

PEDICABS (LONDON) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Pedicabs (London) Bill as introduced in the House of Commons on 23 January 2018 (Bill 154).

- These Explanatory Notes have been prepared by the Department for Transport with the consent of Paul Scully MP, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill will enable Transport for London to regulate pedicabs for the first time.

Policy background

- 2 The Government has been asked by the Mayor of London to introduce legislation which would allow Transport for London (TfL) to regulate pedicabs (pedal and power-assisted pedal cycles constructed or adapted to carry passengers for hire or reward) in London. The Mayor has raised concerns about pedicabs including safety (passenger, rider/driver and vehicle), fares regulation and congestion in the West End of London.
- 3 Pedicabs have been operating in London for about 18 years, but the precise number operating in the capital is unknown. TfL estimate that there are around 400 working predominantly in the West End and Covent Garden (but this could be as high as 1000). There is some evidence that they are moving into other parts of the capital. Though relatively few in number, they have a disproportionate effect on traffic congestion and congregate in pedestrian areas, impacting on buses, drivers and other road users.

Legal background

- 4 There is no extant legislation which would allow the regulation of pedicabs in London. This is because the legislation which enables Transport for London to regulate taxis within London does not apply to pedicabs. Conflicting judicial decisions mean that pedicabs can only be regulated outside London, where different legislation applies.
- 5 Outside London, in England and Wales, pedicabs are treated as taxis for the purposes of the Town Police Clauses Act 1847 and Part II of the Local Government (Miscellaneous Provisions) Act 1976. Accordingly, pedicabs may be regulated as taxis under the provisions of the 1847 and 1976 Acts.
- 6 By contrast, within London, pedicabs are not treated as taxis for the purpose of the Metropolitan Public Carriage Act 1869, which is the equivalent legislation in London.
- 7 It is not considered appropriate to amend the 1869 Act in order to regulate pedicabs. However, this Bill is modelled on sections 9 and 10 of that Act, which enable Transport for London to make orders that regulate taxis in London and to attach penalties to contraventions.

Territorial extent and application

- 8 This Bill extends to England and Wales but only applies in England to pedicabs operated within Greater London.
- 9 Taxi licensing is devolved in Scotland and Northern Ireland. In relation to Wales, competence for taxi licensing is currently reserved to Westminster but will be devolved from April 2018. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.
- 10 As the Bill is a Private Member's Bill, the English Votes for English Laws provisions in the Standing Orders of the House of Commons relating to Public Business do not apply to the Bill.

Commentary on provisions of Bill

Clause 1 Power to regulate pedicabs

- 11 Subsection (1) will enable Transport for London to make regulations for the purpose of regulating the use of pedicabs in public places in Greater London in circumstances in which payment is made for the carriage of passengers.
- 12 Subsection (2) defines the terms pedicab and public place. A pedicab is defined as a pedal cycle, which includes for this purpose a power assisted pedal cycle (see clause 6), or a pedal cycle in combination with a trailer, constructed or adapted for carrying one or more passengers. A wide definition is required because there are many different types of pedicab. A public place is defined as any place to which the public have access (whether or not on payment). Hence the Bill is not limited to pedicabs which operate on public highways.
- 13 Subsection (3) requires that, before making regulations, Transport for London must consult whatever persons they consider appropriate. This will give Transport for London a wide discretion as to who may be consulted.
- 14 Subsection (4) provides that the rest of the Bill is not intended to limit subsection (1). Accordingly, subsection (1) confers a wide discretion on Transport for London.
- 15 A general enabling power in these terms is considered to be appropriate because it would not be proportionate to make provision for the regulation of pedicabs by way of detailed primary legislation. It will allow all of the details of the regulatory regime to be determined after appropriate consultation and enable the regime to be adapted from time to time in response to changing circumstances.

Clause 2: Licenses, fares and other matters

- 16 Subsection (1) is designed to enable Transport for London to licence pedicabs, their drivers and operators in a manner similar to the licensing regime applicable to taxis.
- 17 Subsection (2) will enable Transport for London to charge for the administration of licence applications and recover both license administration and enforcement costs.
- 18 Subsection (3) will enable Transport for London to recover all costs so that the pedicab industry will bear the costs of regulation.
- 19 Subsection (4) will enable Transport for London to protect passengers from being overcharged. There is evidence that overcharging is common, especially when pedicabs are hired by tourists.

- 20 Subsection (5) will enable Transport for London to prescribe appropriate standards (for example, requiring that drivers and operators must be fit and proper persons who have been the subject of appropriate criminal record checks and requiring that pedicabs are insured and roadworthy) to ensure the safety of passengers and to protect other road users.
- 21 Subsection (6) will enable Transport for London to restrict pedicabs from operating in areas in which they are causing obstruction or congestion. They may only be allowed to stand for hire in specific areas (similar to taxi ranks).
- 22 Subsection (7) will enable Transport for London to impose other requirements on drivers or operators which are not expressly contemplated by subsection (5).
- 23 Subsection (8) will enable Transport for London to determine whether a driver or an operator is a fit and proper person.
- 24 Subsection (9) will enable Transport for London to outsource licensing and/or enforcement functions whilst retaining overall responsibility.

Clause 3: Enforcement

- 25 Subsection (1) will enable Transport for London to prosecute drivers or operators who provide false or misleading information in connection with licencing applications or decisions, or fail to comply with the requirements imposed by the regulations.
- 26 Subsection (2) limits the impact of subsection (1). It means that drivers and operators can only be prosecuted in a Magistrates' Court and cannot be punished with imprisonment. They can only be punished with a fine which does not exceed a prescribed statutory maximum (currently £2,500).
- 27 Subsection (3) will enable Transport for London to impose civil penalties (as well as or in addition to creating offences) in relation to conduct described in subsection (1). Civil penalties may be a more effective method of enforcing the regime because they may be imposed more promptly for minor contraventions (such as not displaying a licence) and will avoid the need to pursue a prosecution in a Magistrates' Court.
- 28 Subsection (4) will enable vehicles to be immobilised, seized, retained and disposed of where they are used in contravention of the regulations. Transport for London may need to take such action if a vehicle is found to be unsafe, unroadworthy, unlicensed or uninsured.
- 29 Subsection (5) will enable Transport for London to enter into arrangements with the Metropolitan Police which are similar to those applicable to the enforcement of the taxi licensing regime.

Clause 4: Appeals

- 30 Subsection (1) has the effect that any person in relation to whom any relevant regulatory decision (as set out in subsection (2)) is made by Transport for London will have the right to request that the decision is re-considered and to appeal to a Magistrates' Court; and subsection (3) will enable further provision to be made by Transport for London about re-consideration or appeals. It is necessary to impose a requirement to this effect in order to comply with the European Convention on Human Rights in a manner which gives Transport for London flexibility to amend the applicable procedures from time to time.

Clause 5: Procedure for pedicab regulations

- 31 This clause provides that the power to make pedicab regulations is exercisable by statutory instrument, subject to the negative resolution procedure.
- 32 The powers to regulate taxis in London under sections 9 and 10 of the Metropolitan Public

Carriage Act 1869 were originally conferred on the Secretary of State, who made taxi regulation orders by Statutory Instrument. Transport for London was substituted for the Secretary of State by the Greater London Authority Act 1999, in consequence of which taxi regulation orders are no longer subject to any form of Parliamentary scrutiny.

- 33 By contrast, it is considered appropriate that pedicab regulations made by Transport for London under the Bill should be made by Statutory Instrument, subject to the negative resolution procedure. Having regard to the subject matter, this would be a more proportionate form of Parliamentary scrutiny than the affirmative resolution procedure.

Clause 6: Interpretation

- 34 This clause defines terms used in the Bill, the meanings of which are largely self-evident but (as mentioned above) it should be noted that the term “pedicab” includes a power-assisted pedal cycle.

Clause 7: Commencement

- 35 This clause is self-explanatory.

Clause 8: Extent

- 36 This clause provides that the Bill extends to England and Wales. As explained above, it applies only to pedicabs operated within Greater London.

Clause 9: Short title

- 37 This clause is also self-explanatory.

Commencement

- 38 The Bill comes into force at the end of the period of 2 months beginning with the day on which it is passed.

Financial implications of the Bill

- 39 Any costs of meeting the measures provided for by the Bill will be met in the first instance by Transport for London.
- 40 Transport for London can, and may decide to, recover these costs through pedicab licence fees.

Parliamentary approval for financial costs or for charges imposed

- 41 A money resolution will be needed for the Bill. Transport for London is partly funded out of grants paid by the Secretary of State under section 101 of the Greater London Authority Act 1999. Adding to its functions gives rise to the possibility of an increase in grant-funding under that section, although in practice it is expected that any expenditure incurred by Transport for London will be met by fees.
- 42 A ways and means resolution will be needed to cover fees payable in respect of licensing. See clause 2(2) and (3) of the Bill.

Compatibility with the European Convention on Human Rights

- 43 No statement of compatibility with section 19 of the Human Rights Act 1998 is required because this is a Private Member's Bill. However, the Bill is considered to be compatible with the European Convention on Human Rights. The issues are summarised briefly in the following paragraphs.
- 44 The provisions of the Bill engage and potentially interfere with Article 1 of Protocol 1 (protection of property) and Article 6 (right to a fair trial).
- 45 This is because (as is explained in more detail above) the Bill enables TfL to make regulations which may require the operators (who may also be the owners) of pedicabs to hold licences and comply with a wide range of relevant requirements. The regulations may create offences and authorise the suspension or revocation of licences, the imposition of civil penalties and the immobilisation, seizure, retention or disposal of pedicabs.
- 46 This is necessary to control the use of pedicabs in the public interest and for effective enforcement if pedicabs are operated in contravention of relevant requirements, for example, if they are unroadworthy and constitute a risk to the safety of passengers or other road users, stand or ply for hire in places in which they may cause traffic congestion or otherwise constitute a public nuisance.
- 47 However (as is also explained above), the Bill also provides that provision must be made for rights to require the re-consideration of (and appeal to a Magistrates' Court from) key enforcement decisions which would not otherwise be capable of being appealed by any other

means.

Annex A - Territorial extent and application in the United Kingdom

The Territorial extent of the Bill is England and Wales. Taxi and private hire legislation is devolved in Scotland and Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	No	Yes	Yes	No
Clause 2	Yes	No	No	No	No	Yes	Yes	No
Clause 3	Yes	No	No	No	No	Yes	Yes	No
Clause 4	Yes	No	No	No	No	Yes	Yes	No
Clause 5	Yes	No	No	No	No	Yes	Yes	No
Clause 6	Yes	No	No	No	No	Yes	Yes	No
Clause 7	Yes	No	No	No	No	Yes	Yes	No
Clause 8	Yes	No	No	No	No	Yes	Yes	No
Clause 9	Yes	No	No	No	No	Yes	Yes	No

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