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## Private Hire Vehicles - Guidance Note

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## Road Safety Act 2006: Sections 53 and 54

### Repeal of the PHV Contract Exemption

A note from the Department for Transport

#### Introduction

1. This note relates to private hire vehicles (PHVs) in England and Wales only, as PHV licensing is devolved in Scotland and Northern Ireland.
2. It responds to the main questions that have been raised with the Department by local licensing authorities, and others, concerning two forthcoming changes to PHV licensing legislation provided for in the Road Safety Act 2006 ("the 2006 Act"):-
  - Section 53 of the 2006 Act repeals section 75(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 (which is commonly known as "the contract exemption", and currently exempts from PHV licensing requirements vehicles engaged on contracts lasting not less than seven days). The provision affects England

and Wales outside London; our letter of 28 February 2007 (copy attached), stated that the intention was to bring the provision into force in January 2008 and Ministers have now decided that the precise coming into force date will be 28 January 2008.

- Section 54 of the 2006 Act amends the definition of "private hire vehicle" in the Private Hire Vehicles (London) Act 1998 - which has much the same end result in terms of requiring vehicles in London engaged on contracts (to provide services to specific groups rather than the public at large) to be licensed. As also foreseen in our February letter, Ministers have decided that this change will come into force on 31 March 2008.

3. Whilst this note is written largely in terms of the impact that the repeal of the contract exemption will have outside London, the points it makes are also generally relevant to what will be the position within London when section 54 of the 2006 Act comes into force.

4. We sought the views of stakeholders on a draft of this guidance and are grateful for the comments which were received.

### **The Department's view, not legal advice**

5. It is not the role of the Department to interpret the law or to provide legal advice. Nothing in this note should be regarded as a definitive statement of what the law means and it should not be relied upon as legal advice. It is clear from the views we received that many stakeholders would find it helpful if the guidance could give stronger advice on the impact of the repeal of the contract exemption, but we would stress that it is a matter for local licensing authorities to make decisions on what the law requires in particular cases, seeking their own legal advice when necessary. Organisations that may be affected by the changes described in paragraph 2 should also consider seeking their own independent legal advice. Ultimately it is for the Courts to provide a definitive interpretation of the law.

6. However the Department is able to offer a view on the questions that have been raised and what follows covers each of these in turn.

### **What is a private hire vehicle?**

7. A PHV is defined in legislation as "a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers". The repeal of the contract exemption will not change this definition. All that will happen when the contract exemption is repealed is that vehicles outside London which fall within the definition of a PHV in the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act") and which have not been licensed because of relying on the contract exemption will be brought within the PHV licensing regime.

8. PHVs are often referred to as "minicabs" but the definition brings into the PHV licensing regime a wider range of vehicles than just the conventional minicab. For example, in considering whether a particular vehicle falls within the definition of "private hire vehicle" it is not relevant that all hirings are charged through a business account without any cash changing hands between the driver and passenger; what is relevant is whether the vehicle has fewer than nine passenger seats and is made available for hire with the services of a driver for the purpose of carrying passengers. Nor does the definition say that the vehicle has to be hired frequently or for a number of different purposes for it to be a PHV. It is not relevant, for example, whether the vehicle only carries out one trip per day on the same route; what is relevant is whether the vehicle is provided for hire with the services of a driver for the purpose of carrying passengers. This is explained in more detail in the sections which follow below.

9. A further general point to note is that PHV licensing is designed to cover exclusive hirings, where the vehicle is hired as a whole. It is therefore necessary to consider the manner in which the vehicle is provided. If passengers pay individual fares as part of the contractual arrangements PHV licensing is unlikely to apply. Where a vehicle is not being exclusively hired it may be that the vehicle is being used to carry passengers for

hire or reward at separate fares, which would make the Public Service Vehicle (PSV ie bus) licensing regime relevant. It would then also be relevant whether the vehicle is being used "in the course of a business of carrying passengers" (for the purposes of the definition of a PSV in the Public Passenger Vehicles Act 1981). The various categories into which the vehicles could fall are described in greater detail below.

## **What did the contract exemption cover?**

10. At present (that is before section 53 of the 2006 Act comes into force), by virtue of section 75(1)(b) of the 1976 Act a vehicle in England and Wales outside London which would otherwise need to be licensed as a PHV is exempt from PHV licensing requirements if it is used for contracts lasting not less than seven days. Similarly, the operator and driver of that vehicle are exempt from PHV licensing requirements.

11. It is important, in the Department's view, to note that the contract exemption is quite narrow. This is because case law has established that for section 75(1)(b) of the 1976 Act to apply the following conditions must all be satisfied:

- (i) the vehicle must be hired under a contract for use of a specific, identified vehicle, not merely a contract for the provision of a service;
- (ii) the contract must be for a period of at least seven days;
- (iii) a notice period for termination of the contract must be specified in the contract.

12. Licensing authorities, and transport providers considering whether they will be affected by the repeal of the exemption, will need to consider whether the vehicles in question are in fact currently within the scope of the exemption. Any vehicle which satisfies the definition of a PHV and has been relying on the contract exemption in error should have been licensed as a PHV already and the need to be licensed does not arise from repeal of the exemption.

## **What are the alternatives to PHV licensing?**

13. The definition of "private hire vehicle" set out above encompasses a range of vehicles and a range of services, but it does not follow that every vehicle with fewer than nine passenger seats which is used to carry passengers for some sort of recompense must necessarily be licensed in the PHV category.

14. As mentioned above, a PHV is licensed first and foremost to provide exclusive hirings, in other words hirings in which the vehicle is hired as a whole by a single person or group. The hirings must be made through a licensed PHV operator for a specified charge. (As an adjunct to the main purpose of providing exclusive hirings, a licensed PHV operator can, in certain circumstances, "marry-up" hirings to a similar destination and charge passengers separate fares - but the primary purpose of a PHV is to provide exclusive hirings and any vehicles with fewer than nine passenger seats which provide exclusive hirings should be considered in the context of the definition of "private hire vehicle".)

### **Small PSVs**

15. It is possible for vehicles with fewer than nine passenger seats which carry passengers at a commercial rate to fall within the Public Service Vehicle (PSV) Operator licensing regime - they are known as "small PSVs". The main characteristic of a small PSV - which distinguishes it from a PHV - is that the small PSV provides a service at separate fares that is, where each passenger pays his or her own fare for a particular journey. Small PSVs are not normally allowed to provide exclusive hirings (the exception to this rule being where the vehicle are a small part of a big bus operator's business). The operator of any small PSV would need to hold a PSV Operator's licence, granted by the relevant Traffic Commissioner.

16. Of course, as mentioned above, where a vehicle is already licensed as a PHV, it can offer a service at separate fares in specific circumstances, but the small PSV category applies where a vehicle provides a service

at separate fares and is not licensed as a PHV.

### **Car sharing schemes**

17 It is also possible for vehicles with fewer than nine passenger seats to provide a service involving the carriage of passengers which is neither a PHV nor a small PSV - the vehicle could fall within the rules governing **car sharing schemes**. The main characteristic of a vehicle which is being used legitimately under the car sharing rules is that the total of any charges should be agreed in advance and must not exceed the running costs (including wear and tear and depreciation) of the vehicle for the journey. In other words, it is a form of transport which is provided by volunteers who do not make a profit from the service.

18. The rules governing car sharing are contained in section 1(4) of the Public Passenger Vehicles Act 1981 ("the 1981 Act"). A useful leaflet about how these schemes work has been prepared by the Community Transport Association and can be accessed on their website: <http://www.communitytransport.com/index.aspx?id=104> (the relevant document is "Using MPVs and Smaller Vehicles").

19. Car sharing schemes have a valuable role to play and repeal of the contract exemption is not intended to bring them within the PHV licensing regime where they are legitimately operating under the 1981 Act.

### **Hackney carriages (taxis)**

20. For the sake of completeness, it is worth mentioning that vehicles with fewer than nine passenger seats which provide exclusive hirings can be licensed as hackney carriages - or taxis. As well as carrying out pre-booked hirings, a hackney carriage is permitted to stand at ranks or be hailed in the street so the passenger arranges the hiring directly with the driver (unlike PHVs where the hiring must be made through a licensed operator). It is unlikely that vehicles which have been exempt from PHV licensing by virtue of the contract exemption would want to enter the hackney carriage licensing regime, but it would, at least in theory, be an option for the vehicle owners to consider.

21. This brief outline of the various categories into which a vehicle with fewer than nine passenger seats could potentially fall demonstrates the complexity of the legislation. That is why the Department stresses the importance of independent legal advice. The views which follow focus on the position in relation to PHV licensing; they are offered in general terms noting that individual cases should, of course, be considered according to their particular circumstances.

### **Will I have to be licensed in every area in which I wish to undertake a hiring?**

22. This is a question that has been asked by some transport providers who will be affected by the repeal of the contract exemption. The law on "cross border" hirings is complex and it may be appropriate for those involved to seek their own advice in particular cases.

23. The legislation governing PHVs in England and Wales is couched in terms of PHVs being regulated according to the "controlled district" in which they are operated. A controlled district comprises the area of a local district or borough council or unitary authority.

24. The Department takes the view that a licensed PHV can undertake a hiring which goes beyond the boundary of, or is wholly outside, its controlled district. However this is subject to a requirement that the vehicle and the driver are both licensed by the same local authority that granted a licence to the operator who arranged the hiring, and also that the operator has a licence for the area in which he intends to operate.

25. We would emphasise again that our view should not be regarded as a substitute for independent legal advice, and that much may depend upon the facts of a particular case.

### **Best Practice Guidance**

26. It is worth mentioning in this note the relevance of the Department's Best Practice Guidance which was published in October 2006 - it can be accessed on the Department's website ([www.dft.gov.uk](http://www.dft.gov.uk)). Licensing authorities will be faced with a number of applications for PHV licences from drivers, operators and vehicle owners whose circumstances might be different from the more conventional applications which they routinely receive.

27. There are likely, for example, to be drivers who currently drive for a commercial rate but are dedicated to just a single contract, for example, a school run involving the same journey twice a day during term time. Licensing authorities must, of course, satisfy themselves that an applicant for a PHV driver's licence is a fit and proper person to hold such a licence, but they would want to take account of the nature of the work carried out by the applicant in doing so. In relation to topographical knowledge, the Guidance suggests that licensing authorities might adopt a lighter touch in relation to PHV drivers than taxi drivers.

### **How does the repeal of the contract exemption affect "ambulances"?**

28. A number of providers of "ambulance" services have asked if the services they provide will come within the PHV licensing regime following the repeal of the contract exemption. Bearing in what is said above (paragraph 11) on the narrowness of the contract exemption, the Department is doubtful that many providers of an ambulance service currently rely on the contract exemption in order to be able to provide their service outside the PHV licensing regime. In particular, we understand that many private ambulance vehicles are provided under contracts for the provision of ambulance services, rather than for use of a specific vehicle, and therefore cannot rely on the exemption.

29. That of course still leaves the basic question of whether a particular vehicle comes within the definition of a PHV quoted above. A wide range of vehicles and operations appear to come under the broad "ambulance" heading, and it seems to the Department that the vehicles can be divided into three categories:

- **emergency/specialist ambulance vehicles** – likely to accommodate a stretcher and specialist equipment, and to require the presence of health professionals. Licensing authorities may wish to make use in this connection of the fact these vehicles are exempt from road tax by virtue of the Vehicle Excise and Registration Act 1994 and cannot be used for "social" hirings. The Annex to this note sets out the definition in the 1994 Act.
- **vehicles which operate as part of a formal Patient Transport Service**[1] – usually non-emergency, planned transport of patients, where the booking will only be made if the person to be carried has been assessed by a health professional as having a medical need for transport; these vehicles will be contracted to a health care provider and cannot be used for "social" hirings; licensing authorities can verify with the owner of a vehicle that it is being used in connection with such a contract. An exemption from road tax as mentioned under the first bullet point- and described in the annex - might also be relevant. Patient Transport Services encompass a wide range of vehicles, ranging from specialist to less specialist types, to allow for transport consistent with a patient's needs.
- **other vehicles** used to transport passengers to and from hospitals and other medical facilities on an ad-hoc basis without falling within either of the above two categories. These vehicles might perhaps be driven by volunteers or perhaps the operator has made a commercial decision to dedicate the operation to medical-related journeys, but the key point is that they are not operated as part of a formal Patient Transport Service scheme and are not within the definitions in the Annex.

[Note: in practice there is some overlap between the first two ambulance categories, (eg: during a crisis a non-emergency ambulance may become an emergency ambulance).]

30. In considering which of these categories falls within the definition of PHV, there are a number of factors that we recommend licensing authorities take into account. The Department believes that there is a significant difference between vehicles arranged by a health provider and used because a person is assessed as having a medical need for transport, and other vehicles used to provide transport to health facilities. It is significant that details of the former, being provided as part of a wider healthcare package, would be subject to the laws on patient confidentiality (so the providers could not comply with PHV licensing requirements to allow licensing officers to check records). The Department also considers it significant whether the vehicles in

question are permitted to carry out health-related work only, taking account of the descriptions in the first two bullet points. The signs displayed by the vehicle are a factor too, (but will not be determinative, eg: if the vehicle is also used for social events). The Department considers it irrelevant whether the vehicles are provided by the NHS or private sector.

31. There is no specific exemption in the PHV licensing legislation for an ambulance and the Government has no plans to introduce such an exemption. It appears to the Department that a court would be unlikely to consider that Parliament intended vehicles in the first two categories (ie: emergency/specialist ambulances and vehicles used under Patient Transport Services schemes) to be within the PHV definition. Therefore an exemption would not be necessary or appropriate. In reaching this conclusion the Department took account of the specific characteristics of the vehicles in the first two categories, most particularly the fact that they form part of a wider healthcare package and can only carry patients who have been assessed as having a medical need for transport. Moreover, they cannot be used for non-medical/health-related work, the drivers should have training and background checks in connection with the service they provide, and the records of any transport provided are subject to the laws on patient confidentiality. In short, if checks are in place for these services, they could legitimately be regarded as distinct from the PHV licensing regime.

32. In the Department's view, vehicles in the third category which are provided for hire but which, though choice (commercial or otherwise), are dedicated to hospital-related journeys may well fall within the PHV definition. There will, inevitably, be cases where a licensing authority decides that a vehicle which presents itself as an ambulance actually falls within the PHV category on account of the nature of the work which it provides. For example, the Department has been made aware of vehicles which describe themselves as ambulances but actually carry out a variety of bookings ranging from patient transfer to evening social events

### **How will services provided by volunteers be affected (including voluntary car schemes)?**

33. Government Ministers welcome the valuable service provided by the many volunteers who offer their time freely to transport less fortunate members of society to and from health appointments and various social events and engagements. Their efforts and kindness benefit society as a whole by contributing towards social inclusion. The Department is aware of concerns about the actual dividing line between volunteers who provide a service using small vehicles and licensed PHV drivers who provide a service on a commercial basis. Each sector has a valuable role to play and this note endeavours to assist those who want to understand what constitutes volunteering and when a service becomes commercial.

34. The Department's view is that the phrase "for hire" in the definition of a PHV implies that there must be an element of commercial benefit to an arrangement for PHV licensing requirements to apply. As a consequence of this we consider that services provided by genuine volunteers who receive no recompense or receive only enough to cover their actual expenses are unlikely to satisfy the definition of a PHV. Therefore in our view such services would not have needed to rely on the contract exemption to avoid PHV licensing requirements and as such its repeal will not affect them in any way.

35. There is case law which indicates that a service becomes commercial if there is any form of profit or gain by the transport provider (ie: if the service is not simply an act of social kindness). Drivers will want to satisfy themselves that they are not making a profit from the service they provide if they want to avoid falling within the definition of "private hire vehicle". It is worth reiterating at this point the importance of drivers seeking independent legal advice if they are in any doubt about their own particular case.

36. In determining whether a particular volunteer service is operating legitimately outside the PHV licensing regime, one useful method of calculating the profitability or otherwise of the service might be to consider the rates charged in the context of the rules set out by HM Revenue and Customs (HMRC) for taxation purposes. The rules are explained in a fact sheet which can be accessed on the [HMRC's website](#). Essentially, volunteer drivers' tax free allowance is 40 pence on the first 10,000 miles in the tax year; and 25 pence on each mile over 10,000 in the tax year. The HMRC fact sheet explains how to calculate income from volunteer driving.

37. The particular point has been raised whether voluntary car schemes will be affected by the repeal of the contract exemption. It is our understanding that many such schemes involve the payment of separate fares and as such fall outside the PHV licensing regime and outside the PSV licensing regime - the rules governing car sharing are covered in paragraphs 17-19. The repeal of the contract exemption will not change this.

### **How will the change affect "Stretched limousines"?**

38. Some stretched limousines may fall within the definition of PHV and may have been relying on the contract exemption. However, the points made in paragraph 11 are of course relevant. In particular, it should be noted that the contract exemption cannot be correctly relied on by services which involve a series of one-off hirings lasting a day or perhaps just an evening - as seems to be the case for many services provided by stretched limousines.

### **Childminders**

39. There are a considerable variety of childminding arrangements. In considering whether the repeal of the contract exemption is relevant, much will depend on the particular facts of each case.

40. The Department's view is that it is possible that a childminder who uses his or her own car to drive a child to and from school or for any outings as part of his/her childminding business might fall within the PHV definition. However we consider it unlikely that a court would consider that Parliament intended that the majority of the many thousands of childminders across England and Wales should have to obtain PHV licences in order to be able to transport children in their care. As such, we would expect the courts to seek to interpret the definition of a PHV in such a way that most typical childminder arrangements do not fall within its scope.

41. In our view the following further considerations are also likely to be relevant:-

- Whether the childminder actually has the transport of the child in his or her care in the motor vehicle as a requirement of the contract, (ie whether the child has a right to be carried in the childminder's vehicle in return for the payment provided, or whether other modes of transport are an option).
- Whether the vehicle is hired as a whole - the concept of exclusive hirings is covered in paragraph 14. Childminders may be caring for different children under different contracts at the same time. These children may be simultaneously carried in the vehicle for the same journeys (e.g. where the children attend the same school) or for overlapping journeys (e.g. if children are dropped off or collected in turn from different schools). Where this is the situation, the vehicle as a whole has not been exclusively hired by any particular parent.
- Whether separate fares are being charged; if they are, the vehicle is not a PHV.

42. If a vehicle only provides a service which would place it in the PHV category only for part of the year (eg during term time) and not during other times, it would still require a PHV licence in order to provide a lawful PHV service at the times when it is operating as such.

### **Distribution of this note**

43. This note is being sent to taxi/PHV licensing authorities and other relevant organisations. It has also been placed on the Department's website.

**Buses and Taxis Division**  
**Department for Transport**

## **Annex**

### **Is the vehicle exempt from road tax by virtue of the Vehicle Excise and Registration Act 1994?**

Schedule 2 to the Vehicle Excise and Registration Act 1994 identifies an ambulance as a vehicle which is exempt from road tax; it defines an ambulance as:

- A vehicle which:
  - (a) is constructed or adapted for, and used for no other purpose than, the carriage of sick, injured or disabled people to or from welfare centres or places where medical or dental treatment is given, and
  - (b) is readily identifiable as a vehicle used for the carriage of such people by being marked "Ambulance" on both sides.