

TRANSPORT FOR LONDON

BOARD

**SUBJECT: CHANGES TO PRIVATE HIRE VEHICLE REGULATIONS**

**DATE: 31 MARCH 2009**

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**1 PURPOSE**

1.1 The purpose of this paper is to seek the Board's approval for the making of amendments to the following private hire vehicle (PHV) regulations:

- a) The Private Hire Vehicles (London PHV Driver's Licences) Regulations 2003 (the PHV Driver Regulations); and
- b) The Private Hire Vehicles (London) (Operators' Licences) Regulations 2000 (the PHV Operator Regulations).

1.2 This proposal was endorsed by the Surface Transport Panel at its meeting on 24 February 2009.

**2 BACKGROUND**

2.1 TfL is the licensing authority for London's taxi and PHV services and is able to make regulations in connection with its licensing obligations. The making of PHV regulations (except for those setting licence fees) is a matter reserved to the Board under TfL Standing Order No 2.

**3 PROPOSED AMENDMENT TO THE PHV DRIVER REGULATIONS – PHV DRIVER PHYSICAL FITNESS STANDARDS**

3.1 The PHV Driver Regulations currently require applicants for a PHV driver's licence to meet DVLA Group 2 licence standards of physical fitness which normally apply to drivers of lorries and other large vehicles. The PCO therefore has very limited discretion in making decisions in respect of an applicant's physical fitness.

3.2 In the case of taxi drivers, taxi legislation requires TfL to be satisfied that the applicant is fit to act as a cab driver but does not specify physical fitness standards. The PCO chooses to be guided by the DVLA Group 2 standards in licensing taxi drivers but has the flexibility to depart from these standards in particular cases, such as eyesight, where this is considered safe and appropriate.

3.3 The current position for PHV drivers has been a particular problem when the uncorrected eyesight of an applicant falls a little short of the Group 2 standard but the applicant's eyesight when corrected, for example with spectacles, is at or above the standard required. There have been many cases where PHV driver applicants have had their applications rejected solely on the grounds of eyesight even though they had been working for many years satisfactorily as a

PHV driver before licensing was introduced in London in April 2003 and taxi drivers in the same situation would have been licensed.

- 3.4 The DVLA has been unable to discover the origins of the Group 2 requirement for uncorrected vision.
- 3.5 The PCO tries to harmonise practices for the taxi and private hire trades wherever it fits with general policies and when it is practical to do so. In this case, the PCO wishes to bring PHV regulations in line with the practice for taxi drivers by moving to a 'guided by' approach in relation to the DVLA Group 2 physical fitness standards.
- 3.6 A lower standard would only be accepted in any case after careful consideration of medical reports and other information concerning the applicant and, where appropriate, advice from TfL's Occupational Health Department, to ensure safety standards are not compromised.
- 3.7 The PCO has obtained independent expert medical advice that supports the proposed change.

#### **4 PROPOSED AMENDMENT TO THE PHV OPERATOR REGULATIONS – CONSEQUENTIAL TO THE MENTAL CAPACITY ACT 2005**

- 4.1 Regulation 19 of the PHV Operator Regulations deals with cases where an operator's licence has been granted in the sole name of an individual and that person is no longer able to act as the operator due to death, bankruptcy or becoming a "patient" under Part VII of the Mental Health Act 1983. It allows the PHV operation to continue for a transitional period so that a new applicant can be licensed.
- 4.2 Part VII of the Mental Health Act 1983 was repealed on 1 October 2007 following the commencement of the Mental Capacity Act 2005. This means the reference in regulation 19 of the PHV Operator Regulations is now obsolete and needs to be amended.
- 4.3 Under the Mental Capacity Act 2005, instead of regarding people as lacking capacity for all purposes (which was the position under the Mental Health Act 1983), capacity is now viewed as decision or activity specific. So, rather than viewing a person as a "patient" who lacks capacity generally, the Mental Capacity Act 2005 considers whether the person lacks the capacity to do something in particular, for example, conduct legal proceedings or manage and control their financial affairs. The latter, for instance, could include lacking the capacity to operate a PHV business.
- 4.4 The proposed amendment to regulation 19 of the PHV Operator Regulations will reflect the position under the Mental Capacity Act 2005 by referring to a person who lacks capacity (within the meaning of that Act) to carry on the activities covered by the licence.
- 4.5 The Government was not able to make this consequential amendment when the Mental Capacity Act 2005 commenced as the power to make PHV regulations rests with TfL. The Government has therefore invited TfL to make the necessary amendment and suggested the proposed wording of the amendment.

## 5 EQUALITY AND INCLUSION

- 5.1 **Physical fitness standards:** The proposed measure would bring the practice for PHV drivers into line with taxi drivers and remove the potential for inequitable treatment of applicants with a safe standard of physical fitness.
- 5.2 **Mental capacity:** The proposed change implements a more enlightened approach, consequential to primary legislation, in relation to the mental capacity of private hire operators.

## 6 ALTERNATIVES

- 6.1 **Physical fitness standards:** Harmonising the policy to require taxi drivers to meet DVLA Group 2 standards in all cases would be unnecessarily prescriptive and would bring no discernible safety benefits. Reducing the standard for both taxi and PHV drivers to that applying to private motorists (DVLA Group 1) would fail to recognise their professional role in carrying passengers and the fact that they drive daily for much longer periods than private motorists. The requirement to be 'guided by' DVLA Group 2 standards would give the PCO the appropriate level of discretion. Although this could be limited to eyesight matters, the preference is to allow the same form of discretion for all physical fitness matters to fully align with the practice for taxi drivers.
- 6.2 **Mental capacity:** None.

## 7 CONSULTATION

- 7.1 **Physical fitness standards:** The PHV trade has taken a very keen interest in this matter, which has been discussed with them on a number of occasions. They have made strong representations in favour of a relaxation in the regulation in line with the practice for taxi drivers, as is proposed.
- 7.2 **Mental capacity:** As this amendment is required due to changes to primary legislation over which TfL has no control, it is not considered necessary for TfL to conduct any consultation.

## 8 RECOMMENDATIONS

- 8.1 The Board is asked to APPROVE the making of regulations, to be signed by the Commissioner of Transport or in his absence, the Managing Director of Surface Transport, that:
- a) amend the PHV Driver Regulations to require the licensing authority to be guided, rather than bound, by the DVLA Group 2 physical fitness standards; and
  - b) amend the PHV Operator Regulations to reflect the recent changes to primary legislation concerning mental capacity.

## 9 CONTACT

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