. This should be either to the Senior Magistrate or the Summary Court.

5.9 It is suggested that permit holders should be issued with a photocard (which should be secure but need not be as elaborate as a photocard driving licence) and required to wear or display it when carrying passengers for hire or reward (or seeking them).

5.10 It is suggested that a fee should be charged for permits to cover the costs of the scheme should be covered by a fee for permit applications. The suggested fee, considering responses from the public consultation, would initially be £15.

5.11 Offences would need to be created to ensure compliance with the scheme. These would need to cover the following aspects:

- driving a taxi without a permit
- failing to display the permit when required
- giving a false declaration when applying for a permit
- failing to disclose a change during the year

5.12 However, backed up by cross-checks on applications, the need for annual renewal of permits and suitable publicity for the photocard element of the scheme, the scheme is likely to be self-regulating to a large extent.

5.13 It is considered that this further revised interim system being suggested would fulfil the basic requirements for promoting and maintaining public confidence without imposing more bureaucracy than necessary

6.0 Financial Implications

None at this stage

As indicated in paragraph 5.10, it is suggested that an administrative fee should be charged for permit applications to cover the costs of the scheme. The fee will need to be reviewed annually as part of the budget process.

7.0 Legal Implications

The legal implications of this paper are largely set out in sections 4 and 5.

Section 59(1)(q) provides for subsidiary legislation to be made in relation to “the granting and cancellation by the chief police officer of permits authorising the use of public service vehicles and other motor vehicles for the carriage of passengers for hire or reward”. That could be used to introduce an interim permit scheme covering those driving vehicles carrying passengers for hire or reward within the Stanley area and on designated roads.

An order under the Criminal Justice Ordinance would need to be made to provide that spent convictions must be disclosed and can be taken into account for the purposes of the permit scheme.

8.0 Human Resources Implications

None at this stage

The scheme being suggested would largely be run through the RFIP Licensing Bureau and, although some additional support might be needed to deal with initial applications and seasonal peaks, it is envisaged this could be found from within existing resources.

Annex A

The matters set out below reflect the comments made at the Public Meeting, at a meeting between the Attorney General and the Chamber of Commerce and the responses sent to the RFIP during the consultation period.

The Respondents ranged from the Chamber of Commerce to local business people and members of the general public.

Accordingly, please note the following:

- Support overall proposal for Taxi Drivers AND Tourist drivers – 18 Responses were in favour of this.
- Do not support the proposals AT ALL – 11 Respondents were not in favour of any type of Permit Scheme.
- Support the proposals for Taxi drivers ONLY – 22 Respondents supported this.
- Support the proposals for Tourist drivers ONLY – 4 Respondents supported this.
- Support the Criteria for obtaining a Permit – 11 Respondents supported this.
- Do not support the Criteria for obtaining a Permit – 12 Respondents did not support the proposed criteria.
- I am not happy with any charge being made in respect of the proposals – 10 Respondents raised this point.
- I am happy with some charge being made in respect of the proposals – 16 Respondents raised this point.
- I appreciate the need to protect the public – 6 Respondents raised this point.
- The proposals would have a detrimental affect on tourism and / or the tourist industry – 9 Respondents raised this issue.
- The proposals would lead to a shortage of tourist drivers at peak times – 12 Respondents raised this issue.
- There needs to be a simple system in place for temporary or ad-hoc drivers – 2 Respondents raised this point.
- Some drivers only drive one or two days per year – 3 Respondents raised this point.
- An annual licence is too onerous – 5 Respondents raised this point.

- The roads need to be sorted out first / the roads need to be adopted first / it is the roads that affect tourist's confidence – 13 Respondents raised this point.
- Driver's off-roading or driving in Camp with tourists is not regulated - 14 Respondents raised this point.
- This is just another form of Tax / just another revenue stream for the Government - 12 Respondents raised this point.
- There is no need for further regulation / if it's not broken don't fix it – 7 Respondents raised this point.
- We already have a driving licence and insurance, what do we need this for – 1 Respondent raised this point.
- There is no evidence of complaints / there is no evidence of complaints about drivers – 6 Respondents raised this point.
- There is no need for a photo card / Drivers already carry a driving licence with a photograph on it – 13 Respondents raised this point.
- A photo card is a good idea – 17 Respondents raised this point.
- There is a need for better vehicle checks - 5 Respondents raised this point.
- The vehicles are already subject to checks by the insurance company – 14 Respondents raised this point.
- The drivers are already subject to checks by the insurance company – 13 Respondents raised this point.
- Get the insurance company to give drivers a “sticker” with insurance details on it to drivers to place on their vehicles – 2 Respondents raised this point.
- The Police should undertake Insurance spot checks – 2 Respondents raised this point.
- What about the situation where drivers need to provide evidence of insurance cover but are not driving their own vehicle – This would be difficult to provide at short notice – 1 Respondent raised this point.
- Regarding Health issues – These are covered when applying for insurance – 6 Respondents raised this point.
- A standard medical should be introduced for all drivers - 1 Respondent raised this point.
- I am concerned by driver fatigue – 1 Respondent raised this issue.

- A specific test for drivers is a good idea – 5 Respondents raised this point.
- It is a good idea to have some form of accreditation for tourist drivers – 7 Respondents raised this point.
- Age restrictions should be introduced for drivers, e.g. No one under 21 or over 70 – 2 Respondents raised this point.
- Need to introduce an ‘advanced’ driving qualification – 1 Respondent raised this point.
- Need to introduce an ‘off road’ driving qualification – 1 Respondent raised this point.
- What about the drivers Human Rights – 2 Respondents raised this point.
- Yes the system should be self regulating – 11 Respondents stated this viewpoint.
- No the system should not be self regulating – 7 Respondents stated this viewpoint.
- People who are drivers and are from overseas should be regulated – 3 Respondents raised this point.
- With regard to offences of dishonesty or violence – It is important for someone to earn a living to move out of a lifestyle – 1 Respondent raised this point.
- Regarding offences – What happens in people’s private lives should not be taken into consideration – 2 Respondents raised this point.
- More clarification is required as to the definition of a fare paying passenger - 1 Respondent raised this point.
- What about protecting drivers from tourists? – 3 Respondents raised this point.
- A proper system should be put in place to enable people to make complaints about people or vehicles – 1 Respondent raised this point.
- In respect of offences and disqualification periods, those that responded to this agreed that the repercussions should reflect the offence. The Respondents appear to support a case by case approach for such matters and that the penalties reflect the seriousness of the case.
- A suggestion was also made by the Chamber of Commerce regarding the setting up of a local Taxi Association. Such an association may have a role to play if it is intended for any scheme introduced to be self regulating.

- A suggestion was also made by the Chamber of Commerce regarding allowing 'Operators' of taxi's to grant Permits to drivers where they were required on short notice. Clearly this may place extra obligations on the Operators. It was also noted that this would not cover drivers working on their own on a short term or ad-hoc basis.