
The Use of Section 19 and Section 22 Permits in Providing Road Passenger Transport in Great Britain: Aligning Domestic Legislation with EU Regulation 1071/2009

Department for Transport

RPC rating: fit for purpose

Description of proposal

Under domestic regulations, “Community Transport” operators can be exempted from the requirements of EU Regulation 1071/2009, which sets EU standards for operators of road transport services. Exempted operators hold permits issued under sections 19 and 22 of the Transport Act 1985, and do not need to hold a Public Service Vehicle (PSV) licence.

The criteria for exemption are that operators:

- operate exclusively for non-commercial purposes or have a main occupation that is not as a road passenger transport operator (Article 1 (4) (b)); and
- operate only domestically and have a minor impact on the transport market because of driving short distances (Article 1 (5) (b)).

However, the legal relationship between the EU and domestic legislation is unclear; there is no guidance on the scope of the exemptions and there is some ambiguity over the definition of a “Community Transport” operator that is being applied – this is due to the Department previously assuming the terms ‘non-commercial’ and ‘not-for-profit’ were equivalent. Following an enforcement investigation carried out by the Driver and Vehicle Standards Agency (DVSA) in 2017 and discussions with the European Commission, it has become apparent to the Department that this assumption is no longer sustainable.

The Department explains that stakeholder feedback gathered through consultation indicates that it is difficult to know:

- which piece of legislation to apply first in deciding whether to apply for an operator’s licence or permit; and

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- which exemptions apply.

This uncertainty contributes to:

- non-compliance with obligations by operators through ignorance or lack of clarity; and
- stakeholder complaints that the profile of organisations using permits has changed significantly over the thirty years since the Transport Act was passed and that, as a result, many not-for-profit permit-holders have expanded and now compete actively with profit-making PSV licence-holders – particularly for local authority contract work.

Furthermore, it is unclear whether or not the UK is currently fully compliant with the EU Regulation.

The proposed intervention is intended to clarify the applicability of the EU Regulation using a combination of new legislation and updated guidance. The Department's preferred option is also intended to clarify the degree to which the UK is compliant with EU legislation.

Impacts of proposal

The Department's preferred option is to introduce a statutory instrument that clarifies the relationship between the EU Regulation and the Transport Act, and to update guidance about who can operate passenger transport without a PSV licence. This option generates a net present cost to business and third sector organisations of £50m over the appraisal period.

Benefits of the preferred option include better understanding by operators of their obligations, preventing anti-competitive practices by operators, reducing the risk of disruption to services and reducing punitive action on operators due to misuse of permits. These benefits have not been monetised in the IA due to lack of available evidence, but the overall impact is anticipated to be beneficial to the market.

With regards to the Business Impact Target (BIT), this is a non-qualifying regulatory provision, as it is the domestic implementation of an EU Regulation.

Number of operators affected

Based on permit data held by Traffic Commissioners, the IA states that there are approximately 6,300 operators who hold valid permits. The Department's analysis suggests that *"the number of section 19 and 22 permit operators potentially affected by the requirements of 'the EU Regulation' and the transition to PSV operator licensing-related requirements is approximately 3,150 operators or 50% of the*

sector.” These are likely to be local authorities and other organisations, including charities. The data is presented with appropriate caveats regarding spurious accuracy and data errors.

The IA includes a scenario analysis looking at the different costs that would arise depending on the numbers of existing permit holders that would transition to a PSV licence in a low (5%), central (25%) or high (50%) scenario. These limits are based on permit data, combined with consultation responses that suggest that a further 17% will be exempt. This has been rounded up to 25% as a conservative best estimate.

Familiarisation costs

The IA estimates one-off familiarisation costs to operators of £350,000 in the first year, using an appropriately sourced hourly wage (upscaled to include non-wage labour costs) and multiplying it by the number of operators.

Transport Manager costs

Although the Department’s consultation indicates that approximately 31% of operators currently do not have a qualified Transport Manager, the IA assumes that 50% of section 19 and 22 permit organisations will have to appoint one to meet the requirements of the EU Regulation (this is the maximum number possible), and calculates different costs based on whether new staff are employed or existing employees are trained to fill the roles, giving a possible range of £2.3m-£114m over ten years.

Licence and registration costs

The IA calculates the costs that existing permit holders will incur should they need to apply for a PSV licence – on average, this amounts to £210 per operator over ten years. Permit holders providing local bus services (defined using the distance between points where passengers can get on and off the vehicle) will also face increased registration costs. The Department estimates that these operators will incur an additional cost of £5,654 per operator over ten years in the IA’s central scenario.

MOT and certification costs

Permit holders that transition to a PSV licence will see an increase in their MOT costs depending on the type of vehicle they run. In the absence of more detailed evidence, the Department assumes an average MOT cost for the vehicles in each

category. These have been estimated to be between £90,000 and £915,000 per year for the sector as a whole over the ten-year appraisal period.

Larger vehicles are required to obtain an Accessibility Certificate if being used to provide a local bus or scheduled service. The IA's central scenario estimates the cost of doing so to be £5,685 per vehicle over ten years.

Other impacts

The IA also describes various non-monetised costs and benefits including the impact on passengers if their services were to stop, as well as notice periods and legal costs.

Benefits

The IA expects benefits to arise from increased understanding by operators of the scope of their requirements, fairer competition, increased compliance and improved ability to take enforcement action. These have not been monetised.

Quality of submission

The Department has provided a detailed and well-informed IA on this realignment of domestic legislation to meet the requirements of the EU Regulation better. The RPC is pleased to note that the Department has run a detailed consultation, including workshops, with a wide range of stakeholders.

The IA makes good use of evidence from the consultation to make appropriate assumptions in its cost-benefit analysis. It also sensibly uses the number of vehicles operated (rather than number of employees) as a proxy for business size.

The IA could be improved further by addressing the following points:

Presentation of options

The IA considers three options alongside the 'do nothing' counterfactual. However, only the preferred option is presented with a summary sheet setting out the associated costs and benefits. For consistency and ease of understanding, all three options should be presented with a summary sheet.

Cost to business

The IA explains that the preferred option will align domestic requirements with existing EU legal requirements that are already in force in the UK. Therefore, any

costs incurred by business or community bodies are deemed to be incurred as a result of current non-compliance with the EU Regulation. Based on this, the Department considers that the equivalent annual net direct cost to business (EANDCB) is likely to be zero. However, there may be some uncertainty about how operators who are unknowingly non-compliant may be affected and, ideally, the Department would provide further evidence to support this assertion.

Assumptions

The IA assumes organisations that train their staff to become certified Transport Managers will continue to pay them the same salary. This assumption could be improved by considering the difference in salary between existing Transport Managers and uncertified staff from salary surveys.

Monetisation of impacts

Not all the costs (and none of the benefits) have been monetised. While it is understandable that some costs cannot be realistically quantified, it is reasonable to expect a higher level of research and analysis for a final stage IA of this scale. For example, the costs of installing tachographs and changing an operator's legal status could be drawn out through further consultation.

International comparison

The IA could be improved by including a discussion on international comparisons of this EU regulation. This would allow a comparison of how member states may have successfully used PSV licences, or further inform the difficulties with this specific EU regulation.

Monitoring and evaluation plan

The IA includes a brief outline of how the measure will be monitored and evaluated. This will be helpful to facilitate a proportionate post-implementation review. Given the scale of costs and uncertainties identified in the IA, a monitoring and evaluation plan will help the Department to assess whether policy objectives are being met and identify unintended consequences.

Small and micro business assessment (SaMBA)

The IA explains that the definitions it uses for small and micro operators may not perfectly overlap with the standard definition for small and micro businesses. The

Department has based its definition on the number of vehicles rather than the number of employees. Using this definition, the vast majority (98%) of operators affected by the change will be small and micro businesses or voluntary organisations. The impact assessment, therefore, addresses the SaMBA requirement in itself and the Department has not provided a separate SaMBA. This seems reasonable.

However, although hard to quantify, the SaMBA could also acknowledge that, or consider whether, some small or voluntary bodies may cease their activities on the grounds that it is too difficult for them to otherwise continue.

Departmental assessment

Classification	Non-qualifying regulatory provision (EU)
Equivalent annual net direct cost to business (EANDCB)	N/A
Business net present value	-£50 million
Overall net present value	-£50 million

RPC assessment

Classification	Non-qualifying regulatory provision
EANDCB – RPC validated	N/A
Small and micro business assessment	Sufficient

Regulatory Policy Committee