

Private Hire Vehicles (London) Act 1998 - Proposed Amendment

1. The purpose of this letter is to alert you to a problem which has arisen as a result of the implementation of the Private Hire Vehicles (London) Act 1998 (the 1998 Act) and to seek your views on the Department's proposal to amend the Act to deal with the problem.

Summary of proposal

2. It has become apparent, during the implementation of the 1998 Act by Transport for London, that some operators and drivers are circumventing the licensing system due to a flaw - or loophole - in the legislation. Briefly, the Act requires licensing where an operator, driver and vehicle **provide a service to the public**. A number of operators and drivers are currently avoiding licensing on the basis that they do not provide a service to the public at large; rather they provide a service **to a specific group of people**. We are therefore proposing to amend the 1998 Act in such a way as to bring into the licensing system those operators and drivers who provide contract services.

3. A fuller description of the problem and the proposed solution, with a request for comments, is attached at Annex A.

Regulatory Impact Assessment

4. A Draft Regulatory Impact Assessment has been prepared for these proposals; it is at Annex B. It would be helpful when you reply if you would indicate whether or not you have any specific comments on this document.

Application to Devolved Administrations

5. This proposal affects London only. (The Department has responsibility for taxi and private hire vehicle legislation in England and Wales. Legislation in Scotland and Northern Ireland is devolved.)

Consultation Responses

6. A list of the initial consultees is attached at Annex C to this document. If you think any other organisation should see it, please let us know.

7. Please send your responses by Wednesday 6 October 2004 to Pippa Brown in one of the following ways:

- (i) in writing to 3/12 Great Minster House, 76 Marsham Street, London, SW1P 4DR;
- (ii) by fax to 020 7944 2279; or
- (iii) by e-mail to taxis@dft.gsi.gov.uk.

8. If you are responding in writing please submit two copies of your response. If you are responding as a representative organisation, please include in your response a summary of the people and organisations which you represent.

Copies of Responses

9. Copies of responses will be placed in the Department's library following the close of the consultation, where anyone may inspect them. You should say at the beginning of your response if you do not want it to be available in this way. All responses will be included in any statistical or other summary of the results.

Enquiries

10. Enquiries about the contents of this consultation paper should be made to Pippa Brown at the above address.

Consultation Code of Practice

11. The consultation is being conducted in accordance with the Government's Code of Practice on Written Consultation. The criteria contained within the Code have been reproduced in Annex D of this consultation document. If you have any complaints about the consultation process, please contact Andrew D. Price in DfT's Corporate Secretariat Division in Zone 4/11, Great Minster House, 76 Marsham Street, London, SW1P 4DR, who can be contacted by e-mail at AndrewD.Price@dft.gsi.gov.uk

Further copies of the consultation paper

12. This document is available on the Department for Transport web-site. Alternatively, requests for further copies should be made to Pippa Brown on 020 7944 2278.

Yours faithfully



Head of Taxi / PHV Policy Branch

Private Hire Vehicles (London) Act 1998 - Proposed Amendment Annexe A

Background

1. The Government supported a Private Member's Bill to license London's private hire vehicles (PHVs - minicabs) in its first term to bring in a long overdue safety measure and to enable London to catch up with the rest of the country in this regard. PHVs in London are in the process of being licensed under the Private Hire Vehicles (London) Act 1998 (the 1998 Act) by Transport for London (TfL). The Act provided for the licensing of PHV operators (the people who actually arrange the hirings), PHV drivers and private hire vehicles. Operator licensing was introduced in 2001, driver licensing in 2003 and vehicle licensing earlier this year. The sheer volume of PHV driver and PHV vehicle licence applications has necessitated special arrangements (principally involving the use of temporary permits) to ensure a smooth transition; implementation will be completed in April 2006.

The problem

2. A problem has been identified in the definition of "private hire vehicle" in the Private Hire Vehicles (London) Act 1998. The 1998 Act defines a private hire vehicle as "a vehicle constructed or adapted to seat fewer than nine passengers which is made available with a driver to the public for hire for the purpose of carrying passengers, other than a licensed taxi or a public service vehicle".

3. The words "available to the public" have created a problem in that some PHV operators and drivers who provide their services on a contract basis to one or more companies, local authorities, schools, hospitals etc have argued that they are not making their services available to the public at large and therefore their vehicles do not fall within the definition of "private hire vehicle" in the 1998 Act. Accordingly, they have concluded that the whole operation does not require licensing. A logical extension to this argument is that there is also a possibility that a firm could offer its services only to one section of the public, eg children, and by so doing fall outside the scope of the licensing regime.

4. TfL have reluctantly accepted that those operators and drivers who do not make their services available to the public at large are exempt from licensing. They have asked Central Government to rectify what they see as a significant loophole in the legislation.

5. The Department accepts there is a considerable problem if certain operators are avoiding the requirement to be licensed. The definition of "private hire vehicle" in the legislation governing England and Wales outside London does not include the word "public". Indeed, the contract exemption provided for in the provincial legislation was deliberately left out of the London legislation on the basis that it had, over the years, become open to abuse.

6. We are aware that this is not just a theoretical problem; we have been alerted to actual cases where drivers and vehicles which Parliament clearly believed should be licensed have managed to evade the PHV licensing system on the basis that they are providing a service to an identified company or body rather than to the public at large. The main implications of this are that the drivers are unlikely to have had a criminal record check carried out on them (nor to have met other licensing requirements) and the vehicles will not have been checked with regard to suitability and insurance. However, if we are going to take action to remedy the problem which has been brought to our attention, we need as much information as possible about its actual scale and nature. The draft initial Regulatory Impact Assessment (Annex B) attempts to quantify the problem, but we would hope to gauge more accurately the numbers involved through the consultation process.

Can you provide any information about the scale of the problem, including the actual numbers of operators and drivers who are using the loophole described to provide an unlicensed service?

7. Our understanding is that particularly vulnerable people (hospital patients or schoolchildren) are being disproportionately affected by the apparent loophole in the legislation.

Can you offer any feedback about the nature of the services which are being operated outside the licensing system, particularly the categories of people who are being carried by unlicensed drivers and the extent to which they go beyond contracts with public authorities?

Does your organisation use the services of unlicensed PHV operators and drivers? If so, why is this preferable to using licensed operators and drivers?

8. It is possible that the services which are currently being provided outside the licensing system are, in fact, services which are subject to checks by an authority other than Transport for London. For example, where education or health authorities are using unlicensed PHV operators and drivers, it may be the case they are carrying out their own criminal record checks for the purposes of the contract.

If your organisation uses unlicensed drivers, do you undertake checks on their criminal record? Do you undertake any other checks eg on the vehicle or insurance?

Proposed solution

9. The key principle underpinning the 1998 Act is safety and the fact that a significant number of drivers are seeking to by-pass the system of licensing means that the new regime is to a large extent undermined. And, as long as the apparent loophole remains, it is likely that increasing numbers of PHV drivers will become aware of it and seek to take advantage of it. The result of this is that passengers will not have the degree of confidence in the PHV trade which Parliament wanted them to have when passing the Bill.

10. There is, on the face of it, a concern that the underlying objective of the Act - a comprehensive licensing system for PHVs in London - is not being achieved. We are, therefore, proposing to amend the definition of "private hire vehicle" in the 1998 Act to remove the reference to providing the vehicle to the public.

11. In this way, all PHV drivers and operators who provide private hire services in London - whether they advertise to the public at large, or whether they direct their service towards one or more groups of people - will have to be licensed. The vehicles they use will also have to go through the necessary checks to secure a licence. (The exemption for weddings and funerals would remain; Parliament took the view that these services were of a sufficiently specialist nature as to justify an exemption from licensing.)

12. We propose to invite Parliament to make the change by means of primary legislation as soon as Parliamentary time permits. (We have also considered pursuing this measure by means of an order under the Regulatory Reform Act 2001. However, we concluded that this is not a suitable vehicle on the basis that it will not be removing any burden; on the contrary it will be imposing the burden of a licensing regime on those operators who are currently avoiding the PHV licensing system on the basis that they are not providing services to the public.)

Do you have any comments on the pros and cons of the proposal to amend the legislation; specifically whether the proposed amendment is likely to achieve the desired objective of providing a comprehensive licensing system and enhancing the degree of safety associated with travelling in a PHV?

13. The draft initial Regulatory Impact Assessment (attached at Annex B) suggests alternative approaches to legislation.

Do you have any comments on the feasibility of pursuing alternative approaches, particularly ones which might avoid legislation, such as a voluntary agreement by various bodies to the use of licensed PHVs only?

Buses and Taxis Division
Department for Transport July 2004

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Definition of London Private Hire Vehicle Licensing

Policy objectives and the issue.

Issue

1. Private hire vehicles (PHVs) in London are in the process of being licensed under the Private Hire Vehicles (London) Act 1998 (the 1998 Act) by Transport for London (TfL). PHV operator licensing was introduced in 2001, PHV driver licensing in 2003 and PHV vehicle licensing in 2004. Implementation will be completed in April 2006.

2. A significant problem has arisen as a result of the definition of "private hire vehicle" in the Act which states that a PHV must be available to the public. Some PHV operators who provide their services on a contract basis to local authorities, schools, hospitals etc have argued that they are not making their services available to the public at large and therefore their vehicles do not fall within the definition of "private hire vehicle" in the 1998 Act and, as such, the whole operation does not require licensing. There is also a possibility that a firm could offer its services only to one section of the public, e.g. children, and by so doing fall outside the scope of the licensing regime.

3. TfL have reluctantly accepted that those PHV operators and PHV drivers who do not make their services available to the public at large are exempt from licensing.

4. Accordingly, this definition does create a considerable problem in terms of exempting certain operators from the requirement to be licensed. The definition of "private hire vehicle" in the legislation governing England and Wales outside London (the Local Government (Miscellaneous Provisions) Act 1976) does not include the word "public". Indeed, the contract exemption provided for in the provincial legislation was deliberately left out of the London legislation on the basis that it had, over the years, become open to abuse, by dubious operators to provide a service outside the licensing system.

Objective

5. The objective of licensing London's minicabs is to create a safer PHV trade for passengers in London; a regulatory approach could be used to bring within the licensing regime those drivers and operators currently avoiding legislation on the basis that they are not providing a service to the public at large.

6. The measure is likely to be well-received and non-controversial. The Licensing Authority, Transport for London, has asked us to rectify the problem; the GMB (representing some PHV drivers in London) has issued a press release urging the Government to act; the main trade body for London PHVs, the Licensed Private Hire Car Association, is pressing for a legislative solution; the London licensed taxi trade have accepted private hire licensing and so would welcome any measure to clamp down on those now endeavouring to evade the licensing system; and consumer groups would also welcome the measure. It would seem that failure to implement the measure would be the more controversial approach.

Risk Assessment

7. The practical effect of the definition on the travelling public is that PHV drivers and vehicles could be unlicensed and therefore unsafe and a potential danger (just what the 1998 Act was meant to stop). Under the 1998 Act, PHV operators and PHV drivers must be assessed as "fit and proper"; drivers undergo criminal record checks as well as medical checks and, in future, they will have to demonstrate their knowledge of the local area. Vehicles are licensed every year and have to undergo a special test devised by TfL to ensure that they are suitable for PHV work.

8. We have been alerted to actual cases where PHV drivers and vehicles which Parliament clearly believed should be licensed have managed to evade the licensing system on the basis that they are providing a service to an identified company or body rather than to the public as a whole. The GMB issued a press notice to highlight the problem in February; they referred to a case where Public Carriage Office inspectors discovered seven minicab drivers transferring patients to and from St Thomas' Hospital without being licensed.

9. Our information from the Licensing Authority is that some 750 drivers and 50 operators are avoiding licensing by using this loophole. *[Consultation to elicit more comprehensive information about extent and nature of problem - number of operators/drivers involved; organisations and bodies arranging contracts; public sector (hospitals/local authorities); private sector (hotels/nightclubs)]*

10. *[From the consultation responses we receive, it might be the case that vulnerable people are disproportionately affected by the loophole; those visiting hospitals or going to school who have a limited choice in how they travel - and who might believe that the service is in fact licensed.]*

11. Where transport contracts are arranged for the carriage of vulnerable people (eg for elderly or disabled people, or for children) it is sometimes possible for the body arranging the contract (probably the local education or health authority) to get criminal record information about any driver who will be used on that contract. However, the onus for checking lies with the contracting body.

12. People using unlicensed services arranged by hotels or nightclubs would be at risk - perhaps females, relying on minicabs to get home late at night; perhaps tourists who are not familiar with getting around London. It is unlikely that such bodies would have access to criminal record checks on the unlicensed drivers that they are using to provide a service.

Options

13. We have considered the following options:

Option 1: Do nothing - accept that the definition in the 1998 Act is adequate;

Option 2: Encourage all drivers and operators to acquire the necessary licences;

Option 3: Amend the legislation using Regulatory Reform Order procedure, and

Option 4: Amend legislation using conventional Bill procedure.

Option 1: Do nothing - accept that definition in the 1998 Act is adequate.

14. Pros - the Government would not have to use valuable Departmental resources and scarce Parliamentary time in pursuing the issue. Some of the contracts *involved [consultation would determine the actual proportion]* would involve criminal record checks on the PHV drivers undertaken by the body responsible for awarding the contract.

15. Cons - If Central Government took no action at all, the risks identified above would remain; vulnerable people would continue to use PHVs without the confidence and assurances associated with a licensing system. It would take only one unfortunate incident with tragic consequences to highlight the importance of the quality and safety checks for PHV operators, PHV drivers and vehicles undertaken by the Licensing Authority.

Option 2: Encourage all drivers and operators to acquire the relevant licences.

16. Pros - as with option (i) above, this would save on Departmental and Parliamentary time and resources. The Department could explain to those PHV operators and PHV drivers currently avoiding the licensing system that it could in fact be beneficial to them to acquire the relevant licences; they would be able to offer their services to a wider range of people, and people would have greater confidence in the service they provide. Moreover, the users of unlicensed services might think twice about continuing to make use of unlicensed PHV drivers and PHV operators if the Government were to make a pronouncement about them.

17. Cons - This sort of voluntary approach would really only appeal to those PHV drivers and PHV operators who would be willing to participate in the licensing system; it would do nothing to check the activities of the rogue PHV operators who know that they would fail the suitability assessment so the risks identified would remain.

Option 3: Amend the legislation using Regulatory Reform Order procedure

18. Cons - this would not be possible on the basis that it will not be removing any burden; on the contrary it would be imposing the burden of a licensing regime on those PHV operators who are currently avoiding the PHV licensing system on the basis that they are not providing services to the public.

Option 4: Amend the legislation using primary legislation

19. Pros - Amending the definition of "private hire vehicle" in the 1998 Act would require just a single clause in a transport-related Bill. It would remove any doubt about whether the PHV operators and PHV drivers currently avoiding licensing were doing so lawfully or unlawfully.

20. Cons - It might prove problematic finding a suitable Bill; in order to act swiftly, it would be necessary to tack this measure onto a Bill whose primary objective does not relate to private hire vehicles. This approach might give rise to problems relating to scope but not to the extent of ruling out the proposal.

Business Sectors Affected

21. The sector which would be most affected by regulation would be that part of the London minicab trade which is currently avoiding the PHV licensing system; they would have to acquire the relevant licences.

22. The licensed London private hire vehicle trade would be positively affected in terms of creating a level playing field for the whole trade.

23. The organisations which currently make use of the services of unlicensed PHV drivers and PHV operators would be affected to the extent that they might have to pay more for the service. They would, however, benefit from higher quality and safety standards.

Equity and fairness

24. The proposal would produce a more level playing field for those PHV drivers and PHV operators who have acquired the relevant licences yet feel aggrieved that others have managed to evade the licensing system.

Costs and benefits

25. The cost impact would be greatest on those PHV drivers and PHV operators who currently evade the licensing system and would need to acquire the relevant licences. The majority of individuals taking advantage of the loophole are drivers who, in order to work lawfully if the law were to be changed, would need to be licensed as PHV drivers and have their vehicles licensed as well. For working purposes, following discussion with the Licensing Authority, we have assumed that some 750 drivers will need to acquire a PHV driver licence and a vehicle licence. A much smaller number of individuals taking advantage of the loophole fall into the category of PHV operators i.e. they actually arrange hirings either on an ad hoc basis or in accordance with a contract. In order to continue operating lawfully were the law to be changed, we assume that some 50 people will need to acquire PHV operator licences. We also assume that a small proportion of the PHV driver licence applications (along with the accompanying vehicle licence applications) and the PHV operator licence applications will be refused; it is reasonable to assume that some of the PHV drivers and PHV operators currently evading the licensing system may be doing so on the basis that they are unlikely to meet the fit and proper criteria.

26. A rough estimate of the initial cost to the trade in amending the law could be quantified as follows:

	Assumed number	Cost per item	Cost overall
Driver licence applications	750	£157.00	£117,750
Vehicle licence applications	750	£75.00	£56,250
Small operator licence applications	20	£637.00	£12,740
Standard operator licence applications	30	£637.00	£19,110
Grant of driver licence (3 yrs)	700	£105	£73,500
Grant of vehicle licence (1 yr)	700	£25	£17,500
Grant of small operator licence (5 yrs)	15	£500	£7,500
Grant of standard operator licence (5 yrs)	25	£1510	£37,750
			£342,100

27. This figure reflects the **initial cost of entering the PHV trade legitimately**; there would be on-going costs in terms of renewing licences (annually for vehicles, three yearly for PHV drivers and five yearly for PHV operators).

28. There might be a slight knock-on effect for those passengers or local authorities who currently use unlicensed PHV drivers; if the drivers have to pay for licensing their charges might be higher, but the introduction of the wider licensing system suggested that increases in fares to off-set licence fees was not a major concern. However, bodies such as health authorities would be relieved of the burden of carrying out criminal record checks - to the extent that they actually do so.

29. Passengers - who currently use the services of unlicensed PHV drivers and PHV operators would secure the greatest benefits in terms of enhanced personal safety and security and a greater degree of confidence in the service.

Potential unintended consequences

30. [None perceived - *But, consultation might generate some unintended consequences*]

Distributional impacts

31. [Complete after consultation - *transfers of income or redistribution of opportunities?*]

Competition Assessment

32. [Complete after consultation - *include small businesses.*]

Compliance and review

33. Transport for London are responsible for the private hire vehicle licensing system in London; if this proposal was to be taken forward, they would be responsible for ensuring that PHV operators and PHV drivers complied with the new requirement. A special review would not be necessary, rather it would be a matter for TfL to prosecute any PHV drivers or PHV operators who were not complying with the new requirement.

Contact Point

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The full Index and Annexes C (list of consultees & D code of practice are available from the website link
<http://www.dft.gov.uk/consultations>

The LPHCA and The Private Hire Board have been aware for a considerable time that some were exploiting what is now seen as a loophole in The 1998 Act. We agreed that this needed addressing and representatives were in the middle of dialogue with The Department for Transport and The Public Carriage Office when the media were alerted, which unfortunately opened the floodgates for the unscrupulous to potentially exploit the loophole.

The LPHCA was never completely convinced that a loophole existed however TfL lawyers were not prepared to test this in the courts, so the only realistic option is now a change / amendment to the Act.

It is our belief that Sir George Young intended the regulation to be all embracing for those rewarded by charging for the carriage of passengers in London in small vehicles. If this loophole remains unplugged The London Private Hire Industry would be faced with the nightmare scenario of competing for business with unregulated transport providers that potentially completely avoided the costs and massive public safety requirements that the Licensing Process affords Londoners.

Whilst we have some members who may be impacted on by the closing of this loophole, in our view the possibility that schoolchildren, hospital patients, the elderly and many other vulnerable groups may be transported by someone who is medically unfit, criminally unacceptable or in a potentially unfit vehicle is unthinkable.

Either a full meeting or a ballot of members prior to the consultation closure date (Wednesday 6th October) will ratify the LPHCA's position to the Government.



See posts running on The LPHCA website message board on page 40.

see page 16 - Rupert Cope
Head of Taxi / PHV Policy Branch