

RoSPA Response to

“Consultation on the Use of Section 19 and Section 22 Permits for Road Passenger Transport in Great Britain”

A Department for Transport Consultation Paper

1 May 2018



Response to “Consultation on the Use of Section 19 and Section 22 Permits for Road Passenger Transport in Great Britain”

Introduction

This is RoSPA’s response to the Department for Transport’s “Consultation on the Use of Section 19 and Section 22 Permits for Road Passenger Transport in Great Britain”. It has been produced in consultation with RoSPA’s National Road Safety Committee.

Minibuses provide a vital mode of transport for a great many people and organisations. Local authorities, schools, voluntary groups, clubs and societies and employers all make extensive use of the minibus to run an impressive range of social and educational activities. Many community transport operators also provide social care services, especially to people who are elderly, isolated or disabled.

Since 1985, community transport groups that operate on a not-for-profit basis have been able to apply for permits to carry passengers in a bus or minibus without holding a Public Service Vehicle operator’s licence (PSV licence). However, concerns have been raised that some community transport operators that use permits are competing with commercial operators that are required to hold a PSV licence. This is not allowed by EU law, which only exempts operators from holding PSV licences if their primary purpose is not transport or they operate services that cannot be considered commercial.

The permit system recognised that not-for-profit organisations provide services of social/charitable benefit (for example, for isolated or vulnerable people) which profit-making organisations are not able to provide because of the costs of meeting the PSV driver licence rules. Permits provide a lower cost regulatory regime for not-for-profit organisations, enabling them to function where operators that must conform to full PSV licensing requirements and costs are not able to do so. Without the permit scheme many people and groups would lose access to community transport services.

Previously, the DfT and DVSA took the view that holders of section 19 and 22 permits were exempt from the need to hold a PSV operators licence because they are either engaged in road passenger transport services exclusively for non-commercial purposes or their main occupation is not being a road passenger transport operator. The term "non-commercial" was equated to "not-for-profit" and it was assumed that permit-holders would not compete with PSV licence-holders. However, following a legal challenge, these assumptions are no longer sustainable and, as a general rule, if a transport service is provided in return for payment, it should be treated as commercial, even if the organisation providing it operates on a not-for-profit basis.

Since the Transport 1985 Act, 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 Government is, therefore, consulting on how to clarify domestic law and guidance to ensure fair competition for commercial contracts and greater clarity for operators about their legal obligations. It proposes 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 exemptions set out in the Regulation. The Department for Transport and the DVSA also propose to update their guidance to better explain the circumstances where exemptions may apply and permits may be granted.

The Government has no plans to end the permit system.



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RoSPA Responses to Questions in this Consultation

The DfT propose to update its guidance, “[Section 19 and 22 permits: not for profit passenger transport](#)”, to clarify that organisations must satisfy one or more of the exemptions (ie, not be a commercial organisation or operate primarily for transport) to apply for and hold a permit.

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?

RoSPA’s Response

RoSPA agrees that, in general, organisations that operate a bus or minibus to provide passenger transport services for payment should be treated as operating for commercial purposes, whether or not the organisation has a not-for-profit status. They should be subject to PSV licence rules. However, we agree that not-for-profit community transport operators should continue to be able to rely on the non-commercial exemption from the PSV licence rules if their services meets one or more of these conditions:

- The service is free of charge (excluding voluntary donations, money or time or grants that are not conditional on the provision of the transport service or income from non-transport activities), or imposed on passengers or a third party (such as a local authority).
- Any charge for the service is substantially less than cost.
- The charge imposed is substantially less (more than 10% less than cost) than the cost of providing the service because the cost is heavily subsidised.
- The charge for service equals (or exceeds) the cost and there is no competition for the service from the holders of PSV licences (‘commercial operators’).
- the permit holder can provide appropriate evidence of this.
- Even where the passengers pay for the cost, the service is occasional and not regular and is organised on a voluntary basis with an unpaid driver for a specific group of people (for example, ad-hoc day trips for members of a recreational club or residents of a care home where the passengers share the costs.
- Where the vehicle is used by an organisation to carry individuals who have paid for non-transport services from the same organisation and the carriage is incidental to the provision of the other services.

In RoSPA’s experience, the greatest confusion about minibuses rules is around the definition of ‘volunteer’ drivers and whether they require a D1 entitlement on their driving licence in order to drive a minibus. Greater clarity in Government guidance about this issue would be very useful.

We also suggest the terms “occasional” and “incidental” and the definition of the services to be treated as ‘hire or reward’ should be clearly defined to reduce the risk of legal disputes over whether a permit holder provides such services. For example, students pay for courses, should transport provided as part of a course is ‘for profit’.



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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?

The DfT does not have enough information (for example, average service distances or the extent to which services operate within specific geographical areas or administrative boundaries) to form a firm view about how this exemption might be implemented. They have, therefore, asked for feedback from respondents.

EU Member States can decide whether or not to apply this exemption, and the UK has not previously done so, but the exemption exists in principle.

RoSPA's Response

RoSPA agrees that providing transport services which profit-making operators are unwilling or unable to provide should not be considered commercial so that not-for-profit permit-holders can provide a service, whether or not money changes hands. The revised guidelines should make it clear that a not-for-profit organisation would need to obtain a PSV licence in order to compete with a profit-making organisation, for example, for a school transport contract with a local authority.

We agree that it is not practical for the Government to issue exhaustive or rigid guidance that covers every eventuality, but unfortunately RoSPA does not have evidence on which to base suggestions.

The most common enquiries that RoSPA receive about minibuses being operated under a permit is about the definition of 'volunteer' drivers and whether they require a D1 entitlement on their driving licence in order to drive a minibus and the terms they need to operate under in order to be a volunteer minibus driver.

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?

RoSPA's Response

RoSPA is unable to answer this question.

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?

RoSPA's Response

No, RoSPA does not provide transport services. However, we do produce advice for minibus operators, drivers and passengers, including on section 19 and section 22 permits in "[Minibus Safety: A Code of Practice](#)". Minibus safety issues are one of our more common topics of road safety enquiries.



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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?

RoSPA's Response

No, RoSPA does not provide transport services.

RoSPA does not operate a minibus service or a road transport passenger service. However, we do produce advice on minibus safety, including “[Minibus Safety: A Code of Practice](#)” which includes advice for minibus operators, drivers and passengers which includes the topic of section 19 and section 22 permits.

Enquiries about minibus issues are one of our more common topics of road safety enquiries, and perhaps the most common enquiry that we receive about minibuses being operated under a permit is whether ‘volunteer’ drivers require a D1 entitlement on their driving licence in order to drive a minibus and the terms they need to operate under in order to be a volunteer minibus driver.

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?

RoSPA's Response

Incidents involving minibuses, whether driven by ‘professional’ or ‘volunteer’ drivers are very rare.

As the consultation paper notes, many community transport operators also provide social care services, especially to people who are elderly, isolated or disabled, and so it is likely that there would be impacts on specific groups that depend on the services provided by community transport operators.

The main issue that is not resolved by the proposals is the ongoing confusion over the definition of “volunteer driver”, particularly in relation to school minibuses. A very clear definition of a volunteer driver is needed.

RoSPA thanks the Department for Transport for the opportunity to comment on the proposals. We have no objection to our response being reproduced or attributed.

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