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CHAMBERS

## New guidance on licensing motorcycles

Two wheels better than four wheels? Roy Light looks at the prospects for faster taxi transport on the pillion.

### Background

Concerns over traffic volume and journey times, as well the harmful effects of vehicle exhaust emissions, have seen traffic management initiatives assume increased prominence. Bus lanes, congestion charges and parking restrictions are now commonplace. Public transport is promoted over private vehicles. The lone car driver with three or four empty seats is seen as wasteful of both resources and road space (thus 'two plus only' lanes). In reply, motorists point to the large number of buses which outside rush hour may ferry few passengers; while taxis too often travel with a number of empty seats.

Motorbikes, at most, have one empty seat and when utilised as a taxi are fully laden, with no wasted carrying capacity. Importantly, their size means that motorbikes take up far less road space than other motorised vehicles. Increasingly, authorities are allowing motorbikes to use bus lanes. In any event, motorcycles are able to circumvent traffic hold-ups caused by other vehicles and can reduce stress and pollution by providing transport that can make better progress than a four wheeled vehicle. On this basis motorbike taxis seem an eminently sensible idea.

Yet a number of concerns arise. First, there are limitations on use, with room only for one passenger and restricted luggage space. But for the single passenger without a large amount to carry this is not a problem. Further, motorbikes may not be suitable for those with particular physical needs or for the old or infirm. It must be recognised that for some people a motorbike taxi may not be an appropriate form of transport. (Clearly a motorbike would not be able to comply with the obligation to carry an assistance dog.)

Of concern to authorities considering the licensing of motorbike taxis are weather protection and physical safety. Weather protection can be provided by suitable motorcycling clothing which will also, to varying degree, afford physical protection in the event of an accident. There is a balance to be struck between convenience and safety. To assist authorities dealing with applications for motorbike private hire vehicles this balance recently has been addressed in the

Department for Transport's *Licensing Motorcycles as Private Hire Vehicles; a guidance note from the Department for Transport* in July 2012 ('the Guidance').

## **Statutes**

The Local Government (Miscellaneous Provisions) Act 1976 covers private hire vehicles outside London (apart from the city of Plymouth which has not adopted the Act) and the Private Hire Vehicles (London) Act 1998 covers the Metropolitan area. Broadly there is a requirement for a private hire operator's licence (for the person who takes the bookings), a driver's licence (for the rider) and a vehicle licence (for the motorcycle).

### *Vehicles*

A motorcycle clearly may come within the definition of a private hire vehicle contained in s.80(1) of the 1976 Act:

A motor vehicle constructed or adapted to seat fewer than eight passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purposes of carrying passengers.

Section 48 of the 1976 Act applies to the licensing of vehicles for private hire (the same provisions though in different form appear in s.7 of the 1988 Act). Aside from the requirement that the vehicle must have in force the relevant policy of insurance the Act also provides that before it grants a licence the authority must be satisfied that the vehicle is:

- (i) suitable in type, size and design for use as a private hire vehicle;
- (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
- (iii) in a suitable mechanical condition;
- (iv) safe; and
- (v) comfortable.

The authority must therefore exercise its discretion whether to grant a licence and may refuse to grant provided that discretion is exercised fairly and reasonable. There is no description or specification laid down for private hire vehicles other than the matters listed in s.48(1)(a). There is no requirement that a vehicle must have a particular number of wheels; that motorcycles should not be licensed or should be subject to any particular criteria or conditions. It would therefore seem that unless an authority makes a positive decision that it is not satisfied that the motorbike conformed to the criteria in s.48(1)(a) it should grant the licence. Further, if any concerns under the section could be addressed by

way of conditions the licence should be granted subject to those conditions; which must, of course, be necessary and proportionate.

### *Drivers*

The requirement that a private hire driver be licensed is contained in s.46(1)(b) of the 1976 Act. And by s.51, provided the authority is satisfied that the applicant is a fit and proper person and has been 'authorised to drive a motorcar' for at least 12 months, shall grant the licence. (The criteria are more onerous inside London where a motorcar licence must have been held for three years, the applicant must be at least 21 and must have passed 'the knowledge' – s.13 of the 1988 Act.) As with vehicle licences the authority may grant the licence subject to conditions.

On a literal reading of s.51 only a 'motorcar' licence is necessary. So it could be argued that the Act does not apply to motorbikes or that a motorbike licence is not a requirement. This would be a manifestly absurd interpretation, the purpose of the section, in the interests of passenger safety, being to ensure that a driver holds the necessary licence and has done so for a minimum period of time.

### **Case law**

*Chauffeur Bikes Limited v Leeds City Council* [2005] EWHC 2369(Admin) concerned an application for a Honda Pan European to be licensed as a private hire vehicle. Leeds City Council refused the application, the magistrates' court granted it on appeal and the Crown Court reversed the magistrates' decision on the basis that the vehicle was unsuitable and unsafe for use as a private hire vehicle.

The matter reached the High Court by way of case stated. The Crown Court decision appears to have been based on factors specific to motorcycles rather than to the particular motorcycle in questions. These included (1) people sit on not in a motorcycle; (2) the contribution to the weight of the machine by adding a passenger and the positioning of the weight of that passenger can affect the handling of the machine; (3) the surface area of the tyres in contact with the road is comparatively small; (iv) a motorcycle is susceptible to side winds because of its two-wheeled configuration and its side area; (v) inexperienced passengers may intuitively counterbalance against the leaning over motion of the motorcycle by sitting upright in a way which may destabilise the machine; and (vi) inexperienced passengers may react unexpectedly during the course of exposure to the ordinary incidents of motorcycle riding and thus create a dangerous situation.

Chauffer Bikes argued that the issue of safety could not be taken into account when considering s.48(1)(a)(i) and that 'safe' in (vi) should be interpreted to mean safe as a vehicle rather than safe as a private hire vehicle. The High Court dismissed the appeal holding that safety was a consideration that Parliament intended to be taken into account when considering whether a vehicle was 'suitable in type, size and design for use as a private hire vehicle'.

The Court further held that the decision of the Crown Court was one that it was entitled to come to on the evidence before it and that the matter of safety was one for the licensing authority to consider. However, 'the fact that a district council, say in Kent, may come to one conclusion does not oblige one in Yorkshire to do the same' (Poole J at para.24).

The case is therefore not a bar to the licensing of motorcycles as private hire vehicles rather recognition that an authority must exercise its discretion on the matter of safety based on the evidence before it. This view is shared by the Guidance (paras.9-11).

## **Policy**

The Guidance takes as its 'starting point' the Department for Transport's *Taxi and Private Hire Vehicle Licensing: Best Practice Guide* (March 2010) 'which urges licensing authorities to accept for licensing as wide a range of vehicles as possible and to ensure that any constraints or restrictions are in place for a very good reason' (para.4). And the 'key point' of the 2012 Guidance is that the risks associated with riding pillion on a motorcycles are not 'sufficiently high as to provide guidance which rules them out of the licensing system altogether' (para.8).

As underlined in the *Chauffer Bikes* case, whether a vehicle satisfies the criteria listed in s.48(1)(a) is a question of fact for the authority to decide. Evidence may be presented to the authority and it will exercise its discretion on the evidence before it and be assisted by the authority's own policy and the Guidance.

The risk of accident is a major concern for those considering the licensing of motorbikes. Yet, the particular nature of motorcycling and associated matters, such as riding techniques, differing bike characteristics and road craft allow those on motorbikes to reduce the risk of accidents. There is a large literature on the causes and avoidance of accidents involving motorcycles. This demonstrates that rider training and advanced techniques such as defensive rather than aggressive riding can greatly reduce risks. However, in the event of a collision, bikers are more at risk of injury than other motorised road users. While kit, such as gloves, boots and helmets, has improved considerably (with even airbags

starting to become available) bikers remain particularly vulnerable should they be involved in an accident.

RoSPA considered the risks in their publication *Response to the Department for Transport Consultation Paper "Licensing Motorcycles as Private Hire Vehicles"* (RoSPA, Birmingham, 16 December 2011):

Riding as a pillion passenger on a motorcycle does mean facing a higher degree of risk than travelling as a passenger in a car ... However, RoSPA does not believe that this justifies banning motorcycles from being used as PHVs. We should not ban an activity simply because it holds risk, but balance the risk with the rights of individuals to have choice, while ensuring that it is informed choice and that the risk is minimised. Motorcycling is a perfectly legitimate form of transport. (p.2)

The Guidance considers 'passengers will weigh up the risks involved' and while some people may avoid travel by motorcycle others would consider it 'as a convenient and practical form of transport' (para.7). The Guidance then goes on to outline what the Department 'considers to represent Best Practice' for authorities when dealing with vehicle, driver and operator licensing for the use of a motorcycle as a PSV.

#### *Vehicle licences*

Authorities are reminded that motorcycles must comply with construction and use and lighting regulations as well as insurance requirements and that the suitability of the motorcycle for private hire should be considered. There is a wide variety of motorcycle types with engine capacities ranging from 50 to 1800 cc and the type and engine size of a particular motorcycle will need to be assessed for its suitability. It is likely that a 1200cc touring bike may be more suitable than a 50cc sports moped. A particular recommendation is that ABS should be fitted to the bike (which is available on most if not all large touring bikes).

While a bike should have suitable pillion footrests, aids to pillion travel such as handrails and backrests are, it is suggested, best left to the discretion of vehicle owners. And aside from the basic rule that passengers should never travel while holding any luggage, the provision of luggage carrying capacity should be in accordance with the vehicle manufacturer's specification; although the authority may wish to establish that this will be reasonably sufficient for the vehicle's anticipated use.

The vehicle should be operated in accordance with the manufacturer's specification and the Department recommends it be tested twice a year. Other

recommendations relate to the display of signs, carrying of luggage and vehicle performance.

### *Driver licences*

The Guidance takes note of the fact that motorcycle accident rates decrease sharply with increased experience and that advanced training has a similar beneficial effect. Thus beyond the statutory requirements 'it is crucial that a licensing authority satisfies itself that the applicant is suitably competent at, and experienced in, riding a motorcycle to an appropriate standard' (para.A2(iii)). The Guidance recommends that authorities should look for an advanced riding qualification (usually from RoSPA or the IAM) as evidence of competence and that there should be a minimum of five year' experience of riding a motorcycle. Further, an operator should be satisfied, perhaps by way of conducting a test, that the rider is suitable, particularly as regards the carrying of pillion passengers.

Guidance is given on safety helmets and protective clothing and the need for communication between rider and passenger means that an intercom system should be used and that the rider should have a good command of English as there may be a need to communicate safety instructions to the passenger (assuming, of course that the passenger's too speaks English). Advice should be given to inexperienced pillion passengers on how to behave on the bike and they should also be informed of the risks of bike compared to car travel. Those under the influence of drink or those who cannot, for whatever reason, be safely carried should be refused travel on the bike.

### *Operator licences*

A number of recommendations are made relating to the provision of suitable clothing/helmets and methods of ensuring hygiene for shared equipment; advice to hirers on suitable footwear and luggage capacity; and the view that 16 should be the minimum age for passengers. Documentation should include a written statement of how a rider's capabilities will be assessed, a health and safety policy and a vehicle maintenance log.

## **Summary**

The Guidance states that

The Department would want to be convinced that there was strong evidence and compelling reasons if we were to provide guidance which advised licensing authorities not to accept motorcycles as PSVs ... We do not consider that there is a compelling case for ruling out motorcycles as PSVs on safety grounds. (paragraphs 5-6)

Licensing authorities have a duty to ensure that private hire vehicles provide safe and convenient transport. The Guidance provides a valuable template to aid authorities in this respect. Much of what is said is common sense. While the provisions of the Guidance are neither detailed nor comprehensive they steer the authorities consideration of whether the application before them, in terms of the vehicle, rider and operator, is suitable for use as a PSV under the Act.

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