

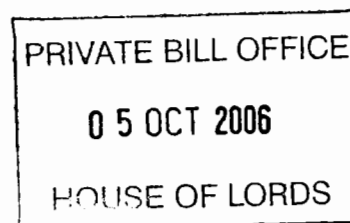
**TRANSPORT FOR LONDON BILL (PRIVATE)**

**IN PARLIAMENT**

**SESSION 2005-2006**

**HOUSE OF LORDS**

**REPORT  
OF  
THE SECRETARY OF STATE  
FOR  
TRANSPORT  
ON**



**THE TRANSPORT FOR LONDON BILL**

---

The Bill is promoted by Transport for London ("TfL"). It provides TfL with further powers in respect of its responsibilities relating to congestion charging, London cabs and private hire vehicles, penalty fares, street management and miscellaneous matters.

The Government has objections to clauses 14, 16-22, 28 and 47-54.

**PART 3**

**LONDON CABS AND PRIVATE HIRE VEHICLES**

**14. Time limits for cab driving offences**

The Government is opposed to this clause because it would be extremely difficult for drivers and complainants to remember the details of an incident with sufficient clarity and accuracy after six months. This would mean that complaints could not be properly decided after so much time has elapsed from the actual incident. There is no clear reason why it should take complainants that long to decide whether to complain and a risk that complaints after that long a period may simply be vexatious.

However, the Government recognises that the current seven day time limit for making complaints is very short and may prevent genuine complaints from being made. The Government notes that an alternative approach could be for some lengthening of the period for complaints, but that the new time limit should not be longer than one month.

**16. Provisions for issuing cab notices**

The Government is opposed to this clause because the proposal is potentially unfair on the proprietor of the vehicle. The clause, as drafted, could lead to a situation where a vehicle proprietor has his licence suspended - as a result of the driver's actions in driving the vehicle after the notice has been issued - before he (the proprietor) has even been

served with the notice or become aware that one has been issued. The present position is that the notice must be served on the proprietor for the vehicle licence to be suspended.

Given this potential unfairness the Government opposes the clause and notes that an alternative approach might be to introduce a separate offence, to which the driver would be subject, of driving the vehicle after receiving a copy of the notice that the vehicle is unfit for use.

### **17. Provides a regime for fixed penalty notices**

The Government is opposed this clause because it would be inconsistent for the offences, listed in Schedule 1, to be made subject to a new and entirely different fixed penalty notice system to that which currently exists for road traffic schemes. The Government is generally supportive of fixed penalty disposal for low level offences but does not wish to see the proliferation of new schemes where this is not necessary. There is an existing fixed penalty scheme for road traffic offences. The offences listed in Schedule 1 could be added to this scheme by secondary order.

The Government has concerns with the fixed penalty scheme as set out in the Bill, but these would not occur if the offences were added to the existing road traffic fixed penalty scheme. These concerns are:-

(i) The absence of the option for the recipient of a ticket to be tried by a court. Where a suspected offender is given the opportunity to discharge liability to conviction of an offence by paying a sum of money, he must have the opportunity to challenge the allegation against him in court. Fixed penalty notices should therefore give the choice of paying the penalty or opting for a court hearing.

(ii) The proposals for dealing with unpaid penalties. It should be clear in the legislation what happens if the recipient of a fixed penalty notice does not opt for either of these choices in the time allowed. This is normally prosecution or fine registration of some larger sum than the penalty amount.

(iii) The length of the payment period. Penalty notices for disorder allow 21 days for the offender to choose either to pay or go to court. Road traffic tickets allow 28 days. 14 days does not seem sufficient – for example, many people go on holiday for 2 weeks.

(iv) The tying of the penalty amounts to costs rather than the maximum penalty for the offence. Maximum penalties and fixed penalties are set to reflect the seriousness of the offence, not of any costs involved in the scheme. That principle should be applied here. With penalty notices for disorder, the penalty may not be more than one quarter of the maximum fine for the offence.

### **18. Enables TfL to amend Schedule 1 offences.**

The Government is opposed to this clause which is seeking to give TfL a power to amend primary legislation by subordinate legislation (commonly known as a “Henry VIII power”) without any Parliamentary scrutiny. Government believes in the principle that amendment to primary legislation should only be made after proper Parliamentary consideration, even although the intention in this case may be to use the power to make only relatively insignificant changes to that legislation.

An alternative approach, if it was considered necessary to be able to make changes to Schedule 1 more readily, would be for the Secretary of State to be given the power to amend Schedule 1 by regulations subject to affirmative resolution and thus requiring the direct approval of Parliament.

See also comments on clause 17.

**19. Provides for fixed penalty notices to be given.**

The Government is opposed - see clause 17.

**20. Sets levels of fixed penalties.**

The Government is opposed - see clause 17.

**21. Requires TfL to notify the Secretary of State of the set fixed penalty levels.**

The Government is opposed - see clause 17.

**22. Regards the production by a London PHV vehicle of its licence and badge**

The Government recognises that this clause is designed to facilitate enforcement and enhance safety for passengers. However, the Government has sympathy with the view expressed in the petition by the LPHCA; the licence is a valuable document and sufficient information for passenger reassurance and for enforcement purposes is already available on the badge. The Government, therefore, opposes this clause.

**PART 4**

**SURFACE TRANSPORT**

**28. Provides that TfL shall be a relevant authority**

The relevant authority would be for the purposes of Chapter 1 of Part 1 of the Crime and Disorder Act 1998 ("the 1998 Act") which makes provision relating to anti-social behaviour orders.

The Government is opposed to this clause because the Home Office has recently agreed to Transport for London's request and the relevant Statutory Instrument has now been signed. This makes Clause 28 redundant. The Government, therefore, opposes this clause as TfL now holds the relevant power. On a wider issue of principle, legislation gives the Home Secretary the discretion to grant relevant authority status to applicant bodies, and the Government would not wish to see that gate-keeping function circumvented.

**PART 6**

**MISCELLANEOUS**

**47. Confers powers on TfL to enter into derivative investments**

The Government is opposed to this clause because it believes that it should not allow the unregulated use of derivative contracts by any local authority, including TfL.

When the prudential capital finance system was introduced on 1 April 2004, local government was given considerable additional freedoms both to borrow money and to invest surplus funds. Derivative contracts would further extend those freedoms. They would, for example, allow a loan taken out at a fixed rate of interest to be treated as a variable rate loan.

Derivative contracts, however, involve complex dealings in the financial markets which are markedly different from those conventionally entered into by local authorities. Their use may well entail significant risks for taxpayers and could only be acceptable subject to appropriate safeguards.

Before granting such a power to any authority, the Government would have a duty to assess fully the potential benefits and risks. That process would need to include consultations with local government, CIPFA and the Audit Commission.

The Government would then have to decide whether adequate safeguards could be

implemented to manage and mitigate the risks. This seems more likely to be achievable by way of general legislation applying to local government as a whole. The Government is prepared in principle to explore such an approach.

In the meantime, however, the Government considers that it must oppose clause 47 in this Bill.

#### **48. Clarifies section 215(1) of the 1999 GLA Act**

The Government is opposed to this clause. It believes that it is both unnecessary and not usual practice to use primary legislation to clarify other legislation rather than amend it.

The clause seeks to clarify or extend the scope of powers granted to TfL under section 215(1) of the 1999 GLA Act. Broadly speaking, section 215(1) provides that where a Private and Public Partnership (PPP) agreement is or has been entered into, TfL's powers include (and therefore are not limited to) a generic power to enter into and carry out other agreements in connection with that PPP agreement.

Clause 48 provides that under section 215(1) of the 1999 Act TfL may enter into and carry out agreements in connection with a PPP agreement whether or not TfL is a party to that PPP agreement. It also provides that such agreements need not relate to the provision of property or rights relating to the PPP agreement or support or be consequential upon entering into the PPP agreement.

However, Section 215(1) does not require that TfL must be a party to the relevant PPP agreement in order to enter into and carry out other agreements in connection with that PPP agreement. Nor does it limit the scope of such agreements to those involving the provision of property or rights in connection with the PPP. Furthermore, paragraph 1(3) of Schedule 10 to the 1999 Act provides wide powers to TfL to do such things and enter into such transactions as are calculated to facilitate, or are conducive or incidental to, the discharge of any of its functions.

Based on the existing powers provided to TfL in the 1999 Act the Government is not persuaded that the proposed provisions in clause 48 are necessary because it believes TfL already has these powers.

#### **49. Gives TfL power to carry out certain insurance related activities**

The Government is opposed to this clause which seeks an exemption from section 19(1) of the Financial Services and Markets Act 2000 (FSMA). This sets out that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is: (a) an authorised person; or (b) an exempt person. This is known in the Act as the general prohibition. Clause 49 seeks to exempt TfL from domestic legislation which implements the EC Insurance Mediation Directive (IMD) (2002/92/EC).

If TfL plan to carry on insurance mediation activities (as defined in the IMD and domestic implementing legislation), the exemption provided by clause 49 would not be compatible with the UK's European Community obligations under the IMD. This is because TfL would not fall within the exemptions permitted under the IMD, and the IMD gives States no power to create additional exemptions. If TfL's activities are not required to be regulated under the IMD, then an exemption would be unnecessary because, under FSMA, TfL would not be carrying on regulated activities and would fall outside the scope of UK legislation implementing the IMD.

## **50. Confers an exemption on TfL**

The Government is opposed to this clause because in the absence of any case having been made to the Treasury it is not able to support an exemption from the financial promotions regime. The Treasury has not received any approaches or representations from TfL nor from any other bodies which have put forward the case for TfL to be exempt from the financial promotion restriction in FSMA, or which have explained which particular business activities TfL believe should be exempt. The FSMA financial promotion regime is a central plank of the UK's financial regulation regime, and provides consumers and investors with a wide range of important safeguards which minimise the scope for misselling.

In summary, in the absence of any case having been made the Treasury is not able to support an exemption for TfL from the FSMA financial promotion regime.

See also Clause 49.

## **51. Clarifies p.18(1) of Schedule 11 to the 1999 Act which enables TfL to acquire land.**

The Government is opposed to this clause. It is not usual practice to use primary legislation to clarify other legislation. Paragraph 18(1) of Schedule 11 to the GLA Act 1999 already provides for the extent of TfL's powers to acquire land, which include the power to acquire land for the purpose of rehousing the occupiers of dwellings acquired or to be acquired by TfL. Clause 51 seek to extend this by adding a new power to acquire land for the purpose of *relocating* the occupiers of properties acquired by TfL. This would appear to be intended to apply to properties used as commercial premises.

If the amendment is necessary, the Government proposes that the Bill should amend paragraph 18 (1) of Section 11 to the GLA Act 1999. This could be achieved as follows:

“18.- (1) Subject to paragraph 20 below, Transport for London may acquire land for the purpose of discharging any of its functions (including the rehousing *or relocating* of the occupiers of dwellings *or properties* acquired or to be acquired by Transport for London). “

## **52. Enables TfL to grant interests in certain land**

The Government is opposed to this clause. It believes that it is unnecessary. A power already exists to amend the existing Order under section 157 of the Greater London Authority Act 1999, and consider of cases for amendment of the Order are made on a case by case basis. [If a case to remove the existing restriction on the power to grant an interest in land under paragraph 16 of Schedule 11 to the Greater London Authority Act 1999 were made, the Government undertakes to consider it.] The Government is concerned that providing, as the clause does, that no limitation may be placed on this power to grant an interest in land would represent an undue fettering of its discretion

## **53. Clarifies the status of certain residential tenancies**

The Government is opposed to this clause because it believes it is unnecessary. The purpose of the clause seems to be to prevent residential tenancies of properties that are transferred to TfL being treated as either assured tenancies or rent act protected tenancies. However this is already provided for by article 5A of the GLA Roads and Side Roads (Transfer of Property etc.) Order 2000, which was inserted in that Order by the Greater London Authority (Miscellaneous Amendments) Order 2001 (“the 2001 Order”).

The clause seems to be concerned to ensure that assured or Rent Act protected tenancies cannot exist through an intermediate landlord, but the 2001 Order refers to the interest of the land under residential tenancy and so the identity of the landlord is not relevant. In addition the clause appears to have retrospective effect, whereas the provisions of the

2001 Order simply prevent existing tenants from gaining security of tenure as a result of the transfer to TfL, which they would not have if the property had remained vested in the Secretary of State.

#### **54. Powers to revoke or vary certain orders**

The Government is opposed to this clause because it is concerned that it will fetter the ability of the Secretary of State for Transport's to make Orders for trunk roads in London. The Secretary of State remains the Highway Authority for some short lengths of trunk road within Greater London in addition to the Motorway network. The Government propose an amendment to clause 54 which would prevent TfL from revoking or changing orders made by the Secretary of State after a certain date. The date needs to be historic to ensure that it covers existing trunk road Orders.

The Government's suggested amendment is as follows:-

- (i) Clause 54(2) at the beginning "Subject to subsection (3)," ,
- (ii) Clause 54(3) insert after "subsection (2)" the words "cannot revoke in whole or in part an Order made by the Secretary of State for Transport after 3rd July 2003 and."

Signed by

**Date**

5/10/06

**Gillian Merron**

**Parliamentary Under Secretary of State for Transport**

Signed by

**Date**

5 October 2006

**Graham Hanson**

**Head of Transport (Roads and General) Branch**

**GLA, Business and Europe Division**

**Government Office for London**