

promoting quality public transport.....

October 2011

**The provision of Registered Local Services using Small Passenger Carrying Vehicles and Minibuses to replace Buses
- a briefing paper for TravelWatch NorthWest by
Paul Fawcett MPhil. FCILT**

1. Background

1.1 With **Bus Deregulation** (Transport Act 1985) came a number of relaxations to taxi (Hackney and PHV) legislation to allow the carriage of passengers at separate fares.

1.2 These included Hackneys being able to do so from **designated ranks** (very few such exist in England and Wales) and also for both Hackneys and PHVs to do so when **advanced bookings** are made. In both cases the consent of the initial hirer is required.

2. Separate Fares and VAT on Fares

2.1 The taxi trade (especially the more unionised Hackney operators) have traditionally distinguished themselves from Public Service Vehicle (PSV) operators primarily by their opposition to **separate fares**, although rarely preventing their passengers from splitting a fare between themselves and thus *de facto* paying separate fares!

2.2 A further inconvenient distinction and a possible distortion of competition is that fares paid on vehicles with eight or less passenger seats are **subject to VAT**.

3. Taxi Buses

3.1 A third relaxation allowed Hackneys to run **Registered Local Services**, charging separate fares. The Local Transport Act 2008 now extends this opportunity to PHVs. This is the PHV operators' **new "opportunity"**.

3.2 The procedure for doing so is relatively simple. Whilst a PSV Operator has to demonstrate professional competence, good repute and financial standing to obtain a licence from the **Traffic Commissioners** (TC), a PHV Operator can obtain from the TC, as of right, a **Special Restricted PSV Operator's Licence**. This apparent largess is based on the Department for Transport's

assertion that PHVs are subject to “equivalent though not identical” quality controls by their own Licencing Authorities.

3.3 Once in possession of a Special Restricted PSV Operators licence PHV operators are able to register any local service they choose. They may for example identify a gap in the public transport network, such as a new route (possibly feeding into an existing service) or that there are no evening or Sunday services. To register their proposed service they need to give **56 days notice** to the TC and supply a **timetable**.

3.4 Such “Taxi Bus” registrations are deemed to be commercial as they receive no subsidy from the **Local Transport Authority** (LTAs comprise PTEs, Unitary Authorities and “Shire” Counties, *but not District Councils*). Nor are they protected. At any time another PHV or PSV operator may register a **competing service**.

3.5 However, this is no more onerous than the competition faced by PHV operators from new entrants to the trade which is itself “de regulated” in so far as **Local Taxi Licencing Authorities** (Unitary and District Councils) cannot limit the number of PHV plates they issue (as they can still do with Hackney Carriages).

3.6 DfT pays Bus Service Operator grant to the providers of registered local services, including PHV operators who hold a Special Restricted PSV Operators licence.

4. Tendered Services

4.1 Local Transport Authorities are required to secure by tender those non-commercial but socially desirable services which the market does not provide. **Operating costs** for both PHVs and PSVs have increased above inflation and passenger numbers and hence revenue have declined so that many PSV Operators are now deregistering what were previously commercial services. At the same time **LTAs’ funding is being cut** and they are unable to afford tenders from PSV Operators to reinstate deregistered services. They are likely to turn to Taxi Buses as a cost effective way of doing so. They may issue **tenders** for Taxi Buses or just for buses in general, and PHV operators are being advised to request to **prequalify to be included in tender lists**.

4.2 As with commercial services there is the risk that an operator may register a competing service, in which case the LTA would legally be unable to continue to subsidise the operator winning the tender. However this is a low risk if the service is demonstrably non-commercial without the subsidy. Nonetheless it is not unknown for an operator to **“tactically” deregister** a commercial service in the expectation of winning the tender to reinstate this (with subsidy). Some LTAs are coming to see Taxi Buses as one tool for discouraging such tactics!

5. Community Transport

5.1 CT as it is generally known, is the provision of transport to those who are unable to transport themselves or access conventional public transport systems. Operations are **not for profit** and rely heavily on volunteer input, either for driving, management control, or both. Many CT schemes have their roots in **vehicle sharing** to meet community needs. For example some CTs organise **car sharing** schemes to respond to demands for transport to health, education, leisure and other services, such as local shopping.

5.2 Until the mid-1970s there was no legal means whereby CT schemes could charge passengers a fare for using their services. They therefore had to operate outside PSV legislation. However, escalating costs, particularly of fuel, meant that this situation became untenable and the 1977 Minibus Act was passed to allow CT schemes to make a charge to meet costs. It also gave CT exemptions from sections of operator and driver licensing. This means that in most cases drivers are permitted to drive on a car driver's licence. Users must however be **registered members of the scheme**, and there are restrictions on the categories of people who can be carried. The scheme was slightly modified by the 1981 Public Passenger Vehicles Act, and later under Section 19 of the 1985 Transport Act. Further significant changes were made in the 2008 Local Transport Act.

5.3 Vehicles used under **Section 19** arrangements have been widely used to develop fully-accessible **"Dial-a-Ride"** services aimed at assisting more mobility-disadvantaged people, in particular those for people who are elderly or disabled, or for whom no other form of transport is available.

5.4 The true **"Community Bus"**, charging separate fares and available to the public at large, operates under permits granted under **Section 22** of the Act. Community Buses are used to run not-for-profit local services, whether to a timetable or on a demand-responsive basis. Under 1985 legislation they could only be operated with an unpaid volunteer driver. This restriction previously limited their development, but has now been removed by the 2008 Act. The same Act permitted the use when providing Community Bus services of **large buses** with 17 or more passenger seats.

5.5 Both types of service were, until 2008, generally only allowed to operate minibuses with between 9 and 16 passenger seats. Following the passing of the 2008 Act, vehicles operating under Section 19 permits were divided into two classes - **Minibuses** with 9-16 passenger seats and **small passenger carrying vehicles with eight or less passenger seats**.

5.6 Unlike the **car sharing** provisions (Public Passenger Vehicles Act 1981) used by some CT operators, the essential non-commercial criteria of CT is determined by reference to schemes' overall operating costs and incomes rather than the **'not for profit'** test applied to the separate fare paid by each individual car sharer.

6. Minibuses and SPCVs

6.1 CT organisations can, and many do, obtain full (or in at least one case, restricted) PSV operator licences (see below). They are also now able (Local Transport Act 2008) to operate small passenger carrying vehicles with **eight or less seats using section 19 Permits**. However they are not alone in this respect, as the 2008 Act now widens the Transport Act 1985 provisions relating to the use of taxis at separate fares (taxi-buses) by **extending this provision additionally to private hire vehicles**.

6.2 The Public Passenger Vehicles Act 1981 (as amended by the Transport Act 1985) provides for the use of minibuses (9-16 passenger seats) and small passenger carrying vehicles (SPCVs with eight or less passenger seats) to register local services and carry passengers at separate fares. This provision is in the form of a Restricted PSV Operator Licence under which it is only necessary to demonstrate good repute and financial standing but not (as full PSV O-licence operators must additionally demonstrate) professional competence.

6.3 Traffic Commissioners can grant an operator a Restrictive licence for no more than **two** minibuses. The restriction on their use is that they must have 16 or less passenger seats and that the operator's main occupation must not be that of an operator of PSVs carrying fare paying passengers.

6.4 The “main occupation” criteria allows traders such as hotel owners to run their own courtesy buses for their guests and is frequently used by taxi proprietors to add one or two larger vehicles to their fleets. Conversely the legislation could permit an operator to provide a local service using either a minibus or a **small passenger carrying vehicle with eight or less passenger seats** similar to a taxi bus.

6.5 The legislation relating to Small Passenger Carrying Vehicles (SPCVs), buses and taxis is excessively complex. Following representations in 2011 to the House of Commons Transport Committee (HOCTC) by TWNW and the National Taxi Users Association (NTUA) the Committee (in August 2011) referred this to the Law Commissioners. The latter are currently considering some of the above issues such as dual licencing (by Traffic Commissioners and Local Transport Authorities) of Buses and Taxis and the rationale for there being two categories of “taxis” – private hire and hackney.
(ENDS)