

# **TOWARDS OPTIMAL REGULATION IN THE TAXI INDUSTRY**

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## **INTRODUCTION**

This paper considers the rationale for regulating the taxi industry and examines the instruments which are used. A critique of the British licensing regime is then presented, and the paper concludes with a call for more informed regulation.

In October 1993, the UK Government published a Green Paper on "The Future of Taxi and Private Hire Services in England and Wales". It is largely accepted by the Government, Local Authorities and the taxi and hire car trades that the current legislative framework for licensing taxis and hire cars is in need of overhaul. The legal basis of the current regulations concerning vehicles available on the street for hire by the public is the London Hackney Carriage Act (1831) within the Metropolitan Police area, and the Town Police Clauses Act (1847) elsewhere. Since then, much has changed, notably the introduction of private hire vehicles or "minicabs", which are unable to ply for hire and must be pre-booked. This difference in the method of hiring, which is the key legal distinction between taxis and hire cars, is now largely neglected by the public due to the advent and application of radio control to both types of vehicle. Indeed, it is clear that the two markets which exist are not for taxis and hire cars, but for on-street hirings and telephone-booked trips, and the precise legal nature of the vehicle which meets these demands is usually unimportant for the consumer. Another important feature of these markets is the heterogeneity of the customers. They range from high income business travellers requiring access to/from airports and stations and for whom high service quality is essential, to low income non-car owning households undertaking shopping or local trips and for whom price is important.

The Green Paper sought answers to two questions: are there any features of the markets in which taxis and hire cars operate which suggest a need for regulation over and above the usual Road Traffic laws? If so, what are the appropriate policy instruments?

## **PURPOSES OF TAXI REGULATION**

Many areas of economic activity are subject to regulation at a local level by municipal authorities. In Britain, such local authority regulation is almost completely restricted to licensing and granting of permissions. The purpose of the controls is to ensure consumer protection and public health and safety, along with the protection of public morality; indeed, the fact that the first modern system of local government in Britain was established under the Public Health Act, 1875, demonstrates the primacy of such concerns.

Regulation of the taxi industry has a long history: 1635 is the date of the first recorded legislation in England, and 1650 in France. Early controls were largely concerned with public order and protection rather than the economics of the industry. In recent years however, economists have turned their attention to the taxi industry. The result has been to establish the optimal economic performance of the trade as a purpose of regulation, alongside public safety, consumer protection, accessibility and congestion management. Without pre-empting

later discussion, it would seem that each of these involves the regulation of different aspects of the trade as outlined below.

Public safety involves protecting the consumer and other road users in matters concerning the physical safety and suitability of the vehicle using stricter controls than those which apply as part of the general road traffic laws. It implies regulation of vehicle standards (such as size, age, road-worthiness checks, identification) and driver standards ("fit and proper person").

Consumer protection is concerned with preventing operators in a strong bargaining position from exploiting weak consumers. For example, a cab driver with a vacant cab and no other vehicle in sight has a situational monopoly and could, for a given journey, charge more than for an identical trip where the consumer had a choice of cabs. Or, if fares are regulated to prevent this happening, the driver could refuse a particular hiring because it was not sufficiently lucrative, having a lower than average chance of a balancing return hiring. The appropriate regulatory measures in these circumstances are compulsory metering and the setting of maximum fares and/or fare registration plus the advertisement of the fare on the side of the cab; the licensing of drivers and the plating of cabs; and a requirement to accept hiring ("compellability").

Congestion management. There may be wider traffic management reasons for wanting to regulate taxis. For example, in a congested town centre it may be useful to prohibit cruising and impose return to rank rules. This requires a rank designation policy which can cope with the number of cabs and possibly a restriction on the number of licences issued.

Accessibility. In recent years, a number of councils have tried to make taxis more accessible to people with disabilities; and in London, all newly-licensed taxis must be able to carry passengers in wheelchairs. To achieve this requires control of vehicle type.

Economic performance. There are a number of feasible price/service level combinations which could be sustained in a given taxi industry, but it is indeterminate as to whether the market will attain the best one. Regulators may want to control maximum fares, cab numbers and taxi ranks in order to be able to push the market towards the best state.

Public order. A first-in-first-out queuing rule for taxis at taxi ranks is almost universally upheld in Britain. Price competition between cabs on rank would require that cabs at any position in the queue be able to pull out. This may not always be physically possible, and might create antagonism between drivers, leading to unruly or unsafe behaviour. There is therefore a conflict in the rank trade between competitive pricing and public order considerations. In the situation where there are many consumers but only one taxi, the driver may want to take the passenger who wishes to travel furthest rather than the passenger at the head of the queue. This too could have undesired public order effects.

## **INSTRUMENTS OF TAXI REGULATION**

There are three important elements of regulation, namely the conferment of monopoly rights, the imposition of entry conditions and the control of fares.



The monopoly power granted to taxicabs is the exclusive right to ply for hire. Although (in England and Wales at least) this has no legally water-tight definition, it is usually understood as the right to search physically for business in the vehicle within a defined area, either at appointed places ("ranks") or on-street. Nowadays in Britain outside London, monopoly rights are also granted in almost every area to private hire cars, which, like taxis, are small vehicles available for hire by the public; but since they are not taxis, they are not permitted to ply for hire on the street and must be booked by customers through an office or agency. In order to exclude vehicles which are not available for hire by the public, it is necessary for legitimate vehicles to be readily identified. One almost universal requirement is the display of a licence plate in an approved fashion. Other conditions imposed by a local authority, may include requirements to use a particular distinctive vehicle or livery.

Other entry conditions aimed at ensuring public safety and consumer protection include regulations limiting the age of vehicles used, insistence that drivers have a thorough knowledge of the area, checking that drivers and operators are of good repute or technical vehicle specifications. In most jurisdictions, taxis offering service are compelled to carry the consumer anywhere within city limits. The effect of these quality regulations is to raise costs and therefore, other things being equal, to raise the prices faced by consumers, although there is the compensation of a higher standard of service. They also restrict the choice available to the consumer, removing his option of, say, a cheaper but smaller cab, or a cheaper but less knowledgeable driver.

Another condition on entry commonly applied is some form of quantity control, usually a restriction on the total number of licensed vehicles, or potentially a limit on the number of firms allowed to operate. If the latter involved the grant of an exclusive franchise to one operator, then that operator would be able to use his monopoly power to select the most profitable number of cabs. This was close to being the case in Chicago in the 1960s; and the city of Los Angeles is divided into sectors with one firm given exclusive rights to that sector. In the case of numerical restriction, a binding entry constraint can be expected, all things being equal, to raise prices and reduce quantities below those which would otherwise obtain. Other barriers to entry which can have a similar effect include requirements to provide twenty-four hour coverage, or coverage of the whole licensing area, or a condition that operating a taxi be the sole or main occupation of the applicant.

Fares control can take two forms, namely specification of the level of fares and regulations concerning the fares structure. Control of the level of fares can range from laying down the maximum permissible fare or setting a minimum fare to specifying the actual fare which must be charged. Considering the case of the administered fare, if it is set too low, we would expect firms to leave the industry. If it is set too high, and demand is price inelastic, we would expect industry profits to rise and therefore either the number of cabs to increase or, if there is a limit on the number of licences, a scarcity rent to accrue to the holders of licences. Control of the fares structure governs such things as variability of fares throughout the day, the relationship between time spent and distance travelled, and extra charges for multiple occupancy or luggage.

In practice, the instruments are used to determine what output is produced, who produces it, how it is produced, how much is produced, what price is charged. The regulatory agency may determine:

the industry structure, for example, awarding a monopoly franchise, or requiring membership of a radio dispatch circuit of a minimum size;  
the technology which must be used by producer, such as vehicle type regulations which require that the vehicles used be accessible to people in wheelchairs;  
the products which are produced, such as exclusive ride taxi service, shared ride taxi service, radio dispatch service;  
the prices, to prevent monopoly exploitation and/or the ignorant consumer, and to ensure a fair living for those in the trade;  
the providers, to ensure the financial probity and good character of operators and drivers.

## **BRITISH EXPERIENCE OF REGULATION**

The first general taxi licensing legislation in England and Wales outside London was the Town Police Clauses Act of 1847, under which various permissive powers were granted to local Commissioners, including

"The Commissioners may from Time to Time license to ply for hire....such Number of Hackney Carriages....as they think fit." (10 & 11 Vict. c.89 s.37)

As well as this discretion granted to local authorities to restrict the number of taxis in this way, the Act established the essentials of the taxi licensing system which still apply, governing issues such as the establishment of taxi ranks, regulating what taxis and drivers should look like (up to a point), the regulation of fares (for time and distance) and their display, and regulating the physical/mechanical characteristics of taxis. In practice, not all licensing authorities had regulations for each aspect of taxi operation, and regulations differed (and differ) considerably from area to area. Note that, since licences are issued (or not) to individual applicants, there is no possibility of the authorities determining the industry structure directly.

In Britain, regulators dealt almost exclusively with hackney carriages until 1976. Not until the passage of the Local Government (Miscellaneous Provisions) Act in that year were private hire cars officially recognised as existing. (Prior to that date, a number of local authorities had promoted private Acts to permit them to regulate the activities of non-taxi paratransit vehicles; but there was no general permissive legislation such as the 1847 Act.) The contrast in the *modus operandi* of vehicles available for hire on the street ("la voiture de place") and those which had to be booked through an office or at the owner's business premises ("la voiture sous remise") was readily made by Napoleon III and his Préfets in mid-nineteenth century Paris. This difference in the method of hiring, now largely neglected by the public due to the advent and application of radio control to both taxis and hire cars, is the key legal distinction between the two modes.

Part II of the Local Government (Misc. Prov.) Act clarified, updated and extended the law concerning the regulation of vehicles made available for hire to the public. Under its terms, a district council which had adopted the provisions of the 1847 Act was able also to adopt the 1976 Act, and was thereby granted permissive powers to make similar regulations for private hire cars as were in force for taxis, except that a local authority was not allowed to control



the fares charged by private hire drivers, nor were they allowed to refuse the grant of a private hire car licence for the purpose of limiting the number of private hire cars.

The apparent anomaly created by the existence of a relatively unregulated industry where prices and quantities are determined by market forces, and the continued tight regulation of the taxi sector was one of the driving forces behind the inclusion of clauses concerning taxis and hire cars as an adjunct to the 1985 Transport Act. The clauses dealing with taxis and hire cars fall into two distinct parts, the first dealing with shared taxis and the operation of taxis as Public Service Vehicles, thus attempting to blur the boundaries between hire vehicles and buses, and the second concerning taxi licensing in general and control of numbers in particular. By removing the previous discretion granted to local authorities to determine the number of taxis, such that an application for a hackney carriage licence may be refused for the purpose of limiting the number of hackney carriages if, but only if, the person authorised to grant licences is satisfied that there is no significant demand for the services of hackney carriages which is unmet, the Transport Act has caused the number of taxis licensed in some areas to increase at a very great rate; in other areas, authorities have maintained previous levels of service. In all areas, however, the situation as regards hire cars is virtually unchanged, and there are still no entry restrictions.

The intention of the Transport Act was clearly to promote the role of market forces in determining the number of vehicles available for hire by the public, the expectation being that there would be an increase in the supply of vehicles and hence an improvement in the quality of service offered through reduced passenger waiting times. Unlike in the case of the bus industry, where the Transport Act removed both the entry and fare regulations, the issue of taxi fare control is not addressed and, under the current legislation, although councils are not required to control fares, most do so. The result of the legislation is that there are four broad policies which may be adopted by local authorities:

- (a) no fare regulation, no entry restriction (market solution)
- (b) no fare regulation, entry restriction
- (c) fare regulation, no entry restriction
- (d) fare regulation, entry restriction.

Policy (b) is extremely rare, and (a) typically occurs only in the most rural districts. The Transport Act has had relatively little effect on whether a council regulates fares, and so the British evidence on the effects of deregulation is limited to those councils which have changed from policy (d) to policy (c).

Our work indicates that although 85% of authorities have issued (or been prepared to issue) new licences since 1986, over half are still maintaining numerical limits. Thus, further compulsory deregulation will affect a larger number of authorities than heretofore. The premium attached to ownership of a plate (where this exists) increased by 13% in real terms between 1988 and 1991, suggesting that in districts where entry controls remain, the market position of existing licence holders appears to have been strengthened.

The combined growth of taxi and hire car numbers has not been completely uniform, although growth everywhere has exceeded the growth rates over the early 1980s. Clearly, hire cars are regarded as an inferior substitute, since their numbers have risen much faster in districts which maintain controls compared with those which have deregulated since the Act. Even in the



latter districts, though, as well as in districts which have always been deregulated, there has been some growth in hire car numbers, suggesting that there is still a role for this type of vehicle. There is clearly a demand from the operators and hence, presumably, the public for the private hire vehicle; it seems therefore that a two-tier licensing system is to be preferred, especially if fare controls continue to impact differentially on the on-street and pre-booking sectors.

The evidence on fares is mixed. On the one hand, it appears that there exists the potential for the trade to push up fares in recently derestricted markets; on the other hand, there is some evidence to suggest that fares have also risen in regulated districts. Whatever happens to general licensing policy, there is a need to ensure that the level and structure of regulated fares is appropriate. If fares are set correctly, deregulation of entry can be beneficial: there is no evidence that this has happened since the 1985 Transport Act. When it comes to the fare levels, it is clear that there is little scientific basis to their determination. Most authorities use a criterion of "reasonableness" of both a proposed fare increase and the absolute fare levels. Factors taken into account include changes in the retail prices index, changes in the cost of fuel and fares in similar or neighbouring districts. Only two districts in a sample of 319 considered the effects on demand; and, maybe more worryingly if the market-determined fares in the private hire sector are anything like efficient, only four authorities made comparisons with private hire fares. On structure, the relationship between daytime and nighttime fares is all over the place; there is certainly no consideration of the different elasticities of demand which exist in these markets.

Regarding vehicle quality enforcement, a lower proportion of authorities which have deregulated since the Act specify a desirable maximum age for vehicles, and a much lower proportion of deregulated districts as a whole have a rigorous policy on road-worthiness checks. Seventeen per cent of deregulated authorities employ no checks at all, compared with less than two per cent of restricted districts. Further deregulation of entry may lead to greater pressure on the trade to cut quality. If quality is important to the regulators, more resources will need to be devoted to enforcement.

The number of district councils imposing the Metropolitan Conditions of Fitness (MCF), which require the use of a purpose-built vehicle, has been increasing over the years. The economic significance of this is that it raises the entry barriers to the hackney sector since an existing private hire vehicle cannot simply be replated as a hackney. There is, though, no evidence of councils which have deregulated entry being more likely to introduce these conditions: it might have been thought that councils would introduce this policy to reduce the demand for new hackney plates. Indeed, Fairhead (1990) refers to the adoption of free entry but with MCF as "controlled deregulation".

It has also been suggested that relaxing entry controls might contribute to traffic problems in town centres, since failure to provide additional rank capacity leads to increased cruising. Evidence on the number of rank spaces per hackney indicates that provision in deregulated districts is about half that in restricted districts. It is clear that in some circumstances, further entry deregulation could add to problems of congestion and illegal parking.

We have found little evidence that the Transport Act has been successful in stimulating new types of taxi service, such as shared taxis and taxibuses except in specialised circumstances.



Certainly, it seems that a formal shared taxi scheme is unlikely to take off, although impromptu shares late at night will presumably continue.

Overall, we find that the Transport Act has had limited success in achieving its objectives. In restricted markets, a substantial and increasing licence premium is enjoyed by licence holders. In deregulated districts, we see generally lower standards of quality enforcement and severe shortages of rank capacity. There has also been substantial expenditure by local authorities seeking to maintain their position by commissioning studies of unmet demand. The single criterion of passenger waiting times as a basis for determining regulatory policy is likely to perpetuate these problems. The Green Paper proposals are an attempt to promote discussion prior to such a comprehensive review. However, with compulsory entry deregulation being the only firm promise, and with no requirements as yet to ensure that fares are set at appropriate levels, the evidence so far is that the proposed reforms are unlikely to lead to substantial benefit to consumers in terms of the number of vehicles available for hire or the development of innovative services, and may lead to disbenefits in terms of lower quality and increased congestion in town centres.

## **AN APPROPRIATE REGULATORY REGIME**

### **Regulatory Principles**

We take as the starting point that there should only be regulatory intervention in the case of market failure and, furthermore, that it is incumbent on those who would regulate to demonstrate how the regulations which are applied remove or reduce the size of the market failure. Concerning the actual regulations used, there are perhaps three criteria by which we can assess their suitability: acceptability, proportionality and targeting.

To be successful, regulation must firstly be acceptable to all the parties concerned; so in the case of taxis and hire cars, consumers (the public), producers and regulatory authorities need to agree as to the desirability of the controls. If the public finds it unacceptable that they may not hire on-street a vehicle whose driver is willing to carry them just because the vehicle is a private hire car and not a taxi, then there is a *prima facie* case for a single-tier licensing system. Secondly, the controls used should be proportionate to the scale of the problem and thus determined by the nature of the market failure they are supposed to be addressing. Given that the safety of the vehicle is largely determined by the mileage it has undertaken and the maintenance it has received, there should be no distinction in the standards required of taxis and of private hire vehicles. Similarly, the drivers should be subject to the same checks that they are a "fit and proper person". However, it seems that there is a stronger (though arguably still not overwhelming) case for fare control in the on-street hiring sector than in the pre-booking sector; in this latter case, customers can shop around more readily and are more likely to know what a "fair" fare is. Any licensing regime must take account of the potential requirement to treat the two sectors differentially. Finally, there should be targeting; each regulation should have its purpose or purposes clearly defined and so, if a particular objective can be achieved more efficiently by one type of regulation, that should be used. It seems to us that the focus of regulation should be on quality rather than quantity, since all the legitimate objectives of taxi regulation can be achieved by quality controls and appropriate fare

setting. If this is done, the need for quantity control, and the distorting side-effects which almost inevitably follow, is removed.

As well as the nature of the regulations, we need to assess the regulatory process, that is how the regulations are determined and applied. In particular, the process should be flexible, informed and transparent. Flexibility requires that regime adopted can change according to circumstances, particularly the expansion of economic activity and changes in population. Does it still work when the underlying conditions change? The evidence is that control of numbers is a relatively inflexible device, incapable of being changed speedily enough in response to changes in market conditions. Flexibility would also dictate that regulations be devised and enforced at local level.

Informed regulation means using evidence to determine appropriate regulatory policy. There should therefore be a requirement on the regulators to demonstrate that the fares they set are appropriate and preferable to those which might be expected to prevail in a deregulated market. Transparency requires that the criteria used by the authorities be published and applied consistently.

### **Regulatory Practice**

We now consider how various approaches to licensing compare in terms of achieving the stated objectives. The options are:

- A. Minimal regulation, simply a registration scheme, with the focus on the suitability of the driver. There would be no quality controls on vehicles greater than those for private motoring.
- B. Regulation of the on-street hiring sector, but no controls at all on the pre-booking sector. This is the current situation in London.
- C. Two tier system, with different regimes established for the on-street and pre-booked sector.
- D. One tier system, with all vehicles for hire subject to the same controls.

It is necessary to bear in mind that each option may rule out certain policy instruments thus affecting its ability to achieve a given objective. Table 2 summarises the discussion.

Public safety. Public safety is maximised with option C, where operators who maybe do not wish to operate a purpose-built vehicle or want the freedom to set their own fares are still licensed. Option D may encourage illegal operation of potentially unsafe vehicles for hire, but the number of such vehicles is likely to be smaller than if private hires are a legitimate but unlicensed form of operation (option B). Option A can afford no higher safety than exists for ordinary road users, and may offer even less.

Consumer protection. Once again, option C offers the greatest protection, with the maximum number of vehicles and drivers being licensed and thus made accountable.

Accessibility. Until such time as a fully-accessible vehicle is available at the same cost and with the same degree of passenger comfort as an ordinary saloon car, a mixed fleet of vehicles



is desirable. Under option C, the licensing authority can insist (say) on wheelchair accessibility for taxis and accessibility improvements such as swivel seats for hire cars. Option B removes the control over the hire car sector, and option D at the moment means effectively either all purpose-built vehicles or all saloon cars.

Environmental protection. The current *modus operandi* of the trades, with taxis based in town centres and hire cars more often based in suburbs (at least in larger towns and cities) would continue under options B and C. Option D, by removing the operator's choice to have a vehicle which is unable to ply for hire, may cause increased operation in town centres; but a licensing system (with the possibility of suspension or revocation as a disciplinary measure) may be more effective than option A in preventing overcrowding at taxi ranks.

Economic performance. We have argued that fare control is essential to promote economic efficiency in the on-street and rank hiring market, but less so in the telephone booking sector. The existence of a vehicle whose fare is not regulated (either licensed or legitimate unlicensed private hire) provides a check on the fares which a regulator can set, and allows multiple price/availability combinations. Option D, if fares are regulated, is likely to remove this possibility, such that the *de jure* maximum fare set becomes the *de facto* fare charged. Option A is likely to lead to a suboptimally high fare/availability outcome.

Public order. The scope for illegal operation is minimised if both taxis and hire cars are regulated, and is lower under option D than option B. Likewise, compellability and the law of contract are more easily enforced the more vehicles come under the scope of regulation.

In the light of this, it seems to us that option C is the best, B is second best, D is third best and option A the worst.

Table 1: Ranking of Regulatory Options by Achievement of Objectives.

Policy option → Objective ↓	A. Minimal regulation	B. No private hire licensing	C. Two tier system	D. One tier system, private hires abolished
Safety	4	3	1	2
Consumer protection	4	3	1	2
Accessibility	4	2	1	3
Environment protection	4	1=	1=	3
Economic performance	4	1=	1=	3
Public order	4	3	1	2

Ranking of options by objective: 1, best option; etc.

## CONCLUSIONS

We have argued that the objectives of regulation are best met by a scheme which brings as many vehicles as possible into a licensing system, and where maximum fares for on-street or rank hiring are controlled. Advocates of a one tier system should note that, even in districts which currently have free entry to the taxi sector, there remains a demand by operators for the private hire car as a separate entity, especially in districts where taxi fares are regulated, since private hire operators have the scope to offer a range of services at a range of prices. However, private hire must not be seen as the easy option. Driver and vehicle requirements should be as stringent for hire cars as they are for taxis (with the exception of imposing Metropolitan Conditions of Fitness, of course) so that quality is enhanced. Indeed, the key to any successful modern Act must be its promotion of quality. The current vehicle quality regulations, which permit some discretion, are probably adequate, although standards must be enforced; this will probably require greater resources than are currently provided and hence higher licence fees. The driver quality regulations are less satisfactory; many areas still have no knowledge test, in other areas the requirements for private hire drivers are much more lax than those for taxi drivers. A specific knowledge requirement as mentioned in the Civic Government (Scotland) Act, along with physical suitability and lack of relevant criminal record should replace the rather nebulous concept of a "fit and proper person". All in all, the requirement must be an Act which focuses on quality. Councils should adopt a proper methodology in their fares determination procedures, adopt more proactive enforcement policies and allow the consumer to gain the benefits which liberalising entry can bring. However, it is vital that the interrelationship between fares and service levels be taken into account. The Civic Government (Scotland) Act 1982, until amended by the Transport Act 1985, allowed such consideration:

"...a licensing authority shall refuse an application to grant a taxi licence if, in their opinion, granting it would have an adverse effect on the general availability to the public in their area of the services of taxis or the cost of providing those services" (section 10 subsection 3).

Under this formulation, the regulators had the discretion, indeed the duty, to consider a choice between a high price/high availability service or a low price/low availability service. Section 16 of the 1985 Transport Act implicitly pushes regulators in the former direction, which is unlikely to be optimal unless customers place a very high value on waiting time. The flexibility granted by the dual criterion of availability and cost would welcome as long as it was not abused.

### **We therefore recommend:**

- (a) the maintenance of a two tier licensing system at a local level;
- (b) regulators should be required to pay much more attention to fare setting, in particular determining whether the level and structure of fares is in the public interest;



- (c) fares should not be regulated in the hire car sector. This has the added advantage of acting as a check on the actions of the regulators as they set the fares in the on-street hiring sector;
- (d) vehicle quality should be achieved through a strong monitoring and enforcement policy rather than through highly restrictive vehicle type control;
- (e) quality control of drivers and operators should be maintained;
- (f) driver quality should be enhanced by making the full criminal record of applicants available to the regulator in view of the special nature of the relationship between drivers and their customers;
- (g) subject to (b), (c), (d), (e), and (f), quantitative entry restrictions should be progressively relaxed;
- (h) monitoring of the market - fares, service quality, load factors, vehicle, driver and operator quality - is an important regulatory function and should be given much greater prominence.

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