

COMMITTEE: General Licensing Committee

DATE: 9 March 2005

SUBJECT: Review of the Policy of Controlling Taxi Numbers

REPORT OF: Douglas Lindsay, Commercial Services Manager,
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Ward(s): All

Purpose: To provide members with the relevant information for determining any changes to the current policy of restricting the number of hackney carriages in Eastbourne.

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Recommendations: That Committee considers all the information contained in this report, and:-

1. Determines the preferred policy option in response to the Government's Action Plan for Taxis and Private Hire Vehicles, taking full account the relevant service level issues findings of Scrutiny Committee Taxi and Private Hire Service Task Force in September 2002;
 2. Resolves that any new hackney carriage proprietor licence is issued only for, and transferred only to, a wheelchair accessible hackney carriage from a list approved by the Environmental Health Manager;
 3. Resolves that any hackney carriage entering the trade that is licensed for five or more passengers is a wheelchair accessible hackney carriage from a list approved by the Environmental Health Manager;
 4. Resolves that consultation is undertaken with the hackney carriage and private hire trade and representatives of the businesses and organisations on the above decisions; and
 5. Receives and reviews a report that summarises the responses to consultation in three months before making a final policy decision.
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1.0 Introduction

1.1 The 2002/2003 Scrutiny Committee programme included an item on Taxi and Private Hire Services. A Scrutiny Committee Task Group, comprising Councillor Lacey, Chairman, and Councillor Mrs Pooley, received the views from representatives of a range of interested parties on services provided by taxis and private hire in Eastbourne.

1.2 The findings, way forward, proposed actions and timescales were reported to Scrutiny Committee on 16th September 2002 and approved by Cabinet on 7th November 2002. The applicable level of service issues relevant to this report are set out in paragraphs 6.1 and 6.2 of Task Group's report, attached as Appendix 1 are summarised as:

- The length of time to locate a vehicle, particularly at night; and
- Availability of wheelchair accessible taxis.

The representatives who contributed are also listed in Appendix 1.

1.3 The planned report to licensing panel was put on hold pending an Office of Fair Trading Study and Government response.

The OFT report entitled "The regulation of taxi and private hire vehicles services in the UK" was published in November 2003. It recommended that local authorities should not retain the power to limit the number of taxis. The Government responded through a Department for Transport (DfT) circular of 16 June 2004 to all local authorities entitled "Government request to all councils restricting taxi licenses in England and Wales to review their Quantity Control policies," to which was attached the Government's Action Plan for Taxi and Private Hire Vehicles in England and Wales. The whole document is attached as Appendix 2. Please note that annex B, is a little out of date.

2.0 Government's Position – Restriction of Taxi Numbers

2.1 The Governments position as set out in paragraph 7 of the DfT circular of June 16 is that:-

"restrictions should only be retained where there is shown to be a clear benefit for the consumer, and that councils should publicly justify their reasons for retention of restrictions and how decisions on numbers are reached. Thus the Government considers that unless a specific case can be made, it is not in the interest of consumers for market entry to be refused for those that meet the application criteria.

However the Government makes it clear in the Action Plan that local authorities remain best placed to determine local transport needs and to make the decisions about them in the light of local circumstances. So it is not proposed at this time to take away the power to restrict taxi licences from local authorities."

2.2 The DfT considered that the outcome of the review would be either (i) to deregulate or (ii) continue to restrict taxi numbers in which 3 scenarios are possible:

Maintaining the current limit (in which case a survey would now be necessary in Eastbourne);

Granting a number of new licences to meet unmet demand determined by a survey;

Granting a specific number of new licenses each year (in which surveys would also be required)

3.0 Governments Position - Wheelchair Accessible Taxis

3.1 There have been repeated delays in making taxi accessibility regulations. However the DfT is now to phase in regulations. Eastbourne is in the first phase together with Hastings, Lewes, Wealden and Brighton and Hove. First phase local authorities will have to convert to a taxi fleet that has wheelchair access and a range of other features to help disabled people access taxis from 2010 to 2020. Eastbourne was included because it is a major tourist attraction.

3.2 In the meantime local licensing authorities have been advised to consider their own policy with regard to accessible taxis for their area and not hold back on any local initiatives. A DoT circular letter of 9th September 2002 set out the accessibility policy considerations when making a taxi accessibility policy. These have been reproduced in annex D of the Governments Action Plan (appendix 2 of this report).

4.0 Scope of this Report

4.1 The scope of this report accordingly includes taxi numbers and wheelchair accessible vehicles that also have features for other people with access difficulties.

5.0 Hackney Carriage and Private Hire – General Information

5.1 Hackney carriages provide a most flexible form of public transport. They can be hired from ranks, hailed in the street and be pre-booked. Private hire vehicles must however be booked in advance.

5.2 The hackney carriage market is a large and growing one. The number of hackney carriages in England and Wales outside London has more than doubled since 1986, increased by 40% since 1994 and 8% since 2001. (DfT 2004)

5.2.1 Licensing authorities have greater regulatory powers over hackney carriages than private hire vehicles. These are:

Setting the maximum hackney carriage fares in their district, which almost all licensing authorities do;

Requiring additional vehicle fitness standards, for example London style and similar cabs that meet specific needs of disabled passengers. Urban local authorities in particular commonly require new hackney carriage licenses to be for purpose built wheelchair accessible taxis:

- London and 46 local authorities outside London have wheelchair accessible taxi fleets.

Limiting hackney carriage numbers, but only if it can be shown that there is currently no significant unmet demand:-

- 40% of local authorities outside London restrict hackney carriage plates (DfT 2004), down from 63% in 1989 (DoT 1990).
- In London hackney carriage numbers have not been restricted since 1931(OFT)
- Taxis may be the only public transport mode where quantitative supply restriction can be imposed.

5.3 The principle driving these permissible regulatory powers is customer service. They should be applied only when there is a clear customer service benefit in so doing.

5.4 Taxis are an important part of an integrated public transport system. The DoT White Paper "A New Deal for Transport; Better Value for Everyone" (1998) observes that taxis, together with private hire, fill the gap when most buses and trains have stopped for the night. Local authorities will need to consider taxis and private hire vehicles in their local transport plans. Whether there are sufficient taxi ranks in the right places operating at the right time of the day. It is important that local authorities use their taxi and licensing powers to ensure that taxis and private hire vehicles in their district are safe, comfortable, properly insured and available when and where required.

The DFT (2003) is now urging authorities and officers involved to ensure that the local transport plan process, introduced in the 1998 White Paper, incorporates the contribution of taxis and private hire vehicles.

6.0 Hackney Carriage Licence Restriction

6.1 The Council limits the number of hackney carriage proprietors licences (plates) to 84, a number unchanged since 1975. The Transport Act 1985 enables a licensing authority to refuse the issue of a new hackney carriage proprietor's licence only if satisfied that there is no significant unmet demand within its area. Any person who is refused a proprietors licence has the right to appeal to the Crown Court.

6.2 Until the Transport Act 1985 came into effect, all licensing authorities had an unrestricted right to limit the numbers of hackney carriage licences in their area, a right which goes back to the days of the horse drawn carriage. The aim of the Act was to remove this unrestricted power and only to allow the restriction of taxi numbers if the authority could justify and support the policy by proving that there was "no significant demand that was unmet".

6.3 The DoT issued Circular 3/85 provided guidance for local authorities on number limitation of hackney carriage vehicles covered in Section 16 of the 1985 Act. The overall tenor of Paragraphs 27 and 28 of this Guidance reproduced below is one of allowing market forces to determine the service level subject to transitional safeguards.

DoT Circular 3/85

"District councils may wish to review their policy on the control of hackney carriage numbers in the light of the section. Limitation of numbers can have many undesirable effects – an insufficiency of taxis, either generally or at particular times or in particular places; insufficient competition between the providers of taxi services, to the detriment of their customers; and prices for the transfer of taxi licences from one person to another which imply an artificial restriction of supply. Under the section a district council may refuse a licence to restrict numbers only if satisfied that there is no significant unmet demand for taxis in the relevant area. If there is an appeal, it will be for the Council to convince the Court that they had reasonable grounds for being so satisfied. It will not, in general, be sufficient for a district council to rely on the assertion of existing taxi licence holders that the demand is already catered for. They have evidence only of the demand which they satisfy and it will be for the Council themselves to seek for and examine the evidence of unmet demand. There may be those who have given up trying to use taxis because of the inadequacy of the service and there may be latent demand in parts of a district that have not been adequately served – where those who wish to use taxis may not have demonstrated their demand since there had been no opportunity of having it satisfied. Moreover, if the applicant for a new taxi licence proposed to use it – for instance under Section 12 – and had reasonable grounds to believe that there would be a demand for his service if he provided it, a Council which wished to refuse a licence would have to satisfy themselves that the demand would not be forthcoming. Over-crowding at taxi ranks is not of itself evidence that there is no unmet demand. It may be that the provision of ranks has been too limited and that the Council should look actively for sites for further ranks.

There are a number of district councils which already exercise no control over the number of taxis in their areas without causing problems of over-supply. However, the Department accepts that in some areas the total abandonment of quantity control could lead to an initial over-supply of taxis before market forces could bring about an equilibrium between supply and demand. In order to avoid possible disruption, a district council faced with a large number of applicants could in the Department's view, reasonably grant a proportion of the applications, deferring consideration of the remainder until the effects of granting the first tranche could be assessed."

- 6.4 The Government's Action Plan goes one step further towards delimiting taxi numbers by stating:- unless a specific case can be made, it is not in the interest of consumers for market entry to be refused for those that meet the application criteria.
- 6.5 In deciding whether there is a demand that is unmet, the only acceptable method is through the appointment of an independent consultant to carry out a survey and report the results. A licensing authority cannot rely on the views of existing hackney carriage proprietors or solely by carrying out its own research.
- 6.6 In 1999 the Council considered an application for an additional hackney carriage proprietor's licence specifically for a purpose built wheelchair accessible taxi. It was resolved not to issue the licence, instead to undertake a hackney carriage study.
- 6.7 This was carried out by Halcrow Fox, an independent transport consultant.

Their report of February 2000 concluded that overall there was no significant demand for hackney carriages that was unmet. The Extended Disability Consultation carried out as part of the brief found that people with disabilities experienced difficulties in obtaining taxis. The Study recommended that any new licences should be for wheelchair accessible taxis.

- 6.8 The Study was considered by Planning and Licensing Committee on 4th April 2000, who decided not to issue any additional hackney carriage licences at that stage. Committee were told by a hackney carriage representative that two more wheelchair accessible vehicles would be brought into the trade. This would have brought the total to 11. However it did not happen. The number of wheelchair accessible vehicles has declined to 4, the reverse of the intention at that time and of the purpose of the Disability Discrimination Act 1995 and a failure by the trade to take the opportunity to advance through provision of purpose made taxis.

7.0 Considerations for Policy Change

- 7.1 The Scrutiny Committee Task Group findings, Appendix 1 and the Governments position, Appendix 2.
- 7.2 The Hackney Carriage Study can no longer be relied upon to demonstrate that there is no significant unmet demand. Such surveys have a life of 2-3 years. The Halcrow Fox report acknowledges this, recommending a further survey in 2002.
- 7.3 Taxi supply must be able to meet the growing Eastbourne population. The 2001 mid-year population was 89,834, an increase of 20% since 1975, when taxi numbers last increased and is projected to continue to grow. An ageing population also increases demand (DoT 2002).
- 7.4 Eastbourne is an important centre for tourism, leisure, shopping and business. It is one of the largest providers of tourist accommodation in the south-east outside London (Tourism Study 1998). The taxi trade must be able to meet the needs of customers as demands change.
- 7.5 A key element of the Council's Crime Reduction Strategy is the adequate provision of late night transport, to disperse people from the town centre, thus reducing the potential for nuisance and anti-social behaviour. A late buses trial in 2001 met with a disappointing and uneconomic response. The direct, personal, convenient and safe service offered by taxis and private hire is preferred by customers, especially late night and by women. It is essential that there is adequate availability of vehicles that can ply for hire at ranks and in the street, to assist in overall service improvement, which taxis can do.
- 7.6 The Licensing Act 2003, will affect the night-time economy by removing the limit on alcohol licensing hours. The taxi trade must be free to adjust to meet the consequent changes in demand
- 7.7 Taxis and Integrated Transport. The DFT (2002 and 2003) urges licensing and highway authorities to improve taxi inputs into integrated transport policies. Taxi supply must be able to respond to demand changes over time without imposed limit restrictions on taxi numbers.
- 7.8 Committee should note a comparison of Eastbourne taxi data with East

Sussex and Brighton and Hove Councils, tabulated in Appendix 3. It shows that Eastbourne has:

- the lowest taxi/private hire ratio of the six local authorities
- a significantly lower taxi/private hire ratio than the south-east outside London;
- by far the lowest percentage of wheelchair accessible taxis of the 3 coastal towns.

The data points to an under-provision of taxis and wheelchair accessible taxis, in line with the Task Group findings.

8.0 Further Considerations for Improving Hackney Carriage Availability for People with Disabilities

8.1 Recent research gives the broad picture on the need for adequate taxi provision for people with disabilities:-

8.1.1 Health Survey for England (2001) found that in 2000-2001 18% of men age 16 and over reported having one or more of 5 types of disabilities (locomotion, personal care, sight, hearing and communication). 5% of adults were found to have a serious disability.

8.1.2 A Department of Transport study "Older People: Their Transport Needs and Requirements" (2002) found that taxi use is the most strongly associated with town centre dwellers, women and people with impairment, particularly mobility impairment. The report suggests that accessibility to transport services are important considerations as people become older. It was found that of the 65% of people that experience difficulty with taxis, 44% experienced accessibility difficulties. Accessibility is described as:

- personal mobility problems;
- temporary mobility problems;
- difficulty boarding/leaving vehicle;
- general health problems;
- hearing/speech impairment;
- weak sight;
- difficult to carry things;
- confusing to use;
- attitude of staff.

8.2 The Government recognised the requirements of disabled people in the Disability Discrimination Act 1995. The purpose of Sections 32 – 39 of the Act is to ensure that disabled people have the same flexibility of choice in their use of licensed taxis as the rest of the travelling public. To achieve this, suitably designed taxis that meet the needs of people with a wide range of disabilities, including those who need to travel in a wheelchair, must be equally available as taxis that are not so designed for people with disabilities.

8.4 The case for more wheelchair accessible taxis was made to the Task Group and by Halcrow Fox. It was also raised as an issue of concern with officers and hackney trade representatives by the Eastbourne Physical and Sensory Disabilities Forum in 2001. Officers have received complaints from wheelchair users that they have not been able to hire a taxi and experienced

unacceptable delays before taxis arrived. Attempts to set an increased provision of wheelchair accessible hackney carriages have not been taken up by the hackney carriage trade.

8.5 Adoption of policies to increase availability of taxis for disabled people can include any of the following:

8.5.1 All new hackney carriage proprietor licences issued are dedicated wheelchair accessible plates. The only possible drawback to this is that sufficient numbers must be taken up to make a real difference to service provision.

8.5.2 All hackney carriages entering the trade that are licensed for 5 or more passengers to be wheelchair accessible. This option on its own from past current experience is unlikely to result in any significant increase in the number of wheelchair accessible taxis, but is supportive of 8.5.1 above.

8.5.3 All taxis to be wheelchair accessible by a certain date. Adoption of this policy would ensure full compliance with the Disability Discrimination Act and there are no disadvantages in service provision. It is, however, an additional major step that requires separate consideration.

8.6 The design of purpose made wheelchair accessible taxis also improves driver safety when not carrying disabled people. The design incorporates a screen between the driver and passenger, this reduces the risk of assault upon drivers when plying for hire, particularly at night. Passenger door locks can be controlled by the driver, reducing the risk of passengers absconding without paying. These design safeguards, together with in-car CCTV aided by a grant from Eastbourne Crime Reduction Partnership, NightWatch, radio-link and standardising of crime reporting procedures should reduce significantly drivers' concern about working during unsocial hours.

8.7 The adoption of 8.5.1 and 8.5.2 will, therefore, meet the objectives of improving the service for disabled people providing that an adequate number of licences are issued and taken up. They also have the potential to improve the taxi supply for all passengers, particularly at night through provision of a larger numbers of purpose built taxis :-

9.0 Policy Option 1 – To Maintain the Current Number Restriction Policy

9.1 Need for Regular Surveys

If a number restriction policy in any form is continued, the Council must be satisfied that there is no significant unmet demand before it can refuse applications. This applies even if the Council wishes to issue a limited number of additional licenses, on an informal suggestion that arose from the Task Group findings. In order to ascertain if there is a significant unmet demand, the Council will need to undertake regular unmet demand surveys at 2 to 3 year intervals provided there are no significant demand/supply changes in the interim.

9.2 Survey Costs

The costs of these surveys are significant and involve substantial officer time, all of which must be recovered from the hackney carriage proprietors licence fees. The last survey cost £11,400. Future surveys could much more

expensive with the widening of the terms of reference to include issues such as suppressed demand, service expansion, disability discrimination and barriers to entering the trade.

9.3 Service Level – Expansion of Service

Continuation with a limitation policy may prevent the best service being provided to the travelling public, as it will not resolve the unmet demand at peak times or unsocial hours. It will also be an impediment to an expansion of the taxi market, as indicated in Circular 3/85 which, in Eastbourne, has been curtailed for many years. There are expansion possibilities suggested by the taxi trade through provision of additional daytime ranks. It is important that there is an adequate supply of taxis to service any ranks because they are expensive to provide and maintain and the public expect taxi availability at ranks. A particular issue is supply of taxis at ranks at night. A new night-time rank is scheduled for Eastbourne Pier to specifically cater for the night-time economy, the current one being unused at any time. Ranking at the Station west forecourt and Susans Road is intermittent at night. The large Bolton Road rank is rarely serviced other than daytime. At a meeting with Sussex Police, trade representatives and the Council's Highways Manager, the importance of Bolton Road as a rank late evening and at night was agreed. It is an ideal town centre location for taxis and their customers.

Continuation of a limitation policy is unlikely to result in availability of sufficient additional taxis to make such expansion possible and improve the service at night.

A change in demand in a short period may occur as a result of the Licensing Act 2003, which deregulates alcohol licensing hours. It is essential that such changes can be readily accommodated by the hackney carriage licensing policy.

9.4 Competition and Barriers to Entering the Trade

It is also recognised in Circular 3/85 that a limitation policy prevents fair competition within the trade and prevents those who wish to enter the trade from doing so. The officers regularly receive enquiries from people wishing to enter the trade. The list of people, some of whom have expressed interest specifically in wheelchair accessible taxis, and have been asked to be informed when any become available, numbers over 100. The list goes back to 1986 and many will no longer be interested. The officers estimate that if the limitation policy was removed, on the information to hand, there would be a small number of applications for wheelchair accessible hackney carriages. The Council's number restriction policy has resulted in hackney carriage licences being traded at a considerable cost, currently around £15,000 plus the cost of the vehicle. This is a barrier to those wishing to enter the trade, a very significant one in the case of wheelchair accessible taxi provision. No new proprietor has purchased a wheelchair accessible vehicle. The limitation policy is also a significant impediment to new hackney carriage business start up which reduces competition and entrepreneurship.

9.5 Provision for People with Disabilities

Continuation of a limitation policy may prevent disabled people have the same flexibility of choice as the rest of the travelling public. A policy that all new

hackney carriage licences issued are for purpose built wheelchair accessible taxis supported by a policy that all hackney carriages entering the trade that are licensed for 5 or more passengers are purpose built wheelchair accessible will improve but may not in itself result in availability of an adequate increase in the number of suitably specified vehicles that provide for the widest range of disabilities, until the phasing in of the Regulations from 2010 to 2020.

9.6 An alternative, which applies in London and 46 licensing authorities outside London, is to require all hackney vehicles to be wheelchair accessible by a certain date. This would take time and may not result in any immediate significant change as the tendency would be to put off purchase until near the compliance date. It is nevertheless an option which could be considered in advance of the DDA Regulations.

9.7 Social Inclusion

The Government Social Inclusion Unit Overview on Transport and Social Exclusion states that the poorest fifth of the population have no car and depend upon public transport. If transport is unavailable or does not meet their needs, this is a barrier to inclusion. A limitation policy may contribute to exclusion for essential journeys through lack of availability and choice.

9.8 Driver and Community Safety

Section 17 of the Crime & Disorder Act 1998 requires a local authority to consider the impact of its decisions on crime and disorder. For the reasons given above continuation of a limitation policy may not significantly improve the availability of hackney carriages at night to assist in particular in getting people away from the town centre. It should be noted that purpose built taxis are licensed to carry from 5 to 8 (typically 6 or 7) passengers, as compared with the normal Eastbourne taxi that is licensed for 4 passengers. The extra capacity, together with the design safeguards, will contribute to a reduction in crime and disorder, providing availability is significantly improved.

9.9 Integrated Transport

The continuation of a quantity restriction on hackney carriages may frustrate further development and deliveries of taxi contributions to integrated transport.

9.10 Vehicle Licenses Transferred for Profit

The Task Group recommended that a mechanism to ensure that new hackney vehicle licences granted should not be transferred for profit. A limitation policy would mean that this remains a possibility. The likelihood of a quick profit can be reduced by granting the licences specifically for purpose built wheelchair accessible taxis that can only be transferred to another such vehicle together by seeking an undertaking that the proprietor of a new licence will not transfer it for a period of say 2 years, as a declaration of the intention of the applicant. In practice, however, the Council will not be able to prevent a transfer.

9.11 If it is decided to issue of a limited number of hackney carriage licences the considerations would be:-

9.11.1 The cost implications of regular surveys.

- 9.11.2 If there were a greater number of applicants than licenses available, the Council could also face a Crown Court appeal by any person not granted a licence on the basis that the selection process for deciding the applications was unfair. The cost implications are significant by virtue that a barrister would have to be instructed to defend the Council's position. The cost of any such appeal would also have to be recovered from hackney carriage licence fees.
- 9.11.3 It would be difficult to establish the required number of hackney carriage licences to effectively provide the best service to all taxi users, because market forces would not dictate the level. It can, however, be argued that regular unmet demand surveys would ensure that there is no significant unmet demand. However, the implications of this approach as stated previously apply.
- 9.11.4 A reduced possibility of over supply. The immediate removal of all quantity control may lead to the over supply of taxis until market forces can produce an equilibrium between supply and demand. Committee can decide to issue a set number of licenses and to then commission another unmet demand survey to assess the impact these additional licences have had. As mentioned previously, any person subsequently refused a licence may appeal to the Crown Court.
- 9.11.5 The main advantage to this option is that a gradual increase in the numbers of hackney carriages would prevent the over supply of vehicles and congestion on taxi ranks. This aspect would have to be counterbalanced with the cost implications of continued surveys.
- 9.11.6 A reduction in oversupply could also be achieved through the requirements and procedure for new licences, set out in Appendices 4 and 5 and compliance with current livery conditions. Would-be applicants will need to give these matters careful consideration when developing their business plan. Should this option be agreed, applicants will be advised in an information pack provided, to discuss their plans with a business consultant before making an application. A possible outcome is that there will be a gradual increase in licences and a consequent reduction in the chance of oversupply.

10.0 Policy Option 2 – Removal of Number Restriction Policy

10.1 Power to De-limit at Any Time

There is no legal requirement for a licensing authority to establish whether there is any unmet demand before reaching a decision to remove a limitation policy. Any Council can choose to remove a number limitation policy at any time and this is confirmed in the stated cases of R -v- Great Yarmouth Borough Council 1987, 1989 R -v- Castle Point Borough Council 2002 and R -v- Wirral Metropolitan Borough Council 2002.

The Council can decide to abandon or phase out quantity control regardless of whether there is no unmet demand or not. However, in coming to its decision the Council must consider the arguments for and against such a policy. It must take into account relevant considerations and not take into account irrelevant considerations. It must act on the evidence before it and not act perversely or irrationally. It is important that the interests of the public are

given due consideration as well as the interests of the private hire and hackney carriage trades and those wishing to enter the trade.

10.2 The Council is under no obligation to control the numbers of licences.

10.3 Taxi Rank Provision

Circular 3/85 has summarised many of the issues which the Panel should consider in reaching its decision on this policy. One of these considerations is the possible lack of rank provision for any additional vehicles in the event of de-limiting vehicle numbers. This is an issue which can be addressed by the Council in conjunction with the Highways Authority in providing more authorised ranks within the Borough.

However, it is accepted by officers that even with additional rank spaces, it is possible that there will not be enough spaces for every licensed hackney vehicle. It should however be considered that at any given time that many vehicles will be undertaking hirings, some will be fulfilling telephone bookings and a proportion will not be working. This is also largely dependent on how many additional licences are issued.

10.4 Earnings of Existing Drivers

The possible reduction of income is also a consideration for the Committee as with an increased number of vehicles plying for hire it is probable that at some times there will be less rank work or immediate hiring available per vehicle. Panel should also take note of the ruling in this area by Judge Woolf LJ stated in the case of R -v- Great Yarmouth Borough Council that:

"there is no basis for intervening on the grounds of the individual hardship of individual drivers".

"there is no requirement for a Council to protect the earnings of existing drivers."

10.5 Investment in the Vehicle

The removal of a quantity limit removes the premium for such licences, therefore releasing funds for investment in the vehicle that would otherwise be spent on purchasing a plate. It also removes a barrier to entry. Removal of the quantity limit with the proviso that all new licenses are dedicated to wheelchair accessible vehicles will affect the premium of current hackney carriage licenses

10.6 No Need for Surveys

If this option is adopted significant unmet demand issues do not apply. There would be no need to conduct regular unmet demand surveys. The possibility of legal challenge by applicants refused a licence on the grounds of a numerical limit would also be removed. The Committee should note that if this policy option is adopted, it can be challenged by way of judicial review. Although this could result in substantial costs being incurred to both the Council and the trade it would be a "one off" cost. Case law reduces the possibility of a judicial review.

10.7 Crime and Disorder Reduction

If the removal of the number restriction policy results in more taxis plying for hire as intended, this would assist people to leave the town centre without undue delay. This can help in reducing incidents of crime and disorder, particularly late at night and at weekends as an essential element of a range of measures being implemented by the Crime Reduction Partnership. Additionally, if the removal of the number restriction policy is approved it should result in an increased supply of fully licensed taxis which could reduce the number of illegal plying for hire offences being committed, a matter raised by the hackney carriage trade. It would also stop the engagement of taxis licensed by neighbouring authority being called in to supplement the service, as has occurred recently and illegal plying for hire by taxis licensed by neighbouring Council's.

10.8 Better Service to the Public

Adoption of this policy may provide a better service to the public as it should result in availability of more hackney carriages for immediate hiring at ranks or by being hailed in the street and a greater availability for disabled people. It also opens up the possibility of the provision of ranks serviced by hackney carriages outside of the town centre.

10.9 Better Service for People with Disabilities

The requirement that all new licences are issued for purpose built wheelchair accessible hackney carriages without an artificial limit will result in greater availability of hackney carriages for people with a wide range of disabilities. This policy on its own may not provide adequate provision and should be supplemented by a requirement that all hackney carriages licensed to carry 5 or more passengers entering the trade must be wheelchair accessible purpose built vehicles of the specification approved by the Head of Environmental Health.

10.10 Integrated Transport

The removal of the quantity limit, together with the greater provision of wheelchair accessible hackney carriages, facilitates transport integration.

11.0 **Procedure for Issuing New Hackney Carriage Plates**

11.1 The process for issuing any new hackney carriage proprietors licences must be seen to be fair and transparent, meeting the requirements of a wide range of passengers.

11.2 In order to achieve passenger requirements, licences will be issued only for vehicles that meet the needs of people with a wide range of disabilities, including those that need to travel in a wheelchair. The minimum specification of vehicles would be decided by the Environmental Health Manager, in consultation with representatives of disabled groups, who will compile a list of suitable vehicles. A provisional specification is given in Appendix 4.

11.3 People who have expressed an interest in hackney carriage proprietor licence availability will be contacted by writing to their last known address. Availability

of new licences will also be publicised in the local newspaper and in the taxi and private hire newsletter.

11.4 Those that wish to apply will be required to complete an application form which will include the information set out in Appendix 5, in addition to the standard information required of all new applicants.

11.5 All applicants will have to demonstrate that they meet the needs of disabled people through training and passing the DSA taxi test. A suitable training course has been discussed with the East Sussex Disabled Association (ESDA).

11.6 Committee should note that if it is decided to restrict the number of new licences and there are more applicants than licences available, a list of criteria will have to be compiled that will enable the Council to decide which applicants should be granted licences and those that will be refused. Any person refused a licence can appeal to the Crown Court.

12.0 Consultation

12.1 Consultation with representatives of interested parties was undertaken by the Task Group.

12.2 No further consultation has taken place in preparation of this report.

12.3 Further consultation recommended is included in this report.

13.0 Human Resource Implications

13.1 There are no financial implications to the Council as the licensing system is self-financing, other than those which may be incurred in the event of legal challenge. This has been covered at the relevant sections of the report. If the Committee decides to alter the current policy it may result in an increase of work for officers over the short term. This can be reduced by the prioritisation of duties.

14.0 Environmental Implications

14.1 It could also be argued that delimitation would lead to increased congestion on the roads and create further pollution in the Borough. It is unlikely that the delimitation of taxi numbers would result in any increased congestion on the town's roads. Additional taxis may complement the transport system in Eastbourne.

15.0 Human Rights Implications

15.1 Certain aspects of the Human Rights Act implications of the recommendation have been addressed in the body of the report.

15.2 Hackney carriage vehicles are possessions for the purposes of Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR), which is effective as law in the UK by virtue of the Human Rights Act 1998. Hackney carriage licences are also generally viewed as possessions for the purposes of ECHR.

15.3. Article 1 of Protocol 1 states that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law and the general international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.....".

15.4 Members must therefore be satisfied

- i. that the proposals amount to control of possessions, rather than deprivation, and
- ii. that there is a statutory power to carry out the proposals, and
- iii. that the proposals are necessary in the public interest, and
- iv. that the proposals are proportionate to the risks associated with not implementing them.

15.5 None of the proposals made in this report involve the deprivation of possessions. The proposal concerning the limitation or restriction of numbers of hackney carriages does not require the owners of existing vehicles or licences to cease their operation or to hand their existing licences over to the Council. Delimitation does however open up the existing market to potential competition, which may result in a devaluation of an asset which had achieved its value through the operation of a restricted market. Many licence holders have purchased their plates at considerable cost and if the current number restriction is removed this investment may be much reduced or worthless.

15.6 There is no legal requirement to protect the earnings of existing vehicle licence holders, as the Council merely regulates the issue of licences and is not responsible for the operation of any licence or business. The fact that the operation of a restricted trade inadvertently resulted in the price inflation for purchase of a proprietors licence is likely to have been an unintended consequence of the legislation which was primarily designed to open up the market unless a local authority could justify otherwise. No compensation provisions exist in the statute. Here members are required to balance the economic interests of existing licence holders with the general interests of the public. Achieving a fair balance between these interests does not require compensation in any case as it is a well established principle that restrictions on the use of property imposed in the public interest by general regulatory laws do not constitute a deprivation of property for which compensation should be paid. (Grape Bay Ltd -v- AG of Bermuda)

15.7 As outlined above, the statutory power to restrict the numbers of hackney carriages within a local authority area is contained within the Transport Act 1985 and subject to the requirement that there be proof of no significant unmet demand. Committee must also take into account and respond to the Government's Action Plan. Any council can choose to remove a number limitation policy at any time, subject to the proviso that the decision must not

of itself be Wednesbury unreasonable (R -v- Great Yarmouth Borough Council)

16 Human Resource and Financial Implications

16.1 There are staffing implications in progressing any option in this report. There are greater implications in retaining a limitation policy, because of the need to conduct surveys

16.2 There are no financial implications for the council as all the implementation costs will be recovered from the hackney carriage licensees through vehicle licence fees

17 Community Safety Issues

17.1 These are addressed in this report.

18.0 Application of Council Plans, Policies and Strategies

18.1 These documents apply to this report:

- Eastbourne Borough Council Corporate Plan
- Eastbourne Borough Council Crime Reduction Strategy
- Eastbourne Tourism Strategy
- Eastbourne Borough Council Regeneration Strategy
- East Sussex County Council Local Transport Policy

19.0 Conclusions

19.1 Committee must consider all the information, in particular the Government's Action Plan and Scrutiny Committee findings in deciding its preferred option. The core options are in paragraph 2.2 plus options for wheelchair accessible provision.

19.2 If it is resolved to retain a limitation policy the resolution should state the specific case for the resolution for publication

19.3 The outcome must be to enable an adequate supply of taxis for all passengers on a continuing basis.

Douglas Lindsay
Commercial Services Manager

List of Appendices

Appendix 1 – Scrutiny Committee Task Group Service Level Issues 6.1 and 6.2 and List of Representatives

Appendix 2 – DfT circular of 16 June 2004 entitled Government request to all councils restricting taxi licenses in England and Wales to review their Quantity Control policies and the Government's Action Plan for Taxi and Private Hire Vehicles in England and Wales

Appendix 3 – East Sussex Brighton and Hove Licensing Authorities Taxi and Private Hire Data Comparison

Appendix 4 – Provisional Specifications for Issuing New Hackney Carriage Plates

Appendix 5 – Application Information to be Supplied by Applicants for Hackney Carriage Proprietors Licenses

Background Papers:

The Background Papers used in compiling this report were as follows:

1. Eastbourne Hackney Carriage Study 2000
2. Crime & Disorder Act 1998, Section 17
3. Taxi and Private Hire Use in GB – DETR 2001
4. Travel by Taxi and Private Hire in GB – DETR 2001 and DFT 2003
5. Older People: Their Transport Needs and Requirements – DETR 2001
6. Health Survey for England 2001 – Joint Health Surveys Unit/DOH
7. Disability Discrimination Act 1995
8. Taxi and Private Hire Licensing Issues: Local Accessibility Policies for Taxis 2002
9. The regulation of taxi and private hire vehicles services in the UK - Office of Fair Trading 2003
10. DfT circular of 16 June 2004 entitled Government request to all councils restricting taxi licenses in England and Wales to review their Quantity Control policies and the Government's Action Plan for Taxi and Private Hire Vehicles in England and Wales

To inspect or obtain copies of background papers please refer to the contact officer listed above.