

PRIVATE HIRE VEHICLE LICENSING

A note for guidance from the
Department for Transport

August 2011

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Introduction

1. This note relates to private hire vehicles (PHVs) in England and Wales only, as responsibility for PHV licensing policy is devolved to Scotland and Northern Ireland.
2. It was clear that the repeal of the PHV contract exemption¹ and the change to the definition of “private hire vehicle” in the London PHV legislation² brought into focus a variety of activities which were not regarded as ‘conventional’ PHV services but which involved the carriage of passengers in a vehicle with fewer than nine passenger seats. A number of such activities were identified by the In House Policy Consultants (IHPC) commissioned by the Department to evaluate the impact of the repeal of the contract exemption – in particular, activities that were specifically identified by some local authorities as requiring licensing under the PHV licensing regime.
3. It was particularly disappointing to note from the IHPC report³ that only 50% of respondents thought that the objective of the repeal - improving public safety - had been achieved. The principal reason given was that the legislation was not being consistently and rigorously enforced. Respondents felt there were too many grey areas where licensing authorities were not sure whether vehicles used for certain types of activities should be licensed. A view which emerged from the stakeholders was that the Department’s guidance note of November 2007 which accompanied the repeal of the PHV contract exemption was couched in a non-committal way leaving licensing authorities and operators unsure about the status of many activities.
4. It was also clear that those involved with the operation of vehicles used for these activities (i.e. activities where there was an element of doubt about whether PHV licensing applied) were looking to the Department to provide a definitive statement about whether they should in fact be licensed.
5. The Department is not in a position to provide the sort of definitive statement that stakeholders are seeking; to do so would be to give the impression that the Department was responsible for interpreting the law. **The Department is not responsible for interpreting the law – that is a matter for the courts.**

¹ The Road Safety Act 2006 repealed section 75(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 which contained an exemption from PHV licensing for vehicles used on contracts lasting not less than seven days (commonly known as the ‘contract exemption’); the repeal came into force in January 2008.

² The Road Safety Act 2006 amended the definition of “private hire vehicle” in section 1 of the Private Hire Vehicles (London) Act 1998 by removing the words “to the public”.

³ <http://www.dft.gov.uk/pgr/regional/taxis/phvcontractexemption/>

6. However, in those 'grey areas' of the legislation where it is not clear whether a particular vehicle should be licensed or not, it is reasonable that the Department should offer a view about the extent of PHV licensing and, where possible, indicate the considerations which, in the Department's view, are relevant to an assessment of whether or not a particular vehicle should require a licence.

7. This note therefore moves away from the repeal of the PHV contract exemption, back to first principles. It sets out the key principles and characteristics which the Department considers define a private hire vehicle and, against that background, offers a straightforward view about whether the various services identified by the Consultants as falling within a grey area should actually require licences.

8. We would expect that this guidance note would have a degree of persuasive value in terms of assisting with local authority decision-making. But, any transport providers reading this note should be aware that it does not carry the force of law and the Department would urge people who are in any doubt about their legal position to seek independent legal advice.

9. Of course the fundamental purpose of the PHV licensing regime is to establish a position where passengers can use these vehicles with a high degree of confidence about their safety. But, the safety concerns must be weighed up with the burdens which are placed on transport providers. This principle is at the heart of the Department's Best Practice Guidance about wider taxi and PHV licensing issues and it is also relevant in this context.

10. The key message conveyed to licensing authorities in this guidance note is to think carefully about the burden which would be placed on people and organisations who are in the "grey areas" identified by the Consultants if they were to impose a requirement for PHV licensing. We would urge licensing authorities to ask themselves - particularly in cases where the activity in question is already regulated or assessed in respect of wider duties being carried out - whether there is any real need to oblige these people or organisations to acquire licences.

11. It should be stressed that the key principles set out in Part One of this guidance note are designed to assist with licensing authorities' consideration of any given case where the decision is not clear-cut. It is not designed to be a "tick-box" exercise which leads automatically to a "yes" or "no" answer. It is the responsibility of licensing authorities to reach informed decisions based on an assessment of each case and this note is designed to help them do so.

Part One – Key principles

Definition of private hire vehicle

12. Section 80 of the Local Government (Miscellaneous Provisions) Act 1976⁴ defines a private hire vehicle 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”

13. It is clear that a range of vehicles could potentially fall within this definition – certainly more vehicles than those which are solely used to provide a conventional “minicab” service. Licensing authorities will be aware of existing case law in this area and this guidance note is not intended to conflict with any of the binding principles already established by the courts. However, in the Department’s opinion, there remains an element of flexibility for licensing authorities to take a balanced view of the specific facts of any one case. This guidance note attempts to assist licensing authorities with their decision making by setting out what the Department considers are relevant considerations and example parameters as to which services should have their vehicles treated as PHVs and which should not.

14. It should be stressed that this is the Department’s view of what the law means; it represents our best effort to clarify issues which have not been clarified by the courts. We recognise that in due course the courts might interpret the law differently from the view set out in this guidance note. In those circumstances, we would look again at this guidance note.

15. The Department sought the views of stakeholders on a draft of this guidance and is grateful for the comments received. Some revisions to the initial draft version have been made on the basis of the feedback we received.

Deciding what is, and what is not, a private hire vehicle?

16. In the Department’s view, whether PHV licensing is required in a particular case will depend on a careful assessment of all the facts. The Department would discourage licensing authorities from adopting blanket policies on particular types of services, for example a policy which requires all childminders who drive a child to school to be licensed, as often consideration of the specific facts of how a particular vehicle is used will be necessary to reach a decision.

⁴ The definition in the Private Hire Vehicles (London) Act 1998, is similar though not identical.

17. In offering advice about what is and what is not a PHV, the Department considers that there are some key principles which should underpin the decision-making process.

18. We would recommend that licensing authorities when deliberating over a particular service where it is not clear whether or not licensing should apply, ask themselves the following questions – and consider the points which the Department offers as a guide.

Question 1 Is there a commercial benefit?	
If the driver or the operating organisation / person derives a commercial benefit, it should be subject to further scrutiny.	If the carrying of passengers yields no commercial benefit, it is unlikely to require private hire licensing.

19. A key characteristic of a typical private hire vehicle operator and driver is that they charge a fare at a commercial rate that will generate a profit.

20. Accordingly, if the driver of a vehicle used for carrying passengers is doing no more than collecting expenses, then the vehicle should not, in the Department's view, be subject to PHV licensing.

21. The definition of private hire vehicle in legislation refers to a vehicle being "provided for hire". Case law has established that there does not need to be the payment of money for a hiring to take place. However, there will need to be some element of commercial benefit to the person providing the vehicle. When assessing the question of commercial benefit, licensing authorities should look fairly at all the circumstances. An assessment of whether or not the service derives a commercial benefit can be equally applied to any organisation acting as an operator of the service as well as a driver. However, in the Department's opinion, case law in this area allows licensing authorities to form a balanced and fair view of what constitutes a 'commercial benefit' rather than taking a strict and inflexible approach to remote or minor consequential benefits.

<p>Question 2 Is carrying passengers in a vehicle with fewer than nine passenger seats an ancillary part, or a main part, of the overall service?</p>	
<p>If carrying passengers is a main part, or an obviously separate and identifiable part, the service is more likely to require further scrutiny.</p>	<p>If carrying passengers is an ancillary part, the service is less likely to be private hire.</p>

22. A characteristic of a typical private hire vehicle operation is that the operator wants to transport passengers from a start point to a destination; that is the main purpose of the business.

23. It is clear that there are a number of services provided by various people and organisations which involve carrying passengers as a purely incidental and minor part of the wider service. When looking at services where there is an element of doubt as to whether or not PHV licensing should apply, the Department considers it relevant to look at the overall services being provided and the characteristic use of any vehicles in question.

24. The Department's view is that licensing authorities are responsible for making a considered decision as to whether or not licensing should apply if the carrying of passengers is a genuinely incidental and minor part of a wider service being provided. In the Department's opinion, a distinction can be drawn between those services where carrying passengers is a genuinely incidental part of a larger service and those operations which have a separate identifiable service of carrying passengers. For example, "courtesy lifts" are a feature of many businesses which are not dedicated to transporting passengers. Many of these businesses will provide courtesy lifts on an informal basis – i.e. on the basis that a lift can be provided to customers who request such a service if a car is available at the time and someone is free to drive the customer, but no guarantee is given. This type of incidental service can be contrasted with those operations which provide dedicated transportation as part of a wider service. For example, a company organising a sporting event which agrees to organise transportation for the players or officials, is providing separate organised transportation services regardless of the fact that transportation may be a small and incidental part of the overall service.

Question 3 Has the driver been vetted to provide the wider service of which driving is a part?	
If the driver has not been vetted for wider work, the Department considers that the service is likely to require further scrutiny.	If the driver has been vetted for wider work, the Department considers that the service is less likely to require private hire licensing.

25. The Department considers that licensing authorities should take a pragmatic approach to licensing, taking account of the underlying objective of licensing – safety. When considering services where there is an element of doubt as to whether or not PHV licensing should apply, the Department considers it relevant to investigate whether or not drivers have been assessed by an organisation in the context of their wider role (for which driving passengers is just one part). This is particularly relevant where the drivers have, for example, undergone a Criminal Records Bureau check for that wider role. One example might be in the case of care workers who use their cars to transport clients from time to time; they are likely to have been vetted for that work. The Department would question whether there is any real need to subject drivers who have been assessed in this manner to a separate licensing regime.

Question 4 Is the driver under any explicit or implicit obligation to undertake any duties or tasks beyond driving (and assisting with entry/exit and assisting with luggage)?	
If the driver's duties are restricted to driving and assisting with luggage, the Department considers that the service is more likely to be private hire.	If the driver has wider duties beyond those associated with driving, the Department considers that the service is less likely to be private hire.

26. This element is directed at the sorts of duties undertaken by people who are in a position of care or responsibility in respect of the passenger being carried in the vehicle. For example, in the case of genuine ambulances, the Department considers it relevant that drivers clearly have wider responsibilities for the care of their patients. Similarly, childminders have a wider responsibility and specific duties relating to the children in their care. Another example would be those who provide secure escort and custody services where drivers are under wider obligations in relation to the transport of passengers to ensure that they cannot abscond.

<p>Question 5 Does the service require a specific qualification or level of training on the part of the driver which goes beyond the driving and courtesy skills associated with conventional private hire?</p>	
<p>If the driver does not require any specific qualifications or training which go beyond driving and general customer care, the Department considers that the service is more likely to be private hire.</p>	<p>If the driver must have specific qualifications or training which go beyond driving and general customer care, the Department considers that the service is less likely to be private hire.</p>

27. PHV drivers are experts in their field and we would, of course, expect them to discharge their duties by utilising their skills to the full. However, this element of the consideration process is directed at the sorts of specialist skills which a driver must possess in order to undertake the wider work of which driving is a part. For example, the driver of an ambulance would be expected to undergo specialist training before being allowed to start work.

<p>Question 6 Would Parliament have had this service in mind in passing the legislation governing private hire vehicles?</p>	
<p>If Parliament would have had this sort of service in mind when passing the relevant legislation, the Department considers that the service is more likely to be private hire.</p>	<p>If Parliament would not have had this sort of service in mind when passing the legislation, the Department considers that the service is less likely to be private hire.</p>

28. This final question is included to assist licensing authorities in cases which are finely balanced where the authority is struggling to reach a decision. It relates back to the fundamental point of this guidance which is made at the outset about taking a common-sense approach to licensing. Whilst ultimately it is a matter for the courts to interpret the legislation with reference to any particular service, the Department is firmly of the opinion that in passing the relevant legislation, Parliament believed that it was establishing a regulatory mechanism for dealing with conventional private hire vehicles – albeit a range of vehicles – but whose principal purpose was to transport passengers from a to b.

29. Legislation by its very nature is regularly applied to situations outside of Parliament’s original thinking and must constantly be interpreted to keep pace

with innovation and a changing world. However, where there is an element of ambiguity in legislation and its application is unclear, Parliamentary intention can be a valid tool to aid in its interpretation. In the Department's opinion, consideration of this final question adds weight to the argument that those services which form minor or incidental parts of other services should not require licensing, for example courtesy lifts provided by garages or transport provided by child minders.

Insurance

30. The issue of insurance does not feature in this guidance note as relevant to the question of whether or not a particular service falls within the PHV licensing regime. However, the Department views correct insurance cover as an extremely important issue which may, of course, be affected by an assessment of whether or not a particular service is operating within the PHV regime. Licensing authorities may wish to make enquiries about the insurance cover held by transport providers as part of their investigations and decision making process. We would urge licensing authorities to communicate to transport providers the importance of checking with their insurance provider that the services they are providing are adequately covered by the relevant policy of insurance and stress that any conclusions reached in the licensing process will not necessarily be relevant to an assessment of whether or not the insurance policy is adequate. It should be noted that this guidance note has been shown to the Association of British Insurers at the draft stage and they were satisfied with the guidance contained in it.

Part Two – Sector-specific guidance

31. This section of the guidance note deals with those sectors mentioned in the IHPC report as being “grey areas” in the context of PHV licensing. It takes each sector in turn and, using the key principles outlined in Part One, offers a general opinion on whether they should be licensed as private hire. As mentioned above, licensing authorities are encouraged to look at the specific facts of any one case and reach a conclusion based on those individual facts rather than automatically placing particular types of services into the licensed or non-licensed category.

Stretched limousines

32. ***The Department considers that most stretched limousine operations (where the vehicle has fewer than nine passenger seats) are likely to fall within the PHV licensing regime.***

33. Essentially these vehicles are luxury versions of conventional “minicabs”. They are in the business of transporting passengers, normally in a group, from a pick up point to a destination. They focus on providing this service in a luxurious way, but they are, nevertheless, providing a straightforward transportation service. The operator will, of course, want to be sure that the driver is highly skilled in terms of customer service. However, aside from the size and quality of the vehicle and the possibility of in-vehicle entertainment, there is no discernable difference in the function and service provided between a conventional minicab and a stretched limousine.

34. The Department’s Best Practice Guidance provides further information about the licensing of stretched limousines, for example approval certification, how to test the vehicles and how to establish the number of seats.

35. Taking account of the principles set out in Part One of this guidance note, the Department takes the view that typical stretched limousine operations should be licensed because they involve:

- a commercial benefit on the part of the driver/organiser;
- the carrying of passengers as a main part of the service;
- drivers who are unlikely to have been vetted for wider work;
- driver duties which are restricted to driving and assisting with luggage; and
- the sort of service which Parliament would have had in mind when passing the relevant legislation.

Chauffeur/Executive drivers

36. ***The Department considers that most chauffeur/executive operations are likely to fall within the PHV licensing regime.***

37. It seems to the Department that the primary function of a chauffeur/executive driver and vehicle is to transport passengers from a to b, albeit in a higher quality vehicle than a conventional minicab. As with stretched limousines, the Department, whilst recognising that the drivers might have a more dedicated focus on higher quality customer care, considers that chauffeur vehicles would fall within the PHV category.

38. The Department would take this opportunity, though, to highlight for licensing authorities section 75(3) of the 1976 Act which allows them to modify requirements for the display of plates on vehicles and the wearing of badges by drivers.

39. Taking account of the principles set out in Part One of this guidance note, the Department takes the view that typical chauffeur/executive car operations should be licensed because they involve:

- a commercial benefit on the part of the driver/organiser;
- the carrying of passengers as a main part of the service;
- drivers who are unlikely to have been vetted for wider work;
- driver duties which are restricted to driving and assisting with luggage; and
- the sort of service which Parliament would have had in mind when passing the relevant legislation.

40. Licensing authorities might want to remind chauffeur/executive car drivers and owners of the importance of making all bookings through a licensed operator. This is particularly important in “one-man-band” cases where the owner of the vehicle is also the driver and takes the bookings himself; he would need a separate PHV operator’s licence.

Event Management Companies

41. ***The Department considers that companies which provide a dedicated transport service for events should be subject to PHV licensing.***

42. The Department is aware of the existence of companies who specialise in providing transport services for events or those who specialise in the

organisation or management of events, of which, a part includes the provision of transport services. Due to the numbers of people involved in, or attending, the event in question, organisers often want to call in a specialist company to provide transport. Nevertheless, these vehicles are providing a dedicated transport service and the company itself is acting as an operator in terms of arranging the hirings.

43. Of course, each operation must be assessed individually, but in general terms, the Department considers that these companies are acting as PHV operators and the vehicles and drivers used by them should be licensed.

44. It may well be the case that the drivers' customer care obligations go slightly beyond the requirements associated with a conventional private hire driver, but the essential nature of the work is to provide transport from a to b.

45. Taking account of the principles set out in Part One of this guidance note, the Department recognises that typical event management operations might involve duties beyond driving, but considers that they should be licensed because they involve:

- a commercial benefit on the part of the driver/organiser;
- the carrying of passengers as a main part of the service;
- drivers who are unlikely to have been vetted for wider work; and
- the sort of service which Parliament would have had in mind when passing the relevant legislation.

Ambulances

46. ***The Department considers that “genuine ambulances” do not fall within the PHV licensing regime.***

47. We recognise that there is a great deal of debate about what constitutes a genuine ambulance and a wide range of vehicles and operations appear to come under the broad “ambulance” heading.

48. It seems to the Department that “genuine ambulances” fall into two 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 1994⁵ and cannot be used for "social" hirings.

- vehicles which operate as part of a formal Patient Transport Service⁶ – 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 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.

49. It is these categories of vehicle/service which the Department has in mind in reaching the conclusion that "genuine ambulances" do not need to be licensed. And, it should be stressed that the vehicles referred to in the second category above are vehicles solely dedicated to patient transport service work; if the vehicles, at other times, carry out social hirings then they would not fall into this category.

50. There is a category of vehicle/service which the operator might describe as an ambulance because it carries out predominantly transport work involving medical-related journeys, but which the Department does not recognise as a genuine ambulance. These vehicles transport passengers to and from hospitals and other medical facilities on an ad-hoc basis but do not fall within either of the above two categories. They might, for example, be under the control of an operator who has made a commercial decision to provide a dedicated service involving medical-related journeys, but the key point is that if they do not (i) meet the definition of "ambulance" in the Vehicle Excise and Registration Act 1994; or (ii) operate under the auspices of a formal Patient Transport Service, then the Department would advise that they are likely to be private hire. It may well be the case that other considerations apply (taking account of the six questions in Part One of this Guidance Note) but they are unlikely to be ruled out of PHV licensing because they are ambulances.

⁵ 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.

⁶ 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.

51. The Department is aware of plans to bring private ambulances under the control of the Care Quality Commission in 2011; the vehicles will be registered and the drivers will undergo training and CRB checks. This move will go a long way towards helping licensing authorities to determine whether a particular service is a genuine ambulance and whether or not it should be licensed as PHV. This note has been shown to the Care Quality Commission who considered that the guidance was in line with their own view of what constitutes an ambulance.

52. Taking account of the principles set out in Part One of this guidance note, the Department recognises that genuine ambulance services derive a commercial benefit, but consider that they should not be licensed because they involve:

- drivers who are likely to have been vetted for wider work;
- drivers who have wider duties beyond those associated with driving;
- drivers who must have specific qualifications or training which go beyond driving and general customer care; and
- the sort of service which Parliament would not have had in mind when passing the legislation.

Volunteers

53. ***The Department considers that genuine volunteers who receive no recompense or receive only enough to cover their actual expenses do not fall within the PHV licensing regime.***

54. The definition of “private hire vehicle” states that the vehicle must be “provided for hire”. It is clear that in order to satisfy this requirement there must be some form of commercial benefit to the person providing the vehicle.

55. The Government recognises the importance of volunteers who willingly give their own time to assist others and are not paid a wage for doing so. It is important that they should continue to be able to do so in order to contribute towards social inclusion objectives.

56. It should be noted that car sharing is a quite lawful and legitimate form of transport provision. 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.ctauk.org/> (the relevant document is "Using MPVs and Smaller Vehicles").

57. 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>. The updated rates are in this fact sheet: <http://www.hmrc.gov.uk/budget2011/individuals-main-announcements.pdf>. Essentially, volunteer drivers' tax free allowance is 45 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.

58. The Department recognises that the licensed trade has concerns about the total mileage undertaken by some volunteer drivers which they consider amounts to being in the business of providing transport in such a way as to make a profit. Furthermore, in addition to drivers, licensing authorities will be aware that the fundamental question of whether or not a commercial benefit is derived from the service can equally be applied to any organisation acting as an operator of the service in question. As mentioned in Part One of this guidance note, the Department would urge licensing authorities to make a balanced and fair assessment of whether or not a 'commercial benefit' is derived in any particular case, rather than taking a strict and inflexible approach to this question.

59. The Department reached its conclusion that volunteer drivers do not fall within the PHV licensing regime because of the nature of the activity in relation to the definition in the legislation. If a driver chooses to offer a substantial amount of time to this activity, this does not change the essential nature of the work; indeed, the HMRC's rules take account of the fact that some drivers will be undertaking substantial mileage and the rates reflect this.

60. Taking account of the principles set out in Part One of this guidance note, the Department considers that volunteer drivers should not be licensed because:

- the service involves no commercial benefit; and
- it is not something that Parliament would have had in mind when passing the legislation.

Care and support worker services

61. ***The Department considers that most car journeys undertaken in the context of care and support services do not fall within the PHV licensing regime.***

62. This section refers to people who provide regulated or unregulated care and support to adults in their own homes, in community settings, in residential or nursing care homes or as part of Shared Lives schemes.

63. The provision of a transport service in this context can be either where a member of staff within a care home drives one of the residents to, for example, the shops or a health appointment; or where a care worker visits a person in their own home for the purpose of providing a general care package, of which driving them to the shops, to an appointment or to any other activity is one part. This includes cases where care is funded by a personal budget, Direct Payment or the individual's own money.

64. Taking account of the principles set out in Part One of this guidance note, the Department considers that people providing care and support services should not be licensed because:

- the carrying of passengers is an ancillary part of the service;
- the driver is likely to have been vetted for wider work;
- the driver will have wider duties beyond those associated with driving;
- the driver is likely to have specific qualifications or training which go beyond driving and general customer care; and
- Parliament would not have had this sort of service in mind when passing the legislation.

Childminders

65. ***The Department considers that car journeys undertaken in the context of most typical childminding arrangements would not fall within the PHV licensing regime.***

66. We recognise that there is a variety of childminding arrangements and, on examining the facts of particular cases, there may well be circumstances where this principle does not apply. However, the Department's guidance in the above statement reflects a typical childminding arrangement where a childminder uses his or her own car to transport one or more children to and from, for example, school.

67. This conclusion reflects the principles underlying most of the questions in Part One of the guidance note. A childminder will have undergone a whole raft of suitability checks and the service he or she provides goes well beyond driving. It seems to the Department to be unnecessarily burdensome for childminders to be drawn into the PHV licensing regime.

68. Childminders are already vetted; they are carrying out work where the driving element is incidental rather than central, they require specialist skills and they have responsibilities to the passengers which go beyond driving.

69. The Department considers it most unlikely that a court would conclude 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.

70. Taking account of the principles set out in Part One of this guidance note, the Department considers that typical childminders should not be licensed because:

- the carrying of passengers is an ancillary part of the service;
- the driver is likely to have been vetted for wider work;
- the driver will have wider duties beyond those associated with driving;
- the driver is likely to have specific qualifications or training which go beyond driving and general customer care; and
- Parliament would not have had this sort of service in mind when passing the legislation.

Rental car companies / Garages

71. ***The Department considers that most informal courtesy lifts offered by, for example, rental car companies or garages would not fall within the PHV licensing regime.***

72. It is quite common for rental car companies and garages to provide a 'courtesy lift' service for customers – perhaps because they have dropped off the rental car at the company's office and need to get back into town, or, in the case of garages, because the car needs to stay at the garage for repair and the owner needs to get home. Such lifts are provided as an ancillary service to the main purpose of the business.

73. The Department recognises that an assessment of the individual facts of each case will be necessary. In reaching the conclusion that most services of this nature would fall outside of the licensing regime, the Department has taken the view that most services will be of an 'informal' nature. By this the Department means that the service will not usually be a contractual arrangement or form part of the contract for wider services and will not be advertised as such. A service of this nature will usually be provided on the basis that a lift may be available if a vehicle is available and a member of staff is free at the time, but no guarantee is given. Furthermore, vehicles are usually used on an ad hoc basis rather than specific vehicles being allocated

for this purpose – the vehicles are simply part of the hire fleet or garage test cars which are predominantly used for other purposes. However, a more formal arrangement or the allocation of specific cars purely for the purpose of courtesy lifts and no other, or limited other, functions would suggest that the service is more likely to fall within the licensing regime.

74. These types of companies do not dedicate themselves to the transportation of passengers; they simply offer lifts as a convenience to their customers as an informal and ancillary service to their main business. The Department does not consider that Parliament had this sort of service in mind when it passed the national PHV licensing legislation in 1976. Whilst it is clear that an assessment of the individual facts of any one case will be necessary, the Department would encourage licensing authorities to take a pragmatic approach to these types of grey area services. In the Department's opinion, a distinction can be drawn between those companies who offer an informal and ad hoc courtesy lift service making use of any available cars and staff and those companies who provide a separate dedicated transport service for customers. As discussed in Part One, in assessing the fundamental question of whether the service derives a commercial benefit, the Department would once again urge licensing authorities to make a balanced and fair assessment on the individual facts of any one case.

75. Taking account of the principles set out in Part One of this guidance note, the Department considers that rental car companies/garages should not be licensed because:

- the carrying of passengers is an ancillary part of the service; and
- Parliament would not have had this sort of service in mind when passing the legislation

Secure escort and custody services

76. *The Department considers that services which involve the escort and custody of people sentenced or remanded to custody, secure accommodation or alternative youth detention accommodation are not PHVs.*

77. There is a whole category of service provision involving the transportation of people who are sentenced to be remanded to custody and must be carried from, for example, a prison or young offenders institution, to a court. An important consideration is that these services require the involvement of specialists who are in a particular position of authority and responsibility. In order to carry out their duties, the drivers have undertaken training in physical control methods and have had criminal record checks.

78. The Department takes the view that the special characteristics of this work take them outside the realm of PHV licensing; what is most crucial is the element of control which the drivers have, and, going back to the first

principles outlined in Part One, the drivers will already have been assessed for their wider responsibilities.

79. There is a further category of transport closely allied to this but which is more in the nature of social care than secure care, for example journeys involving contact visits for children in care and transporting children who have absconded from care homes. The Department's advice is to take account of the general principles outlined in Part One of this note in reaching a decision, most particularly is determining whether the drivers have already been assessed for the purposes of carrying out this work and whether they have had specialist training relating to their wider care responsibilities. In general terms the Department considers that these services should not fall within the PHV licensing regime, but we recognise that there might be services where these characteristics do not feature and they are simply a PHV operator which has decided to serve a niche market.

80. Taking account of the principles set out in Part One of this guidance note, the Department considers that secure escort and custody services should not be licensed because:

- the driver is likely to have been vetted for wider work;
- the driver will have wider duties beyond those associated with driving;
- the driver is likely to have specific qualifications or training which go beyond driving and general customer care; and
- Parliament would not have had this sort of service in mind when passing the legislation.

Buses and Taxis Division
Department for Transport
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