

DRAFT

Small Passenger Services

Land Transport Rule: Operator Licensing

[2017]

Rule 81001

Land Transport Rule: Work Time and

Logbooks Amendment [2017]

Rule 62001/7

Land Transport (Driver Licensing)

Amendment Rule [2017]

Rule 91001/13

Overview

*This overview accompanies, and sets in context, the public consultation (yellow) draft of **Land Transport Rule: Operator Licensing [2017] (Rule 81001)**, **Land Transport Rule: Work Time and Logbooks Amendment [2017] (Rule 62001/7)**, and **Land Transport (Driver Licensing) Amendment Rule [2017] (Rule 91001/13)**. The proposed Rules replace **Land Transport Rule: Operator Licensing 2007** and update **Land Transport Rule: Work Time and Logbooks 2007** and **Land Transport (Driver Licensing) Rule 1999** in respect of small passenger services.*

*If you wish to comment on these draft Rules, please see the page headed 'Making a submission'. The deadline for submissions is **Friday 18 November 2016**.*

Consultation on proposed Rules

The purpose of this publication is to consult on proposed changes to Land Transport Rules related to the regulation of small passenger services:

- *Land Transport Rule: Operator Licensing [2017]* (which revokes *Land Transport Rule: Operator Licensing 2007*)
- *Land Transport Rule: Work Time and Logbooks Amendment [2017]*
- *Land Transport (Driver Licensing) Amendment Rule [2017]*

Consultation on the proposed changes is being carried out to ensure that legislation is sound and robust and that the Rules development process takes account of the view of, and the impact on, people affected by the proposed changes.

This publication has two parts:

- (a) An overview, which sets proposed Rule changes in context; and
- (b) The consultation (yellow) draft of *Land Transport Rule: Operator Licensing [2017]*, *Land Transport Rule: Work Time and Logbooks Amendment [2017]*, and *Land Transport (Driver Licensing) Amendment Rule [2017]*.

Please read the overview carefully and consider the effects that the proposed changes would have on you or your organisation.

Proposed timetable for implementation

Subject to the approval of the Minister, it is proposed that the Rules would take effect in 2017.

Making a submission

These Rules are being developed in a parallel process alongside the *Land Transport Amendment Bill* (the Bill) which was introduced to Parliament on 12 September 2016. The Bill establishes the proposed legislative framework for a reformed small passenger service sector, and the yellow draft Rules must be considered in that context.

To inform your comments on the yellow draft you are advised to consider the Bill's small passenger service provisions and then comment on whether the amendments proposed in the yellow drafts are a workable application of the legislative framework.

If you wish to make a submission on the proposed changes in the draft Rules (or the Bill) please read the information below.

Before making your submission

Please read the information provided in the consultation document.

Please include the following information in your submission on the draft Rules

- the title of this document
- your name, and title if applicable
- your organisation's name if applicable
- your address – postal, and email if applicable

When making your submission

If you are not using the online form, it would be appreciated if you would ensure that you quote the subject headings or Rule references used in the consultation document.

Submissions on the Bill

Advice on how to make a submission on the Bill can be found at:

https://www.parliament.nz/en/pb/sc/make-a-submission/document/50SCTIR_SCF_00DBHOH_BILL12874_1/land-transport-amendment-bill. Submissions on the Bill close on **Thursday 27 October 2016**.

Sending your submission

You can submit your comments on the online submission form at:

<https://nzta.govt.nz/about-us/consultations/land-transport-rule-small-passenger-services-2017/submission-form>

Otherwise, if possible, send your submission by email to rules@nzta.govt.nz and, if you wish, follow this up with a signed copy. If emailing your comments, please let us know your postal address.

If posting your submission, address it to

Small Passenger Services Reform 2017

Rules Team

NZ Transport Agency

Private Bag 6995

WELLINGTON 6141

Please note the deadline for submissions

The deadline for submissions is **5pm on Friday 18 November 2016.**

Your submission is public information

Please note that the NZ Transport Agency may publish any information that you submit, and may identify you as the submitter should it publish your submission or provide it to a third party.

Please indicate clearly, therefore, if your comments are commercially sensitive, or if, for some other reason, they should not be disclosed, or the reason why you should not be identified as the submitter.

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Summary of proposed Rule changes

Reforms proposed by Government to the regulatory system for small passenger services require amendments to the Land Transport Rules that set out requirements for operating or driving for a small passenger service (which is a passenger service that takes place in a vehicle that has seats for 12 or fewer people). These reforms are the result of a review of the sector conducted by the Ministry of Transport in 2015 and 2016. Some of the primary changes incorporated in the draft legislation were canvassed with industry, and other stakeholders in April 2015 and with the wider public through a consultation document released in December 2015. Information on the review is available on the Ministry of Transport's website: <http://www.transport.govt.nz/land/small-passenger-services-review/>

The proposed Rule amendments in this document are part of a package that also involves amendments to the *Land Transport Act 1998* (the Act). Amendments to the Act are currently being considered by Parliament via the *Land Transport Amendment Bill* (the Bill). The legislative and Rule-making processes are being conducted concurrently and changes to the Bill may require further amendments to Rules.

The majority of the proposed changes are in the new *Land Transport Rule: Operator Licensing [2017]* (the Operator Licensing Rule), which revokes the *Land Transport Rule: Operator Licensing 2007* (the 2007 Rule or “current Rule”).

The Operator Licensing Rule is the subordinate legislation that sets out the requirements for obtaining and retaining a licence to operate a transport service. The requirements for rental services, vehicle recovery services, and goods services have been carried over largely unchanged from the 2007 Rule. The proposed Operator Licensing Rule contains requirements for both large passenger services and small passenger services. The requirements for large passenger services largely mirror those in the 2007 Rule. The requirements for small passenger services have changed significantly.

Broadly, the intent of proposed changes to the small passenger services regulatory system are designed to:

- allow the sector to respond to innovative technology and emerging business models
- ensure the sector can operate in a competitive market, and
- ensure the regulatory system can meet New Zealand's future needs and deliver maximum benefits for consumers.

Relationship of proposed Rules with Land Transport Amendment Bill

The *Land Transport Amendment Bill* establishes the transport service licensing framework the Government intends to put in place for the sector and includes, in a schedule, consequential amendments to *Land Transport (Driver Licensing) Rule 1999* and *Land Transport (Road User) Rule 2004*. The Operator Licensing Rule details the procedures, criteria and standards small passenger service operators would need to comply with under the new legislative framework.

A major change introduced by the *Land Transport Amendment Bill* and reflected in the draft Operator Licensing Rule is the replacement of the current regulatory distinctions that exist in the sector (taxi, private hire, shuttles, dial-a-driver, and carpooling) with a single class of small passenger service. This is intended to allow the sector to operate on an even footing and to provide a range of services that respond to customer demand while ensuring fundamentals of safety are retained.

It is proposed to remove from the current Operator Licensing Rule are the detailed requirements for taxis, shuttles, private hire services and approved taxi organisations. Instead, a small passenger service operator (as defined in the Bill) will be required to hold a Small Passenger Service Licence and ensure safety provisions specified in the Rule concerning drivers and vehicles are met.

The draft Rule also reflects policy decisions to remove current requirements that impose costs on operators but no longer offer significant benefits:

An operator or company that operates a taxi will no longer need to belong to an approved taxi organisation, make services available 24 hours a day for 7 days a week, or install driver panic alarms. Also, there will no longer be a requirement to hold a certificate of knowledge of law and practice.

A driver will no longer need an area knowledge certificate, or to meet English language requirements. A driver will still be required to hold a passenger endorsement, but they will no longer be required to pass a full licence test in the past five years before they first get a passenger endorsement, or complete a passenger endorsement course.

A small passenger service vehicle will no longer need to display information about fares or mandatory branding, or provide information in Braille (if operating a taxi).

Other changes giving effect to the reforms are included here in the proposed amendments to *Land Transport Rule: Work Time and Logbooks 2007* and *Land Transport (Driver Licensing) Rule 1999*.

Why are Rule changes being proposed?

Small passenger services regulatory settings are outdated

The small passenger services sector has long been an important provider of mobility options for people and organisations in our towns and cities. To be effective, the right rules and incentives are needed to enable the sector to innovate and deliver improved customer services. These rules and incentives also need to provide for the safe use of small passenger services by both passengers and drivers.

The present regulatory settings for the sector were established in the 1980s. These settings are outdated, inflexible and impose unreasonable costs. As well, consumer expectations, technology and the range of services have changed since the system was established. This system is based on distinctions between service type (taxi, shuttle, private hire, dial-a-driver) and rules that impose varying levels of compliance costs and restrictions depending on what service is being operated.

Taxi services carry the highest compliance costs

Taxi services carry the highest burden of compliance costs. Operators are required to

- develop and operate according to approved operating rules
- provide 24-hour-a-day coverage
- install and maintain in-vehicle cameras and panic alarms
- register fares with the NZ Transport Agency (the Transport Agency)
- use meters to calculate fares based on rates per kilometer;
- comply with mandatory signage requirements.

On the other hand, private hire operators in the non-taxi sector offer specialised services (for example, limousine services) restricted to pre-booked customers who agree a fare before using the service. Private hire services are not required to meet the same requirements that apply to taxis.

New business models and innovative technologies

Some new entrants have entered the market using alternative and technology-based business models (for example, smartphone app-based services) that are changing the small passenger services market and challenging the existing regulatory framework. These new entrants are broadly operating under private hire rules and are competing with taxis without having to meet the compliance costs of a taxi service.

Innovations within the sector are presenting new approaches to mitigating risks to drivers and passengers that are not readily accommodated under the present regulatory framework. For example, the rationale for mandatory installation of in-vehicle security cameras to deter misconduct by drivers or passengers is being challenged by new approaches to risk mitigation. These new approaches enable live GPS tracking of location of driver and passengers, cashless transactions, and driver and passengers to each have access to information (contact information, images and post-trip ratings) about the other. Services using such innovations are becoming more widely used by operators.

Review of small passenger services sector

The Ministry of Transport's review of the small passenger services sector in 2015 acknowledged that technology is changing the transport sector, and that future rules need to be fit for purpose and flexible to accommodate these changes. Any future system would have the following features:

- responsiveness to supply and demand
- compliance burden as low as possible while achieving the regulatory objective
- transparent regulatory fees and charges
- effective choice so people can travel where they wish in a timely manner
- incentives for improved customer services
- mitigated safety risks for passengers and drivers, including ensuring that vehicles meet minimum standards of safety appropriate to the service being offered

Introduction of a level playing field – fewer rules, competition promoted, safety features retained

Between December 2015 and February 2016, the Ministry of Transport consulted with the public on five options for the future of the small passenger services sector. These options were to:

1. modify the status quo
2. reinforce separate markets for taxis and private hire services, with separate regulatory burdens
3. create a new single class system in which drivers are responsible for safety and compliance (reduced regulatory burden);
4. create a new single class system in which operators have responsibility for safety and compliance (reduced regulatory burden);
5. apply existing taxi requirements to all operators (higher regulatory burden in a new single class system).

After considering feedback from the public, the Government has proposed the introduction of a single class of regulated small passenger services covering all current taxi, private hire, shuttle, and dial-a-driver and carpooling services, with responsibilities for compliance being focused first at the operator level, and then at drivers (Option 4). At the same time, existing regulations considered to impose costs on the sector without contributing to the delivery of the future system are to be removed. More information about the changes can be found here:

<http://www.transport.govt.nz/legislation/bills/land-transport-amendment-bill/>

A broad outline of the how the future regulatory system will function is provided on Page 10.

How the future small passenger services regulatory system will function

The proposed future regulatory system is based around a reduced level of regulatory burden, with a single class of small passenger service operator. The single class would cover taxis, private hire, shuttles, third party facilitated carpooling, and dial-a-driver services.

Any person or entity that operates a small passenger service will have to apply to the Transport Agency for a small passenger service licence. The Transport Agency will register a licence holder provided it has assessed the person(s) in control as being fit and proper to operate the passenger service.

A small passenger service operator will be responsible for ensuring the following:

- drivers hold a current Passenger (P) endorsement
- drivers comply with work time requirements
- drivers' vehicles have a current Certificate of Fitness (CoF)
- all vehicles have approved in-vehicle cameras, or fall within an exception (if they operate inside one of the specified 18 urban areas requiring this)
- the Transport Agency is advised of any serious improper behaviour by drivers
- assistance is provided to the Transport Agency or New Zealand Police with an audit or any investigation.

A small passenger service operator will set its own fares and be able to accept jobs from passengers via pre-bookings. Small passenger service operators whose business is conducted in small passenger service vehicles (as defined in the Bill) may also be able to be engaged off a rank or street hail.

A driver will have to be associated with a small passenger service licence holder (owner drivers could be their own small passenger service operator). An individual driver will continue to be required to hold a P endorsement and display their identification card for passengers, drive within the work time limits (particularly where they drive for more than one small passenger service operator), and ensure that their vehicle has a valid CoF. Drivers of small passenger service vehicles will continue to have to accept the first hire offered (unless the operator for whom the driver drives, only provides services to registered passengers) and take the most advantageous route for the hirer. A driver must agree the basis of the fare with the prospective hirer before a trip begins.

All services within the specified 18 main urban areas will be required to have either an in-vehicle recording camera system, or collect specified information about both drivers and passengers before the trip. Excluded from these requirements are vehicles provided by passengers in dial-a-driver services, some exclusively pre-booked services (such as special event vehicle hire) and third party facilitated carpooling services.

The Transport Agency will approve applications for small passenger service licences (if it considers that the person(s) in control is a fit and proper person and lives in New Zealand). It will register the licence and ensure that the licence holder and drivers are operating in accordance with the law (P endorsements for drivers, work time limits and vehicles having a CoF).

The Transport Agency will issue P endorsements for drivers (having made an assessment that they are fit and proper persons to drive small passenger vehicles). The Transport Agency will be able to suspend or revoke a small passenger service operator or a driver's right to operate if they are in breach of the law. To reduce the cost and streamline the process for obtaining a P endorsement, the current requirement that a small passenger service driver must have undertaken a P endorsement course is to be removed. This, along with other initiatives, is expected to significantly reduce the time and cost involved in obtaining a P endorsement.

Not-for-profit carpooling operations such as those run by local authorities, and companies providing only communications services (for example, a call centre company providing back-office functions), would continue to be exempt from the rules covering small passenger services.

The table below illustrates the main features of the proposed system and lists requirements that are to be removed from the current system. Most features of the new system will be implemented via the proposed Rules.

Features of the proposed system	Features no longer part of system
One single class of licensed small passenger service operator covering all service types	Regulatory distinctions between service categories
Driver must be a fit and proper person (P endorsement)	Approved taxi organisation
Transport Agency to be advised of serious complaint/allegation against a driver	Taxi services must be provided 24/7
Driver has held a New Zealand full licence (other than a Class 6) for more than 2 years	Operator must hold a certificate of knowledge of law and practice
Driver work time limits and log books will continue to apply	P endorsement course passed is a qualification for a P endorsement
Driver is medically fit to drive	Mandated panic alarms
Vehicle has a Certificate of Fitness	Use of meters regulated
Duty for driver to accept first hire offered	Taxi fares registered with Transport Agency
Duty to take route most advantageous to hirer	Regulated signage
Duty to agree fare basis prior to start of trip	Regulated Braille signage
Mandated in-vehicle security cameras	Driver has area knowledge certificate
Exceptions from in vehicle camera requirements in defined circumstances	Driver has competency in English language
Power to refuse a passenger	Driver has passed a practical driving test in 5 years prior to application for P endorsement
Payments made to drivers by third-party facilitated carpooling operators limited to cost-recovery	

Creation of a new Operator Licensing Rule

Most of the legislative changes required to implement the small passenger service reforms are to *Land Transport Rule: Operator Licensing 2007*.

In proposing the Operator Licensing Rule [2017], we have taken the opportunity to rewrite it rather than provide a complex set of amendments.

As well as changing small passenger service requirements to reflect new policy, the Rule has been revised and reordered to reduce duplication of common requirements, remove redundant requirements, clarify wording and improve the readability of the Rule.

The general approach taken has been to set out in Section 2, the common requirements for all transport service licences, before moving to additional and more specific requirements for small passenger services, rental services, and vehicle recovery services.

A notable feature is that the draft Operator Licensing Rule is now much shorter than the 2007 Rule. The proposal to introduce a single class of small passenger service licence covering all service types means that the detailed requirements specified in the 2007 Rule for taxis, approved taxi organisations, shuttles and private hire services are no longer part of the Operator Licensing Rule. Features of the present system that are to be retained (for example in-vehicle camera security systems) have been consolidated in a new section on small passenger services.

There are fewer definitions in Part 2. Any terms that are defined in the Act have been removed.

Fewer schedules to the Rule are required—for example existing Schedule 2 “Display of operator or taxi information” is removed as under the new system fare and other information will no longer have to be displayed on taxis. Similarly, Schedule 4 (regarding area knowledge certificates) is redundant in the new system. However, the requirements for transport service licence cards are retained.

Further adjustments to the draft Rule are anticipated before it is signed into law. Changes to the draft Rule may be required to reflect changes made to the *Land Transport Amendment Bill*, and submissions on this yellow draft.

What are we seeking your feedback on?

The Transport Agency welcomes your comments on the proposed Rule and regulation changes set out in this overview and in the draft Rules.

The proposals which follow focus on changes within the proposed Rules that set out different responsibilities, or envisage new processes.

When you provide your feedback, it would be helpful if you would consider and comment on the following:

- What impact would the proposals have, and on whom? The Transport Agency is particularly interested in your comments on any costs (to you or to your organisation) of implementing the proposals.
- Would any groups or individuals, in particular, be disadvantaged by the proposals, and how?
- Would any groups or individuals, in particular, benefit from the proposals, and how?
- Are there any implementation or compliance issues that would need to be considered?

Wherever possible, when making your comments please provide examples to illustrate your point.

Associated documents available

The consultation page for the draft Rules is available: here <https://nzta.govt.nz/about-us/consultations/land-transport-rule-small-passenger-services-2017>

What changes are proposed?

This section sets out the changes that are proposed to the requirements relating to operator licensing, and work time and logbooks and the reasons for proposing the changes.

The Operator Licensing Rule

1: Amend the Scope of the Rule by replacing Passenger Service Licence with two new categories of licence: large passenger service licence and small passenger service licence.

This proposal reflects proposed amendments to the transport service licensing requirements under the *Land Transport Act 1998*. Under these amendments, the existing Passenger Service Licence (which applies to both large and small passenger services) would be replaced by separate large and small passenger services licences. This in turn requires amendments to the scope of the Operator Licensing Rule and replacement of references to 'Passenger Service Licence' throughout the Rule with references to the two new licence categories.

Amendments to Transport Service Licence requirements

2: Require additional information from applicants for a small passenger service licence.

3: Remove requirement for certificate of knowledge of law and practice for small passenger service licence holders

4: Consolidate requirements for complaints registers for vehicle recovery and goods service vehicles

As noted under Proposal 1, the draft Rule recognises large and small passenger service licence categories.

The current information requirements for applicants for a Transport Service Licence (name, age, date of birth, address) have been carried over into the draft Rule. In the new system applicants for a small passenger service licence must also provide the full name of the person who lives in New Zealand and is to have control of the service in New Zealand. This is intended to ensure a New Zealand-based person can be held accountable for ensuring small passenger services are operated within the law.

Current holders of a Passenger Service Licence must hold a certificate of knowledge of law and practice. The certificate demonstrates that the holder has acquired knowledge of laws and practice relating to the efficient and proper operation of a transport service. However, under the proposed reforms, many of the detailed rules governing the small passenger service sector are to be removed, and the need for the certificate is considered

less relevant. Small passenger service operators will therefore no longer need to hold a certificate of knowledge of law and practice.

The 2007 Rule sets out requirements for maintaining a register of complaints from passengers across the range of service categories covered by the Rule. The draft revised Rule retains the current complaint register requirements for large passenger and vehicle recovery service operators. Revised requirements for how a small passenger service records passenger complaints are found in clause 3.3 of the draft Rule.

Additional requirements for small passenger service operators and drivers

5: New duties of small passenger service operators in relation to drivers

6: Replace existing duties and responsibilities relating to the conduct of drivers with streamlined requirements relating to driver safety, basis of determining a fare, and issuing of receipts.

7: Insert new criteria for requirement to have in-vehicle cameras, and allow exceptions

Duties of small passenger service operators in relation to drivers

The draft Rule sets out the core responsibilities of small passenger service operators in relation to the fundamentals of passenger safety. Operators will have seven duties in relation to drivers. These duties are to ensure that:

- drivers have a P endorsement - that they are fit and proper persons
- drivers comply with work time and logbook requirements
- vehicles have a current CoF
- drivers have a current identification card
- operators maintain evidential records of the above four matters
- the Transport Agency is advised of serious improper behaviour by a driver (e.g murder, attempted murder, sexual offences, abduction, kidnapping, robbery, and intent to cause bodily harm by injury)
- assistance is provided with audits or investigations by the Transport Agency or NZ Police.

The proposed Rule contains a serious complaints reporting requirement and an obligation to assist the Transport Agency and NZ Police with investigations. The detailed

requirements of the existing Rule in relation to the maintenance of a complaints register will no longer apply. Instead the draft Rule sets out a general obligation to record complaints and requires this information to be made available during an investigation by authorities.

Third-party facilitated carpooling services (see the Bill for its definition of facilitated cost-sharing arrangement) are exempt from P endorsement, vehicle CoF, and work time requirements. The current exemption from needing a CoF will continue to apply to vehicles provided by passengers using a dial-a-driver service.

Duties and conduct of drivers

Drivers will need to comply with all applicable legislative requirements (e.g. have held a driver licence for at least 2 years, hold a P endorsement, comply with work time and logbook requirements) and ensure their vehicles meet all applicable vehicle-related requirements (e.g. certificates of fitness and loading). However, requirements in the 2007 Rule covering driver duties and conduct are less prescriptive than the existing Rule and are reduced. The draft Operator Licensing Rule retains the power for a driver to refuse to accept a passenger if the driver reasonably believes their personal safety is at risk. Generally, a driver must take the most advantageous route to the hirer. The Rule also sets driver obligations in relation to fares and the issuing of receipts.

Use of a meter for calculating fares will no longer be mandatory though operators may still choose to use one. A driver will be expected to have agreed the basis of a fare (for example, whether calculated by a meter, cash negotiation or via an app) with a passenger in advance of the trip. A driver will be required, if requested, to state the correct scale or basis for a fare that applies to a hire, and must not demand more than the exact amount of the fare payable. As in the 2007 Rule, small passenger services will be required to issue GST receipts if the driver or operator is registered for GST (with the exception of drivers of vehicles used in trips organised through a third party facilitated cost-sharing arrangement). Fares will no longer have to be registered with the NZ Transport Agency, which will no longer investigate and take action in response to fare disputes between passengers and companies. Instead, disputes should be addressed by existing mechanisms provided in the *Consumer Guarantees Act 1993*, the *Fair Trading Act 1986* and contract law.

The Rule will no longer set expectations around general driver conduct in relation to passenger luggage and personal appearance and demeanour. Nor would the Rule regulate the grounds upon which a driver can refuse hire (with the exception of the driver having the reasonable belief that their personal safety is compromised). In particular, the Rule would no longer state that a driver can refuse hire because the prospective passenger has an animal travelling with them; the movement of disability assist dogs is regulated by the *Dog Control Act 1996*. Regulation is not considered necessary for these requirements as it is in an operator's business interest to properly manage these expectations as part of their business model. Other safety-related provisions covered by the existing Rule (for example carrying luggage that would endanger safe driving of a vehicle) are now covered by an operator's obligations under the *Health and Safety at Work Act 2015* to ensure a safe workplace, and do not need to be regulated by the Rule.

Similarly, it is no longer considered necessary to regulate driver duties in relation to matters such as obstruction of other small passenger service vehicles or vehicle loading as these are covered by other transport laws.

Duties of small passenger service operators in relation to vehicles—in-vehicle camera requirements

Under the 2007 Rule, in-vehicle cameras are mandatory for all taxis operating within any of 18 specified urban areas. Other categories such as shuttles and private hire vehicles are exempt from this requirement. The Government agreed to introduce the mandatory camera requirement in 2010. This decision was made against a background of concern about violent crime against drivers. Taxi businesses are required to provide a 24-hour service, 7 days a week, meaning drivers cannot avoid working at times of high risk, even if this were their preference.

Notwithstanding widespread support for proven safety measures in the taxi industry, their uptake at the time was patchy because operators were reluctant to unilaterally introduce measures that would impose costs on their members in case some members left them to work for another operator. A mandatory requirement was designed to overcome this concern. The draft Rule retains and extends the mandatory requirement to all small passenger service vehicles operating in the 18 specified areas. However, it is proposed that a camera system will not be required if an operator can demonstrate it has alternative means of recording information about both driver and passenger.

This flexible approach is designed to maintain the system's focus on safeguarding passenger and driver safety, while acknowledging different and emerging operating models in the sector (such as app-based technology for connecting drivers with passengers) can achieve a similar safety outcome as an installed camera. The range of technology-based systems is vast and evolving quickly. Currently, some small passenger services utilise features such as enabling information about the driver and passenger to be provided to each other (including images and post-trip ratings), and live GPS tracking of the location of drivers and passengers. Cashless transactions are also widely used, reducing the risk of a driver being attacked.

Under the proposed changes, small passenger service operators operating within the 18 urban areas (listed in Schedule 3) must meet one of two requirements:

- a) all vehicles are fitted with an approved in-vehicle camera system; or
- b) the small passenger service:
 - only provides services to registered passengers
 - makes driver and passenger information available (for example, names and photographs of both driver and passenger)
 - makes driver and passenger information available before each trip

- makes a record of the trip available (for example, GPS records).

In developing this aspect of the Rule, it was also acknowledged that a mandatory requirement could impose an unreasonable compliance cost on some operators in the sector that are currently not required to have cameras. A number of specified exceptions to these requirements are proposed:

- a vehicle provided by a passenger in a dial-a-driver service
- a vehicle provided by a driver in a third-party facilitated carpooling service
- special occasion vehicle hire services (for example, weddings, school balls)
- short-duration package tour services (for example, three-day sightseeing tours)
- Government services under a long-term contract.

No changes are proposed to the requirements of the existing Rule regarding approval of in-vehicle camera systems and the handling of material (including storage, access to and privacy) recorded by such systems.

Amendments to other forms of transport service

As noted earlier in this overview, no policy changes are proposed that affect the operation of large passenger services, rental services, vehicle recovery services, goods services or exempt services. The main change is that all requirements common to more than one type of transport service (e.g. the complaints register) have been consolidated into Section 2 (Transport Service Licences).

8: Clarify circumstances when a rental service operator can charge an administration fee when debiting a hirer's credit card to cover the cost of an infringement notice.

9: Consolidate exempt services from regulation 9 of the *Transport Services Licensing Regulations 1989* into the Operator Licensing Rule.

Under the current Rule, rental service providers can debit a hirer's credit card to cover an infringement fee incurred while the hirer was using a rental vehicle. The Rule (at clause 9.5(7)) also allows the service provider to charge an administration fee to cover the cost of debiting the hirer's credit card when recovering the cost of the infringement fee. A minor rewording is proposed to clarify that the administration fee can only be charged after the infringement notice has been forwarded to the hirer, and that the hirer has been notified that an infringement fee is to be debited from the hirer's credit card.

Exempt passenger services listed in the current Rule are transferred unchanged to the draft Rule. A minor change has been made to clarify that third-party facilitated cost-sharing arrangements are not an exempt service.

The *Transport Services Licensing Regulations 1989* provide for a number of exemptions from operator licensing. The regulations are to be revoked as part of the modernisation of the transport services licensing regime, however the need for these exemptions remains. Listing these exempt services in the Operator Licensing Rule is a logical step, in effect centralising all exempt services in one place.

The Worktime and Logbooks Rule

10: Update Rule by deleting references to taxis and inserting references to small passenger services.

Land Transport Rule: Work Time and Logbooks 2007 sets out how the limits to the work time hours are to be administered for a driver of a vehicle that requires a Class 2, 3, 4, or 5 licence, or is used in a transport service (other than a rental service), or that is a vehicle used to carry goods for hire or reward, as prescribed by the Land Transport Act 1998 (the Act). The Rule is to be updated to reflect policy changes for small passenger services.

Impact of the change on work hours and logbook requirements

Under the current Rule, taxi drivers can take a rest after 7 hours of continuous work time (provided they have only been undertaking short fares around a city or town). Different rules apply to drivers of other vehicle classes – a rest break must be taken after 5.5 hours continuous work. The distinction exists because taxi drivers' work typically involves periods of rest while waiting for a fare.

In the future system the work time requirements that currently apply to taxi drivers will be extended to all small passenger service drivers.

Currently there are two prescribed forms of logbook – a taxi-specific logbook and a general logbook. The taxi logbook is only used by taxi drivers, and the general logbook is used by drivers of other vehicle classes subject to work time requirements. However, taxi drivers must use the general logbook if they are in a “mixed work” situation – where they also drive a different class of vehicle in a cumulative work day.

In the future system the taxi logbook will be rebranded to become a small passenger service logbook used by all drivers unless they are in the mixed work situation described above.

Both operator and driver will be required by regulation to ensure compliance with work time requirements.

The Driver Licensing Rule

11: Remove obligation for passenger service drivers to have sat a full licence test within 5 years of obtaining a passenger endorsement on their licence.

Land Transport (Driver Licensing) Rule 1999 (the Driver Licensing Rule) sets out the licensing regime for all drivers in New Zealand, including endorsements which allow drivers to carry particular goods or offer particular services in connection with their licence. Under the current rule, all passenger service drivers are required to obtain a passenger endorsement on their licence. Endorsements are valid for either 1 year or 5 years (unless suspended, revoked, or surrendered).

A condition of the passenger endorsement is that an applicant for the endorsement must pass a full licence test as part of their application unless they have passed the full licence test required for a Class 1 licence in the preceding 5 years. The future system will remove this condition. Passenger service drivers will still need to meet the other conditions in rule 27 of the Driver Licensing Rule in order to obtain, or renew, their passenger endorsement.

12: Replace references to the Operator Licensing Rule 2007 with references to the Operator Licensing Rule 2017.

Rules 36 and 37 of the Driver Licensing Rule refer to clauses 3.2, 10.3, and 11.3 of Land Transport Rule: Operator Licensing 2007. As the 2007 Rule is being replaced with the draft Operator Licensing Rule set out in this consultation package, the references in rules 36 and 37 of the Driver Licensing Rule will need to be updated to their equivalent provisions in the new Operator Licensing Rule. This proposal is not set out in the draft Land Transport (Driver Licensing) Amendment Rule [2017] contained in this package, but will be added following consultation once the final new references are known.

Matters to be taken into account

The Act provides the legal framework for making Land Transport Rules. Section 161 states the procedures by which the Minister makes ordinary Rules.

What are Land Transport Rules?

Land Transport Rules (Rules) are legislation made by the Minister of Transport or his delegate ('the Minister') under the Act.

The Act sets out principles and the policy framework; Rules contain detailed requirements, including standards and processes, for putting those principles and policy into operation. Rules cover a range of land transport issues. The outcomes that Rules aim to achieve include: safeguarding and improving land transport safety and security, improving access and mobility, assisting economic development, protecting and promoting public health and ensuring environmental sustainability.

Compliance with Rules is required because they form part of New Zealand transport law. The specific offences and penalties that apply to each Rule are set out in the Act or in regulations.

Most Rules are drafted by the Transport Agency, by an arrangement with the Chief Executive of the Ministry of Transport, working closely with the Ministry of Transport's policy and legal advisers.

Rules are drafted in plain language to be easily understood. The Transport Agency undertakes consultation on proposed changes to Rules on behalf of the Minister. The issues that are raised in submissions on the draft Rule will be analysed and taken into account in preparing the Rule for the Minister to sign.

Subject to the approval of the Minister, the proposed Rules would take effect in 2017.

Application of Rule-making criteria

Proposed activity or service

Section 164(2) of the Act sets out the matters that the Minister must have regard to when making a rule. This includes the nature of the proposed activity or service for which the Rule is being established.

The Operator Licensing Rule is designed to set the requirements for obtaining and retaining a licence to operate a small passenger service, large passenger service, rental, vehicle recovery or goods service.

The Work Time and Logbooks Rule sets out how the limits to work time hours are to be administered for a driver of vehicles specified in the Rule.

The Driver Licensing Rule sets out the conditions upon which a driver can become licensed, or get an endorsement on their licence to carry out particular types of work.

Risk to land transport safety

Section 164(2)(a), (c) and (d) requires the Minister to take into account the level of risk to land transport safety in each proposed activity or service, the level of risk existing to land transport safety in general in New Zealand, and the need to maintain and improve land transport safety and security.

The Operator Licensing Rule maintains passenger and driver safety, and is designed to encourage the uptake of more modern technologies and emerging business models. The Work Time and Logbooks Rule is designed to protect the public by ensuring driver fatigue is properly managed. The Driver Licensing Rule is designed to protect the public by ensuring that the requirements for drivers to become licensed or endorsed are robust and appropriate.

Assisting achievement of strategic objectives for transport

Section 164(2)(e) of the Act requires that the Minister have regard, and give such weight as he or she considers appropriate in each case, to whether a proposed Rule (i) assists economic development; (ii) improves access and mobility; (iii) protects and promotes public health; and (iv) ensures environmental sustainability.

The proposed Operator Licensing, Work Time and Logbooks, and Driver Licensing Rules provide for improved productivity and competition in the small passenger services

sector by reducing the regulatory compliance burden and providing a regulatory platform that will allow services to compete on an even footing. They will also improve the range and quality of small passenger service options available to the public, place passenger and driver safety at the centre of compliance requirements, and encourage more efficient use of vehicles and the road network.

The proposals in the Operator Licensing Rule to continue to exempt some transport services (such as those operated by district health boards and registered charitable organisations, private ambulance services, and some carpooling activities) from the requirements to be licensed are expected to continue to have a positive impact on access and mobility. Exemptions for carpooling arrangements to and from a tertiary institution and sports activities, as well as transport relating to school-related activities also continue from the current Operator Licensing Rule. Exemptions for certain transport services that are not passenger services are carried over from the *Transport Services Licensing Regulations 1989* into the proposed Operator Licensing Rule.

Costs of implementing the proposed changes

Section 164(2)(ea) of the Act requires that the Minister have regard to the costs of implementing measures proposed in a Rule.

A summary of the costs, and benefits, of the proposed changes, can be found in the regulatory impact statement on the Ministry of Transport's website (<http://www.transport.govt.nz/about/publications/ris-bccs/bymode/>).

International considerations

Section 164(2)(eb) and (f) of the Act requires that, in making a Rule, the Minister must have regard to New Zealand's international obligations concerning land transport safety, and the international circumstances in respect of land transport safety.

The Rules do not impinge on any international obligations.

How the amendment Rules fits with other legislation

Land Transport Act 1998

Parliament is considering amendments to Part 4A of the Act at the same time as these Rules are being developed. Amendments to the Act will provide the legislative mandate for the small passenger service reforms that will in turn be implemented via these Rules. As proposals are currently before Parliament, they are subject to change. Any changes may affect the final content of the Rules.

Among proposed amendments to the Act, the existing Passenger Service Licence is to be replaced by new small and large passenger service licences. References to approved taxi organisations will be removed and a number of new definitions are proposed.

Bylaws

Changes will be required to local authority bylaws which refer to taxis.

Offences and penalties

Land Transport Rules do not contain offences and penalties for breaches of Rule requirements. These provisions are set out in regulations.

Most current offence provisions will be carried over into the new regime. Several new offence provisions have been proposed to ensure the enforceability of the proposed reforms.

Fees

Rules cannot include fees; these must be set in regulations.

Fees are currently set in the *Transport Services Licensing Regulations 1989*. These are proposed to be revoked and replaced, where appropriate, in a separate process that will be undertaken by the Ministry of Transport.

Based on the current policy proposals, the fee for an application for a small passenger service licence is expected to be similar to that currently charged for a Transport Service Licence application: \$449.80 inc. GST. The associated vetting fee of \$28.20 is not expected to change.

Approved taxi organisations will cease to exist under the policy proposals. Accordingly, the fee currently charged for an application to be an approved taxi organisation (\$3,678.15 inc. GST) is to be revoked.

These fees may change as a result of any further policy changes that arise during Parliamentary consideration of the *Land Transport Amendment Bill* or the consultation on the yellow draft Rule.

Publication and availability of Rules

Access to consultation material

Copies of this consultation document may be obtained by calling the NZ Transport Agency Contact Centre on 0800 699 000. It is also available on the NZ Transport Agency's website at:

<https://nzta.govt.nz/about-us/consultations/land-transport-rule-small-passenger-services-2017>

Availability of Rules

Land Transport Rules can be purchased from selected bookshops throughout New Zealand that sell legislation. They can also be inspected at the National Office and regional offices of the NZ Transport Agency. Final versions of these Rules are also available on the NZ Transport Agency's website at:

<http://www.nzta.govt.nz/resources/rules/about/>.

Information about Rules

Information about the Rules programme and process is available online at:

<http://www.nzta.govt.nz/resources/rules/about/>.

If you have not registered your interest in this proposed amendment Rule (or other draft Rules in the Rules programme), you can do so by contacting the NZ Transport Agency at our addresses shown in the *Making a submission* section at the front of this publication, or at: <http://www.nzta.govt.nz/resources/rules/about/registration.html>. This includes a form for registering an interest in Rules.

Regulatory impact of proposed Rule amendments

Two Regulatory Impact Statements prepared by the Ministry of Transport on the proposed changes to the small passenger service system are available for you to read, should you wish, in conjunction with the overview.

These documents can be downloaded from the Ministry of Transport's website:

<http://www.transport.govt.nz/assets/Uploads/About/Documents/RIS-Future-Framework-for-Small-Passenger-Services.pdf>

<http://www.transport.govt.nz/assets/Uploads/About/Documents/RIS-Third-Party-Facilitated-Carpooling.pdf>