

North Yorkshire County Council
Business and Environmental Services
Executive Members

20 April 2018

Section 19 and Section 22 Consultation

Report of the Assistant Director – Transport, Waste and Countryside Services

1.0 Purpose Of Report

- 1.1 To provide the Corporate Director Business and Environmental Services (BES) and the BES Executive Members with an overview of the current consultation in order to facilitate discussion to finalise and agree a corporate response to the consultation.
- 1.2 To seek agreement from the Corporate Director BES and the BES Executive Members that the finalised consultation response can be shared with North Yorkshire Community Transport providers.

2.0 Background

- 2.1 The Corporate Director Business and Environmental Services (BES) and the Executive Members (BES) were updated of the background and latest information received from the Department for Transport regarding Section 19 and Section 22 permits on 20 October 2017.
- 2.2 In summary the UK's interpretation of EU Regulation 1071/2009 (the Regulation) is incorrect and a public consultation would be carried out detailing changes required to update current guidance, together with proposed amendments to the Transport Act 1985 (the Act) to help clarify the relationship between the permit issuing conditions set out in the Act and the derogations set out in the Regulation.

3.0 Key Elements of the Consultation

- 3.1 Transport Act 1985
The DfT is proposing to amend sections 18 to 23 of the Transport Act 1985 to align those provisions directly with the exemptions set out in the Regulation.
- 3.2 Wording is proposed to be inserted 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.
- 3.3 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.
- 3.4 A draft of the proposed Statutory Instrument is attached at Annex A.

Relevant Guidance

- 3.5 The DfT is proposing to 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:
- i. "...engaged in road passenger transport services exclusively for non-commercial purposes";
 - ii. "...which have a main occupation other than that of road passenger transport operator"; or
 - iii. "...engaged exclusively in national transport operations having only a minor impact on the transport market because of ...the short distances involved".
- Further information on the proposed revised guidance for these three exemptions is detailed in Annex B.
- 3.6 The exemption detailed at 3.5 iii differs from other exemptions 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 but its use is now being considered as part of the consultation.

4.0 Consultation

- 4.1 The consultation documents have been circulated to internal service areas to review and consider the implications the proposed changes may have on council functions and interests, together with the impact suppliers and residents.
- 4.2 A meeting was held with North Yorkshire Community Transport operators on 27 March 2018 to enable discussion of the various issues the proposed changes might cause. The following is a summary of the points raised by operators that attended:
- Some operators confirmed they would not transition to a PSV 'O' Licence, most citing cost.
 - All operators felt that their drivers/volunteers would be unwilling to undertake a PSV/D1 test, or where they did, the concern would be that they would then look for paid work.
 - Many operators highlighted the impact of the proposed changes would be felt most in rural areas and areas of multiple deprivation.
 - It was suggested the proposed changes and subsequent issues should be raised with local MPs.
 - The difficulty in recruiting volunteers was highlighted by some operators.
 - The potential cost to other service areas, for example social care, was raised if passengers lost services and suffered isolation and loneliness.

5.0 Summary of NYCC Consultation Response

- 5.1 The consultation response questions are very focussed and provide restricted opportunity to demonstrate the impact to the council and local residents. It is also appropriate to highlight that the DfT has received a legal challenge regarding its interpretation of the Regulation, so maintaining the status quo is not possible. Nevertheless the response highlights the issues for the council as a procurement body and a fleet operator. In addition the potential for significant impact to local residents has been included.

Procurement of Services

5.2 Whilst the consultation document and proposed changes to the Act and guidance do provide some further information, there remains some uncertainty and lack of clarity. Further detail has therefore been requested:

- On the process to enable S19 permit holders to tender for contracts that profit-making organisations are unable or unwilling to provide;
- To confirm that profit-making organisations are deemed as unwilling or unable to provide transport services if tender prices received for transport services are so prohibitively high as to be unreasonable;
- On what items can be included in a full cost recovery model; and
- On what constitutes an occasional as opposed to regular service.

5.3 The response also highlights that many existing permit holders have specialist vehicles for transporting passengers with specialist needs that local bus and coach operators do not currently operate and are unlikely to invest in.

Council Fleet Operations

5.4 Confirmation has been requested that a local authority fleet operations fall into the category "...which have a main occupation other than that of road passenger transport operator" and as such will still be eligible to operate using S19 and S22 permits.

5.5 The response also details some requested information on the number of vehicles, permits and other similar information as specifically requested in the consultation document.

Local residents

5.6 Significant detail has been provided on the potential impact to residents living in rural areas. Including how many community transport providers operate additional passenger transport services to their local communities without any financial support from the council which are at risk of being lost if those providers choose to cease operating as a result of the additional requirements imposed on them.

5.7 Further clarity has been requested on whether a specific type of organisation would meet the "...which have a main occupation other than that of road passenger transport operator".

5.8 Suggestions have been made regarding the exemption "engaged exclusively in national transport operations having only a minor impact on the transport market because of... the short distances involved" might be applied to enable North Yorkshire community transport providers to benefit from such exemption.

5.9 A copy of the consultation response as currently drafted is attached as Annex C.

5.10 As the consultation response questions are very focussed and given the significance of community transport to the county's transport network, a covering letter has been drafted to provide supplementary information. This is attached as Annex D. This information is intended to highlight the importance of community transport to rural areas. Additionally the role of permit issuing bodies, which includes the council, is not referred to in the DfT's consultation or response template so this is also referred to.

6.0 Legal Implications

- 6.1 Given that there still remains uncertainty and lack of clarity we will need to monitor future changes to guidance and the Transport Act 1985 and take action as appropriate. Discussions are ongoing with colleagues in Legal Services and these discussions will continue.

7.0 Financial Implications

- 7.1 There will be additional costs and administration for some contracted suppliers that are S19 or S22 permit holders and their responses may include:
- Seeking additional costs from ourselves.
 - No longer wishing to undertake contracts for ourselves and/or terminate their existing contracts.
 - Withdrawal from providing transport (e.g. Community or DRT) altogether.
- 7.2 As such it is likely that there will be negative financial implications for the council as a result of the proposed changes due to a reducing pool of operators bidding for council contracts.

8.0 Equalities Implications

- 8.1 An equality impact screening assessment has not been undertaken as the final decision on the exact changes that will be made to legislation and guidance and when they will be implemented rests with Central Government. This report and its recommendations detail the subsequent impact to residents following Central Government's decision, particularly those in rural areas of the county, some of whom may fall into one of the protected characteristics as defined by the Equalities Act 2010.

9.0 Recommendation

- 9.1 The Corporate Director BES and the BES Executive Members note the contents of this report and agree a finalised corporate response to the consultation.
- 9.2 The Corporate Director BES and the BES Executive Members agree that the finalised consultation response can be shared with North Yorkshire Community Transport providers.

IAN FIELDING

Assistant Director – Transport, Waste and Countryside Services

Author of report: Cathy Summers

Background Documents:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/680319/section-19-section-22-permits-consultation.pdf

ANNEX A – Draft Regulations

STATUTORY INSTRUMENTS

2018 No. 0000

ROAD PASSENGER TRANSPORT

The Transport Act 1985 (Amendment) Regulations 2018

| | | |
|-------------------------------|---------|----------------|
| <i>Made</i> | - - - - | 2018 |
| <i>Laid before Parliament</i> | | 2018 |
| <i>Coming into force</i> | - - | []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]]; and
- (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, p.51.

⁽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.

The DfT 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>

The DfT proposes to update the guidance in relation to exemptions detailed in Regulation 1071/2009 as follows:

- **"Undertakings engaged in road passenger transport services exclusively for non-commercial purposes"**

General principle

In general, operating a vehicle 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).

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 grants 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 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. 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.

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

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

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

The DfT 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.

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Section 19 and 22 permits: how to apply EU Regulation 1071/2009

Consultation response form

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?

- Sections 3.16 and 3.17 of the consultation document make clear that not-for-profit organisations can secure contracts for services that are not classified as local services, for example school services, which profit-making operators are unwilling or unable to provide. It is suggested that the guidance explicitly confirms securing contracts in this way is permissible, either in this section or section 5.1 of the guidance (Tendering for contracts).*

In addition we request some suggested best practice on how either a local authority or not-for-profit organisations should manage this. For example should not-for-profit organisation be expected to tender for such services and the local authority only able to award such a contract in the absence of tenders from profit-making organisations or does the local authority not permit not-for-profit organisations to tender for such services but in circumstances where no bids are received from profit-making organisation, the local authority then approaches not-for-profit organisations regarding undertaking such work.
- We would appreciate further detail confirming that profit-making organisations are deemed as unwilling or unable to provide transport services (as detailed in section 3.16 of the consultation document) if tender prices received for transport services are so prohibitively high as to be unreasonable. This will enable not-for-profit organisations (such as a local authority in house fleet, community transport operators) to perform such services or the alternative would be the service is not provided.*
- We would appreciate clarity in relation to full cost recovery (FCR) that organisations might want to apply to their operation. Section 5.1 of the current guidance (Tendering for contracts) includes further information on FCR but refers to cost recovery by service. It remains unclear whether overheads relating to an organisation's premises, non-driving staff, vehicle depreciation can be included in FCR.*
- We would also appreciate clarity on whether overheads relating to an organisation's premises, non-driving staff, and vehicle depreciation can be include in "Any charge for service is substantially less than cost" when establishing if the 10% threshold applies.*
- We would appreciate further clarity on Occasional Services for example would every Tuesday or the first Friday of every month be considered an occasional or regular service.*

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?

1. *We would appreciate explicit clarification that local authority fleet operations fall into this category, including where they are providing local bus services (in areas where profit-making organisations are unwilling or unable to provide such services) on which fares are charged.*
2. *We would appreciate further clarity on not-for-profit organisations that offer several services to their community, for example a local shop, library etc, and that also offer a transport service. In this example it is clear that the transport provision is not a 'sideline' or incidental to their main activities but equally as several services are offered it could be argued transport is not their main occupation either.*
3. *Section 3.18 of the consultation document clearly details that not-for-profit organisations would need to obtain a PSV licence in order to compete with profit-making organisations for a service contract. However as this section is detailed under the section referring to "Undertakings engaged in road passenger transport services exclusively for non-commercial purposes" it could be interpreted that this section is therefore not applicable to the other exemptions eg to organisations "...which have a main occupation other than that of road passenger transport operator". Clarity on this point would be appreciated.*

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?

North Yorkshire County Council is the largest rural county council in the country and has significant sections of rurality. A number of residents live more than 20 miles from their nearest amenities. Provision of commercial local bus services in these areas is not economically viable. With significantly reduced revenue support available to support local bus services the council has worked closely with community transport providers in such rural areas across the county to ensure that transport provision can still be accessed.

We therefore request that the broadest use of this category be applied. Section 3.26 of the consultation refers to administrative boundaries and whilst we would welcome application of the suggested district council area, some North Yorkshire community transport providers cross over two district council areas (solely due to where the organisation is based) though overall the area of coverage would not exceed a typical district council area.

To assist the department in considering this point below are details of the radius/end to end mileage of some services currently provided by community transport providers in North Yorkshire:

North Yorkshire County Council In House Fleet

Service 4 - within 5 mile radius

Service 11 - 16 miles

Service 12 - within 5 mile radius

Service 14 - within 5 mile radius

Service 16 - within 5 mile radius

Service 31a - within 5 mile radius

Service 31b - within 5 mile radius

Service 44 - within 5 mile radius

Service 59 - 9 miles

Service 60 - 5 miles

Service 71 - 7 miles

Service 72a - 18 miles

Service 74 - 21 miles

Service 74a - within 5 mile radius
Service 74b - within 5 mile radius
Service 78a - 6 miles
Service 155 - 11 miles
Service 190 - 17 miles
Service 193 - within 5 mile radius
Service 210 / 211 - 12 miles

North Yorkshire Community Transport Providers

Service 156 - 30 miles
Service 30 - 24.5 miles
Service 32 - 8.8 miles
Service 113 - 11.6 miles
Service 173 - 20.3 miles
Service 174 - 16.4 miles
Service 175 - 22.3 miles
Service 176 - 29.9 miles
Service 182 - 20.3 miles
Service 184 - 39.2 miles
Service 185 - 24.5 miles
Service 187 - 28.1 miles

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?

North Yorkshire County Council In House Fleet

The Council is likely to fall into that category. The fares on the social care fleet is nominal (£2.50 per day vs full cost of £26). Fares collected on local bus services are minimal.

North Yorkshire Community Transport Providers

We estimate that 20 to 25 organisations are likely to fit into this category. This figures excludes organisations that operate incidental transport for example schools, scout groups etc.

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”² (Table B, paragraphs 3.19 to 3.21 on page 15), does your organisation fit into this exemption?

North Yorkshire County Council In House Fleet

The Council’s main occupation is not direct local bus service provision.

North Yorkshire Community Transport Providers

We estimate that approximately 6 organisations are likely to fit into this category.

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?

Yes. People living in rural areas, some of which do not have access to a car and/or are elderly or have mobility issues, will be impacted.

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

² Regulation 1071/2009 Article 1 4 (b)

At present, the council has 22 contractual agreements with 7 different community transport providers across the county. We are also aware that many of these community transport providers operate additional passenger transport services to their local communities without any financial support from ourselves. The majority of these services (excepting some of the contractual agreements) will not be attractive to commercial local bus operators as the patronage numbers and fare income are too low to build a commercial business case. Many providers rely on income from contracted services to help with overheads and to provide support to enable them to provide the other community transport services. The loss of contract income is likely to mean many will cease operating.

The concern is therefore some of the North Yorkshire community transport providers will require a PSV O licence in order to continue to provide services. We are aware of the availability of £250k funding from DfT to assist community transport providers who wish to transition to a PSV O licence. This support from the department to ensure that community transport providers can meet the financial challenges of transitioning to a PSV O licence is welcomed. However, we are receiving feedback to suggest that reasons other than financial will prevent many community transport providers from pursuing the option to obtain a PSV O licence. For example, a significant barrier will be that drivers, who are generally unpaid volunteers, are advising operators that they would not be willing to undertake CPC training.

Additionally we are also concerned that such providers have specialist vehicles for transporting passengers with specialist needs that local bus and coach operators do not currently operate and are unlikely to invest in given that they can generally only be used on specialist transport provision.

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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.

*North Yorkshire County Council
County Hall
Northallerton
North Yorkshire
DL7 8AD*

Type of Organisation

Local Authority – County Council

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.

No

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

Various statutory and discretionary public 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?

The Council operates 93 minibuses using section 19 permits. The permits were issued by the Council.

Section 19 large bus permit

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

Nil

Section 22

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

The Council has 16 Section 22 permits.

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?

North Yorkshire County Council In House Fleet

No. The Council provides adult social care transport in-house. The Council provides some school services in-house. The Council provides local bus services where no commercial operator operates a services or where the required level of subsidy for a commercial operator is so high as to be cost prohibitive.

North Yorkshire Community Transport Providers

At present, the council has 22 contractual agreements with 7 different community transport providers across the county.

- 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.

North Yorkshire County Council In House Fleet

N/A

North Yorkshire Community Transport Providers

North Yorkshire County Council

Charges

Question 5

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

Yes

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

Yes

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

Yes

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

N/A

Vehicle Numbers

Question 6

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

None

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

Up to 93

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

Nil

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

Up to 16

Driver Numbers

Question 7

- A. How many drivers does your organisation use in total?
Approximately 200
- B. How many of your organisation's drivers are paid more than out-of-pocket expenses?
All
- C. How many of your organisation's drivers are unpaid volunteers?
Nil

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)
North Yorkshire is the largest county council in the country with significant sections of rural areas. The attached map demonstrates this. There are very few services where both the origin and destination are in urban areas. For the vast majority of services the origin is in a rural area and the destination is mainly to another rural area or an urban area.



2011-rural-urban-classification---north-yorkshire

- B. Does your organisation provide services in rural areas under section 22 permits? If so please name the rural area(s)
North Yorkshire is the largest county council in the country with significant sections of rural areas. The attached map demonstrates this. There are very few services where both the origin and destination are in urban areas. For the vast majority of services the origin is in a rural area and the destination is mainly to another rural area or an urban area.



2011-rural-urban-classification---north-yorkshire

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)?
*North Yorkshire County Council In House Fleet
32 miles. See response to question 3 for further information.
North Yorkshire Community Transport Providers
39.2 miles. See response to question 3 for further information.*

- 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:

North Yorkshire County Council In House Fleet

Local bus services only

- a 5 mile radius? 50%
 a 10 mile radius? 65%
 a 15 mile radius? 85%
 a 20 mile radius? 100%

North Yorkshire Community Transport Providers

- a 5 mile radius? *See comments below.*
 a 10 mile radius? *See comments below.*
 a 15 mile radius? *See comments below.*
 a 20 mile radius? *See comments below.*

Given the unique and diverse nature of the services operated by North Yorkshire Community Transport providers coupled with the fact that not all services are financially supported by the council we cannot provide a full proportional split of services by distance. However, we request that the broadest use of the 'short distance' exemption be applied. Section 3.26 of the consultation refers to administrative boundaries and whilst we would welcome application of the suggested district council area, some North Yorkshire community transport providers cross over two district council areas (solely due to where the organisation is based) though overall the area of coverage would not exceed a typical district council area. A number of residents live more than 20 miles from their nearest amenities. Provision of commercial local bus services in these areas is not economically viable.

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) qualification) does your organisation employ?

Two, but one does not have direct involvement in Fleet Management.

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?

Five

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?
One
- B. Would you expect those staff to need training before taking the TMCPD or take the test immediately on the basis of their experience?
Yes

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?

One

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?

If the Council did not meet the derogation then the time needed to comply would be 2 years.

The Council would meet all PSV operator's licence criteria except for using full D1 drivers with CPC. The testing and qualification of the drivers would be the limiting factor.

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.

No. However, the Council maintains an Operator's Licence as well as using permits.

The taxation and MOT regime for permit operators and PSV operator's limits the crossover use of vehicles between entities.

Consultation responses

Send this completed response form:

Via email to buses@dft.gsi.gov.uk

Or by post to:

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

DRAFT

Dear Sirs

North Yorkshire County Council has submitted a formal response to the Consultation on the use of section 19 and section 22 permits for road passenger transport in Great Britain. However, we hereby provide some additional information as part of our response that cannot be adequately covered in the response template.

Community Transport Provision in Rural Counties

As you are aware North Yorkshire is the largest county council in the country and has significant sections of rural areas. Provision of a comprehensive public transport network, without significant financial support, is difficult to achieve in such conditions but we work hard to ensure that the majority of our residents can access key services, employment and educational establishments so as to help continue the economic growth being achieved in our region. Like many local transport authorities we have been faced with reducing budgets and this has inevitably involved pressures on the financial support available for local bus services. However a customer focussed response to the challenge was achieved and we worked closely with the community transport providers across the county to ensure that transport provision could still be accessed when council supported local bus services were withdrawn.

At present, the council has 22 contractual agreements with 7 different community transport providers across the county. We are also aware that many of these community transport providers operate additional passenger transport services to their local communities without any financial support from ourselves. I must stress at this point that the majority of these services, excepting some of the contractual agreements, will not be attractive to commercial local bus operators as the patronage numbers and fare income are too low to build a commercial business case. I am therefore concerned that as a result of potential changes to the guidance and legal framework applicable to CT operators, some of the North Yorkshire community transport providers may be deemed to require a PSV O licence in order to continue to provide services to the County Council as some, though not all, are tendering for work in a competitive market. The consequence of this is that we are likely to lose these providers.

I am aware that Jesse Norman MP, Parliamentary Under Secretary of State whilst giving evidence to the Transport Select Committee at their Community Transport Inquiry mentioned the availability of £250k funding in this financial year to assist community transport providers who wish to transition to a PSV O licence. This support to ensure that community transport providers can meet the financial challenges of transitioning to a PSV O licence is welcomed and I have also asked my transport team to scope out what other assistance we can provide to Community Transport providers. However, I am receiving feedback to suggest that reasons other than financial will prevent many community transport providers from pursuing the option to obtain a PSV O licence. For example, a significant barrier will be that drivers, who are generally unpaid volunteers, are advising operators that they would not be willing to undertake CPC training. Many CT operators rely on income from contracted services to help with overheads and to provide support to enable them to provide the other community transport services. The loss of contract income is likely to mean many will cease operating.

Without these community transport providers the council will face increased contract costs and the loss of other valuable transport services to vulnerable people in remote communities. The Council does not have the financial resources available to fund replacement and it is unlikely that a local bus operator will provide these services on a commercial basis. It is this type of unintended consequence, whereby services being provided without any financial support are at risk of being lost, and others that are yet to surface that concerns me. I am also greatly concerned that such providers have specialist vehicles for transporting passengers with specialist needs that local bus and coach operators do not currently operate and are unlikely to invest in given that they can generally only be used on specialist transport provision.

I note that a potential exemption that may be implemented which applies to undertakings "engaged exclusively in national transport operations having only a minor impact on the transport market because of.... the short distances involved." This investigative work is welcomed and I urge you to consider the widest possible coverage as a 20 mile radius will not be sufficient for some operators in North Yorkshire.

Permit Issuing Bodies

Further guidance or best practice would be appreciated on the due diligence that should be undertaken by a permit issuing authority to ensure that applicants satisfy one or more of the exemptions to the Regulation in order to apply for and hold a permit. Clarification on whether an organisations declaration is sufficient or whether supporting information should be requested would be appreciated. It would also be useful to include suggested best practice on dealing with organisations satisfying one or more of the exemptions at the time of applying for a permit, but who no longer become eligible part way through the duration of the permit. Clarity on whether the onus rests with the permit issuing authority to withdraw or the organisation to surrender would be appreciated.

The update to Local Authorities dated 9 November 2017 States "We have not asked any local authority to cancel any contracts and do not expect that they should have to do so." We would appreciate further clarity and advice on how, as a permit issuing body, we should deal with such organisations that hold contracts with ourselves (or other similar bodies) who make an application for a permit to replace an expired permit during the duration of that contract.

Driver CPC

The requirement to hold or the exemption set out in Regulation 3(2)(f) of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 for vehicles "*being used for the non-commercial carriage of passengers or goods for personal use*" are not referred to in the consultation document. However, there is anecdotal evidence suggesting that DVSA officers at roadside checks are informing salaried drivers of permit vehicles that once revised guidance is published they will be required to be holders of a Driver CPC qualification.

The impact of such a change will be significant and mean that teachers, council fleet drivers and other such salaried staff would be required to obtain the Driver CPC qualification even though they are driving vehicles operated under a permit, which I am sure is not the intention otherwise the consultation which have set out this and allowed such organisation to respond accordingly. It would therefore be appreciated if appropriate guidance could be updated to ensure that there is no misunderstanding by either drivers or roadside enforcement officials.

If you require any further details or information please do come back to me.

Yours sincerely

DRAFT