



SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 13

PSV OPERATIONS

INCLUDING SMALL VEHICLES, 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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Senior Traffic Commissioner

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 amended) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the licensing of Public Service Vehicle operations, including limousines and novelty vehicles.
2. For vehicles constructed or adapted to carry more than 8 passengers, operators require a public service vehicle (PSV) operator's licence, which is issued by the relevant traffic commissioner.¹ Operators will be aware that when carrying out a Regulated Activity², they should make sure drivers are eligible by applying for an Enhanced DBS check.³

Public Service Vehicle Legislation – The Public Passenger Vehicles Act 1981

3. Under sections 13(1)–(3) there are two categories of PSV operator's licence, as follows:
 - Restricted licence.
This category only allows the operation of a maximum of two vehicles. There are restrictions as to who may hold a restricted licence, and these are set out below. There is no requirement to have a qualified transport manager who holds a Certificate of Professional Competence so the operator may avoid that expense but the standards required for both vehicle safety and records are the same as for standard licences. Experience has shown that the levels of knowledge and compliance with the rules that apply are considerably less with restricted licences.
 - Standard national licence and standard international licence.
There is no restriction on the maximum number of authorised vehicles that can be applied for, subject to an operator meeting the repute, financial and professional competence requirements.
4. 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 national or international use 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

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

² <https://www.gov.uk/government/publications/new-disclosure-and-barring-services>
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739154/Regulated_Activity_with_Children_in_England.pdf

³ <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers>

(ii) by a person whose main occupation⁴ is not the operation of PSVs adapted to carry more than 8 passengers.

5. 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

6. 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) is 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.

7. Regulation 28(1)(b) of the Public Service Vehicles (Condition of Fitness, Equipment, Use and Certification) Regulations 1981, (“the 1981 Regulations”), 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”.

The Public Service Vehicle Accessibility Regulations

8. The Public Service Vehicle Accessibility Regulations 2000 (PSVAR) apply to all public service vehicles (buses or coaches):

- introduced since 31 December 2000;
- with a capacity exceeding 22 passengers;
- used to provide a local or scheduled service⁵.

9. The Public Service Vehicles (Accessible Information) Regulations 2023 apply in respect of local services⁶, with the exception of:

- a small bus (vehicle adapted to carry less than seventeen passengers) used to provide local services;
- a vehicle which was first used to provide local services before 1 January 1973;
- an excursion or tour⁷;
- a closed door home to school service⁸;
- a long distance service⁹;

⁴ See below Guidance

⁵ See Statutory Guidance and Statutory Directions on Local Bus Services

⁶ See Statutory Guidance and Statutory Directions on Local Bus Services

⁷ See section 137(1) of the Transport Act 1985

⁸ A service which is for the carriage of eligible passengers to and from an educational establishment and which can only be used by eligible passengers

⁹ A service consisting of one or more local parts and one or more non-local parts; and with respect to which the distance covered by the non-local parts is more than half of the total distance.

- any part of a local service where the service is operating as a demand responsive transport service¹⁰;
 - a community bus service other than where such service is provided using a vehicle which is first used to provide such a service on or after 1st October 2023.
- 10.** The Regulations have a staged implementation depending on either: when the vehicle was first used to provide local services, whether it is an applicable community bus service or a partially compliant vehicle. Once a vehicle falls within scope, the operator must ensure that passengers are provided with information in the manner required by the Regulations. Information must be given on the route including the designation, stopping places, point of termination and any diversion from the scheduled route. This information must be made available in both an audio and visual form which are consistent with each other.
- 11.** Non-compliance with PSVAR is a criminal offence under the Equality Act 2010 and carries a fine not exceeding Level 4 on the standard scale.
- 12.** Under the Equality Act 2010, the Secretary of State of Transport may authorise, by means of a special authorisation order, the use of a regulated public service vehicle which does not comply with accessibility regulations. There are currently exemptions¹¹ for operators with coaches that are non-compliant or partially compliant with PSVAR, which are used to provide either or both of the following:
- a ‘closed door’ home-to-school service, transporting eligible passengers to and from educational institutions;
 - a rail replacement service, transporting passengers to their destinations when train services cannot run.

Operating Centres¹²

- 13.** There is no provision to consider the environmental suitability of an operating centre on a PSV operator’s licence. However, section 20(3) of the Public Passenger Vehicles Act 1981 clearly refers to where vehicles are normally kept. There must be sufficient capacity within the nominated site to meet that requirement. In addition, section 14ZC(1)(b) requires operators to make adequate arrangements for securing compliance with the requirement of the law relating to the driving and operation of relevant vehicles. A traffic commissioner might therefore consider the ability of drivers to conduct a driver daily walk round check within the proposed operating centre.¹³ A traffic commissioner might also, for example, consider the safety of the point of access or egress in order that the laws on safe driving can be complied with.

¹⁰ A service, or part of service, where the route is not fixed but instead is determined on a case by case basis with reference to requests from passengers or prospective passengers

¹¹ <https://www.gov.uk/guidance/apply-for-an-exemption-from-psvar-accessibility-regulations-for-home-to-school-or-rail-replacement-services>

¹² See Statutory Guidance and Statutory Directions on Operating Centres

¹³ A driver is expected to do a thorough check of the vehicle during which they might need to crouch down beside the vehicle or step back to check the topside. By way of guidance, all ATF testing areas must be at least 2 metres wider than the vehicle being tested to allow for this. If there is not enough space to carry out these checks in the vehicle’s parking space then the operator may be required to demonstrate there is sufficient capacity at the operating centre for these checks to be carried out before the vehicle enters the public highway.

Hire or Reward

14. 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, whether or not the right is exercised.¹⁴

Separate Fares and advertisements to the public

15. 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 I allows for the sharing of taxis and private hire vehicles at separate fares. If those conditions are met, then the vehicle is not a PSV. Part III of Schedule 1 of the 1981 Act 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 a person who receives any remuneration in respect of the arrangements.

16. To fall outside the definition of a PSV, 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. As a result, no differentiation of fares for the journey on the basis of distance or of time can be made.
17. 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.
18. 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:

¹⁴ [2013/056 Bradley Fold Travel Ltd & Peter Wright](#) the Upper Tribunal said "*there is no doubt that s.1(5) gives the term "hire or reward" a wide meaning and when considered alongside the test adopted by the Divisional Court in Albert v Motor Insurers' Bureau (supra)... the term clearly includes the manner in which Mr Wright was operating the vehicles despite the fact that he was doing his best to make a small annual loss*" [2017/076 Andrew Steven Gingell v DVSA](#) reiterated the test from *Albert v Motor Insurers' Bureau* [1971] 3 W.L.R 291 "*that the test of whether a vehicle was being used for "hire or reward" was whether there had been a systematic carrying of passengers for reward which went beyond the bounds of mere social kindness*"

- (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

- 19.** As a general rule any public service vehicle being used in Great Britain to carry passengers for hire or reward (i.e. on a commercial basis) will need an operator's licence of some kind.¹⁵ The type of licence required depends upon on the capacity of the vehicle and the type of operation undertaken.
- 20.** 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).¹⁶ In England and Wales these licences are administered by the relevant local authority or Transport for London (TfL), which has discretion as to which vehicles they will license. The Scottish Government is responsible for regulating the powers of Scottish local authorities to license taxis and private hire cars.¹⁷ 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.
- 21.** Section 79A of the 1981 Act applies to England and Wales and provides that where a small bus (a PSV adapted to carry fewer than 9 passengers) is 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. The Scottish Government is responsible for regulating the powers of Scottish local authorities to license taxis and private hire cars. A PSV operator's licence therefore does not excuse or override the requirements of a PHV licence.¹⁸
- 22.** That provision is subject to a limited exemption in that, if the operator operates a business which nearly all involves the operation of large buses, it can operate PHVs under the PSV operator's licence. However, this can only be a small part of the overall business. The Department for Transport has issued guidance suggesting an indicative threshold of 10% of the business (measured by mileage) but other elements may also be relevant.

¹⁵ Section 12(1) of the Public Passenger Vehicles Act 1981 unless exempt by section 18 of the Transport Act 1985 by using a vehicle under a permit granted under section 19 or 22 of that Act, see below Guidance

¹⁶ See above exemptions for where separate fares are charged

¹⁷ Under the Civic Government Act 1982 licensing is the responsibility of Scottish local authorities, which have a wide discretion to determine appropriate licensing arrangements

¹⁸ Section 265 Transport Act 2000 amended the 1981 Act and the Criminal Justice and Public Order Act 1994

Community Transport

Section 19 & 22 Permits – The Transport Act 1985

- 23.** Community transport is not defined in legislation, but is a term generally used to describe transport provided by voluntary and not-for-profit bodies. Where such bodies charge for transport it may be carried out under a section 19 or section 22 permit. Where a vehicle is being used for hire or reward a PSV operator's licence is generally required. Section 18 of the Transport Act 1985 removes this requirement where the vehicle is being genuinely used under a section 19 or section 22 permit.
- 24.** Section 18(5) of the Transport Act 1985¹⁹ requires all operators using or applying for a permit to be an “exempt body”, by meeting one of the exemptions in Regulation (EC) No 1071/2009, before satisfying the not-for-profit and other criteria set out in the 1985 Act. The relevant exemptions from Regulation (EC) No 1071/2009 are set out in Article 1(4)(b):
- “...engaged in road passenger transport services exclusively for non-commercial purposes” (the “non-commercial exemption”)²⁰;
 - “...which have a main occupation other than that of road passenger transport operator” (the “main occupation exemption”).
- 25.** The Transport Act (Amendment) Regulations 2019 has also provided for a “short distance exemption” as allowed for in Article 1(5): “member states may exempt from the application of all or some of the provisions in this regulation those road transport operators engaged exclusively in national transport operations having only a minor impact on the transport market because of...the short distances involved.”
- 26.** Organisations that provide transport on a ‘not-for-profit’ basis and who meet the above exemptions can therefore apply for permits under section 19 or section 22 of the Transport Act 1985. These permits allow the holder to operate transport services for hire or reward without the need for a PSV operator's licence. A permit is not specific to one vehicle, it can be transferred between different vehicles but can only be used on one vehicle at any time. An organisation can therefore hold both section 19 and 22 permits. However, a vehicle can only be used under one type of permit at a time depending on what the vehicle is being used for.
- 27.** A section 19 permit can be granted to a body concerned with education, religion, social welfare, recreation or other activities of benefit to the community. These permits are either ‘standard permits’ for vehicles which are adapted to carry no more than 16 passengers (excluding the driver) or ‘large bus permits’ for vehicles which are adapted to carry 17 or more passengers. These permits may be granted to organisations that operate vehicles without a view to profit to transport

¹⁹ As amended by the Transport Act (Amendment) Regulations 2019

²⁰ From 2022, Regulation (EC) No 1071/2009 Article 1(4)(b) is amended by Regulation (EU) 2020/1055 to clarify that any carriage by road, other than carriage for hire or reward or for own account, for which no direct or indirect remuneration is received and which does not directly or indirectly generate any income for the driver of the vehicle or others and where there is no link with professional activity, is to be considered as carriage exclusively for non-commercial purposes

their members, or people whom the organisation exists to help. Section 19 permit vehicles cannot be used to carry members of the general public.

- 28.** A “community bus permit” can be granted under section 22 to a body concerned for the social and welfare needs of one or more communities to provide a “community bus service”. This is defined in subsection (1) as a “local service” provided by such a body without a view to profit, either on the part of that body or of anyone else. Unlike section 19 permit vehicles, community bus services are ‘local bus services’ and can carry the general public. Local bus services are defined as services using public service vehicles for the carriage of passengers by road at separate fares on which passengers may travel for less than 15 miles²¹. Vehicles adapted to carry 9 or more passengers (excluding the driver) may be used under a community bus permit, this includes large buses adapted to carry 17 or more passengers.
- 29.** A traffic commissioner may attach such conditions to a permit as they consider appropriate. For section 19 permits the conditions are specified under section 20(4) as:
- (a) limiting the passengers who may be carried in any vehicle used under the permit to persons falling within such classes as may be specified in the permit;
 - (b) with respect to such other matters as may be prescribed.

In respect of a section 22 permit a traffic commissioner can attach conditions as they see fit for restricting or regulating the use of any vehicle under the permit.

- 30.** A permit holder must continue to meet the exemption throughout the lifetime of a permit. Section 23A limits the maximum period for both section 19 or 22 permits to a period not exceeding five years. If a permit holder’s circumstances change once a permit has been granted the permit holder will need to satisfy itself that it is still meeting the requirements of the relevant exemption.
- 31.** A section 19 permit issued by a traffic commissioner may be varied or revoked by a traffic commissioner however this variation cannot substitute another body for the body to whom the permit was granted²². A traffic commissioner may revoke a section 22 permit on one of the following grounds²³:
- (a) that he is not satisfied with respect to the adequacy of facilities or arrangements for maintaining in a fit and serviceable condition any vehicle used under the permit;
 - (b) that there has been a contravention of any condition attached to the permit;
or
 - (c) that a prohibition under section 9 of the 1981 Act (power to prohibit driving of unfit public service vehicles) has been imposed with respect to a vehicle used under the permit.

²¹ Section 2 of the Transport Act 1985

²² Section 20(5) and 20(6)

²³ Section 23(6)

Other types of operation – The Transport Act 1985

Special Restricted Operations – Transport Act 1985

- 32.** Under section 12 of the Transport Act 1985 a traffic commissioner can grant a special restricted operator's licence so that an applicant can operate a licensed taxi or hire car on a local service.²⁴ An applicant can only apply for a special restricted licence if they already have a taxi licence, a private hire vehicle (PHV) licence or, in Scotland, a private hire car (PHC) licence.²⁵ Further to sections 10 to 12 of the Transport Act 1985, section 13(3) provides supplementary information, defining the term "taxi licence" as a licence under section 6²⁶ of the Metropolitan Public Carriage Act 1869, section 37 of the Town Police Clauses Act 1847 or any similar enactment, or a taxi licence under section 10 of the Civic Government (Scotland) Act 1982.

Bus Station Charges

- 33.** Section 81(6) of the Transport Act 1985 allows for the holder of a PSV operator's licence to apply to the traffic commissioner if they consider the charges for the use of accommodation for public service vehicles at any such bus station provided for by a Passenger Transport Executive or local authority²⁷, to be unreasonable. The application would need to be submitted to the traffic commissioner in the area in which the bus station is situated. Any operator applying under this section would need to provide evidence as to why they believe that the charges are unreasonable and set out what they believe to be a fair charge. The Passenger Transport Executive or local authority then have an opportunity to respond after which, the traffic commissioner will determine whether a hearing is required. Upon considering all the evidence, the traffic commissioner will decide whether the charges are reasonable and if not, may under section 81(7) determine the charges to be made in respect of the applicant's vehicles for such period and on such terms as they see fit.

Case Law

- 34.** This Guidance may be subject to decisions of the higher courts and to subsequent legislation. There is a lack of clarity in some of the law and an absence of specific provisions relating to the licensing of small vehicles. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law.

Definition of a Public Service Vehicle

- 35.** The meaning of 'public service vehicle' and 'used' is set out in the legislation. The term 'adapted' has previously been interpreted to include altered or changed.²⁸

²⁴ See Statutory Guidance and Statutory Directions on Local Bus Services

²⁵ [2020/005 Christopher Johnson](#) – section 12(1)(b) requires only that an applicant states a proposal to use one or more licensed taxis to provide a local service, there is no requirement to commit to a particular route at that stage. The applicant must however hold a relevant licence and not just be the legal owner of a vehicle

²⁶ A distinction is drawn in the Metropolitan Public Carriage Act 1869 between licences issued by Transport for London to licensed vehicles under section 6, and those issued to licensed drivers under section 8

²⁷ as is mentioned in subsections (3), (5) or (5A) of section 81 of the TA 1985

²⁸ *Backer v Secretary of State for the Environment* [1983] 1 W.L.R 1485, *Burns v Currell* [1963] 2 Q.B. 433, *Traffic Commissioners for South Wales Traffic Area v Snape* [1977] R.T.R. 367, relying on earlier authorities

A minibus with four out of eleven seats blocked off was found not to be a public service vehicle.²⁹ In [2000/028 Excellent Connections Ltd](#) 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 clear³⁰ by reference to section 1(1)(a), the Encyclopaedia of Road Traffic Law and Practice and higher courts case law³¹ that the term ‘adapted’ is 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.”

- 36.** 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. Where a vehicle is not adapted to carry more than 8 passengers for hire and reward but carries passengers at separate fares in the course of that business or the operator seeks to rely on any other exemption, it is permissible for the traffic commissioner to seek evidence to support the operator’s position.³² It may be necessary to seek evidence accounting for all of the relevant journeys in order to demonstrate whether the conditions in the legislation are met.
- 37.** 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 might 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.

Limousines

- 38.** In the leading case of [Clayton Car Sales](#)³³ 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

²⁹ Westacott v Centaur Overland Travel Ltd [1981] R.T.R. 182

³⁰ [2012/053 Clayton Car Sales Ltd](#)

³¹ In Maddox v Storer [1963] 1 Q.B. 451, 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

³² [2013/063 Balwant Singh Uppal trading as Professional Chauffeuring Services & PCS Limos Ltd](#)

³³ [2012/053 Clayton Car Sales Ltd](#) - The Upper Tribunal referred to a passage at the end of the judgment Lord Parker CJ in Wurzal v Addison [1965] 2 Q.B. 131 which might at first sight suggest that a stretch Limousine adapted to carry no more than 8 passengers could fall within section 1(1)(b). The Upper Tribunal made it clear that the Wurzal case was concerned with different legislation (see below)

limousines are being use 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”.

39. In that case the Upper Tribunal indicated that it may be 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 deviation.³⁴ That minimum may be appropriate in the case of a mini-bus but the Upper Tribunal was persuaded that it may not necessarily be suitable in a stretch limousine, where the expectation of the passengers is likely to be for a greater degree of comfort. However this was not fully argued before the Upper Tribunal. 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.
40. In determining whether a vehicle is “*fit and apt for that purpose*” or “*suitable*” it is suggested that a traffic commissioner may be 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 example, 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 suggested the test is 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 (apt) or suitable, to carry more than 8 passengers. A traffic commissioner therefore might also wish to refer to the Certificate of Initial Fitness (COIF)³⁵, or the Individual Vehicle Approval certificate.

Use of a Public Service Vehicle

41. Vehicles with fewer than nine passenger seats cannot normally be considered to be public service vehicles except in very limited circumstances. The first, under section 79A of the 1981 Act allows their use by an operator of larger vehicles provided their use forms only a small part of the overall public service vehicle operation.

³⁴ Divisional Court upheld a decision to reject “mere straight line measurement” as a 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* [1977] R.T.R. 367

³⁵ [2004/209 & 252 Home James Limousines Ltd & Phillip Harris trading as Dynevor Wedding Cars](#) – where a vehicle is adapted to carry a maximum of eight passengers a COIF may not be required however any applicant should produce the specification details of the vehicle and any available inspection records from the DVSA

42. The second opportunity to use vehicles with fewer than nine passenger seats arises from the definition of a public service vehicle in section 1 of the Act. Section 16 provides powers to a traffic commissioner to attach conditions to a licence. Section 16(2), allows a wide discretion to attach conditions, which specify different maximum numbers for different descriptions of vehicle. That is not to be confused with the power in section 16(3), which allows a traffic commissioner to attach prescribed conditions (as defined by section 60(2)³⁶) to a licence at any time which the traffic commissioner thinks necessary for restricting or regulating the use of vehicles under the licence.
43. For the purpose of section 16(2), a set of conditions have been developed to assist operators to comply with section 1. This allows a vehicle with fewer than 9 passenger seats to be considered a public service vehicle when these conditions (different to the alternative conditions mentioned in Part III of Schedule 1), are met in order to satisfy the requirements of section 14ZC(1)(b) regarding compliance with the laws relating to driving and operation of vehicles. In short, these are that:
- separate fares are charged to each passenger³⁷;
 - fares to passengers must differentiate based on distance travelled;
 - journeys must be advertised in advance in such a way that there is a genuine opportunity for individual members of the public to travel on them; and
 - the operator, or a paid intermediary, must either bring the passengers together or make the arrangements for the payment of separate fares.
44. The Upper Tribunal has approved of this approach and by reference to the Guide for Operators of Stretched Limousines.³⁸ Limousine operations using vehicles adapted to carry fewer than 9 passengers are likely to fall outside the PSV operator licensing regime and require a PHV licence, as they are unlikely to meet the above conditions. More recent guidance to prospective operators of small limousines on the GOV.UK website states: *For small limousines – seating up to 8 passengers - you'll need a private hire vehicle (PHV) operator licence*. Where an operator fails to meet those conditions a traffic commissioner will be entitled to take action against the operator's licence. A traffic commissioner is entitled to take into account any evidence of the way in which the operation is being run, including evidence of advertising³⁹.
45. An act is taken to be done 'in the course of a business' if it is part of the activities of a business.⁴⁰ 'Business' means anything which is an occupation, trade or profession.⁴¹ Carriage 'for hire or reward' involves the carrying of passengers beyond just mere social kindness and which amounts to a predominantly business activity.⁴²

³⁶ Regulation 7 of the Public Service Vehicles (Operators' Licences) Regulations 1995 prescribes conditions in relation to designated sporting events and/or the remedy or avoidance of complaints made under Regulation (EU) No 181/2011

³⁷ In [2002/039 Excellent Connections Ltd](#) the Transport Tribunal considered the decision of the Divisional Court in *Wurzal v Addison* [1965] 2 Q.B. 131 and found that "separate fares" should be given a wide definition

³⁸ [2014/031 James Fleming](#)

³⁹ [2015/023 Balwant Singh Uppal trading as Chauffeuring Services & PCS Ltd](#) in which the Upper Tribunal approved of the traffic commissioner's finding that an 'advert' was merely a device.

⁴⁰ *Haverling London Borough Council v Stevenson* [1970] 1 W.L.R. 1375; *Wycombe Marsh Garages Ltd v Fowler* [1972] 1 W.L.R. 1156

⁴¹ *Re Williams' Will Trusts, Chartered Bank of India, Australia and China v Williams* [1953] 2 W.L.R. 418

⁴² *Albert v Motor Insurers' Bureau* [1971] 3 W.L.R. 291

46. 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 exercised.⁴³ A vehicle will be treated as carrying passengers for hire or reward if payment is made for or includes the carrying of passengers.⁴⁴ 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 fares.⁴⁵ An ex gratia payment to the driver may not amount to a fare⁴⁶ 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.

The Tribunal has concluded that a traffic commissioner was right to refuse an application where that applicant had previously been operating unlawfully.⁴⁷ The Upper Tribunal has also confirmed that, whilst taking account of s.81(1) of the 1981 Act, a traffic commissioner is entitled to pursue reasonable enquiries of the relevant parties so as to identify who was actually operating.⁴⁸

Main Occupation for Restricted Licences and Section 19 & 22 Permits

47. The Upper Tribunal, when considering a restricted licence appeal, has confirmed that the starting point for the meaning of occupation is the definition found in the Oxford English Dictionary:

*“The state of having one’s time or attention occupied; what a person is engaged in; employment, business; work; toil. .. A particular action or course of action in which a person is engaged, especially habitually; a particular job or profession; a particular pursuit or activity”.*⁴⁹

48. This definition must then be considered in the context of Section 13(3) of the Public Passenger Vehicles Act 1981, which sets out the restrictions that an operator must fulfil and continue to fulfil, to be entitled to a restricted rather than a standard PSV licence. The Tribunal explored the indicators of hours and

⁴³ DPP v Sikondar [1993] R.T.R. 90, Rout v Swallow Hotels Ltd [1993] R.T.R. 80

⁴⁴ Drew v Dingle [1934] 1 K.B. 187, where a charge was made for carrying goods to market and passengers accompanying the goods were carried without further charge

⁴⁵ Osborne v Richards [1933] 1 K.B. 283, MacLeod v Penman Hamilton Blair and Meechan, Hawthorne v Knight 1962 S.L.T. 69; Aitken (Thomas) v Hamilton 1964 S.L.T. 125; Wurzal v Addison [1965] 2 Q.B. 131, Vickers v Bowman [1976] R.T.R. 165, DC are concerned with previous legislation

⁴⁶ MacLean v Fearn (1954) S.L.T. (Sh. Ct.) 37

⁴⁷ [2009/527 Lisa Rafferty trading as 1st Class Limos](#). This gives examples of the type of enquiries which might be made in order to ascertain any links between the drivers and the operator. In any event the vehicles did not have a Certificate of Initial Fitness to be used as a PSV.

⁴⁸ [2003/062 The Tachograph Centre Ltd](#) - at all times the onus of establishing good repute remains with the operator

⁴⁹ [2017/002 Mohammed Akbar trading as Choudhary Transport](#)

income that must be considered in order to establish “main occupation”. The operator is required to satisfy the traffic commissioner that any particular activity other than PSV operation is an “occupation” from which income is generated and that overall, the PSV operation is not the “main occupation”. The Upper Tribunal has also asserted that in determining “main occupation” a “*bare assertion will not do*” and proceeded to detail the types of evidence⁵⁰ that an operator will “*need to produce in order to establish that a particular activity is not only an occupation but their main occupation.*”⁵¹ The Tribunal has offered the following guidance in that they:

“do not consider that activities such as the pursuit of a hobby, charitable work or other activities which do not generate an income can fall within the definition of “occupation”. Neither do we consider that the receipt of investment or other income which does not require the operator to dedicate anything more than a minimal amount of time to it, can be considered to be an “occupation”. Each case will of course be fact sensitive.”

49. An applicant for a restricted PSV operator’s licence should provide a complete statement of all sources of income and amounts received. They must ensure that these are consistent with and supported by annual accounts, tax returns and bank account statements in the name of the applicant to demonstrate how the total of such income received is reasonably expected to continue to exceed that from the operation of the vehicle(s) if a licence is granted.⁵² The operator will be required to supply similar evidence for the time spent⁵³ operating the vehicle(s) under the licence. This will enable the traffic commissioner to carry out an assessment of the evidence and make findings of fact.⁵⁴
50. The above principles are relevant to any organisation seeking to rely on the main occupation exemption in Regulation (EC) No 1071/2009 for the purposes of obtaining a section 19 or 22 permit under the Transport Act 1985. In order for a ‘not-for-profit’ organisation to satisfy the main occupation exemption the engagement in road passenger transport must be ancillary or complementary to another activity which must demonstrably be their main occupation.

Non-Commercial Exemption for Section 19 & 22 Permits

51. The High Court recently considered the meaning of the non-commercial exemption⁵⁵ and set out agreed principles on the interpretation, which were not not in dispute:

“First, it is clear from the words of article 1(4)(b) that the focus is on the purposes for which the organisation is engaged in providing road passenger transport services and whether those purposes are exclusively non-commercial. This requires consideration of the totality of the road passenger transport services in

⁵⁰ See General Requirements under the Statutory Directions below

⁵¹ [2016/073 Pauline Marion Hukin trading as Red Fox Travel](#)

⁵² [2017/033 Paul Andrew Nimmo trading as P&N Travel](#). A list of relevant documents is detailed below in Directions

⁵³ [2020/064 Manzoor Hussain Shah](#)

⁵⁴ In the case of school contracts, any proposed earnings should be contrasted with the indication in the Upper Tribunal decision of [2015/050 Ibrar Anif trading as Local Minibus Travel](#) that an operator can potentially earn up to £500 per week

⁵⁵ [R \(on the application of Bus and Coach Association Ltd\) v Secretary of State for Transport \[2019\] EWHC 3319 \(Admin\)](#)

which the organisation is engaged and whether any of those services is being provided at least partly for a commercial purpose. If an undertaking engages in road passenger transport services, to any extent, for purposes which are not entirely non-commercial, then that undertaking's engagement in such services does not fall within the exception.

Second, the fact that an organisation is a registered charity or is otherwise constitutionally prevented from distributing profits does not of itself mean that it is engaged in road passenger transport services "exclusively for non-commercial purposes". That is because the purposes for which an organisation is engaging in a particular activity may not be identical to its overall objects as an organisation.

Third, the mere fact that an organisation is providing road passenger transport services in return for payment does not mean that it is providing such services for purposes which are, even partly, commercial. If that were so, the exception would be otiose, since an undertaking which receives no payment in return for its services is not within the scope of the EU Regulation to begin with and therefore has no need to rely on the exception. That is because, as already indicated, such an undertaking is not engaged in the occupation of road passenger transport operator, as defined in article 2(2) of the EU Regulation.

*Fourth, the fact that a community transport organisation covers its costs or even makes a profit from providing a particular service does not necessarily mean that its purposes in providing the service are partly commercial. However, if a purpose of providing a particular road passenger transport service is simply to generate revenue or profits which can then be used to fund or subsidise other road passenger transport services which are themselves being provided entirely for social or other non-commercial purposes, the organisation will not be able to rely on the exception. The same will be true if any of its road passenger transport services is being provided wholly or partly for the purpose of generating revenue or profits which can then be Judgment Approved by the court for handing down. *Bus & Coach Association Ltd v. Secretary of State for Transport* and ors used to fund activities outside the field of road passenger transport undertaken exclusively for charitable or other non-commercial purposes.*

Fifth, beyond this, the question whether an organisation is "engaged in road passenger transport services exclusively for non-commercial purposes" is one of fact, to be answered on the basis of an examination, in the round, of features of the organisation and its activities from which the purposes for which it engages in road passenger transport services can be ascertained or inferred. Relevant considerations include:

(1) the level of the payments received by the organisation for providing its road passenger transport services;

(2) whether or to what extent the organisation is providing services under contracts won in competitive procurement or tender exercises;

(3) the size and scale of its operations in the market for road passenger transport services; and

(4) the extent to which the organisation relies upon the support of unpaid volunteers to deliver its road passenger transport services or, in so far as it relies on paid staff, whether they are paid at levels comparable to the staff paid by commercial operators to perform similar roles.”

Short Distance Exemption for Section 19 & 22 Permits

- 52.** This exemption only applies to operators engaged exclusively in national transport operations and which have only a minor impact on the transport market because of the short distances involved.⁵⁶ The national market covers operators operating solely in the UK with vehicles carrying more than 8 passengers.
- 53.** The Transport Act 1985 (Amendment) Regulations 2019 recognises a specified distance as a ‘short distance’ for the purposes of Article 1(5)(b)⁵⁷, save for on an occasional basis⁵⁸ (e.g. day-trips), as including (but not limited to) a case where:
- each service operated by the body using a public service vehicle under a permit is operated within a radius of ten miles from a place specified by that body upon applying for the grant (or variation) of that permit; or
 - in respect of each service operated by the body using a public service vehicle under a permit, the distance from the first place where any passenger using that service is taken up to the last place where any passenger using that service is set down, is not more than ten miles, measured in a straight line.
- 54.** The above definition is non-exhaustive, each case will be assessed on its own merits. For example, an operator operating in less densely populated areas can provide supporting evidence with their application of extenuating circumstance that, in view of the nature of the area in which they operate, a ‘short distance’ is longer than the distance set in the legislation as the distance is, in the relevant local circumstances, so short that the impact on the transport market is small.
- 55.** Services run on an occasional basis are those which do not fall within the definition of ‘regular services’ and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier themselves. Such services may be operated with some degree of frequency without thereby ceasing to be on an occasional basis.
- 56.** ‘Regular services’⁵⁹ are services which provide for the carriage of passengers according to a specified frequency and along specified routes, whereby passengers may be taken up or set down at predetermined stopping points. Therefore, a service operated regularly to the same location and for the same purpose cannot be deemed occasional. An organisation can operate occasional services in addition to the regular services operated but by contrast these services cannot take up or set down new passengers during the journey.

⁵⁶ Worked examples are provided on the Department for Transport’s GOV.UK page: <https://www.gov.uk/government/publications/section-19-and-22-permits-not-for-profit-passenger-transport/eu-regulation-10712009-further-guidance-on-the-operation-of-the-short-distance-exemption-in-great-britain>

⁵⁷ Regulation (EC) No 1071/2009

⁵⁸ The 2019 Regs refer specifically to an occasional basis and not an occasional service

⁵⁹ Definition similar in scope to Article 3(3) of the Interbus Agreement

Applications without Merit

- 57.** If an application for a PSV licence is incomplete or an applicant fails to satisfy a traffic commissioner that the requirements are met, Regulation 6 of the Public Service Vehicles (Operators' Licences) Regulations 1995 allows a traffic commissioner to refuse the application upon a finding that the application or the applicant's conduct is frivolous or unreasonable.⁶⁰ The legal definition of frivolous was clarified by the Upper Tribunal⁶¹ by reference to the Court of Appeal when they said a claim could be frivolous where: "*examination of the facts demonstrates a high probability of failure*".⁶² The Tribunal went on to remind applicants that they are not entitled to draw any inferences from the period of time an application has been under consideration. The Upper Tribunal made clear that there is only so much the Office of the Traffic Commissioner can reasonably be expected to do to assist applicants.⁶³ As with all decisions, the reasoning (upon which a finding that the applicant has been frivolous or unreasonable) should be disclosed to enable them to consider whether that aspect is something they would wish to seek to challenge before the Upper Tribunal.⁶⁴
- 58.** Where an application proceeds to public inquiry, a traffic commissioner may make an order pursuant to Section 54 of the 1981 Act for the payment of costs by a party to an inquiry when that party has been responsible for frivolous, vexatious, improper or unreasonable conduct in relation to the inquiry. The maximum amount of costs that may be ordered to be paid under such an order is £125 in respect of each day or part of a day on which the inquiry is held or would have been held if it had not been cancelled or postponed at short notice due to the act or default of the party against whom the order for payment of costs is made⁶⁵.

⁶⁰ [2013/083 Ahmad Yusuf Kasam trading as Ahmad Kasam & Sons](#), [2020/030 Phantom Limo Hire Ltd](#). The Oxford Dictionary definition of *frivolous* refers to an adjective with the following meaning: "not having any serious purpose or value"; *unreasonable* is defined as: "not guided by or based on good sense; beyond the limits of acceptability or fairness"

⁶¹ [2016/055 Raymond Kyle Heard trading as Kyle's Executive Travel](#)

⁶² R v Special Adjudicator ex parte Paulino & Edoukou [1996] IAR 122

⁶³ See General Requirements under the Statutory Directions below

⁶⁴ See Statutory Guidance and Statutory Directions on Appeals. [2016/069 Chigwell Taxi Co. Ltd](#), [2018/036 Wajid Bashir trading as MB Travel](#)

⁶⁵ Regulation 8 of the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986

DIRECTIONS

59. 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 (as amended) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995. 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 in relation to the Public Service Vehicles.⁶⁶

Basis of Directions

60. In the interests of adopting a consistent approach to decision making the following checks have been identified to assist support staff, who must decide whether to refer a case to the traffic commissioner for consideration and the circumstances in which a traffic commissioner may wish to consider an application or existing licence at a public hearing.

61. 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 licences.⁶⁷

Main Occupation

62. The main occupation is to be determined by reference to the entity⁶⁸ which has applied for the licence; for instance:

- **Sole traders** – if the licence application is made by a single individual then the main occupation of that individual is 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 but wage or salary slips will also be useful. Self-employed applicants are expected to produce copies of tax returns, disclosing taxable income. Traffic commissioners may take into account both the income and the hours worked. Evidence may include payslips showing hours worked or current contracts of employment etc.
- **Partnerships** - the business of the partnership (rather than the individual partners) is considered and the evidence listed above should be requested. If a licence/application is in the name of a partnership then either 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 whilst sometimes the hours worked by individual partners and other factors are disclosed, the partnership itself must satisfy the main occupation rule, and not the individual partners.

⁶⁶ See Statutory Guidance and Statutory Directions Introduction and Delegation of Authority

⁶⁷ 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 to ensure that there is an operator's licence (such as on the publicly available database), is there a record of those checks and how regularly will the existence of the operator's licence be checked?

⁶⁸ See Statutory Guidance and Statutory Directions on Legal Entities

- **Limited Liability Partnership (LLP)** - although these applications are rare, similar considerations apply as to limited companies.
 - **Limited Companies** – if the licence application is made by a limited company then the main occupation of that company is considered and not the hours and income of the directors. Evidence which might be relied upon will include, for example, the memorandum of association, a declaration to the taxation authorities, or audited accounts. Accordingly the documentation setting up the limited company will need to be assessed against the relevant criterion.
- 63.** In order to demonstrate that the “main occupation” requirement is satisfied, operators or applicants for a restricted PSV licence may be asked to provide the following clear evidence⁶⁹ to show that an activity is their “main occupation”:
- self-employed applicants should supply the latest Self Assessment tax return which discloses taxable income or accounts and evidence of actual income from this source over the last 12 months;
 - applicants who are an employee should provide the latest P60 form, payslips for the past three months and details of the hours/days worked in the role;
 - main occupations which involve driving should provide details of the hours/days driven;
 - a business plan outlining: the purpose of the business, an estimate of income from the operation of Public Service Vehicles and who will be driving for the operation.⁷⁰
- 64.** The above might also be supported by:
- wage slips for the last 3 months;
 - audited accounts (in the case of limited companies);
 - bank statements for the last 3 months;
 - tax returns disclosing taxable income;
 - P60s for the last tax year.
- 65.** Similar evidence will also be required to show the level of income received and the time spent operating vehicles under the licence or in the case of an applicant, a detailed business plan outlining these proposed figures in order that they can be contrasted to the figures indicated by the Upper Tribunal. An applicant may be asked to explain the basis of any figures or calculations relied upon.
- 66.** 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. An operator is required to reaffirm that their main occupation is not the operation of public service vehicles when confirming they wish to continue to hold a licence every five years. 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.

⁶⁹ [2017/002 Mohammed Akbar trading as Choudhary Transport](#)

⁷⁰ [2017/033 Paul Andrew Nimmo trading as P&N Travel](#)

Types of Vehicle

67. As per section 1 of the 1981 Act, 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 therefore arise when considering the operation of limousines as small PSVs. A 400mm benchmark has previously been employed for the size of a seat but each case must now be considered on its merits.
68. Stretch limousines with 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.
69. The Individual Vehicle Approval (IVA) scheme should 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 DVSA 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 DVSA. However, a number of limousines are currently operating with registration details which do not match the actual position.
70. Responsible applicants are keen to ensure that they comply with the requirements of the licensing regime. 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. 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.

Where an applicant does seek to operate limousines and/or novelty vehicles under a PSV operator's licence, further enquiries may be required.

71. 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 vehicle (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 vehicle (i.e. 9 to 16 passenger seat) where the following applies:
- the driver carrying passengers for hire and reward is required to have a vocational (PCV or passenger carrying vehicle) driving licence;
 - the vehicle requires a tachograph to be fitted and used;
 - a different category of MOT certificate applies;
 - the main occupation rule applies for restricted licences;
 - a Certificate of Initial Fitness (COIF) is required.

Limousines and novelty vehicles

72. The Upper Tribunal has considered 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 limousines.⁷¹ It is not necessary for traffic commissioners to consider the wider public policy when reaching individual decisions. The current legislation and case law means that some small vehicles can, in limited 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. It will be for an applicant to satisfy a traffic commissioner on the balance of probabilities that all the requirements are met. A substantial number of operators of limousines and/or novelty vehicles have, in applying for a PSV operator's licence, acted in good faith, but some seek a licence in order to circumvent the requirements of a private hire licence or to avoid an appeal to the local magistrates' or Sheriff Court.

73. The majority of applications involving limousines and novelty vehicles are for restricted licences, so staff should pay particular regard to making recommendations to the traffic commissioner will also need to be aware of the provisions of section 13.

Small Vehicles – Separate Fares

74. For a vehicle to be legitimately licensed as a PSV solely, it is not sufficient for just separate fares to be charged for that vehicle; other conditions must also be met. 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 conditions is met:

*Conditions Affecting Status or Classification*⁷²

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, was 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.

⁷¹ 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>

⁷² Schedule 1 of the Public Passenger Vehicles Act 1981

- 75.** An operator relying on qualification 2 should make arrangements so that:
- 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.
- 76.** If neither condition is met, then the vehicle is unlikely to qualify as a PSV in relation to the journey in question and should 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 qualification is met.

“Dry Hiring”

- 77.** 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. In an attempt to avoid operator licensing requirements, some vehicle keepers will ‘dry hire’ limousines, which involves leasing out a vehicle without a driver, a process which requires the hirer to pay for the use of a driver in addition to the vehicle hire.
- 78.** Some businesses might portray ‘dry hire’ arrangements as a way to circumvent the operator licensing requirements. Customers should be aware that this can 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), it is likely to result in a requirement for the hire company to hold a PSV operator’s licence.⁷³
- 79.** In considering applications from operators, staff acting on behalf of the traffic commissioners will anticipate the following 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 a PCV driver 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, this will be an important indicator that it might not be a genuine self drive hire arrangement.
 - Is there 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”.

⁷³ [2009/527 Lisa Rafferty trading as 1st Class Limos](#)

- 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 hire” arrangement.
- Are there any other restrictions on the driver such as 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

- 80.** 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).
- 81.** The 15-mile rule is relevant only when deciding whether a service is a local service.

Existing Holders of Restricted PSV Licences using Small Vehicles

- 82.** Where it proves necessary to consider an existing licence (or application), in addition to checks regarding 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.⁷⁴

Permit Operations

- 83.** Permits are issued either by a traffic commissioner or another designated body.⁷⁵ The Secretary of State designates those bodies, which can grant standard section 19 permits. These designated bodies can then issue permits to those concerned with: education, religion, social welfare, recreation or other activities of benefit to the community. These designated bodies can then issue permits to itself or its members. Only a traffic commissioner can grant a large bus permit or a community bus permit. All permits expire after five years.⁷⁶
- 84.** On application and throughout the life of the permit the operator must continue to meet one of the exemptions⁷⁷, the not-for-profit and other criteria set out in the 1985 Act. Sections 19(6) and 22(3) require an applicant to satisfy the traffic

⁷⁴ The lead traffic commissioner wrote in March 2010 to all operators with historic restricted PSV operator’s licence explaining the expectations on them

⁷⁵ Designation bodies are listed in the Section 19 Minibus (Designated Bodies) Order 1987 (SI 1987 No.1229) as amended by SI 1995 No.1540 and 1997 No.535

⁷⁶ Permits issued after April 2009 expire after a maximum of five years

⁷⁷ Regulation (EC) No 1071/2009 as detailed above

commissioner that there will be adequate facilities or arrangements for maintaining vehicles used under the permit in a fit and serviceable condition.⁷⁸ A traffic commissioner is likely to be satisfied by a commitment from the applicant that vehicles will be maintained in accordance with DVSA's Guide to Maintaining Roadworthiness.⁷⁹ A traffic commissioner expects permit holders to cooperate with all reasonable requests from DVSA and other enforcement authorities. For example, the permit holder might be asked to produce evidence which shows they continue to be an exempt body.

85. Permit holders are reminded that whilst section 12(1) of the 1981 Act does not apply to the use of any vehicle under either a section 19 or 22 permit, this does not remove other obligations arising under other road transport legislation. For example, the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007/605 applies to require a driving licence category D1, D1+E, D or D+E, or a driving licence recognised as equivalent. There is an exemption under Regulation 3 where the vehicle is being used for the non-commercial carriage of passengers for personal use, in other circumstances the driver CPC requirements apply and drivers must be aged 21 or over. Regulation (EC) No 561/2006⁸⁰ requires vehicles to be fitted with tachographs and for drivers' hours to be met but does not apply where the vehicle is being used on a regular service where the route does not exceed 50 kms, or where the vehicle is adapted to carry nine to sixteen passengers and is used for the non-commercial carriage of passengers. A traffic commissioner will expect a permit holder to comply with all legal requirements and is likely to seek confirmation from an applicant by way of conditions that they will:

- continue to meet the not-for-profit and social welfare requirements;
- keep records which demonstrate they continue to be an exempt body within the meaning of Regulation (EC) No 1071/2009 and will make those records available on request to a traffic commissioner or any enforcement body;
- ensure that only vehicles over nine passenger seats will be used under the permits;
- ensure adequate maintenance and facilities so that vehicles are maintained as per the DVSA Guide to Maintaining Roadworthiness;
- that vehicles receive the correct annual test for its class;
- require their drivers to hold the correct entitlement as required by the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007/605;
- comply with driver's hours rules and specifically Regulation (EC) No 561/2006;
- keep records which demonstrate they continue to meet the short distance exemption by reference to the relevant short distance or local circumstances, which demonstrate the impact on the transport market is small, as communicated at the time of application.

86. A traffic commissioner can vary or revoke a permit they issued, or one issued by another designated body after they have been consulted. The legislation does not provide a specific process for the revocation of section 19 or 22 permits. The

⁷⁸ To the same standard as a licensed Public Service Vehicle operator licence holder

⁷⁹ <https://www.gov.uk/government/publications/guide-to-maintaining-roadworthiness>

⁸⁰ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85

Senior Traffic Commissioner recognises the argument that the removal of a permit may impact on the rights of the holder. It is therefore important to ensure that such processes are fair. Traffic commissioners are equipped to diligently inquire into the circumstances of a case. The Senior Traffic has therefore directed that traffic commissioners and their staff adopt a similar approach to the consideration of existing operator's licences as summarised in Annex 1⁸¹, which allows for any evidence to be disclosed in advance and for a party to test that evidence.

⁸¹ See below Guidance and Statutory Guidance and Directions on Case Management

ANNEX 1 - DETERMINATION OF EXISTING SECTION 19 & 22 PERMITS

1. The responsibility for making a determination is vested in the presiding traffic commissioner considering that particular permit. That traffic commissioner will act as a single person appellate tribunal and exercise any discretion with regard to the principle of proportionality as enshrined in British, European and human rights law. The independence and impartiality of traffic commissioners is guaranteed as part of the obligations on the State. The essential requirement is one of fairness but there should be no doubt as to the issues being raised.
2. In exercising this appellate function traffic commissioners must have regard to the decisions of the higher courts and the principle of proportionality in deciding what is commensurate with the circumstances of each individual case. The Senior Traffic Commissioner has extracted the following principles and examples from existing legislation and case law to be used as a general approach.
3. In managing a case it may be useful for a traffic commissioner to make directions for the parties to follow so that the case is in a state to be heard and that parties are not disadvantaged.⁸² It is conceivable that a party may make a request for copies of specified documents relied upon by the decision-maker. Where a party obtains relevant documentation there is an expectation that it should be supplied to the presiding commissioner. Legally qualified representatives act under professional duties to assist the tribunal.
4. The legislation does not require a hearing and the grounds for revocation are limited. Drawing on the experience of traffic commissioners and the Upper Tribunal case law on impounding cases, if the issues or facts are straightforward then the traffic commissioner may proceed to direct a propose to revoke letter is issued. Any such letter must disclose all relevant evidence relied upon in making the decision and set out the party's right to request a hearing.
5. If the permit holder requests a hearing, then the traffic commissioner dealing with the matter will take that request into account when considering whether to convene one. The traffic commissioner must decide whether a decision can be reached by considering the written representations or whether fairness requires that a hearing be held.

Hearings

6. Where a traffic commissioner decides to convene a hearing the Office of the Traffic Commissioner should give any party reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any change to the time and place of the hearing. That will normally involve 14 days' notice, but a shorter period may be given either with the parties' consent, or in urgent or exceptional cases.

⁸² See Statutory Guidance and Statutory Directions on Case Management for general assistance

7. In the interests of justice any hearing will usually be open to the public unless the case involves evidence where the traffic commissioner is of the opinion that the interests of justice are best served by all or part of the proceedings being heard in private.
8. The traffic commissioner is entitled to expect that the permit holder will attend a hearing. Where a company or other corporate body is called to a hearing a director is expected to attend. If the traffic commissioner cannot be satisfied that the person before them has the requisite authority to speak on its behalf then the traffic commissioner is entitled to ask for authority to be produced or to find that the company is not present. The company or other corporate body should therefore seek permission from the traffic commissioner to substitute a director before any hearing.
9. Any person entitled or permitted to appear may do so on his or her own behalf or can be represented by counsel (barrister) and/or a solicitor. There is no provision for free representation. Other potential representatives such as transport consultants can only appear with the permission of the traffic commissioner.
10. If a party fails to attend a hearing, the traffic commissioner may proceed with the hearing if satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and the traffic commissioner considers that it is in the interests of justice to proceed with the hearing.

Determination of Permit

11. Having considered all the evidence the traffic commissioner will decide on the case and notify the permit holder in writing⁸³. If the permit is revoked the decision of the traffic commissioner must specify the ground/s. The Office of the Traffic Commissioner must ensure that the permit holder is informed of the traffic commissioner's decision within the given timetable.
12. The letter communicating the determination must clearly set out the date upon which any permit may cease to have effect.

Appeals

13. If the relevant traffic commissioner decides to revoke a permit that decision can only be challenged by way of judicial review. In England and Wales an application is made to the Administrative Court, one of the specialist Divisions of the High Court. In Scotland a petition is raised in the Outer House of the Court of Session. Judicial Review is the process by which these higher courts review acts done by public authorities or a review of a court or a tribunal decision. The review will concentrate on any procedural issues and whether the decision was correct according to the law⁸⁴.

⁸³ See Statutory Guidance and Statutory Directions on Format of Decisions for decision timetables

⁸⁴ <https://www.gov.uk/government/publications/form-n461-judicial-review-claim-form-administrative-court> or <https://www.gov.uk/government/publications/administrative-court-judicial-review-guide>