

# A GUIDE TO AUTHORISATION



## **International Organisation of Professional Drivers**

Authorised by the Secretary of State for  
the regulation of off highway auto events  
under Statutory Instrument 1371 (1995)  
and Section 5 (13A) of the 1991 RTA

This guide is one of a series of occasional guidance notes published by the International Organisation of Professional Drivers (**IOPD**) dealing with important issues that arise from time to time. It strives to achieve consistency of understanding and enforcement. Sometimes there have been long held incorrect interpretations of current legislation that have been corrupted by vested interests or simply the Ostrich Syndrome or ‘my mate down the pub says.....’

The Guides have been extensively researched and contain contributions from many experts drawn from the Police, Environmental Health, Health and Safety, DEFRA, DfT and the Private Sector. Occasional Guidance Notes are not routinely reviewed and should not be relied upon as definitive. This guide may be used to brief a legal adviser (an insured professional acting within their competence) on recreational auto activity custom and practice and the understandings within the community.

This Guide may be used to evidence Risk Assessment, Event Safety Planning and/or Compliance to Governing Body recommendations as listed in the HSE’s ‘Managing Health and Safety at Motor Sport Events HSG112’ document.

The **IOPD** is recognised by the Department for Transport and is empowered under Statutory Instrument 1371 as an Off-Road Event Authorising Body. It is one of 11 such bodies in England, Scotland and Wales specifically named in legislation. This empowerment grants the IOPD the authority to ‘authorise’, which is a defence against criminal conviction of participants and organisers under Sections 1, 2 and 3 of the Road Traffic Act. The Department of Transport guidance states:

*“The extension of the Road Traffic Law to Public Places has important consequences for those who take part in or organise events involving motor vehicles in fields, parks or other areas where the General Public is admitted . . .”*

This is to ensure that those people participating in and spectating at the event are protected from unnecessary risk and to ensure that a record is kept of the audit of the standards and procedures of that organisation.

The IOPD was granted this status because of its system of rules, regulations and inspection procedures for both venues and operators. The IOPD is instructed in the Department for Transport’s Guidance on Off Road Event Regulations to periodically carry out unannounced inspections of authorised venues and events to ensure compliance.

The IOPD has been engaged as an Expert Witness by major Insurers, the Police, The Coroner’s Office and the Procurator Fiscal in cases involving accidents resulting in injury and fatalities at Off Road Events.

The IOPD currently issues authorisation permits for in excess of 19,300 days of recreational motor and motorcycle activities. This involves 37 disciplines (types of activity), around 1,000 Landowners, and over one million spectators and participants per year!

*The contents of this Guide should not be relied upon without verification from your legal adviser. However, this Guide may be used to brief your legal adviser on recreational auto activity custom and practice.*

**Ever wanted to know how you can enjoy and be protected from prosecution or compensation claims when permitting the use of your land, organising or being involved in auto sport activities?**

Then the answer is simple: **get your events Authorised or take part with an Organiser who is Statutory Authorised.**

**Why:**

Because if you are authorised and have a current IOPD Authorising Permit you, your landowner and your participants are disapplied (under section 13A of the 1991 RTA) from criminal offences relating to how a mechanically propelled vehicle is being driven or ridden (dangerously, carelessly, inconsiderately or without due care and consideration) on private land or land under a temporary road closed order (section 1-3 of the RTA).

Because all persons involved are provided with a defence, by a Statutory Empowered Body against HSE /EHO prosecutions which carry lengthy custodial sentences and / or a large five figure fine and similar costs under section (3 and 33(1)(a) to the Health and Safety at Work Act 1974.

Because all persons are provided with a defence under section 143 1988 and the 2006 Road Safety Act relating to the requirement for all vehicles to be Road Risk Insured on privately owned land unless taking part in an authorised competitive activity or a related sport activity (European Parliament Council Directive 2009/103/EC 16<sup>th</sup> September 2009 amendment 14(1a).

Because all persons involved are provided with a defence to Section 87 of the Road Traffic Act 1988 driving a motor vehicle otherwise than in accordance with a licence or underaged.

Because all persons involved, are provided with a defence against Coroners Investigations and recommendations. This when Coroners use the Road Traffic Act and Highway Code Guidance, as a foundation to make judgements and recommendations on incidents within the curtilage of an authorised recreational auto sport activity, rather than the Statutory Empowered Governing Body Rules and Regulations. Coroners Powers paragraph 7 schedule 5 of the Coroners and Justice Act 2009 and Regulations 28 and 29 of the Coroners (investigations Regulation 2013).

Because all persons involved are provided with a Statutory Empowered mediation system to negotiate with the HSE and EHE over prohibition Notices which immediately close any venue for up to two years or indefinitely. This could even extend to purpose built racing circuits and occasionally simply putting an Organiser out of business.

Because all persons are provided with a Statutory Empowered mediation system to defend against Noise Abatement, Planning and Lawful use of Land issues. The event organiser will receive an IOPD Black Safety Pack containing 25 documents required in a Police or HSE Investigation along with compliance requirements of every litigation, letting, insurance and compliance agency in the UK today.

Because the Organiser will receive a response (usually with 24hours) from an experienced adviser from the IOPD who has a direct knowledge of the issues you may be facing as an event organiser.

## **Background Information on the IOPD and its Director Steve Murty.**

- 40 years of being called to give expert opinion from Courts right through to High Court of Appeal.
- 30 Years of Statutory empowerment and Governing Body Leadership.
- Liaison with:
  - The Secretary of State for the Transport Office
  - The Senior HSE Adviser for Motor Sport
  - The BLM led future European Motor Insurance Forum initiated by Vnuk
  - The Heads of Recreational \motor Sport Insurance Companies.
  - Local Authority Enforcement Officers including HSE, EHE, Planning and the Police.
- The producer of over 24 Guides to help Organisers and Participants understand and comply with current legislation in recreational Autosport.
- The director who designed, built and scrutineered vehicles to ensure maximum safety in an incident.
- The Director who was in the past the Organiser and the ‘Controlling Mind’ of a Drag Racing Circuit
- The Director who was in the past the Owner and Organiser, both in this country and abroad, of many auto related events.
- The Director who was in the past the holder of the British Land Speed Record for the Standing Start for a none wheeled driven vehicle over 1km.

The contents and the accuracy of the first addition of this Guide published in Jan 1993 were recognised by the Association of Chief Police Officers and individually by the Chief Police Officer for Avon and Somerset who stated, ‘it was well researched, accurate and informative.’

Hampshire Police - ‘We cannot find fault with the contents and consider it to be useful, informative and well written’.

West Midlands Police - ‘the document is clear and to the point and as such request permission to reproduce the document for onward transmission’

# **The Legality of Recreational Motor Sport in Twenty-First Century Society**

The IOPD regulations are a guide to advise on a central course of action between:

- the standards of behaviour required by Society as a whole when in charge of a mechanically propelled vehicle as enshrined in the Road Traffic Act, The Road Safety Act, the Highway Code and the Health & Safety Regulations.
- and at the other extreme the irresponsible, undisciplined excitement seekers who have no regard for the potential outcome, damage, harm and suffering including the possibility of death they may cause with a mechanically propelled vehicle.

A central or mid-course has been recognised by the Law Makers and Government for many centuries with regard to and in the context of permitted and accepted Recreational sports and past times. Examples of this may be Boxing (which is in fact common assault) Horse Racing (Riding furiously) Carriage Driving (Driving furiously) the carry and discharge of a Fire Arm in a Public Place, the driving or riding of a mechanically propelled vehicle, under age without a licence in a Public Place and I guess there are many other sports.

When it comes to the driving or riding of mechanically propelled vehicles which have the potential to inflict multiple deaths and injuries (Brooklands 1933) the Governments and Law Makers have made allowances and provision for what would otherwise be criminal acts committed with motor vehicles carrying long custodial sentences (Of up to fourteen years for the Organiser and Participant) by the provision of The Off Road Event Regulations Act (1991) which was then interpreted in Section (13A) of the Road Traffic Act (1991).

How Motor Sport and associated recreational activities are regulated and governed is 'emanated' or past down from Government to 11 Statutory Empowered Governing Bodies under Statutory Instrument 1371 by the Department for Transport (on behalf of the State).

A Governing Body may govern and regulate as they see fit under these regulations and have the Statutory Authority to disapply Organisers and Participants from the RTA Driving Regulations and prosecutions. The evidence of a Participant and Organiser being Authorised and disappplied from the most serious driving offences is by way of and under the Off-Road Event Authorising 'Permit'.

This Permit allows or 'permits' the most serious driving offences to take place in a controlled space, because at the time it is 'an authorised space'. It means that health and Safety officials have great difficulty in bringing multiple prosecutions for breaches of Societies understood standards of Duty of Care, including Corporate manslaughter, expected from the 'normal' use of mechanically propelled vehicle 'in traffic' on the Highway and on private land which is a 'public place' like a Race Circuit or Car park.

The Authorisation of an 'event' is thus the best and possibly the only defence of charges brought in both Civil and Criminal Courts against Event Organisers by Prosecution Lawyers on behalf of a claimant, the Police, or the HSE/HEO.

Without Authorisation Permits in place any recreational Auto sport activity contra to the Road Traffic Acts, The Road Safety Acts the Highway Code and the Health & Safety Regulation 1974 could be claimed simply to be unlawful and negligent.

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The moment a motor vehicle is used for an activity which is part of an ‘event’ (an occurrence which is noteworthy) then Road Risk Insurance may be made void by the Insurer. (Think driving to work or for a work or working as an example where extra premiums are required in order to remain insured.

### **IOPD classifications of public attended events**

A) **A Parade:** - vehicles driven to display the vehicle moving whilst conforming to the Road Traffic Act and Highway Code. **An authorisation permit may be required.**

If any participating vehicle does not conform to the RTA including Third Party Road Risk Insurance relating to this use of the vehicle in an organised event, on a purpose built circuit or track (participants should check with their insurers) then an Authorising Permit and appropriate Public Liability Insurance provided by the Organiser is required in order to disapply the RTA regulations for the duration of the event. Otherwise criminal prosecutions may result should a moving vehicle collision occur resulting in injury or damage to a third party.

B) **A Demonstration:** - vehicles driven to the maximum potential whilst disregarding the RTA and Highway Code (e.g. a Top Gear track test activity)  
**An Authorising Permit is required to disapply the RTA when the Public are present even when it is at a display which is restricted to a securely fenced off circuit.**

C) **Testing:**- vehicles driven to achieve a bench mark of the vehicles’ performance and shortcomings. (whilst disregarding the RTA and Highway Code)  
**Requires authorisation** as in ‘B’ above.

D) **Driving Experience:**- vehicles driven to achieve a benchmark of the drivers’ abilities and control for personal advancement and stimulation (whilst disregarding the RTA and Highway Code).  
**Requires authorisation** as in ‘B’ above.

E) **Driver Instruction:**- vehicles driven in order to instruct a person in the control of a vehicle in order to pass a test or become an advanced motorist whilst conforming to the RTA and Highway Code.  
**No authorisation required.**

F) **Driver Training:**- vehicles driven to achieve advancement of drivers’ abilities and control by training or coaching (whilst disregarding the RTA and Highway Code) including unlicensed drivers.  
**Requires authorisation** as in ‘B’ above.

G) **A Time Trial:**-vehicles driven in a way that is paced, judged, or timed where records are kept to show superior ability of the vehicle and driver (whilst disregarding the RTA and Highway Code).  
**Requires authorisation** as in ‘B’ above.

H) **Race:**- vehicles driven to the limits of control and adhesion along with others in order to beat the others to a pre determined finish (whilst disregarding the RTA and Highway Code).  
**Requires authorisation** as in ‘B’ above.

## **Definitions**

### **What is a Mechanically Propelled Vehicle?**

The Road Traffic Act (RTA) 1991-Section 4 added motor vehicles to a new larger category 'mechanically propelled vehicles'. In effect extending its coverage to almost anything that can be ridden in or on that moves under its own power. So Mechanically Propelled vehicles are **ALL** vehicles which are propelled in some way other than by human or natural forces, including all purely leisure vehicles as well as those involved in motor sport.

### **What is meant by the term 'Road' in relation to the Road Traffic Act?**

A road is defined in section 192 (1) as any road to which the public has access.

*(For further clarification of public access see what is a public place listed below.)*

A road may be continuous like a circular route or it may come to a termination like a cul-de-sac (Clark v Kato). It can be a definable way between two points over which a vehicle could pass (Oxford v Austin).

By definition therefore circuits, beaches, stadiums, drag and sprint strips, fields, quarries, woodland, private roads and country estates are all 'Roads' when a definable way between two points has been created for an event.

### **What is a public place?**

A public place is taken to mean a place to which the public have access and includes a field, park, stadium or circuit including those parts to which public access is denied i.e. the circuit and infields, in Stadiums, Circuits or other venues, in their entirety must be considered a public place.

Ref 1207 Cawley v Frost, Queens Bench division 1976. Lord Widgery CJ Melford Stevenson and Caulfield J.J.

DPP v Coulman and DPP v Vickers

The Department of Transport has provided motoring event organisers with the following guidance:

'.....A public place in terms of motoring events can be taken to mean events organised in fields, parks, beaches or other areas where the general public is admitted either free of charge or on payment of an entrance fee'.

The Department of Transport has also confirmed:

*' research would be perverse if. . . 'public place', while it does not include 'private places', could include private land. To classify a place as a 'public place', depends upon its status at the material time i.e. whether at the material time the public has or is permitted to have access either on payment or otherwise. It is a question of how the land is being used rather than the type of ownership (i.e. public or private) which is relevant to whether a place will come under the definition of 'public place'*

*' . . . events held on, or in private land and premises, like purpose built Stadiums and Circuits and show grounds; public arenas and exhibition halls are recognised in law as 'Public Places'. . .*

In summary it is probably easier to say 'What is a private place?'



### **What is a private place?**

A private place is a place in which family, friends and relatives, employees and contractors (under contract) are present and all other persons are excluded.

In summary therefore every other situation and venue could be deemed a public place.

### **What is private land?**

When the term is used by the DfT and the police, with all their legal training they are focusing on the term 'private' meaning to them a 'private place' however the 'common man' may be more familiar with the term 'Private Land' within the context privately owned land. Two entirely differing meanings, one with serious implications. If a Police Officer was called to a recreational motorsport event accident, they would most likely radio in stating that the incident took place on 'private land'. The Senior Officer may then make the incorrect decision that it is not a police matter and take no further action. Therefore, it is crucial when reporting an incident to emphasise at every stage that the incident has taken place on 'privately owned land'. EHO and HSE enquiries are however a different matter.

### **What is Vnuk?**

Vnuk is a European Court Judgement given in September 2014. The European Court ruled that the requirement for compulsory Insurance should now cover any use of a vehicle so long as that use is consistent with the normal function of the vehicle. (also see Lewis v Tindale MIB & Secretary of State 2018).

This is interpreted to mean everywhere including on private land, in a private place, circuit, factory etc. This now has the effect of dispensing with any claim as to what is a public place with regard to the requirement for Road Risk Insurance. It is everywhere. No Insurance policy is available to cover such a compulsory obligation for recreational motor sport.

In recreational Motor Sport, even with Brexit, the UK will have to comply with the EU Law currently and until at least March 2019. The Department for Transport is currently drawing up a revised Road Traffic Act to reflect this. It is believed it will be limited to require all vehicles being used 'in traffic' (being used as a form of transport) to have Road Risk Insurance.

The IOPD is promoting that vehicles being used for 'recreation' i.e. motor sport under a Statutory enforced Authorising Permit should be formally recognised as the opposite of 'in traffic' as vehicles are not being use for transport but for recreation and training purposes. Vehicles operating under an Authorising permit could be provided with a documented and certified defence to the mandatory Road Risk Insurance requirements which could then be evidenced by the Authorising Body.

A Public Liability and Employers Liability Insurance will already be in place for participants and their vehicles providing a route to compensation for injured third parties without redress to the Motor Insurance Bureau (MIB).

No 'participant- to -participant' insurance is available in Europe as both parties are complicit in acts that without an Authorising Permit may otherwise be criminal offences.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION (as of the 26<sup>th</sup> October 2018)

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability (COM(2018)0336 – C8-0211/2018 – 2018/0168(COD))

Ordinary legislative procedure: second reading Motor Sport relevant paragraphs:

#### Amendment 4

Proposal for a directive

##### Recital 3 b (new)

(3 b) It is also appropriate to exclude from the scope of Directive 2009/103/EC vehicles intended exclusively for motorsports, as these vehicles are generally covered by other forms of liability insurance and not subject to compulsory motor insurance when they are solely used for a competition being limited to a controlled track or space,

IOPD NOTE: This can only be evidenced by a Permit of Authorisation.

#### Amendment 5

(3 c) The use of a vehicle in a closed area, where no access is possible by the general public, should not be seen as the use of a vehicle in traffic and therefore should not lead to an obligation to hold compulsory insurance. Nonetheless, when a vehicle is used in traffic at any point and therefore subject to compulsory insurance, Member States should ensure that the vehicle is covered by an insurance policy that covers potential injured parties, during the contracted period, regardless of whether the vehicle is in traffic or not at the time of the accident, except where the vehicle is used in a motorsports event.

IOPD NOTE: This can only be evidenced by a Permit of Authorisation.

#### Amendment 14 (1 a)

This Directive shall not apply to vehicles that are intended exclusively for use in the context of participation in a competitive sport activity, or in related sport activities, within a closed area.

IOPD NOTE: The addition of related sport activities.

#### Amendment 20

(a) for personal injuries: EUR 6 070 000 per accident, irrespective of the number of injured parties, or EUR 1 220 000 per injured party

#### Amendment 21

(b) for damage to property, EUR 1 220 000 per accident, irrespective of the number of injured parties

IOPD NOTE: A new maximum fixed level of compensation payable ex costs.

### **What is an Authorised Place**

An authorised place is a public place where the following prosecutable offences under RTA Regulations and conventions of Society are disapplied (waived) by Statute (Special Instrument 1371).

### **What is an Event?**

In the view of the IOPD, an 'event' is any movement, under its own power, of a mechanically propelled vehicle or a motor vehicle, in any place which is at the material time **"a public place"**. Given these factors, an 'event' becomes inclusive rather than exclusive and the IOPD's view is that all movements under power are included. This would include service vehicles, display vehicles, stunt vehicles etc. etc as well as fun, experience, competition and tests of skill in driving and riding.

### **What Is an Organiser?**

A person who calls together any gathering of vehicles which is not spontaneous, but is organised, publicised and coordinated by an individual, group, club or company. This person may be deemed to be the 'controlling mind' in law and responsible for any injuries sustained as a result of the activity. This may move to the person in control at the start of the event e.g. the Clerk of the Course or Event Manager.

### **What is a Motor Sport Bee?**

A Motor Sport Bee (Oxford Dictionary) 'meeting for combined amusement'. There must be no leader, no one person that has called to-gether a group of like-minded people. No elected Officers. Simply a gathering by consensus only. There is no joining fee or registration to one person or persons. (untested in law).

### **What is Authorisation?**

To Authorise: (from the Oxford English Dictionary) to make legal; the power to enforce obedience; delegated power; to give authority to; to sanction. (A term largely used in the documented legislation.)

### **What is a Licence?**

It is an official document or certificate of authorisation (giving authority or liberty to do a particular act). Permission is granted by an authorising body, which allows a deviation from a particular convention. Without this permission the act would be unlawful. (A term mostly used in the Commercial sector).

### **What is an Authorisation Permit?**

It is written permission, a licence given by a competent authority and is mainly used in the Auto Sport sector. It carries legal force to protect against prosecution and gives power to enforce obedience. An authorisation permit must show:

- The dates and times when the events will take place including all Practice Days.
- Where the events will take place, recording the exact curtilage of the site being Authorised, on a plan including the layout and direction of the course. The positions of the marshal positions and fire points must also be shown.
- The name and the signature of the Authorising Agent.
- A reference number issued by the said Government recognised Authorising Body and this must be recorded with the Government recognised Authorising Body.
- The Permit should also carry the address of the Government recognised Authorising Body and a contact number.

All this information should be held by the Government recognised Authorising Body. They must also file a record of the skill, knowledge and experience of those in charge of the event via a certificate of competence 'an examined Person'. Also have recorded the suitability of the venue and hold documented evidence of venue inspections.

Aiding or abetting (now often considered as being in joint enterprise) with a participant, or the organiser or promoter of an activity, which results in an offence as listed above being committed is liable to a penalty: As per offender. Plus negligence is then established. Ref: Accessories and Abettors Act 1861 RTA (sec123). This places Event Insurers in a vulnerable position for a Civil Claim.

Within an 'Authorised Place' the criteria establishing negligent actions with regard to participating vehicles and therefore the grounds for a claim for compensation for insurers to settle are substantially reduced by the disapplication through Statutory Authorisation of all behaviours or actions that would, otherwise, be offences under section 1, 2 and 3 of the RTA 1991 and others that are implied but untested in law.

These offences being:-

Death by Dangerous Driving

Dangerous Driving

Careless and Inconsiderate Driving

Driving in a way which falls below what would be expected of a competent driver

Driving without reasonable consideration for other persons and aggressively

Driving in a way that might be regarded as inconveniencing other drivers

Driving at excessive speed

Showing off by driving other than carefully

Racing

Loss of control due to speed

Mishandling or insufficient attention to the conditions

Wheel spins

Handbrake turns

Donuts or tire smoking and drifting

Wheelies

Colliding with other vehicles and obstacles

And, implied but untested :

Driving whilst unlicensed

Driving whilst under the age for the class of vehicle

And the whole class of offences related to construction and use regulations, MoT Tests etc. etc.

At all events the DfT and the courts have recognised that the participating riders and drivers, the support teams, spectators and Landowners are all in Joint Enterprise to varying degrees with the above offences unless authorised. Unlawful negligent driving or riding within the curtilage of an unauthorised site could attract prosecution of the Landowner, the Organiser, the Driver and Passengers.

Authorisation by one of the competent bodies recognised in statute, using its statutory powers, clarifies the areas within the Private Land which are at the same time a public place where RTA third party insurance is mandatory, for example, on all feeder road networks and car parks. It also clarifies where the public liability insurance may take over to provide the same necessary protection, for example the purpose built or marked out tracks, circuits, arenas, pits and paddocks including all specialist 'support site only' vehicles like ambulances, fire trucks, sweepers and maintenance vehicles, which may be un-registered.

### **What is a Motor Sports Competition Licence?**

A competition licence when used in association with an authorised event conclusively demonstrates a participant's commitment to the rules of that sport or activity.

It sets the holders aside from being classed as public, by recognising special circumstances personal to the holders that may assist in transforming the place of the activity out of the public domain and out of public place offences. (Lord Justice Mann in DPP v Coulman)

It legitimises their participation in risk taking for recreation and stimulation.

It also provides a documented commitment to agreed rules and regulations to minimise risks.

A motor sports competition licence also documents the commitment of the participant to a regulatory system which recognises and makes participants aware that a participant may kill or be killed when participating in acts which in 'normal' driving subject to the Road Traffic Acts would amount to dangerous, careless or inconsiderate driving or riding, and which, in conjunction with authorisation of the event in which they are participating, removes the risk of prosecution for dangerous, careless or inconsiderate driving or riding under the Road Traffic Acts.

Any person that is competing against others (a rival) in a formal structured event where participants are required to present themselves and their vehicles at a pre determined time in a committed manner, or against challenging conditions, when the outcome is judged by a third party, published and awards given, will require a Competition Licence. These are available from any one of the 11 Government recognised Authorising Bodies of which the IOPD is one.

A competition licence provides a means to control and discipline driver/riders by the threat of its removal and its privileges.

### **What is Volenti?**

The term Volenti non fit injuria meaning states that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party was established in 1933 at a motor racing event at Brooklands racing circuit. This was as a result of a major racing incident. It is still used to-day in defence of establishing negligence and liability on the part of participants in an authorised motor sporting activity. It is accepted that there can be no insurance provider for driver to driver or passenger's injury claims or vehicle to vehicle damage claims. This can also affect the liabilities held to spectators and officials at an authorised event.

## **How can Health & Safety Regulations affect Recreational Activities?**

Landowners & Event Organisers Liability The IOPD have now received undisputable evidence in the form of a copy of a summons that environmental Health and HSE Officers will bring prosecutions against Landowners and Organisers that allow Autosport and recreation activities on their land without first checking the organiser's safety insurance and industry regulative procedures (as covered by authorising permits). This may also extend to Companies that advertise, promote and sell Driving and Riding Experiences.

To evidence this undertaking it needs to be covered by a simple contract signed and dated by both parties, a copy of the Authorising Permit and Organisers Insurance. All should be retained by the landowner and seller of the Experience.

The landowner's and organiser's 'duty of care' (under Health and Safety at Work Regulations), is to guard against charges of *'failing to conduct your undertaking in such a way as to ensure so far as was reasonably practical that persons were not exposed to risks to their health and safety'*. Contra to Section 3 & 33(1)(a) to the Health and Safety at Work Act 1974.

Prosecutions of this type are not covered by Landowners or Organisers Public Liability Insurance and may also result in substantial fines of up to £20,000 and a possible custodial sentence of 12 months. The IOPD has provided defence documentation to the HSE in six separate cases over the last four years resulting in no further action in five of the cases as the organisers were 'Authorised'. The sixth case involved a non-authorized organiser, and this has progressed to a prosecution. The final outcome is to be announced following an appeal. Further information is subject to confidentiality agreements at this stage.

## **Bullet Points to the Laws relating to Off Highway Recreational Driving /Riding**

The Road Traffic Act states that it is an offence to drive or ride a mechanically propelled vehicle in a public place in the following ways:

(a) Dangerously, carelessly or in a way likely to cause alarm, distress or annoyance.

*Penalty:* A fine, disqualification or imprisonment. Offending vehicles may be seized and destroyed. Ref: RTA 1991 RTA/Home Office Guide

Magistrates Guidance Notes (4<sup>th</sup> August 2008) states:-

(1) Dangerous Driving is speeding, showing off, aggressive driving, racing, overtaking inappropriately. Driving in a manner that a competent and careful driver would consider as dangerous and the standard of driving falls far below that which would be expected of a competent and careful driver (The RTA 1991 Section 1-2A).

Examples would be:

An incident involving excessive speed or showing off e.g. above the speed limit. Aggressive driving, such as driving much too closely to the vehicle in front. Racing. (Racing is taken to mean competing against a rival, against a time or against challenging conditions). Inappropriate attempts to overtake. (e.g. On the inside). Cutting in after overtaking. Even the act of abandoning a vehicle in an inappropriate place can lead to a charge.

*Penalty:* Imprisonment, disqualification or fine. Offending vehicles may be destroyed.

## Factors indicating high culpability

Causing death by careless or inconsiderate driving. *Penalty:* Up to 14 years imprisonment.  
Driving other than in accordance with a valid driving licence. *Penalty:* 3 to 6 points. Up to 6 months imprisonment. Driving without insurance. *Penalty:* a fine, 8 points, may be disqualified, vehicle may be destroyed. More than one person was killed as a result of the offence. Serious injury to one or more persons in addition to the dead.

(2) Careless or inconsiderate driving (driving without due care and attention). If a person drives a mechanically propelled vehicle on a road or other **public place** without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence (The RTA 1991- Section 2).

Examples would be:

Inconveniencing others. Loss of control due to speed. Mis-handling or insufficient attention to the road conditions, or carelessly turning right across oncoming traffic. Injury to others or damage to property. (As of 1<sup>st</sup> September 2013). Tailgating. Failing to give way at a junction. Overtaking and pushing into a queue of traffic. Being in the wrong lane. Inappropriate speed. Wheelspins. Handbrake turns. Donuts/drifts. Wheelies

*Penalty:* Disqualification, fine or community service order.

Which causes death.

*Penalty:* Up to 14 years imprisonment      Ref: RTA 1991 (section1,2&3)

Without 3<sup>rd</sup> party Road Risk Insurance

*Penalty:* A fine, 8 points, may disqualify. Vehicles may be seized & destroyed.  
Ref: 2006 Road Safety Act, Amending the 1988 RTA (section 143) Home Office Guidance 2006 (page 21-23)

Without an appropriate Driving Licence and or not being of an appropriate age, or whilst disqualified.

*Penalty:* A fine, 3 to 6 points, up to 6 months imprisonment. Vehicles may be seized & destroyed. Ref: Home Office Guidance 2006 (section 164-165 RTA)

Without a current M.O.T. and registration plate(s)

*Penalty:* A fine. Ref: D.E.F.R.A. Guidance 2006 10/7 RTA (section165)

Aiding or abetting a participant, organiser or promoter of an activity, which results in an offence, as listed above, being committed.

*Penalty:* As per offender. Plus negligence is then established. Ref: Accessories and Abettors Act 1861 RTA (sec123)

More than 15 yards from a road without lawful authority.

*Penalty:* £30-£1,000 fine. Ref: RTA 1988 (section 34)

Factors indicating greater degree of harm (therefore increased penalties): Injury to others. Damage to other vehicles or property. Overtaking manoeuvre at speed resulting in a collision of vehicles or driving on the border of the dangerous.

HSE Compliance and Health & Safety at Work offences involving Organisers and Landowners who fail to conduct their undertakings in such a way to ensure that persons were not exposed to risks to their health and safety section (3) and 33(D&L). this may be as simple as allowing access land and walking away without ensuring that the user has an Authorising Permit in place. This offence may carry a six-month custodial sentence.

The HSE Newsletter No 6 Oct 2005, to all Local Authorities states:- If an event is not authorised then it is **unlawful** and a police officer can be requested to stop it at once.

Section 59 of the Police Reform Act 2002 states:- a Constable may seize a vehicle in a public place and remove it if he has reasonable grounds for believing it has been used in contravention to section 3, 87 and 143 of the RTA 1988 (driving carelessly or inconsiderately, without a licence or without insurance).

Council of the Association of Chief Police Officers and its members ref ACPO/TC/27/93/GG confirm:- event organisers, landowners, marshals and officials may be joined in prosecutions under Aiding and Abetting or under Joint Enterprise, resulting in large fines and custodial sentences (IOPD case number 58)

1207 Cawley v Frost Queens Bench Division 1976 Lord Widgery CJ Melford Stevenson and Caulfield JJ stated:- All parts of a circuit or stadium in their entirety, including the infield, must be considered a **public place**.

The RTA states under section 13A a person **shall not be guilty** of an offence under section: 1 (a person who causes the **death** of another person by driving dangerously in a public place) 2 (driving dangerously in a public place) 3 (driving carelessly or inconsiderately in a public place) if he shows that he was driving in accordance with an authorisation given under regulations made by the Secretary of State.

Kenneth Carlisle (Secretary of State) under special instrument 1371 states:-The International Organisation of Professional Drivers may if it sees fit grant an authorisation under section 13A of the RTA 1988.

Defence of prosecutions in criminal or civil cases brought against all those involved with vehicle events are extremely compromised if the activity is seen to be unlawful at the outset (HSE N/L No 6 Oct 2005). Several major motor sport insurers now only insure authorised events thereby limiting their exposure to claims as venues are then '**Authorised Places**' in law where **certain prosecutable transgressions of the conventions of our society are disappplied by statute**.

The purpose and benefit of Authorisation to Recreational Autosport Organisers and Promoters has significantly changed over the last quarter of a century as the State (The Government) extends its thrust and financing of Health and Safety Regulation and thereby prosecutions.

HSE /EHO (Environmental Health Officer) training and Instruction is simple. If someone is injured in the 21<sup>st</sup> Century, it should not have happened. Therefore, someone must have been negligent in some way. (Initially this is never normally perceived as the injured person). Well it stands to reason in our super safe society nobody deliberately and knowingly puts themselves in danger, do they? So, the enforcement officers' assumptions are:

- a) That there must not have been sufficient warning signs or barriers
- b) There must have been un-necessary hazards
- c) Insufficient PPE (personnel protection equipment)
- d) Insufficiently trained staff and insufficient instruction
- e) Inadequate intervention to stop people hurting themselves and others by limiting how fast they may travel, where they may travel, over what they may travel or how close they may travel.

All these cited are covered under the Road Traffic Acts and Highway Codes as negligencies. All this is very laudable of course but what about Recreational Motor Sport? People take part for the thrill of being allowed to place themselves in danger with and against others. They



want to challenge their skills. Push themselves to the limit and often beyond. They know they may be killed or seriously injured. They know they may suffer losses both physical and/or financial. They may even injure or accidentally kill others.

The State recognised this one unique case in the 1991 Road Traffic Act, Off Road Event (off highway) Regulations where laws relating to offences carrying custodial sentences of up to 10 years and beyond are disappplied in relation only to **authorised** motor sports and associated activities. It legislated for the exemption of motor sport from the State's control of mechanically propelled vehicle risks covered in this case under a disapplication of the Road Traffic Act regulations. This little-known exemption disappplies the offences relating to how vehicles are driven under Section 13A covering authorised auto sport and associated activities. Initially this fact appears incredulous to Enforcement Agencies who do not normally come across this unique exemption to widely understood Safety Laws covering all other places in society. Therefore an Authorisation Permit from a Recognised Governing Body is now crucial to avoid prosecution and being sued for negligence. To enjoy this amazing unique privilege an event organiser must put in place simple and obvious risk reduction procedures. The IOPD have branded this as '**DIMSIS**'

- D** Discipline of all involved within the curtilage of the event.
- I** Inspection of all vehicles involved on the course prior to the activity starting.
- M** Marshalling of all within the venue.
- S** Segregation of vehicles by type, power, skill and age and segregation of vehicles from each other and from marshals and spectators.
- I** Instruction of all parties involved by rules, regulations and briefings.
- S** Safety - seats, belts, crash and roll over protection including the wearing of helmets and fire protection.

## **An outline of how ‘Authorisation under the Off-Road Regulations’ came to be, what it is, what it entails, who can provide it and how!**

The following is a summary of what the IOPD sees as a common-sense analysis spelling out the implications of the Road Traffic Acts (RTA) and the Magistrate’s Guidance on recreational driving, testing, training and other recreational activities using mechanically propelled vehicles at an event, in a restricted environment (off highway) on all Private Land when the Public are Present, including Purpose Built Stadiums, Circuits, Public Arenas, Showgrounds, Circuits Tracks, and Exhibition Halls. (DFT 28-6-07)

### **Background to Authorisation**

When the Road Traffic Act (RTA) was re-enacted some three decades ago it attempted to apply the usual and generally well understood ‘road law’ of dangerous, careless and inconsiderate driving to all mechanically propelled vehicles in all ‘public places’.

This change in the law, lobbied for by the Police, had the entirely laudable purpose of enabling the prosecution of people acting irresponsibly in parks, open spaces and all other ‘public places’ where they might injure or inconvenience the public!

However, an unforeseen situation arose as the RTA also made almost all challenging activity and sport involving MPVs effectively unlawful whether properly conducted or not as, by definition, most activities and sports took place;

- in venues that, in law, are ‘public places’ even if on private property,
- using MPVs that did not meet road going specification,
- often driven or ridden by people without driving licences,
- with behaviours, speeds etc. and performance of manoeuvres, use of equipment / trailers etc. that were not permitted on the road . . .

### **What is an Authorisation Permit or Licence and why is there a need for one?**

After a short period of consternation, a way to re-legitimise sport and activity by providing for a system of ‘authorisation’ was devised. An update of the RTA was passed that referred to ‘The Motor Vehicles (Off Road Events) Regulations’ which were first enacted in 1992 and then, with revisions, in 1995.

1, The Department of Transport guidance note HGV92227 states:- The organiser of an event will need to obtain authorisation under section 13A of the Road Traffic Act 1988 if the event necessarily involves the driving or riding of vehicles in a manner that could be considered dangerous or careless

The Department for Transport Guidance note HGV92227 states:

*‘The Organiser of an event which includes the use of mechanically propelled vehicles in a public place will need to obtain authorisation under Section 13A of the Road Traffic Act 1988 if the event necessarily involves the driving or riding of vehicles in a manner which could be considered dangerous or careless as per RTA section 1,2 and 3 (1991).*

’ i.e. contra to the Road Traffic Act and the Highway Code.

Section 13A - (1) of the R.T.A. now states

*‘.....A person shall not be guilty of an offence under section 1,2 and 3 (dangerous, careless and inconsiderate driving) of this Act by virtue of driving a mechanically propelled vehicle in a public place other than a road if he shows that he was driving in accordance with an authorisation for a motoring event given under regulations made by the Secretary of State (Statutory Instrument No: 1371)’*

### **This in effect created a third ‘place’ in Law - an ‘Authorised Place’**

This meant that ‘authorised events’ could take place without having to conform to the requirements for driving and for vehicles laid down in the RTA. In effect a person shall not be guilty of an offence if it can be shown that he was driving or riding in accordance with, and within the curtilage of a **Road Traffic Act (Off Road Event) Authorisation Permit** issued by an Authorising Body under Road Traffic Act Regulations 1991.

The permit or licence of authorisation defines the curtilage or perimeters of the site or venue and changes the legal status within the curtilage of an Authorised Auto Event (which is in a public place) taking it outside the scope of certain Road Traffic Act Regulations and the Road Safety regulations, by placing the activity under the Off Road Event Regulations of 1992 into an ‘Authorised Place’ and clarifies exactly where the RTA ceases to apply, particularly with regard to criminal offences such as death by dangerous driving.

In order to comply with the spirit of HSE LMD 2015 Regulation 13 (a) and (g) the Course or Action Area and Safety Zones must be clearly defined both on a track plan and also on the ground by means of fencing, taping and signage stating, ‘Prohibited Area’.

The minimum boundary demarcation on large open sites like airfields, beaches etc is a clearly visible open space of at least 50 metres from the course, controlled by marshals with signage stating ‘Prohibited Area’.

For activities where speeds are below 50 mph, this may be reduced to 15 metres.

For exclusion zones round the course or action area where the public could enter because there are no permanent barriers, entry must be made to be ‘restricted’ and defined as ‘a controlled Track or Space’ (2018/0168 COD). This can be done using at least 25kg and 60mm width blue and white striped plastic tape mounted on stakes, trees or large road cones at a height above the ground of ½ metre. The barrier tape should state ‘Prohibited Line do not cross’ (as per police scene of crime boundary marker tape). See also specific event type Authorising Body regulation on track or course boundary demarcation which may extend this regulation. (For suppliers of this tape please contact the IOPD.)

The process of ‘authorisation’ creates an entirely new class of ‘public place’ in law where the requirements of the RTA are suspended and an activity may take place that includes elements of risk! The quid pro quo of this privilege is that all reasonable steps must have been taken to minimise risk to that which is obvious and necessary and that the three categories of participants present (i.e. riders or drivers, direct support teams and venue personnel, and the spectators) must be aware of the increased risk and must be present and participating of their own choice having proceeded past appropriate warning signs.

The process of ‘authorisation’ ensures that these activities may take place lawfully by providing for a structured system to minimise risk, an inspection system to discourage negligence, insistence that best practice be recorded and applied and that the interests of all the persons possibly put at risk are maintained so far as is reasonably practical. The Department for Transport Guidance note HGU 92227 states:

*‘... Each Authorising body should carry out periodic, unannounced spot checks, to ensure that the procedures are operating properly. They should keep a register of these spot checks.’*

These irrefutable reports have proved invaluable to the courts to prove a history of independently certified inspections of best practice on behalf of an event operator by a

government empowered inspectorate thus helping to exonerate them from accusations of poor standards or persistent negligence.

To obtain a 'permit or licence of authorisation' a club or an organiser must prove that they have the necessary skills, experience and training and they have assessed the risks to the three classes of participants, riders or drivers, direct support teams and venue personnel, and the spectators and have taken all necessary steps to minimise those risks and to provide against mishaps with control, communication, first aid etc. and with adequate insurances.

The importance that is placed upon an event being authorised can be better comprehended by understanding that, when an Authorisation Permit or licence is withdrawn (as a result of a failure to comply with safety conditions), then the DfT guidance states:

*'.....the police should be notified as soon as possible of the revocation by means of a standard form stating the time and date that the notification was signed and handed to the organisers.....'*

### **When is Authorisation not needed?**

There are a number of situations in which authorisation is **not** required and they can be summarised as:

#### **A. Events occurring in a private place rather than public place. This is not the same thing as private property and public property!**

An event in a 'private place' would be one closed to all others but employees and contractors of the same business or organisation or members of the same family and their immediate circle of friends.

Examples might be staff of a motor manufacturer, or a vehicle related museum or of a rigorously exclusive club on their own closed premises, carrying out testing etc. but not subdivisions of premises, circuits, test tracks etc. in or on which 'the public' are present at the time – (see *Cawley v Frost 1976*).

Or, members of a family and their normal circle of friends on their own land to which there is no public access enjoying powered leisure or competitive activities in private.

All other places where an 'event' is taking place will almost certainly be 'public places', see below for the limited range of exceptions.

#### **B. Events occurring in a public place when all vehicular movement is carried out lawfully under the 'roadgoing' provisions of the Road Traffic Acts.**

Such an event might include an owners club meet in the grounds of a farm or stately home where only registered, tested and RTA insured vehicles were present and all driving complied with normal road going behaviour and standards except for the possession of road tax.

Or, an agricultural show at which all vehicles and machines participating or being exhibited complied with all road going compliance requirements (except possession of road tax) and at which mechanically propelled vehicles that were not registered or not capable of being registered were excluded.

Or, a 'diversionary activity' for young persons, allowing constructive and controlled access to and use of motor vehicles at which all vehicles supplied complied with all road going compliance requirements and at which all participants who drove or rode were appropriately licensed and insured to RTA standards.

### **So is ‘authorisation’ compulsory for an off-road event in a public place?**

All other types of ‘event’ in ‘public places’ which includes both public open space and private property or premises to which the public have access whether on payment or otherwise (and including those parts to which access is denied – *Cawley v Frost* 1976) require authorisation or are otherwise likely to result in one or more offences being committed!

If this activity is not authorised then despite whatever planning has taken place the Road Traffic Act applies and all driving behaviour must comply with the normal requirements of driving on a road or other public place i.e. driving according to the conditions, no speeding or ‘risk taking’ -

This is not likely to be the expectation of the participants. They may well not realise that their driving should be ‘normal’, cautious road driving.

It is important to emphasise that authorised and unauthorised events are not entirely synonymous with legal and illegal events.

**In summary there is the need for Authorisation of ALL Non Road Legal Activities in ALL Public Places.**

The Department for Transport guidance states:-

**‘The organiser of an event which includes the use of mechanically propelled vehicles in a public place will need to obtain authorisation under section 13A of the Road Traffic Act 1988 if the event necessarily involves driving or riding of vehicles in a manner which could be considered dangerous or careless.’** *i.e. contra to the Road Traffic Act and the Highway Code.*

#### **Further qualification**

Authorisation legitimises what would otherwise be potential criminal auto activities within an event. **(An event being any group of like minded people that are called together advertised and promoted.)**

Even non-competitive events taking place on the highway are required to be authorised in order for them to be lawful. This is clearly when road legal vehicles are driven in a road like manner, but yet are subject to some form of a test of ability or Trial. (See section 13 of the 1988 RTA).

It was the Government and the DfT intention to set a policy which would once and for all tidy up all the loose ends as to what, where and how vehicle activities are and are not lawful and this they believe they have done.

Since the introduction of the Off-Road Event Regulations in 1992 there have been constantly updated opinions and guidance by many other Government Departments. The 2006 Road Safety Act further amends, strengthens and grants the police more power whereby they may seize and crush offending vehicles from any premises other than the home of an individual (home meaning house and not adjoining garage.)

The 2006 Road Safety Act also clarifies the liability of Event Organisers in permitting vehicles to participate in activities in a public place without Third Party Road Risk Insurance under section 143 of the RTA.

The DEFRA guide also further clarifies these issues and interpretations.

The DfT felt all driving in an unconventional way i.e. contra to the Highway Code or with an unconventional mechanically propelled vehicle should now be ‘Authorised’. It instructed the 11 Governing Bodies to take this on board by authorising any activity which was safely organised.

Authorised Governing Bodies and Authorised Event Organisers have made provisions to fulfil these requirements, as the only providers of fully Authorised moving vehicle events. Putting it simply, subsequent to the enactment of the Off Road Event Regulations, all Off Highway vehicle activities and competitions would either need to be authorised under the Road Traffic Act Regulations by one the 11 Governing Bodies, or would have to conform to normal ‘on highway’ driving standards. (The Highway Code) including 3<sup>rd</sup> Party insurance.

Consider this Simple Test:-

*‘if it can not be shown that riders /drivers of mechanically propelled vehicles participating in an event carry third party motor insurance (which must comply with the requirements of part VI of the RTA 1988) whilst participating in the activity and produce evidence of this to the appropriate authority, then the activity should be authorised and insured on an appropriate Public Liability Insurance Policy.’*

Events may go ahead in Public Places without authorisation, if all participating vehicles are insured and are driven in accordance with the Highway Code and the Road Traffic Act. These include events like Vintage Car Rallies and Enthusiast Rallies etc.

All those events where unlicensed and uninsured vehicles are driven/ridden contra to the Highway Code and within the curtilage of a venue, to which the public are present, must be Authorised so as to provide evidence of compliance to the Off Road Event Regulations 1991 which in turn provides a defence against attempted prosecution. This is because participants and organisers:

*“shall not be guilty of an offence under section 1,2 and 3 of the 1991 RTA “if he shows that he was driving in accordance with an authorisation”*

**Authorisation is the best defence for claims, in both the Criminal and Civil Courts, for negligence without which activity contra to the Highway Code could be claimed simply to be negligence and therefore compensable by the Insurers.**

### **Venue Operators**

If a venue owner or operator conducts any kind of activity themselves, perhaps a go-kart circuit or mini quads as a children’s amusement then either:

All vehicles must be registered and entirely road legal, the drivers / riders fully qualified and each vehicle covered by a Road Traffic Act (RTA) insurance . . .

- or -

The event must be covered by an authorisation issued by an authorising body which will specify the safety precautions, public liability insurance etc. in place of the protection of the RTAs.

**If a venue owner or operator provides or rents any part of their premises or land to others for any purpose that includes use of mechanically propelled vehicles (MPVs) of any kind for instance, mini quads at a children’s activities fair, demonstration drives at a vehicle show, use of an exhibition hall for a competitive motor event or a stunt display (including in a subsidiary or support role – quad bikes for security staff at a festival for instance) then the venue owner or operator should make it an explicit part of the contract that the user of the premises or land either:**

ensures that all MPVs, their drivers / riders and manner of driving / riding are in compliance with the Road Traffic Acts,

- or -

the user of the premises or land obtains an authorisation from one of the authorising bodies and ensures compliance with its conditions.

So long as the contractual condition is explicit and the management of the venue asks for a copy of the authorisation then they should be protected against prosecution for aiding and abetting any offences committed and being joined in any civil action or claim should anything go seriously wrong!

**Custom shows, meets or similar require the same consideration.** If every vehicle movement is by an entirely road legal vehicle then fine . . . if not, say the presence of a motorcycle stunt team, manufacturers demonstrating unregistered vehicles trailered into the event, enthusiasts showing vehicles or machines that are not fully road legal then the organisers should complete a risk assessment and apply for a permit of authorisation.

### **The Liability of Motoring Event Organisers**

Courts could be asked to consider the liability of a motoring event's organiser should a participant be prosecuted for dangerous, careless or inconsiderate driving:

*Whosoever shall aid, abet, counsel or procure the commission of any indictable offence....shall be liable to be tried, indicted and punished as a principal offender (The still widely used Accessories and Abettors Act 1861, also covered by the Health and Safety Act)*

### **What about Festivals and 'Shows' and 'Showgrounds'?**

In a nutshell the situation for showgrounds is no different to anywhere else. When any part of the showground is a 'public place' the RTA should be assumed to apply over the entire property – including otherwise 'private' service areas etc.

Indeed, where once showgrounds were occasional venues for things agricultural they are now hosts to a much wider range of activities. Even agricultural shows seem to have little to do with farming anymore and 'entertainment' activities are very much in evidence. There is a common misconception that authorisation is not necessary or, indeed, not available for the protection of the public and participants from prosecution should offences be committed against the RTA or related legislation, especially if these come to light as the result of an incident.

Looking at the apparent three component parts the following can be said:

**First Component** – Actual competitive events: (competing against a rival, being judged)

The first component part consisting of actual competitive events is advertised as being under the rules of the appropriate Governing Body and notice is given that permits of authorisation have been applied for.

As noted above, so long as the authorisation has actually been issued this section can be presumed to be 'outside' the Road Traffic Act and to be a properly conceived and set up part of the event. Unless observation indicates otherwise it can be assumed that this part of the event will be properly and lawfully run.

**Second Component** – General Public – 'Have a Go' (participating)

The second is possibly more problematical. The general public are invited to participate in an 'Experience type drive' along a special course.

Mention is made of expert scrutineers and expert level medical support yet it is mentioned that there is no requirement for participants to be licence holders or to have membership of or recognition by any other recognised organisation. More crucially, no mention is made of authorisation by the Governing Body (or, indeed, any other Government recognised Authorising Body).

Often under insurance – It will state that the Organiser has Third party Public Liability Insurance covering any one incident up to £5 million. You and your passenger will be required to sign an indemnity prior to commencement of the “Special Sessions”. Details of this are on the application form. You can take out specific “Track Day” Insurance covering accidental damage to your car.

This paragraph suggests that the organisers realise that the normal RTA insurance possessed by participants will be void – if this is the case then in the absence of authorisation the RTA insurance requirement for vehicles moving in a public place may not be being met.

For the purpose of this event the ‘public place’ would appear to comprise the entire Show Venue. *Precedent Cawley v. Frost [1976] 1 W.L.R. 1207* Clearly the opportunity for ‘special type’ driving is being offered to the general public and not just to members of an affiliated club or clubs and that the event may be dangerous is indicated by the requirement for helmets and the ‘Insurance’ paragraph. If this is indeed the case it is possible that ‘dangerous driving’ may take place in a public place.

The question to be asked is whether or not this part of the event is authorised, as it clearly should be, by one of the Governing Bodies. It should be, but is it? If the Governing Body were asked but declined then they should already have notified the appropriate Police Authority - *Department of Transport Guidance Note for those Authorising and Organising Events (Document HGU 92227)*

### **Third component – Displays and Stunts**

‘Auto sport demonstrations’ and other displays may also be described as precision and stunt driving displays.

‘Stunts’ speak for themselves; the ‘displays’ would depend on the vehicle, the driver and what was actually done in terms of driving behaviour.

As with the second component if no authorisation covers these activities then vehicles, drivers and activity must be RTA compliant and all activity should be carried out by road legal vehicles covered by an RTA compliant policy of insurance. These invariably prohibit other than ‘normal’ use and driving. *See standard sections under ‘Exclusions’ found in every RTA compliant insurance policy.*

### **In summary:**

As in most composite, ‘festival’ or ‘show’ type events it seems that the requirement for authorisation is understood where competitive events are concerned but the requirement for ‘authorisation’ of other ‘activities’ of a display, participation or ‘experience’ nature in which any one or combination of vehicle, driver / rider or driving behaviour are not entirely RTA compliant may have been overlooked - and it is in these areas that problems may remain. Not only may participating and spectating members of the public be put at risk by the possibility of driving behaviours outside the RTA, including the risk of prosecution for those driving, but it might also be assumed that ‘employed persons’ are present who may well have been trained for the hazardous situation but who in the absence of full compliance with the RTA are exposed to the risk of prosecution by the failure to comply with the law.



**Assuming that no comprehensive and detailed authorisation is in place** – it would seem that the remedy is relatively simple. Proper authorisation of the entire event and not just any competitive element.

This would of course, in the process of being assessed and granted, ensure that the necessary training, precautions, plans etc. were in place for all the events that did not conform to the RTA in any one or multiple aspects of **full vehicle conformity, full driver conformity and full driving behaviour conformity.**

Where the owners / operators are leasing or renting facilities it is strongly recommended that they consult with their lawyers to make sure that the agreements and documentation transfer the ‘interest in land’ to the lessee or renter for anything to do with motor vehicles or mechanically propelled vehicles.

This should be drafted to make the lessee or renter responsible for being satisfied that the ground conditions etc. are satisfactory for their purpose. It should also remind them of their obligations as regards H&S etc.

Where the lessee or renter intends introducing mechanically propelled vehicles other than entirely road legal vehicles driven by properly qualified drivers in an entirely road safe manner then the contract should insist upon authorisation and beyond that copies of compliance documentation to the venue manager as well.

Only by doing this carefully and with attention to detail will the venue owners transfer their liabilities, actual and potential, to the lessee or renter.

### **What happens to unlawful events?**

In practice not much if they pass off without incident.

If, as occasionally happens, a complaint is made a Health and Safety or Environmental Inspector may take a view that there is danger present and may summon a Police Officer to stop the event. Theoretically vehicles that are not road legal may be impounded and even crushed and this has happened. In reality though so long as no one has been hurt a caution is more likely!

. . . Until things go wrong. If there is what may be described as a ‘serious risk’ or an actual incident resulting in damage to property, injury or death the repercussions may be severe. Everybody is now aware that when an incident takes place that may result in a death, or a serious injury to a minor, the venue now becomes a police investigated “ scene of crime” even though it may have taken place on private land or in a stadium.

There has been a case where an Environmental Health Officer inspecting the plans for a large motoring event due to attract over 15,000 visitors asked for proof of authorisation for an arena stunt show and sprint strip. The organisers were unable to obtain authorisation in the 48 hours available and had to cancel the main moving vehicle activity at the event for fear of severe repercussions.

In cases of ‘serious risk’, for instance where children are riding Quads that do not conform to The All-Terrain Motor Vehicles (Safety) Regulations 1989 the ‘supplier’ may find themselves in very deep water indeed. The children or young people themselves may be open to prosecution for unlicensed driving and the organiser / proprietor for aiding and abetting!

Where an incident involving property damage and more particularly injury or death occurs the incident must be reported under the RTA. Then very undesirable things may happen.

Directly in the ‘firing line’ for a potential criminal prosecution will be:

- The person driving or riding the MPV that caused the damage. They may be charged with dangerous or careless driving depending upon the severity of the result. They may also be charged with any other motoring offences that become apparent, driving without RTA insurance, driving without an appropriate licence etc. Punishments depend on the charge and the verdict and may range from a few points to imprisonment.
- The person identified as ‘in charge’ of the event. They may find themselves answering charges ranging from aiding and abetting to corporate manslaughter! (This has happened in approximately 6 cases in recent years.)
- The land or premises owner may be held responsible for allowing the event to happen and so ‘aiding and abetting’ the primary offender whether that is the rider / driver or the organiser . . .’

And that is not the end of it. IOPD knows of many incidents that have been followed by hefty civil claims for damages. Once again those most likely to be claimed against are:

- The rider or driver of the MPV that caused the injury or damage.
- The organiser or organisers identified as being in charge of the event.
- The landowner

It is not unusual for a criminal prosecution to be followed up by a civil claim for damages and once the first has succeeded it is unlikely that any defence can be effective against the second!

### **Who ‘authorises’?**

There are 11 Government recognised Authorising Bodies who are recognised by the Department of Transport under the terms of the Road Traffic Act 1991. All are Empowered by Statutory Instrument by the Secretary of State to inspect, approve and sanction off-highway venues and issue Authorising Permits.

- 1.The Royal Automobile Club (now Motorsport UK),
- 2.The Amateur Motor Cycle Association Ltd,
- 3.The Association of Land Rover Clubs Ltd,
- 4.The Auto Cycle Union Ltd,
- 5.The British Schoolboy Motorcycle Association,
- 6.The International Organisation of Professional Drivers Ltd,
- 7.The National Autograss Sport Association Ltd,
8. NORA 92 Ltd,
9. National Traction Engine Trust,
- 10.The Youth Motorcycle Sports Association (YMSA) Ltd
11. The Scottish Auto Cycle Union Ltd.

### **Who is the IOPD and what do they represent.**

As mentioned above The International Organisation of Professional Drivers (the IOPD) is one of the 11 Authorising Bodies and was incorporated in January 1990. The IOPD is recognised by the Department of Transport under the terms of the Road Traffic Act 1991 and is empowered by the statute to inspect, approve and sanction off highway venues and issue authorising permits under the Road Traffic Act legislation given under regulations made by the Secretary of State. The IOPD by issuing such a permit is empowered to change the legal status within the curtilage of an Authorised Auto event (which is in a ‘public place’) taking it outside the scope of the Road Traffic Act Regulations and Road Safety Regulations, by

placing the activity under the Off Road Event Regulations of 1992. All authorising bodies are instructed by the Department of Transport to notify the appropriate police authority if they revoke or refuse an authorisation permit when safety standards are not met.

The IOPD was specifically asked to attend the needs of commercial auto leisure providers, manufacturers, event and circuit operators in addition to sporting and competitive activities not belonging to the ‘franchises’ of the FIA/FIM governed by the RAC/MSA and the ACU.

Unlike the traditional ‘clubman’ organisations the IOPD does not require membership – authorisation can be a purely commercial transaction – however membership is encouraged and an association in membership can enjoy significant benefits from a status that effectively provides for a large measure of self-government under the ‘umbrella’ of the IOPD.

Since the Empowerment of the IOPD under the 1991 Road Traffic Act (Off Road Event Regulations) in pursuing the remit the Department for Transport asked us to take up we have slowly increased the number of days of Authorised Activities permitted under IOPD rules, regulations and inspection systems to the point that the IOPD is now covering around 19,300 days of Auto leisure activities per year at over 1,080 venues, for an estimated one million participants and over one million spectators.

High profile organisations affiliated to and authorised by the IOPD include six of the international motor manufacturers with ‘off highway’ driving experience programmes based in the UK including Landrover and Range Rover. Along with the National Motor Museum, The Brooklands Museum, and Mercedes-Benz World at Brooklands UK Ltd. The IOPD also authorises Landrover Experience Centres along with The British Off Road Driving Association, amongst others.

These types of off road activity are of immense economic importance to the nation operating as they do almost every day of the year.

The IOPD issues authorising permits / licences for activity days at some 16 motor racing circuits, 7 county showgrounds, and over 100 country estates and farm venues.

The IOPD has been following very closely the legislative and guidance changes, which might impact on the Off Road Auto Activity Leisure Industry, most recently the 2006 Road Safety Act and the publication of the DEFRA Guide to the use of Motor Vehicles Off Road (Dec 2005).

In 2006 the IOPD established and funded an online information website to inform off road event operators of the relevant legislation which may affect them and offered to advise on how they might become authorised under the regulations.

This site received an average of around 250 hits per month in mid-Summer 2006. This quickly rose to 3,000 a month by October 2006 and topped 6,000 hits in February 2007. This was probably as a result of the publication of the DEFRA Guide and the 2006 Road Safety Act.

In February 2007 the IOPD funded a Major Conference at Mercedes-Benz World at Brooklands to promote understanding of these evolving regulations and consistency of enforcement. The Guest List for the conference was extensive and included the Motor Sports Association, many non-authorised Auto Leisure Associations, representatives from Health and Safety, Environmental Health, and the Association of Chief Police Officers. There were also representatives from the main Insurers and Journalists from the main Auto Sports News groups. At the Conference the IOPD launched a number of Information Guides that were supplied to the Press, the Insurers, the enforcement agencies and IOPD affiliates.

The IOPD has supplied expert witnesses in recent court cases and has also attended Coroners Courts as an expert witness to fatal auto sports accidents.

## **How does the IOPD make this process work?**

There are slightly different methods used for individual venue or activity providers and for associations or clubs.

### ***Where a venue, operator or centre is not in a club or association:***

(They may be a sole trader, partnership, limited company or local authority etc)

The IOPD will provide support and materials to help the understanding of the requirements for 'authorisation'. Once an operator or responsible person feels they are ready an inspection will be made to thoroughly audit and check every aspect of the operation.

Where necessary recommendations may be made and issue of the 'permit of authorisation' made contingent on compliance. Once all is found well the venue or the operator is deemed 'authorised'.

Usually certification is for fixed sites. However, for an operator, someone like a stunt or display provider or who delivers 'corporate entertainment', who travels from site to site or who uses different customer venues the process by which they organise and set up will be tested.

In all cases, permanent venues or temporary sites, a 'Permit of Authorisation' in the form of a certificate will be issued covering the venue, date(s) or period (of up to one year), specifying the authorised activities and, so long as its conditions are met, effectively suspending the RTA.

### ***Associations:***

The IOPD encourages associations who wish to be part of this process to get together in whatever form is appropriate, to adopt a set of rules or a constitution that requires a 'best practice' approach and to define and publish what that is in the form of **standards or codes of practice** (some times referred to as operational rules and regulations). These should be available to its members and mandatory in use to protect the safety of all participants.

IOPD will provide access to models, introduce useful contacts, suggest consultants etc. at no cost. Assistance can be given (at a cost) to help with the detail of this process if necessary.

Once an agreed set of Codes of Practice or rules is in place IOPD will inspect each home venue and go through the application of the Codes of Practice in detail. An experienced and senior member of the association, to observe and participate in the inspection process should accompany this initial visit. If all is satisfactory the venue will be 'authorised' i.e. licensed against the specification requested by the IOPD.

As each principal venue is 'authorised' i.e. licensed and each event organiser demonstrates their understanding and practical competence, so the privilege of being trusted to assess and specify other venues – often temporary or one day – for the purposes of authorisation will be extended.

After an initial period the skills of inspecting, assessing and advising authorisation for new members and checking compliance by existing members can be passed to a cadre of the association's own respected and trained members. IOPD will conduct occasional notified or un-notified inspections to check the system and to validate it.

### ***Individuals:***

The IOPD also offers other support to individuals, businesses, clubs and associations involved in auto sport and auto leisure provision.

This includes assistance in finding best quality and value insurance, advice with business problems, advice in dealings with regulators and assistance in the event of a serious incident at an authorised event. Attending Coroners hearings, providing expert witness reports etc.

The IOPD also provides a lobbying platform and weight and credibility when representations need to be made to officialdom or politicians.

There is also in development a structured training and qualification system to meet the certification needs brought about by regulators, planning consents, insurers etc. You will find that in future Clerks of the Course, Organisers, Marshals etc. will need to be trained and/or assessed.

Because the IOPD is the governing body for many small, amateur, semi and fully commercial organisations, minority interest activities etc. there is often a contact available with someone who understands exactly what an unusual problem is and how it can be dealt with.

### **Advantages of Authorisation Permits to insurers of auto related events:**

1. Authorisation is a zero-cost service with all costs being initially born by the insured.
2. Authorising Bodies set codes of good practice for organisers to follow. (A requirement of the Department for Transport [DfT] and Health & Safety regulating Governing Bodies). Codes of Practice are borne out of many decades of experience across multiple disciplines of auto activity. Governing Body Codes of Practice reflect Crown Court, High Court and House of Lords decisions on past negligence case judgements. Confirmation of compliance of Codes of Practice reduces likelihood of negligence claims.
3. Authorisation of events provides for a legally recognised and DfT guided inspection system of venues and operates under Special Instrument 1370 of the Road Traffic Act [RTA]. This ensures the continual compliance to governing body codes of safety and good practice. Official verification reduces likelihood of claims of negligence.
4. Authorisation permits provide a system to legally withdraw authorisation (under Special Instrument 1371) from organisers when inspectors feel that risks to participants, marshals or spectators are being recklessly disregarded. This acts as the ultimate threat to conform as a police officer must be called to attend the event, to verify the disregard to safety and caution or charge the offenders.
5. The withdrawal of authorisation permits allows for a legally documented cessation of unacceptable risks to insurers from a specific point in time which is clearly defined and beyond which there is no liability to the insurer that has made being Authorised as a condition of cover.
6. Authorisation provides a system where any person, including insurers, may approach the appropriate Governing Body and request an unannounced inspection should they have grounds to suspect that a disregard for safety is taking place.
7. Authorisation formalises and registers Off Highway events, their curtilage and their place in law, as an authorised place. This authorised place is then a place where certain sections of the Road Traffic Act are suspended and special characteristics or reasons personal to those present (which is not possessed by the public at large) can be shown to exist. If not then it is a public place (Lord Justice Mann in DPP v Colman See also DPP v Vickers)

8. Authorisation provides for a direct link and working relationship with the Chief Police Officer of the county. The police must be informed if authorisation is withdrawn from an organiser and in reciprocal legislation the police may contact the Governing Body if they have any anxieties regarding safety at an event.

9. Authorisation provides 3<sup>rd</sup> party impartial system of verification of periodic inspection of operators and venues to establish that there is no substantial material change to the declared operational parameters of an activity.

10. Authorisation provides an accident report and inspection system to assist coroners and their agents establish the facts in respect to an off highway mechanically propelled vehicle death.

11. Authorisation legitimises risk taking for recreation and stimulation using mechanically propelled vehicles in off road auto related activities. Even when participants are involved where there is a death by dangerous driving the RTA recognises the need to exempt participants and organisers from prosecution for the six most serious charges relating to mechanically propelled vehicles.

12. Authorising Governing Bodies provide indisputable documented verification of adherence to codes of good practice as a defence against negligence claims.

13. Authorising Governing Bodies provide a system of networking to inform and update organisers on police, planning, environmental, insurance, Health & Safety and legal issues.

14. Authorising Governing Bodies provide a liaison system between organisers and Health & Safety inspectors, insurers, solicitors and barristers to explain established traditional procedures and confirm 'custom and practice' in auto related activities.

15. Authorising Governing Bodies provide a system of experts recognised under DfT regulations available to help, advise and offer opinions to the courts and the Health & Safety Executive.

16. Authorising Governing Bodies provide accident reports and venue inspection reports to assist the Coroner and their agents.

### **What are the main criteria required to achieve IOPD Authorised Status?**

- D Discipline
- I Inspection
- M Marshalling
- S Segregation
- I Instruction
- S Safety

An Algorithm – Motor and Mechanically Propelled Vehicles

**QUESTION 1, PLACE - Is the place a Public Place at the material time?**

**YES – It is A PUBLIC PLACE**

**NO – It is A PRIVATE PLACE  
Authorisation Not Needed**

If one or more Motor Vehicle or Mechanically Propelled Vehicle moves then consider authorisation

**QUESTION 2, RTA COMPLIANCE - Are all Vehicles, Drivers and Behaviours fully RTA compliant?**

**NO –**

**YES –  
Authorisation probably not needed**  
(eg Owners club meet)  
There is no problem if everything is compliant but there may be issues that the RTA does not cover

**QUESTION 3, AUTHORISATION - Is there a Permit of Authorisation issued by one of the Statutory Bodies?**

**YES -** Organiser or Operator will be able to produce evidence together with information to demonstrate compliance with its conditions. This will permit non-RTA vehicles / drivers / behaviours within the terms of its conditions. If the terms are not being complied with then the authorisation has no validity.

**NO –** An offence or offences may be being committed under any or all of compliance of vehicle(s), drivers / riders and driving behaviour.

## **The Broader Implications of being authorised by a Government recognised Authorising Body**

- The Risk Assessment provided by the authorisation system brings to the fore all the factors that must be considered and implemented.
- The decision to become authorised is an indicator ‘of care’ in itself.
- Recognised Authorising Bodies have Rules and Regulations (Governing Body Rules) which are bound in their Statutory Authorising Procedures. These Rules have now become the recognised Industry Standards and all unauthorised Event Operators may be judged against these Standards. Should an incident occur at an event, any breaches or procedures found, which are contra to the recognised Industry Standard Rules i.e. Governing Body Rules may be used by prosecutors or claimants to show/ prove / claim negligence.
- The questions asked by all Enforcement Agencies are:  
*‘were there significant breaches of the recognised industry standards or rules?’*  
And  
*‘is there evidence of inspection and audited compliance to these standards’*

The fact that an unauthorised operator was unaware of these Industry Standard Rules would not be a defence. The authorised sporting club will be aware of the motor sport rules and permit process.

- The Rules and Regulations and the implementation of those rules gives a practical expression of the ‘duty of care’ of the Authorised Entity i.e. the Organisers. The rules and regulations would be seen as a safe system of work along with method statements etc. The business promoter will be assessed to ensure he provides a safe system of work but needs to understand that failing to do this leaves them open to criminal prosecution in addition to the civil negligence claim.
- Authorisation creates a third category of ‘place’ to that of a ‘private place’ and ‘public place’ as it creates an ‘Authorised Place’ by changing the status of the land. In so doing it gives a defence to a mechanical propelled vehicle operator against the myriad of requirements to comply with normal vehicular operating conditions, thus neutralising claims of a negligent operation as a result of non Highway Code approved activity. The Highway Code and the most important sections of the Road Traffic Act now apply to Private Land which is at the same time a Public Place.
- Outside of Authorisation the Public’s safety on Private Land is protected by the Police, EHO, HSE etc. These Enforcers will judge situations against normal Transport criteria i.e. the Road Traffic Act and the Highway Code. Within an authorised site there is a contract of Conditions of Entry between the Operator and the Public. This places conditions and expectations on those entering within an authorised site. Once a place is authorised those within it become subjected to the disciplines of the conditions of Authorisation and the Rules and Regulations of that specific venue and outside the guidance laid down in the Highway Code and the Road Traffic Acts.



- Outside Authorisation the public or participants (in moving vehicles activities) are protected by people who may only have knowledge of non competitive (meaning also competing against the elements for recreation) moving vehicle hazards. They may not fully understand the risks and regulations of mechanically propelled activities. And so these well meaning enforcement agencies may seek, and do, to bring prosecutions based on normal road standards, which make dangerous, careless and inconsiderate driving or riding, overtaking on the inside, losing control, using communication systems, showing off, driving whilst uninsured, unlicensed and underage, a criminal offence in a public place. This in turn makes all concerned potentially open to claims of negligence when their actions are scrutinised and substantial fines.
- When authorised, these exact same moving vehicular activities have a statutory recognised defence in that the R.T.A. precludes a person being guilty of the six most serious offences and therefore by inference lesser charges may also follow similar exemptions.
- Authorisation therefore legitimises activities which could otherwise result in the ‘Controlling Mind’ (the Organiser, his agents Trainer or a Participant) being prosecuted or found negligent. (If a person is found guilty of such an offence that person or accessory may face up to 5 years in prison, or up to £30,000 fine per charge. This fee cannot be met or covered by insurance and once established leaves the person’s insurers liable to settle any subsequent civil claims with little defence.)
- A trainer instructor, coach or Event Organiser including all who aid, abet, consul or procure (no matter how well certificated I.E. ADI, LANTRA, BORDA or Police Trainer) would more likely be found culpable for the outcome of a trainee or participant losing control if the event was not authorised. Authorisation gives the greatest protection against negligence claims as a result of the possible consequences of Risk Taking for stimulation or training by the very nature of the fact that the Organiser has sought to become authorised.
- The role of the Authorising Body ensures that the process is independently supervised and audited. Authorised Event Organisers have access to the pool of knowledge of unforeseeable risks available to the Governing Body via the recorded incidents available to them.
- The IOPD along with other authorised Governing Bodies are independent arbitrators and give force to the ‘Waiver of a Duty of Care.’ This is because participants and spectators become knowingly complicit in the Risk taking activities when entering into an authorised place and pass beyond the standard ‘Motor Sport is Dangerous’ signs. This is also the case for Participants and Marshals when they ‘Sign On’.
- Authorisation clarifies what is truly a Volunteer Organisation. One which takes it outside the Health and Safety At Work Act legislation. And more importantly the prosecution system involved with work activities.
- It assists Organisers who are clearly a business to register and conform to Industry Standards, because Governing Bodies set the Industry Standard.
- Unauthorised Event Organisers would not normally have access to the Industry Standards therefore they may inadvertently be breaching these standards or be unaware of them. Unaffiliated businesses would lack an independent auditing system verifying their standards.

## **A Selection of some of the most commonly asked questions:**

(Approved by Senior Police Officers)

The following questions were submitted to the Association of Chief Police Officers and their members in 1992. Copies of their endorsements of the IOPD opinions are available on request.

### ***My relationship with the police is excellent. So, where is the relevance to my organisation or motoring events?***

All legitimate organisers of motoring events should actively canvas a good relationship with the police in their area, particularly as the police have a wealth of information that is very pertinent to an organiser, namely public order and safety.

However, consider the most horrific of motoring event scenarios, an accident involving injuries and a death. Here, the organiser is duty bound to contact the police and in all cases, a police report must be filed for consideration by an immediate superior if not, to take this example to the extremes, the public prosecutor.

The suggestion that an excellent relationship with the police of your area would somehow exempt your organisation and participants from considering the law suggests very short sighted and potentially dangerous views.

### ***Could a conviction of dangerous, careless or inconsiderate driving while participating in a motoring event affect my ability to drive on UK roads?***

Yes. It is important to realise that the recent changes in the law do not distinguish between dangerous, careless or inconsiderate driving taking place on a road or private land which is a public place. The Regulations treat them as one and the same.

This being the case, if a participant in a motoring event is convicted of such an offence, penalty points would be the least that would apply. If the penalty is simply points, these would be added to any previously existing points. The law states that any points over 12 are an automatic ban from driving a mechanically propelled vehicle on a road in the United Kingdom.

To take this possibility to an obvious final conclusion, you could find yourself facing a driving ban without ever committing an offence on HM's roads.

### ***Could my road insurance be affected by penalty points received during a motoring event?***

Obviously, the final answer must come from your insurance company. However, it would be extremely unlikely that insurance companies would make a distinction between points received while on a UK road or a motoring event in a public place, particularly as the law does not.

### ***Are drug or alcohol related motoring offences also exempted from prosecution if an event is authorised?***

No, the Department of Transport, referring to the amended Road Traffic Act is quite clear: -

*Those taking part in an event should be made aware that an authorisation does not exempt them from prosecution for offences which are drug or*

*alcohol related – i.e. causing death by careless driving when under the influence of drink or drugs or driving under the influence of drink or drugs. Section 3A and 4 of the Road Traffic Act 1991 [Guidance Note For Those Who Authorise And Organise Motor Vehicle Events].*

***I am a motoring event participant, not an organiser. Can I be authorised and therefore exempted from prosecution for dangerous, careless or inconsiderate driving in an unauthorised motoring event held in a public place?***

No, the law stipulates that only the event may be authorised.

***Could every motoring event be affected by the amended Road Traffic Act?***

Yes, if only as awareness unfolds, organisers may need to be well versed as to the parameters and implications of the new legislation particularly when dealing with concerned participants, sponsors, investors, insurance companies and the police.

***Most motoring event organisers have had problems with participants that take unacceptable risks, for example driving or riding dangerously in an event's pits or camp site. As an organiser, I feel that such a person should not be exempted from prosecution. Does authorisation protect such a person?***

No. In an authorised event, only those participants who drive or ride in accordance with the event's recognised safety rules and regulations would be protected from prosecution.

It is not the purpose of the regulations to legitimise unnecessary dangerous driving or riding.

In fact, the new legislation gives organisers the ability to request police assistance to deal with severe infringements of safety rules. This is an example of the positive benefits gained by motoring events of the introduction of the amended Act.

Many organisers have used the amended Road Traffic Act to make participants more aware of the risks involved in failing to comply with an event's safety rules and regulations.

***Is it illegal to organise or participate in an un-authorised motoring event in a public place?***

The question addresses the ambiguity of the law in that it is not illegal to organise or participate in an unauthorised motoring event in a public place, if the event is for totally road legal vehicles and drivers, driving or riding in a road like manner.

It is unlawful however to drive dangerously, carelessly or inconsiderately in a public place. Accordingly if there is an accident at an unauthorised motoring event, the police may now treat the accident in much the same way they would if the accident took place on a public road, i.e. cordon off the track or circuit as a crime scene and thoroughly investigate all aspects. The Police will also consider if the Organisers were 'in joint enterprise' with the law breakers.

***I am concerned that I might inadvertently participate in a motoring event that should be authorised but is not. How can I be sure that an event is authorised?***

Organisers with authorised motoring events would see the need to inform their participants of this fact.

Check all the documentation you've received from the organiser. If you find no mention of exemption from prosecution for dangerous, careless and inconsiderate driving, call the organiser and ask if the event is authorised, who has authorised the event and the event authorisation number.

Should you still be concerned, confirm that the event is authorised directly with the authorising body.

***The owner of the neighbouring land has been actively trying to stop my motoring events. Would the amended Road Traffic Act provide him with another argument if my event is unauthorised?***

Assume that your event involves driving or riding in a manner that your neighbour, who isn't a motoring enthusiast, would consider as dangerous to the public and he calls the police.

Before the 1<sup>st</sup> of July 1992, the police would have had to consider the matter a civil case and subsequently out of their jurisdiction. Though frustrated your neighbour would have had no option but to accept this or name you in a costly civil action.

The 1<sup>st</sup> of July legislation moved the matter into the realms of criminal law, thus it is now within the Police's jurisdiction to act upon your neighbour's complaint.

***I have heard the police may deny an application for authorisation and therefore exemption from prosecution. Is this true?***

It is important to emphasize that the police are not involved in an event's ability to gain authorisation and therefore exemption from prosecution for dangerous, careless or inconsiderate driving.

***The definition the law gives of dangerous, careless and inconsiderate driving seems vague. Can you clarify the parameters?***

Dangerous driving is driving in a manner that a competent and careful driver would consider as dangerous and if the standard of driving falls far below what would be expected of a competent and careful driver (The RTA 1991 Section 1 – 2A)

***Who would interpret the parameters of dangerous, careless or inconsiderate driving?***

In the first instance, the police and in the second instance the courts.

***What are the implications of the new laws governing motoring events in public places to my public liability insurance?***

Again the final answer must come from your insurance company.

However, before the 1<sup>st</sup> of July 1992, if a participant or spectator for example was involved in an accident at your event, it was up to the injured parties to bring a civil action.

This civil action would attempt to prove negligence either on the part of the landowner, the organiser, his staff or participants; in most cases all parties could be drawn in. Most civil actions are costly if not fraught with uncertainty.

After the 1<sup>st</sup> July 1992, the injured party would need only to press the police to take action in the first instance. A successful conviction could fuel the argument that your insurance company is duty bound to provide compensation.

In the long term, insurance companies may request authorisation as a means of controlling such a risk as the status quo is maintained pre – 1<sup>st</sup> July 1992. If this action is not acceptable to the organiser, the most likely response is an increased premium to compensate for the possible increased risk or a refusal to even quote a premium.

***How many members of the public would constitute a public place?***

In an attempt to err on the side of caution, it would be best to equate a public place with the presence of just one member of the public.

***How is it that I hear different interpretations of the law?***

It is important to remember that in the final analysis only courts can interpret the law with any amount of accuracy because of the courts' access to all the different variables of each particular case.

As mentioned previously, this is why organisers are strongly recommended to seek professional legal advice. Do feel free to use this Discussion Document to introduce your legal advisor to the perceived risks and implications prior to arranging a consultation as this could save you considerable briefing costs.

**Landowners and Organisers Liability**

The IOPD have always understood that there was a legal process to hold Landowners suppliers and sellers of Driving and Riding Experiences and Organisers responsible for the serious outcome for a participant in a non-RTA compliant auto recreational activity collision that they may be deemed to control or own. That is by facilitating the activity on land which they control (Granting Access) encouraging participation and controlling the activity.

This has now finally been clarified by the HSE and EHO who will use Health and Safety at work legislation -Section 3 and 33 (1)(a) of the schedule and 3A of the H&S at Work Act 1974. This the IOPD understands carries a custodial sentence of up to 12 months and /or a fine of up to £20,000. The charge reads 'failing to conduct your undertaking in such a way as to ensure so far as is reasonably practical that persons were not exposed to risks to their health and Safety'

The best way forward for landowners, sellers of the experience and organisers, to evidence a defence, is to show an authorising permit for the event and evidence of regular inspections by a Statutory Empowered Authorisation Body before allowing an Auto Activity on land that they own or control. The IOPD have provided defence and documentation on six separate investigations over the past four years.

## **The Venue Provider / Event Organisers Checklist:**

<b>Check:</b>	<b>Action:</b>
Does the event or a part of the event involve any form of Mechanically Propelled Vehicle (MPV)?	<p>If 'no' then there is no problem! If yes ask -</p> <p>a. Are all MPVs registered and covered by a valid Road Traffic Act (RTA) insurance policy and will all driving / use be by licensed drivers and comply with the RTAs?</p> <p>- or -</p> <p>b. Will the event run under a 'permit of authorisation' issued under the Motor Vehicles (Off-Road Events) Regulations 1995</p>
If b. above, is the event or part event involving MPVs under the 'umbrella' of a body affiliated to an 'authorising governing body'?	<p>If yes ask which one and for their contact details</p> <p>If no suggest that the organiser or sub-organiser approach an appropriate association; or if hard to categorise, non-competitive or commercial approach the IOPD</p>
Does the event organiser have public liability insurance for the proposed event?	<p>If yes ask to see original and ask for photocopy for filing (Some rogue operators cancel insurances after showing certificates, copy is your evidence of good faith)</p> <p>If no suggest that the organiser ask the 'authorised governing body' of their choice for a list of specialist insurers</p> <p>Where possible specify that insurances specifically indemnify the venue</p>
Does the event organiser or sub-organiser have 'authorisation' for the proposed event <u>specifically naming your venue</u> ?	<p>If yes ask to see the original authorisation document and ask for a photocopy for filing.</p> <p>If no insist that 'authorisation' is obtained and do not confirm booking until the document is produced. You may need to assist with maps, plans and planning before authorisation is granted.</p>

## **Organisers Check Your Authorising Permits**

It has come to our attention that a number of Bogus Authorising Permits may be circulating that appear to be misleading. It may also be deemed that the Authorising Permits were produced fraudulently, to mislead or misappropriate funds and may fail under the Trade Descriptions and The Supply of Goods Act.

Consequently it is advised that should you be relying on an authorising permit you check that the permit is issued by an Authorising Body listed under Statutory Instrument 1370 (1992) and subsequent number 1371 (1995).

Ask yourself: Do all matters conform to the 1995 Off Road Event regulations and associated guidance notes?

As an organiser you should have formally applied for authorisation on a Government recognised Authorising Body's standard form, (not on any form bearing any other organisation brand or details, and not to any other address other than that of the recognised Governing Body listed in the Act.) On the application form you should have been required to declare the organiser's name and address, the date/time of the period of authorisation, venue address, the nature of the event, the number of participants expected. If any one of these criteria were not met then the authorisation could be null and void.

The permit should contain in writing the event date including all practice dates, special conditions including compliance with safety rules.

Check to ensure that the permit was issued from the office of the said Governing Body by an Agent authorised in Law as such (i.e. employed by a DfT recognised Governing Body). The Agent must have been given direction as to the conditions to be complied with, prior to issuing of the Permit of Authorisation and they must have satisfied themselves of the following:

The skill, knowledge and experience of those in charge and hold documented records of this.  
The suitability of the venue and hold documented evidence of venue inspections.

The dates and times when the events will take place.

Where the events will take place, recording the exact curtilage of the site on a plan including the layout and direction of the course, the marshal positions and fire points.

Ask yourself has this been formally requested and supplied?

All this information should be held by the Authorising Body, filed and recorded with a reference number issued by the said Authorising Body.

The Permit should carry the name and the signature of the Authorising Agent, the address of the Authorising Body and a contact number and any special conditions to be adhered to particularly the provision of medical cover, fire and marshal cover.

The Authorising Body must have in place inspection criteria and be able to show a full and complete audit trail of the periodic inspections of all Authorised entities under their direction since empowerment.

The Authorising Body must have in place fully documented procedures for the immediate revocation of an Authorisation and written and recorded procedures to notify the Police and relevant Enforcement Agencies and Insurers which must be timed and dated.

The Governing Body must have documented Industry Standards which must be in the possession of the event organisers. The organiser must have provided a set of rules and regulations to all participants which the Governing Body must hold on file.

Please note the Authorising of Off Road Events can not be delegated to other entities than those specifically listed in the Act, not even to associated entities wholly owned or associated to those listed and bearing similar trading names, without the express permission of the Department for Transport and only prior to it being enshrined in a proposed future amendment to the Act of Parliament. Any Permit of Authorisation not fulfilling the spirit of the above criteria is likely to carry NO legal force thus leaving all concerned with the moving vehicle activity liable to criminal charges by the Police, HSE and EHO prosecutions and Civil prosecutions for negligence resulting in orders for compensation to be paid.

### **Recreational Motor Sport Collision Injury and Damage Insurance**

*and as a result of reading this document is there a need to take out additional Insurance?*

The character and popularity of Off-Road / Off Highway Driving / Riding is its attraction. Participants who choose to participate in Off-Road driving or riding wish to take that quantum leap from the legal line of riding / driving carefully and considerately on the road (under the confines of the Road Traffic Acts and Highway Code and Road Risk Insurance), to the freedom and increased adrenalin rush, excitement and stimulation of Off-Highway driving.

But for many driving/ riding Off-Highway over extreme terrain for no good reason but recreation, would probably be classified as dangerous, careless and inconsiderate driving / riding. Participants enjoy being on the edge of slipping and gripping bringing with it added risks as it is inevitable that a participant or others may at some point totally lose control of the vehicle. From that point the control of the machine is lost, and the outcome is one of luck and good fortune.

Participating in an Off-Highway Event probably will make any standard Road Risk Insurance policy a participant may have, null and void as Insurers may ask questions along the lines of:

“Was the vehicle being used in a traffic situation that is for transport from A to B?  
Or was it being used at an event or on a purposely laid out course or circuit?”

Participants should be aware that for those wishing to have compensation for their misfortunes and injuries there are many Insurers offering Vehicle Cover and Personal Accident Insurance Policies, and Collision Policies at a rate balanced on risk. Many participants in extreme recreational activities invest in such a policy before participating, whilst others trust to luck.

What Authorised Events Organisers and Statute Recognised Regulating Bodies, who stand in place of the State on this matter, attempt to do is to reduce and control any risk to that which is reasonable and practical. This is done by means of an Authorisation Permit making the event an Authorised Recreational Motorsport Activity under section 13A of the 1991 RTA. It allows participants, if they choose, to ride more than 15 yards from a road (section 34 of the 1988 RTA), if authorised to do so. It also disapplies the most serious riding and driving offences in the 1988 RTA. And so disapplies a participant from prosecution for dangerous, careless and inconsiderate driving, but not from the risks associated with such transgressions.

To sum up: participants may not be charged with criminal offences as a result of losing control, which could be the outcome if the event was un-authorised.

But no participant has a clear-cut route to compensation for property damage unless they have put in place collision damage insurance for their activity.



Taking part in an Authorised Recreational Motorsport Activity may have, in some cases, specific conditions applied to the event before it can take place. In the case of the IOPD it lays down some 200 pages of regulation and procedures to ensure those in control are experienced, trained and qualified.

How fast a participant chooses to drive in the conditions and the extremes of terrain that they attempt to drive/ ride over are in the main not specified. It is up to the participant to use their own judgement and driving / riding skills to drive at a speed at which they feel safe and over terrain on which they feel confident.

Participants must accept that they are in joint enterprise with others who may also lose control of their vehicle. Therefore, there can be no liability claim either way.

To take part in an Authorised event is a privilege for which the participant pays a premium both in cost and inconvenience as they knowingly step over the line into Authorised Recreational Motorsport and outside Road Risk insurance cover. Those participants wishing to remove the risk of other participants losing control and colliding may negotiate individual course experiences at a premium cost.

As with all injury and damage cases, Regulators look to see where lessons can be learnt. Could we regulate further conditions to reduce the chance of it happening again? Often it seems difficult to see how further significant reductions in risk can be obtained without substantially undermining the character, nature and popularity of the activity. It is accepted that horse riding, mountain biking and particularly off-road motorcycling and Quad riding are statistically amongst the highest risk of any recreational activity. Car and 4X4 activity is less so.

It is felt that the best way for Organisers to manage the expectancies of the participants, should one of them lose control of their machine and suffer an injury or vehicle damage, is by way of a Risk Recognition Form / Signing - On Form and Warning Notices. The Signing -On form should be made as clear and concise as possible and once signed it can be shown that the participant has agreed to abide by the Organiser's Rules and Regulations. Also, that they understand the risks they are exposed to by taking part in the authorised activity. This should then be backed up at a Riders / Drivers briefing and noted on the briefing prompt notes.

Organisers will probably wish to ensure that they and their participants do not stand the cost of any impacts including whip-lash claims. This may be avoided by the participants taking out specialist insurance from the various providers in the market.

**Please note:**

To prevent Double Indemnity and increased costs the IOPD and its Affiliates do not provide Personal Accident or Collision Insurance as part of the fee to participate. Further information regarding the limited cover of Motor sport public Liability insurance is available from the IOPD.

**The following is the IOPD's guidance on giving Passenger Rides in Non-Competitive Off Highway Auto Sport and Leisure Activities.**

**It is the IOPD's view that Authorised Mechanically Propelled Vehicle Activities are normally only authorised and insured for third party claims on the grounds that participant to participant or passenger liabilities are recognised as outside the scope of any insurance or liability claims unless special provisions have been made and confirmed in writing.**

In this document the IOPD sets out to lay down sensible, practical regulations to reduce and control the risks involved in carrying passengers in Off Highway Activities. The IOPD hopes this will formally legitimise the practices by statutory disapplication of the Road Traffic Act (RTA) Regulations under a section 13A Authorising Permit.

Up until the beginning of the 21<sup>st</sup> century there appears to have been no Statutory Regulating Body Guidance specifically permitting the carrying of passengers whilst driving in breach of the current Road Traffic Act on Private Land i.e. dangerously, carelessly and inconsiderately and without Third Party Road Risk Insurance.

The IOPD recognises that the carrying of passengers in many Off Highway related activities like Track Activities and Displays, Drifting and Run What You Brung now takes place on Private Land at virtually every major motor sport facility in the UK today. The numbers involved may be in excess of 500,000 people per year and this generates in excess of twenty-five million pounds of income a year, employing some several thousand people. The IOPD recognises that the procedure has now (after some two decades of expansion) come to be seen as the 'Industry Norm' and 'Custom and Practice' even though the practice is contra to the current and ever expanding RTA Regulations, covering Public Places on Private Land.

The carrying of passengers in motor sport environments is of vast commercial importance to those involved within the Industry including most vehicle manufacturers. Unfortunately, there are widespread and outdated misconceptions that a person may drive how they wish and without Road Risk Insurance once they are on Private Land including participating in a motoring event. However in 1991 the Law was changed to extend the RTA to all Private Land when the Public are present (A Public Place). This includes all unauthorised motoring events.

It is recognised that such activities may involve increased risk and driving styles contra to regular RTA compliant driving which will not be covered under a driver's normal Road Risk Insurance. Statutory Road Risk Insurance will normally exclude participation in Off Highway events on purpose built or laid out tracks thereby leaving all involved in breach of at least section 143 of the 1988 RTA on Insurance and also most likely sections 1,2,and 3 relating to how vehicles are being driven.

Thus the activity should be insured under a Public Liability policy which recognises passenger liabilities. The activity should also be **authorised** and regulated under The Off Road Event Regulations 1995 or there is the potential for multiple Road Traffic Offences to be brought against all concerned.

The Authorisation process under section13A of the RTA relating to how a vehicle may be driven or ridden creates a barrier to prosecution and therefore evidence of negligence. (See the IOPD Guide to Authorisation).

To date the IOPD has found no specific test cases which may be relied upon to assist in clarifying liabilities of carrying passengers whilst not conforming to current Road Traffic and Road Safety Act legislation in a 'public place'. However it is clear that the potential is there on the Statute Books for substantial fines, banning orders and custodial sentences unless the event is Authorised by an Off Highway Event Permit.

The IOPD has continued to authorise passenger carrying Event Organisers that apply to the IOPD. Organisers for non-competitive events must have the appropriate insurance, attitude, commitment and methodology whilst operating at IOPD Approved Venues and whilst following all other IOPD Guidance laid down in the IOPD Black Safety Pack.

Authorisation under the Road Traffic Act may also make provision for the training and instruction of drivers in advanced vehicle control techniques assuming that the Trainer / Coach shows certification of being a superior driver to those being trained and is registered as an Advanced Vehicle Control Trainer with the IOPD. Without evidence that the activity forms part of an Authorised Off Road Training Activity all Driving Instruction for money should only be given by Instructors on the ADI Register (sections 1,2 and 3 of the RTA).

To this end the IOPD may authorise and make provision for passengers to be carried in vehicles which are participating in a recognised activity, which might normally be perceived as challenging or unacceptable on the Highway e.g. young people without a DVLA Provisional Licence, supervised by a coach or other competent professional driver. Authorisation is on the assumption that the supervisor has an acceptable degree of competence and adequate control measures are in place to limit the risk. Insurers must be informed and be prepared to underwrite the risk of a claim by providing Insurance Cover for the passengers and under age drivers.

The IOPD believes that the Authorisation system may also allow for the carrying of bonafide members of the media and press under controlled conditions. This is justified as a necessary and acceptable risk in order to achieve a record, a report or the training of others.

Road Risk Insurance is required by law whilst driving on Private Land when the Public are present particularly for those vehicles carrying passengers (section 143 RTA 1988). It is the responsibility of the driver, or any person who causes or permits the activity, to ensure that good passenger insurance is in place for the activity. This can be obtained from all good Motor Sports Insurers.

The IOPD hopes this helps with an understanding of liability to oneself and others and what may well be deemed as irresponsible and negligent actions thus creating a potential liability on the Driver, Event Organisers and Landowners, if the events are not authorised. See the IOPD Guide to Authorisation.

The IOPD has identified four separate Enforcement Sectors in the UK with an interest in auto related recreational activities.

- The first being Health and Safety.
- The second being Environmental Health.
- The third the Police.
- The fourth Claims Solicitors.

After years of consultation with the above listed parties the IOPD now amends all previously dated advice on the matters of Off Highway Passenger Rides with this Guidance dated November 2018.

The IOPD has identified five categories of legitimate and Authorisable Passenger Experience Events taking place ‘off the Highway’:

1. All wheel drive type of activities on challenging un-metalled surfaces (non tarmac or ‘loose’ surfaces) involving passengers of all ages on designated ‘Green Level’ Courses. (See the IOPD Guide to Off Roading). Passengers under 12 years of age must be seated to current D f T requirements.

2. As above but taking place on ‘Green and Orange/Amber Level’ courses, limited to passengers of 12+ years and who must be ‘signed on’ (that is signing a Risk Recognition Form).
3. As above but taking place on ‘Orange/Amber Level’ designated courses with ‘navigators’ (Note not passengers) over the age of 17 and ‘signed on’ as a competitor due to the extreme and challenging nature of the course.
4. Off Highway metalled (tarmac) surface driving on a purpose built track or circuit, where the passengers are all aged over 6 years and the driving is in all respects conforming to the Road Traffic Act Regulations except Section 143 (Third Party Insurance). Therefore overtaking on the right, no aggressive driving or overtaking, no speeding above 60 mph, etc, etc.
5. Off Highway Metalled surface driving on a purpose built track or circuit (i.e. Track Test Type Activities, Run what you Brung or drifting) where passengers are over 18 years of age, appropriately ‘signed on’ and the style of driving is contra to the RTA in respect to RTA driving behaviour regulations (sections 1,2 and 3). For example speeding, overtaking on the left, aggressively driving and overtaking, driving without Third Party Insurance etc. All participants must be protected by both front and side Air Bags or Crash Helmets plus after market protection as deemed appropriate through a Risk Assessment.

In order to minimise the likelihood of a successful prosecution or claim the IOPD advises its authorised Off Road Event Regulated Organisers of Passenger carrying Driving Experience Activities to follow the Guidance now listed below. By doing so they will be providing evidence of risk reduction procedures and evidence of compliance, to recognised Industry Codes of Practice.

#### Organisers:

1. Must ensure that the activity is covered by an Authorising Permit under the Off Road Event Regulations. Thereby disapplying the Road Traffic Act Regulations covering the way in which the person is driving and therefore legitimising the unavoidable risk taking practices and to ensure that participants and spectators are not put at unnecessary risk.
2. Must ensure there are in place Rules and Regulations.
3. Must have an adequate ‘paper trail’ of this and other operational ethics. This is largely satisfied by following the IOPD Black Safety Pack and completing the declaration enclosed.
4. Must ensure that no passengers are carried where the driver is timed, paced or judged and awards are given, unless supervised by a qualified coach who can operate the controls that are fitted to the vehicle or a radio/ignition intercept or additional control measures are in place.
5. Ensure that a paid Coach / Trainer is qualified and holds a certificate to coach / train for the specific type of vehicle and type of activity.
6. Ensure that the Driver / Coach / Trainer has a current RTA Driving or Competition Licence and has held it for three years or more or that additional control measures are in place.
7. Ensure that Drivers/ Coaches /Trainers who are ‘pure volunteers’ (see IOPD Guidance on Volunteers in Auto Recreational Leisure Activities) and are not being paid, are over 21 years and have held a full licence for three years or more, or the holder of a Competition Licence or an IOPD Advanced Vehicle Control Qualification or similar training qualification.

8. Must ensure that all paid Coaches / Trainers are holders of a current IOPD Advanced Vehicle Control Certification, or an ADI, ARDS, SDSA BORDA< LANTRA , Land Rover, Jaguar or similar recognised training qualification.
9. Vehicles must be scrutineered (inspected) to ensure they have adequate safety provisions.
10. Must provide trained and certified key personnel e.g. Clerk of Course /Event Director for metalled surface activities to ensure discipline is maintained.
11. Must have appropriate medical cover.
12. Must ensure that all drivers, coach/ trainers and passengers are covered by appropriate Insurance to at least 1 million euros.
13. Must ensure that there is no lower age limit on the Insurance Policy for passengers (This can be 16 with some Insurers.) or that the stated limit is adhered to.
14. Must ensure that all participants are given and understand (through a participant briefing or leaflet) the risks listed on the IOPD Passenger Risk Recognition Contract Forms i.e. the Signing on Form, before entering onto the track.
15. Must ensure all passengers have signed the Risk Recognition Contract Form.
16. Must ensure that for all passengers under the age of 18 and over 12 years of age there is a completed IOPD parent/ guardian form (or equivalent) and that, when volunteer drivers are in control of the vehicle, they participate only at a time when all other passengers on the metalled surface track are over 12 and under 18.
17. Must ensure that all passengers wear seat belts and are appropriately restrained.
18. Must ensure that passengers on metalled surface courses wear crash helmets when cars do not have air bags and when speeds are in excess of 60 mph.
19. All passengers involved with drifting must wear a helmet.
20. Must ensure that if drives take place in ‘competition vehicles’ (non registered) these vehicles have a 4 or 5 point harness fitted for all participants and that these are worn during the experience.
21. Must ensure that open sided, open wheeled vehicles have rollover protection, window nets or arm restraints fitted.
22. Must ensure that on unmetalled surface tracks where speeds do not exceed 30 mph, i.e. ‘off roading’ the lower age limit for passengers is 6 years for tracks designated ‘Green Status’. On tracks designated ‘green and amber’ the lower limit is 12 years and passengers must sign on with parent / guardian signing on form. ‘Amber’ status tracks must be limited to signed on ‘navigators’ over the age of 17.

PLEASE NOTE:

**Organisers may apply to the IOPD for a dispensation to the above guidance in certain circumstances eg Historic or Classic vehicles. This will be added to the Authorisation Permit Special Conditions when appropriate.**

In summary:

Basic Law states: *‘that a person is responsible for their actions and inactions;’* i.e. the driver.

If a driver carries passengers not only are they responsible for their own actions, but these actions which could harm others. Thereby creating a potential liability on the driver or the insurers to pay compensation for any harm the driver may cause. This is why it would be crucial to have good comprehensive passenger insurance in place for all Off Highway activities.

The European Court of Justice ruling Feb 2014 involving Mr Vnuk, found that Motor Insurance should be in place for all motor vehicles irrespective of whether the vehicle operates

in a 'public place' or 'private place'. A number of Member States including Ireland sought to impose limits on the effect of the judgement but without success. The Department for Transport is examining the implications! In the meantime the Road Traffic Act 1988 expressly confirms compulsory Public Liability Insurance is mandatory on a road or public place e.g. on a Circuit, Drag Strip or Off Road Track.

Authorisation in effect creates a third place in law which is not a 'public place' or a 'private place' but an 'authorised place' and so may offer some defence in the British Courts, but as yet this is untested.

Activities on metalled surfaced tracks which conform to the RTA with regards to how the vehicles are being driven i.e. within the speed limit of 60mph, overtaking carefully on the right, careful cornering etc may take properly restrained passengers from 6 years upwards and do not require passengers to be signed on but still require Authorisation to offer a defence to section 143 compulsory Third Party Road Risk Insurance by providing Public Liability Insurance covering Passenger and Third Party Liabilities.

**The following is the IOPD's guidance on giving passenger rides in *Competitive Off Highway Auto Sport and Leisure Activities*.**

The IOPD recommends Land Owners, Organisers and Drivers should seek professional legal advice and confirmation of Third-Party Insurance for passengers when 'pure passengers' are being carried in or on a vehicle taking part in a *competitive* activity i.e. one that is timed, paced or judged to determine a winner in the activity. **This is particularly important in respect to incidents where a loss of control of a vehicle could feasibly result in injury to the passenger.**

**The IOPD does not authorise pure passengers being carried in a vehicle in a competition. This therefore leaves the activity unauthorised and open to the full Road Traffic Act and driving penalties including possible life prison terms.**

The IOPD believes that under Health and Safety and Police Regulations such an action could be seen as putting passengers at an unnecessary risk. However, it is believed that a fully consenting and signed on co-driver or sidecar rider is not a passenger. It is believed that they are a participant and are part of a team controlling a vehicle with driver and co-driver being responsible for each other and jointly sharing in the control of the vehicle and would therefore be recognised by the Organisers Public Liability Policy for motor sport.

**It is the IOPD's view that Authorised Mechanically Propelled Vehicle Activities are normally only authorised and insured for third party claims on the grounds that participant to participant or passenger liabilities are recognised as outside the scope of any insurance or liability claims unless special provisions have been made and confirmed in writing.**

When a person enters into an Auto related activity the person in control of the vehicle must assume responsibility for their actions and any resultant injury or loss sustained as a result of their actions. (See *Gorrington v Calderdale*, *Hall v Brooklands*, *Tomlinson v Congleton*, *Poppleton v P.Y.A.C.*, *Parker v TUI Ltd*, *Uren v Corporate Leisure Ltd*.)

When a person takes a passenger in a motor vehicle they must also take responsibility for that person. The driver therefore has a duty of care not to drive in a way which may foreseeably result in the passenger being injured even though the event may be authorised. (See *Donaghy v Stevens* and more recently *Darnley v Croydon NHS Trust* 2015 uksc50).

Remember a Circuit or a Dragstrip may be deemed a Road for the purpose of the Road Traffic Act. Even though the venue is on Private Land it would still be deemed a Public Place and therefore covered by the most serious offences in the Road Traffic Acts unless the organiser has in place an Authorisation Permit issued under section 13A of the Road Traffic Act.

An Authorisation Permit disappplies the sections of the Road Traffic Act relating to dangerous, careless and inconsiderate driving assuming that the driver and organisers are conforming to Governing Body regulations.

Authorisation may restrict a criminal offence prosecution under RTA regulations but not a civil claim for compensation.

### **Age Issues summarised:**

In all places – except private places and with the agreed curtilage of ‘authorised events’- the usual Road Traffic Act age restrictions apply. In addition various regulations for the protection of children also apply.

Children and young persons can legitimately take part in ‘authorised’ activities and competitions in an ‘authorised place’, indeed entire authorising bodies and sections of authorising bodies exist to properly regulate children’s’ motor sport and activities.

Competition machines used in private places and in authorised events or venues are exempt from the British standard BS7407;1991 which applies to MPVs for children powered by combustion engines.

References : RTA 1988 Section 87 and 164. DEFRA Guide 2005 section 9 page 21 paragraph 8 and section 10 page 32 (13). Road Safety Act 2006 page 30 (5). Please also see the IOPD ‘Guide to Children and Events Involving Mechanically Propelled Vehicles’.

## **How can I obtain further information?**

By logging onto:

[www.iopd.org.uk](http://www.iopd.org.uk)

[www.opsi.gov.uk/si/si1995/Uksi\\_1995\\_1371\\_en\\_i.htm](http://www.opsi.gov.uk/si/si1995/Uksi_1995_1371_en_i.htm)

[www.defra.gov.uk/wildlife-countryside/cl/mpv/pdf/regulating-motorvehicles.pdf](http://www.defra.gov.uk/wildlife-countryside/cl/mpv/pdf/regulating-motorvehicles.pdf)

Full copies of The Road Traffic Act 1988 and 1991 and The Motor Vehicles (Off Road Events) Regulations 1992 and 1995 are available from HMSO Bookshops or by post from HMSO Publications Centre, PO Box 276, London SW8 5DT. For telephone orders ring 020 7 873 9090.

The Department for Transport has also produced a brochure titled 'A Guidance Note For Those Who Authorise and Organise Motor Vehicle Events'. These are available via the IOPD.

### **Relevant Legislation, Precedents and Guidance:**

Road Traffic Act 1988 (as amended)

The Off-Road (Motor Vehicles) Regulations 1992

The Off-Road (Motor Vehicles) Regulations 1995

Department of Transport Guidance Note for those Authorising and Organising Events (Document HGU 92227)

RTA Insurance requirement in a Public Place:

The Motor Vehicles (Compulsory Insurance) Regulations 2000

The Road Safety Act 2006

The definition of public place:

Criminal Justice Act 1988, s 139(7)

Harriot v DPP [2006] Crim LR 440, DC

The 'totality' of the 'Public Place'

Cawley v. Frost [1976] 1 W.L.R. 1207

Department for Transport definitive written advice

RSS/031/001/0002, 28 June 2007

Health and Safety newsletter for Local Authorities no6 October 2005

Google 'Track days and racing schools' by Ince & Co (international Law firm)

*The IOPD's understandings are based on many sources including 'off the record' comments from Civil Servants at the Department for Transport and HSE Inspectors. Our published guidance is based on our Statutory Empowerment under Special Instrument 1371 which instructs us to Authorise Events 'as we see fit'.*

*The contents of this guide should not be relied upon without verification from your legal adviser. However this guide may be used to brief your legal adviser on recreational auto activity, custom and practice and the control measures you intend to implement.*