

Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption

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Executive Summary

This review fulfils a government undertaking to review the impact of the repeal of the Private Hire Vehicle (PHV) contract exemption, which was brought into force in England and Wales outside London in January 2008. A similar provision commenced in London in March 2008.

The repeal was enacted in order to eliminate the risk to public safety by ensuring that all PHV operators, drivers and vehicles would need to be licensed by local licensing authorities, and subject to the checks of the PHV licensing regime. In doing so, the repeal would also create a level playing field between all operators competing for work. The Review was asked to consider the costs estimated in the Regulatory Impact Assessment (RIA) and the impact on the numbers of those affected.

Only about half of respondents believed the public safety objective had been achieved. The objective had been impacted by the lack of rigorous and consistent enforcement and by differing interpretations by local licensing authorities of which operations needed to become licensed. It was welcomed by the licensed trade, due to the more level playing field, but few users or the general public would have been aware of the change.

The review found that following the repeal, licensing authorities had taken different approaches to licensing those previously operating under the contract exemption; to their licensing policies and to enforcement, and those becoming licensed had faced considerable variation in the costs of licensing and licensing policies. There was some evidence that operators and drivers had chosen to license with those authorities with more “pragmatic” policies eg on age of vehicles. There had been significant costs on some local authorities’ home to school and special needs transport contracts. One local authority had faced increased additional cost when its contracts were re-tendered of £500,000.

In general, the group most impacted was those who had previously operated under the exemption, but there had also been considerable impact on the licensing authorities themselves, who had had to develop their policies and to license new operators. In the main, those who had stopped operations had been small business and individuals who had previously driven out of a sense of community spirit, who did not want to become licensed due to the licensing procedures and cost. Those who had become licensed were also concerned about licensing procedures and cost, but also the time taken. Businesses were concerned about consistency of treatment across the country and certainty of costs for their planning. The key point was to ensure fairness to all concerned; it was a considerable source of concern that some businesses had become licensed, but that other similar types of operation in other areas had not, depending on the view of the individual licensing authority; and moreover, where it was clear that licensing was required, eg with limousines, that all local authorities should enforce this.

Although it is difficult to determine the repeal's impact on the numbers of those licensed, due to the current economic situation, it appears that the RIA had underestimated the numbers that would become licensed by a factor of about 5; although the costs of licensing could well have generally been lower than the RIA estimates. But this was subject to considerable local variation.

Despite Notes for Guidance on the legal interpretation of the repeal issued by the Department for Transport, there remained several “grey areas”, where licensing authorities were taking differing approaches. These included licensing stretch limousines and chauffeur services; care services and childminders; and rental car (or other) services where a lift might be provided to a customer as an ancillary service; prison transport, but in particular the licensing of “ambulances” which covered a variety of modes of operation. The issue of ‘volunteers’ was also raised – in relation to health and other transport. Those affected were concerned to achieve clarity and consistency of approach.

In most of these grey areas, a view needed to be taken on whether the transport service provided fell within the definition of a private hire vehicle and the interpretation of whether a commercial benefit was derived from it, on which there was a body of case law. In practice, it required licensing authorities to exercise their discretion by understanding the nature of the operation or business before coming to a view. Transport for London (TfL) had certainly recognised this, and had a clear view on “ambulances” and would welcome a clearly defined legal exemption. The National Association of Licensing and Enforcement Officers and operator representative organisations were looking to extend the principle of a level playing field eg to determine whether drivers were genuine “volunteers” or not. Most responding local authorities were concerned to have clearer and more definitive central guidance. There was also a view that the entire body of taxi and PHV licensing legislation was outdated and that a radical overhaul was needed to bring clarity and laws that would reflect today's methods of operation, including modern communication methods.

1. Purpose of the Review

1. In May 2009, Buses and Taxis division, Department for Transport, asked the In House Policy Consultancy (IHPC), to review the impact of the repeal of the private hire vehicle (PHV) contract exemption.
2. Section 53, Road Safety Act 2006 had repealed “the contract exemption” which had – in England and Wales outside London - exempted from private hire vehicle (PHV) licensing requirements vehicles engaged on contracts lasting not less than seven days. The provision was brought into force in January 2008.
3. In line with government policy to review the impact of legislation, the Department for Transport (DfT) sought to review post implementation to establish the costs and benefits of the policy, and whether it has achieved the intended effects. IHPC was asked to consult stakeholders – including regulators, contracting bodies, licensing authorities, operators and users - with the following remit:
 - To collect evidence of the impact of the repeal of the contract exemption by s53 RSA 2006
 - To consult stakeholders about their experience of the new regime and its impacts; to capture their views on whether it has achieved its objectives and if there have been any unintended consequences
 - To establish whether the assumptions in the Regulatory Impact Assessment were accurate
 - To consider whether any lessons can be learned from this policy change.
4. IHPC sent questionnaires to and/or interviewed:
 - 43 regulators, including the National Association of Licensing and Enforcement Officers (NALEO), the Institute of Licensing (IoL) and individual licensing authorities in England and Wales;
 - two representatives of the PHV industry including The National Private Hire Association (NPHA) and the Licensed Private Hire Car Association (LPHCA) as well as 13 individual PHV operators;
 - 34 operators or organisations who had previously worked under or used vehicles operating under the contract exemption, covering limousine operations and ambulances, child minders and home care workers;
 - 29 organisations which had arranged school, health and social care transport as well as
 - 10 users who had contacted DfT as a result of the legislative change.
5. To review the experience in London, we also contacted Transport for London (TfL), as S54 of the Road Safety Act changed London PHV legislation in a similar way.

6. In addition to IHPC’s requests for views, a number of the organisations we contacted drew their members’ attention to the review, and we received 21 replies in response to this.
7. We received 71 responses in the form of questionnaires, but we also spoke to several others and received views from others.

	Questionnaires Received	Verbal or other written views	Nil returns
Regulators	38	0	0
PHV operator or representative body	6	0	0
Operator/user of contract exemption	10	6	2
Contracting body	7	0	0
User	2	2	0

8. A full list of respondents is at Annex B. An example questionnaire is at Annex C.

2. Purpose of the Repeal

9. The Government's intention in repealing the contract exemption (ie Section 75(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976) was to eliminate the risk to public safety – particularly to children and vulnerable adults. The full RIA that accompanied the legislation is at Annex D.
10. Under the contract exemption, any vehicle which was used only to carry passengers for hire and reward under a contract for hire of the vehicle for a period of not less than seven days was exempt from PHV licensing. This meant that the vehicles, the drivers and the operators of such vehicles were not subject to the checks which the local licensing authority undertook as part of the PHV licensing regime. This would include such checks as enhanced or more frequent inspections of vehicles, and medicals and criminal record checks on drivers. It would also ensure that vehicles complied with local licensing policies eg on age of vehicles.
11. The RIA also noted that the repeal would create a level playing field between all operators in competing for work, as the licensed operators' view was that avoiding licence fees gave unlicensed operators a commercial advantage in competing for contract work.
12. There were two types of 'long term' private hire contract that typically operated under the contract exemption:
 - A contract which involved a public sector organisation. An example would be an education authority which arranged a contract with an unlicensed operator/driver to transport children to and from school;
 - A contract entered into by a commercial organisation. Here an example might be a contract between an unlicensed operator/driver and a night club for the transport of their clientele or employees home late at night.
13. There remain certain vehicles that do not need to be licensed as PHVs:
 - Vehicles used exclusively for weddings or funerals
 - Vehicles exempt from road tax under the Vehicle Excise and Registration Act 1994 as they are identified as ambulances. Schedule 2 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 centre 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."
14. The Road Safety Act also contained a provision allowing licensing authorities to suspend or revoke a taxi or PHV driver's licence with immediate effect. This was intended to remove the right to drive while an appeal was pending, as the public's safety could be at risk where an individual had been judged by a licensing authority no longer fit and proper to hold a licence.

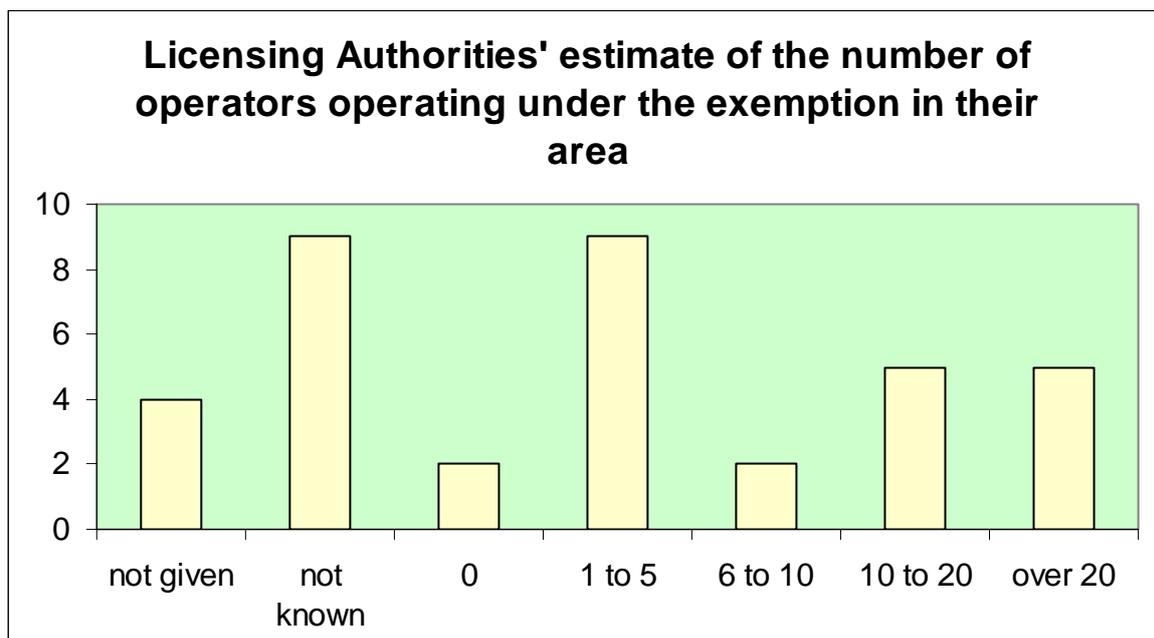
We asked local licensing authorities about the types of operations that had used the exemption in their areas. They gave the following examples:

- Small businesses doing airport transfers, staff bus and school contract work
- Existing private hire operators that operated school runs and/or vulnerable adults to day centres/hospitals and businesses
- Commercial drivers operating as private chauffeurs
- Stretch limousine hire
- Private charities operating ambulance car services
- Private ambulance firms doing mainly contract work for Social Services and Health Authorities
- Large organisations (including football clubs) where their employees travelled extensively and used the vehicles to be taken to/from the airport or between company offices, that is executive/chauffeur companies under contract to specific companies
- Nursing homes, Limo operators, Nurseries, some hotels
- The mayor's chauffeur

15. In London, TfL had a similar list of different types of operations:

- (1) commercial companies providing services to "closed communities" of customers such as those working exclusively for TV or film production companies
- (2) Commercial companies providing vehicles used exclusively in the music industries
- (3) Commercial companies providing contract work for NHS trusts
- (4) Commercial companies doing private contracts eg transporting children to and from school for their parents
- (5) Commercial "ambulance" services
- (6) Private clubs and casinos that offer their own car service as part of their membership
- (7) London Local Authorities

16. NALEO emphasised that its concerns “were not with Third Sector or genuine “volunteers” but with commercial enterprises which gave themselves a commercial advantage whilst not undergoing the safety checks carried out by licensed and accountable firms”.
17. We asked licensing authorities to estimate the number of operations that had used the exemption. NALEO estimated that there were “5000+ in England and Wales” mainly sole traders but some larger operations.



Based on 38 replies

18. We asked about the checks made on unlicensed operators and drivers in connection with a contract. About half the licensing authorities who responded had made such checks. One district council which did not explained that “this was due to the conflicting advice and legal opinion prevalent in the trade and licensing authorities”. The NPHA explained that for the most part, its members’ operations were self-monitored: “There was only ever one instance where an airport transfer operation was taken to Court for not having appropriate licences”.

	Yes %	No %
Were checks made on unlicensed operators and drivers, for example, in connection with a contract?	54	46

Note: answered by 35 respondents

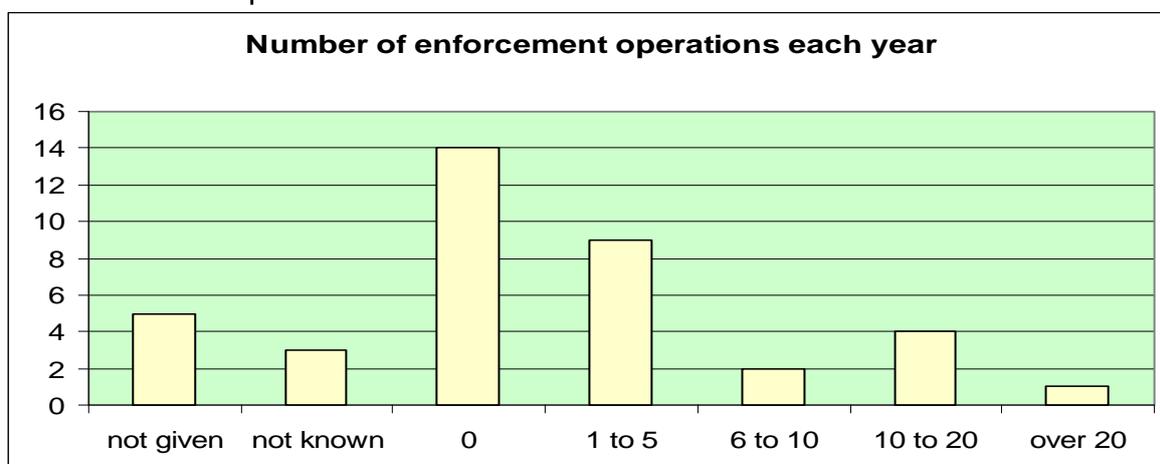
19. Examples of checks undertaken were:

- For existing operators checks were made at their offices for list of contracts and vehicles
- When licensing officers became aware of such operations eg when an advert appeared for private hire functions from an unlicensed company or individual, they would make contact to examine paperwork, contracts and records to check eligibility
- Partner work with the police and VOSA
- The trade often acted as a source of intelligence. It was common for licensed PHV operators to inform the licensing authority of operations they suspected were not eligible to operate under the contract exemption.

20. We asked how regulators satisfied themselves that unlicensed operators were exempt from licensing. The most common response was following up reports from licensed companies or members of the public or other local authorities by contacting the company concerned and finding out how the operation was being run, and inspecting contracts. Other responses covered:

- *“We asked the individual to produce evidence of their contract with the individual and also of the system used to take the booking and confirm the booking. These were then referred to our legal adviser...[to] assess compliance”*
- Conditions for council school transport contracts had as a contract term that applicants had to be licensed and that all drivers/escorts had to be CRB checked
- Discussions with the school contracts section of the Council. *“The others we didn’t particularly know they existed”*
- *“Most of them we wouldn’t have known about, or needed to know about, unless and until a complaint was received.”*

21. We asked how many enforcement operations took place annually. NALEO found it difficult to estimate at a national level; dependent on the area, it could be 0 to 100 annually. TfL carries out enforcement activities as an integral part of its business processes and could not separate out the specific area of operating under the contract exemption.



Based on 38 replies

22. The LPHCA pointed out that some of its members had had their operations monitored and experienced checks on vehicles and drivers, but some had not, and that this was one of the reasons why the repeal had been necessary.

3. How it was implemented

23. For England and Wales outside London, the provisions were brought into force in January 2008.

24. In November 2007, the Department for Transport (DfT) issued a note for guidance on Sections 53 and 54 of the Road Safety Act. It responded to questions which had been raised with the Department by local licensing authorities, and gave its views, but made clear that it was not the Department’s role to interpret the law or provide legal advice. A copy is at Annex E.

25. The amendment to the Road Safety Act had been tabled in July 2006, and following a limited consultation about timing of commencement in November 2006, a letter went to all licensing authorities in February 2007. DfT’s draft guidance for consultation was produced in summer 2007.

26. Most regulators told us that the change had raised issues for licensing authorities in relation to Council policy and licensing conditions. Licensing authorities had informed those they knew to be operating under the exemption (including education and social services contractors) and in some cases had re-tendered school transport contracts. Some had also taken on extra resources in order to cope with the volume of new licensing. However, most had felt there had been sufficient time to meet the commencement date, even if there were instances where contractors were unprepared for the change despite being advised in good time by the local authority.

27. We asked about the extent to which licensing authorities had kept contracting bodies, operators and users informed about the change in the laws. Among those who answered this question there was no clear majority view. The NPHA reported that:

“In this area above all others, we found that local authorities often failed to inform licence holders of the lead up to the January 2008 deadline and the repeal. In a few areas they put a press release in the local paper, but not many. This Association put several articles in our national newspaper.....”

28. Others reported that they had been kept fully informed

“Had regular trade meetings with the council”

	Well %	Not well %
To what extent did your local authority keep you informed and involved about the change in the law?	46	54

Note: answered by 24 respondents

29. One authority reported that there had been vehicles still unlicensed at commencement date, including school contractors. For the first two weeks, they had spent resources on on-street enforcement, working with the Council's transport services. Another had put significant resource into licensing one large operator (200 vehicles), including arranging for vehicle inspections and briefing drivers at weekends. One contracting authority reported significant change to the number of contractors available and to the cost of transport – it affected about 250 contracts (out of 900).
30. The Department was contacted by several parents, particularly of disabled children, who used PHVs for transport to school. These parents were concerned that their existing operators would either find it too difficult or too expensive to continue to provide transport for their child if they had to become licensed. They suggested that the impact of the repeal would be to force them to find an alternative operator who was not familiar with their child and his or her needs.
31. In London, TfL described a major exercise to inform potential licensees and organisations who issued passenger transport contracts.

Letters were drafted and sent to NHS Trusts, London Local Authorities, and other organisations that were using/likely to use these types of services. These letters outlined the effect of S54 of the Road Safety Act and detailed the timetable for implementing this change. We also approached our existing licensees to assess if their companies were undertaking this type of work or if they could identify any businesses that would now fall within the remit for licensing. This along with various notices in the trade publications generated quite a lot of interest.

Once identified companies were contacted and we work with them to ensure that if they were now required to be licensed that they were aware of the different licences and what was required. In some instances, these companies met representatives from the PCO or corresponded by letters.

If communicating by letter, companies were requested to submit details of the exact work undertaken by their business and this allowed us to give consideration as to whether or not they matched the licensing requirements. In some instances legal advice was sought.

In addition, two teams (consisting of two people each) were formed to spread the word about the change to the definition of a private hire vehicle. They visited relevant companies and those organisations who issue passenger transport contracts (e.g. local authorities and NHS Trusts).

In working through the process to determine who should be licensed it became clear that some public sector organisations (London Local Authorities) were exempt because of the nature of the services that they provided, i.e. if the service was a 'statutory obligation' and it was provided in-house.

In all cases where businesses were not currently identified as falling within the licensing regime they were informed that our decision was based on their current circumstances (as outlined to us) and that any changes to their operation may mean that this needed to be reviewed.

3.1. Groups impacted

32. We asked respondents who they thought had been most impacted by the contract exemption repeal.

	Score
Operators who had previously operated under the exemption/ voluntary bodies	144
Local government	121
Licensed PHV operators	105
Users	96

Note: ranked by 52 respondents asked to rank 1-4, where 4 = the most impacted.

33. Unsurprisingly, respondents believed that the change had most impacted on those operators who had used the exemption, and local government in their capacity both as licensing authorities having to implement the repeal and as contracting authorities, where contracts had previously made use of the exemption without carrying out PHV licensing-type checks.

34. However, two thirds of respondents did not report a disproportionate impact on any one of these groups.

	Yes %	No %
Do you think there has there been a disproportionate impact on one of these groups?	32	68

Note: answered by 54 respondents

35. Those who felt there had been a disproportionate effect said:

“I think it was aimed at illegal operators and stretched limo companies and has inadvertently drawn in other section which the legislation was not aimed at”

“The very small operators (ie one driver, one vehicle) carrying out school contract work etc have been particularly affected”

“In many local authorities the contract exemption was used for schools, special needs transport etc and has had a major impact”

“Local Government: additional costs mean that funds were diverted from education in schools. Users: many of the private hire vehicles conveyed young people with emotional, behavioural and learning difficulties...long standing relationships were broken which are taking time to rebuild with new suppliers. Operators: we lost some very professional operators. However, we appreciate that the revised legislation imposes a higher common standard which offers more protection to us as procurers and customers”

“we have suffered [licensing authority’s] inflated costs for no real result – the operation is no safer than it was before”

“vehicle operators previously exempt have had further cost input into their organisation which they cannot pass onto their clients because of competition”

“the legitimate operator who was running under the exemption, has now borne the brunt of the cost of licensing and also had to compete for work as other legitimate operators have had to take on extra work to subsidise the extra cost...while the non-legitimate operators continue to operate as there is not enforcement due to ignorance of operators...”

“despite being an operator of ambulances, we had had to go through with PH licensing to continue operating SEN contracts. If the law is enforced, EVERY ambulance service in the country will be affected. Emergency, NHS, & Private will all have to fall in line.”

36. We asked about the attitudes to the repeal of the licensed PHV trade and the general public.

- Respondents reported that the licensed PHV trade were generally very positive and pleased by the repeal, as they felt it made for a more level playing field and they would no longer be competing for contracts with the unlicensed and therefore cheaper companies. The LPHCA reported that the repeal had generally been “very well received” by its members, “but the lack of enforcement remains a very big problem”. However, some respondents had found no change:

“Initially a fear that the trade would be “swamped” with new operators/drivers. This did not materialise”

- In regard to the general public, there were two main responses: either respondents thought the public was unaware of the repeal, or they felt safer.

“Positive – feel more re-assured that the vehicles they are using are properly regulated along with the drivers”

User views

37. The review heard from two user organisations and one individual. Two responses related to users of school transport and one to users of transport to and from hospice/hospital and home. The responses indicated that initially the repeal had led to considerable effort being expended on the part of users of transport services as they attempted to find out whether or not the person providing school transport for their child, or transport to and from home and hospice/hospital would need to be licensed. Users said they had not been kept informed by their local authority, or by

the Department and that it had taken them too long to find out whether or not the repeal applied to those providing transport for them.

“we found out through a colleague who saw it on the internet”

“the whole thing was a complete muddle, and it took months of writing/phoning to MP/Council etc to find out that we were not affected”

3.2. Impact on Public Safety

Contract Exemption

38. Almost every regulator, contracting authority and PHV operator or organisation we contacted was broadly in favour of the public safety aims of the repeal.

39. Questionnaire respondents knew that the intention of the repeal of the contract exemption was to eliminate the risk to public safety. But only about half thought it had achieved that.

	Yes - %	No - %
Were you aware of this objective was behind the repeal?	95	5
In your view, were there issues of public safety before the repeal?	57	43
Do you think the objective of eliminating the risk to public safety has been achieved?	50	50

Note: 24 responses addressed all three questions. In addition regulators were asked the last question above to which there were 58 responses

User views

40. The users who took part in the survey were aware that the objective of the repeal of the contract exemption was to eliminate the risk to public safety but thought that there had not been issues of public safety that needed to be addressed. One organisation went further, suggesting the repeal had compromised public safety:

“As the usage in rural areas was predominantly in areas where no Taxis were available and there were no previous safety concerns. Risk was not there. There is a perception that children that previously used these services and now have none are having their safety compromised, by having to walk narrow country lanes to a bus stop.”

Non user views

41. Respondents who believed the public safety goal had been achieved explained:

“everyone is now under one umbrella and has no excuse”

“I don’t think you can ever say that all risks are completely eliminated, but the objective has been successful in that contract drivers are now CRB checked and required to produce medical and cars are now checked, that previously weren’t”

“I feel it has increased the standard of school run driver, through the vetting and medical procedures”

42. NALEO believed the legislation had helped, but only ongoing enforcement and compliance activity could achieve the aim: *“Whilst the risk is very much reduced very often those who seek to avoid licensing are those whose methods most require it.”*

43. Respondents who did not think that eliminating the risk to public safety had been achieved did so mainly on the grounds that the repeal had not been consistently and rigorously enforced, and also that there remained uncertainty about which operators should be licensed. They explained that:

“Until the law is clarified and there is an enforcement protocol put into place throughout the country, different authorities will give varying amounts of emphasis to these matters”

“people are still operating unlicensed. Accept it’s LA’s responsibility – but not had resources”

“the Council has done nothing to stop these illegal operators”

“The objective has been met in as much as drivers/companies that required to be licensed have put themselves forward for licensing but there are still a number of people operating illegally”

“To an extent but due to some uncertainty as to which operators etc should be licensed, not all those who perhaps should be brought into the regime, have been”

“There is no incentive for the Police to involve themselves. VOSA are not sure of their role. Local Authority staff are hard pressed as it is without policing this issue as well. Insurers do not seem interested”

“There appears to be little policing of the law. Ambulance services continue to operate without PH licenses and people still operate “taxi” services without the appropriate licenses”

“There are more licensed vehicles but the law and guidance on specialised vehicles is a mess. No one is prepared to take a national lead and actually set down clear rules and policies”

“We are in business because we offer bespoke service ...we are very patient with [passengers going to hospital]. Taxis don’t care we do”

44. The LPHCA did not believe that the public safety objective had been achieved. It was concerned that *“considerable activity remains undertaken by unlicensed*

entities, which can be found very quickly on the internet in particular. Local authorities continue to enforce in a random manner and whilst this remains the case public safety is compromised and entities licensing correctly are commercially and morally disadvantaged.” It attributed this to local authority inadequacies and lack of will to enforce and prosecute.

45. NPHA also did not believe that the objective had been met: *“In our opinion, there have not been enough companies coming within the licensing regime; in particular, countless airport services and ‘volunteer’ drivers are still operating without licences, appropriate insurance, CRB checks, medicals, vehicle maintenance checks. Our members report to us that several of the airport transfer drivers brag to them that they don’t need licences. This indicates to us that there is still a high level of public safety risk”.*

Enforcement

46. We asked licensing authorities whether there had been additional enforcement activity.

	Yes %	No %
Has there been additional enforcement activity?	58	42

Note: answered by 38 regulators

47. Those who had not undertaken additional activity often said they continued to enforce as before. One added that there had been few additional licences granted, and another added that: *“No change in staffing levels, so enforcement capacity has stayed the same”*

48. Those who had undertaken additional activity described initial on street activity with Council transport services and targeted activities, such as actions at a port, which attracted large numbers of chauffeur driven vehicles, or inspections on proms nights with police and an authorised vehicle tester. In one instance, a licensing authority was looking to adopt a joint enforcement initiative with the police and an authorised vehicle tester in future. Others commented that:

“It took considerable time to identify unlicensed businesses who did not wish to comply”

“[We have been] chasing operators who haven’t licensed and evaded the process. No prosecutions, but plenty of interaction”

“additional Private Hire Operators calls for increased enforcement.”

“Some extra enforcement was created, which used to be undertaken by the County transport office ie checking vehicles at school run pick up points”

“We have been searching newspapers and websites for anyone advertising. We have sent them a letter explaining the legislation and the forms for licensing.”

Immediate licence revocation power

49. We asked regulators whether they had used the power to suspend or revoke a taxi/PHV licence with immediate effect. Almost all regulators believed there were issues of public safety in allowing drivers to work pending appeal, and three quarters had used those powers. They cited examples of drivers convicted of serious traffic offences, violence, drugs and sexual offences, who would have been able to drive pending appeal.

50. Most regarded this amendment as appropriate and working very well; in the words of one respondent:

“It has successfully taken out the further risk element to the general public at the earliest possible stage”

	Yes - %	No - %
Were there issues of public safety [in drivers continuing to work pending appeal]?	81	19
Have you used this power?	73	27

Note: 33 licensing authorities answered this question

51. Local authorities said the amendment was well used, supported by the police notifying them of convictions under “Notification of Convictions” under Home Office Circular 6 of 2006 under which PHV driver is a notifiable occupation. They gave examples of drivers convicted of a range of offences whose licence they had been able to revoke immediately. It had been a source of frustration pre-repeal that they had had to wait at least 21 days – for the driver to lodge an appeal – and for up to 3 months for trial dates before being able to act to protect the public. NALEO was pleased to report that the Court generally understood, and had upheld, correctly executed instant suspensions.

3.3. Unintended consequences

52. We asked whether there had been any unintended consequences or benefits as a result of the repeal.

	Yes %	No %
Have there been any unintended consequences or benefits as a result of the repeal?	39	61

Note: 44 respondents answered this question

53. Licensing authorities gave the following examples of unintended consequences and benefits:

- Licensing of limousines
- Vehicle operators choosing to license with neighbouring authorities which have different policies eg on age on vehicles
- Confusion among local authorities and grey areas with regard to licensing of hospital cars and nursery cars; community-type services; vehicles transporting prisoners; garage courtesy services
- *“More control over a previously uncontrolled sector. Additional income for the authority balanced by additional administrative and enforcement burdens”*
- *“Those operators with wheelchair carrying capacity have received calls from members of the public wishing to use this service”*
- Increased regulation
- Extra knowledge tests
- *“The quality of service has improved”*
- *“fewer complaints from the licensed PH trade about unlicensed operators”*
- *“Some areas have reported better relationships between enforcer and licence holder as those under the exemption often caused commercial resentment as being seen to have financial advantage”*

54. Operators who have had to become licensed as a result of the change described the impacts on their businesses: increases in costs in administration, purchase of new vehicles, and CRB and medical checks; long waits for CRB checks to be carried out; and fewer drivers being prepared to be licensed.

- *“extra costs – waiting up to six months for CRB checks – unable to take on extra work”*
- *[the requirement to carry a “taxi” plate] “has stopped me providing a genuine chauffeur service in my area”*
- *“unfair competition will be removed, everyone’s costs will be the same, the private hire trade will become safer”*

55. One user organisation and an individual respondent suggested that no operators had stopped providing services as a result of the repeal and there had been no impact because the repeal of the private hire exemption had not been applied to voluntary services.

“our drivers for the community car scheme are not paid, but receive expenses of 40p per mile. This is paid, half by the District Council, half by the Parish council. We understand that the PHV legislation does not apply to us”

“it was determined that the regulations did not apply to a voluntary service, [the voluntary organisation] has not been affected by the change and cannot therefore contribute anything of value”

3.4. Impact on numbers of PHV operators, vehicles and drivers licensed

56. The major impact of the legislation was predicted to have been on numbers of licensed PHV operators, vehicles and drivers, and the consequent regulatory burden of acquiring the licences. The Regulatory Impact Assessment estimated there would be 300 additional operator licences; 2000 additional vehicle licences and 2000 additional driver licences.

57. The review received details from 30 licensing authorities across England and Wales as well as from London. The licensing authorities made clear that it was not straight forward to look at the changes in licences before the repeal date and now; the position was also changed due to the current economic circumstances. They believed that with the current number of redundancies, the number of licences would increase as people sought this employment before returning to other work when the number of jobs available increased.

“during the past 12 months the number of Private Hire licences we have issued has increased. This is not just a reflection of the removal of the exemption but also due to the recession many people out of work decide to set themselves up as private hire. Therefore by looking at the numbers of licences issued prior to removal of the exemption and current numbers is not a true indication of the impact of the removal of the exemption”

The findings below therefore need to be viewed in this light.

58. The details given by licensing authorities showed big variation in the changes in licence numbers. One or two reported small decreases. Some authorities reported no change; others gave figures doubling or tripling of licences. In one case, a licensing authority agreed to licence a fleet of 200 vehicles and drivers for one operator, who provided airport services throughout the country; another explained that:

“all the other Councils surrounding us had too restrictive policies and were not prepared to accommodate the flood of applications for ph drivers and vehicles to drive school run transport. This impacted greatly on our small team in licensing”.

59. Nevertheless, the figures across the 30 authorities show significant increases, which appear, in part, attributable to the repeal of the exemption, and suggest that the figures in the RIA were too low. Even if we assume that only 50% is attributable to the repeal, extrapolating across the (around) 375 local authorities across England and Wales, it suggests that increasing those estimates by a factor of 5 would not be unreasonable. NALEO agreed; it believed that national estimates of around 600 additional operators and 20,000 additional drivers would be more accurate. TfL

estimated that the repeal had increased the number of operators by about 300; the driver population by about 1200 licensees, but pointed out that this was often part – time work; and about half of the growth in vehicles – about 5000.

	Additional licences in 30 authorities	Average change %	RIA national estimate	Review national estimate
operators	264	+24%	300	1500
vehicles	1690	+47%	2000	10,000
drivers	1970	+31%	2000	10,000

Numbers were given by 30 licensing authorities

60. The RIA took into account that not all drivers and operators using the exemption would become licensed. The review asked licensing authorities, and others, whether they were aware of any operators who had stopped providing services as a result of the repeal of the exemption. The response was similar across those surveyed.

	Yes	No
Are you aware of any operators which have stopped providing services as a result of the repeal of the exemption?	27%	73%

33 licensing authorities answered this question

	Yes %	No %
Are you aware of any operators which have stopped providing services as a result of the repeal of the exemption?	34	66

59 respondents (including licensing authorities) answered this question

61. Three quarters of licensing authorities were not aware of any operators who had stopped providing a service. Where they were, there were typically one or two in each authority; they tended to be individuals who had been motivated by public service, but put off by the additional costs, or those who refused to comply as they could not meet the licensing standards. The following reasons were given:

“School contracts only: done as a public service: licensing costs too high to continue”

“£1k to license was too much for a 1-man band”

“not cost effective for an individual to license just for prom work, who normally just do weddings”

“age requirements meant some operators would have needed to replace their vehicles with newer models”

“unlicensed operator, refused to licence, prosecuted. Vehicle did not meet age or safety criteria”

“unable to comply with the new requirements or the costs involved”

62. One user organisation also reported that operators had stopped providing services as a result of the repeal because their operator did not want to get a licence:

“Some of the contracts they operated were so small in financial value as they usually carried their child and maybe a neighbour’s child, this was especially prevalent in rural areas. The task of registering as a Taxi or Private hire vehicle was deemed far too expensive and onerous”

63. This picture was confirmed by contract arrangers’ responses. The impact differed markedly between those who had already insisted on PHV-type checks as a contract condition and those who had not. At one extreme, in one authority 200 individuals who had previously undertaken school transport due to their community spirit (typically people who had taken early retirement and liked helping young people for the best of reasons) did not become licensed; only a handful did. A further authority lost 20 elderly, community-spirited individuals; six had become licensed.

64. By contrast, in other areas there was little impact: in one the repeal was the catalyst for one operator – who had one contract- who was due to retire, to do so. Another lost one contractor, who failed to gain a licence.

65. Licensed operators, represented by the LPHCA, were aware of operators who had stopped providing services as a result of the repeal, and attributed this to proper enforcement and interpretation of the new arrangements. The NPHA was also aware of operators who had stopped providing a service, and attributed that to the age of the operator.

66. The review also explored whether instances had become apparent where operators who should not have been operating under the exemption were affected.

	Yes %	No%
Bearing in mind the narrow parameters of the contract exemption, have there been any instances where it has become apparent that operators should not have been operating under the exemption have been affected?	25	75

36 respondents answered this question

67. The quarter of responses where this had become apparent gave the following examples:

- One or two cases, when operators disclosed their method of operation

- Several operators who took on private work outside a (adult service) contract
- Limousines which were operating in addition to weddings
- Operators also doing general private hire work, who took a booking to take someone to the airport; they thought this was a contract so exempt
- Persons operating “airport runs” who were unable to provide contracts which satisfied the legal teams, now licensed
- Operators, now licensed, who appeared to have used the same vehicle on several separate contracts and for periods of less than seven days

3.5. Cost implications

68. The Regulatory Impact Assessment estimated the main cost of repealing the contract exemption as the new regulatory burden that would be imposed on vehicle owners, drivers and operators who were unlicensed on account of providing a contract service. It noted the possibility that some operators, vehicle owners and drivers might suffer if local authority policies precluded the licensing of certain specialist vehicles.

69. The RIA estimated the following cost breakdown, based on a snapshot at that time of local licensing authority fees for operators, drivers and vehicles. It noted that these fees were set according to the principle of full cost recovery, and varied considerably throughout the country.

RIA cost table

Operator licences	300 applicants x £400 fee	120000
Driver licences	2000 applicants x £250 fee	500000
Vehicle licences	2000 applicants x £200 fee	400000
		1, 020,000

3.5.1 Licensing Costs

70. The Review confirmed that licensing fees did vary considerably between licensing authorities. It was also not straightforward to make comparisons. Local licensing authorities had differing costs:

- depending on the length of licences, which varied between 6 months and 5 years – and differing for operators, vehicles and drivers;
- the number of vehicles per operator;
- depending on the vehicle age – with higher licence fees for older vehicles (eg in one the number of checks increased from 2 to 3 annually for vehicles over 7 years old)
- reduced licences for vehicles or drivers for renewals
- reduced vehicle licences for wheelchair accessible vehicles
- reduced driver licence fees for over 65s
- risk assessment. One local authority offers reduced rates, depending on a risk assessment. This takes into account the results of spot checks on operators; record keeping; first aid training; advanced driver training and vehicle testing. Each operator is given a star rating (displayed on vehicles) and those with 4 stars receive the most reduced fees.

71. In the table, we set out the fees reported to us by 29 licensing authorities and London, on an annualised basis, and for a one-man operation, given that this appears to have been the main sort of operation that was required to be licensed as a result of the repeal.

	annual licence			all three
	operator	one vehicle	driver	
	£	£	£	£
Sefton	25	120	77.82	222.82
Oldham	600	334	77	1011
Hart	100	200	90	390
Reigate	187	178	69	434
Great Yarmouth	115	230	60	405
Warrington	25	200	28	253
Bristol	154	177	51	382
Darlington	250	415	70	735
Liverpool city	150	150	50	350
Uttlesford	80	105	170	355
Neath Port Talbot	296	296	67	659
North Kesteven	22	110	55	187
Wychavon	70	135	70	275
Weymouth	91	103	43	237
Stroud	162	120	125	407
Southampton	33	156	40	229
Blackpool	150	165	88	403
Flintshire	120	146	97	363
Broadland	129.15	191.7	55.05	375.9
Sedgemoor	165	180	55	400
Canterbury	50	216	85	351
Rotherham	130	202.5	63.3	395.8
Newark	45.33	77	51	173.33
Cheltenham	190	142	52.33	384.33
Three Rivers	192	126	126	444
Calderdale	130	217	87	434
Spelthorne	160	235	235	630
Bury	240	200.75	135.75	576.5
Bedford	165	266	82	513
Average	145.74	186.00	81.22	412.95
RIA assumption	400	200	250	850
London	250	114	99.33	463.33

72. The total cost of an operator, driver and vehicle licence for a 1-man operator, on an annualised basis, was on average £413. But it varied from the lowest - £175 in Newark - to the highest - £1011 in Oldham. However, the RIA had estimated a total cost of £850, which looks an overestimate.

73. However, in addition to licence fees, operators and drivers would also be faced with fees for CRB checks £36, plus DLVA mandate check £5, and the cost of a medical (around £40). Some licensing authorities charged £10 -15 for vehicle plates. For vehicles, there were also testing costs (one authority quoted a cost of £40). These could add a further £130.

74. The LPHCA regarded the licensing costs as representing the reasonable and fair costs of licensing and its management.

3.5.2 Other costs

75. The Review found that there had been further costs incurred as a result of the repeal which had not been identified in the RIA.

Additional costs for Licensing Authorities

76. Some licensing authorities identified significant additional costs incurred as a result of the appeal. NALEO explained that every Council had needed to research the provision within its own area. Some had written to every operator and placed advertisements in the local press inviting “operators” to make contact. Where operators had become licensed this had generated additional income. Other costs mentioned were:

- The cost of Officers, Chief Executive and Council Cabinet in reviewing the policy response to the repeal
- meetings with the trade
- consultations on amending conditions
- Legal advice arising (to resolve the policy on age of vehicles).
- Purchase of additional slots at testing stations
- Staff costs in processing and issuing licences to those who previously took advantage of the exemption. In some cases, licensing authorities took on additional staff (in one case part-time for 2 year fixed contract at a cost of £16,000) to help with the volume of licensing. It was unclear if this was a one-off or continuing cost.
- Starting and continuing investigations into unlicensed operators
- Costs of providing exemptions from standard conditions of specialist vehicles to enable them to continue to be used for providing the specialist needs of severely disabled persons
- TfL reported additional costs generated in areas such as legal, project management and licensing processes, but observed that all these costs were recoverable from licence fees.

77. One authority also commented that it would be recommending to its Licensing Committee that given the now extensive checking on drivers there should be a change from annual licensing of drivers to licensing every three years.

Additional costs for Contracting Authorities

78. Some local authorities used unlicensed operators under the contract exemption for educational and social services, and did not have contract conditions that were equivalent to PHV licensing requirements eg CRB; vehicle testing. These authorities incurred significant costs. For others, there was little impact as a condition for council contracts was that contractors were hackney, PHV or VOSA licensed.
79. For one shire county, that had previously insisted on CRB checks for those operating under the contract exemption, 250 home to school/college contracts were affected and were re-tendered, at an additional cost of £ 500,000. Staff resources also had to be diverted to deal with the consequences of the repeal. However, the contract manager estimates that in the longer term, due to keener competition and the recession, the net additional cost may be more of the order of £200,000 annually.
80. Another shire county had incurred higher cost of around £22,000 when one home to school contractor failed to become licensed in time, despite 11 months' notice, and it had to re-let contracts at very short notice. When the contracts were re tendered in advance of the next academic year, the costs of routes served by those operators who had had to license as a consequence of the repeal had increased by about 20%. These operators provided specialist, wheelchair-accessible vehicles, about 75 of which became licensed between 10 operators.
81. Another rural county reported increased costs of £50,000 annually on school and social contract work, representing about 25 contracts. Its contract prices had increased to reflect the costs incurred to become licensed. On average, this equated to £3 a day (£570 per academic year) for each contracted route.
82. One licensing authority was aware that its Children's Services had paid licensing fees of around £16,000 in order to retain some contracts which would otherwise not have continued, and had deducted them from the cost of the contract over the following 12 months.

Additional costs for Businesses

83. There were several costs in addition to the cost of licensing identified by other respondents – operators and others.
84. An operator of a chauffeur driven service who has had to become licensed was not concerned with the cost of licensing, but more with the loss of business due to having to display a "taxi" plate on the rear of the car.

85. An operator carrying out council contracts for home to school journeys for disabled children reported the “*enormous*” cost of licensing, but in addition the need to buy newer vehicles and the cost of additional paperwork. Another ambulance and PHV operator reported the need to devote management time to manage the licensing, including recruitment of an additional transport manager. In addition, time delays in licensing were restricting the growth of the business. Another pointed to the driver time (and income foregone) in learning to pass a full knowledge test, even though they would only be driving one route. Others cited additional maintenance work, sometimes of a cosmetic nature (eg re-spraying scratches) without significant benefit.
86. The British Vehicle Rental and Licensing Association (BVRLA) estimated that for the 200,000 cars operated by their members, the cost of licensing 2 vehicles per branch would have a compliance cost in year 1 of £3.7m, with an ongoing cost of £3m annually. If all vehicles needed to be licensed the costs were £71m in year 1 and £70 annually thereafter.

3.6. Use of DfT Guidance and Legal Advice

87. The licensing regime (policy and enforcement) for an area is the responsibility of an individual licensing authority and it is for local licensing authorities to take decisions on what the law requires, under the terms of the current taxi and PHV legislation. In the course of the review, it was clear that there is a considerable range of local policies to meet local circumstances eg on age of vehicle policy, specialist vehicles and a variety of costs of licences (set to recover a licensing authority’s costs).

88. However, the Department for Transport was aware that, in advance of commencement, licensing authorities had questions about the changes and it had drafted, consulted on and issued a note for guidance which set out its views. Subsequent to this, and after commencement, it had been contacted by a number of stakeholders, including operators, users and others on whom the repeal was having an impact. As part of the review, we therefore asked what use people had made of the guidance, and whether it had been necessary to take subsequent legal advice and action to clarify the legislation in particular cases.

	Yes %	No %
Have you used the Department’s guidance note to inform your decisions about which operations needed to be licensed and which did not?	70	30

57 respondents answered this question

89. NALEO ensured that its members were aware of the Guidance by circulating it to gain general acceptance of what did and did not need licensing. Other respondents had used the guidance:

- To clarify any points that may have arisen or that they were a little unsure of
- To understand the rationale for the change and to assist in introducing it
- To alert people to the changes
- To make all council officers and unlicensed operators aware of its contents
- To take into account as part of a review of licensing policy for drivers and vehicles
- To discuss with fellow licensing officers in area groups
- To show to operations (eg garages running courtesy service) who did not agree with the need to license in a particular case
- To include in letters to the PCT for the district and the local access club
- To exempt the Ambulance car sector
- To provide advice to enquirer and applicants, and potential operators
- To give assistance as to whether vehicles are hire and reward – for example where residential homes provide a vehicle for use of residents where the fee for that service is part of the fee they pay for residence. Also for guidance where vehicles are actually an ambulance or hire and reward

- In relation to the types of operations carried out and whether it is in the public interest ie medical transfers, retirement homes etc

90. An operator reported that it had been used by the Council at meetings with the trade.

91. One local authority contract arranger commented that:

“Given the anticipated additional cost to us as a procurement body and to the District Licensing Authorities in increased administration costs, we tried to find a way of introducing a “third way” of licensing vehicles which were used solely on home school/college contracts. The Department’s guidance notes clarified that this was not possible”.

92. Some commented that it had been useful “to dot the “i”s and cross the “t”s, but others had not found it so precise:

“the guidance can be useful in some areas but it does not offer any clarification of grey areas such as nursery/childminder vehicles and hospital cars”

“it is very difficult to use a policy that gives little definite direction”

93. One operator who had operated under the contract exemption reported that the local authority had commented about DfT’s Guidance Notes:

“they are “guidance” we don’t have to adhere to them, and in fact we will disregard them”.

Taking legal advice and action about the contract repeal

	Yes %	No %
Have you or your organisation taken legal action to clarify the legislation?	20	80

44 respondents answered this question

94. NALEO and others are unaware of any challenges in the Higher Courts. One authority had consulted the council legal department for unspecified reasons, but had found the guidance did not give clear direction

95. During the course of the review, a court case was brought against Pink Ladies by Warrington Borough Council. After originally licensing, Pink Ladies had sought to set up as a lawful members’ club. The drivers would be employed by the members, and the vehicles owned by members, so they would be using their own vehicle and hiring a driver separately. This, they claimed, would be outside the definition of a private hire vehicle as hiring a vehicle with a driver. The judgement was that the case was proved. Warrington BC pointed out that the legal action had cost around £30,000 to date – from the Borough Council’s taxi budget.

96. Five respondents had taken legal advice in response to the change in the law:

- The National Childminding Association sought the advice of its lawyers on the implications for childminders
- The British Vehicle Rental and Leasing Association's (BVRLA)'s Legal Services reviewed the legislation in detail when two councils approached a member. The councils took different interpretations of the implications following the removal of the exemption. The BVRLA pointed out that different interpretations could be attributed to the lack of detailed guidance published by the Department to assist the various industry and public sectors that could be potentially affected. It regarded the differing interpretations as confirmation about the confusing nature of the legislation and the need for clear guidance from central government.
- Transport for London sought legal advice in order to arrive at a suitable definition for ambulances as it was clear from a number of businesses that they approached that the term 'ambulance' was being used to cover a wide range of vehicles. It was not the intention of TfL to license those vehicles that provided a genuine specialist or emergency service. However, a number of companies argued that they were still exempt because of the nature of the services that they provided. In effect they were claiming that they provided 'ambulance services' when in reality they transport passengers to either hospital appointments or educational facilities. TfL considers that the private hire vehicle legislation should contain a formal exemption for ambulances and should clearly define this term.
- An operator of a fleet of ambulances and staff to provide non emergency patient transport has become licensed: *"We negotiated at great length with [a district council]. DfT guidance was very poor and extremely woolly leading to a diversity of interpretation" "[the district council] has been very helpful by creating a category for ambulances and ambulance drivers which protects our business and that of the local taxi market (by restricting our use)." The operator took legal advice, and is considering taking legal action "with over 370 others who support our view".*
- An operator with 12 employees operating contracts issued by [a shire Council] taking disabled and disadvantaged school children to and from school had previously operated under the exemption. The organisation took legal advice, but has had to become licensed and to uprate two vehicles in order to meet the local authority's age policy. It felt there was no possibility of legal action:

"I asked [a borough Council] about an appeal in the Magistrates Court only to be told it would be heard in the County Court defended by Barristers and that the costs if I lost would be £4000 per day. There is no effective appeal procedure – I have

been to the head of Licensing – but all they do is fudge the situation and refer it to the committee who come back with the same answer.”

97. The responses to the Review made clear that there remained areas where there was confusion about licensing, and inconsistent interpretation and practice between local authorities. The next section discusses those.

3.7. “Grey” areas

3.7.1 Stretch Limousines

98. The issue of limousines was addressed by about 20 licensing authorities, and was seen as an issue by about half of them. NALEO reported that some councils would license stretch limousines and that some would not. A few licensing authorities claimed that others were not pro-active in licensing limousines. This was not the case amongst those licensing authorities who responded to this consultation. TfL made clear that limousines in London had become licensed; however, it was not always straightforward and TfL aimed to understand the nature of the business in deciding the need for licensing. The National Limousine Association (NLA) reported that about a quarter of local authorities would not license limousines. It estimated that about a quarter of the trade remained unlicensed.
99. The construction of stretch limousines can vary enormously, but the crucial point is their seating capacity. If a stretch limousine has a seating capacity of 9 or above, the local authority cannot legally license it as a private hire vehicle. A passenger carrying vehicle (PCV) capable of carrying more than 8 passengers has to obtain a Certificate of Initial Fitness (COIF) from VOSA in order to be able to carry passengers for hire and reward. COIF regulations make clear that the vehicle must not be left hand drive, for example, and there are conditions around emergency exits. There are issues about vehicles which are imported, then converted, and about the age of vehicles. Novelty vehicles eg a New York yellow cab do not fit into a vehicle category. This is a very specialist market.
100. The National Limousine Association (NLA) was concerned about enforcement of limousine licensing. In this complex and technical area, it had found differing understanding and application of the rules amongst licensing authority enforcement officers, VOSA and the police. So its view was that there were often two different approaches; either to leave the area of limousines alone, or to enforce vigorously, without a detailed understanding of construction rules.
101. Most licensing authorities regarded the repeal of the exemption as making the requirement to license limousine operations clear both to licensing departments and the police. Some had taken the opportunity to adopt a new policy on limousines, which they had not previously licensed; this included adopting additional conditions to license such vehicles. Some explained that their policy was to prefer to license limousines, and to deal with each vehicle on an individual basis.
102. The National Limousine Association (NLA) pointed out that limousine operators faced as many different licensing policies and conditions as there were licensing authorities and a huge variation in licensing costs (quoting £125 to £1300 annually). At present, operators wanted to be able to choose which licensing regime to operate under – responding to the local policies and the nature of their own vehicle - for example PSV licensing had no age of vehicle regime. However,

the NLA would also welcome a specific licensing category supported by new guidance.

103. The repeal was seen as an opportunity by licensing authorities and the NLA to ensure public safety by requiring limousines, their operators and their drivers to become licensed. One authority reported an increase in enquiries from the public, checking to see if stretched limousine operators were licensed. Those who have licensed limousines reported that it made it “*easier to deal with unlicensed ones*”.
104. But some authorities reported that “*unlicensed limos continue to operate as before*”. One authority reported that :
“*we had one unlicensed limousine operator. Refused any offer of help or advice, maintained he was exempt. He was prosecuted following a test purchase and subsequently pleaded guilty at court*”
105. NALEO and some licensing authorities argued in favour of dismantling the complex licensing regime in this area, and allowing only councils to license vehicles with 8 passengers or fewer; and above that only VOSA. One authority explained that “*the limit of 8 passengers should dictate that they fall within private hire licensing and not have the choice of being shown as restricted PCVs which is virtually unenforceable. A licence for this category could relate to a fleet of 10 vehicles of which no more than two should be on the road at any one time. It is virtually impossible to police unless you stop all the vehicles at the same time on the road. PCV licences are not specific to vehicles, whereas PHV licences are*”.
106. An issue often mentioned by respondents was limousines claiming to be operating as a wedding (or funeral) car only, but also serving the school “proms” market. Several authorities reported enforcement in this area. Some pointed to difficulties with even this exemption: given the potential number of journeys from house/church/reception/airport.

3.7.2 Chauffeur services

107. A handful of operators raised issues in relation to chauffeur services. NALEO reported that it remained an ongoing task to identify new firms setting up “*in particular “Chauffeur”/Executive” firms who often believe licensing is not required for those types of operation.*”
108. It appeared that, in general, chauffeur services had become licensed (sometimes under the PSV “O” regime). This included one respondent who ran vehicles under contract to transport international ships crews, agents and officials to secure ports and airports. The operator had become licensed, but given the security regime under which he operated said that the additional cost of licensing had not increased public security; had resulted in staff shortages given the time taken to become licensed, and some licensing regulations had clashed with port security regulations.

109. Operators also reported their increased costs as a result of licensing; regarded the previous risk to public safety as minimal, and thought the result was another layer of bureaucracy. One driver said that in his area, it had taken nearly 3 months to become licensed. He was concerned that there was a variation in the licensing authority's requirements: *"I know one chauffeur who has actually moved to a neighbouring area because the qualification process is no where near as onerous"*.
110. An area of concern to operators was the requirement to carry plates. One operator said he had lost business due to having to display a plate. Some authorities reported that their policy was to allow certain vehicles an exemption from displaying the licence plate, confirmed by another operator's experience. One reported that:
"the genuine chauffeur types tend to have high end, relatively new cars and don't present a problem to us EXCEPT in the context of our option to allow exemption from the legal requirement to display driver badge and vehicle licence plate: this is an area that results in disharmony".
111. Another explained that: *"the Council recognised that vehicles which had previously been exempt from private hire licensing had mainly been used for "executive" type work. The Council in response to requests from these vehicle owners, introduced an executive private hire licence. The vehicles are subject to the same regulations as normal private hire vehicles but the vehicles are not required to exhibit a private hire vehicle licence plate on the vehicle. This is subject to the vehicle being used for "executive" type work (ie contract work) and for normal private hire use of accepting bookings from the general public."*

3.7.3 Event management companies

112. In London, TfL pointed out that the repeal had meant that it had had to exercise greater discretion in how it carried out its core functions. In practice, the Public Carriage Office has had to analyse the specific mode of operations of some companies in order to determine if they should be licensed. For example, it had become obvious that the arrangements made to service some events with private hire vehicles might fall under the licensing regime. This would involve scrutinising the arrangement between different entities to determine if they met the licensing requirement. It had also identified that a number of event management companies were adopting roles that could potentially fall foul of the licensing legislation.
113. TfL's view was supported by the LPHCA, who commented that:
"Fashion shows, air shows, Wimbledon, the Chelsea Flower Show, sports and other events all throw up considerable unlicensed passenger transport (for reward) activity."

3.7.4 Ambulances

114. The DfT guidance contains a section about how the repeal of the contract exemption would affect “ambulances”. This remains a grey area. The guidance note pointed out that a wide range of vehicles and operations appeared to come under the broad “ambulance” heading and this has been borne out in practice, according to the evidence the Review received. There is a range of vehicles from:

- emergency/specialist ambulance services dealing with ‘emergency’ and other work
- vehicles which operate as a formal patient transport service
- other vehicles transporting passengers to and from medical facilities on an ad hoc basis, which may well be driven by ‘volunteers’.

115. The guidance stated that: *“it appears to the Department that a court would be unlikely to consider that Parliament intended vehicles in the first two categories to be within the PHV definition.”* However, licensing authorities asked for clarity; and TfL has produced its own definition of “ambulance”. TfL was minded to challenge the definition of “ambulance services” when passengers were being transported to either hospital appointments or educational facilities. It considered that the private hire vehicle legislation should contain a formal exemption for “ambulances” – and the term should be clearly defined.

116. The British Ambulance Association (BAA) is clear that those vehicles which can be defined as ambulances (and therefore be a member of its association) are those which meet the definition contained in Schedule 2 of the Vehicle Excise and registration Act 1994 and therefore are exempt from Vehicle Excise Duty:

“An ambulance is a vehicle which:-

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

These vehicles cannot be used for “social hirings”, and only carry patients who have been assessed by a medical professional as having a medical need for transport.

117. The BAA was only aware of one instance in which one of its members had become licensed – in this instance the operators had agreed in order to be able to tender for a contract to transport seriously disabled children. The licensing authority concerned was concerned that the guidance did not address the question of vehicles specially equipped and use for patient transport. A contracting authority also reported this case, and said that the district in question had created a secondary plate for ambulances, on the basis that the ambulances would not operate in the “normal” PHV market, as the vehicles were specially adapted and not suitable for the general public. The operator concerned, while objecting to the

requirement to be licensed, appreciated the council's helpfulness in creating a category for ambulances and ambulance drivers. The operator reported that the NHS had disregarded the legislative change, and pointed out that if the law were enforced, then every ambulance operator in the country, as well as themselves would need to become licensed. We also heard from another operator, who had obtained licenses, but pointed to the differing requirements of the NHS and PHV licensing eg with regard to signage and tinted glass in vehicles.

118. Another licensing authority also suggested an additional licensing category, perhaps under the VOSA umbrella, for operators of specialist vehicles, such as wheelchair accessible vehicles, who do not undertake normal PHV work, but only local authority contract work. The review heard from a handful of operators of these sorts of vehicles for local authorities, who felt that licensing had had an adverse impact on their businesses, in terms of costs and shortage of staff, for no public safety benefit.

119. Other licensing authorities reported having discussed the issue with their Primary Care Trust, and were aware of discussions amongst groups of licensing authorities. One local authority reported that it had chosen to continue to exempt ambulance cars as the vehicles would be difficult to get through their age and type policies and *"as the costs would be disproportionate to the advantages"*.

120. TfL regarded "ambulances" as a grey area, and believed that it needed to exercise discretion with regard to the need to license (or not). It did not rely on the 1994 Act definition, and chose to exercise its own judgement in specific cases. It was not its intention to license those vehicles that provided a genuine specialist emergency service, and had adopted the following definition:

"A vehicle that falls within any of the following categories may be excluded from the London PHV licensing process.

1. *A vehicle constructed or adapted for the purpose of the conveyance of recumbent persons in accordance with any relevant definition in Vehicle Construction and Use legislation.*

Vehicles must have a rear compartment with a permanent means of conveying a person in a recumbent position, together with an attendant seat to accommodate the presence of a health professional. The words 'Ambulance' must be clearly signed on the front and sides of each vehicle. The vehicle should also be fitted with a blue warning beacon or a device which resembles a blue warning beacon (Road Vehicle Lighting Regulations 1989, section 16).

Ambulances in the NHS, private, local authority, military and voluntary sectors that comply with this definition will be classed as emergency vehicles.

2. *Specialist vehicles which do not meet the criteria in 1 above (for example 'first response' vehicles) but which are defined as emergency vehicles under section 16 of the Road Vehicle Lighting Regulations 1989 due to the fact that they are fitted with a blue warning beacon or a device which resembles a blue warning beacon.*

3. *Vehicles which operate as part of a formal, contracted, patient transport service, usually non-emergency and solely for the purpose of the planned transport of patients who have been assessed by a health professional as having a medical need for specialised transport to or from medical appointments. These vehicles must be constructed or adapted and used for no other purpose than the carriage of sick, injured or disabled people to or from medical appointments.*
There are three key requirements for this category.
That the vehicle:
 - a. *is specifically constructed or adapted in some way for the purpose of the carriage of sick, injured or disabled people;*

 - b. *has been booked because the person to be carried has been assessed by a health professional as having a medical need for specialist transport to or from medical appointments; and*

 - c. *is not used for 'social' hirings.*

These vehicles will be readily identifiable as used for the carriage of such people by being marked 'Ambulance' on the front and sides of each vehicle. Vehicles may require the presence of a health professional".

Volunteers

121. The Review found that a significant source of concern centred on ad hoc patient transport and, in particular, the use of volunteers. The DfT's guidance note also addressed this. The interpretation focused on the phrase "for hire" in the definition of a PHV. The guidance note set out the Department's view that there must be an element of commercial benefit for PHV licensing arrangements 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". The note referred to the rules set out by HMRC about calculating income from volunteer driving. Licensing authorities reported relying on this guidance, and the review heard of no volunteer services that had become licensed.
122. One user organisation and an individual user respondent suggested that there had been no impact on them, due to the repeal of the private hire exemption, as they were supported by voluntary services.

“our drivers for the community car scheme are not paid, but receive expenses of 40p per mile. This is paid, half by the District Council, half by the Parish council. We understand that we PHV legislation does not apply to us”

“it was determined that the regulations did not apply to a voluntary service, [the voluntary organisation] has not been affected by the change and cannot therefore contribute anything of value”

123. NPHA was concerned about this area. It was aware of major increases in the number of unlicensed ambulances and volunteer drivers’ sector. Their members had reported that they had drivers leaving their circuit to become ‘volunteer’ or ambulance car drivers because they could earn more money that way. NPHA attributed this to:

“more and more councils...are using volunteer groups to tender for school, hospital and volunteer driver services. At this moment there are literally thousands of drivers in this country operating effectively 24/7 and doing hundred, even thousands of miles every week. For the first time, we believe the ABI is taking a fresh look at whether these full-time volunteers are insured. We have always maintained not. Working consistently 24/7 goes far beyond matters of “social kindness”.

124. NALEO was concerned was that there was no oversight of the application of the HMRC rules, and for, example Health Trusts might pay over the HMRC volunteer rates. It was further concerned that, on public safety grounds, drivers should have the appropriate insurance, be CRB checked and have their vehicles inspected. It suggested that a volunteer tier of licensing might be introduced; whereby some body – Health Trust or Licensing Authority for example – would keep a record of mileage and notify HMRC as well as checking CRB and DVLA status of volunteers and also, perhaps, licensed taxis or PHVs which undertook work at volunteer rates. And of course, the new Independent Safeguarding Authority (ISA) regime would be relevant. This approach would also have the added benefit of continuing to extend the level playing field which had been advanced by the repeal of the exemption. This approach was supported by one licensing authority who commented on this issue; another had concerns but did not regard the issue as a high priority.

3.7.5 Care services

125. Once the contract exemption was repealed, DfT was contacted by representatives from the care homes sector and domiciliary care workers, seeking clarification on the impact on their sectors. A number of licensing authority respondents to the review said they had used DfT’s guidance in relation to care services; others said remained unclear on whether the repeal would apply to such services. NALEO’s view was that the need to license would depend upon the terms

under which care was given. If an occasional trip was undertaken as a social kindness then licensing would not be appropriate.

126. One said that while it had alerted people to the changes and drawn their attention to potential insurance implications, no care workers had asked to be licensed. A home care provider in the same district reported a recent conversation with the licensing department. They were told that home care would come under the law, but they are not actively seeking to enforce the law with homecare providers. But they said *“that the insurance may not be valid without a licence if push came to shove.”* A homecare provider in another area reported that they could not get a definitive answer from the local licensing authority, which at the time was comprised of several district councils, as *“depending on which one we spoke to, we got a different answer!...In the end, although no-one was willing to put pen to paper...our staff do not have to obtain a licence.”*

127. One local authority contractor manager reported that licensing had led to an increase in the cost of care homes for the Council and that:

“There is still confusion in some quarters, particularly those involved in the world of social welfare. Private companies offering health care packages and providing some transport as part of that care package or transport on an outing now have to be licensed as a PHV; previously they did not. This caused confusion and ill-feeling as the homes maintain that they are only providing this service as an add-on to the care packages and not as a transport operator.”

128. The UK Home Care Association (UKHCA) was concerned that DfT’s guidance and, if necessary, the law should be amended to make clear that care workers do not have to license their vehicles as PHVs. They were concerned that the DfT guidance had anticipated that childminders might be impacted by the repeal, but that it was silent on the position of care workers taking service users out in their cars. They were concerned that the anomaly remained despite the similarity in role – ie both carried clients in their own vehicles as part of their wider caring duties.

129. They wanted amended guidance to be issued to local licensing authorities to ensure there would be clarity and consistency of approach to PHV licensing in different areas. In calling for this, UKHCA believed that

- User safety was paramount. Home care providers and their staff should ensure their vehicles have the appropriate insurance to cover the transport of service users as passengers, when they offer this service as part of a care package, and are properly taxed and MOT tested.
- Care workers who used their own cars to transport service users as part of a wider package of care should not have to license their vehicles as PHVs. Licensing might lead providers to restrict the provision of essential services, including taking service users shopping and to social events. This would undermine the Government’s personalisation policy of social care. They pointed

out that where care workers take service users out in their own cars, they commonly make a mileage claim to their employer so they are reimbursed for the cost at an agreed rate. There is no profit element to the provision of transport.

- Homecare providers that do fall within the Road Safety Act remit should license their vehicles as PHVs.

3.7.6 Childminders

130. The issue of whether childminders would need to become PHV licensed was addressed in the Department for Transport's guidance note. The National Childminding Association (NCMA) reported that when the changes were introduced, it received enquiries from field staff, childminders and local authority early years staff as well as licensing officers all over the country. It had appeared that the legislation was going to be interpreted differently in different areas; some intended that childminders would have been subject to the licensing regime, others not. This initial variation of approach was confirmed by the Institute of Licensing. Another local authority confirmed that they had alerted people such as childminders to the insurance implications, but none had come in to be registered.
131. The NCMA referred all local authorities who were intending to subject childminders to the licensing regime to the guidance where it stated that it was *"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."* But some local authorities thought that the guidance did not offer any clarification of grey areas such as "nursery/childminder vehicles".
132. In practice, the review was not made aware of any childminders who had become licensed or licensing authorities that had licensed them as a consequence of the repeal. However, while authorities had not been pro-active, some would be prepared to license childminders. Others said they were not looking to address this area, and did not regard transport as an integral part of child minding.
133. The NCMA concluded that that although the legislation was not intended to apply to childminders, it was unintentionally misleading. The guidance had gone a long way to redress this but was non-statutory. There remained a concern about insurance for childminders when driving children in their care, so NCMA were keen to resolve this point as a result of this review of the impact of the repeal.
134. NALEO also raised concerns about the insurance angle. It pointed to the definition of a private hire vehicle "which is provided for hire with the services of a driver" and case law which dealt with the issue of hire and reward as against goodwill. It believed that childminding was a business and that a childminder would take children in their car for hire and reward, and not as a social kindness, and so should have hire and reward insurance. It would welcome clarification or a specific

exemption for childminders. For example, it suggested there might be a distinction drawn according to the number of children in the childminder's care (say, above 2). Its concern that there was no oversight of the provision of the correct insurance or of vehicle safety (including provision of the correct child seats), which could be undertaken by, for example, social services or a licensing authority. It believed that CRB checks and the establishment of the Independent Safeguarding Authority regime did provide for adequate checks in other respects.

135. Some authorities, including TFL, did mention that they had licensed nurseries and other commercial companies doing private contracts such as transporting children to and from school for their parents. One authority reported that it was undertaking a scoping exercise looking at the issue of private day care nurseries (eg pre-school clubs which would also transport children to school), as it believed the guidance was clear that if parents paid for this service as part of a pre-school club, then it should be PHV-licensed.

3.7.7 Rental cars

136. A specific issue had arisen in relation to rental cars. The British Vehicle Rental and Leasing Association (BVRLA)'s members offer daily, weekly, and monthly rental of vehicles to corporate and retail customers. There are occasions when its members, by way of an ancillary support to their customers, would pick them up or drop them off to a local destination – either the home address or the renter or a local train station. Two councils, who had taken different interpretations following the removal of the exemption, had approached one BVRLA member.
137. The BVRLA member was advertising a collection and delivery service, and two councils regarded this as bringing it within the PHV licensing system, as it was not an ad-hoc service, but an inducement to use the company. One Council took the view that this company should always have been operating as a PHV Operator, and the other that the removal of the exemption brought the company within scope for the first time. The issue pivots around the definition of a PHV in the Local Government (Miscellaneous Provisions) Act 1976.
138. The two councils have had a detailed dialogue with the BVRLA, drawing on legal advice and consulting the Department for Transport. To date, there has been no resolution and the uncertainty is restricting the company's business planning for fear of legal action. It appears that further developments have been put on hold pending the outcome of this review, although one licensing authority has put the company concerned on notice that it may undertake a test purchase with the intention of prosecuting the company. The BVRLA regards this uncertainty as completely unacceptable and wants clear guidance from the government. It has estimated a considerable cost if all its members had to become PHV licensed (see para 71 above).

139. NALEO was not aware of instances where local authorities were pursuing the licensing of businesses such as car rental firms and garages which would give people lifts. It did not regard this as a priority given it did not involve vulnerable members of society and was more often than not offered in an emergency.

3.7.8 Prison transport

140. One licensing authority and the Youth Justice Board have raised the issue of whether the repeal has created the need for vehicle transporting those in custody to be included in the PHV regime. The Board reported that different local Authorities were taking different views in relation to custodial vehicles and asked for central guidance to remove the inconsistency.

4. Lessons Learned

141. The review asked respondents whether DfT should learn lessons from the policy change. It was clear that there had been some issues about clarifying what would be expected of local authorities under the repeal, and that DfT's consultation with the industry and guidance in advance of commencement had been welcomed, but the majority of respondents felt this could have gone further. There had been fears at the outset that a wide variety of activities might be severely affected by the repeal, but that in practice, 18 months on, in general, this had not happened. In some cases, this was down to licensing authority resources and priorities.
142. There remained a variety of approaches to the implementation, and this inconsistency was a source of concern. Some respondents argued for continuing to extend licensing to further sectors – into currently in grey areas eg volunteer drivers – to continue the process of establishing a level playing field. Others felt that a “one size fits all” regime was not appropriate. TfL was clear that the legislation meant that licensing authorities had to examine how a business really operated in order to determine whether it needed to be licensed under the PHV regime. This was echoed by NALEO and some individual licensing authorities, they were seeking to determine whether the operations gained a “commercial benefit” from the way they operated that brought them within the PHV licensing law. Operators, through the LPHCA, remained concerned that the repeal was not being consistently enforced: *“We would like to see DfT Guidance ...followed up by an assessment of enforcement and Local Authority duty of care in delivering enforcement”*. This was also the view of NPHA: *“This entire policy change is only as good as its enforcement on a local level by licensing authorities. We believe a lot of lip service was paid to the DfT as regards the contract exemption, but there are still too many unlicensed services out there.*
143. Besides welcoming the review itself, there was other positive feedback from some respondents:
- *“Apart from the teething problems at inception, the information provided before, during and after the process was well thought out and clear, so the process of change was relatively seamless. Any future changes should use this as a blueprint with the sole proviso that the bona fide trades and enforcement representatives should be involved as soon as possible in the process.”*
 - *“The introduction of the change in legislation was carried out after consultation with all interested parties and this Council has not experienced any difficulties which would have suggested that all the implications of the policy change had not been fully considered.”*
144. However, the following themes also emerged:

Consultation

- DfT needs to ensure it consults on legislative changes with the licensing authorities and their representative bodies (NALEO, IoL and LACORS), and keeps them informed. There had been issues with the commencement date and the availability of the RIA of the repeal.

Timing

- There must be a clear and exact date for the commencement of the legislative change. Some respondents were glad that the implementation date had been put back; one needed more than six months in order to undertake the vehicle inspections for those which became licensed as a consequence of the repeal. Another reported that with school contracts due for renewal in August, operators had been concerned about signing up for contracts (in May/June) without clarity on the impact of the repeal.

Grey areas

- The legislation is still unclear. Grey areas remain, and exemptions alongside wedding and funeral cars need to be clear.
- There needs to be clarity on the grey areas: statutory guidance which was unambiguous would be welcome. Specific mentions of limousines; personal car used for hospital transport; care workers; child minders and private ambulances.
- *“More research into the whole PHV/Hackney Sector should be carried out to identify all vehicles and drivers carrying out these activities. All such vehicles, including NHS “volunteer” vehicles should be brought within regulations even if only on a restricted basis.”*

Enforcement

- When the law is changed, resources need to be provided for enforcement,: *“until money is supplied to local authorities which is ring fenced inadequate enforcement will allow operators to work outside the law”*.

Joining up policy across government

- *“The provision of home to school/college transport is an important part of the state education system. It requires significant financial input which could otherwise be spent on investment in schools (or saved). It is therefore important that the implications to the cost of providing transport are borne in mind when framing legislation both by DfT and DCSF.”* The respondent pointed out the education department’s proposal for diplomas for 14-19 year olds would require pupils to visit different schools, raising transport issues such as cost, and pupils’ travel time.

- The same point was made in the context of ambulances where respondents said that NHS contract requirements and PHV licensing requirements were not compatible in relation to ambulances.
- Users suggested that the Department should consider the widest potential impacts of policy change and in particular any potential difference in impact on an urban or a rural area. They were also keen to see the Department issue clear and unambiguous guidance

Impact on small businesses

- The review heard from small businesses who had been forced to license to continue in business. They were concerned at the impact on their businesses not just in terms of licensing costs, but also in terms of additional administrative overheads and the difficulty of recruiting staff due to the time taken to become licensed and the need for medical and CRB checks. Given these consequences, they were particularly concerned at inconsistent interpretation between authorities; lack of enforcement against operators who remained unlicensed, and lack of consultation with stakeholders such as themselves before introduction.
- A further respondent proposed that DfT should provide specific business guidance as to the policy intention of the legislation. This would ensure that those business sectors which were “*being caught by a broad interpretation*” would have the certainty they require to operate their business.

145. Some respondents also reflected more broadly on the impact of the repeal. The following themes emerged:

- The whole of taxi and private hire vehicle licensing legislation is out dated, based on very old laws and some revision in 1976. A radical overhaul is needed to bring clarity and ensure the legislation is appropriate for the modern way of life and is fit to deal with today’s ways of operating and modern communications eg booking on mobile phones or internet.
“It [PHV and Hackney Carriage licensing legislation] is ripe for a complete overhaul rather than tinkering”
- New legislation should make licensing procedure and practice the same across the country (similar to the Gambling or Licensing Acts). *“At present, a person may be unsuitable in one authority, but in the neighbouring authority able to become licensed. It is also noted that people are travelling from the London areas to obtain cheaper/easier to obtain licences outside London”.*
- A plea to simplify the licensing system (across taxis, PHVs, PCVs and PSVs) with a distinction made between vehicles with 8 seats or below, and those with 9 or more.

- The need to think through the implications of the imminent Independent Safeguarding Authority (ISA) scheme for the industry, under which it will be a regulated activity when people exclusively transport children and/or vulnerable adults. For example, with regard to such volunteers, there would be sense in one body holding a record of volunteers' transport activities and CRB checks, to "join up" the system – in contrast to the current situation where records may be held by HMRC, health authorities, school contract holders and licensing authorities or others, but no one body has an overview.

Annex A – Terms of reference

Review of the impact of the Repeal of the PHV Contract Exemption: Terms of Reference

1. In Section 53, Road Safety Act 2006, “the contract exemption” was repealed which had – in England and Wales outside London¹ - exempted from private hire vehicle (PHV) licensing requirements vehicles engaged on contracts lasting not less than seven days. The provision was brought into force in January 2008.
2. In line with government policy to review the impact of legislation, the Department for Transport is undertaking a review post implementation to establish the costs and benefits of the policy, and whether it has achieved the intended effects.
3. We have therefore commissioned the In House Policy Consultancy to consult stakeholders – including regulators, contracting bodies, licensing authorities, operators and users - with the following remit:
 - To collect evidence of the impact of the repeal of the contract exemption by s53 RSA 2006
 - To consult stakeholders about their experience of the new regime and its impacts; to capture their views on whether it has achieved its objectives and if there have been any unintended consequences
 - To establish whether the assumptions in the Regulatory Impact Assessment were accurate
 - To consider whether any lessons can be learned from this policy change.
4. The Department for Transport has asked for a report by the autumn.

Buses and Taxis Division
Department for Transport

¹ Section 54 of the Road Safety Act changed the London PHV legislation in a similar way; whilst this project is focussing on the outside-London change, we are also seeking feedback about the impact of the change in London.

Annex B – List of Respondents

National Association of Licensing and Enforcement Officers
Transport for London
Oldham Metropolitan Borough Council
Hart District Council
Reigate and Banstead Borough Council
Great Yarmouth Borough Council
Sefton Metropolitan Borough Council
Bristol City Council
Darlington Unitary Authority
Liverpool Council
Gloucester Council
Uttlesford Council
Cardiff Council
Neath & Port Talbot Council
British Vehicle Rental & Leasing Association
National Childminding Association
National Limousine Association
UK Home Care Association
British Ambulance Association
Cars4Kids
Crystal Chauffeur Service
Albies
First4Care
Patient First Group
Monkton Cars (Wales)
Gloucestershire County Council
Nottinghamshire County Council
Hertfordshire County Council
Cornwall Council
Lincolnshire County Council
Northamptonshire
Derbyshire
Disabled Persons Transport Advisory Committee
CancerCare
Northwold Parish Council
Excell - Executive Chauffeurs
Excelcars
North Sefton hackney carriage Association
Beeline Taxis Ltd
Karel Lazecky
Dragon Taxis Limited
Blaenuau-gwent council
North Kesteven District Council
Wychavon DC

Weymouth & Portland Borough Council
Stroud District Council
Southampton City Council
Blackpool Council
Flintshire County Council
Broadland District Council
Scarborough Council
Sedgemoor District Council
Canterbury City Council
Rotherham Council
Newark and Sherwood District Council
Cheltenham Borough Council
Three Rivers District Council
Calderdale Metropolitan Borough Council
Spelthorne Borough Council
Bury Council
Central Bedfordshire Council
Warrington Borough Council
National Private Hire Association
The community Transport Association
Alan Wright(Motor Dealerships)
Dorset County Council
Hertfordshire District Council
Tony Crabtree
Peter Simmonite
Bob Mears
Executive Cars

Annex C – An example Questionnaire

REVIEW OF THE IMPACT OF THE REPEAL OF THE PRIVATE HIRE VEHICLE CONTRACT EXEMPTION

It is government policy to review the impact of legislation, post implementation, to establish the actual costs and benefits of the policy and whether it has had the desired effects. In line with this, the Department for Transport's IHPC is undertaking a review of the impact of the Repeal of the Private Hire Vehicle Contract exemption².

This questionnaire is designed to provide input to that Review by exploring the impact of the exemption's repeal on a sample of stakeholders including contracting bodies.

Your views are very important to us. We want to understand your experience, see how the policy is working in practice, learn about whether the expected benefits are being delivered and see whether there have been any unintended consequences so that we can consider whether any lessons might need to be taken into account in future policy making.

² Section 53 of the Road Safety Act 2006 (repeal of the PHV contract exemption outside London) commenced in January 2008 and Section 54 (amending the definition of PHV in London) commenced in March 2008.

Part 1 - Information about you

Name	
Address	
Phone Number	
Email	
<p>1.1 Please tick if you are in a rural area, urban area or London.</p> <p><input type="checkbox"/> Rural</p> <p><input type="checkbox"/> Urban</p> <p><input type="checkbox"/> London</p>	
<p>1.2 Please tick one box from the list below that best describes you/your company or organisation.</p> <p><input type="checkbox"/> Contracting body</p> <p><input type="checkbox"/> Other - please specify</p>	
<p>1.3 Please explain briefly your role in relation to the provision or use of Private Hire Vehicle services.</p>	

1.4 Did you make use of an operator under the contract exemption prior to repeal?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give brief details and state whether it was a public sector or commercial contract.		

Part 2 – Impact of Repeal

2.1 What has been the impact of the repeal in January 2008 on your organisation?
2.2 What steps have been taken to address this impact?

<p>2.3 The Regulatory Impact Assessment prepared by the Department for Transport made assumptions, about additional costs for PHV operators, who were no longer exempt. These are set out below, on a national basis. Do you think these assumptions were reasonable?</p>			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Operator licences	300 applicants x £400 fee	120000		
Driver licences	2000 applicants x £250 fee	500000		
Vehicle licences	2000 applicants x £200 fee	400000		
		1, 020,000		
<p>If no, please explain briefly why not.</p>				
<p>2.4 Have you incurred additional costs as a result of the repeal of the Private Hire Vehicle Exemption? Please give brief details.</p>				
<p>2.5 Is there a general contracting period for your contracts with Private Hire Vehicle operators?</p>				

2.9 Are you aware of any operators in your area which have stopped providing services as a result of the repeal of the exemption?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, in your view, why have these operators stopped?		
2.10 Who do you think has been most impacted? Please rank 1-4 with 4 being most impacted and 1 being least impacted.	<input type="checkbox"/> Operator <input type="checkbox"/> Marginal Operators/Voluntary bodies <input type="checkbox"/> Local Government <input type="checkbox"/> Users	
2.11 Do you think there has been a disproportionate impact on one of these groups?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give your reasons.		

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Part 3 – Objective of Repeal

3.1 The objective of the repeal was to eliminate the risk to public safety. Were you aware that this objective was behind the repeal of the contract exemption?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.2 In your view, were there issues of public safety before the repeal of the exemption?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please give brief details of the main public safety issues arising.		
3.3 Do you think the objective of eliminating the risk to public safety has been achieved?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Please give your reasons.		
3.4 Do you think DfT should learn lessons from this policy	Yes <input type="checkbox"/>	No <input type="checkbox"/>

change?		
Please explain.		

Part 4 – General

4.1 If there are any other comments you would like to put forward to this review that we have not covered in the questions in Parts 1-3, please give these below.

Annex D – The Regulatory Impact Assessment (RIA) for S53 Road Safety Act 2006

PRIVATE HIRE VEHICLES - IMPROVING SAFETY

Regulatory Impact Assessment

1. Title of proposal

Considering the case for removing “the contract exemption” (i.e. section 75(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976).

2. Purpose and intended effect

Objective

To eliminate the risk to public safety which arises from the current legislation on this matter.

Background

In England and Wales (outside London) private hire vehicles (PHVs) are licensed by local authorities. In order to undertake a lawful PHV hiring, it is necessary for the operator (the person who arranges the booking - normally the radio circuit controller), the driver and the vehicle to be licensed.

Although the term "private hire vehicle" is most commonly equated with minicabs, the legislation defines a private hire vehicle in such a way as to bring a wider range of services (for example, limousine and luxury car/chauffeur hire) within the PHV regime. The common criteria is that the vehicles have fewer than nine passenger seats, are made available for hire with the services of a driver and are not hackney carriages (taxis) or public service vehicles.

Licensing authorities carry out checks on the operators and drivers of PHVs (including criminal record checks in the case of drivers) and they can test the vehicles, up to three times a year.

It should also be noted that licensed hackney carriages (i.e. taxis), driven by licensed hackney carriage drivers, may also be used for private hire work; such vehicles and drivers are also subject to thorough checks by local licensing authorities.

The issue at the centre of this RIA is the contract exemption. Section 75 of the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”) contains an exemption

from PHV licensing for any vehicle which is used only to carry passengers for hire and reward under a contract for the hire of the vehicle for a period of not less than seven days. This means that the vehicles, and the drivers and operators of such vehicles, are not subject to the checks which the local licensing authority undertakes as part of the PHV licensing regime. The exemption only applies to vehicles outside London (a clause in the Road Safety Bill should ensure that London vehicles only hired under contracts are brought within the licensing regime which applies in London). The 1976 Act does not apply in Plymouth where a local Act is in place.

There are two types of 'long term' private hire contract that should be borne in mind when considering the issues. The first is a contract which involves a public sector organisation. An example would be an education authority which arranges a contract with an unlicensed operator/driver to transport children to and from school. It is possible (but, as discussed below, not reliably so) that the education authority would carry out its own criminal record check on the driver for the purposes of the contract and perhaps checks on the vehicle. But these checks would be outside the local PHV licensing regime and there is a strong case for saying that it is more appropriate for such checks to be undertaken by the local licensing authority. The second type of contract is a contract entered into by a commercial organisation, for example a contract between an unlicensed operator/driver and a nightclub for the transport of their clientele or employees home late at night. It is unlikely criminal record checks would be carried out on the drivers discharging these contracts.

Rationale for Government intervention

The Government is responsible for the overall policy and legislation governing taxi and PHV licensing in England and Wales. Local licensing authorities have some discretionary powers which enable them to formulate some suitable local policies for their own local licensing regime, but they have no powers in relation to the contract exemption; vehicles which fall within the scope of section 75(1)(b) of the 1976 Act do not have to be licensed. So, if any action is to be taken in relation to changing the law, it falls to Central Government to take the initiative. It is the Government's responsibility to promote a legislative framework which is sufficiently robust that passengers are confident about their safety.

The RIA sets out two options – (1) do nothing or (2) repeal the contract exemption. The Government is persuaded of the need to repeal the contract exemption.

3. Consultation

Within Government

Education Minister (Lord Adonis) wrote to DfT Minister in April 2006 urging the Department to use the opportunity presented by the Road Safety Bill to remove the contract exemption.

Other Government Departments were consulted in the preparatory stages and agreed that action was necessary on safety grounds.

Any change to the legislation would affect Wales as well as England. The Welsh Assembly Government has agreed that a change is warranted.

Public consultation

The RIA was prepared without public consultation

However, account has been taken of previous representations which have been put to the Department over the years, both as part of a formal consultation (in 1994) and as day to day correspondence from various interested parties.

Since the amendment was tabled in July 2006, some feedback has been received from stakeholders. The generally held view is that removing the contract exemption would enhance safety. Some concern has been expressed by stakeholders who would be directly affected by the change, most notably some limousine operators and private ambulance operators.

4. Options

Option 1: Do nothing

Pros -

- no need for the Government to amend legislation;
- would save on Departmental and Parliamentary time and resources;
- would allow those who want to put a 'long-term' private hire contract out to tender to have a wider choice;
- would not add to the regulatory burden for contractors;
- would not impose costs for contractors; and
- would enable existing businesses and contracts to continue without any disruption.

Cons -

- allows unsuitable individuals to carry passengers (e.g. where they have been, or would be, refused a PHV or taxi driver's licence on the grounds that they are not deemed "fit and proper");
- no assurance that drivers' backgrounds have been checked - they might have been checked for the purposes of a local authority contract, but no assurance, and checks are more unlikely where a purely commercial organisation enters into a contract for private hire services;
- even where checks are undertaken by local authorities, there is a risk that they will be ineffective or inconsistently carried out;

- questionable whether local health and education authorities should actually be carrying out certain checks when the local licensing system exists to do just that;
- avoiding licence fees gives unlicensed operators a commercial advantage in competing for contract work;
- will create an anomaly between London and the rest of England and Wales once the Road Safety Bill clause to amend the definition of “private hire vehicle” in the Private Hire Vehicles (London) Act 1998 is enacted and, as a result, brings vehicles in London used exclusively for contract work within the London licensing regime.

Option 2: Repeal the provision which allows vehicles used only on ‘long-term’ hirings to be exempt from licensing.

Pros -

- improves safety by establishing a situation whereby contract work would only be undertaken by those who have been subject to local licensing checks;
- removes the burden of carrying out checks from health and education bodies;
- creates a level playing field between all operators in competing for work;
- establishes the sort of comprehensive system of PHV licensing that is intended in London by virtue of the Road Safety Bill clause amending the definition of "private hire vehicle" in the 1998 Act.

Cons -

- adds to the regulatory burden;
- imposes costs on operators, drivers and vehicle owners who are currently exempt from licensing by virtue of section 75(1)(b) of the 1976 Act;
- may disrupt existing contractual arrangements which are working well and safely;
- may bring into the PHV regulatory regime people who do not consider themselves to be conventional PHV operators (such as the operators of some private ambulances) and their vehicles and drivers;
- problematic for operators of specialist vehicles - such as stretched limousines - if the local licensing authority has a policy which precludes granting licences to such vehicles (though it should be noted that only those limousines with fewer than nine passenger seats can be licensed as PHVs).

5. Costs and benefits

Sectors and groups affected

- licensed private hire trade who compete against unlicensed operators;
- unlicensed operators, vehicle owners and drivers who take advantage of the contract exemption;
- licensing authorities who must enforce the law and devote resources to scrutinising contract arrangements to ensure that section 75(1)(b) of the 1976 Act applies to the contract vehicle;

- passengers who use unlicensed contract private hire services - some will use these services on a purely commercial basis whilst others (e.g. special-needs children or vulnerable adults) will have the services arranged for them by a public authority;
- bodies and organisations who arrange 'long-term' private hire contracts.

Benefits

Option 1 - do nothing

The principal benefit of doing nothing would be that no additional costs or regulatory burdens would be imposed on drivers, vehicle owners and operators who currently take advantage of the contract exemption.

The main beneficiaries would be unlicensed drivers and operators who could continue working without the need to incur the costs of licensing.

Another beneficiary would be the organisations who choose to arrange contracts with unlicensed drivers/operators.

Option 2 - repeal the contract exemption

The principal benefit of repealing the contract exemption would be that the safety risks associated with allowing unlicensed drivers, vehicles and operators to provide a long-term private hire contract would be removed.

The main beneficiaries would be the travelling public who would have the reassurance of knowing that the service they were using has been checked and authorised by the local licensing authority.

The licensed PHV trade would also benefit from a more level playing field in competing for contract work.

In certain cases local health and education authorities would benefit from no longer having to carry out checks of their own in connection with the contract they were arranging; rather they could be confident that any PHV driver would have been checked for the purposes of the PHV licensing system.

Local licensing authorities would benefit from no longer having to enforce the contract exemption provision; they would save resources currently devoted to investigating the terms of contracts to ascertain whether they properly comply with the exemption criteria.

Costs

Option 1 - do nothing

There would be a cost to the travelling public in terms of a continuing risk from drivers who had not been subject to checks.

The licensed PHV trade would continue to incur a cost in terms of unfair competition when they want to tender for contracts.

Option 2 - repeal the contract exemption

The main cost of this option would be that a new regulatory burden with associated costs would be imposed on vehicle owners, drivers and operators who are currently unlicensed on account of providing a contract service.

In order to quantify the cost of bringing those drivers, operators and vehicle proprietors currently engaged solely on contract work into the PHV licensing system, it is necessary to make three assumptions - an assumption about the number of people currently engaged in unlicensed contract work, an assumption about the number of those people who would actually acquire the relevant licences to enable them to continue working and an assumption about licence fees.

By virtue of the fact that drivers and operators taking advantage of the contract exemption are not licensed and therefore are not registered with any licensing authority, it is difficult to identify just how many people are involved. However, when the Government prepared an RIA to close the loophole in the 1998 Act which allows for unlicensed contract work in London, Transport for London estimated that some 800 drivers were providing a service without holding PHV licences. This figure is equal to some 3% of the total number of PHV drivers in London who were within the system. If this sort of estimate were to be used to gauge the position in the rest of England and Wales, it would suggest that some 2,500 drivers (and vehicles) were benefiting from the contract exemption. Adopting the same sort of estimate for operators as in London would suggest that some 400 operators would fall to be licensed if the contract exemption were to be removed.

However, if the contract exemption were repealed, it is unlikely that every one of those individuals would automatically acquire the relevant licences to enable them to continue. For example, some of the drivers would have opted for the unlicensed contract sector because they had failed to prove to a licensing authority that they were "fit and proper" to hold PHV licences. Another set of drivers will be those who only undertake a limited amount of private hire work - perhaps retired people who appreciate the fact that they can make some extra money without any regulatory burden - and who have no interest in becoming licensed PHV drivers. It is reasonable to assume that some of the existing contract work would be secured by operators who are already licensed; the point about drivers taking up unlicensed contract work on the basis that they would fail the fit and proper check applies equally to operators. Moreover, existing licensed operators would be

able to tender for work on a more level playing field. Accordingly, the RIA assumes that some 300 operators will acquire PHV operator licences and 2000 individuals will be granted driver and vehicle licences.

Licence fees for operators, drivers and vehicles are set by individual local licensing authorities. They are intended to be set according to the principle of full cost recovery, that is, the fees are intended to cover the costs incurred by the licensing authority in carrying out the licensing function. The fees, therefore, vary considerably throughout the country. A snap-shot of eight licensing authorities showed that operator licence fees varied from £100 to £1000; driver licence fees varied from £100 to £400; and vehicle licence fees varied from £120 to £360. The table below uses a figure in the middle of these ranges (the operator fee is nearer the lower end as the £1000 fee was extraordinary).

Operator licences	300 applicants x £400 fee	120000
Driver licences	2000 applicants x £250 fee	500000
Vehicle licences	2000 applicants x £200 fee	400000
		1, 020,000

It is also possible that some operators, vehicle owners and drivers might suffer by virtue of local authority policies which preclude the licensing of certain specialist vehicles (e.g. a blanket ban on left-hand drive vehicles would rule out stretched limousines imported from the USA). However, it should be borne in mind that the legislation provides a right of appeal to the magistrates' court for any person who is aggrieved by a decision of a licensing authority to refuse the grant of a PHV licence.

6. Small Firms Impact Test

As small-scale operators are more likely than larger private hire operators to exclusively operate vehicles which fall within the contract exemption, it is likely that any decision to repeal section 75(1)(b) of the 1976 Act would impact substantially on the smaller-scale operators. However, Government takes the view that the safety arguments for bringing such vehicles within the licensing regime justify the impact on these businesses.

7. Competition Assessment

As noted above, the contract exemption gives unlicensed drivers, vehicle owners and operators a commercial advantage when tendering for 'long term' contract private hire work as they have not had to pay out for licence fees. Consequently, any decision to repeal the contract exemption would mean that licensed drivers, vehicle owners and operators would be able to compete on a level playing field.

8. Enforcement, sanctions and monitoring

If the contract exemption were to be repealed, responsibility for enforcement would rest with local licensing authorities; they are responsible for ensuring that people who drive, own or operate private hire vehicles within their "controlled district" hold the appropriate licences. If an operator, vehicle owner or driver contravenes the relevant PHV licensing laws, the maximum penalty is a fine not exceeding Level 3 on the Standard Scale.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

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ROAD SAFETY ACT 2006

Sections 53 and 54

A note for guidance from the Department for
Transport

November 2007

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 we 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 vehicles 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 web-site:
<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 below 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 web-site (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 Service³ – 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).]

³ In the Department's view, "a formal Patient Transport Service" can be taken here to include services contracted to private healthcare providers, subject to the other requirements identified in this paragraph being met.

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 web-site (<http://www.hmrc.gov.uk/mileage/volunteer-drivers.htm>). 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

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 centres or places where medical or dental treatment is given, and welfare
 - (b) is readily identifiable as a vehicle used for the carriage of such people by being marked "Ambulance" on both sides.