

PRIVATE HIRE OPERATORS: TfL INTRODUCES NEW PASSENGER CONTRACT REGULATION

Transport for London has issued a new regulation and guidance for private hire operators on passenger contracts.

Travis Morley Law answers some of your questions.

by Travis Morley Law

On 22nd April 2022 Transport for London ("TfL") issued 'Private Operators; Contracts with Passengers – New Regulation & Guidance' Notice 06/22.

It announced, in response to a High Court judgement¹, the implementation of a new regulation governing the contractual relationship between private hire operators and passengers. Accompanying guidance was also published outlining TfL's approach to assessing compliance with the regulation.

Following publicity surrounding this matter, Travis Morley Law has been contacted by private hire operators with real concerns about the effect and application of this regulation. We, as expert legal consultants on Taxi Licensing Law and Contract Law, will seek to answer some of those questions.

What is the new regulation?

Regulation 9(14) is an amendment², which introduces a new licence condition, to the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000. It states:

"The operator shall enter into a contractual obligation as principal with the person making the private hire booking to provide the journey which is the subject of the booking and any such contractual obligation must be consistent with the 1998 Act and these Regulations."

Who does the regulation affect?

It came into force on 23rd April 2022 and applies to all private hire operators licensed in London.



Okay, so does this impose new responsibilities?

Yes. TfL expects private hire operators to ensure compliance with Regulation 9(14). To assist, it has published 'Guidance for London Private Hire Vehicle Operators: Contracts with Passengers'³.

Whilst it has no legal effect, the Guidance does outline certain new responsibilities. These include⁴:

- (1) "...a London PHV operator must – itself – accept bookings from its passengers, rather than anyone else (e.g. a driver) doing so;"
- (2) "...a London PHV operator must – itself – take responsibility for the journey from point A to point B, rather than anyone else (e.g. a driver) doing so;"
- (3) "...the booking must be carried out in a London licensed PHV (or taxi) driven by a London licensed driver; and"
- (4) "...the booking must be carried out for a fare which was either agreed or for which an accurate estimate was provided in advance..."

How do I comply with the new responsibilities?

Compliance, or rather the assessment of it by TfL, will largely depend upon whether a private hire operator utilises written contracts or not. ▶

¹ Uber London Limited v Transport for London & Others [2021] EWHC 3290 (Admin).

² Private Hire Vehicles (London) (Operators' Licences) (Amendment) Regulations 2022.

³ 'Guidance for London Private Hire Vehicle Operators: Contracts with Passengers', Transport for London, 22nd April 2022.

⁴ Page 2, 'What does this mean for London PHV operators?', 'Guidance for London Private Hire Vehicle Operators: Contracts with Passengers', Transport for London, 22nd April 2022.

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Right, I have written contracts?

TfL has indicated it will likely consider a private hire operator compliant where its written terms of service⁵:

- "...makes it clear that the London PHV operator is responsible for both accepting the booking as well as the provision of the journey [also known as transportation services]...";
- "...states that a contract is created between the operator and passenger for the booking as well as the provision of the transportation services...";
- "...refers to fares for the journey being collected by the operator or collected by the driver on behalf of the operator...";
- "...makes it clear that only the operator can cancel a booking with a passenger..."; and
- "...makes it clear that liability in relation to the transportation services belongs to the operator..."

It also indicated TfL will likely consider a private hire operator as non-compliant where its written terms of service⁶:

- "...retains responsibility only for accepting bookings and that the drivers are responsible for providing the transport service or journey, or that the passenger's contract is with the driver...";
- "...acts only as an agent for the driver...";
- "...is not a transportation provider or does not provide transportation services...";
- "...is an intermediary between the passenger and driver who is the transportation provider...";
- "...has established payment arrangements by which passengers pay drivers directly, with the operator taking a fee or proportion of the fare as the driver's agent...";
- "...transfers liability for its obligations under the 1998 Act onto anyone else such as drivers..."; or
- "...has no responsibility in relation to the performance of the contract to provide transportation services because such services are provided by the driver..."

No, I don't have any written contracts?

TfL has indicated it will, alternatively, request evidence of a private hire operators' processes, systems and procedures. This will include⁷:

- "...any wording that operators use to describe their operating model which may be available to passengers on their website or in publicity materials about their services...";
- "...whether operator's take responsibility for anything that may occur on the journey...";
- "...whom passengers should make complaints to about the journey...";
- "...where applicable, payment of VAT on fares..."; and
- "...how bookings are cancelled..."

Notably, TfL later suggests it may also seek the above evidence regardless of whether a private hire operator uses written contracts.

⁵ Page 3, 'Operators with written contracts', 'Guidance for London Private Hire Vehicle Operators: Contracts with Passengers', Transport for London, 22nd April 2022.

⁶ Ibid.

⁷ Page 4, 'Operators Without Written contracts', 'Guidance for London Private Hire Vehicle Operators: Contracts with Passengers', Transport for London, 22nd April 2022.

About Travis Morley Law...

Travis Morley Law is a leading legal consultancy specialising in Taxi Licensing Law. Our advisers uniquely combine over 30 years professional expertise as lawyers, academics and licensing officers. We have been providing sound legal solutions to trade organisations, businesses and individuals since 2010.

What are the repercussions for non-compliance?

TfL maintains it is the duty of private hire operators to ensure compliance. Accordingly, it is important to heed the expectations set down in the Guidance and be ready to demonstrate compliance. A failure to do so, risks refusal of a licence application or enforcement action.

Is there anything I can do?

The diverse nature of the private hire trade means that each private hire operator runs their business in different and unique ways.

Accordingly, with a view to due diligence, it is strongly recommended that professional legal advice be sought. Only following an in-depth review will it be possible to advise on the best approach for your business under not only Taxi Licensing Law but Contract Law, Employment Law and Tax Law.

If you want to check how you are affected by the above issues, or any other Taxi Licensing Law or Contract Law matter, please contact Travis Morley Law now on 01159 724928 or by email to enquiries@travismorley.com or visit us at www.travismorley.com.

