



Department
for Transport

Consultation on the use of section 19 and section 22 permits for road passenger transport in Great Britain

February 2018

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1. Foreword

Community transport operators provide vital services that encourage growth and reduce isolation by linking people and communities to existing transport networks, jobs, education, shops and services. Many community transport operators are in effect also providers of social care services, especially to people who are elderly, isolated and disabled, and they are generally motivated by compassion and philanthropy, not profit.

Over the past few years, the Government has provided considerable support to the sector by various means, including:

- Buying over 400 new minibuses for community transport groups since 2014;
- Partially funding the Community Transport Association in England to provide support to community transport operators; and
- Offering direct support to operators through the Bus Service Operators Grant scheme.

Since 1985, all community transport groups that are operating on a not-for-profit basis have been able to apply for permits to carry passengers in a bus or minibus without first holding the Public Service Vehicle operator's licence (PSV licence) that would otherwise be required.

The Government remains committed to supporting the sector and to maintaining the permit system. However, concerns have recently been raised that some community transport operators that use permits are competing with commercial operators, which are required to hold a PSV licence. This is not allowed by European Union (EU) law, which only exempts operators from holding PSV licences in limited circumstances. We are therefore consulting on how to clarify domestic law and guidance to ensure fair competition for commercial contracts and greater clarity for operators as to their EU legal obligations.

The majority of community transport operators should not be affected by any clarification of the EU rules. It is important to be clear that the EU rules only apply to vehicles with more than eight passenger seats and that the EU rules exempt operators of such vehicles if their primary purpose is not transport or if they operate services that cannot be properly considered commercial, for example:

- Where there are no alternative non-community transport providers who offer journeys to or from similar destinations;
- Where alternative providers are content to provide confirmation that they do not regard the community transport operator as a competitor;
- Where the service is an occasional activity, organised on a voluntary basis with an unpaid driver for a specific group of people; or

- Where the service is either free of charge or the charge is substantially less than the cost of providing the service.

The Government is also seeking to apply EU rules which would exempt services where operators have only a minor impact on the transport market because of the short distances involved. Further detail is set out in Chapter three.

We are exploring other ways to support the sector as well. We are making £250,000 available to fund advice for operators who need a PSV licence and are exploring what further assistance we can give; we are working with the Driver and Vehicle Standards Agency to ensure that a proportionate approach is taken to enforcement in relation to operators who demonstrate that they are working towards compliance; and we have written to local authorities to explain that there is no need for them to cancel contracts precipitately.

We hope that together these steps will reassure the sector, allow those CT operators which are affected to continue to provide valuable services for passengers while they work toward compliance, and to minimise any additional costs which they will incur.

The Government has no plans to end the current permit system and its commitment to supporting this sector remains as strong as ever.

2. Introduction, background and the need for change

Who should read this document?

2.1 The consultation is primarily aimed at:

- permit-holders and issuers;
- applicants or potential applicants for permits;
- other community transport stakeholders who may rely on services provided by permit-holders (including local authorities, recreational associations, NHS trusts, and charitable organisations);
- holders of PSV licences; and
- their respective representative organisations.

2.2 However, we welcome responses from any individual or group with an interest.

Further information we are seeking

2.3 Alongside the consultation questions, we are asking community transport operators and local authorities which directly provide community transport services for information about how they operate. Community transport is a very diverse and localised service, and we are seeking to understand better the potential impacts of our proposals. We would be very grateful if respondents could provide as much information as possible, so that the Government can make decisions that are as fully informed as possible. The recent Community Transport Minibus Fund demonstrates the Government's support for the sector, and the provision by stakeholders of more detailed information will help create a stronger evidence base for future policy and funding interventions.

Definitions

2.4 In this document, the following terms have the following meanings:-

“CT” – community transport;

"community bus service" - the meaning given by section 22(1) of the 1985 Act;

“the Department” – the Department for Transport;

"DVSA" – the Driver and Vehicle Standards Agency;
"EU" – the European Union;
"local service" - the meaning given by section 2 of the 1985 Act;
"permit" - a section 19 permit or a section 22 permit;
"PSV" - public service vehicle;
"PSV licence" - a PSV operator's licence issued pursuant to the 1981 Act;
"public service vehicle" - the meaning given by section 1 of the 1981 Act;
"the Regulation" – means Regulation 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;
"section 19 permit" - a permit issued pursuant to section 19 of the 1985 Act;
"section 22 permit" - a permit issued pursuant to section 22 of the 1985 Act;
"the 1981 Act" - the Public Passenger Vehicles Act 1981;
"the 1985 Act" - the Transport Act 1985.

Background

- 2.5 We recognise that community transport is vitally important to the lives of thousands of passengers, to communities across the UK and to society as a whole.
- 2.6 The Department provides financial support in England through the Bus Service Operators Grant (BSOG). Around £3.5 million in BSOG is forecast to be paid directly to CT operators in England this financial year.
- 2.7 Since 2014 over 300 local charities and community groups across England have also received new minibuses through round one of the Community Minibus Fund, and over 400 vehicles have already been delivered to them.
- 2.8 This document sets out why and how we propose to amend legislation and guidance about who can operate PSVs without a PSV licence, using the system of permits that is set out in sections 18 to 23A of the 1985 Act. The proposals affect the operating model that many community transport stakeholders rely upon.
- 2.9 The proposals only apply to England, Wales and Scotland. The legislation relating to community transport operators is a devolved issue in Northern Ireland (NI), and the NI Department for Infrastructure published a separate consultation document on 22 September 2017¹.
- 2.10 We are asking for views on the proposed changes to the guidance and ways in which we could provide further clarity. We would also be very interested in respondents' views on the potential impacts of the changes, in order to understand better any likely effects the changes may have.

¹ "Consultation on the use of section 10B permits for road passenger transport in Northern Ireland".

2.11 The consultation closes on 4th May 2018.

Existing legislation and guidance

2.12 Across the EU, the provision of road passenger transport is a regulated sector, with licensing and training requirements which are designed to promote safety, professionalism and fair competition.

2.13 As part of this, an organisation which operates vehicles that carry more than eight passengers and receives payment for doing so is defined as a “road passenger transport operator”¹ and must comply with certain legal requirements.

2.14 In particular, the Regulation sets the standards that road passenger transport operators have to meet. The Regulation came into force in 2011. Unlike the earlier Directives on this issue², the Regulation has direct legal effect within the United Kingdom.

2.15 The only relevant exemptions to these legal requirements apply to organisations:

- “...engaged in road passenger transport services exclusively for non-commercial purposes”³;
- “...which have a main occupation other than that of road passenger transport operator”⁴; or
- “...engaged exclusively in national transport operations having only a minor impact on the transport market because of ...the short distances involved”⁵.

2.16 There is no flexibility in the law for the UK Government to introduce further exemptions. The EU rules do not allow the UK Government to establish special rules for transport operators using other criteria, for example the amount of their income or the number of vehicles which they operate or passengers which they carry. It is also not possible to take into account for the purposes of applying or enforcing the Regulation any UK legislation which relates to other criteria, for example, the provisions of the Public Services (Social Value) Act 2012. However, it is important to note that the 2012 Act applies to the procurement of contracts by local and other public authorities.

2.17 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the EU. The government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU

¹ The Regulation defines “the occupation of road passenger transport operator” in Article 2(2) as “...the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users in return for payment by the person transported or by the transport organiser.”.

² Directive 96/26/EC and Directive 74/562/EEC

³ Article 1(4)(b)

⁴ Article 1(4)(b).

⁵ Article 1(5)(b).

legislation. The outcome of the negotiations will determine what arrangements apply in relations to EU legislation in future once the United Kingdom has left the EU.

The need for change

- 2.18 In the past, the Department and the DVSA took the view that all holders of section 19 and 22 permits were exempt¹ from the Regulation because they would be either "engaged in road passenger transport services exclusively for non-commercial purposes" or "...have a main occupation other than that of road passenger transport operator". For this purpose, it was believed that the term "non-commercial" equated to "not-for-profit"; and it was not anticipated that permit-holders would compete with PSV licence-holders.
- 2.19 However, following a legal challenge, it has become apparent to the Department and the DVSA that these assumptions are no longer sustainable. As a general rule, if a transport service is provided by an organisation in return for payment, that service should be treated as commercial, even where the organisation is not-for-profit. Payment includes any fares charged to passengers (either individually or in groups) and any other payments obtained from any third party (e.g. a local authority, under a contract or conditional grant arrangement) in exchange for providing the relevant service.
- 2.20 It is possible, therefore, for a permit-holder to be operating on a not-for-profit basis but also in a commercial way. This means that it is no longer possible to assume automatically that all permit-holders are "engaged in road passenger transport services exclusively for non-commercial purposes" for the purpose of the Regulation simply because they are not-for-profit.
- 2.21 However, it is also important to note that there are some circumstances nevertheless, where it may be possible to treat the service as non-commercial, even if payment is made in exchange for a service. These are discussed in more detail in Chapter three.
- 2.22 Since the 1985 Act was passed, the profile of the community transport sector has changed significantly. Some not-for-profit permit-holders have expanded and now compete actively with profit-making PSV licence-holders - particularly for local authority contract work. The resulting competition between permit-holders and PSV licence-holders was not intended or foreseen. The Department accepts that developments in passenger transport provision during the last two decades have in part been encouraged by successive Governments.
- 2.23 The permits system recognises the value of not-for-profit organisations that provide services of social/charitable benefit where their profit-making counterparts would not, often in relation to the isolated or vulnerable. Permits provide a lower cost regulatory regime for not-for-profit organisations, enabling them to function where full licensing requirements and costs might not. The Government firmly believes this way of operating should continue, but this reasoning does not apply where a not-for-

¹ Under Article 1(4)(b)

profit permit holder is competing with a profit-making PSV licence holder to provide the same services.

2.24 Chapter three explains how we propose to amend legislation and update guidance to address this issue.

3. The Proposals

Summary

3.1 We propose to:

- **Amend the 1985 Act** to clarify that permits may only be granted to and held by organisations that meet one or more of the exemptions¹ set out in the Regulation; and
- **Update relevant guidance** issued by the Department or the DVSA to reflect current market practice and better illustrate and explain the different cases where exemptions may apply and therefore where permits may be granted.

3.2 The proposed amendment would not constitute a substantive change to the existing law because the Regulation already has direct effect in the UK. The amendment would simply have the effect of clarifying the current legal position for the benefit of permit-holders, applicants and issuing authorities.

3.3 Each of those points is described in detail below.

3.4 Chapter 4 details the specific questions to which we are inviting responses.

Amending the 1985 Act

3.5 We propose to amend sections 18 to 23 of the 1985 Act to align those provisions directly with the exemptions set out in the Regulation. We would insert wording into section 18 to the effect that permits may only be awarded to organisations that are "exempt bodies" which meet one or more of the exemptions set out in the Regulation and transcribed at para 2.15 above. Sections 19 and 22 would also be amended to clarify that existing permits are only valid while the relevant organisation continues to satisfy one or more of the exemptions.

3.6 This change may be made simply, by secondary legislation (i.e. Statutory Instrument) relying on the enabling power² that allows Ministers to amend Acts of Parliament to make them compatible with EU law.

3.7 A draft of the proposed Statutory Instrument is attached as Annex A.

3.8 We will update guidance to illustrate the circumstances in which exemptions may apply alongside responding to this consultation.

¹ In Article 1(4) or 1(5)

² In section 2(2) of the European Communities Act 1972

Updating relevant guidance

- 3.9 The Department provides guidance for applicants for/holders of permits. It can be found online at: <https://www.gov.uk/government/publications/section-19-and-22-permits-not-for-profit-passenger-transport>
- 3.10 Sections 2 and 3 of that guidance describe the two types of permit, and who is eligible to hold them. We propose restructuring those sections to clarify that an organisation must satisfy one or more of the exemptions to the Regulation in order to apply for and hold a permit.
- 3.11 Paragraphs 3.14 to 3.28 of this document explain the meaning of each exemption to the Regulation. We outline how we propose to explain the first two exemptions¹ (on organisations which are not commercial or not primarily for transport) in guidance. The final exemption² (on short distance services) is less straightforward and we would welcome any views before we consider further whether (and, if so, how) we should adopt it.
- 3.12 Permit-holders are diverse in size, operation and constitution, so we are not in a position to provide exhaustive guidance covering all potential circumstances. Nevertheless, we aim to provide all existing holders and potential permit applicants with as clear a description as possible of what these exemptions may mean in practice, and seek to do this in a way that is clear, helpful and applies in a wide variety of situations. Each case will still need to be treated on its individual merits by permit issuers and enforcement authorities³.
- 3.13 It should be noted that the guidance documents are not legally binding. It is a matter for the courts to determine how the legislation should be applied in each case.
- 3.14 **"Undertakings engaged in road passenger transport services exclusively for non-commercial purposes"**

Table A: Outline of proposed guidance

General principle

In general, operating a vehicle⁴ to provide passenger transport services for payment should be treated as using that vehicle for commercial purposes, whether or not the operator has not-for-profit status.

If you are in any doubt, it may be better to err on the side of caution because it is an offence to operate a vehicle without a PSV licence in circumstances in which a licence is required, and there may also be other serious consequences (e.g. as to the validity of insurance cover).

¹ In Article 1(4)

² In Article 1(5)

³ Permit issuers can revoke permits that they have issued. The term includes Traffic Commissioners who, as well as issuing permits, have the power to revoke permits issued by other bodies.

⁴ For this purpose, a vehicle which is capable of carrying more than 8 passengers.

When can CT operators rely on the non-commercial exemption?

CT operators may rely on the non-commercial exemption if all of the services which they operate fall within **one or more** of the following categories. Similar circumstances may be taken into account because it is not possible to provide an exhaustive list.

The service is free of charge

No charge is imposed, either on passengers or any third party (such as a local authority). Voluntary donations (including money or time), grants¹ which are not conditional upon the provision of any transport service and income from non-transport activities can be ignored.

Any charge for service is substantially less than cost

Any charge imposed on passengers or any third party (such as a local authority) is substantially less than the cost of providing the service because the cost is heavily subsidised (for example, by voluntary donations of money or time, unconditional grants² or income from non-transport activities). As a broad rule-of-thumb, “substantially less than cost” means more than 10% less than cost.

Any charge for service equals (or exceeds) cost

Even if a charge is imposed which equals (or exceeds) cost, if there is no competition for any of those services from the holders of PSV licences (‘commercial operators’). This includes situations in which no commercial operator:

- pre-qualifies or bids for any local authority contract; or
- provides any equivalent service (i.e. for a similar class of passengers, on a similar route and during a similar time period).

If a CT operator is relying on the absence of competition from commercial operators, the CT operator must be able to provide appropriate evidence. For example, confirmation might be obtained from:

- the relevant local authority, to the effect that local commercial operators have shown no interest in competing for contracts; or
- local commercial operators, to the effect that they have no intention of bidding for contracts or operating competing services.

Occasional Services

Even where the passengers pay for the cost, if the services are occasional and not regular in nature and are organised on a voluntary

¹ Grants must comply with applicable EU state aid rules, as set out in the Department’s guidance published on 14 January 2015, which is available at <https://www.gov.uk/government/publications/community-transport-operator-funding-eu-state-aid-rules>

² See footnote 1

basis with an unpaid driver for a specific group of people (rather than members of the general public). This includes ad-hoc day trips for members of a recreational club or residents of a care home where the passengers share the costs.

Incidental services

Where vehicles are used by an organisation to carry individuals who have paid for non-transport services which are provided by the same organisation and the carriage is merely incidental to the provision of the other services. This includes attendance at a day centre or participating in lunch club.

The “non-commercial” test must be satisfied in relation to every service. If an operator provides a community bus service using a vehicle driven by volunteers and subsidised by donations or grants, the “non-commercial” test will not be satisfied if the operator also raises income through occasional private hire of that (or any other) vehicle.

- 3.15 Our proposed guidance aims to give a clear description of what the Government believes it means to be *operating exclusively for non-commercial purposes* in this context.
- 3.16 **It is important to be clear that providing transport services which profit-making operators are unwilling or unable to provide should not be considered commercial. We believe that a lack of a market for a service should enable a not-for-profit permit-holder to perform that service, whether or not money changes hands.**
- 3.17 The Government cannot issue exhaustive or rigid guidance that covers every eventuality. But it wants the process for this decision to be appropriate and proportionate to the situation. For example, the Government believes that if a not-for-profit organisation applies for a:
- section 22 permit to operate a community bus service where no competing local service is being operated by any profit-making organisation, confirming those facts should be enough evidence. Explicit written confirmation from actual or potential profit-making competitors as to their future intentions should not be essential but would plainly also be enough evidence.
 - section 19 permit to operate a service under a contract entered into with a local authority following an open competition where no profit-making organisation tendered to provide the service, it should be enough to confirm those facts. This may include contracts where there is both a social care and a transport component.
- 3.18 Fair and transparent competition in any market is important. These revised guidelines would mean that a not-for-profit organisation would need to obtain a PSV licence in order to compete with a profit-making organisation for a service contract (for example, a school transport contract with a local authority). All not-for-profit organisations wishing to compete with profit-making organisations for the same contracts would need to have the same regulatory requirements and regulatory

costs; and the same external conditions within which to pursue service excellence and growth.

3.19 "Undertakings...which have a main occupation other than that of road passenger transport operator".

Table B: Outline of proposed guidance

- *A permit may be awarded to any not-for-profit organisation whose main occupation is not road passenger transport.*
- *An organisation's constitutional documents may be clear enough to justify a decision that road passenger transport is not their main occupation. This may, for example, include charities whose objectives are not primarily about transporting passengers.*
- *In other cases, an organisation's main occupation may be obvious from their day-to-day activities.*
- *Wherever an organisation's main occupation is unclear, the permit-issuer or enforcement authority should consider the case on its own merits.*

3.20 Organisations whose main occupation is not passenger transport can still use permits to operate transport that is a 'sideline' or incidental to their main activities. For example, this exemption will continue to cover vehicles operated by a wide variety of educational, religious, social, sporting and recreational organisations (e.g. Scout group minibuses) to provide transport.

3.21 A fixed criterion or test for the meaning of "main occupation" cannot be provided. Considering the wide diversity of uses for permits, any fixed criterion or measure may not be applicable in all circumstances. All cases should be determined on their individual merits by the relevant permit-issuer.

3.22 **Undertakings "engaged exclusively in national transport operations having only a minor impact on the transport market because of... the short distances involved".¹**

3.23 This potential exemption differs from the others because EU Member States have an option as to whether or not to apply it. The United Kingdom has not previously sought to do so and we are not aware of examples of other Member States doing so, but the exemption exists in principle.

3.24 There is not enough information available to enable the Department to form a firm view about how this exemption might be implemented in legislation and guidance. We do not hold, for example, information about average service distances, or about the extent to which services operate within specific geographical areas or administrative boundaries.

¹ Article 1(5)(b)

- 3.25 We have therefore included questions in the questionnaire attached to this consultation so that we can better understand these issues, and would be very grateful for feedback from respondents.
- 3.26 We are exploring whether we could define a short-distance exemption by referring to services that operate within specific geographical areas or administrative boundaries, particularly local authority (perhaps district council) areas. This could be particularly relevant to Scottish islands or other isolated rural areas. We may also be able to define this by referring to services that operate within a specified distance from the principal office of the relevant operator or the operating centre at which the relevant vehicle is located. For this purpose, the Department is prepared to consider a radius of 15 to 20 miles.
- 3.27 We would welcome any views on whether and how respondents think this exemption could be applied. Any proposals as to how the exemption could be applied must be accompanied by evidence that services of particular types or operating in particular circumstances have only a minor impact on transport markets because of the short distances involved.

Other Potentially Relevant Factors

- 3.28 We are aware that some community transport operators have separated commercial operations which require PSV licences from non-commercial operations which rely on permits through the use of separate corporate entities. It may be possible to re-structure existing organisations, either in this way or by adopting other legal structures which have similar effects, and we would be very interested to obtain further information from operators about these arrangements.

Impacts

- 3.29 Compliance with the Regulation may require some permit-holders to change the kinds of services they provide, or to obtain PSV licences.
- 3.30 Permit-holders who are able to rely on one of the exemptions to the Regulation will continue to be able to operate using permits rather than PSV licences if they wish. They will still be able to carry out contract work using permits but only in circumstances where there is no competition with profit-making organisations.
- 3.31 Alternatively, obtaining a PSV licence will allow not-for-profit organisations to engage in competition with their profit-making counterparts and expand their opportunities. Not-for-profit organisations have just as much potential to operate successful, high-quality services as their profit-making counterparts; a wider holding of PSV licences in the not-for-profit sector may thus have positive as well as negative effects.
- 3.32 We do not expect there to be any impact on organisations who use permits to operate transport that is a 'sideline' or incidental to their main occupations. No change is proposed to how Scout or other youth groups, for example, can operate their minibuses using section 19 permits.

3.33 All permit holders should regularly review their continuing compliance with all applicable legal requirements.

3.34 An Impact Assessment of the proposals accompanies this consultation document.

4. Consultation Questions

We are keen to take as much advantage as possible from the wealth of insights and ideas that exists across the community transport sector. For each of the questions below, if you have any suggestions for changes or additions to our proposed guidance, please provide as much detail as possible about your suggestions and your reasons for them. Please answer these questions, illustrating you or your organisation's circumstances as of 31st January 2018.

Your name:

Your e-mail address:

Question 1

Do you have any comments on how the proposed guidance clarifications in respect of organisations “...**engaged in road passenger transport services exclusively for non-commercial purposes**” could be further improved or clarified? In particular, do you believe there are further examples of “non-commercial” activity which we should include?

Question 2

Do you have any comments on how the proposed guidance clarifications in respect of organisations “...**which have a main occupation other than that of road passenger transport operator**” could be further improved or clarified?

Question 3

Do you have any views on whether and how the category “**minor impact on the transport market because of the short distances involved**” could be used in practice?

Question 4

Based on how the Department proposes to apply the exemption for organisations “...**engaged in road passenger transport services exclusively for non-commercial purposes**”¹ (Table A, paragraphs 3.14 on page 12 to 3.18 on page 14), does your organisation fit into this exemption?

¹ Regulation 1071/2009 Article 1 (4) (b)

Question 5

Based on how the Department proposes to apply the exemption for organisations “...which have a main occupation other than that of road passenger transport operator”¹ (Table B, paragraphs 3.19 to 3.21 on page 15), does your organisation fit into this exemption?

Question 6

Based on how the Department proposes to interpret the exemptions to the Regulation, do you think that there could be impacts for specific groups in society?

¹ Regulation 1071/2009 Article 1 4 (b)

5. Consultation Context Questions

These context questions are only for organisations who provide services using a section 19 permit or section 22 permit. Please answer these questions, illustrating the circumstances of your organisation as of 31st January 2018.

Details of Organisation

Question 1

Please provide your organisation's name, address and charity number if appropriate.

Type of Organisation

Question 2

Is the primary activity that your organisation carries out the provision of transport services?

Please determine this question by virtue of activity and not the type of organisation you consider your organisation to be i.e. a charity or social enterprise.

If your organisation also provides other (non-transport) services e.g. social care services, please provide details of the other services.

Permit Numbers

Question 3

Which of the following permit types do you use?

Section 19 standard permit

How many of this type of permit have been issued to your organisation?

Which organisation(s) issued these permits?

Section 19 large bus permit

How many of this type of permit have been issued to your organisation?

Section 22

How many of this type of permit have been issued to your organisation?

Local Authority and Other Contracts

Question 4

- A. Did your organisation gain any of its current work through tendering for contracts in competition with holders of PSV licences?

- B. If so, please name the local authority or other public sector body you are carrying out work for so that we can establish whether some authorities or bodies could be affected more than others, and how.

Charges

Question 5

- A. Does your organisation charge either passengers or a third party for providing transport services using section 19 permits?

- B. Does your organisation charge either passengers or a third party for providing transport services using section 22 permits?

- C. If so, is the charge substantially less than the cost of providing the services?

- D. Is there any other information about the way in which you charge for services which you think might be relevant to this consultation?

Vehicle Numbers

Question 6

- A. How many vehicles does your organisation operate using section 19 permits, adapted to carry up to 8 passengers?

- B. How many vehicles does your organisation operate using section 19 permits, adapted to carry 9 to 16 passengers?

- C. How many vehicles does your organisation operate using section 19 permits, adapted to carry 17 or more passengers?

D. How many vehicles does your organisation operate using section 22 permits?

Driver Numbers

Question 7

- A. How many drivers does your organisation use in total?

- B. How many of your organisation's drivers are paid more than out-of-pocket expenses?

- C. How many of your organisation's drivers are unpaid volunteers?

The Rural Impact

Question 8

The Department for the Environment, Food and Rural Affairs defines rural areas at: <https://www.gov.uk/government/statistics/defining-rural-areas>

The definition and types of rural area are quite complex so if you don't know whether you provide services in one, when answering the next question simply give the name(s) of the area(s) you think is rural, and we will check whether or not it is a rural area.

- A. Does your organisation provide services in rural areas under section 19 permits?
If so please name the rural area(s)

- B. Does your organisation provide services in rural areas under section 22 permits?
If so please name the rural area(s)

Developing the Short Distance Exemption

This is to help to develop the short distance exemption discussed at pages 15 and 16 of this consultation document. This exemption is about mileage travelled from a starting point.

Question 9

- A. Looking at all the routes you operate, what is the furthest distance in miles between the start and end points (ignoring any return journey)?

B. What proportion of the services which you operate would fall within the 'short distance' exemption, if the exemption were to apply to journeys which are within the following distances from your operating centre:

- a 5 mile radius?
- a 10 mile radius?
- a 15 mile radius?
- a 20 mile radius?

Transport Managers

A Transport Manager is an individual with a Transport Manager Certificate of Professional Competence (TMCP) qualification who 'continuously and effectively' is responsible for managing an organisation's transport activity. Their duties include ensuring appropriate driver licensing is regularly checked; keeping drivers hours and working time records; and scheduling and keeping records of vehicle safety and preventative maintenance checks. A Statutory Guidance note on Transport Managers can be found at:

<https://www.gov.uk/government/publications/traffic-commissioners-transport-managers-september-2017>

Question 10

How many qualified Transport Managers (who hold a TMCP) does your organisation employ?

Question 11

How many staff does your organisation employ who carry out all the duties of a Transport Manager but who do not hold a TMCP qualification?

Question 12

The suggested amounts of time below are a starting point as to what Traffic Commissioners might expect in terms of hours worked by Traffic Managers. They are intended as a prompt to operators/applicants and the nominated TMCP holder to discuss what time is actually required to carry out their duties.

LEVEL OF AUTHORITY

Motor Vehicles	Proposed Hours (per week)
2 or less	2-4
3 to 5	4-8
6 to 10	8-12
11 to 14	12-20
15 to 29	20-30
30 to 50	30-Full Time

Above 50

Full Time and additional assistance
required

- A. Based on the above guidelines, how many of your staff do you anticipate would need to get TMCPD qualified, in order for you to keep delivering the services that you are currently delivering?
- B. Would you expect those staff to need training before taking the TMCPD or take the test immediately on the basis of their experience?

Traffic Areas

A list of Traffic areas can be found in Annexe 14, pages 51 to 54, of the Public Service Vehicle Operator Licensing Guide for Operators.

The guide can be found at: <https://www.gov.uk/government/publications/psv-operator-licensing-a-guide-for-operators-psv437>

An operating centre is the base or centre where your organisation's vehicles are normally kept.

Question 13

In how many traffic areas, does your organisation have an operating centre?

Time for Compliance

Question 14

How much time do you believe your organisation will need, in order to comply with the proposed changes to legislation and guidance?

Separation of Commercial and Non-Commercial Activities

Question 15

Has your organisation separated (or are you considering the separation of) commercial operations which require a PSV licence from non-commercial operations which rely on permits, through the use of separate corporate entities?

If so, please explain the corporate structure and the process by which you have separated (or are proposing to separate) those entities.

6. Consultation Responses

Please send responses, using the consultation response template on the [GOV.UK website](#), via email to buses@dft.gsi.gov.uk. Written responses can also be sent to:

Community Transport Consultation
Buses and Taxis Division,
Department for Transport,
Zone 2/12,
Great Minster House,
33 Horseferry Road,
London
SW1P 4DR.

When responding, please state whether you are an individual or representing the views of an organisation. If responding on behalf of an organisation, please clarify who the organisation represents, and where applicable, how the views of members were assembled.

This document has been published on the Gov.uk website (www.gov.uk) and can be made available in appropriate accessible formats on request.

Closing Date

This consultation started on 8th February 2018. The deadline for responding is 4th May 2018.

Consultation Principles

The consultation is being conducted in line with the Government's key consultation principles. Further information on these is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>.

If you have any comments about the consultation process please contact: the Consultation Coordinator, Department for Transport, Zone 1/29, Great Minster House, London, SW1P 4DR - Email consultation@dft.gsi.gov.uk.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot assure that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Next Steps

Once it has considered all of the responses to this consultation, the Government will produce a summary report setting out how it now intends to take the reforms to [x] forward and what will happen next. This will be published on the Gov.uk website.

ANNEX A – Draft Regulations

STATUTORY INSTRUMENTS

2018 No. 0000

ROAD PASSENGER TRANSPORT

The Transport Act 1985 (Amendment) Regulations 2018

Made - - - - 2018

Laid before Parliament 2018

Coming into force - - []th [] 2018

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾. The Secretary of State has been designated for the purposes of section 2(2) in relation to the carriage of passengers by road.

Citation and commencement

1. These Regulations—

(1) may be cited as the Transport Act 1985 (Amendment) Regulations 2018; and

(2) come into force on []th [] 2018.

Amendments of Transport Act 1985

2.—(1) The Transport Act 1985⁽²⁾ is amended as follows.

(2) In section 18 (exemption from PSV operator and driver licensing requirements of vehicles used under permits)

(a) in subsection (1)(a), after “use” insert “by an exempt body”;

(b) in subsection (1)(b), after “use” insert “by an exempt body”;

(c) in subsection (5)—

(i) after the definition of “Community licence”, insert—

““exempt body” means a body—

⁽¹⁾1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a); and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

⁽²⁾1985 c.67; sections 18 to 23A were amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 (c.22), sections 7 and 16, Schedule 3, paragraphs 4 and 5 and Schedule 6; the Driving Licences (Community Driving Licence) Regulations 1996 (S.I. 1996/1974) regulation 4, Schedule 3, paragraphs 1(2), 1(3) and 2; and the Local Transport Act 2008 (c.26) sections 57(1), (2), (3)(a), 3(b), 3(c), (4), (5), (6)(a), (7) and (8), 58(1), (2), (3), (4), (5)(a), (5)(b) and (6), 59(1), (2), (3), (4) and (5), 60(1) and 131 and Schedule 7, Part 3.

- (a) to whom the 2009 Regulation does not apply by virtue of Article 1(4)(b) of the 2009 Regulation (non-commercial purposes or main occupation not road passenger transport operator); or
- (b) who satisfies the requirements of Article 1(5)(b) of the 2009 Regulation (minor impact on transport market because of short distances involved) [for which purpose the term “short distances” includes [TBD]];

(ii) after the definition of “small bus”, insert—

““the 2009 Regulation” means Regulation (EC) No. 1071/2009⁽¹⁾ of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC⁽²⁾”.

(3) In section 19 (permits in relation to use of public service vehicles by educational and other bodies)—

(a) in subsection (1), after the definition of “bus” insert—

““exempt body” has the same meaning as in section 18 of this Act;”;

(b) in subsection (1), in the definition of “permit”, after “granted” insert “to an exempt body”;

(c) in subsections (2)(a) and (3), for “a body”, substitute “an exempt body”;

(d) in subsection (3), for “other body”, substitute “other exempt body”;

(e) in subsections (4), (5) and (7), for “any body”, substitute “any exempt body”;

(f) in subsection (7)—

(i) for “bodies”, substitute “exempt bodies”;

(ii) in paragraph (a), for “classes of body” substitute “classes of exempt body”;

(iii) in paragraph (c), for “the body” substitute “the designated body”; and

(g) in subsections (8) and (9), for “A body”, substitute “An exempt body”.

(4) In section 20 (further provision with respect to permits under section 19)—

(a) in subsection (7), after paragraph (b) insert—

“; or (c) it ceases to have effect under subsection (8) or (9) below.”;

(b) after subsection (7) insert—

“(8) A permit granted at any time to an exempt body ceases to have effect on the date on which the body ceases to be an exempt body.

(9) A permit granted before [commencement date] 2018 ceases to have effect on that date if the body to whom it was granted is not an exempt body.”.

(5) In section 22 (community bus permits)—

(a) in subsection (1)—

(i) in the definition of “community bus service”, for “a body”, substitute “an exempt body”;

(ii) at the end of the definition of “community bus service”, omit “and”;

(iii) in the definition of “community bus permit”, after “granted” insert “to an exempt body”;

(iv) at the end of the definition of “community bus permit”, insert “; and”; and

(v) after the definition of “community bus permit”, insert—

““exempt body” has the same meaning as in section 18 of this Act.”; and

(b) in subsection (4), for “A body”, substitute “An exempt body”.

(6) In section 23 (further provision with respect to community bus permits), after subsection (6), insert—

“(6A) A community bus permit shall remain in force until—

(1) it is revoked under subsection (6) above, or

(2) it ceases to have effect under subsection (6B) or (6C) below.

(6B) A community bus permit granted at any time to an exempt body ceases to have effect on the date on which the body ceases to be an exempt body.

⁽¹⁾OJ No L 300, 14.11.2009, p51.

⁽²⁾OJ No L 124, 23.05.1996, p.1.

(6C) A community bus permit granted before [*commencement date*] 2018 ceases to have effect on that date if the body to whom it was granted is not an exempt body.”.

Review

3.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) In carrying out the review, the Secretary of State must have regard to how Articles 1(4)(b) and 1(5)(b) of Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (which are implemented by these Regulations) are implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(4) The first report under this regulation must be published before the end of the period of five years beginning with [*commencement date*].

(5) Subsequent reports under this regulation must be published at intervals not exceeding five years.

Signed by authority of the Secretary of State

Date

Name
[Parliamentary Under Secretary of State]
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Transport Act 1985 in order to implement Articles 1(4)(b) and 1(5)(b) of Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.

Regulation 2(1) amends [TBC].

Regulation 2(2) amends [TBC].

Regulation 2(3) amends [TBC].

Regulation 2(4) amends [TBC].

Regulation 2(5) amends [TBC].

Regulation 2(6) amends [TBC].

Regulation 3 requires the Secretary of State to review of these Regulations and publish a report within five years after *[commencement date]* and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.