

PEDICABS (LONDON) BILL

Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pedicabs (London) Bill (“the Bill”). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. This Bill will enable Transport for London (“TfL”) to make regulations (“pedicab regulations”) for the purpose of providing a regulatory regime for the carrying of passengers in public places, in Greater London, by pedicabs for hire or reward; and or for connected purposes. The regulations would enable TfL to introduce a licencing regime and corresponding enforcement provisions.

The Bill is modelled upon section 9 of the Metropolitan Public Carriage Act 1869 (“the 1869 Act”), which enables TfL to make regulations by way of ‘London cab order’ to regulate hackney carriages (any carriage for the conveyance of passengers which plies for hire) within London. Section 10 of the 1869 Act enables TfL to annex penalties to contraventions of all or any part of a ‘London cab order’ and enforce these accordingly.

C. DELEGATED POWERS

Clause 1: Power to regulate pedicabs

Power conferred on: Transport for London

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

3. Clause 1(1) confers a general enabling power upon TfL to make pedicab regulations for the purpose of regulating the use of pedicabs in public places in Greater London; clause 1(2) defines ‘pedicabs’; clause 1(3) imposes an obligation on TfL to consult whoever it considers appropriate before making pedicab regulations.

4. A general enabling power in these terms is considered to be appropriate because it will allow the details of the proposed licencing regime to be determined by TfL after consultation and enable TfL to adapt the licencing regime from time to time in response to changing circumstances.

5. Originally, the enabling power under section 9 of the 1869 Act was conferred on the Secretary of State who made a 'London cab order' by Statutory Instrument. TfL was substituted for the Secretary of State by the Greater London Authority Act 1999, in consequence of which, a 'London cab order' is no longer subject to any form of Parliamentary scrutiny. By contrast, it is considered appropriate that pedicab regulations should be made by TfL by Statutory Instrument, subject to the negative resolution procedure, which (having regard to the subject matter) would be a more proportionate form of Parliamentary scrutiny than the affirmative resolution procedure.

Clause 2: Licences, fares and other matters

Power conferred on: Transport for London

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

6. Clause 2(1) provides that pedicab regulations may make provision for the licensing by TfL of pedicabs, their drivers or their operators, including provision about licence conditions, the duration, renewal, variation, suspension or revocation of licences and the display or production of licences.

7. Pedicabs, their drivers and their operators are currently unregulated within London. The Metropolitan Police, TfL and relevant authorities which exercise other regulatory functions in respect of public transport do not have any licencing, enforcement or other powers (equivalent to those available in respect of buses, hackney carriages and private hire vehicles) to ensure that the drivers and operators of pedicabs are fit and proper persons or to ensure that a pedicab is safe. There is a public expectation that vehicles which carry passengers for hire or reward on London's roads will be safe; and that their drivers and operators will be properly regulated in all other respects. TfL has shared information showing that there were 24 driver incident reports between 2018 and 30 August 2023 covering incidents such as road obstruction and driver conduct; six sexual offences between 2019 and 30 August

2023; and previously data from 2019 showing that there were 13 collisions resulting in personal injury, with 12 of these being characterised as slight and one injury as serious. TfL's statistics show that the number of incidents fell to one in 2020. This fall is likely to be attributable to the impact of COVID-19 restrictions on tourism and the night-time economy. Pedicab drivers and operators are not subjected to any kind of background assessments, such as a criminal record checks or medical examinations. TfL has extensive experience of licensing hackney carriages and private hire vehicles and intends to adopt a similar and appropriate regime for pedicabs.

8. Clause 2(2) provides that the regulations must include provision corresponding to provisions in relation to immigration status in the Private Hire Vehicles (London) Act 1998. This will allow TfL to ensure that only persons with the right to remain and work are licensed.

9. Clause 2(3) provides that pedicab regulations may provide for fees to be payable in connection with licences and clause 2(4) provides that the fees may be set at a level which enables TfL to recover all costs. This will allow TfL to charge for the administration of licence applications and recover both licence administration and enforcement costs. The pedicab industry (not the taxpayer) should bear the costs of regulation.

10. Clause 2(5) provides that pedicab regulations may make provision about fares for pedicabs. It is important that fares may be regulated. This will protect passengers from being overcharged. TfL has previously provided an estimate that fares can be between £20 - £30 per person per trip, but there have been high-profile examples of passengers being charged excessive fares. This includes a tourist with their two children being charged £450 for a 1.3-mile, seven-minute journey (reported in July 2023).

11. Clause 2(6) provides that pedicab regulations may make provision for a range of requirements and conditions applicable to drivers, operators and vehicles. This will enable TfL 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.

12. Clause 2(7) provides that pedicab regulations may prohibit, prevent or restrict the operation of pedicabs in specified places, at specified times and (in the case of prohibiting and preventing) in other specified circumstances. The Law Commission produced a report on taxis and private hire vehicle (PHV) services in 2014. Evidence provided by Westminster City Council, TfL and the Metropolitan Police noted 'traffic-related issues' raised by pedicabs, including contravention of restrictions on one-way streets, riding on the footway, parking in bus lanes, impeding traffic in central London and generating anti-social behaviour. Since November 2021, Westminster City Council have worked with the Metropolitan Police to increase its efforts to use existing powers under the Control of Pollution Act 1974 to carry out enforcement activity to combat noise nuisance. This has resulted in around £30,000 being issued in fines. The Bill's measures would enhance the enforcement tools available, enabling restrictions to be imposed on pedicabs operating in areas in which they are causing obstruction or congestion. An example of such measure could be that they only be allowed to stand for hire in specific areas (similar to ranks for hackney carriages).

13. Clause 2(8) provides that pedicab regulations may allow TfL to make publicly available information about licences or the pedicabs, operators or drivers to which they relate.

14. Clause 2(9) provides that pedicab regulations may impose other requirements on drivers or operators. This would allow TfL to impose other requirements on drivers or operators which are not expressly contemplated by clause 2(6).

15. Clause 2(10) provides that pedicab regulations may confer a discretion on TfL. This will enable TfL to determine matters consequential to the pedicab regulations taking into account all relevant information, for example, whether a driver or an operator is a fit and proper person.

16. Clause 2(10) provides that pedicab regulations may provide for TfL to delegate functions. This would allow TfL to outsource licencing and/or enforcement functions whilst retaining overall responsibility.

17. For the reasons set out in paragraph 5 above, it is considered appropriate that regulations which make provision to the effect stated in clause 2 should be made by Statutory Instrument, subject to the negative resolution procedure.

Clause 3: Enforcement

Power conferred on: Transport for London

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

18. Clause 3(1) provides that pedicab regulations may provide for it to be an offence to provide false or misleading information in connection with licencing applications or decisions and to fail to comply with requirements imposed by the regulations. In order to be effective, the licencing regime may require the ultimate sanction of criminal prosecution but clause 3(2) limits the enabling power by providing that any offences may only be triable summarily (i.e. in a Magistrates' Court) and cannot be punishable with a fine which exceeds level 4 on the standard scale. The only exception to this limitation is where the offence concerns matters referred to in clauses 2(2) (which refers to the immigration status of drivers and operators of pedicabs).

19. Clauses 3(3) and 3(4) provide that pedicabs regulations can allow a person charged with an offence under the regulations to discharge their liability for the offence by paying a fixed penalty notice.

20. Clause 3(5) provides that pedicab regulations may authorise TfL to impose civil penalties (as well as or in addition to creating offences). 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 would avoid the need to pursue a prosecution in a Magistrates' Court; enforcement would be through a civil enforcement mechanism. This also lowers the burden of proof, in that TfL can impose monetary penalties, if on a civil standard of proof (on the balance of probabilities), there has been a breach of the pedicabs regulations.

21. Clause 3(6) provides that pedicab regulations may authorise the immobilisation, seizure, retention and disposal of pedicabs. This is important if a vehicle is found to be unsafe, unroadworthy, unlicensed or uninsured.

22. Clause 3(7) provides that pedicab regulations may confer enforcement functions on constables. This would enable TfL to enter into arrangements with the Metropolitan Police which are similar to those applicable to the enforcement of the hackney carriage licencing regime.

23. For the reasons set out in paragraph 5 above, it is considered appropriate that regulations which make provision to the effect stated in clause 3 should be made by made by Statutory Instrument, subject to the negative resolution procedure.

Clause 4: Appeals

Power conferred on: Transport for London

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

24. Clause 4 provides that pedicab regulations must provide for a person to whom any 'relevant decision' (defined in clause 4(2)) relates to have a right to request that the decision be re-considered and to appeal to a magistrates' court; may confer further rights to request that decisions are reconsidered or to appeal; and may make further provision about re-consideration or appeals. It is necessary to impose a requirement upon TfL to make provision for re-consideration of (and appeals from) relevant decisions in order to comply with the European Convention on Human Rights (notably Article 6 – right to a fair and public hearing) but in a manner which gives TfL flexibility to amend the applicable procedures from time to time.

25. For the reasons set out in paragraph 5 above, it is considered appropriate that regulations which make provision to the effect stated in clause 4 should be made by made by Statutory Instrument, subject to the negative resolution procedure.