



**Community
Transport
Association**

Response to the
Department for Transport

**Public Consultation on
European Commission Proposals to
Establish Common Rules Concerning the
Conditions to be Complied With
to Pursue the Occupation of Road
Transport Operator**

Closing Date: 29 February 2008

The Community Transport Association

The CTA is a rapidly growing national charity giving voice and providing leadership, learning and enterprise support to member organisations, which are delivering innovative transport solutions to achieve social change. CTA UK promotes excellence through providing training, publications, advice and information on voluntary, accessible and community transport.

Voluntary and community transport exists to meet the travel and social needs of people to whom these would otherwise be denied, providing accessible and affordable transport to achieve social inclusion.

The CTA is the representative body for third sector passenger transport operators in the UK. CTA Member organisations are involved in the provision of transport, especially accessible services.

The CTA is the UK's largest provider of training, advice and information on accessible, voluntary and community transport provision. The CTA is part - funded by the Department for Transport, the Scottish Executive, the Welsh Assembly Government and the Department for Regional Development (Northern Ireland).

CTA's Response to Consultation

The CTA welcomes the opportunity to contribute to the Department for Transport's consultation process. Our response takes the form of responding to each consultation question, adding other information as appropriate.

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Complete List of Consultation Questions

The Operator Regulation

Q1. Do you agree with the new requirement that operators are 'effectively and stably' established in the Member State?

The problem that this new regulation is designed to resolve is the possible registration of operators normally operating in one EU country misusing an 'office of convenience' in another country where they perceive the enforcement of legislation is less rigorously applied.

The CTA would support this endeavour in the short term but the objectives of this directive, once achieved, should ensure that all EU countries operate to the same standards.

As far as the UK is concerned it would, for the first time, introduce a requirement for PSV operators to have a suitable premises to operate the business from and sufficient room to park the vehicles.

Many smaller commercial operators use their own house as an operating centre and, in a limited number of cases, the vehicle is normally parked on the roadway. This is currently legal for PSV operation under UK law but may not be so once this legislation is enacted.

The majority of CT operations are likely to be excluded from all the requirements of this legislation. However, if this exclusion does not apply to some or all CT operators, then the requirement to have an operating centre as described would be a disincentive to continuing to operate community based vehicles.

Q2. Should PSV operators be required to specify an operating centre that has adequate parking for their fleet? What problems, if any, might this cause?

The rise in social enterprise in the community transport sector means that small operators increase the size of their fleet progressively over a period of years. If it were a requirement to move premises every time a new vehicle was added to the fleet the additional cost would inhibit expansion and growth in the sector. The same constraints would apply to SMEs involved in transport.

The imposition of increased regulation on the PSV sector in the UK cannot be justified by any failure of the current legislative framework in this country. Introducing this requirement is being justified to close a 'loophole' created because some other EU countries do not have sufficiently robust enforcement frameworks. This is an inappropriate response to the problem.

Q3. Do you agree that proof of financial standing should come from the same Member State and be on the basis of short-term solvency or bank guarantees and that such guarantees (even if secured on fixed assets) should be binding? What impact will this have on smaller operators that do not file annual accounts?

The majority of CT operations are likely to be excluded from all the requirements of this legislation. However, if this exclusion does not apply to some or all CT operators, then the requirement to have continuous financial standing as a charity would tend to increase cash holding and could reduce charitable impact in the short term and also mitigate against further grant giving if funders perceive a bank balance to be excessive.

Q4. It is still unclear whether operators can use accounts/bank sureties from the Crown dependencies (Isle of Man, Jersey and Guernsey), as this Regulation will not apply in those territories. Would that cause problems for some operators?

The CTA has no comment on this issue

Q5. Are the six-month maximum time limits for proving effective and stable management and financial standing long enough?

The CTA has no comment on this issue

Q6. Do you think that the current power of the Traffic Commissioners and Transport Tribunal to grant a stay should be maintained?

The CTA has no comment on this issue

Q7. Is two years enough time for operators to comply with the requirements of the Regulation? If not, what period do you consider reasonable?

The CTA has no comment on this issue

Q8. Do you think Traffic Commissioners should continue to be able to exercise discretion over whether the transport manager(s) working for self-employed drivers exercise effective control over the business?

The CTA has no comment on this issue

Q9. Does the maximum 4 operators / 12 vehicle limit proposed strike the right balance between operational flexibility and the need to maintain effective and continuous control? What impact would this have on UK operators?

The CTA has no comment on this issue

Q10. Does the introduction of contractual arrangements for transport managers ensure that responsibilities and liabilities are clear? What impact would this have on operators?

The CTA has no comment on this issue

Q11. What is your view of the proposals for an EU-wide ban on transport managers guilty of serious infringements themselves or held responsible for serious infringements of their undertakings?

The CTA supports this measure

Q12. Do you think that the national Certificate of Professional Competence should be abolished?

Community Transport operators and other SMEs are generally unlikely to be operating outside the UK. The effect of abolishing the national CPC would increase regulation for these organisations.

Q13. What is your view of the Commission drawing up a list of EU-wide common infringements leading to loss of good repute? Should Traffic Commissioners continue to have the freedom to exercise discretion in this area - for example to decide which infringements are more or less significant?

Yes, discretion should be available.

Q14. What is your view on the 140 hours compulsory training? What impact is this likely to have on UK operators, particularly smaller ones?

The specifying of a number of hours of training is not an effective way of ensuring competency. The CTA recognises that many managers entering the community transport sector have previous managerial experience. We would therefore be particularly interested in how previous 'management experience' would be measured or certified.

Q15. Would the proposed abolition of 'Grandfather Rights' in 2012 cause a problem for operators? If so, what cut off year would you want and why?

The CTA has no comment on this issue

For holders of goods vehicle operator licences

Q16. Are any of the activities listed in Annex A operated for hire or reward? We are very keen to know any that are, to inform our position during negotiations. If so, is it reasonable for them to meet the requirements of the proposed Operator Regulation?

The CTA has no comment on this issue

Q17. What difficulties would those with standard national licences experience if they were required to meet the requirements of the proposed Operator Regulation?

The CTA has no comment on this issue

For holders of Restricted PSV operators' licences

Q18. What proportion of restricted licence holders do you estimate would be able and willing to obtain PSV operators' licences (rather than ceasing to operate vehicles with 9 or more passenger seats) under the proposed Regulation? If your company holds one of these licences, how would it be likely to respond to this proposed regulatory change?

For a number of SMEs (e.g. small hotels, childminders / nurseries, care homes, etc.) that operate transport as an ancillary activity, with 1 or 2 vehicles either under or over 9 passenger seats, the restricted licence framework is straightforward and easy to use. For such businesses, the proposed changes would make vehicle operation where 'hire and reward' exists, but no actual fares are paid, much more complicated and as such, we believe that the majority of restricted licence operators would prefer not to change.

The use of restricted licenses in the community sector can be considered in two parts. Firstly, those cases where a restricted licence is being used for vehicles with less than 9 seats. Under the auspicious of this EU legislation change, it appears that such use of restricted licences can continue because the scope of the document states that it refers to vehicles with 9 or more passenger seats. The CTA believes that when the Local Transport Bill is enacted the number of community transport using Restricted Licences will fall because the use of Section 19 permits will be allowed on these vehicles. The restricted licence would still offer to community transport the opportunity to price a public service contract in such a way to create a surplus to fund other charitable work, whereas the use of a Section 19 permit vehicle cannot be operated with a view to profit.

We believe that there are very few, if any, examples of restricted licences used to operate 9 to 16 seat vehicles within the voluntary and community sector. We are also aware of cases where restricted operators licences will be replaced by Section 22 permits when the Local Transport Bill is enacted.

For voluntary transport operators – permits under section 19 or section 22 of the Transport Act 1985)

Q19. What proportion of section 19 or section 22 permit holders do you estimate would be able and willing to obtain PSV operators' licences (rather than ceasing to operate vehicles with 9 or more passenger seats) under the proposed Operator Regulation?

There has been a gradual increase in the number of Section 19 operators setting up trading companies with an O licence. This has occurred for two reasons.

- Firstly, CT operators find themselves prevented from being able to undertake some socially necessary transport unless they are an O licence holder. This is an effect of the mainstreaming of transport services that CTs have previously provided under 'bus challenge' type grant arrangements.**
- Secondly, CTs are finding that their core charitable work is not now being funded to the same extent as it was in the past. The trading arm is therefore becoming an essential funding mechanism for community transport charities. Similar arrangements are made by many charities not in the transport sector.**

The enactment of the Local Transport Bill will enhance the Section 19 and Section 22 permit system and allow the community transport sector to become 'fit for purpose' and meet the challenges that face it when addressing social exclusion in the future. Any requirement to convert from the revised permit system (post the enactment of the Local Transport Bill) to O licences would be extremely counter-productive to the aims of the new legislation in the UK.

The vast majority of community transport vehicles, including those operated by voluntary organisations as a means to further their work are very unlikely to convert to full O licence operation.

According to the Traffic Commissioner's records over the years that the Section 19 permit system has operated, and extrapolating these figures to the present day, there have been around 90,000 Section 19 permits issued. The CTA would estimate that at least a quarter of these are now likely not to be in use, although there is no research to confirm this view.

Forcing all community transport minibuses to operating under O licences would have devastating effect on the whole of the voluntary sector in the UK. The additional costs of operator licensing, PCV driver training and Driver CPC training would convince many groups to cease their operations.

In addressing the question posed, the CTA would like to comment on the wording used in the DfT consultation paper, which seems to be slightly different to that contained in the draft EU directive.

Paragraph 44 of the DfT paper gives two exemptions from the O licence requirement.

Paragraph 44a does not seem to be constrained to goods vehicles and seems to allow any PSV operator with a lower weight minibus to be exempt. If this wording were to be transposed into UK legislation it would allow a great number of operators of small vehicles including those operated by commercial organisations to be exempt from PSV O licences.

Paragraph 44b does constrain itself to passenger operation. However, the three requirements that seem to be separate criteria (As written, each of which must be met to claim exemption) need separate consideration. Making them alternatives would significantly change their meaning and would be far more acceptable.

- ***“engaged exclusively in road passenger transport for non-commercial purposes”*** The vast majority of CT operation seems to meet this condition. However depending on future interpretation, an organisation such as the scouts may be non-commercial but are they engaged exclusively in road passenger transport?
- ***“which have a main occupation other than that of road passenger transport operator”*** This would have the opposite effect to the previous requirement. Community transport operators providing generic transport services to other community groups and dial-a-ride services would have difficulty claiming that they had some other purpose than road passenger. Unless an argument could be made that the ‘primary’ objective of CT is social inclusion, which it achieves by the ‘secondary’ objective by providing not-for-profit transport. On the other hand, the scouts and thousands of other organisations like them could say that their main purpose was not transport.
- ***“and which use vehicles driven by their own employees”*** As written, the requirement could be met by many dial-a-ride and some well funded CTs. However, without adding “or volunteer” the majority of CTs could not meet this requirement.

All these comments would not apply if the wording were changed to make each of the three alternatives a separate, stand-alone, criteria for exemption.

Q20. What proportion of section 19 or section 22 permit holders do you estimate would be able to remain within the proposed derogation, or to adapt their operating practices so as to come within it?

As stated above, if the wording remains as a series of requirements that exempted organisations need to meet in total, only a handful of CT schemes could apply to be exempt. If the list of requirements is changed to being alternative options then the wording is acceptable. The removal of the existing wording concerning ‘only having a minor

impact on the transport market' seems to indicate that EU policy is becoming aligned with the policy of the UK Government to encourage the voluntary and community sector to provide more public services on a not-for-profit basis. This may be an incorrect assumption because it is known that there are very few examples of CT type organisations in other EU countries.

Q21. If you are representing a body holding one of these permits, how would that body be likely to respond to this proposed regulatory change?

It is most important that the UK Government retains as much as possible of the status quo with regard to permit operations. The community groups using the current legislation framework are contributing significantly to the easing of numerous social problems and raising the quality of life for thousands of disadvantaged people throughout the UK. To put even a small percentage of this benefit at risk would not make sense within the UK.

There is no doubt that implementing these changes, as currently drafted, would lead to less community transport work taking place because smaller charitable organisations would cease to operate their own transport and be forced to buy in more expensive commercially operated services resulting in increased transport costs and as a consequence less charitable impact. Consequences of this could include higher health care costs, increased social exclusion, pressure on social intervention budgets, reduced life expectancy and higher crime levels.

How the Operator Regulation would affect UK Regulators

Q22. Do you agree with the establishment of national, interconnected databases in all Member States?

The CTA has no comment on this issue

Q23. Do you feel more sensitive data (such as licence withdrawals/declarations of unfitness) should be electronically available through the interconnected database or only available on specific request from one national authority to another?

The CTA has no comment on this issue

Q24. What is your view of targeted checks in each Member State and the exchange of information about operators and transport managers across Member States?

The CTA has no comment on this issue

Q25. Do you think these proposals will enable UK enforcement authorities to improve monitoring and enforcement of provisions in relation to the quality of EU vehicles entering the UK?

The CTA has no comment on this issue

Q26. Do you agree that the UK should press for the vehicle registration mark of all vehicles used outside of an operators home Member State to be recorded on the database?

The CTA has no comment on this issue

The Goods Market Regulation

Q27. What is your view of the proposed conditions of when cabotage would be allowed? Would you prefer different conditions? If so, please explain and provide your reasons?

The CTA has no comment on this issue

Q28. Should there be a definition of the term 'a load' in relation to cabotage journeys? If so, what would you suggest and why?

The CTA has no comment on this issue

Q29. What other documentation, apart from consignment notes, carried by hauliers might the driver of a vehicle use as satisfactory evidence that they are not in breach of the proposed cabotage rules?

The CTA has no comment on this issue

Q30. Do you think the proposed EU wide definition of when cabotage is allowed would help UK hauliers to obtain new business in other Member States? If so, please explain in what ways this might happen.

The CTA has no comment on this issue

The Passenger Market Regulation

Q31. Do you agree with Article 8 of the proposed Regulation which restricts the circumstances when the competent authorities can reject a request for a regular service? If not, then please explain why?

The CTA has no comment on this issue

Proposals relating to both the Goods Market and Passenger Market Regulations

Q32. Do you agree that the certified copies of Community Licences should be standardised as suggested in the proposal?

The CTA has no comment on this issue

Q33. What is your view on whether the certified copies of Community Licences and the Driver Attestations including serial numbers and a stamp or seal should aid enforcement on non resident operators?

The CTA has no comment on this issue

Other issues - the Passenger Market Regulation

Q34. Do you agree that the UK Government should press for the PM Regulation to exclude from the EU authorisation regime local bus services within 50 km of the Northern Ireland/ Irish Republic border, so these are left to the local authorities concerned?

The CTA has no comment on this issue