

Private Hire Regulations Review: Response to Consultation and further Proposals

**By Diego Zuluaga, on behalf of the Institute of Economic
Affairs**

December 2015

About the author

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Response from the Institute of Economic Affairs:

On 30 September, Transport for London (TfL) launched a consultation on its review of the regulations covering private hire vehicles (PHVs), commonly known as minicabs. Whilst recent technological developments have had important implications for the private passenger transport sector – including minicabs but also licensed taxis – many of the proposals put forward by TfL would appear to:

- raise barriers to competition in the sector;
- undermine the welfare of PHV users without any apparent impact on passenger safety; and
- make beneficial innovation of the sort that the sector has recently experienced less likely in the future.

The following examines the most salient regulatory changes proposed by TfL in its consultation.

TfL's objectives in changing PHV regulation

TfL lists three objectives for the proposed regulatory changes. They are:

- to improve passenger safety;
- to maintain a clear distinction between taxis and PHVs;
- to further improve the quality, safety, accessibility and overall standard of private hire vehicle provision in London.

There is no mention in any part of the document of concerns on the part of TfL to maintain and improve passenger welfare, which would include safety but also choice, reliability, quality, variety, punctuality, and the affordability offered by price competition between different providers. As the authority regulating public and private hire transport in London, ensuring passenger welfare ought to be among TfL's highest priorities.

Moreover, as will be argued below, there is reason to believe that innovation is increasingly rendering the legal separation between taxis and minicabs – and the special privileges granted to the former – obsolete. Maintaining such privileges through heavier regulation of PHVs is likely to go against the interests of passengers.

Responses to selected proposals in TfL's consultation

- 1) *Operators must provide a booking confirmation to passengers containing the driver photo ID and details of the vehicle being used to discharge the booking.*
 - *Do you agree with the above proposal? If you don't agree, please explain why.*

This practice is to a large extent already followed by PHV operators. App-based private hire services, such as those obtaining bookings through Uber, provide the driver's name, photo, vehicle licence plate and model, as well as the driver's mobile number when a booking is made. App-based PHV booking exchange Kabbee supplies the vehicle make, licence plate, agreed price and a contact phone number via text message.

It appears that market mechanisms are already meeting the demand for information from passengers. Indeed, it is in the interest of operators to offer this information to passengers, so they can more easily identify the vehicle and request assistance when needed. A greater amount of information is likely to increase passenger trust and their willingness to book private hire services, thus facilitating PHV bookings and leading to more transactions.

Making particular pieces of information a statutory requirement would appear to increase operating costs for some providers without improving passenger welfare, since a number of providers customarily offer that information.

- 2) *Operators must provide booking confirmation details to the passenger at least five minutes prior to the journey commencing.*
 - *Do you agree with our proposal for a time delay between journey booking and commencement? If you don't agree, please explain why.*

- *Do you think that a different time interval to five minutes is appropriate? If you do, please say what you consider an appropriate time interval to be, and why.*

TfL claims that a five-minute time delay between journey booking and commencement will “further reduce the risk of a customer getting into the wrong car and/ or into an unlicensed vehicle,” and “enable the driver to ensure the passenger is in a safe pick-up location.” There is, however, no indication that the risk of customers getting into the wrong or unlicensed cars constitutes a major problem under the existing framework. Moreover, given the availability of vehicle and driver information, as well as the distinctive label on the back window of PHVs, such risk is already being mitigated by existing regulations.

There may of course be a needed time lag between journey booking and commencement in certain cases. That could be for a range of reasons, most obviously the time required for the driver to come to the passenger’s location, but also in order to ensure the pick-up can be conducted safely. However, that time lag will vary substantially between individual bookings, and it is hard to see why a five-minute wait – or indeed any other prescribed mandatory wait – would be universally appropriate. Indeed, it is quite easy to imagine situations in which a mandatory wait would make passengers worse off – by having to wait longer than necessary for their transport – and less safe – if they have to wait on the street late at night.

It would seem appropriate to leave it to passengers’ and licensed drivers’ judgement to decide what the optimal wait time is in every individual case, especially when the potential risks mentioned by TfL do not constitute a widespread problem in London’s current PHV market.

It is worth noting that the French competition authority in 2013 struck down similar provisions for a mandatory 15-minute wait by PHVs in France, on the grounds that it would distort competition without furthering the general interest (Autorité de la concurrence, 2014).

- 3) *Operators will be required to seek TfL approval before changing their operating model.*
- *Do you agree with our proposal? If you don’t agree, please explain why.*

Technological innovation has transformed London’s PHV market in recent years, expanding both the number of players and opening up private hire services to a larger customer base. Dynamic change in firms’ operating models has been at the heart of this expansion.

Requiring operators to notify TfL before changing their operating models is likely to slow down innovation and raise barriers to entry into the sector, with detrimental consequences for passenger welfare. This point was noted by the Competition and Markets Authority in its own response to the consultation (CMA, 2015).

Furthermore, the proposed requirement would introduce substantial legal uncertainty into the private hire sector. It would be difficult to ascertain what modifications are sufficiently important to be considered a change in business models – e.g. the introduction of a new app, changes to the way drivers are remunerated, information provided to passengers, complaints handled, and so on. That would be in addition to increased compliance costs and reduced incentives to trial new methods and practices of serving customers.

- 4) *Security for app-based booking platforms*
- *What are your views on ensuring that app-based platforms are secure and do not allow passenger or driver fraud?*
 - *Do you believe that there is sufficient technology available to achieve this and if so what technology do you believe we should consider?*

The consultation does not consider the question of whether the need for protections against driver and passenger fraud – which undoubtedly exists – is already being met in various ways by app-based platforms. It must be borne in mind that there are significant existing barriers to potential fraudsters: car locks, mobile-phone passwords (through which the apps operate) and login codes for the transport apps themselves. Moreover, the largest app-based platform currently in operation in London

– Uber – provides passengers with a picture of the driver who will be discharging their booking, thus further preventing fraud.

Unless it is demonstrated that app-based platforms are systematically failing to provide adequate security measures, and that their behaviour is endangering passenger safety, no statutory regulation of the sort proposed would appear necessary. Additionally, there would be some compliance cost to such a requirement, so the benefits to passengers must be clearly evaluated before action is taken.

5) *Operators must offer a facility to pre-book up to seven days in advance.*

- *Do you agree with our proposal? If you don't agree, please say why.*
- *Do you consider a period other than seven days to be appropriate? If you do, please say why.*

TfL cites “an increasing absence of advance booking facilities” as one motivation for this proposal, as well as the importance for disabled passengers of being able to pre-book suitable vehicles in advance. TfL mentions that “it is reasonable to expect a private hire operator to offer such a facility.”

Indeed, it is reasonable to expect *some part* of the market – given current technologies and passenger demand – to offer pre-booking facilities. That is indeed currently the case. But it is wholly unreasonable and unrealistic to expect *all* private hire operators to offer such services, in the same way that it is unreasonable to expect all operators to offer app-based platforms. The PHV market is made up of customers of varying ages, needs and preferences, and it is not only natural but also welfare-enhancing that there would be different operators offering different services depending on the segment of that market which they wish to serve.

Making pre-booking facilities a requirement for all private hire operators would be at odds with the diversity of that market. It would unduly increase costs for some operators which currently do not offer such services, but with no predictable positive impact on the well-being of consumers. Such a requirement could even drive certain operators out of the market.

As the CMA notes, the desire to ensure that disabled passengers have access to private hire services can be met in more efficient and less distortive ways. However, there is no reason to believe that accessibility to PHVs by disabled passengers is currently in jeopardy. Indeed, one of the major app-based platforms recently launched Uber Assist, aimed specifically at that segment of the market.¹

7) *Operators must have a fixed landline telephone which must be available for passenger use at all times.*

- *Do you agree with our proposal? If you don't agree, please say why.*

TfL proposes to require private hire operators to have a functioning landline telephone service available at all times, with the number of staff required being “commensurate” with the size of the operator. As was mentioned above, it is customary for PHV operators to provide a contact number for purposes of customer inquiries, complaints and booking changes. The numbers provided can be mobiles or landlines.

As with the issue of mandatory pre-booking services, it is at odds with the reality of the private hire market to expect every operator to provide a landline contact number. Bookings for PHVs take place through a number of channels, including apps, the internet, by telephone and at operators' physical offices. Thus the means by which customers contact operators can be expected to follow the preferred booking method.

Furthermore, the telecommunications market has itself undergone enormous innovative change in recent decades, and some of this transformation has itself contributed to the rise of app-based platforms. Mandating operators to provide a fixed landline telephone number – a declining form of

¹ Rob Price, “Uber is training its best drivers in London for a new scheme to help disabled people get around,” *Business Insider*, 20 October 2015.

communication – could prevent the PHV industry from adopting newer and better methods of interacting with customers.

The proposal would raise costs for operators, and thus barriers to entry. It would not visibly improve the ability of passengers to contact operators and drivers over the status quo, and it could reduce innovation in customer service delivery as well.

8) Operators must not show vehicles being available for immediate hire, either visibly or virtually via an app.

- *Do you agree with our proposal? If you don't agree, please say why.*

This proposal is aimed at preventing the illegal “touting” by PHVs, which are not authorised to pick up passengers who have not made a booking.

Given current regulations, it is illegal for PHVs to show themselves as available for immediate hire. Thus any action on the part of individual PHVs to the contrary should be addressed through enforcement of the current rules. This point has also been raised by the French competition authority, when illegal plying for hire was raised as a reason for additional regulation. New rules are not the proper way to enforce existing ones.

The situation is clearly different for vehicles shown as available through an app. Namely, this information helps passengers to decide whether to make a booking, how long they are likely to have to wait, and which provider is best placed to serve them in a particular context. They enhance the passenger experience in the use of app-based platforms, helping them to take advantage of the increased variety and diversity of private hire options available in London.

It is important to recognise that while, from a supply-side perspective, the London market for private hire – minicabs and taxis – is a two-tier market due to existing regulation, such a distinction is much less apparent from the viewpoint of passengers. PHVs and taxis are not substitutes in all circumstances, mainly because the former are legally prevented from responding to immediate demand (‘hailing’) by passengers. However, they are substitutes in many circumstances, in the same way that public transport and private hire may be substitutes in certain situations.

Enabling passengers to have a wider range of options when choosing how to arrange their journey raises the welfare of all passengers. Removing some of these choices through regulation, by preventing app-based platforms from providing information about vehicle availability, would reduce passenger welfare.

9) Operators will be required to provide specified information including details of all drivers and vehicles to TfL on a regular basis.

- *Do you agree with our proposal? If you don't agree, please say why not.*

This proposal seeks to improve TfL’s ability to trace drivers suspected of offences back to the operator(s) for whom they work, and to monitor whether certain operators have drivers who are disproportionately prone to offences.

However, there is a question of how burdensome compliance with this rule would be on the vast majority of operators which conduct their business without incident. This is particularly the case for app-based platforms, one of whose major business propositions to drivers is the flexibility and the lack of a permanent commitment involved. It is likely that these operators would see their costs increase perceptibly if they were required to provide TfL with regular updates on their drivers.

An alternative way of achieving the aims of TfL’s proposal would be to require licensed drivers themselves to provide details of the operators they work with on a periodic basis. This would better take account of the fact that some drivers work for different operators at different times, and it would arguably provide TfL with up-to-date information on which licensed drivers are actively participating in the PHV market at any point in time.

While the above alternative would seem more appropriate than TfL's proposed method, there would still be related compliance costs which would have to be weighed against the benefits of reporting requirements.

10) Operators must specify the fare prior to the booking being accepted.

- *Do you agree with our proposal? If you don't agree, please say why.*

This proposal seeks to provide passengers with greater certainty about the price of their booking. Yet, it would effectively prohibit innovative pricing models that are more responsive to supply and demand, changing traffic conditions, and a range of variables when computing fares.

The proposal would limit private hire operators' ability to compete in the way they determine fares, where there is currently a variety of options for customers to choose from. Requiring operators to specify the fare in advance, subject to uncertainty on traffic and weather conditions and subsequent passenger demand, can be expected to lead to higher average fares as operators price in the risk of unexpected factors.

Recent events in the PHV market suggest a trend for greater price competition between operators, for passengers' benefit. There is no indication that the problem ostensibly addressed by this regulation is important to passengers.

14) Specific requirement for an English language test.

- *Do you agree with our proposal? If you don't agree, please say why.*
- *What standard do you think it would be appropriate for applicants to demonstrate?*

It is reasonable to expect most PHV business in London to be conducted in English, and customers to appreciate an adequate level of English on the part of drivers. That may well be an incentive for private hire operators to require a specific level of English from prospective drivers. Additionally, functional knowledge of the English language is already an implicit requirement for private hire drivers, who have to undertake a topographical test in English as part of their licence application.

Whilst the reasoning is straightforward, such a requirement could constitute a barrier to entry for perfectly good and capable drivers who, for instance, did not meet the required written English skills – even though such skills are largely irrelevant when ascertaining a PHV driver's expected performance. Indeed, in other contexts, language requirements – such as a literacy test for voting – have previously been used as protectionist and discriminatory tools against certain groups.

TfL should study the extent to which inadequate knowledge of English is a concern for PHV passengers, and if reason for action is found it should consider whether private arrangements by operators – individually or collectively – might be a more efficient way of achieving the desired ends.

15) Drivers to only work for one operator at a time.

- *Do you agree with our proposal? If you don't agree, please say why.*

The alleged goal behind this rule is to prevent PHV drivers from working excessive hours. However, such a requirement is unnecessary to meet that objective, and it blatantly runs counter to the welfare-enhancing trend for 'multi-homing' by drivers in the PHV market.

The current market for private hires is characterised by a multitude of operators and, as noted above, a variety of business models in pricing and the management of passenger demand and PHV supply. 'Multi-homing' is an additional way of addressing demand fluctuations for a particular operator or type of service – be they pre-booked rides to the airport or short trips late at night through an app-based platform. It facilitates the booking of journeys, thus benefitting both customers and drivers.

If there is a concern that some PHV drivers are flouting rules on working hours, then enforcement of the existing rules should be increased. Restricting supply and innovation – which could well result in a reduction in PHV operators and thus raise competition concerns (CMA, 2015) – would be an exceedingly costly way of preventing such behaviour.

23) *Operator licence type.*

TfL is considering adding new licence types at the high-volume end of the PHV market – for operators with more than 1,000 vehicles – and at the specialist end – for wheelchair-accessible and low-emissions vehicles.

As TfL states in the consultation, its mandate requires that licence fees only be used to cover the costs of licensing, compliance and enforcement, and no other activities. These costs should be distributed proportionately among licensees, according to the resources required to meet the aforementioned regulatory obligations. TfL should explicitly indicate what motivates it to charge operators with no more than two PHVs half of what operators with more than two PHVs are charged. The same reasoning should apply to the prospective new licence type for very large operators – size should not be penalised through higher licence prices.

Additionally, the licensing stage is not the place to encourage certain types of vehicles. If wheelchair-accessible or low-emissions vehicles are a priority for TfL and within its mandate – and they may well be both – they should be subsidised directly.

24) *Controls on ridesharing in licensed vehicles.*

- *Do you support the above proposal? If not, why not?*

TfL proposes to “explore measures to ensure that [PHVs] cannot be used for ride-sharing purposes in London.” As well as passenger safety concerns, it cites a “very clear consensus” among respondents to its March 2015 consultation that PHVs should not be used to transport multiple passengers on different journeys.

Ride-sharing is the next frontier in private hire transport, and it will further blur the lines between taxis and minicabs, on one hand, and public transport, on the other (see below). It can be expected to expand the market for private hire services, and to make these services available to a larger number of people as a result of pooling journey costs. This will clearly be a welfare-enhancing development.

With that in mind, an outright ban as proposed would deter beneficial innovation in this market, shut out potential new customers, and restrict competition between business models and service types within the PHV market. All this would be to assuage concerns about passenger safety which have not so far been borne out by the international evidence of ride-sharing. The proposal clearly will bring more costs than benefits to passengers.

25) *Amendment of advertising regulation to include “in” vehicle.*

- *Do you agree with our proposal? If you don't agree, please say why.*

TfL provides no justification in its consultation document for this additional restriction of advertising by private hire operators. Without substantive arguments, it must be rejected.

Advertising not only offers an additional income stream for operators and drivers of PHVs – as is enjoyed by taxis – but it is also a useful and beneficial method of bringing information to existing and potential consumers, both of private hire services and of unrelated goods and services. No economic or other argument comes to mind to justify the restriction of advertising by private hire operators.

Additional measures: topographical skills and complaints.

TfL has announced a “significant enhancement” of the PHV Topographical Skills Assessment as part of its PHV regulatory review. However, as noted by the CMA (2015) the advent of satellite navigation is rendering topographical skills increasingly unnecessary to effectively conduct private hire services. Statutory topographical requirements raise barriers to entry into the PHV market and thus reduce competition in the sector.

To the extent that there is value for passengers in a higher level of topographical knowledge by drivers, the former can be expected to be willing to pay for this, so there is no reason not to expect

market mechanisms to provide an adequate variety of topographical skills that will meet the demands of passengers.

TfL will also take a “greater role in the oversight and management of private hire complaints.” This will involve increased reporting by private hire operators, and thus higher operating costs. Without evidence that additional intervention by the regulator is needed in this sphere, there would be no justification for new reporting requirements that will increase costs for passengers.

Some comments on recent developments in the London transport market

To conclude, a number of observations regarding the broader market for passenger transport in London is warranted, in light of technological innovations which have challenged many of the traditional assumptions that motivated regulation. These developments ought to be at the forefront of TfL’s analysis as it conducts its review, not just of PHVs, but of other forms of passenger transport.

The first observation is that smartphones have enabled app-based platforms for private hire to enter the market. These have largely bridged the informational gap between operators and passengers which motivated regulation of taxis and PHVs in the first place. Namely, by using apps passengers are now able to obtain sufficient information about driver qualifications, vehicle characteristics, operator reputation and pricing to safely make a booking. Feedback and rating mechanisms for both passengers and drivers have also increased trust and reliability. In economic terms, apps have substantially lowered the transaction costs of bookings, questioning the need for continued heavy regulation of the private passenger transport market.

The second observation, briefly noted above, is that satellite navigation has made topographical skills requirements less relevant, which makes use of ‘the Knowledge’ in taxi qualifications, and similar tests for PHVs, harder to justify. To the extent that there is a demand for greater topographical skills than strictly necessary on the part of drivers, it will be reflected in passenger demand and will thus be provided by the market.

The third observation is that, given technological improvements, passenger transport in London is increasingly moving away from a market for discrete and clearly separate forms of transport – hailed taxis, pre-booked minicabs, and a variety of public transport options – to a continuum of diverse but increasingly substitutable services at different price points – from buses and the Tube to ride-sharing, app-based platforms offering different levels of service, pre-booked minicabs, and Black Cabs. While these different services are not always competing against each other, their respective customer bases increasingly overlap. In particular, innovations such as ride-sharing are blurring the classic distinction between public and private transport.

All of these trends point in one direction – towards the growing obsolescence of regulations of taxis and private hire vehicles. With the problem of asymmetric information largely resolved by technology, the rationale that underpinned regulation in previous decades is no longer valid. As the CMA has noted, apps have made the near-immediate booking – one might even speak of e-hailing – of PHVs possible, which raises questions about whether the two-tier regulation of private transport services is still appropriate. TfL would be wise to review the overall regulatory framework to ensure it is up-to-date with recent innovations and guided by the aim to promote passenger welfare.