



Department for Transport

***This letter is for the attention of
Section 19 and Section 22 permit
issuers in Great Britain.***

Stephen Fidler
Head of Buses and Taxis Division
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

31 July 2017

The Issue and Use of Section 19 and Section 22 Permits for Road Passenger Transport in Great Britain

This letter is addressed to the issuers of permits under Sections 19 and 22 of the Transport Act 1985. It should also be read by the holders of such permits to the extent that they operate in the circumstances described below. As the Department does not hold records of all permit holders, issuers should notify holders to whom they expect the contents of this letter to be relevant.

The Driver and Vehicle Standards Agency (DVSA) has recently issued a decision letter to a community transport operator, following an investigation of a variety of allegations concerning non-compliance with legal requirements applicable to operators of road passenger transport services. The operator was operating minibuses (9-16 seater) under permits issued under Section 19 of the Transport Act 1985. This present letter provides a summary of the outcome in that decision letter and the reasoning behind it, and highlights what it may mean for issuers and holders of Section 19 or 22 permits.

The decision was made following consideration of the specific circumstances of the operator. In brief, its operations comprised a range of services, including local bus, home-to-school and day care transport provided under competitively-tendered contracts with local authorities. These services were provided using minibuses operated under Section 19 permits, driven by salaried drivers, not all of whom held a Driver's Certificate of Professional Competence (Driver CPC) and an unrestricted D1 minibus licence.

The decision letter informed the operator that:

- i. The operator did not come within any of the derogations from the requirement in EU Regulation 1071/2009 for operators of road passenger transport services to hold a PSV Operator's Licence. Regulation 1071/2009 is directly applicable in UK law. Although there is a derogation for operators "*engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator*",¹ that derogation

¹ Article 1(4)(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.

could not properly be considered applicable *simply* because the operator was a registered charity and was therefore prohibited from distributing its profits. In view of the scope and nature of the operator's activities – which included the provision of passenger transport services carried out pursuant to contracts won via competitive tender in contestable markets – the factual circumstances did not justify a conclusion that the operator's engagement in road passenger transport services was "*exclusively for non-commercial purposes*". Nor did the operator have "*a main occupation other than that of road passenger transport operator*", since its main activity was providing road passenger transport services. **The operator concerned therefore required a PSV Operator's Licence.**

- ii. As a consequence of the need to hold a PSV Operator's Licence, the operator's drivers did not fall within Section 18(2) of the Transport Act 1985 and Regulation 4(2) of the Section 19 Permit Regulations 2009² which enable drivers with pre-January 1997 D1 (101 – "not for hire and reward") endorsements on their driving licences to drive minibuses operated under a Section 19 permit. **Accordingly, the operator's drivers should have been holders of unrestricted D1 minibus driving entitlements.**
- iii. In light of an examination of the operator's services, and also taking account of the fact that drivers were salaried employees, the circumstances did not justify a conclusion that the operator's vehicles fell within the exemption set out in Regulation 3(2)(f) of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007³ for vehicles "*being used for the non-commercial carriage of passengers or goods for personal use*". **Accordingly, the operator's drivers should have been holders of a Driver CPC qualification.**

The operator to which the decision letter was addressed was informed that, in view of the above findings, it would need to take action to bring its operations into line with all applicable legal requirements. DVSA will be working with the operator to ensure that it does so.

It is important to emphasise that this decision applies to the operator concerned after investigation of its specific circumstances. Other cases will need to be considered on their own facts. However, developments in passenger transport provision during the last two decades (in part encouraged by successive governments) may mean that the types of contracted work and driver employment/ training/licensing arrangements described in this letter are not unique to this community transport operator.

It has become increasingly apparent to the Department recently that guidance has not kept pace with these developments. It may therefore be helpful to set out the following principles:

- Section 19 or Section 22 permits, as exemptions from PSV Operator Licensing, must only be issued in circumstances meeting both:
 - a) the conditions set out in the relevant section of the Transport Act; and
 - b) one of the derogation criteria set out in Article 1(4) of EU Regulation 1071/2009.

² SI 2009/365

³ SI 2007/605

It is for the organisation applying for such a permit to make its case to the relevant permit issuing body as to why it meets those conditions and criteria, based on the nature of its passenger transport activities and the basis on which it is carrying out those activities.

- The only derogation in Article 1(4) of Regulation 1071/2009 which is likely to be applicable to an operator wishing to operate vehicles under a Section 19 or 22 permit is the derogation for operators “*engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator*”.
 - An operator whose main activity is operating passenger transport services (as opposed to, say, providing youth or care services) would plainly not “*have a main occupation other than that of road passenger transport operator*”.
 - The question as to whether or not an operator’s passenger transport activities are *all* carried out “*exclusively for non-commercial purposes*” has to be answered objectively based on the nature of the activities and the manner in which they are being carried out (e.g. whether or not they are being performed on a business-like basis, whether or not the drivers are unpaid volunteers, and whether or not the operator is competing with other operators)⁴.

An operator whose activities are essentially those of a bus company (in that it employs salaried drivers and carries out passenger transport services under contracts won in contestable markets and/or in exchange for fares charged to passengers at more than nominal rates) cannot be regarded as carrying out its activities “*exclusively for non-commercial purposes*”. That is so even if the operator is a registered charity or other “not for profit” organisation.

Where *any* of an operator’s services are not being carried out “*exclusively for non-commercial purposes*”, then the operator cannot operate *any* vehicles under a Section 19 or 22 permit, since it falls outside the scope of the derogation.

- The exemption in Regulation 3(2)(f) of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 applies only where the vehicle is “*being used for the non-commercial carriage of passengers or goods for personal use*”. Whether or not the criterion is satisfied must be considered on the basis of the facts of the case. In the Department’s view, however, the criterion is plainly not satisfied where the transport service is being provided on substantially the same basis as that of a bus company (for instance using salaried drivers and in exchange for remuneration - whether coming directly from the passengers or from another source, such as remuneration from a local authority under a contract).

⁴ It is important to note that the use of the legal term “non-commercial” in the context of Regulation 1071/2009 is quite distinct from the colloquial use of the same term to describe a local bus service which operates under a contract with a local authority. It is unlikely that any local bus service may be characterised as “non-commercial” for the purpose of Regulation 1071/2009 if it is operated pursuant to a contract which has been awarded following a competitive bidding process, run by a local authority, between potential operators. By contrast, it may be possible to satisfy the derogation if contract work is being conducted in circumstances in which there is demonstrably no contestable market.

I expect that compliance with these principles is more likely to be an issue principally for larger operators who are essentially acting as bus companies and competing for contract work and/or charging fares to passengers at more than nominal rates. By contrast, I expect that many (perhaps the overwhelming majority of) smaller and more traditional Section 19 and 22 permit holders are unlikely to have any compliance difficulties. However, all permit holders should assess periodically their continuing compliance with all applicable legal requirements, including in particular that their reliance on permits continues to meet both the conditions and the criteria mentioned in (a) and (b) above, respectively.

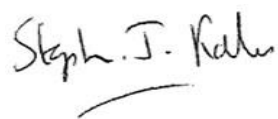
We intend to explain all of this at greater length in a public consultation which we expect to launch in the autumn. This will set out the detailed changes which are required in order to update current guidance, together with proposed amendments to the Transport Act 1985, all of which may help to clarify for permit issuing authorities and permit holders the relationship between the conditions set out in that Act and the derogations set out in Regulation 1071/2009. We will also invite permit holders to provide the Department with more information, so that we can better understand developments in the sector.

Action in this area is required, despite the UK's forthcoming exit from the European Union, in order to avoid any uncertainty for permit issuers and holders. The UK is presently still a member of the EU, and EU law therefore continues to be applicable. While it is possible that the UK (or constituent parts of the UK) might wish to exercise their legislative competences post-Brexit so as to clarify or reform certain legal requirements, this will need to be done over time.

I appreciate that there has historically been guidance that may have provided an inaccurate indication of the conditions and criteria for operating services under Section 19 and 22 permits, and that, as a result, there may be some organisations that are relying on such permits inappropriately. Such operators will now need to take action to bring their services into compliance with legal requirements. The Department will, of course, liaise with all relevant stakeholders, including representative bodies - such as the Community Transport Association – and will seek to support relevant operators in transitioning to full compliance.

Ahead of a consultation, any general queries on this matter should be referred to buses@dft.gsi.gov.uk. However, the Department cannot give legal advice to individual permit issuing bodies or permit holders.

Yours faithfully,



Stephen Fidler