

## **Information Note on Rickshaws and Section 31 of the Road Traffic Act 2016 – Feb. 2017**

Section 31 of the recently enacted Road Traffic Act 2016 amends Section 20 of the Taxi Regulation Act 2013 and inserts the following provision:

- “20(5) (a) *The Authority may make regulations, to be known as non-motorised passenger transport regulations, in relation to the operation of non-motorised passenger transporters in towns and cities.*
- (b) *‘non-motorised passenger transporters’ means hackney carriage or rickshaw propelled by pedal cycle, pedal tricycle, horse, pedestrian or other such non-motorised means.”*

(The “Authority” refers to the National Transport Authority or NTA.)

The NTA has reviewed the particular wording of this legislation, and consider it doubtful that robust and legally defensible regulations covering rickshaws can be made by the NTA under this provision. The main issues that have been identified and which have resulted in that conclusion are:

1. The wording doesn’t allow the regulation of rickshaws with an electric motor. The most prevalent type of rickshaw has an electric motor which provides assistance to the person pedalling the rickshaw. Under the inserted amendment, this type of rickshaw would be outside the definition provided and would, therefore, remain unregulated, negating the objective of the amendment;
2. It is very uncertain that the courts will accept that the NTA regulations can be highly detailed, as they would need to be, without the main Act setting out the relevant items that the NTA can regulate. Legislative drafting guidelines are specific that all areas of secondary legislation, including regulations, must be sufficiently described in primary legislation in order to provide an appropriate framework for such secondary legislation. Accordingly, there is a substantial risk that any regulations enacted under this provision, as currently worded, could be held to be ultra vires based upon recent court precedent;
3. There are issues about how this legislation interacts with existing local authority bye-laws in relation to, for instance, hackneys drawn by horses. Section 199(b) of the Local Government Act 2001 states that a bye-law may not be made for a purpose where provision for that particular purpose is already made, or may be made, under any other enactment. The commencement of this new legislative provision may render invalid other existing bye-laws in respect of such matters as jaunting cars / horse drawn hackneys;
4. The limitation to “*in towns and cities*” creates a number of difficulties in relation to regulations. As “*towns and cities*” are not defined, it is not clear where the NTA has power to regulate; and
5. Of particular significance, there is no stipulation in the amendment stating that a breach of any regulations made under that provision is an offence. The power to declare an offence, capable of consequential fines or prosecution, must be stated in primary legislation.

Without such a provision, the NTA may be able to make regulations but would have no means of enforcing them – no fine could be issued and no prosecutions taken for any non-conformity with those regulations. Such an approach would be ineffective.

There are many other points of concern – the above items simply represent some key issues.

Given the difficulties identified above in developing robust, effective and legally defensible regulation, it is the recommendation of the NTA that Section 31 of the Road Traffic Act 2016 is not commenced, and that, instead, a more comprehensive legislative framework is put in place through more extensive amendment of the the Taxi Regulation Act 2013.