

*Please ask for:*

Catherine McDonald

*Direct dial:*

(023) 9254 5340

*Fax:*

(023) 9254 5587

*E-mail:*

catherine.mcdonald@gosport.gov.uk

23 May 2008

## **S U M M O N S**

**MEETING:** Licensing Board  
**DATE:** 3 June 2008  
**TIME:** 6.00pm  
**PLACE:** Committee Room 1, Town Hall, Gosport  
**Democratic Services contact:** Catherine McDonald

LINDA EDWARDS  
BOROUGH SOLICITOR

---

### **MEMBERS OF THE BOARD**

Councillor Ms Ballard (Chairman)  
Councillor Foster-Reed (Vice Chairman)

Councillor Allen	Councillor Mrs Cully
Councillor Mrs Bailey	Councillor Edgar
Councillor Bradley	Councillor Murphy
Councillor Carter	Councillor Smith

The Mayor (Councillor Kimber) (ex officio)

### **FIRE PRECAUTIONS**

(To be read from the Chair if members of the public are present)

**In the event of the fire alarm (continuous ringing sound) sounding, please leave the room immediately.**

**Proceed downstairs by way of the main stairs or as directed by GBC staff, follow any of the emergency exit signs. People with disability or mobility issues please identify yourself to GBC staff who will assist in your evacuation of the building.**

**IMPORTANT NOTICE:**

- If you are in a wheelchair or have difficulty in walking and require access to the Committee Room on the First Floor of the Town Hall for this meeting, assistance can be provided by Town Hall staff on request

If you require any of the services detailed above please ring the Direct Line for the Democratic Services Officer listed on the Summons (first page).

**NOTE:**

- i. Members are requested to note that if any member wishes to speak at the Board meeting then the Borough Solicitor is required to receive not less than 24 hours prior notice in writing or electronically and such notice shall indicate the agenda item or items on which the member wishes to speak.
- ii. Please note that mobile phones should be switched off for the duration of the meeting.

AGENDA

RECOMMENDED  
MINUTE  
FORMAT

**PART A ITEMS**

1. APOLOGIES FOR NON-ATTENDANCE
2. DECLARATIONS OF INTEREST

*All Members present are required to declare, at this point in the meeting or as soon as possible thereafter, any personal or personal and prejudicial interest in any item(s) being considered at this meeting.*

3. MINUTES OF THE MEETINGS OF THE BOARD HELD ON 25 MARCH AND 15 MAY 2008 [copies herewith].

4. DEPUTATIONS – STANDING ORDER 3.5

*(NOTE: The Board is required to receive a deputation(s) on a matter which is before the meeting of the Board provided that notice of the intended deputation and its object shall have been received by the Borough Solicitor by 12 noon on Friday, 30 May 2008. The total time for deputations in favour and against a proposal shall not exceed 10 minutes).*

5. PUBLIC QUESTIONS – STANDING ORDER 3.6

*(NOTE: The Board is required to allow a total of 15 minutes for questions from Members of the public on matters within the terms of reference of the Board provided that notice of such Question(s) shall have been submitted to the Borough Solicitor by 12 noon on Friday, 30 May 2008).*

6. REVISIONS TO THE GOSPORT BOROUGH COUNCIL  
HACKNEY CARRIAGE AND PRIVATE HIRE CONDITIONS

*This report identifies changes to both legislation and the services provided to the general public that requires that the conditions, principally relating to Private Hire Vehicles be revised.*

PART II  
Contact Officer:  
Tom Dagens  
Principal  
Environmental  
Health Officer  
Ext 5516

7. ANY OTHER ITEMS

*Which by reason of special circumstances the Chairman determines should be considered as a matter of urgency*

## AGENDA ITEM NO. 6

<b>Board/Committee:</b>	Licensing Board
<b>Date of Meeting:</b>	3 June 2008
<b>Title:</b>	Revisions to the Gosport Borough Council Hackney Carriage and Private Hire Conditions.
<b>Author:</b>	Environmental Services Manager
<b>Status:</b>	FOR DECISION

### **Purpose**

As the licensing authority for Hackney Carriage and Private Hire drivers and vehicles, this council is able to apply reasonable conditions to the licences that it grants. This report identifies changes to both legislation and the services provided to the general public that requires that the conditions, principally relating to Private Hire Vehicles be revised.

### **Recommendation**

The conditions applied by this Council to Hackney Carriages and Private Hire Vehicles are amended as indicated in the report. In particular it is recommended that the Licensing Board adopts:

- Revised conditions on the age of vehicles licensed as Hackney Carriages or Private Hire Vehicles.
- The guidance provided by the Department for Transport in determining the licensing requirements for ambulances and voluntary drivers.
- The special conditions for stretched limousines identified in Appendix B.
- A system for the licensing of vehicles considered to be exceptions to the normal licensing conditions for Hackney Carriages and Private Hire vehicles.
- The revised Hackney Carriage and Private Hire conditions as indicated in Appendix D.

## **1 Background**

- 1.1 The Road Safety Act 2006 has removed the exemption from licensing for Private Hire Vehicles provided on contract. These vehicles are primarily used for executive hire. Operators of this type of vehicle whilst accepting the need for licensing, would seek to retain a more exclusive image than that of a regular private hire vehicle.
- 1.2 The Road Traffic Act 2006 has introduced the possibility of licensing authorities having to licence ambulances and voluntary drivers as Private Hire Vehicles and drivers respectively. The Department for Transport has issued guidance to Licensing Authorities on this point

(see Appendix A).

- 1.3 This Council adopted a policy in 2001 to licence stretched limousines as Private Hire Vehicles in 2001. Whilst some special conditions were at that time identified to cater for this type of vehicle, additional technical conditions are required to ensure the safety of these specialised vehicles.
- 1.4 A number of potential operators of specialist or novelty vehicles (e.g. a Fire Engine) have approached the Licensing Team to request that their vehicles are licensed as Private Hire Vehicles. This would permit the hiring of these vehicles for events; there is no alternative licensing regime available to the operators of such vehicles. The nature of these vehicles, has however, precluded this request as the vehicles cannot meet the existing Hackney Carriage and Private Hire Conditions for a number of reasons, e.g. the age of the vehicle, the number of doors fitted to the vehicle.
- 1.5 The Hackney Carriage and Private Hire conditions were last updated in September 2006. Since that time further guidance has been issued by central government on technical points. This Council has also adopted revised policies not reflected in the existing conditions.

## **2 Report**

### **2.1 Executive Hire Vehicles**

Section 53 of the Road Safety Act 2006 repealed section 75(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976, commonly known as the Contract Exemption. Operators of executive hire vehicles now require licensing as Private Hire Operators and their vehicles as Private Hire Vehicles. Licences will be determined in accordance with the Council's licensing conditions (subject to paragraph 2.8 if the vehicle is considered Exceptional).

- 2.2 To accommodate concerns of operators regarding the image of this type of vehicle the rear licence plate will be of a revised design to readily identify this type of vehicle (together with other vehicles licensed under the Exceptional category, see Paragraph 2.10). This design is smaller whilst still carrying all of the information required on the rear license plate. Vehicles that adopt the revised plate would not be required to display the "Pre Booking Only" sticker on their vehicles provided an undertaking is given that the vehicle will not be used for local taxi work. The requirements to display a front internal licence plates and for drivers to wear their driver licence badge will remain.

### **2.3 Ambulances**

Some interpretations of Section 53 have raised the possibility of Ambulances having to be licensed as Private Hire Vehicles and by implication their drivers as Private Hire Drivers together with

voluntary drivers. The Department for Transport has produced guidance in respect of this matter. The guidance provides a definition of an Ambulance where such a vehicle would be exempt from the licensing process. The guidance similarly identifies the circumstances that would require a voluntary driver to be licensed as a private hire driver. The guidance is provided in full as Appendix A. Paragraphs 28-36 relate to Ambulances and Voluntary drivers.

#### **2.4 Stretched Limousines**

At their meeting on the 4<sup>th</sup> October 2001 the Regulatory Board endorsed a proposal to vary the existing Hackney Carriage and Private Hire Conditions to permit the licensing of stretched limousines.

- 2.5 A number of local authorities have adopted special conditions for licensing stretched limousines. Some of these conditions are already adopted by this Council as a result of the previous Regulatory Board decision; however a number of technical requirements were not identified by the Regulatory Board in 2001. It is therefore proposed to adopt a set of licensing conditions specifically to be applied to stretched limousines incorporating the requirement of the Regulatory Board and subsequent technical developments. These conditions are provided as Appendix B.

#### **2.6 Novelty Vehicles**

There is a growing market for “novelty vehicles” to be hired for special occasions (e.g. prom nights, hen parties). This type of vehicle can be considered for licensing as a Private Hire Vehicle and conditions relating to the safety of the public using such vehicles can be attached to any licence issued. The existing Hackney Carriage and Private Hire conditions adopted by this Council make it impossible to licence many such vehicles. Often this is simply due to the age of the vehicle. This Council’s current conditions exclude vehicles over 5 years of age from being considered on first application for a licence. Other physical matters may preclude licensing e.g. the number of doors. The Council’s current conditions in preventing the licensing of such vehicles may encourage the use of unlicensed vehicles. Failure to provide a system for licensing novelty vehicles may also be open to challenge as such a policy may be seen as unreasonable and a barrier to trade.

- 2.7 The overriding concern of any policy in this matter is the safety of the travelling public who use these vehicles. A revised policy that considers each vehicle on its own merits within suitable guidelines is proposed.
- 2.8 In order to widen the licensing regime without compromising public safety it is proposed to identify exceptional vehicles for licensing. An Exceptional Vehicle would be a vehicle that could not meet one or more of the existing licensing conditions; any licence issued would be

subject to an initial application to the Licensing Board for consideration. Any vehicle licensed as Exceptional would be subject to mechanical inspection at intervals of 4 months. The vehicle would be subject to those existing licensing conditions that could reasonably be applied together with any additional conditions identified by the Licensing Board to address the exceptional nature of the vehicle. A significant mechanical history for the vehicle would be required (evidenced by a series of MoT certificates, service history, log books/V5c document etc) to provide a degree of confidence in the condition of the vehicle on initial application.

- 2.9 An Exceptional Vehicle would be required to display a specially designed licence plate at the rear of the vehicle to assist in identifying the vehicle when in use. The normal requirement for front window licence plates, driver licence(s) and the operators licence will all still apply to such vehicles.
- 2.10 In recognition of the increased workload that such vehicles will attract a £50.00 premium on the annual Hackney Carriage or Private Hire Vehicle Licence fee is recommended. The fee for Exceptional Vehicles would be annual and non refundable.
- 2.11 **Revised Hackney Carriage and Private Hire Conditions.**  
Conventional vehicles licensed as Private Hire Vehicles are presently initially licensed up to the age of 5 years from the date of first registration and removed from the fleet when they are 8 years old. Hackney Carriages must, however, be no older than 3 year of age on initial application and again removed from the fleet at the age of 8. The use to which both types of vehicles are put is very similar in view of which it is recommended that all vehicles not considered as Exceptional should be no older than 3 years old from the date of first registration on initial application, and that all vehicles from the age of 8 be treated as exceptional if the applicant wishes to continue to licence the vehicle. This will provide all operators with an opportunity to extend the economic life of the vehicle subject to the controls identified in paragraph 2.8 and the licence premium identified in paragraph 2.10.
- 2.12 The Hackney Carriage and Private Hire conditions were last updated in 2006. A number of adjustments are required to keep the conditions up to date and in accordance with recent Licensing Board decisions. These amendments to the conditions are listed in Appendix D. New or revised conditions are in bold type.

### **3 Risk Assessment**

- 3.1 It is important to ensure that this Council only licences vehicles that are safe and fit for purpose as Hackney Carriages and Private Hire Vehicles.

- 3.2 In order to ensure the safety of the travelling public conditions imposed by this Council must be appropriate and relevant.
- 3.3 Conditions should not be seen as a barrier to trade.
- 3.4 The adoption of the proposed revised Conditions will reduce risks to the Council and the travelling public.

#### **4 Conclusion**

- 4.1 This Council as a Licensing Authority for Hackney Carriages and Private Hire Vehicles may impose conditions on licences for Hackney Carriage and Private Hire Vehicles and Drivers. Conditions should be reasonable and necessary.
  - 4.2 This Council has successfully adopted conditions relating to Hackney Carriages and Private Hire Vehicles for many years. From time to time these conditions require updating to retain their currency.
  - 4.3 Amendments to the existing legislation covering Private Hire Vehicles used on a contract hire basis require modification of the existing conditions adopted by this Council with particular reference to the external rear licence plate to be considered.
  - 4.4 Amendments to the legislation require in certain circumstances the licensing of Ambulances and volunteer drivers. Guidance has been issued by the Department of Transport on this matter and should be incorporated into the Councils licensing conditions.
  - 4.5 The Council has already adopted a policy to licence Stretched Limousines as Private Hire Vehicles. In view of the specialised nature of these vehicles enhanced conditions are required to ensure the safety of this particular type of vehicle.
  - 4.6 Requests to licence a number of unorthodox vehicles have been received additional requests can be expected. It is impossible to licence such vehicles under the present licensing conditions adopted by the Council. Special licensing conditions need to be adopted for Exceptional Vehicles as described in the report in order that they can be licensed and by inference regulated. The enhanced procedures should attract an amended fee.
-



<b>Financial Services comments:</b>	No comments received.
<b>Legal Services comments:</b>	Nothing to add to the report
<b>Service Improvement Plan implications:</b>	Matters contained in the report are not referred to in the SIP.
<b>Corporate Plan:</b>	The pursuit of excellence (enhanced customer service)
<b>Risk Assessment:</b>	Identified in the report
<b>Background papers:</b>	Minutes of the Regulatory Board October 4 <sup>th</sup> 2001
<b>Appendices/Enclosures:</b>	
Appendix 'A'	DfT Guidance Road Safety Act 2006: Sections 53 and 54 Repeal of the PHV Contract Exemption
Appendix 'B'	Additional Conditions Relating to Stretched Limousines licensed as Private Hire Vehicles.
Appendix C	Licensing conditions Exceptional Vehicles.
Appendix D	Amended existing Hackney Carriage and Private Hire Conditions.
<b>Report author/ Lead Officer:</b>	T Dagens 023 9254 5516

## **Road Safety Act 2006: Private Hire Vehicles - Guidance**

### **Note**

### **Road Safety Act 2006: Sections 53 and 54 Repeal of the PHV Contract Exemption**

A note from the Department for Transport

#### **Introduction**

1. This note relates to private hire vehicles PHVs. in England and Wales only, as PHV licensing is devolved in Scotland and Northern Ireland.
2. It responds to the main questions that have been raised with the Department by local licensing authorities, and others, concerning two forthcoming changes to PHV licensing legislation provided for in the Road Safety Act 2006, 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 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 i.e. 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) 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 the Public Passenger Vehicles Act 1981. A useful leaflet about how these schemes work has been prepared by the Community Transport Association and can be accessed on their website: <http://www.communitytransport.com/index.aspx?id=104> the relevant document is "Using MPVs and Smaller Vehicles".

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

## **Hackney carriages (taxis)**

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

21. This brief outline of the various categories into which a vehicle with fewer than nine passenger seats could potentially fall demonstrates the complexity of the legislation. That is why the Department stresses the importance of independent legal advice. The views which follow 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 website [www.dft.gov.uk](http://www.dft.gov.uk). Licensing authorities will be faced with a number of applications for PHV licences from drivers, operators and vehicle owners whose circumstances might be different from the more conventional applications which they routinely receive.

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

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

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

29. That of course still leaves the basic question of whether a particular vehicle comes within the definition of a PHV quoted above. A wide range of vehicles and operations appear to come under the broad "ambulance" heading, and it seems to the Department that the vehicles can be divided into three categories: **emergency/specialist ambulance vehicles** likely to accommodate a stretcher and specialist equipment, and to require the presence of health professionals. Licensing authorities may wish to make use in this connection of the fact these vehicles are exempt from road tax by virtue of the Vehicle Excise and Registration Act 1994 and

cannot be used for "social" hirings. The Annex to this note sets out the definition in the 1994 Act.

**vehicles which operate as part of a formal Patient Transport Service** 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 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, e.g. during a crisis a non-emergency ambulance may become an emergency ambulance.

30. In considering which of these categories falls within the definition of PHV, there are a number of factors that we recommend licensing authorities take into account. The Department believes that there is a significant difference between vehicles arranged by a health provider and used because a person is assessed as having a medical need for transport, and other vehicles used to provide transport to health facilities. It is significant that details of the former, being provided as part of a wider healthcare package, would be subject to the laws on patient confidentiality so the providers could not comply with PHV licensing requirements to allow licensing officers to check records. The Department also considers it significant whether the vehicles in question are permitted to carry out health-related work only, taking account of the descriptions in the first two bullet points. The signs displayed by the vehicle are a factor too, but will not be determinative, e.g. 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 i.e. 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 Departments 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 i.e.: if the service is not simply an act of social kindness. Drivers will want to satisfy themselves that they are not making a profit from the service they provide if they want to avoid falling within the definition of "private hire vehicle". It is worth reiterating at this point the importance of drivers seeking independent legal advice if they are in any doubt about their own particular case.

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

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

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

38. Some stretched limousines may fall within the definition of PHV and may have been relying on the contract exemption. However, the points made in paragraph 11



are of course relevant. In particular, it should be noted that the contract exemption cannot be correctly relied on by services which involve a series of one-off hirings lasting a day or perhaps just an evening - as seems to be the case for many services provided by stretched limousines.

## **Childminders**

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

40. The Departments 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, i.e. whether the child has a right to be carried in the childminders 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 e.g. 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 Departments website.

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

## **Annex**

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

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

A vehicle which:

a. is constructed or adapted for, and used for no other purpose than, the carriage of sick, injured or disabled people to or from welfare centres or places where medical or dental treatment is given, and

b. is readily identifiable as a vehicle used for the carriage of such people by being marked "Ambulance" on both sides.

## Appendix B

### **Additional Conditions Relating to Stretched Limousines licensed as Private Hire Vehicles.**

**Where practicable the existing Hackney Carriage and Private Hire conditions of this council will apply to Stretched Limousines. The following additional or alternative conditions will also apply.**

- SL1. The vehicle must not be over 5 years old on first application for licensing. Vehicles over 8 years old will be subject to the licensing regime adopted for Exceptional vehicles in addition to the special conditions for Stretched Limousines.
- SL2. DVLA V5 or equivalent shall be produced to authenticate registration
- SL3. A Department for Transport (DfT), Single Vehicle Approval (SVA) documentation shall be produced to prove vehicle compliance with EC Type Approval Standards.
- SL4. Vehicles may be either left or right hand drive providing that they have proof of full Vehicle Type Approval.
- SL5. The VIN plate shall display '1L1' to confirm conversion completed by an authorised dealer.
- SL6. The applicant shall confirm, by a badge or other appropriate documentation the conversion dealer.
- SL7. The vehicle must have a minimum of 4 doors. They must be of sufficient size to allow easy access and egress to seats for passengers. This should not require the passenger to use a static tip up seat mechanism.
- SL8. Where the vehicle is fitted with continuous seats, one person shall be counted for each complete length of 41 centimetres (16 inches).
- SL9. Every seat shall have fitted a suitable seat belt or restraint for each passenger.
- SL10. The interior and exterior of the vehicle must be maintained in a clean and proper manner to the reasonable satisfaction of the Council.
- SL11. There shall be no passengers carried in the front compartment.
- SL12. A plate on the door pillar shall confirm the total weight of the vehicle.
- SL13. Tyres fitted to the vehicle must be either 235/75R-15 108S (BF Load) 225/70R-16 107T Town Car Limo Tyre (Reinforced) or other such

tyres as deemed suitable by an independent engineer for this application.

- SL14 No intoxicating liquor shall be provided in the vehicle unless there is in force an appropriate licence permitting the sale or supply of the same.
- SL15. All operators will be required to sign a declaration stating that the vehicle will not carry more than 8 passengers and at the time of booking the vehicle, this restriction shall be explained to the hirer.
- SL16 A stretched limousine vehicle will be subject to twice-yearly mechanical examination, at an authorised testing station. Vehicles licensed under the Exceptional scheme will be subject to mechanical inspection at 4 monthly intervals.
- SL17. Tinted glass shall conform to the legal requirements as laid down by the Vehicle and Operators Services Agency (VOSA).
- SL18 The vehicle shall display the licence plates issued by the Council in the front windscreen and on the rear of the vehicle. The requirement to display "Pre Booking Only" stickers will not be applied to such vehicles.
- SL19 The driver of the vehicle must wear a Private Hire Drivers Licence badge issued by this Council when operating the vehicle.

## Appendix C

### Licensing conditions Exceptional Vehicles.

The licensing of all vehicles under the Council's Exceptional qualification shall be by the Licensing Board on first application.

1. Any vehicle presented for licensing that does not meet the requirements of this Council's Hackney Carriage and Private Hire conditions will be regarded as potentially exceptional.
2. The vehicle must where appropriate comply with the requirements of the existing Hackney Carriage and Private Hire Conditions of this Council. Where it is not possible to comply with a condition the reason for non compliance must be identified together with alternative conditions if necessary.
3. Any vehicle presented for licensing as exceptional must be accompanied by a significant mechanical history for the vehicle (evidenced by a series of MoT certificates, service history, log books/V5c document, etc.) to provide a degree of confidence in the condition of the vehicle on initial application
4. All vehicles licensed as Exceptional will be subject to an independent engineers report at 4 monthly intervals, the report to be submitted to the Licensing Authority.
5. The vehicle shall display the licence plates issued by the Council in the front windscreen and on the rear of the vehicle. The requirement to display "Pre Booking Only" stickers will not be applied to such vehicles.
6. An additional fee over and above that set for the Hackney Carriage or Private Hire Vehicle Licence will be applicable for all vehicles licensed under the exceptional criteria.

## Appendix D

Amended existing Hackney carriage and Private Hire Conditions.

Condition Number	Revised condition
3	The vehicle must comply with the following requirements, <b>(Stretched Limousines or Exceptional Vehicles may be subject to amended/additional conditions):</b>
3(II)	in a suitable mechanical condition; <b>a spare wheel should be carried in the vehicle in the allocated place and be of the same construction and size as the road wheels.</b>
3(V)	<b>normally</b> only a vehicle with at least four doors will be considered for a licence. The doors must be of sufficient size to allow easy access and egress to seats for passengers, passengers must have clear access to the exit doors with out the need to move or to climb over seating. This should not require the passenger to use a static tip-up seat mechanism;
3(VII)	other than for “Exceptional” vehicles, vehicles submitted by the applicant on initial application or transfer must be no more than <b>three years old.</b>
3(VII)	<b>Stretched Limousines must be subject to a Single Vehicle Approval (SVA) document specific to the vehicle.</b>
3(VIII)	at the time of renewal, the vehicle should not <b>normally</b> be more than eight years old before the date of commencement of the licence. In <b>exceptional</b> circumstances vehicles older than eight year may be considered for licensing. <b>These “Exceptional” vehicles will be subject to enhance mechanical inspection and a revised licensing fee. Approval of Exceptional vehicles will be subject to the decision of the Licensing Board who may attach additional conditions to any licence.</b>
3 (IX)	the engine capacity of a licensed vehicle must not <b>other than in exceptional circumstances</b> be less than 1300cc
3 (X)	<b>tinted windows which prevent clear vision into the vehicle are not permitted except for stretched limousines or in exceptional circumstances.</b>
21	The vehicle must be fitted with fire extinguisher ( <b>1 Kg dry powder</b> ) <b>to allow drivers to extinguish small fires.</b> The extinguisher must display an in service date on a sticker securely fixed to the appliance. The appliance must conform to BS EN 3:1995 standard. <b>The extinguisher should not be located in the driver or passenger compartment but kept secure in the boot of the vehicle. The only</b>

	exception to this may be in a purpose built taxi with a fitted partition when the extinguisher may be clipped into a bracket beside the driver..
44	A medical certificate to <b>DVLA group 2 standards</b> shall be produced on making the initial application. <b>Additional group 2 medical certificates will be required on applications in the licensing year during which the applicant reaches his/her 45, 50, 55, 60 and 65<sup>th</sup> birthdays</b> and on each year thereafter. The medical certificate must be completed <b>and signed</b> by the applicants GP.
45	<b>Applicants for private hire/ hackney carriage licences must submit a Criminal Records Bureau check to the Enhanced level with their initial application and thereafter with every third application. A certificate of “Good Conduct” will be required for applicants who have not been wholly resident in the UK prior to application. Applicants should obtain the certificate of good conduct from the appropriate Embassy or Legation. A translation will be required if the document is not provided in English. [www.crb.gov.uk]</b>
47	In the event of a driver suffering a serious illness, the Local Authority may require a medical certificate <b>of fitness to return to work, all certification must comply with DVLA group 2 medical standards.</b> Drivers must inform the Council if they are suffering from a serious illness.
50	<b>All drivers shall at all times whilst operating a vehicle licensed as a hackney carriage or private hire vehicle conduct themselves in an orderly manner and with civility and propriety. They will comply with every reasonable requirement of any person hiring the vehicle.</b>