

TRANSPORT FOR LONDON
SURFACE TRANSPORT PANEL

SUBJECT: CHANGES TO PRIVATE HIRE REGULATIONS

MEETING DATE: 24 FEBRUARY 2009

1 PURPOSE

- 1.1 The purpose of this paper is to seek the Panel's support 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).

2 DECISION REQUIRED

- 2.1 The TfL Board will be asked to approve the making of regulations that:
- (a) amend the PHV Driver Regulations to allow TfL (the licensing authority) to exercise greater discretion in respect of the physical fitness requirement of an applicant for a PHV driver licence; and
 - (b) make a consequential amendment to the PHV Operator Regulations arising from a change to primary legislation concerning mental capacity.

3 BACKGROUND

- 3.1 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 regulations is a matter reserved to the Board under Standing Orders.

4 PROPOSED AMENDMENT – PHV DRIVER PHYSICAL FITNESS STANDARDS

- 4.1 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.
- 4.2 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.
- 4.3 The current position for PHV drivers has been a particular problem when the uncorrected eyesight of an applicant falls just 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 first introduced.

- 4.4 The DVLA has been unable to determine the origins of the Group 2 requirement for uncorrected vision.
- 4.5 The PCO has obtained expert medical advice that supports a change to the regulation. The proposal is that the PCO should be guided by the Group 2 physical fitness standards (as for taxi drivers) rather than requiring absolute compliance with them. Any PHV drivers who require contact lenses or spectacles to meet the Group 2 corrected visual acuity standard would have a condition attached to their licence requiring that they carry a spare pair of spectacles or contact lenses. A lower standard of physical fitness would only be accepted in any case after careful consideration of medical reports and other information to ensure safety standards are not compromised.

5 PROPOSED AMENDMENT – CONSEQUENTIAL TO THE MENTAL CAPACITY ACT 2005

- 5.1 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.
- 5.2 Part VII of the Mental Health Act 1983 was repealed on 1 October 2007 in line with the coming into force 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.
- 5.3 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.
- 5.4 The proposed amendment 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. The Government was not able to make this consequential amendment as the power to make PHV regulations rests with TfL. The Government has therefore invited TfL to make the necessary amendment and suggested suitable wording.

6 EQUALITIES

- 6.1 **Physical fitness standards:** The proposed measure brings the practice for licensed PHV drivers into line with licensed taxi drivers, and removes the potential for inequitable treatment of applicants with a safe standard of physical fitness.

6.2 **Mental capacity:** The proposed change implements a more enlightened approach, consequential to primary legislation, in relation to the mental capacity of private hire operators.

7 ALTERNATIVES

7.1 **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.

7.2 **Mental capacity:** None.

8 CONSULTATION

8.1 **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.

8.2 **Mental capacity:** This amendment is required due to changes to primary legislation over which TfL has no control. As such, TfL has no intent to conduct any consultation.

9 RECOMMENDATIONS

9.1 The Panel is asked to support the making of regulations (subject to obtaining TfL Board approval) that:

- (a) amend the PHV Driver Regulations to allow the licensing authority discretion to be guided by DVLA Group 2 standards in respect of the physical fitness of PHV driver applicants and licensed PHV drivers; and
- (b) amend the PHV Operator Regulations to reflect the recent changes to primary legislation concerning mental capacity.

10 CONTACT

10.1 Contact: Ed Thompson, Director of Taxi & Private Hire, Surface Transport
Phone: 020 7126 1913