

EXPLANATORY MEMORANDUM TO

THE LOCAL SERVICES (OPERATION BY LICENSED HIRE CARS) REGULATIONS 2009

2009 No. 2863

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations provide the detailed rules under which private hire vehicles (PHVs) and private hire cars (PHCs) – commonly known as “minicabs” - can provide local bus services. The term “private hire vehicle” is used in the legislation which applies in England and Wales and “private hire car” is used in the legislation which applies in Scotland; this document will use PHV generically to encompass both types of vehicle.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Since 1986, it has been possible for the holder of a hackney carriage (taxi) vehicle licence to apply to the Traffic Commissioner for a special Public Service Vehicle (PSV / bus) operator’s licence. The holder of a special licence can then register a route with the Traffic Commissioner to operate a local bus service using his taxi. In 1986, three sets of Regulations were made under section 12 of the Transport Act 1985 which set out the detailed rules for taxis operating to provide a local bus service. These vehicles are commonly referred to as "taxibuses".

4.2 The rules which apply to taxibuses in England and Wales outside London are contained in the Local Services (Operation by Taxis) Regulations 1986 (SI 1986/567) (“the Taxibus Regulations”). The rules which apply to taxibuses in London are contained in the Local Services (Operation by Taxis) (London) Regulations 1986 (SI 1986/566). The rules which apply to taxibuses in Scotland are The Local Services (Operation by Taxis)(Scotland) Regulations 1986 (SI 1986/1239).

4.3 Section 53 of the Local Transport Act 2008 (“the 2008 Act”) amends section 12 of the 1985 Act so that the holder of a PHV licence can apply to the Traffic Commissioner for a special PSV operator’s licence. The holder of a special PSV operator’s licence can then register a route with the Traffic Commissioner and use his PHV to provide a local bus service (for the purposes of this document, a vehicle operating in this manner is referred to as a PHV-bus).

4.4 The amended section 12 of the 1985 Act provides for regulation making powers pertaining to PHV-buses, which are the equivalent to the existing regulation making powers for taxibuses. These Regulations set out the detailed rules that apply, and those aspects of the PHV legislation which do not apply, when a PHV owner is using his vehicle to provide a local bus service.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

5.2 Regulation 4 applies only to PHVs which are licensed in England and Wales under the Local Government (Miscellaneous Provisions) Act 1976. Regulation 5 applies only to PHCs which are licensed in Scotland under the Civic Government (Scotland) Act 1982.

5.3 This instrument does not apply to PHVs licensed in London. The 2008 Act amends section 12 of the 1985 Act with the effect that PHV-buses in London are treated differently from taxibuses in London. Essentially, Transport for London (TfL) will be able to decide whether PHVs licensed in London should be allowed to provide local bus services. Accordingly, TfL would be responsible for making any associated Regulations.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Section 53 of the 2008 Act amends section 12 of the 1985 Act so that the holder of a PHV vehicle licence issued by a local authority outside London can provide a local bus service using his PHV, if he obtains a special PSV operator's licence. The intention is to make additional provision for meeting local transport needs. This flexibility means that a PHV licence holder can provide a conventional PHV service at some times of the day and a PHV-bus service at other times, for example for the morning and afternoon school runs. It does not mean that the PHV becomes a bus permanently and can only undertake bus work; it simply means that the licence holder can choose when to operate as a PHV and when to operate as a bus. The PHV licence holder must apply to the Traffic Commissioner for a special PSV operator's licence in order to provide a PHV-bus service and he must register a service in the same way as conventional bus operators. These Regulations are solely concerned with the use of a PHV to provide a PHV-bus service.

7.2 The ability to provide a local bus service means that the PHV licence holder will be operating in a different way to conventional PHV work. The main difference is that the passengers will be paying separate fares rather than a single charge for hiring the vehicle as a whole. Consequently, it is necessary for these Regulations to do two main things. First, they must ensure that passengers know that when a PHV-bus turns up at a bus-stop it is acting as a bus and not as a vehicle which is only available for exclusive and pre-booked hiring. Second, they must enable PHV owners and drivers to operate PHV-bus services without offending against the rules which apply in the case of conventional PHV operation.

7.3 In order that passengers can recognise that a PHV is being used to provide a bus service rather than an exclusive minicab service, the Regulations require the display of a "BUS" sign on the front of the vehicle. This requirement is also included in the existing Taxibus Regulations. It is also important that passengers can easily understand the fares which are charged for any given journey on a PHV-bus. Accordingly, the Regulations require the display – or carrying by the driver – of a fare table. The existing Taxibus Regulations include a requirement to display a fare table, but the option of allowing the driver of a PHV-bus to carry the fare table and show it on request is included in these Regulations. The Regulations also require the PHV driver to carry in his vehicle, when it is functioning as a PHV-bus, a copy of the special PSV operator's licence which entitles him to pick up passengers along the route and which has been registered with the Traffic Commissioner. This will enable a local authority enforcement officer to ascertain whether the driver is, indeed, entitled to pick up passengers under a bus-type arrangement. Further, the Regulations also oblige the driver of a PHV-bus to carry a copy of the timetable. These two requirements constitute a departure from the Taxibus Regulations and are included to aid with

enforcement. The Traffic Commissioner will be responsible for ensuring that the PHV-bus service is operated in accordance with the service registration.

7.4 The Regulations also make provision to relieve PHV drivers and owners from some of the rules which apply to them when providing a conventional PHV service. The most obvious effect in England and Wales is that the link between the operator and the driver will be broken when a vehicle is being used as a PHV-bus. At present, in England and Wales, a lawful PHV hiring must be arranged through a licensed PHV operator. However, under the PHV-bus regime the PHV operator will have no role to play in the hiring arrangements; the vehicle will simply pull up at a bus-stop and passengers will be able to board without having made any prior arrangement.

7.5 The legislation which applies to PHVs whilst they are being operated in a conventional way is referred to as "the hire car code". The Regulations list the elements of the hire car code that will apply to PHV-buses and modify those elements where necessary so that a PHV licence holder does not offend against the hire car code whilst operating a PHV-bus service. In relation to England and Wales, the principal obligation from which PHV drivers are exempted when providing a PHV-bus service is the requirement to only undertake hirings which have been arranged through a licensed operator. The whole point of the new provision is to enable PHV-buses to pick up passengers at a bus-stop. Accordingly, the Regulations identify the specific elements of the hire car code which relate to the role of the PHV operator and provide that these are exempted when the PHV is being used as a PHV-bus.

7.6 In addition to readily identifiable elements of the hire car code in primary legislation, there may well be conditions attached to a PHV vehicle licence which are incompatible with the operation of a PHV-bus service. In relation to England and Wales, the Regulations specifically modify any PHV licence conditions so that PHV-bus operators must extinguish any illuminated signs, and cover up any non-illuminated signs, which indicate that the vehicle is available for exclusive hire. The Taxibus Regulations have a corresponding provision.

7.7 In relation to Scotland, the Regulations exempt the operator of a PHV-bus from complying with any conditions which impose a requirement to accept a hiring, to display signage, or to do anything else which would be incompatible with the operation of a local bus service.

7.8 As with the Taxibus Regulations, enforcement arrangements are not addressed specifically in these Regulations, rather they are dealt with in the Public Passenger Vehicles Act 1981 ("the 1981 Act"). Section 67 of the 1981 Act makes it an offence to act in contravention of, or fail to comply with, any regulations made by the Secretary of State under that Act where such a contravention or failure to comply is not made an offence under any other provision of that Act. By virtue of section 127 of the 1985 Act, section 67 of the 1981 Act has effect as if Parts I and II of the 1985 Act were contained in the 1981 Act. Accordingly, for the purposes of the offence in section 67 of the 1981 Act, these Regulations are to be treated as if they were made under the 1981 Act. This in turn means that any contravention of, or failure to comply with, these Regulations can be enforced directly through section 67 of the 1981 Act.

- ***Consolidation***

7.9 The Regulations do not consolidate existing legislation.

8. Consultation outcome

8.1 The Department sought views on the principle of including the ability to use PHVs to run local bus services when it consulted on the draft Local Transport Bill in 2007. The responses were generally positive. The Department was persuaded by responses which suggested that London should be treated differently because of different considerations (including the fact that licensing of PHVs was much more recent than in the rest of England, Wales and Scotland). Consequently the Bill was introduced into Parliament with a provision which allowed Transport for London to

trigger the PHV-bus provisions in London if they so wished, and to make the necessary Regulations.

8.2. The Department consulted specifically on a draft of the Regulations from December 2008 to March 2009. A total of 34 responses were received. The following three changes were made as a result of comments from stakeholders:

- Regulation 5 has been amended in order to give PHV-bus operators in Scotland greater certainty about the extent to which they can dispense with licence conditions;
- Regulation 6(3) has been amended to give PHV-bus drivers the option of carrying a copy of the fare table (rather than having to display it in the vehicle as had been included in the draft version of the Regulations); and
- Regulation 6(4) has been amended to include an obligation on the driver of a PHV-bus to carry a copy of the timetable for the service which he is, at that time, fulfilling.

8.3 The main interest in this policy has stemmed from the private hire trade, who will be the people able to take advantage of this new flexibility. Overall, the change represents a new flexibility for the private hire trade which should benefit customers, particularly in rural areas.

9. Guidance

9.1 The Department will prepare a publicity leaflet specifically to assist PHV owners who might wish to take up this new flexibility, but who have had no involvement in PSV matters. This leaflet will point to established sources of guidance about PSV operators' licences and registering bus routes (for example those on the VOSA web-site).

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. The Regulations will only apply to those PHV owners who choose to take up the new ability to run a bus service. Moreover, the requirements in the Regulations are not onerous; they will involve an estimated initial outlay in the region of £171 to take advantage of this new flexibility.

10.2 The impact on the public sector is negligible. The Traffic Commissioner will be responsible for granting the special PSV operator's licence and administering the route registration, both of which involve a fee.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business. It allows a single PHV owner to apply for a special PSV operator's licence and run a bus route where he sees a demand for it.

11.2 To minimise the impact on firms employing up to 20 people, the approach taken is to minimise the requirements for a PHV-bus commensurate with ensuring that passengers can recognise that a PHV is acting as a bus when it pulls up at a bus-stop and can ascertain readily what fare they must pay.

12. Monitoring & review

12.1 As part of the wider post-legislative scrutiny of the Local Transport Act 2008, in accordance with "Post-Legislative Scrutiny - The Government's Approach" (March 2008, CM 7320).

13. Contact

Paul Lawry at the Department for Transport Tel: 020 7944 0586 or email: paul.lawry@dft.gsi.gov.uk who can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DEPARTMENT FOR TRANSPORT	Title: Impact Assessment of Regulations relating to The Local Services (Operation by Licensed Hire Cars) Regulations 2009	
Stage: Final	Version: Final	Date: October 2009
Related Publications: Local Transport Act 2008		

Available to view or download at:

<http://www.dft.gov.uk/pgr/localtransportbill>

Contact for enquiries: Paul.Lawry@dft.gsi.gov.uk

Telephone: 0207 944 0586

What is the problem under consideration? Why is government intervention necessary?

The Local Transport Act 2008 allows private hire vehicles (PHVs, or private hire cars as they are termed in Scotland) to provide local bus services in the way that licensed taxis have been able to do since 1986. Government action, in the form of these Regulations, is necessary to set down the detailed rules which will apply when they are doing so.

What are the policy objectives and the intended effects?

The underlying objective behind the relevant provisions of the Act, and these Regulations, is to improve public transport provision by broadening the range of bus services available particularly in areas which may currently be poorly served. More specifically, the draft Regulations do two main things: (i) they help to make passengers aware that, at the time, the vehicle is acting as a bus; and (ii) they amend, where necessary, the statutory rules governing conventional PHV operation so that, when acting as a bus, the PHV owner does not commit any offences against the main PHV legislation.

What policy options have been considered? Please justify any preferred option.

Under the Local Transport Act 2008, PHV owners will be permitted to provide bus services and powers will be available to make the associated regulations. One option would be not to make regulations, but this would mean that passengers would not necessarily be able to recognise a PHV-Bus and that PHV owners would be offending against PHV legislation whenever they ran a bus service. The preferred option is to make the permitted regulations, but to keep the requirements to a minimum so as to encourage PHV owners to take up the provision of PHV-Buses.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? As part of the wider post-legislative scrutiny of the Local Transport Act 2008, in accordance with "Post-Legislative Scrutiny- The Government's Approach" (March 2008, CM 7320).

Ministerial Sign-off For Final Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Sadiq Khan

.....Date: 26th October 2009

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	<p style="text-align: center;">ANNUAL COSTS</p> <p>One-off (Transition) Yrs</p> <p>£ 110 per phv 5</p> <p>Average Annual Cost (excluding one-off)</p> <p>£ 13.5 per phv</p>	<p>Description and scale of key monetised costs by 'main affected groups' PHV owners can choose to take advantage of this flexibility; there is no compulsion to do so. PHV owners will only incur costs if they choose to run bus routes on the basis that it is profitable to do so. The costs involved in acquiring a "BUS" sign and displaying a fare chart are minimal.</p> <p style="text-align: right;">Total Cost (PV) £ 171 per phv</p> <p>Other key non-monetised costs by 'main affected groups' The Regulations oblige PHV owners to cover up any signs which indicate that the vehicle must be pre-booked. This could involve some minimal effort on the part of the PHV owner before embarking on a local service.</p>
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BENEFITS	<p style="text-align: center;">ANNUAL BENEFITS</p> <p>One-off Yrs</p> <p>£ Negligible 5</p> <p>Average Annual Benefit (excluding one-off)</p> <p>£ 38 per passenger</p>	<p>Description and scale of key monetised benefits by 'main affected groups' Rural users will benefit from increased frequency. PHV owners will benefit from increased demand.</p> <p style="text-align: right;">Total Benefit (PV) £ 171 per passenger</p> <p>Other key non-monetised benefits by 'main affected groups' Passengers benefit from being able readily to ascertain that a PHV is acting as a bus; and what fare they must pay. PHV owners benefit from being exempted from certain PHV laws which conflict with operating local bus services.</p>
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Key Assumptions/Sensitivities/Risks The £38 benefit figure assumes a passenger makes an additional 25 journeys per year. The net benefit figure of £15 assumes that these additional trips are provided by a single PHV who carries no other passengers.

Price Base Year 2008	Time Period Years 5	Net Benefit Range (NPV) £ 0 to 171	NET BENEFIT (NPV Best estimate) £ 85.5 per phv
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What is the geographic coverage of the policy/option?			E&W&S (ex London)		
On what date will the policy be implemented?			Autumn 2009		
Which organisation(s) will enforce the policy?			LAs and TCs		
What is the total annual cost of enforcement for these organisations?			£ [Negligible]		
Does enforcement comply with Hampton principles?			Yes/No		
Will implementation go beyond minimum EU requirements?			N/A		
What is the value of the proposed offsetting measure per year?			£		
What is the value of changes in greenhouse gas emissions?			£ [Negligible]		
Will the proposal have a significant impact on competition?			Yes/No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£	Decrease	£	Net £
Key: Annual costs and benefits: Constant Prices				(Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The key costs for the PHV owner are:

The cost of complying with the obligation in the Regulations to display a BUS sign is minimal. Possibly in the region of £10.00 to £50.00 in each case depending on how sophisticated or robust a sign is used.

The cost of complying with the obligation in the Regulations to cover any signs on the vehicle which convey the fact that the vehicle must be pre-booked is negligible, if any.

The cost of complying with the obligation in the Regulations to display a fare chart when the PHV is operating as a bus is negligible, if any.

The additional cost of enforcement arising from the Regulations is minimal.

In relation to the enforcement of regulations 4 and 5, the enforcement provisions of the Hire Car Code are applied.

Regulation 6 requires a different enforcement mechanism to that of 4 and 5. Those requirements prescribed by section 12(9) of the 1985 Act (i.e. regulation 6) will be enforced using section 67 of the Public Passenger Vehicles Act 1981.

The requirement in the Regulations for the driver of a PHV-bus to carry a copy of the special PSV operator licence is designed to assist with enforcement. PHVs are not, when operating in a conventional manner, allowed to pick up passengers directly from the street. If an enforcement officer spotted a vehicle with a PHV licence plate picking up passengers at a bus-stop, this requirement would allow him readily to ascertain that the vehicle was operating as a bus under a special PSV operator licence.

Benefits

The main benefit of including in the Regulations an obligation on PHV owners to display a BUS sign is to enable passengers waiting at a bus stop to ascertain that the vehicle which approaches is actually acting as a bus; and the passengers will be able to see the destination.

The main benefit of including in the Regulations an obligation to cover any signs on the vehicle which convey the fact that the vehicle must be pre-booked is to avoid misleading passengers who might be confused when they see a vehicle approaching. If it were to be displaying a BUS sign and signs indicating that the vehicle must be pre-booked, it would not be immediately evident which sign were active at that time.

The main benefit of including in the Regulations an obligation to display or hold a fare chart when the PHV is operating as a bus is that passengers will be able to see readily what fare they must pay for any given journey. It would be up to the person who holds the special PSV operator licence to decide on the level of the bus fares payable for the service.

The main benefit of including in the Regulations certain modifications to the wider PHV legislation when a PHV is providing a local bus service is that the PHV driver and owner would not be committing an offence against PHV law. The main example in this regard, in relation to the position in England and Wales, is that a PHV driver is restricted in the legislation to carrying out hirings which have been booked through a licensed PHV operator. Clearly this is not practical when operating a bus service and picking up whatever passengers are at a bus stop, so the Regulations modify conventional PHV law such that when a PHV owner is operating bus service he is relieved of the obligation to arrange all hirings through a licensed operator.

We do not have any information on likely take-up by PHVs registering as buses or the demand for these services. We have assumed that the take-up will be restricted to rural areas and provide a more frequent bus service.

There is a one-off cost of £60 to register a route (this is per service registration, not per vehicle) and a fee of £61 for a special PSV operator licence that lasts for 5 years. In addition there will be costs of up to £50 for conversion of the PHV. The total cost is £171 per PHV over 5 years.

It is not known what fare they will charge but it is assumed that a PHV converted to a bus will set the fare to cover costs. Any net revenues for PHVs have not been included in the estimate of benefits.

The average number of rural bus trips is 28 per annum with an average distance of 7.4 miles. If average bus fares are 40p per mile, the average bus fare in rural areas would be around £3. If the introduction of a PHV as a bus effectively doubled bus frequencies and the service elasticity was 0.9 (i.e. a 10% increase in frequency would increase demand by 9%) an extra 25 trips would be generated. The increase in the net benefit for consumers would be £38 a year ($25 \times £3 \div 2$). Over a 5 year period, the length of the licence, this would provide £171 in consumer benefits.

If the PHV carried only one passenger making an extra 25 trips a year the net benefits over a 5 year period would be £0 per PHV. If two passengers were carried the net benefit would be £171 per PHV.

Consultation

The Department consulted on the draft Regulations, including a consultation-stage Impact Assessment – from December 2008 until March 2009. 34 responses were received. A summary of responses with DfT comment will be published on the Department's web-site. In considering consultation responses, the Department's overriding objective was to ensure that PHV owners could quite readily take on the new opportunity available to them without having to adapt their vehicles in any substantive way or incur too much expenditure. The whole point of the new provision is that PHV owners can readily take up the option of providing a local bus service with minimal disruption to their normal operation. That is why, for example, we resisted the suggestion for the BUS sign to be illuminated. This would involve a degree of expenditure which was not justifiable; if an operator felt that an illuminated sign was necessary for a particular service then it would be in his interests to invest in such a sign. The publicity leaflet will make mention of this as an option.

The Department made three substantive changes to the draft Regulations as a result of consultation:

- Regulation 5 has been amended in order to give PHV-bus operators in Scotland greater certainty about the extent to which they can dispense with licence conditions;

- Regulation 6(b) has been amended to give PHV-bus drivers the option of carrying a copy of the fare table (rather than having to display it in the vehicle as had been included in the draft version of the Regulations); and
- Regulation 6 has been amended to include an obligation on the driver of a PHV-bus to carry a copy of the timetable for the service which he is, at that time, fulfilling.

More generally, the Regulations were subjected to changes of a more technical nature between the consultation stage and the final making stage simply to reflect a more modern drafting style; the only changes to the actual policy are the three changes listed above.

Impact tests

Competition Assessment

The regulations will not place anti-competitive restrictions on the range of suppliers of PHV-bus services within an authority and will not reduce incentives to compete. Therefore it is unlikely any significant competition concerns will be raised.

Small Firms Impact Test

The proposal will impose costs on those businesses that wish to operate PHV-buses. The private hire vehicle trade is dominated by small firms. Costs are proportional and reflect the administrative costs in supplying the necessary licences in order to operate a service. It is considered that the costs do not impose a disproportionate burden on small firms.

Legal Aid

There are no Legal Aid implications.

Sustainable development

The potential for a small, increase in carbon emissions conflicts with the principles of sustainable development.

Carbon Assessment

This regulation does not impact on any of the six activities which are identified by Defra as key sources of greenhouse gas emissions (i.e. energy, industrial processes, solvents and other product use, agriculture, land-use change/forestry, and waste). However, the increased fuel consumption of additional journeys operated will impact on carbon emissions originating from the PHV fleet.

Other Environment

Assuming no significant impact on local air quality, this proposal has no significant other environment impacts.

Health Impact Assessment

It is considered that the proposals will have a small beneficial impact on health and wellbeing and health inequalities as services will be potentially more accessible.

Race and Gender Equality

There are no race or gender equality impacts to this proposal.

Disability Equality

It is considered that the proposals will have a small beneficial impact on disability equalities as services will be potentially more accessible.

Human Rights

There are no human rights implications.

Rural Proofing

It is envisaged that the take-up of licences to operate PHV-bus services will mainly be focused on rural areas and provide a more frequent bus service.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No