

## Justice Committee

### Criminal Justice and Licensing (Scotland) Bill

#### Written submission from the Scottish Taxi Federation

As you are no doubt aware, a task group was set up in 2001, by the previous Government and given the responsibility of reviewing the Licensing provisions of the Civic Government (Scotland) Act 1982. Their report was delivered during 2004, following more than 3 years of deliberations. While a few of their recommendations have been included within the abovementioned Bill, it is the view of the Scottish Taxi Federation that if the efforts of the task group are not to be lost and the '82 Act properly updated, then much more needs to be included. We suggest the following should be considered.

#### **Section 10 (3)**

This section is discretionary and not mandatory. It allows LA's, if they so choose, to impose a limit on the number of Taxi licences they issue provided they are satisfied that there is no significant current unmet demand. In view of the present Governments concerns with alleged criminality in the private hire sector of the Taxi/ Ph Car industry, the Federation believes this provision should be extended to include the right to limit the number of Private Hire Licences. At present not all LA's limit the number of Taxi Licences, it is therefore reasonable to assume that if the provision remains discretionary, not all LA's will impose a restriction on the number of Private Hire Car Licences. The Federation believes that the continuing unfettered growth of the Private Hire industry has made it simple for that section of the trade to be infiltrated by undesirable elements.

Additionally, no guidance is given in the Act or elsewhere, as to how LA's should assess demand. As a result, a range of practices are followed by those LA's who operate limits and regular legal challenges are made in respect of decisions by LA's to refuse applications for Taxi Licences on the basis that there is no unmet demand.

The Federation believes that LA's operating best practice is those, which instruct independent third party organisations to carry out surveys to assess demand every 2/3 years and supplement these with assessments carried out by licensing officials the intervening period.

This will assure consistency of approach whilst preserving a LA's power to determine what limit to impose taking into account the result of surveys and local circumstances.

#### **Section 10 (6)**

This section should be amended to make specific provision for the transfer of licences in the event of death or permanent incapacity of the licence holder, particularly where the licence holder leaves behind dependants. Some LA'S

have demonstrated that the current legislative provisions are inadequate and open to interpretation.

### **Section 12- fees for Taxis and Private Hire Cars**

This section should be amended to make it clear that LA's should only charge such fees as are sufficient to cover their expenses.

### **Section 14- Signs on vehicles other than Taxis**

It is the view of the Federation that roof signs of any kind on Private Hire Cars should be expressly prohibited. This section should be so amended.

### **Section 17- Taxi Fares**

Section 17 (1) should be amended to make it clear that any administrative charge made by the Taxi Company for extending credit facilities to account customers does not fall within the powers of LA's to control. It is the Federation's view that the Act does not give power to LA's to impose arrangements for credit since this is not a charge relating to the hire or arrangement for hire of the Taxi. As such Section 21 (5) does not apply.

The Federation is of the view that taxi fares scales should be reviewed annually. If a cost formula were agreed between trade representatives and the LA, such a review would simply be a case of checking the figures against the previous figures and calculating any percentage increase, which may apply.

In general it is not considered that Section 17 is effective since LA's regularly carry out reviews late in the knowledge there is no sanction, which can be imposed in the event that the review is not carried out timeously. Therefore, the Federation propose this section should be amended to allow an appeal by the taxi trade to an independent arbiter if a LA fails to carry out a fares review within the prescribed timescales.

### **Section 18 – Appeals in respect of Taxi fares**

The Federation supports the proposed amendment that representative bodies should be allowed submit an appeal. Such an amendment would not in our opinion be to the detriment of the individual. However, it is felt that the proposed amendment to cause LA's to consult with every individual Taxi operator in respect of a fares scale review, will be administratively burdensome and time consuming for LA's.

### **Section 19-Taxi Stances**

This section should place a responsibility on LA's to provide sufficient taxi stance places to accommodate at least two thirds of the taxis it licences.

There should also be an obligation to ensure stances are placed and constructed in such a manner as to be easily accessed by the general public and to disabled persons in wheelchairs in particular. As an example Glasgow City Council currently provides approximately 350 taxi stance spaces to accommodate 1430 licensed Taxis

### **Section 20- Regulations relating to Taxis and Private Hire Cars**

It is submitted that fitness of the vehicle should be the only criteria for determining whether or not a vehicle can remain in service as a taxi.

### **Section 21-Offence Provisions**

The Federation is aware of a growing problem involving taxi drivers being detained for abduction when dealing with non-paying passengers. Traditionally drivers could rely upon Police assistance and consequently would drive such passengers to the nearest police station. Police assistance can no longer be relied upon as they now take the view that the driver may be guilty of the offence of abduction. The Federation's view is, that drivers require some form of statutory protection to allow them to take a non-paying passenger to a police station when the driver has reasonable grounds for believing a crime has been committed.

It is also our view that a new offence for non-payment of taxi fares based upon the balance of probabilities is most definitely required.

In general terms the offences provisions contained in section 21 are adequate. The difficulty that arises is that the burden of proof required "beyond reasonable doubt" is such that convictions are almost impossible to obtain. It is the Federations view that proof required in terms of section 21 should be on the balance of probabilities.

### **Section 133- Definition of Public Places**

The terms of section 133 appear to be clear and unambiguous. However, certain LA's have managed to consider areas such as bus stations, supermarkets etc which have unrestricted public access, to fall out with the definition of a public place. It is therefore clear that some guidance and clarification is urgently required.

### **Enforcement**

The task group's comments embody all that enforcement is or at least ought to be. In reality, however, neither effective enforcement nor indeed the principles of the Enforcement Concordat are to any real extent evident in the licensing of taxis or private hire cars through Scotland.

There are numerous examples of how enforcement or the responsibility for enforcement has entirely failed. Since the introduction of the '82 Act, no real attempt has been made by LA's to recruit and properly train enforcement officers despite the obvious need for such a service. LA's generally speaking

have instead preferred to identify the Police as the agency with responsibility for enforcing the provisions of the 1982 Act. The police for their part have a tendency to reciprocate and highlight the LA's as the bodies responsible for enforcement. This situation is replicated throughout Scotland and is detrimental amongst other things to public safety. I am enclosing a copy of a recent letter from Tayside Police, which highlights the difficulties in getting to the bottom of who is responsible for enforcement.

It is the Federation's view that something stronger than mere guidance is required and that guidelines require to be issued which should be followed by LA's when dealing with enforcement. It is also the Federation's view that civilian enforcement will only really be effective if the enforcement officers operate under the jurisdiction of the Police.

I would have included further comment but the need to remain within 4 pages prevents my doing so.

**Bill McIntosh**  
*General Secretary*