

Name of Committee:	Public Protection Licensing Committee
Date of Meeting:	05/02/2019
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	Welsh Government Consultation on Improving Public Transport
Purpose of Report:	To provide details of the Welsh Government proposals for the licensing of taxis. Officers of the Shared Regulatory Service will provide a presentation to elected members at Committee to elicit views on the proposals.
Report Owner:	Director of Environment and Housing
Responsible Officer:	Miles Punter
Elected Member and Officer Consultation:	None
Policy Framework:	This is a matter for decision by the Public Protection Licensing Committee.
<p>Executive Summary:</p> <ul style="list-style-type: none"> • The Welsh Government is seeking views on their proposals to reform the taxi and private hire regime in Wales, particularly with regard to standards, enforcement and information sharing. • This report outlines the broad issues that the Welsh Government have identified with the current regime and their proposals to deal with the issues. • This report seeks approval for the Head of the Shared Regulatory Service to draft a response to the consultation as regards taxi licensing, and incorporate that response into the full Cabinet reply. 	

1. Recommendation

- 1.1** Note the contents of the report.
- 1.2** To authorise the Head of Shared Regulatory Services to draft a response to the consultation as regards taxi licensing, and incorporate that response into the full Cabinet reply.

2. Reasons for Recommendations

- 2.1** To provide the Committee with information on developments for public transport in Wales
- 2.2** As the licensing of taxi and private hire vehicles is within the remit of the Shared Regulatory Service, they can provide input to the consultation based on the knowledge and experience of officers.

3. Background

- 3.1** As part of the new devolved settlement for Wales, introduced through the Wales Act 2017, the licensing of taxis, private hire vehicles, drivers and private hire operators became a matter within the legislative competence of the National Assembly for Wales.
- 3.2** Following on from consultations undertaken by the Law Commission from 2011-2014, and a Welsh Government consultation in 2017, the Welsh Government are considering proposals to reform the taxi and private hire licensing regime in Wales.
- 3.3** The Welsh Government published a White Paper on 10 December 2018 which outlined a number of proposals to legislate for reforming the planning and delivery of local bus services and licensing of taxis and private hire vehicles. This document also included a further consultation, by way of a questionnaire, on the proposed changes to the licensing framework. Part 2 of the White Paper is contained in Appendix A.

4. Key Issues for Consideration

- 4.1** The Welsh Government is seeking views on proposals for reforming the planning and delivery of local bus services in Wales, together with the licensing of taxis and other private hire vehicles. Part 1 of the White Paper concerns bus services across Wales; this matter falls outside the remit of the Public Protection Licensing Committee. Consequently, a response to Part 1 of the consultation will be considered and submitted by the Cabinet.
- 4.2** Part 2 of the consultation concerns taxis and private hire vehicles (PHV) in Wales; those matters are reserved to the Public Protection Licensing Committee and are set out for consideration below.

National Standards

As a taxi or PHV can undertake pre-booked work outside of the area in which it is licensed, applicants may be incentivised to apply in an area where standards are

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lower and then operate in an area whose standards they do not meet (and where enforcement action cannot be taken against them).

The Welsh Government is proposing to confer a power on the Welsh Ministers to create national standards, which the licensing authority will have to have regard to when issuing licences. This will mean that all taxis and PHVs in Wales would need to meet a common set of standards in order to obtain a licence. These standards would subsequently be set by regulations and so there will need to be further consultation on their content if the proposal is agreed.

Enforcement

The law currently only allows local authorities to suspend, revoke or refuse to renew a licence that they have issued. Licensing officers cannot undertake enforcement against vehicles, drivers or operators licensed in another area. Due to the modern nature in which taxi and private hire vehicles operate, the Welsh Government is proposing to allow a licensing authority to take enforcement action against any vehicle operating in its area.

Information-sharing

As there is currently no legal requirement for local authorities to share information with one another which might assist them in their decision-making. For example, if a driver is refused a licence or has their licence suspended or revoked by one local authority, it can be difficult for the remaining twenty one local authorities to obtain that information. The Welsh Government is proposing to create a duty on the Welsh Ministers to create a database, or make other information-sharing arrangements, to ensure that relevant information can be shared for the purposes of safeguarding.

4.3 Joint Transport Authority

It is the view of the Welsh Government that the best way of underpinning improvement in all three of the above areas is to centralise the licensing regime. In order to achieve this they propose that the existing taxi and PHV licensing functions of the twenty two Welsh local authorities should be redirected to a single national licensing authority.

4.4 The Welsh Government are therefore seeking views on a further proposal to transfer all licensing functions which exist in law (including licencing, fee- and fare-setting, enforcement, hearing appeals arising from licensing decisions, prosecutions and deciding matters such as whether to apply quantity controls to taxis) away from local authorities and into a Joint Transport Authority. This is referred to in the White Paper as Option A.

4.5 The Welsh Government recognise however the significant scale of Option A and the potential for unintended consequences. Therefore, the White Paper also outlines an alternative Option B; to introduce provisions to deal with the issues outlined in the three areas above, but to retain the current 22 Welsh licensing authorities.

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4.6 The proposals outlined in this report are broad in nature and may be subject to further consultation.

5. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

5.1 Integration – Taxis form part of the public transport network with environmental and economic benefits for the wellbeing goal of A Prosperous Wales

6. Resources and Legal Considerations

Financial

6.1 There are no immediate financial implications arising directly from this report. However, should the Welsh Government decide to transfer the licensing of taxis away from the Council to a new Joint Transport authority, there may be financial consideration for the Council.

Employment

6.2 None

Legal (Including Equalities)

6.3 The licensing of taxi and private hire services are now a devolved settlement for Wales, introduced through the Wales Act 2017.

7. Background Papers

The Law Commission - Taxi and Private Hire Services Report (May 2014)

Welsh Government Consultation Document - Taxi and Private Hire Vehicle Licensing In Wales (June 2017)

Welsh Government Consultation Document – Improving Public Transport (December 2018)

Part 2 – Taxis and private hire vehicles (PHV)

Introduction

- Taxi and PHVs are an essential aspect of the Welsh transport network. Taxis and PHVs operate, often in rural or remote areas, where delivering rail or scheduled bus services may be problematic, either because of local geography or because there isn't enough local demand to support regular scheduled services. Their point-to-point services can facilitate social inclusion for disabled people, and be a lifeline for those who do not own their own car. Even where an area is well-served by rail or bus during the day, taxis and PHVs may be the only form of transport available to the public during the night.
- As at 25 October 2018, there were approximately 5,000 taxis and 4,900 PHVs in Wales, and 12,000 licensed taxi and PHV drivers¹⁰. In 2011, Wales had the highest proportion of people (75.2%) outside of London commuting to work by car, taxi or motorcycle¹¹.
- However, the legislative framework which governs taxis and PHVs does not reflect the industry as it is today.
- Taxi and PHV definitions:
 - **Taxis** – traditionally known as hackney carriages, can pick up passengers from ranks and be hailed from the street. They can also undertake pre-booked work (by telephone, in person or via technology); and
 - **PHVs** can only undertake pre-booked work (by telephone, in person and increasingly via technology).
- Taxis and PHVs are a regulated but decentralised industry in Wales. A taxi cannot operate unless both the vehicle and its driver are licensed by a local authority under the Town Police Clauses Act 1847 (TPCA 1847). PHV vehicles, drivers and operators cannot operate without licences granted under the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA 1976). These two Acts are the main pieces of legislation in this area.
- Following on from consultations undertaken by the Law Commission from 2011-2014, and a Welsh Government consultation in 2017, work has been underway to consider how we might reform the taxi and PHV licensing system in Wales. We have listened to feedback from passengers, local authorities, taxi drivers and interest groups about the current provision of services. It is common ground that the law is outdated and that change is needed.

¹⁰ <https://www.gov.uk/government/statistical-data-sets/taxi01-taxis-private-hire-vehicles-and-their-drivers> (last visited 12 November 2018).

¹¹ http://www.ons.gov.uk/ons/dcp171766_299766.pdf (last visited 13 November 2018).

What are the issues?

- The legislative framework which governs taxis and PHVs is based on a localised system (services being licensed to be provided within local authority borders), but that is at odds with modern technology and taxi and PHV working practices. When the legislation was enacted in 1847 and 1976, taxis were horse-drawn carriages and radio signals for PHVs were unlikely to reach beyond the licensing authority borders. The legislation envisaged people going to their local PHV office, or telephoning it by landline, in order to pre-book a car. In 2018, with the internet, mobile 'phones and smartphone apps, the picture is clearly very different. In practice, taxis and PHVs undertake pre-booked work outside of their licensing area. The legislation did not envisage this; it provided for standard-setting, enforcement, and safeguarding to take place only within a local authority's borders. The mismatch between the legislation and modern practice is evident in the following problems:
 - **Inconsistent standards** – where local authorities have different licencing standards resulting in different costs for operators and variable safety and quality standards for passengers;
 - **Enforcement** – there is no statutory mechanism for enforcement against vehicles licensed in a different local authority area from where an infringement has occurred; and
 - **Safeguarding** – the ability to obtain a licence in one authority and work in another presents a risk when local authorities do not have the means to share safeguarding information.
- For these reasons, there is a need for reform to develop a licensing framework that reflects current working practices.

What we want to achieve

- We consider that there are three areas that could be improved, to align the licensing system with the technological reality. We are not proposing to alter the current position on out-of-area working. Our proposals tackle the following three areas:
 - Proposal 1: the variation in taxi and PHV standards between the twenty two local authorities in Wales;
 - Proposal 2: the inability to take enforcement action against vehicles which are operating "out-of-area"; and
 - Proposal 3: the difficulty in sharing relevant safeguarding information.
- Our view is that the best way of underpinning improvement in all three areas is to centralise the licensing regime.
- Proposal 4: that the existing taxi and PHV licensing functions of the twenty two Welsh local authorities should be redirected to a single national licensing authority. That national authority would be the joint transport authority (JTA), which we have referred to previously in the context of our proposals for bus reform in pages 16 –

20 of this paper. The purpose of the JTA in relation to taxis and PHVs would be to create a standardised licensing area encompassing all of Wales, and to streamline enforcement and information-sharing.

- Our preferred option constitutes implementation of proposals 1 to 3 alongside proposal 4 – Option A.
- We are also considering Option B: implementation of proposals 1 to 3 without proposal 4 i.e. without using a JTA as the delivery vehicle. This would involve creating national standards that the local authorities must follow; extend the existing enforcement powers of local authorities; and creating a mechanism by which local authorities can share relevant information. The sections below set out the proposals in more detail and seek your comments.

Proposals

National standards

The Welsh Government is proposing to set national standards for taxi and private hire vehicle licensing.

All taxis and PHVs in Wales would have to meet these standards in order to obtain a licence. These standards would subsequently be set by regulations and so there will be further consultation on their content.

Current legislative position

- Taxis and PHVs are a regulated but decentralised industry in Wales. A taxi cannot operate unless both the vehicle and its driver are licensed by a local authority under the Town Police Clauses Act 1847 (TPCA 1847). PHV vehicles, drivers and operators cannot operate without licences granted under the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA 1976).
- Licencing Criteria - Local authorities are allowed a wide discretion when licensing vehicles, drivers and operators which is summarised as follows:
 - **Taxis** of any kind or description can be licensed and licence conditions can be imposed by the local authority¹². The MOT is the only common vehicle requirement¹³;
 - **PHVs** – to be licensed a local authority must be satisfied that the vehicle is suitable for usage as a PHV, that its mechanical condition is suitable, that it is safe and comfortable, and that it has valid insurance¹⁴. Other than the common standard of MOT requirements, these terms are not legally defined. Local authorities are guided in relation to vehicles by Best Practice guidance issued by the Department for Transport¹⁵; and
 - **Drivers and Operators** - A “fit and proper person” test is applied to taxi drivers¹⁶, PHV drivers¹⁷ and PHV operators¹⁸. However, there is no legal definition of what is meant by a “fit and proper person”. This is left to local

¹² Section 37 TPCA 1847 and section 47 LGMPA 1976 respectively.

¹³ This is contained in the Road Traffic Act 1988.

¹⁴ Section 48 LGMPA 1976.

¹⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/212554/taxi-private-hire-licensing-guide.pdf

¹⁶ Section 51 LGMPA 1976.

¹⁷ Section 59 LGMPA 1976.

¹⁸ Section 55 LGMPA 1976.

authorities to determine, with the assistance of the Best Practice guidance¹⁹. Taxi and PHV driver licence applicants are required to disclose spent and unspent convictions²⁰, however there is variation in the way in which local authorities deal with criminal records. Some local authorities carry out an Enhanced Disclosure and Barring Service (DBS) check (which records spent and unspent convictions, cautions, reprimands, warnings and any relevant non-conviction information held on the Police National Computer) and a check of the barred list (which lists those legally prevented from working with children or vulnerable groups). In addition, the Law Commission noted that there is considerable variation in England and Wales as to how the outcome of those checks is interpreted against the “fit and proper person” criteria²¹. In Wales, sixteen local authorities conduct both checks and six conduct only an Enhanced DBS check²². Similar discrepancies arise in relation to medical fitness checks²³.

Case for change and desired outcomes

- Variation in local standards can become an issue when services are provided across local authority borders (i.e. “out-of-area”). Taxis may undertake pre-booked work in any area, and PHVs may also be provided that the “triple licensing requirement”²⁴ is met.
- There are twenty two local authorities in Wales, and therefore twenty two different approaches to vehicular suitability (beyond the basic MOT requirements) and to what “fit and proper” means. That has led to, sometimes considerable, variation in standards and a number of problems flow from that.
- As a taxi or PHV can undertake pre-booked work outside of the area in which it is licensed, applicants may be incentivised to apply in an area where standards are lower and then operate in an area whose standards they do not meet (and where enforcement action cannot be taken against them). This exposes passengers in different parts of Wales to different standards and levels of risk, which is difficult to justify. It also undermines local authorities that have taken steps to ensure that their residents can enjoy higher standards, and may irritate both drivers licensed in that area who have made an effort to meet those standards, and those who are unable to obtain a licence in that area because they do not meet the higher standards. Varying standards also mean that drivers across Wales bear different costs when carrying on their trade, which again is difficult to justify.
- We believe that the people of Wales are all entitled to minimum standards, regardless of where they live. National standards would represent a minimum threshold, with higher standards permitted if desired.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/212554/taxi-private-hire-licensing-guide.pdf

²⁰ Regulation 4(1) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

²¹ Local Government Regulation, Taxi and PHV licensing criminal convictions policy (September 2010).

²² <https://www.gov.uk/government/statistical-data-sets/taxi01-taxis-private-hire-vehicles-and-their-drivers> (last accessed 13 November 2018).

²³ Local Government Regulation, Taxi and PHV licensing criminal convictions policy (September 2010).

²⁴ The requirement that the vehicle, driver and place of booking all fall within the same licensing authority area.

- The Welsh Government has committed its aim in the Prosperity for All: economic plan²⁵ that all taxis in Wales will have a zero carbon footprint within 10 years. This is because of the environmental and public health impacts of vehicular emissions, which are now well-understood²⁶. We believe that a national standard should apply which specifies requirements for the vehicular emissions of taxis and PHVs.

Proposed legislative change

- We are proposing to confer a power on the Welsh Ministers to create national standards, which the JTA or local authority will have to have regard to when issuing licences. This will mean that all taxis and PHVs in Wales would need to meet the standards in order to obtain a licence. These standards would subsequently be set by regulations and so there will need to be further consultation on their content if the proposal is agreed.

Q22. Do you agree with our proposal to introduce national standards which will apply to all taxis and PHVs in Wales? Yes/No? Please explain your answer.

Q23. Are there any matters which you would like to see contained in any national standards?

Q24. Are there any matters which you think should be excluded from any national standards?

Q25. What practical obstacles might there be to setting common national standards for both taxis and PHVs?

Q26. What would be the best approach for determining the content of national standards?

Q27. Please provide any other comments or proposals around national standards that were not covered in the above questions.

²⁵ <https://gov.wales/topics/businessandconomy/economic-action-plan/?lang=en>

²⁶ <http://www.euro.who.int/en/health-topics/environment-and-health/Transport-and-health/data-and-statistics/air-pollution-and-climate-change2> (last visited 13 November 2018).

Enforcement

The Welsh Government is proposing to allow a licensing authority to take enforcement action against any vehicle operating in its area.

Current legislative position

- Local authorities have the power to suspend, revoke or refuse to renew a hackney carriage or PHV vehicle licence²⁷, a hackney carriage or PHV driver's licence²⁸, and a PHV operator's licence²⁹. These sections of the 1976 legislation are very broad. They allow suspension, revocation or refusal to renew on the following grounds:
 - The vehicle is unfit for use (vehicles only);
 - An offence is committed under TPCA 1847 or LGMPA 1976 (vehicles, drivers and operators);
 - Non-compliance with TPCA 1847 or LGMPA 1976 (vehicles, drivers and operators);
 - Conviction of an offence involving dishonesty, indecency or violence (drivers);
 - Conviction of an immigration offence or requirement to pay an immigration penalty (drivers and operators);
 - Conduct which appears to render a person unfit to be an operator (operators only);
 - Material changes in the operator's circumstances (operators only); or
 - Any other reasonable cause (vehicles, drivers and operators).
- The effect of suspension or revocation is not immediate. It takes effect only after twenty one days has elapsed, and that period is extended if an appeal is lodged within that time³⁰. There is one exception. A driver's licence may be immediately suspended or revoked where this is in the interests of public safety³¹.
- Where there has been a breach of licensing requirements that is not sufficiently serious to justify suspension or revocation of the licence, the local authority that issued the licence may issue a sanction. This process is not dictated by legislation.

²⁷ Section 60 LGMPA 1976.

²⁸ Section 61 LGMPA 1976.

²⁹ Section 62 LGMPA 1976.

³⁰ Section 77 LGMPA 1976 read alongside section 300 Public Health Act 1936.

³¹ Section 61(2B) LGMPA 1976.

Case for change and desired outcomes

- The law currently only allows local authorities to suspend, revoke or refuse to renew a licence that they have issued. **Licensing officers cannot undertake enforcement against vehicles, drivers or operators licensed in another area.** The local authority which finds itself in that position can only rely on its ability to bring a prosecution under section 222 of the Local Government Act 1972; but this will not be appropriate where no criminal offence has taken place. Additionally, local authorities currently have the discretion to set their own policies on lesser sanctions, and in practice only issue sanctions in relation to licences that they have issued. This limits enforcement to local authority borders, when in practice those borders have been eroded by technological advancement. There is no good reason why a local authority should not be able to take action against any taxi or PHV operating in its area.

Proposed legislative change

- We are proposing to amend sections 60-62 LGMPA 1976 to allow a local authority or a JTA to suspend or revoke a licence relating to **any** vehicle operating in its area. We propose to retain the provisions about immediacy i.e. that any decision will only take effect after twenty one days, unless an appeal has been lodged or there are grounds for immediate suspension or revocation.
- We are proposing to enable a local authority or JTA to issue a lesser sanction to **any** vehicle operating in its area.

Q28. Should a local authority be able to revoke or suspend a licence relating to **any** vehicle operating in its area, even if it did not issue the original licence? Yes/No? Please explain your answer.

Q29. Should a local authority be able to issue a lesser sanction in relation to **any** vehicle operating in its area, even if it did not issue the original licence? Yes/No? Please explain your answer.

Q30. Please provide any other comments or proposals around enforcement that were not covered in the above questions.

Information-sharing

The Welsh Government is proposing to allow the creation of a mechanism by which relevant information can be shared, for the purposes of safeguarding.

Current position

- There is currently no legal requirement for local authorities to share information with one another which might assist them in their decision-making. For example, if a driver is refused a licence or has his licence suspended or revoked by one local authority, it can be difficult for the remaining twenty one local authorities to obtain that information.

Case for change and desired outcomes

- In exercising their day-to-day licensing functions, individual local authorities access and manage data which could be extremely relevant for safeguarding purposes. That there is currently no legal requirement or formal mechanism for that information to be shared with other local authorities creates a risk to the general public.
- We recognise that the vast majority of people involved in the taxi and PHV trades abide by the rules and work hard to provide a good, safe and reliable service to the public. We believe that information should be accessible to allow decision-makers to identify the small minority that do not. All people in Wales are entitled to be safe when using taxi and PHV services.

Proposed legislative change

- We are proposing to create a duty on the Welsh Ministers to create a database, or make other information-sharing arrangements, to ensure that relevant information can be shared for the purposes of safeguarding.

Q31. Do you agree with our proposal to create a database or make other arrangements for relevant safeguarding information to be shared? Yes/No? Please explain your answer.

Q32. Please provide any other comments or proposals around information-sharing that were not covered in the above questions.

Joint Transport Authority

The Welsh Government is proposing to redirect all of the existing taxi and PHV licensing functions away from local authorities and into a national licensing authority, a JTA.

This would include licencing, fee- and fare-setting, enforcement, hearing appeals arising from licensing decisions, prosecutions and deciding matters such as whether to apply quantity controls to taxis.

Current position

- Taxi and PHV licensing functions belonging to a local authority are contained in a number of pieces of primary and secondary legislation, which are too numerous to list in full here.
- The mechanism for establishing JTAs is contained in the Transport (Wales) Act 2006. For more information on our initial proposals to establish JTAs, please refer to pages 14 - 18 of this paper.

Case for change and desired outcomes

- We have highlighted above that there are problems with the existing localised approach to taxi and PHV licensing. These are: the discretion allowed to the twenty two Welsh local authorities in making licensing decisions; their inability to enforce across their borders; and the difficulty that they face in communicating information to one another. Our view is that these problems are best solved by centralising the regime. We propose to do this by creating a JTA, which would act as the national licensing authority for Wales. We propose that all of the existing taxi and PHV licensing functions of the twenty two Welsh local authorities would be redirected to the JTA. This means that rather than having twenty two local authority areas and their associated borders, there would be one licensing area encompassing all of Wales. We are calling this Option A.
- We do however recognise the scale of Option A, and acknowledge that it could produce unintended consequences. We are therefore also considering an alternative Option B: create national standards that the local authorities must follow; extend the existing enforcement powers of local authorities; and create a mechanism by which local authorities can share relevant information. We are especially keen to hear your thoughts on whether a JTA is the appropriate delivery vehicle for a standardised taxi and PHV licensing regime with streamlined enforcement and information-sharing ability (Option A), or whether the existing framework should be retained and improvements made to standardisation, enforcement and information-sharing (Option B).

Proposed legislative change

- We are proposing to redirect all of the existing taxi and PHV licensing functions which exist in law (including licencing, fee- and fare-setting, enforcement, hearing appeals arising from licensing decisions, prosecutions and deciding matters such as whether to apply quantity controls to taxis) away from local authorities and into a national licensing authority, a JTA (Option A). This will be done via the Transport (Wales) Act 2006.
- The alternative to Option A is Option B; allowing local authorities to continue to have responsibility for taxi and PHV licensing. This would be done by amending the existing legislation, and would not involve using the Transport (Wales) Act 2006.

Q33. Do you agree with our proposal to redirect all of the existing taxi and PHV licensing functions away from local authorities and into a national licensing authority (Option A)? Yes/No? Please explain your answer.

Q34. Do you think that local authorities should continue to have responsibility for taxi and PHV licensing (Option B)? Yes/No? Please explain your answer.

Q35. Please provide any other comments or proposals around responsibility for taxi/PHV licensing that were not covered in the above questions.

Q36. We would like to know your views on the effects that the legislative proposals set out in this paper would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Q37. Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Q38. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: