



**Community  
Transport  
Association**

**Response to the**

**Department for Transport  
Buses & Taxis Division**

**Private Hire Vehicles and the Road Safety Act  
2006**

**Consultation on a Guidance Note**

Closing Date: 28 September 2007

The Community Transport Association

The CTA is a rapidly growing national charity giving voice and providing leadership, learning and enterprise support to member organisations, which are delivering innovative transport solutions to achieve social change. CTA UK promotes excellence through providing training, publications, advice and information on voluntary, accessible and community transport.

Voluntary and community transport exists to meet the travel and social needs of people to whom these would otherwise be denied, providing accessible and affordable transport to achieve social inclusion.

The CTA is the representative body for third sector passenger transport operators in the UK. CTA Member organisations are involved in the provision of transport, especially accessible services.

The CTA is the UK's largest provider of training, advice and information on accessible, voluntary and community transport provision. The CTA is part - funded by the Department for Transport, the Scottish Government, the Welsh Assembly Government and the Department for Regional Development (Northern Ireland).

## **CTA's Response to Consultation**

The CTA welcomes the opportunity to contribute to the Consultation on a Guidance Note on Private Hire Vehicles and The Road Safety Act 2006. After reading through the consultation we have decided to respond on those specific areas that we believe would have a marked effect on our sector.

## **Contact Details**

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**For reference the text of the draft document issued by the Department for Transport – Buses and Taxis Division is included in CTA’s response. The original text is set against a grey background.**

[DRAFT FOR CONSULTATION - 1 AUGUST 2007]

## **Repeal of the PHV Contract Exemption**

A note from the Department for Transport

### **Introduction**

1. This note relates to private hire vehicles (PHVs) in England and Wales only, as PHV licensing is devolved in Scotland and Northern Ireland.

2. It responds to the main questions that have been raised with the Department by local licensing authorities, and others, concerning two forthcoming changes to PHV licensing legislation provided for in the Road Safety Act 2006 (“the 2006 Act”):-

- Section 53 of the 2006 Act repeals section 75(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 (which is commonly known as "the contract exemption", and currently exempts from PHV licensing requirements vehicles engaged on contracts lasting not less than seven days). The provision affects England and Wales outside London and, as announced in our letter of 28 February 2007 (copy attached), is due to come into force in January 2008.

- Section 54 of the 2006 Act amends the definition of "private hire vehicle" in the Private Hire Vehicles (London) Act 1998 - which has much the same end result in terms of requiring vehicles in London engaged on contracts (to provide services to specific groups rather than the public at large) to be licensed. As also announced in our February letter, this is due to come into force by the end of March 2008 at the latest.

3. Whilst this note is written largely in terms of the impact that the repeal of the contract exemption will have outside London, the points it makes are also generally relevant to what will be the position when section 54 of the 2006 Act comes into force within London.

### **The Department's view, not legal advice**

4. It is not the role of the Department to interpret the law or to provide legal advice. Nothing in this note should be regarded as a definitive statement of what the law means and it should not be relied upon as legal advice. It is a matter for local licensing authorities to make decisions on what the law requires in particular cases, seeking their own legal advice when necessary. Organisations that may be affected

by the changes described in paragraph 2 should also consider seeking their own independent legal advice. Ultimately it is for the Courts to provide a definitive interpretation of the law.

5. However the Department is able to offer a view on the questions that have been raised and what follows covers each of these in turn.

**The CTA has no comment to make on the above paragraphs**

### **What is a private hire vehicle?**

6. A PHV is defined in legislation as “a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers”.

7. PHVs are often referred to as "minicabs" but the definition brings into the PHV licensing regime a wider range of vehicles than just the conventional minicab.

8. The repeal of the contract exemption will not change this definition. All that will happen when the contract exemption is repealed is that vehicles outside London which fall within the definition of a PHV in the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”) and which have not been licensed because of relying on the contract exemption will be brought within the PHV licensing regime.

9. A further general point to note is that PHV licensing is designed to cover exclusive hirings, where the vehicle is hired as a whole. It is therefore necessary to consider the manner in which the vehicle is provided. If passengers pay individual fares as part of the contractual arrangements PHV licensing is unlikely to apply. Where a vehicle is not being exclusively hired it may be that the vehicle is being used to carry passengers for hire or reward at separate fares, which would make the Public Service Vehicle (PSV i.e. bus) licensing regime relevant. It would then also be relevant whether the vehicle is being used "in the course of a business of carrying passengers" (for the purposes of the definition of a PSV in the Public Passenger Vehicles Act 1981).

**The CTA has no comment to make on the above paragraph**

### **What did the contract exemption cover?**

10. At present (that is before section 53 of the 2006 Act comes into force), by virtue of section 75(1)(b) of the 1976 Act a vehicle in England and Wales outside London which would otherwise need to be licensed as a PHV is exempt from PHV licensing requirements if it is used for contracts lasting not less than seven days. Similarly, the operator and driver of that vehicle are exempt from PHV licensing requirements.

11. It is important, in the Department's view, to note that the contract exemption is quite narrow. This is because case law has established that for section 75(1)(b) of the 1976 Act to apply the following conditions must all be satisfied:

- (i) the vehicle must be hired under a contract for use of a specific, identified vehicle, not merely a contract for the provision of a service;
- (ii) the contract must be for a period of at least seven days;
- (iii) a notice period for termination of the contract must be specified in the contract.

12. Licensing authorities, and transport providers considering whether they will be affected by the repeal of the exemption, will need to consider whether the vehicles in question are in fact currently within the scope of the exemption. Any vehicle which satisfies the definition of a PHV and has been relying on the contract exemption in error should have been licensed as a PHV already anyway.

**The CTA has no comment to make on the above paragraph**

### **Will I have to be licensed in every area in which I wish to undertake a hiring?**

13. This is a question that has been asked by some transport providers who will be affected by the repeal of the contract exemption. The law on "cross border" hirings is complex and it may be appropriate for those involved to seek their own advice in particular cases.

14. The legislation governing PHVs in England and Wales is couched in terms of PHVs being regulated according to the "controlled district" in which they are operated. A controlled district comprises the area of a local district or borough council or unitary authority.

15. The Department takes the view that a licensed PHV can undertake a hiring which goes beyond the boundary of, or is wholly outside, its controlled district. However this is subject to a requirement that the vehicle and the driver are both licensed by the same local authority that granted a licence to the operator who arranged the hiring, and also that the operator has a licence for the area in which he intends to operate.

16. We would emphasise again that our view should not be regarded as a substitute for independent legal advice, and that much may depend upon the facts of a particular case.

**The CTA has no comment to make on the above paragraph**

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

17. A number of providers of "ambulance" services have asked if the services they provide will come within the PHV licensing regime following the repeal of the contract exemption. A wide range of vehicles and operations appear to come under the broad "ambulance" heading. 'Ambulances' / 'ambulance cars' provided for hire throughout the country range from vehicles which are dedicated to providing specialist medical care with relevant equipment and trained staff to ordinary cars which transport passengers with a degree of infirmity in a more routine manner. What follows sets out the Department's view of the general position; nothing said here is intended to be taken as definitive in a particular case.

18. Bearing in what is said above (paragraph 11) on the narrowness of the contract exemption, the Department is doubtful that many providers of an ambulance service currently rely on the contract exemption in order to be able to provide their service outside the PHV licensing regime. In particular, we understand that many private ambulances/ambulance cars are provided under contracts for the provision of ambulance services, rather than for use of a specific vehicle, and therefore cannot rely on the exemption.

19. That of course still leaves the basic question of whether a particular vehicle comes within the definition of a PHV quoted above. In considering this question the Department believes that there is a significant difference between genuine, specialist ambulances (for example used for emergency services / services which require the presence of a health professional / services only able to carry stretcher cases rather than passengers in more normal seats) and vehicles of a less specialised nature.

20. It appears to the Department that a court would be unlikely to consider that Parliament intended the former (ie: genuine, specialist ambulances) to be within the PHV definition. On the other hand, we expect that less specialised vehicles could well be regarded as being within the definition of a PHV in certain circumstances. Much may depend on the individual vehicle in question and the purpose for which it is hired.

21. In addition to considering whether the vehicle in question has a specialist purpose, it will obviously be important to consider whether the other elements of the PHV definition are met.

22. The Department's view is that whether the service in question is provided by the National Health Service or a private contractor is not a relevant consideration. As mentioned above, a broad range of vehicles may come under the "ambulance" heading, and our view is that those which are less specialist in nature and, for example, are being used for simple transport (as opposed to medical) purposes, would be more likely to require PHV licences.

**The CTA has no comment to make on the above paragraph**

## **How will services provided by volunteers be affected (including voluntary car schemes)?**

23. The Department's view is that the phrase "for hire" in the definition of a PHV implies that there must be an element of commercial benefit to an arrangement for PHV licensing requirements to apply. As a consequence of this we consider that services provided by genuine volunteers who receive no recompense or receive only enough to cover their actual expenses are unlikely to satisfy the definition of a PHV. Therefore in our view such services would not have needed to rely on the contract exemption to avoid PHV licensing requirements and as such its repeal will not affect them in any way.

24. The particular point has been raised whether voluntary car schemes will be affected by the repeal of the contract exemption. It is our understanding that many such schemes involve the payment of separate fares and as such fall outside the PHV licensing regime. The repeal of the contract exemption will not change this.

**The CTA welcomes the clarification that volunteers and volunteer drivers for car schemes continue to fall outside the PHV licensing regime. But we wish to ensure that the reasons for so doing are legally, sufficiently robust.**

**Paragraph 24 - The point about 'separate fares' is relevant as this is the legal differentiation between Taxi and PHV licensing on the one hand and PSV operation on the other. However, it is important to ensure that vehicles used in a community car scheme cannot be caught by either set of rules.**

**The Public Passenger Vehicle Act 1981, which is the defining document says that a PSV is "a motor vehicle .. which .. is used for the carrying of passengers for hire and reward at separate fares in the course of a business of carrying passengers". It goes on in Section 1(4) to introduce the "car sharing" concept and states that such a vehicle would not be treated as being involved in a business of carrying passengers if the total fares do not exceed the running costs. This clearly takes community car schemes outside the PSV legislation but could also be concluding that such a vehicle is simply "not a PSV".**

**The definition of a PHV is written with an all embracing tone - "a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers". This could give the impression that a car scheme vehicle should be a PHV.**

**The Department's draft guidance does not solely rely on the 'separate fares' condition to prevent the community car scheme vehicle from being classed as a PHV. The CTA would support this position.**

**However, the CTA believed that Section 79 of the Public Passenger Vehicles Act 1981 was intended to specifically exclude community car scheme vehicles**

by stating that they are outside the scope of Local Government (Miscellaneous Provisions) Act 1976 because the 1976 Act should treat them as PSV vehicles (i.e. not PHV).

The CTA considers that a more robust exemption from PHV legislation is by referring to Section 79 of the Public Passenger Vehicles Act 1981 as modified by the Section 21(10) of Schedule 7 of the Transport Act 1985, which was brought into force by the Transport Act 1985 (Commencement No. 6) Order 1986.

Suggested revised text for paragraph 24 is given below:

*'The particular point has been raised whether voluntary car schemes will be affected by the repeal of the contract exemption. It is our understanding that the majority of such schemes **operate under 'car sharing rules', which involve the payment of separate fares. Car sharing rules state that as long as the fare or aggregate of the fares paid in respect of the journey does not exceed the running costs of the vehicle for the journey; and the arrangements for the payment of fares by the passenger or passengers so carried were made before the journey began, the vehicle's operation will fall outside both the PSV and PHV licensing regime. The repeal of the contract exemption will not change this.'***

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

25. Some stretched limousines may fall within the definition of PHV and may have been relying on the contract exemption. However, the points made in paragraph 11 are of course relevant. In particular, it should be noted that the contract exemption cannot be correctly relied on by services which involve a series of one-off hirings lasting a day or perhaps just an evening - as seems to be the case for many services provided by stretched limousines.

**The CTA has no comment to make on the above paragraph**

### **Childminders**

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

27. The Department's view is that it is possible that a childminder who uses his or her own car to drive a child to and from school might fall within the PHV definition. However we consider it unlikely that a court would consider that Parliament intended that the majority of the many thousands of childminders across England and Wales should have to obtain PHV licences in order to be able to transport children in their care. As such, we would expect the courts to seek to interpret the definition of a PHV in such a way that most typical childminder arrangements do not fall within its scope.

28. In our view the following further considerations are also likely to be relevant: -

- Whether the childminder actually has the transport of the child in his or her care in the motor vehicle as a requirement of the contract, (ie whether the child has a right to be carried in the childminder's vehicle in return for the payment provided, or whether other modes of transport are an option).
- Whether the vehicle is hired as a whole. Childminders may be caring for different children under different contracts at the same time. These children may be simultaneously carried in the vehicle for the same journeys (e.g. where the children attend the same school) or for overlapping journeys (e.g. if children are dropped off or collected in turn from different schools). Where this is the situation, the vehicle as a whole has not been exclusively hired by any particular parent.
- Whether separate fares are being charged; if they are, the vehicle is not a PHV.

**The CTA has regular contact with the National Childminding Association and with childminders and nurseries seeking advice on the provision of transport and licensing issues.**

**The CTA welcomes the Department's view that a 'light touch' is required with regard to whether or not the provision of transport in vehicles with a maximum of 8 passenger seats falls within PHV provision. The CTA agrees with the Department that it should not.**

**However, the situation is more complicated when vehicles with 9 or more passenger seats (minibuses) are used, as case law suggests that 'hire and reward' exists where transport is provided as part of a childminder's or nursery's services and that for commercially run businesses this will require operating under the PSV regime. A Restricted 'O' licence would suffice in the majority of cases and allow for the operation of up to two minibuses.**

#### **Distribution of this note** *[when published as a final version]*

29. This note is being sent to taxi/PHV licensing authorities and other relevant organisations. It has also been placed on the Department's website.

Buses and Taxis Division  
Department for Transport