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SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 13

LIMOUSINES AND NOVELTY VEHICLES

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

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Introduction

- a) The production of the Statutory Guidance and Statutory Directions below reflects the significant increase in the number of limousines and novelty vehicles on Great Britain's roads and the increasing importance.
- b) Increasingly complex legislation and at times a lack of specific provisions relating to the licensing of this type of vehicle has led to calls for greater clarity, not least to assist legitimate operators as they go to efforts to be compliant, a feature that is not without considerable costs. In the case of limousines and novelty vehicles there are many involved as operators, enforcement bodies or as customers who have found difficulties in this complex area of regulation.
- c) The Senior Traffic Commissioner's statutory powers are aimed at providing guidance and directions to the traffic commissioners. In the interests of safety and fair competition, they have been drafted to also offer some assistance to others, including the limousine industry and potential new entrants to the industry. It is also available for financial institutions and others who support the industry.
- d) The Statutory Guidance and Statutory Directions below useful might also be useful in responding to interested members of the travelling public who might have safety concerns, for instance
 - unlicensed vehicles are statistically more likely than not to be defective;
 - many unlicensed vehicles (whilst outwardly comfortable and offering apparently expensive interiors) are incapable of being licensed because they do not meet the safety standards required for licensed vehicles;
 - drivers may not be licensed to drive the vehicle and in some cases have convictions for sexual and/or violent offences. A lawfully operated vehicle is more likely to be driven by someone who is both safe and is entitled to drive that vehicle;
 - some unlicensed businesses are linked to wider criminal activities.
- e) Nothing in the Statutory Guidance and Statutory Directions below is intended to undermine the value placed in the legitimate limousine trade. A substantial number of operators of limousines and/or novelty vehicles have, in applying for a PSV operator's licence, acted in good faith. However there are those who seek to apply in order to circumvent the requirements of a private hire licence or to avoid an appeal to the local magistrates' or Sheriff Court. It is therefore imperative that staff within the Central Licensing Office carry out thorough checks on behalf of the traffic commissioners.

GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981, as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the licensing of limousines and novelty vehicles.
2. As a general rule any motor vehicle being used in Great Britain to carry passengers for hire or reward on a commercial basis will need an operator's licence of some kind. The type of licence required depends upon on the capacity of the vehicle and the type of operation undertaken.
3. For vehicles constructed or adapted to carry 8 or fewer passengers, a private hire vehicle (PHV) licence allows the vehicle to be hired out, with a driver, as a whole (i.e. an exclusive hiring). In England and Wales these licences are administered by the relevant local authority or Transport for London (TfL) which have discretion as to what vehicles they will license. In Scotland, the Scottish Government has legislative responsibility. If vehicles with up to 8 passenger seats, including stretched limousines, are used solely for weddings and/or funerals, they are exempt from PHV licensing requirements.
4. For vehicles constructed or adapted to carry more than 8 passengers, the licence required is a public service vehicle (PSV) operator's licence, which is issued by the relevant traffic commissioner¹.

Public Service Vehicle legislation – the Public Passenger Vehicles Act 1981

5. Under sections 13A-D there are two categories of PSV operator's licence, as follows:
 - Restricted licence.
This category only allows a maximum of two vehicles. There are also added restrictions as to who is entitled to have a restricted licence, see below for details. The advantage to some applicants is that there is no requirement to have a qualified transport manager who holds a Certificate of Professional Competence. Whilst this reduces the financial burden on the operator, the standards required for both vehicle safety and records are the same as for other licences. Experience has shown that the levels of knowledge and compliance with the rules that apply are considerably less with restricted licences.
 - Standard licence, which for historical reasons may be subdivided into standard national and standard international licences.
There is no restriction on the maximum number of discs that can be applied for, subject to an operator having the necessary finances and having the necessary professional competence. An additional requirement of a standard national licence is to have a transport manager who holds a Certificate of Professional Competence, recorded on the national register, see Statutory Document No. 3 on Transport Managers issued by the Senior Traffic Commissioner under Section 4C of the Public Passenger Vehicles Act 1981 (as amended). A standard international licence is

¹ The general requirements for PSV licences are contained in other Statutory Guidance and Statutory Directions, for instance of Good Repute and Fitness

similar to the standard national licence except that it also allows vehicles to be transporting passengers outside of GB and across the EU. Since December 2011, all newly qualified transport managers are authorised to act as transport manager for a standard international licence.

6. In order to qualify for a restricted licence an applicant must show that it meets the requirements of section 13(3), which provides that a restricted licence only authorises the use (whether national or international) of the following:
 - (a) PSVs not adapted to carry more than 8 passengers; or
 - (b) PSVs not adapted to carry more than 16 passengers when used –
 - (i) otherwise than in the course of a business of carrying passengers; or
 - (ii) by a person whose main occupation is not the operation of PSVs adapted to carry more than 8 passengers
7. That main occupation qualification rule does not apply to small (8 passenger seat or less) vehicles but it does apply to all 9 to 16 passenger seat vehicles.

Public Service Vehicle

8. A “public service vehicle” is defined within section 1 of the above Act as a motor vehicle (not a tram) which:
 - a) is adapted to carry more than 8 passengers and is used for carrying passengers for hire or reward; or
 - (b) not adapted to carry more than 8 passengers but is used for carrying passengers for hire or reward at separate fares in the course of a passenger carrying business.

Used means current use which has not been permanently discontinued.

9. Regulation 28(1)(b) of the Public Service Vehicles (Condition of Fitness, Equipment, Use and Certification) Regulations 1981, (“the 1981 Regulations”), which provides that: “a length of at least 400 millimetres measured horizontally along the front of each seat shall be allowed for the accommodation of a seated passenger”.

Hire or reward

10. Under section 1(5) a vehicle is to be treated as carrying passengers for hire or reward if payment is made for, or includes, the carrying of passengers, irrespective of the person to whom the payment is made including on behalf of a member of any association. A payment made for the carrying of a passenger (excluding those connected with an air replacement service) is to be treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and shall be treated as made for the carrying of a passenger if it gives a person the right to be carried, for one or more journeys and whether or not the right is exercised.

Separate Fares

11. Section 1(3) provides that a passenger carrying vehicle carrying passengers at separate fares will not be treated as a public service vehicle unless it is adapted to carry more than 8 passengers. Part III of Schedule 1 does not allow an operator to circumvent these requirements by bringing together all the passengers for the purpose of making the journey where that is done by or on behalf of:

(a) the holder of the PSV operator's licence under which the vehicle is to be used,

(b) the driver or the owner of the vehicle or any person who has made the vehicle available under any arrangement,

and otherwise than by any person who receives any remuneration in respect of the arrangements.

12. The journey must be made without previous advertisement to the public of the arrangements and all passengers must, in the case of a journey to a particular destination, be carried to, or to the vicinity of, that destination, or, in the case of a tour, be carried for the greater part of the journey. So no differentiation of fares for the journey on the basis of distance or of time can be made.

13. The reference to advertisement excludes a notice displayed or announcement made at a place of worship for persons attending, at a place of work for those employees, by a club or voluntary association, or contained in a *periodical* published for the benefit of and circulating mainly among users of the above premises.

14. A journey made by a vehicle in the course of which one or more passengers are carried at separate fares is not to be treated as made 'in the course of a business of carrying passengers' if:

(a) the fare or aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey; and

(b) the arrangements for the payment of fares by the passenger or passengers being carried were made before the journey began;

The running costs of a vehicle for a journey will be taken to include an appropriate amount in respect of depreciation and general wear.

Small PSVs subject to regulation as private hire vehicles

15. Section 79A PPVA applies to England and Wales and provides that a small bus (a PSV adapted to carry fewer than 9 passengers) is being provided for hire with the services of a driver for the purpose of carrying passengers otherwise than at separate fares; it is not to be regarded as a public service vehicle. A PSV operator's licence therefore does not excuse or overrule the requirements of a PHV licence.

16. That provision is subject to an exception that if the operator operates a business which nearly all involves the operation of large buses (that is, PSVs

adapted to carry nine or more passengers) then it can operate PHVs under the PSV operator's licence. The operation of small vehicles must be a small part of a business of carrying passengers by motor vehicles. The legislation does not define 'small part' but the relative size of the fleet of large and small buses is relevant and the Department for Transport has issued guidance suggesting that if less than 10% of the overall fleet licensed under a PSV Operator's Licence are small vehicles the exception may apply. However, because the legislation refers to the size of the small and large bus business other factors (such as mileage run) might be taken into account.

Case Law

17. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Guidance cannot anticipate any reforms being considered by the Law Commission on taxi and private hire law. There is a lack of clarity in some of the law and an absence of specific provisions relating to the licensing of this type of vehicle. The Senior Traffic Commissioner has therefore extracted the following principles and examples from existing case law. This is a difficult task where the Upper Tribunal has indicated, as it did in both *2000/028 Excellent Connections Ltd* and *2002/039 Excellent Connections Ltd*, a reluctance to make a general statement of the law in this complex area without hearing argument from a number of potentially interested parties. Traffic commissioners must therefore work within what has been described as a *situation which remains far from straightforward*. In the leading case of *2012/053 Clayton Car Sales Ltd* the Upper Tribunal stated as follows:

We wish to make it clear that there is widespread and in our view justified concern about the extent to which stretch limousines are operated, in circumstances where a PSV operator's licence is required, without there being a PSV operator's licence in force. Nothing we say is intended to undermine the use of impounding in circumstances in which stretch limousines are being used in contravention of the requirement to hold a PSV licence. But it is important that all VOSA officers concerned with the possible impounding of Stretch Limousines recognise that Stretch Limousines are only liable to be impounded if they are being operated in a way that contravenes the requirement to hold a PSV operator's licence.

18. The meaning of 'public service vehicle' and 'used' is set out in the legislation. The term 'adapted' has previously been interpreted as to include altered or changed². A minibus with four out of eleven seats blocked off was found not to be a public service vehicle³. In *Excellent Connections Ltd* (as above), the traffic commissioner followed legal advice that vehicles carrying up to 8 passengers for hire could not lawfully operate without either a taxi or a private hire licence, in addition to any PSV licence the operator might hold. The predecessor of the Upper Tribunal expressed *marked reservations* about that legal advice and remitted the matter. However the Upper Tribunal has now made clear in *Clayton Car Sales* by reference to section 1(1)(a), the Encyclopaedia of Road Traffic Law and Practice and higher courts case law⁴ that the term 'adapted' is

² *Baker v Secretary of State for the Environment* [1983] 2 All ER 1021, [1983] 1 WLR 1485, *Burns v Currell* [1963] 2 QB 433, [1963] 2 All ER 297, *Traffic Commissioners for South Wales Traffic Area v Snape* [1977] RTR 367, DC, relying on earlier authorities

³ *Westacott v Centaur Overland Travel Ltd* [1981] RTR 182, DC

⁴ In *Maddox v Storer* [1963] 1 QB 451, [1962] 1 All ER 831 the Divisional Court had to consider a provision in Schedule 1 to the Road Traffic Act 1960 which defined the maximum speed for: "a vehicle ... adapted to carry more than seven passengers exclusive of the driver."

not restricted to 'altered' but in this context means 'fit and apt for the purpose' or 'suitable':

It follows, in our judgment, that what is fit and apt or suitable for one purpose will not necessarily be fit and apt or suitable for another purpose. In other words the question of whether or not a vehicle is adapted to carry more than eight passengers is a question of fact and degree that will turn on the purpose for which the particular vehicle is used and how it is equipped.

19. It follows that issues such as customary use or even marketing may be irrelevant to the question of whether the vehicle is adapted so as to fall within scope. That must be judged on whether the vehicle is suitable to carry more than 8 passengers.
20. In the case of a mini-bus it may be reasonable to expect someone to use a passenger seat next to the driver, but in the case of a stretch limousine the Upper Tribunal has stated that different considerations may apply. A person using the front passenger seat in a stretch limousine will be facing away from "the party" in the back. In addition the vehicle may have a partition between the passenger compartment and the driver, which provides those in the back with a degree of privacy.
21. In the *Clayton Car Sales* case the Upper Tribunal stated that it is wrong to simply determine how many passengers a vehicle is *physically* capable of carrying. The measurement of 400 mm, derived from the Public Service Vehicles (Condition of Fitness, Equipment, Use and Certification) Regulations 1981, is not an absolute requirement from which there can be no deviation⁵. That minimum may be appropriate in the case of a mini-bus but it will not necessarily be suitable in a stretch limousine, where the expectation of the passengers is likely to be for a greater degree of comfort. In *Johnson* there was other evidence before the Justices to the effect that the passenger compartment was fitted with 8 seat belts and that the purpose of the vehicle was to convey passengers in a degree of luxury.
22. In determining whether a vehicle is "*fit and apt for that purpose*" or "*suitable*" it is clear that a traffic commissioner is required to reach a decision on more than just a measurement of 400 mm per passenger. It may be necessary to consider the total measurement, whether any allowance has been made for instance for corners in a seat, and the number of seat belts. The Upper Tribunal observed that stretch limousines are hired and marketed on the basis of a certain *degree of "luxury"*. A space of 400 mm per seat may be sufficient in a mini-bus but it may well be inadequate when a greater degree of luxury is to be expected. Many stretch limousines have a bar or drinks cabinet. In the view of the Upper Tribunal the presence or absence of a bar or drinks cabinet is also a relevant consideration because if the passengers are drinking they may well expect to have more space so that they do not accidentally spill drink on each other. The Upper Tribunal therefore confirmed the correct test to be not whether it is physically possible to seat more than 8 passengers in the vehicle, with a minimum of 400 mm each, but whether the vehicle in question is fit and apt, or suitable, to carry more than 8 passengers.

⁵ Divisional Court upheld a decision to reject "mere straight line measurement" as means of judging the accommodation as it depends on the particular facts under consideration. - *Vehicle and Operator Services Agency v Johnson* [2003] EWHC 2104 (Admin) DC, in contrast to *Traffic Commissioners for South Wales Traffic Area v Snape* (As above).

23. An act is taken to be done 'in the course of a business' if it is part of the activities of a business⁶. 'Business' means anything which is an occupation, trade or profession⁷. Carriage 'for hire or reward' involves the carrying of passengers beyond just mere social kindness and which amounts to a predominantly business activity⁸. A payment will amount to a fare if it results in a right to be carried, for one or more journeys, whether or not the right is exercised⁹. A vehicle will be treated as carrying passengers for hire or reward if payment is made for or includes the carrying of passengers¹⁰. An excursion or tour is defined in the Transport Act 1985 as a service for the carriage of passengers by road at separate fares on which the passengers travel together on a journey, with or without breaks, from one or more places to one or more places and back. Fares can include a sum payable in respect of a contract ticket or season ticket. Payments made to the owner, even indirectly, have been held to constitute separate fares¹¹. An ex gratia payment to the driver may not amount to a fare¹² as a journey made by a vehicle in the course of which one or more passengers are carried at separate fares will not be treated as made in the course of a business of carrying passengers if:

(a) the fare or the aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey; and

(b) the arrangements for the payment of the fares by the passenger or passengers so carried were made before the journey began.

24. In *2002/039 Excellent Connections Ltd* a different traffic commissioner was asked to consider whether the vehicles being operated under a PSV licence were "public service vehicles" within the definition contained in section 1(1)(b) above at paragraph 8 or whether they fell within the exemption contained in Part III of Schedule 1 of the 1981 Act by reference to the bringing together of all the passengers for the purpose of making the journey. There was a long factual background involving correspondence over years regarding the operators contract to provide exclusive transport services other than to passengers who had made other prior arrangements or who were using the dedicated bus service. The operator relied on licensed private hire vehicles and a fleet of 8 seater vehicles operating under a PSV licence, on the basis that passengers were charged separate fares. The operator relied on the exemption in Part III of Schedule I above that the vehicles were not in fact public service vehicles when undertaking such journeys and by virtue of section 79 of the Act, were not private hire vehicles. In this case the traffic commissioner also relied on advice, on this occasion provided on behalf of the Secretary of State.

25. The traffic commissioner considered whether:

⁶ *Havering London Borough Council v Stevenson* [1970] 3 All ER 609, [1970] 1 WLR 1375, DC; *Wycombe Marsh Garages Ltd v Fowler* [1972] 3 All ER 248, [1972] 1 WLR 1156, DC

⁷ *Re Williams' Will Trusts, Chartered Bank of India, Australia and China v Williams* [1953] Ch 138, [1953] 1 All ER 536

⁸ *Albert v Motor Insurers' Bureau* [1972] AC 301, [1971] 2 All ER 1345, HL

⁹ *DPP v Sikondar* [1993] Crim LR 76, [1993] RTR 90, DC; *Rout v Swallow Hotels Ltd* [1993] RTR 80, 157 JP 771, DC

¹⁰ *Drew v Dingle* [1934] 1 KB 187, where a charge was made for carrying goods to market and passengers accompanying the goods were carried without further charge.

¹¹ *Osborne v Richards* [1933] 1 KB 283, DC; *Hawthorne v Knight* 1962 SLT 69; *Aitken v Hamilton* 1964 SLT 125; *Wurzal v Addison* [1965] 2 QB 131, [1965] 1 All ER 20, DC; *Vickers v Bowman* [1976] RTR 165, DC are concerned with previous legislation.

¹² *MacLean v Fearn* (1954) SLT 37, Sh Ct

- a) the Appellant was operating the PSV vehicles under “separate fares”, meaning a charge made directly or indirectly to passengers which is unaffected by the number of fare payers;
- b) whether the Appellant’s operation fell within the exemption contained in Part III of Schedule I of the 1981 Act;
- c) if the operation of the vehicles did fall within Part III of Schedule I of the 1981 Act, then the vehicles should not be licensed as PSVs;
- d) whether the Appellant had operated unregistered local services.

The operator employed a fare structure which quoted a basic fare for a single passenger for a particular journey which was then discounted on an increasing basis, depending upon the number of passengers and where separate fares were quoted for each passenger, but groups were permitted to pay the fares as a whole sum¹³. The operator relied on authority that “separate fares” should be widely defined as payments by individual passengers regardless of whether the payment is fixed or according to a tariff, including a single passenger. The operator also argued that bookings made on behalf of single passengers with a strict “no sharing” policy unless travelling as a group did not amount to “making arrangements for the bringing together of all the passengers for the purpose of making the journey” and in any event, the airline staff were not acting on behalf of the operator and thereby exempt from the need to have an operator’s licence and the need to register “local services”.

26. The traffic commissioner found that “separate fares” means a charge made directly or indirectly to each passenger which is unaffected by the number of fare payers and that each passenger pays the *same fare* for the same journey regardless of how many other passengers wish to travel. He accordingly found that the Appellant was not operating at separate fares. In relation to whether the operations fell within Part III of Schedule I of the 1981 Act, he concluded that because of the arrangement with the airport the airport staff members were in effect acting on behalf of the operator. His other determinations were based on those findings and referred back to the previous history. The predecessor of the Upper Tribunal found that the traffic commissioner was wrong in his definition of “separate fares” and was criticised for not having disclosed the advice from the Department for Transport upon which he appeared to rely. The Transport Tribunal found that the authorities define “separate fares” widely so as to cover this operation and fare structure. The traffic commissioner was found to have failed to address the evidence on whether passengers being batched together into groups for the purpose of using the PSV vehicles whether by the operator or anyone acting on its behalf but the Transport Tribunal did not express a view either¹⁴.

¹³ The operator relied on *Aitken v Hamilton* (15 January 1964) Scots Law Times Reports; *Wurzal v Addison* (1965) 1 All ER 20; *Wurzal v Wilson* (1965) 1 All ER 26; *Vickers v Bowman* (1976) RTR 165

¹⁴ This decision reflects that of the Divisional Court in *Wurzal v Addison* [1965] 2 Q.B. 131 [1965] 2 W.L.R. 131 in considering section 118(3)(b) of the Road Traffic Act 1960. The case concerned the operation of a minibus which was licensed as a private hire vehicle and insured to carry seven passengers. The operator agreed to carry a lady and her friends from their place of work to their homes on a daily basis. The lady paid the total sum and then recovered the share from each of the other passengers. The decision of the Justices that there was no case to answer was upheld on appeal on the basis that (1) the Justices were entitled to conclude that there was not sufficient evidence that the vehicle was adapted to carry 8 or more passengers; and importantly that (2) the vehicle was being used for carrying passengers for hire or reward and carrying passengers at separate fares.

27. The Upper Tribunal referred in *Clayton Car Sales Ltd (as above)* to a passage at the end of the judgment of Lord Parker CJ in *Wurzal v Addison*, which might, at first sight, suggest that a stretch limousine adapted to carry no more than 8 passengers could come within section 1(1)(b) of the 1981 Act. Lord Parker held that it made no difference whether each passenger paid their fare directly to the driver or indirectly via their colleague because in each case the driver was carrying passengers for hire or reward at separate fares. The Upper Tribunal has made it clear that the *Wurzal* case was concerned with different legislation. The Upper Tribunal gave a *provisional view* that: where the conditions set out in Part I or Part III of Schedule 1 to the 1981 Act are fulfilled a vehicle carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers is not to be treated as a PSV unless it is adapted to carry more than 8 passengers.
28. In 2009/527 *Lisa Rafferty t/a 1st Class Limos* the Transport Tribunal concluded that the traffic commissioner was correct to refuse an application where that applicant had previously been operating unlawfully. The applicant attempted to rely on a 'dry hiring' arrangement. In this case the 'dry hire' involved rental of the vehicle with the customer apparently left to choose from a 'pool' of chauffeurs (or provide their own) where monies were said to be paid to the driver by the passengers. This case gives examples of the type of enquiries which might be made in order to ascertain any links between the drivers and the operator. The vehicles did not have a Certificate of Initial Fitness to be used as a PSV.

DIRECTIONS

29. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981. The aforementioned Guidance relates to matters which may affect the licensing of limousines and novelty vehicles. These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf individual traffic commissioners and dictate the operation of delegated functions.

Basis of Directions

30. These directions are issued under section 4C(1)(b) of the 1981 Act to provide practical advice on the types of enquiry required of those who support traffic commissioners in fulfilling their statutory functions.
31. The Upper Tribunal has been addressed on the law. The Department for Transport has also issued a circular to local authorities advising that they should not decline to license 1-8 passenger seat limousines¹⁵. It should not therefore be necessary for traffic commissioners to consider the wider public policy when reaching individual decisions. The legislation and case law, such as it is, leaves the situation where small vehicles can in some circumstances be licensed as PSVs; however most of the limousine operations involving small limousines are likely to fall under the category of private hire and will not be a genuine PSV. Where there is information to suggest this there will be grounds to question whether there will be adequate arrangements for securing compliance with the law relating to the driving and operation of the vehicles. The new application should be referred to the traffic commissioner with a recommendation that it be considered at a Public Inquiry. It will be for an applicant to satisfy a traffic commissioner on the balance of probabilities that the requirements are met.

General requirements

32. These Directions should be read in conjunction with those relating to the general criteria required to be shown in order to obtain a PSV licence and the requirements on the holders of PSV licences¹⁶.
33. In addition, as the majority of applications involving limousines and novelty vehicles are for restricted licences, traffic commissioners will also need to be aware of the provisions of section 13. A PSV operator's licence may be either a standard or a restricted licence. A restricted licence authorises:
- i) the use of public service vehicles not adapted to carry more than 8 passengers, and

¹⁵ DfT's Taxi and Private Hire Licensing: Best Practice Guidance, issued March 2010, previously at: <http://www.dft.gov.uk/pgr/regional/taxis/stretchlimousines.pdf>.

¹⁶ Those responsible for the financing of this type of vehicle may be assisted by the content of the Statutory Guidance and Statutory Directions on Finance, and the Statutory Guidance and Statutory Directions on Impounding and may wish to make the following enquiries: have checks been made on to ensure that there is an operator's licence, such as the publicly available database, is there a record of those checks and how regularly will the existence of the operator's licence be checked?

- ii) public service vehicles not adapted to carry more than 16 passengers, when used for a passenger carrying business or where the main occupation is not the operation of PSVs adapted to carry more than 8 passengers.

There are additional provisions relating to public authorities.

34. The main occupation is to be determined by reference to the business¹⁷ which has applied for the licence; for instance:

- **Sole traders** – if the licence is in the name of an individual then it is the main occupation of the individual that holds the licence that has to be considered. Applicants are expected to be able to satisfy a traffic commissioner that they do not fall foul of the main occupation rule, usually this will be by producing their last P60 Certificate showing their income in the last tax year, further, wage or salary slips will also be useful. Those that are self employed will be expected to produce copies of tax returns, disclosing taxable income. Traffic commissioners may take into account not only the income of an individual, but also the hours worked. Evidence may include payslips showing hours worked current contracts of employment etc.
- **Partnerships** - it is the business of the partnership rather than the individual partners, which is to be considered and the evidence listed above should be requested in addition. If a licence/application is in the name of a partnership the deed forming the partnership or other evidence will be required to satisfy a traffic commissioner that the use of 9-16 seat vehicles is not the main occupation of the partnership. It should be noted that sometimes those in partnerships disclose the hours etc worked by individual partners, but it is the partnership itself that is the entity that needs to satisfy the main occupation rule, NOT the individuals who constitute the partnership.
- **Limited Liability Partnership (LLP)** - although current applications are rare, similar considerations apply as to limited companies.
- **Limited Companies** - a common misconception is that the hours and or income of directors are submitted as evidence to meet the main occupation rule but it is in fact the entity that seeks to hold the licence, i.e. the limited company that needs to satisfy the main occupation rule. Evidence which might be relied upon will include, for instance for a company or LLP; the memorandum of association, a declaration to the taxation authorities, audited accounts. Accordingly the documentation setting up the limited company will need to be assessed against the relevant criterion.

35. The main occupation rule is a continuing requirement throughout the life of a restricted licence. The undertakings signed by applicants require them to comply with the law and to notify the traffic commissioner of a material change including where the main occupation requirement is no longer met. If the operator's status changes then it will not have authority to operate and should inform the traffic commissioner no later than 28 days following that change with a view to applying for a standard PSV operator's licence, which will require a suitably qualified transport manager¹⁸.

¹⁷ See Statutory Guidance and Statutory Directions on Legal Entities

¹⁸ See Statutory Guidance and Statutory Directions on Transport Managers

36. Where limousines and novelty type vehicles are not to be operated applicants often provide an undertaking to that effect and/or not to operate vehicles with 8 passenger seats or less without informing the traffic commissioner first. Where an applicant does seek to operate limousines and/or novelty vehicles under a PSV operator's licence further enquiries may be required, as suggested below.

Types of vehicle

37. As per section 1, a small vehicle or small limousine is a vehicle adapted to carry 8 or fewer passengers. A large vehicle or large limousine is a vehicle adapted to carry 9 or more passengers. Issues may arise when considering the operation of limousines as small PSVs. A 400 mm benchmark has previously been employed for the size of a seat but each case must now be considered on its merits.
38. Stretch limousines which have more than 8 passenger seats should not be licensed as PHVs. Due to historic issues which might impact on safety, it is important that checks are carried out. Imported stretched limousines were historically checked for compliance with regulations under the Single Vehicle Approval (SVA) inspection regime before they were registered. In the past the fee for importing and registering a mini bus was relatively cheap and so a number of imported vehicles, which were no longer permitted to be used in other countries, were registered in the 9 to 16 seat category, when they should have been categorised as smaller (up to 8 passenger seat) vehicles. The way in which they are operated in this country may not accord with the registration details. It is open to an applicant to offer a strict condition that the vehicle will not be used to carry more than 8 passengers but a traffic commissioner is not obliged to accept this proposal.
39. Controls on new registrations are now of a higher standard with physical checks undertaken. The SVA has now been replaced by the Individual Vehicle Approval (IVA) scheme. The IVA test will verify that a converted vehicle is built to certain safety and environmental standards. A licensing authority can therefore confirm that an imported vehicle was tested by VOSA before being registered and licensed (taxed) by DVLA via the V5C (Registration Certificate) which should record this in the "Special Note" section; or by contacting VOSA. However a number of limousines are operating with registration details which do not match the actual position.
40. The majority of responsible applicants wish to ensure that they comply with the requirements the licensing regime. A substantial number have therefore offered undertakings to assist in future compliance. An example is as follows:

Limousines and novelty type vehicles used under the licence shall have nine passenger seats or more and a valid certificate of initial fitness or equivalent.

41. Whether or not a vehicle is a smaller one (i.e. 8 or less passenger seats) or a larger one (i.e. 9 to 16 passenger seats) has significant implications. A small (i.e. 8 or less passenger seats) can be driven by someone who only holds an ordinary car driving licence. This contrasts with a larger (i.e. 9 to 16 passenger seat) vehicle where the following applies:
- in the case of a larger (i.e. 9 to 16 passenger seat) vehicle the driver carrying passengers for hire and reward is required to have a vocational

(PCV or passenger carrying vehicle) driving licence, not an ordinary car driving licence;

- in the case of a larger (i.e. 9 to 16 passenger seat) vehicle, the vehicle falls into the category of requiring a tachograph to be fitted and used as with other ordinary PSVs used for hire and reward;
- there is a different category of MOT certificate applicable;
- in the case of a larger (i.e. 9 to 16 passenger seat) vehicle the main occupation rule applies for restricted licences;
- in the case of a larger (i.e. 9 to 16 passenger seat) vehicle different safety standards apply and a Certificate of Initial Fitness (COIF) is required. The differences are not academic and the cost of enhancing a limousine to attain a COIF certificate is usually a substantial five figure sum of money.

42. If the vehicle is not in the 9 to 16 passenger seat category then VOSA has no jurisdiction to impound for operating without a PSV operator's licence, instead it is for other bodies (for example local authorities, including Transport for London) to take enforcement action.

Separate Fares

43. It is not sufficient for separate fares to be charged for a vehicle to legitimately be licensed as a PSV. Further conditions also need to be met in order for the vehicle to qualify as a PSV. The effect of the legislation is that, where a small vehicle is made available for exclusive hire to an individual or group, it falls to be licensed as a PHV. A small vehicle will normally qualify as a PSV only if separate fares are paid and one of the following two qualifications is met.

Qualification 1:

The service must have been advertised to the public, so as to create a *genuine* opportunity for members of the public to be carried *on the particular journey in question*, i.e. the journey is not an exclusive hiring for an individual or group. Advertisement at a place of worship, a place of work, a club or other voluntary association for the information of people present at those places, or in periodicals circulated wholly or mainly among such persons, does not count as advertisement to the general public.

Qualification 2:

The service was not advertised as per condition 1, but the arrangements for

- (i) bringing together the passengers, and
- (ii) (ii) the payment of separate fares, were initiated by the driver, operator or owner of the vehicle, or some other intermediary who is paid for doing so – not by the passengers themselves, or any other party. This condition might be met where the transport provider has identified a number of people each wanting to make the same journey, and has suggested to them that they might want to travel together and split the cost.

44. If neither condition is met, then the vehicle is unlikely to qualify as a PSV in relation to the journey in question and would therefore need to be licensed as a PHV. A vehicle used to operate an "excursion or tour" qualifies as a PSV only if one of the two conditions described in the first question is met.

Dry Hiring

45. If the hirer drives the vehicle him/herself, as under a typical car rental agreement, then the hire company will not be operating the vehicle. Similarly if the hire agreement allows the hirer to employ the services of a chauffeur, selected by the hirer, entirely independently of the hire company, then the hire company is unlikely to require an operator's licence.
46. There are a few irresponsible operators who might view 'dry hire' arrangements as a mechanism for circumventing the operator licensing requirements. Customers should be aware that this may result in an absence of proper checks regarding the driver's driving or criminal record. Sometimes a hire company will require or encourage the hirer to employ the services of a particular driver (or company who provides drivers), or perhaps offers a limited selection of drivers who may be used. Where that connection exists between the hire company and the driver (it does not need to be a formal written contract), this is likely to result in a requirement for the hire company to hold a PSV operator's licence.
47. In considering applications from operators staff acting on behalf of the traffic commissioners should attempt to anticipate the questions which the traffic commissioner might ask:
- What is the relationship between the hire company and the organisation or individual selecting the driver?
 - Is there a premium or deposit to be paid for choosing one's own driver or for driving it oneself? There will be a need for the authority of a PCV licence to drive these vehicles and any rental of the vehicle should reflect the insurance cost. If there are attempts to tie in a premium for self drive then this will be an important indicator that it is not a genuine self drive hire arrangement.
 - Is there is a premium or deposit to be paid for choosing one's own driver, if so what is the sum? The higher the figure the less likely it will be a genuine dry hire.
 - If a system of premiums or deposits is required, on how many occasions is this taken up? Additionally, what is the proportion of occasions when this is taken up? Note that the lower the number of occasions where any premium or deposit is taken up, the less the likelihood of this being a genuine dry hiring arrangement.
 - Are there any other restrictions on the driver? E.g. age restrictions or limiting the driving to those with previous experience of driving limousines (as opposed to those who have passed the relevant PCV test). Additional restrictions often indicate that it is not a genuine dry hire arrangement.

Local Services

48. Most limousine services will be exempt from registering routes and timetables with the traffic commissioners, for one of the following reasons:
- because they are "excursions or tours" (see above) which do not run at least once a week for a period of at least six consecutive weeks; or
 - in the case of smaller limousines, because they operate as PHVs (not PSVs).
49. The 15-mile rule is relevant only when deciding whether a service is a local service. Routes and timetables of "excursions or tours" do not need to be

registered unless they operate at least once a week for a period of at least 6 consecutive weeks.

Applications

- 50.** In order to assist operators in future compliance with this complicated area of law the Senior Traffic Commissioner has determined that the following undertaking should be sought when processing applications from limousine and novelty vehicle operators:

The operator will provide an audit trail to prove, upon request, to VOSA, the police or any other enforcement body, compliance with PSV requirements, namely paperwork to show in respect of any service:

Separate fares were paid and one of the following two conditions was met.

Condition 1: The passengers must have been brought together for the purposes of making the journey by the driver or owner of the vehicle or by some other intermediary who is paid for doing so. In addition each journey must have been advertised to the public, so as to create a genuine opportunity for members of the public to be carried on the particular journey in question, i.e. the journey is not an exclusive hiring for an individual or group, notwithstanding that separate fares are paid. Advertisement at a place of worship, a place of work, a club or other voluntary association for the information of people present at those places, or in periodicals circulated wholly or mainly among such persons, does not count as advertisement to the general public. Finally, in the event that there are multiple destinations, there should be differentiation of fares for the journey based on distance or time.

Condition 2: The making of the agreement for the payment of separate fares must have been initiated by the driver or owner of the vehicle, or by some other intermediary who is paid for doing so – not by the passengers themselves, or any other party. In addition, as in condition 1, each journey must be advertised to the public beforehand as being open to passengers to be carried at separate fares

Additionally:

- on each journey the driver will carry a paper copy of the advertisement*
- the advertisement will show where and when the advert was placed*
- the advertisement will show the start and finish - and this must be more than the mere town - it will include either the road or a postcode.*
- the advertisement will show the pick up time and the return time.*

- 51.** The applicant should understand that should the application for an operator's licence be granted, any failure to comply with the above undertaking may result in revocation of the licence and potential disqualification.

Existing holders of restricted PSV licences

- 52.** Where it proves necessary to consider an existing licence or application, in addition to checks as against the general requirements traffic commissioners may also wish to request documentary evidence of the number of passengers to be carried in each vehicle; the V5 forms for each vehicle; MOT certificates for

each vehicle (unless less than 3 years old and are not required); the main occupation; how journeys are recorded including start/finish odometer readings and, postcodes of the start of a journey and the furthest point, and how separate fares are recorded for each journey.

53. The lead traffic commissioner wrote to those operators with historic restricted PSV operator's licence explaining the expectations on them¹⁹. It is anticipated that those who have mistakenly obtained a PSV licence in good faith, but who are not in fact involved in PSV operations as defined above, will apply to their local authority (see paragraph 3) for a private hire licence. Each case will be dealt with on its merits but the Statutory Guidance above and these Statutory Directions set out the tests, which will be utilised. Where it is found that the wrong type of licence has been obtained the Senior Traffic Commissioner expects the presiding traffic commissioner to take into account the historical context when determining the timeframe for any resulting action.

Queries from members of the public

54. As indicated in the introduction above, licensing and other staff members acting on behalf of the traffic commissioner may be contacted by potential customers and/or passengers of limousines and novelty vehicles. The law can be complicated in this field. The Office of the Traffic Commissioner cannot accept liability for any advice given. However the following bullet points have been prepared by way of general assistance:

- Do not get into a vehicle that is unlicensed; either it should be licensed (1 to 8 passenger seats) by a local authority or by a traffic commissioner;
- If you are told that the operator does not need a licence, be sceptical;
- Carrying passengers for hire and reward requires a licence. Be careful of arrangements to hire the vehicles and driver separately as you may find yourself involved in unlawful activities. If there is an accident there may be no insurance cover;
- Unlicensed limousines may have defects which render them potentially dangerous; and the likelihood that there may have been no checks carried out on the driver's previous convictions or conduct is that much greater;
- If you use a PSV operator, make sure that there is a vehicle disc in the windscreen and check that the name on the disc is the same one that you believe to be operating;
- If you hire a 9 to 16 seat limousine or novelty vehicle it must have a Certificate of Initial Fitness. You are entitled to ask about this;
- If you respond to an advertisement for hire of a limousine, you should insist on knowing who the operator is. You should know who is licensed and therefore insured;
- If you are hiring a 1 to 8 passenger seat vehicle from a PSV operator for a special occasion, be aware that it is likely to be operating illegally as it is unlikely to have complied with the strict requirements for separate fares;
- If you have a concern, contact an enforcement body. This could be your local authority's private hire department; your local trading standards department; the police; or VOSA;
- Despite the obvious concerns of regulators and enforcement bodies, there are good and responsible operators that provide a service to the public either under a valid local authority Private Hire Vehicle Licence or

¹⁹ See Annex 2

operating under a Public Service Vehicle Operator's Licence granted by a traffic commissioner.

ANNEX 1: LETTER TO THE TRADE OF ASSOCIATION FOR LIMOUSINES

Bill Bowling
National Limousines and Chauffer Association
Letter sent by email with paper copy in post

10 March 2010

Dear Mr Bowling

You wrote to me as lead traffic commissioner on the subject of limousines with some suggestions on the interpretation of the law relating to small PSVs. I promised to respond to you once traffic commissioners had completed their review of the law relating to the licensing of limousines and novelty vehicles. I have numbered paragraphs in this letter for ease of reference.

1. In this letter a small vehicle or small limousine is a vehicle adapted to carry eight or fewer passengers. A large vehicle or large limousine is a vehicle adapted to carry nine or more passengers.

2. This has been an interesting exercise and of course it is important that traffic commissioners do not make law – rather that is for Parliament. It is the role of traffic commissioners to try and interpret the law correctly.

3. Traffic commissioners have been assisted by DfT providing its view of the law. It is appreciated that ultimately only the courts can definitively interpret the law.

4. I appreciate that your view has been that you would prefer traffic commissioners to license small vehicles as you believe that we are more consistent than local authorities. I acknowledge that published guidance has led to the current position whereby many operators have obtained PSV licences in good faith in the absence of an agreed position. Traffic commissioners have now taken the opportunity to come to a collective, clear and firm view that this is no longer appropriate. Traffic commissioners value limousine operations as a legitimate trade and this review of the law is not about making life difficult for the good operator and forcing them to operate without licences; rather, it is about applying the law correctly and ensuring that where an operation is really a private hire arrangement, it is licensed as such. As you can see from the views expressed below, we believe that small vehicles can in some circumstances be licensed as PSVs; however most of the limousine operations involving small limousines are likely to fall under the category of private hire and will not be a genuine PSV. Where there is a suspicion that this is so, it is likely that a new application will be heard at public inquiry to consider whether the requirements of Section 14 (3) of the Public Passenger Vehicles Act 1981 are being capable of being complied with. One of the requirements under this section is that the traffic commissioner must be satisfied that there will be adequate arrangements for securing compliance with the law relating to the driving and operation of the vehicles. It will be for an applicant to satisfy a traffic commissioner on the balance of probabilities that the requirements are met.

5. I enclose below a series of questions and answers which set out what traffic commissioners believe represents the law. I have also enclosed extracts from a

recent government circular to local authorities setting out that they should not decline to license 1-8 passenger seat limousines as has happened in the past. I hope that you and your members will find the circular helpful. As you will recall I am of the view that if a local authority declines to license any limousine as a matter of principle, the remedy is to appeal to the local magistrates' court without delay. Separate rules apply in Scotland where appeals lie to the Sheriff Court.

When can a small limousine legitimately be licensed as a PSV?

6. It is often suggested that, wherever separate fares are being paid by passengers, the vehicle can legitimately be licensed as a PSV rather than a PHV.

7. *This is not the case: further conditions also need to be met in order for the vehicle to qualify as a PSV (rather than a PHV).* The effect of the legislation is that, where a small vehicle is made available for exclusive hire to an individual or group, it falls to be licensed as a PHV.

8. A small vehicle will normally qualify as a PSV only if separate fares are paid *and one of the following two conditions is met.*

CONDITION 1: The service must have been advertised to the public, so as to create a *genuine* opportunity for members of the public to be carried *on the particular journey in question.* *i.e.* the journey is not an exclusive hiring for an individual or group. Advertisement at a place of worship, a place of work, a club or other voluntary association for the information of people present at those places, or in periodicals circulated wholly or mainly among such persons, does not count as advertisement to the general public.

CONDITION 2: The service was not advertised as per condition 1, but the arrangements for (i) bringing together the passengers, and (ii) the payment of separate fares, were initiated by the driver, operator or owner of the vehicle, or some other intermediary who is paid for doing so – not by the passengers themselves, or any other party. *This condition might be met where the transport provider has identified a number of people each wanting to make the same journey, and has suggested to them that they might want to travel together and split the cost.*

9. If neither condition is met, the vehicle is very unlikely to qualify as a PSV in relation to the journey in question. It would therefore need to be licensed as a PHV.

I have a large limousine which I hire out on a 'dry hire' basis. Do I need a PSV operator's licence?

10. It depends. If the hirer drives the vehicle him/herself – as they would under a typical car rental agreement – then the hire company will not be operating the vehicle. Similarly if the hire agreement allows the hirer to employ the services of a *chauffeur selected by the hirer, entirely independently of the hire company,* then the hire company is unlikely to require an operator's licence.

11. However, 'dry hire' arrangements are sometimes used to try to circumvent the operator licensing requirements. In particular, hire companies sometimes require or encourage the hirer to employ the services of a particular driver (or company who

provides drivers), or perhaps offers a limited selection of drivers who may be used. In such cases, a connection exists between the hire company and the driver – it might be a written contract, or it might be less formal. But either way, the Government considers that any such connection will normally be sufficient to require the hire company to hold a PSV operator's licence. The courts have reached a similar conclusion. VOSA will take decisive enforcement action where 'dry hiring' is being used as a ploy to try to avoid the regulatory system.

12. When dealing with dry hiring it is important to ask the correct questions, for example:

- What is the relationship between the hire company and the organisation or individual selecting the driver?
- Is there a premium or deposit to be paid for choosing one's own driver, or for driving it oneself? There will be a need for the authority of a PCV licence to drive these vehicles and any rental of the vehicle should reflect the insurance cost. If there are attempts to tie in a premium for self drive then this will be an important indicator that it is not a genuine self drive hire arrangement.
- Is there is a premium or deposit to be paid for choosing one's own driver, if so what is the sum? The higher the figure the less likely it will be a genuine dry hire.
- If a system of premiums or deposits is required, on how many occasions is this taken up? Additionally, what is the proportion of occasions when this is taken up? Note that the lower the number of occasions where any premium or deposit is taken up, the less the likelihood of this being a genuine dry hiring arrangement.
- Are there any other restrictions on the driver? E.g. age restrictions or limiting the driving to those with previous experience of driving limousines (as opposed to those who have passed the relevant PCV test). Additional restrictions are often an indication that it is not a genuine dry hire arrangement.

Do routes and timetables of a limousine service need to be registered with the traffic commissioners?

13. Not normally, no. Most limousine services will be exempt for one of the following reasons:

- because they are "excursions or tours"²⁰ which do not run at least once a week for a period of at least six consecutive weeks; or
- in the case of smaller limousines, because they operate as PHVs (not PSVs);

Is the 15-mile rule relevant to my limousine operation?

14. Not usually, no. The 15-mile rule is relevant only when deciding whether a service is a local service, and therefore whether details of that service need to be registered with the traffic commissioners. But a limousine service will generally be exempt from the requirement to be registered with the traffic commissioners, for one or more of the reasons outlined in the previous question.

²⁰ An excursion or tour is defined in the Transport Act 1985 as a service for the carriage of passengers by road at separate fares on which the passengers travel together on a journey, with or without breaks, from one or more places to one or more places and back.

I am operating an excursion or tour using a small vehicle. Doesn't that automatically make it a PSV?

15. No. A vehicle used to operate an "excursion or tour" qualifies as a PSV only if one of the two conditions described in the first question is met.

16. The question of "excursions or tours" is relevant only when a service is being operated as a PSV (not a PHV) and the operator is deciding whether details of the service need to be registered with the traffic commissioners. Routes and timetables of "excursions or tours" do not need to be registered unless they operate at least once a week for a period of at least 6 consecutive weeks.

The DfT has issued new guidance to local authorities on the licensing of stretched limousines and novelty vehicles, what does it say?

17. The extracts below are from the DfT's Taxi and Private Hire Licensing: Best Practice Guidance, issued March 2010. In the DfT circular issued they are numbered 40-44.

40. Local licensing authorities are sometimes asked to license stretched limousines as PHVs. It is suggested that local authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats - have a legitimate role to play in the private hire trade, meeting a public demand. Indeed, the Department's view is that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle and that any authorities which do adopt such practices are leaving themselves open to legal challenge. A policy of excluding limousines creates an unacceptable risk to the travelling public, as it would inevitably lead to higher levels of unlawful operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators. The Department has now issued guidance on the licensing arrangements for stretched limousines. This can be accessed on the Department's web-site at <http://www.dft.gov.uk/pgr/regional/taxis/stretchlimousines.pdf>.

41. The limousine guidance makes it clear that most operations are likely to fall within the PHV licensing category and not into the small bus category. VOSA will be advising limousine owners that if they intend to provide a private hire service then they should go to the local authority for PHV licences. The Department would expect licensing authorities to assess applications on their merits; and, as necessary, to be proactive in ascertaining whether any limousine operators might already be providing an unlicensed service within their district.

42. Imported stretched limousines were historically checked for compliance with regulations under the Single Vehicle Approval (SVA) inspection regime before they were registered. This is now the Individual Vehicle Approval (IVA) scheme. The IVA test verifies that the converted vehicle is built to certain safety and environmental standards. A licensing authority might wish to confirm that an imported vehicle was indeed tested by VOSA for IVA before being registered and licensed (taxed) by DVLA. This can be done either by checking the V5C (Registration Certificate) of the vehicle, which may refer to IVA under the "Special Note" section; or by writing to VOSA, Ellipse, Padley

Road, Swansea, SA1 8AN, including details of the vehicle's make and model, registration number and VIN number.

43. Stretched limousines which clearly have more than 8 passenger seats should not of course be licensed as PHVs because they are outside the licensing regime for PHVs. However, under some circumstances the SVA regime accepted vehicles with space for more than 8 passengers, particularly where the precise number of passenger seats was hard to determine. In these circumstances, if the vehicle had obtained an SVA certificate, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than 8 passengers, bearing in mind that refusal may encourage illegal private hire operation.

44. Many councils are concerned that the size of limousines prevents them being tested in conventional MoT garages. If there is not a suitable MoT testing station in the area then it would be possible to test the vehicle at the local VOSA test stations. The local enforcement office may be able to advise (contact details on <http://www.vosa.gov.uk>).

Existing holders of restricted PSV licences

18. I appreciate that you might feel that some existing holders of restricted PSV licences do not fall into the category of PSV if one applies the criteria set out at paragraph 8 above. I also appreciate that this may cause uncertainty amongst existing licence holders. The view of traffic commissioners is that a degree of leeway ought to be given for those who have acted in good faith but have the incorrect licence. In the fullness of time those who have applied for and obtained PSV licences in good faith, but are not genuine PSV operations, ought to apply to their local authority for a PHL. I will be writing in due course to current holders of restricted PSV licences to set out more detail the expectations of traffic commissioners in this regard. Ultimately each case must always be dealt with on its merits and the operator will know whether using the tests described at paragraph 8 above, they genuinely fall within the category of a PSV operation.

Yours sincerely

NICK JONES
Comisiynydd Traffig dros Ardal Drafnidiaeth Cymru
Traffic Commissioner for the Welsh Traffic Area
Traffic Commissioner for the West Midland Traffic Area

ANNEX 2: LETTER TO EVERY PSV OPERATOR IN GREAT BRITAIN AS AT OCTOBER 2010

Dear Operator

IMPORTANT MESSAGE TO ALL HOLDERS OF A PSV OPERATOR'S LICENCE WHO OPERATE VEHICLES WITH EIGHT PASSENGER SEATS OR LESS

I am writing to you on behalf of my fellow traffic commissioners to remind you of your obligations if you currently or intend to operate vehicles with eight passenger seats or less under the terms of your public service vehicle (PSV) operator's licence. This letter is being sent to all holders of a PSV operator's licence and I acknowledge that it may not be relevant to your operation. If it is not, please use it for information in case you decide to operate a small vehicle in the future. For the purpose of this note I will refer to these as 'small vehicles' and this includes vehicles commonly referred to as limousine and novelty type vehicles.

Please note this does not apply to taxis and private hire vehicles (PHVs) being used under a special restricted operator's licence.

The reason for sending this note now is that we are aware that over the years there has been some confusion in this area of complex legislation – and that there are some operators who may have been operating small vehicles under their PSV operator's licence rather than as PHVs.

There are only two criteria that allow small vehicles to be operated under a PSV operator's licence. These are defined in the Public Passenger Vehicles Act 1981 (the Act) and are as follows;

- a) A small vehicle can be regarded as a public service vehicle if it is used to carry passengers for hire or reward at separate fares in the course of a business of carrying passengers. However, even if the passengers are carried at separate fares, this does not automatically mean that the vehicle is a PSV. One or both of the following conditions set out in Schedule 1 to that Act must also be satisfied:-

Condition 1: The passengers must have been brought together for the purposes of making the journey by the driver or owner of the vehicle or by some other intermediary who is paid for doing so. In addition each journey must have been advertised to the public, so as to create a *genuine* opportunity for members of the public to be carried *on the particular journey in question, i.e.* the journey is not an exclusive hiring for an individual or group, notwithstanding that separate fares are paid. Advertisement at a place of worship, a place of work, a club or other voluntary association for the information of people present at those places, or in periodicals circulated wholly or mainly among such persons, does not count as advertisement to the general public. Finally, in the event that there are multiple destinations, there should be differentiation of fares for the journey based on distance or time.

Condition 2: The making of the agreement for the payment of separate fares must have been initiated by the driver or owner of the vehicle, or by some other intermediary who is paid for doing so – not by the

passengers themselves, or any other party. In addition, as in condition 1, each journey must be advertised to the public beforehand as being open to passengers to be carried at separate fares

b) In England and Wales, there is an alternative authorised under Section 79A (3) of the Act. This allows certain operators of large PSVs, i.e. vehicles which can carry nine or more passengers, to use a small vehicle under their PSV operator's licence, without the requirement to charge separate fares. The use of a small vehicle must be only a small part of the operator's business of carrying passengers by motor vehicles. Guidance provided by the Department for Transport suggests that, although the ultimate decision for what constitutes 'a small part' is a matter for the courts, the understanding is that if less than 10% of the fleet of vehicles licensed under a PSV operator's licence are small vehicles the exemption may apply. However, as the legislation states small part of the business, other factors such as mileage run or income may be taken into account.

If you are operating small vehicles and cannot meet any of the criteria detailed above you are probably operating the vehicle(s) as a PHV and it should not be used under your PSV operator's licence. You should immediately contact your local authority to seek advice on obtaining a PHV licence. It is acknowledged that some local authorities are reluctant to license certain types of vehicle and, if so, there is an appeal process to the local magistrates' court (sheriff court in Scotland).

If you do not intend to operate vehicles under your public service vehicle operator's licence you should request that the licence be surrendered. You can do this by writing to the Central Licensing Office at Hillcrest House, 386 Harehills Lane, Leeds, LS9 6NF enclosing your vehicle discs and licence sheets.

If you do operate small vehicles it is your responsibility as the licensed operator to comply with the legislation. Operating a vehicle without the correct licence could lead to prosecution in the courts and regulatory action being taken against your operator's licence by a traffic commissioner. When considering regulatory action the traffic commissioner will give serious consideration to the revocation of a licence and, furthermore, should an operator deliberately ignore the need to apply for a private hire licence the traffic commissioner will regard personal disqualification as a real option. Therefore, it is imperative that you take the appropriate action immediately.

The objective of this letter is to make you aware of the legislative position and to ensure that you are in the correct licensing regime so that compliant operators are protected. It is a view of the legislation and should not be regarded as legal advice as only the courts can provide a definitive interpretation of the law. If you are in doubt as to whether you can use your small vehicle under your PSV operator's licence you should contact VOSA on 0300 123 9000 or at psv.selfservice@vosa.gov.uk or seek independent legal advice.

Operators can also discuss the requirements with the Confederation of Passenger Transport 3rd Floor, Drury House, 34-43 Russell Street, London WC2B 5HA. Tel: 020 7240 3131.

Alternatively operators of limousine and novelty vehicles can contact the National Limousine and Chauffeur Association at www.nlca.co.uk or on 0788 6563724.

The following website contains guidance issued by the Department for Transport on the licensing arrangements for stretched limousines:

<http://www.dft.gov.uk/pgr/regional/taxis/stretchlimousines.pdf>

Yours faithfully

NICK JONES

Lead traffic commissioner on limousines and novelty vehicles