



Community Transport: Department for Transport “Consultation on the use of section 19 and section 22 permits for road passenger transport in Great Britain” – SPT response

Committee Operations

Date of meeting 4 May 2018

Date of report 10 April 2018

Report by Senior Director

1. Object of report

To recommend approval of SPT’s draft response to the Department for Transport’s (DfT) “Consultation on the use of section 19 and section 22 permits for road passenger transport in Great Britain”¹, which relates to bus services, and in particular, the provision of Community Transport. The draft response is attached at Appendix 1 and the closing date for responses is 4 May 2018.

2. Background

- 2.1 The process for obtaining the appropriate licenses and permits for operating a bus service remains a reserved matter and is therefore overseen by the relevant UK Government department; in this case, the DfT, hence why they are consulting on this issue, not the Scottish Government / Transport Scotland.
- 2.2 The Transport Act 1985² contains provisions that allow Community Transport (CT) providers operating on a not-for-profit basis to apply for permits (under section 19 and 22 of the Act) to carry passengers on a bus or minibus, without first holding the Public Service Vehicle operator’s licence (PSV licence)³ that would otherwise be required if they were a commercial bus operator. The requirements for obtaining a PSV licence are far more onerous than those required to obtain a section 19 or 22 permit.
- 2.3 Section 19 permits relate to the use of vehicles by educational and other bodies. They are either ‘standard permits’ for vehicles which are adapted to carry no more than 16 passengers (excluding the driver) or ‘large bus permits’ for vehicles which are adapted to carry 17 or more passengers. These permits may be granted to organisations that operate vehicles without a view to profit to transport their members, or people whom the organisation exists to help. Section 19 permit vehicles can’t be used to carry members of the general public.
- 2.4 Section 22 permits are community bus permits and are issued to bodies concerned with the social and welfare needs of one or more communities. These bodies operate vehicles without a view to profit and use their vehicles to provide a community bus

¹ The consultation paper is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680319/section-19-section-22-permits-consultation.pdf

² Transport Act 1985: <https://www.legislation.gov.uk/ukpga/1985/67/contents>

³ Further information on PSV licence: <https://www.gov.uk/psv-operator-licences>

service. Unlike section 19 permits, section 22 community bus services are 'local bus services' and can carry the general public. Vehicles adapted to carry 9 or more passengers (excluding the driver) may be used under a community bus permit. This includes large buses adapted to carry 17 or more passengers. The use of a large bus won't be authorised unless the traffic commissioner is satisfied that there are adequate facilities or arrangements in place to maintain the vehicle in a roadworthy condition.

- 2.5 This legislative provision enabled the growth of the CT sector in the UK over recent years, to a position where it is now a mainstream and essential part of public transport provision in many areas, including the west of Scotland. Indeed, members will recall that SPT led the development of the West of Scotland Community Transport Network⁴, reflecting the importance of the sector in our area.
- 2.6 However, the DfT has decided to undertake this consultation in response to concerns that some CT operators using section 19 or 22 permits were operating services in direct competition with commercial bus operators holding PSV licences. The DfT states that this is not allowed under European law, which only exempts operators from holding PSV licences in very limited circumstances.
- 2.7 The DfT believes that, for the majority of CT operators, the impact of any changes arising from this consultation will be minimal and is providing a £250,000 fund to assist those CT operators who will need to transfer to a PSV licence. The DfT also uses the consultation document to reaffirm the UK Government's commitment to the CT sector in the future.
- 2.8 Notwithstanding the above, the response from CT operators to the DfT's desire for change has been negative, with many CT operators fearing the impact of any proposed changes could cause them to stop services or cease operating altogether.

3. Outline of proposals

The consultation document states that the DfT intend 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 [European] Regulation⁵; and*
- *Update relevant guidance⁶ issued by the Department or the Driver and Vehicles Services Agency to reflect current market practice and better illustrate and explain the different cases where exemptions may apply and therefore where [section 19 and 22] permits may be granted.”*

The key points of SPT's draft response (attached at Appendix 1) are as follows:

- SPT has led the way in Scotland in assisting CT through such initiatives as the West of Scotland Community Transport Network;
- SPT believes that CT is a critically important service providing cross-cutting benefits across a range of policy areas, including health, social interaction/reducing isolation, economic activity and leisure, amongst others, and plays an important role in tackling different types of inequality;

⁴ West of Scotland Community Transport Network website: <http://www.spt.co.uk/community-transport/>

⁵ Regulation 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.

⁶ DfT guidance on “Section 19 and 22 permits: not for profit passenger transport”: <https://www.gov.uk/government/publications/section-19-and-22-permits-not-for-profit-passenger-transport/section-19-and-22-permits-not-for-profit-passenger-transport>

- There is real potential that the changes proposed by the DfT could have a significant negative impact on some of society's most vulnerable groups, who are often reliant on community transport to go about their daily lives;
- There is also a real danger that many CT operators will be unable to continue operation due to additional burdens placed on them as a result of the proposals e.g. moving from section 19 or 22 permit operation to PSV licence operation; and
- Notwithstanding the above, there remains a need to review current permit arrangements and to re-establish effective protocols for the maintenance and administration of the Permit regime. It is SPT's view that there should be a tiered approach to the issue of licences which acknowledges and clarifies the role played by all partners – from commercial operators through to CT – that encourages partnership, integration and the delivery of a safe, complementary and co-ordinated bus network.

4. Conclusions

The potential implications of the DfT's proposed changes to the permit system for the operation of Community Transport services is wide-ranging, and could likely lead to negative consequences for CT operators, and more importantly, some of the most vulnerable groups in society. Concerns about the proposals have been raised by a range of stakeholders, and SPT's views outlined in section 3 are along similar lines. Should these proposals be introduced, there could be significant impacts on the west of Scotland transport network, with the knock-on effect of more requests for public sector organisations such as SPT to support bus services to fill in the gaps. Officers will continue to closely monitor the situation and will advise the Committee of any outcomes in due course.

5. Committee action

The Committee is recommended to approve SPT's draft response at Appendix 1.

6. Consequences

Policy consequences	<i>Response is in line with the RTS.</i>
Legal consequences	<i>None at present.</i>
Financial consequences	<i>None at present. Potential for increased costs in future.</i>
Personnel consequences	<i>None at present.</i>
Equalities consequences	<i>DfT proposals may have significant impact on equalities groups.</i>
Risk consequences	<i>Risk that there will be more requests for SPT services and therefore more pressure on budgets to be closely monitored.</i>

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APPENDIX 1

Department for Transport ‘Consultation on the use of section 19 and section 22 permits for road passenger transport in Great Britain’:

Response by Strathclyde Partnership for Transport (SPT)

General Comments:

SPT believes that there is a clear and real potential that the changes proposed by DfT could have a significantly adverse impact on some of society’s most vulnerable people and communities, who are often reliant on community transport to go about their daily lives. There is also a real danger that many Community Transport (CT) operators will be unable to continue operation due to additional burdens placed on them as a result of these proposals e.g. moving from section 19 or 22 permit operation to PSV licence operation.

The likely costs of this could be prohibitive for many CT operators, e.g. infrastructure (such as depots), a CPC Manager, increased running costs, and potentially a requirement to set up a trading arm. Driver training will be a particular challenge too; for example, the operator may be located in a remote rural area, where there might not be a PCV D1 test centre locally. In this regard, it is also worth noting that there is already a national shortage of qualified drivers

CT is a critically important and growing sector in the transport mix in Scotland. As commercial operators have come under increasing pressure due to economic slowdown, congestion, the availability of cheap car deals and an ageing population, among other things, the CT sector has become an increasingly important element of people’s daily transport in both rural and urban areas.

Research conducted by Transport Scotland into the social and economic benefits of community transport in Scotland⁷ found that CT is a critically important service providing cross-cutting benefits across a range of policy areas, including transport, health, social services and leisure, amongst others and playing an important role in tackling different types of inequality. Respondents to the research noted that:

- CT helps to tackle poor transport accessibility – 50% of survey respondents noted that their trip could not or would not be made without CT;
- CT provides a means for isolated individuals to interact – e.g. 68% of all respondents indicated that the CT service they used was very important ‘just to get out’;
- 89% of respondents explained that CT was either “Fairly” or “Very Important” in supporting personal independence; and
- CT offers a range of health benefits, including improved access to health services, fewer missed appointments and the continued ability to live at home.

It is also worth highlighting comments from the recent report on CT by the House of Commons Transport Committee. The report⁸ stated:

“While the Department [for Transport] has been forced to act under the threat of imminent legal action, its consultation should avoid a narrow, legalistic focus on bringing UK guidance and

⁷ Canning S, Thomas R, Wright S, (2015), Research into the Social and Economic Benefits of Community Transport in Scotland

⁸ House of Commons Transport Committee report:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmtrans/480/480.pdf>

legislation into line with relevant EU Regulations. The consultation must also be used as an opportunity to consider reforms designed not only to achieve compatibility, but also to maintain achievement of the key public policy objective—the provision of high quality, safe and secure community transport services for people who might otherwise be left isolated. Protection of these services, the huge majority of which are uncontested, and by definition cannot be provided by commercial operators, is imperative.”

SPT's views on the way forward

In reviewing the permits system, consideration should be given to a tiered model linked to a Quality Framework to ensure it is fit for purpose – there are currently too many organisations who can issue permits. As such, there should be greater clarity on what work can be undertaken within the context of the permit system e.g. the focus of CT activity should be on providing transport solutions for people in their local communities, principally around ensuring access for people with a disability, older people and community groups to help ensure they have access to local services including access to healthcare, education, training, leisure and employment. There is a range of potential models for the future of the CT sector which should be examined, including co-production models such as the Public Social Partnership being pioneered by SPT⁹.

There remains a need to review current arrangements and re-establish effective protocols for the maintenance and administration of the permit regime. It is SPT's view that there should be a tiered approach to the issue of licences. This could, for example, take the form of an 'A' and 'B' network where commercial operators would comprise the 'A' network and be responsible for registered local service provision, tendered transport authority contracts for supported services and school contracts, with the CT sector forming the 'B' network with responsibility for community transport activities such as providing transport for vulnerable groups, non-mainstream transport, and support for community groups. Further discussion is needed as regards any future 'regulation' of the CT sector to ensure it is delivered in a safe and effective manner.

SPT responses to consultation questions

Question 1

Do you have any comments on how the proposed guidance clarifications in respect of organisations “...engaged in road passenger transport service 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?

SPT response:

SPT supports the principle that Community Transport (CT) operations should remain non-commercial.

However, the 'non-commercial' tests set out in the consultation document do not appear to take into account of how non-commercial/non-profit—making organisations such as charities work, or indeed how commissioning and procurement work within that field. SPT's comments on each of the proposed tests set out in the consultation document are noted below:

- **'The service is free of charge'** - There needs to be clarity on how this will be interpreted and applied in reality given many CT activities involve essential underlying financial transactions which a strict interpretation of the rules may preclude. For example, the costs of membership of a club might incorporate travel on a designated community bus but no up-front payment to the driver. Voluntary donations and unconditional grants may also be classed as a payment. The reference to grants is also confusing as it is unclear whether, for

⁹ http://readyforbusiness.org/wp-content/uploads/2015/09/cs-SPT_Community_Transport_PSP.pdf

example, Bus Service Operators Grant could be included under this exemption. Furthermore, it would be unclear how concessionary fares were to be dealt with through this exemption.

- **‘Any charge for service is substantially less than cost’**- We would strongly advise against the use of phrases such as “as a broad rule-of-thumb” and “substantially less than cost” as used in the consultation document as they are unclear, and open to interpretation. In addition, the rationale and justification behind using a “10% less than cost” threshold figure for CT operators applying a charge to passengers or third parties is not explained or elaborated on. It is in contrast to current guidance, which encourages section 19 or 22 permit operators to use the ‘full cost recovery model’ when establishing fare models.
- **‘Any charge for service equals (or exceeds) cost’** – Current legislation already states that section 19 and section 22 permits cannot be used to operate services with a view to generating a profit. The new arrangements as proposed are concerning in that they could encourage ‘gaming’ between commercial operators and CT operators through requiring some form of prior evidenced commitment or ‘promise’ about their future operations or bids for future contracts.
- **‘Occasional Services’/‘Incidental Services’** – These both require clearer definitions, and specifically in relation to occasional services, what “operated on a voluntary basis” means, and also why the exemption makes reference to using “an unpaid driver”.

Question 2

Do you have any comments on how the proposed guidance clarifications in respect to organisations **“...which have a main occupation other than that of road passenger transport operator”** could be further improved or clarified?

SPT response:

The proposed changes in the interpretation of the application of sections 19 and 22 appear to have no focus on safety, despite this being the principal reason for the permit system, and indeed the primary factor in the operation of any transport service.

Indeed, the changes as proposed could arise in the confusing situation where organisations whose principal activity is not CT operating under Section 19 and 22, whilst CT operators whose sole purpose is CT cannot. Further, while CT operators generally undertake vehicle maintenance and driver training to a high standard this is not always the case for businesses for which CT is not their primary purpose.

In any case, the proposals in this regard will obviously have significant implications for how the exemption is applied and there is a real potential for misinterpretation. It may be worth considering that no fixed criterion or test for the meaning of "main occupation" can be provided given the wide range of organisations involved and that all cases should be determined and evidenced on their individual merits and local circumstances by the relevant permit-issuer, based on guidance from the DfT.

Question 3

Do you have any view on whether and how the category “**minor impact on the transport market because of the short distances involved**” could be used in practice?

SPT response:

SPT’s understanding of this exemption is that it was designed to accommodate organisations which are commercial in nature but which provide transport services otherwise not provided by the market. The scope of any new guidance in relation to this issue should also encompass demand responsive transport, and in particular where services are not ‘end-to-end’. In addition the guidance should also address how the exemption might be applied in relation to the issue of ‘dead mileage’, particularly in rural areas.

The guidance would also need to take into account remote rural areas where a service operating under a section 19 or 22 permit links two small communities several miles apart or a geographical feature that makes actual travelled distances long in comparison to “crow-fly” distance (as can be the case in parts of Scotland).

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**” does your organisation fit into this exemption?

SPT response:

N/A

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**” does your organisation fit into this exemption?

SPT response:

N/A

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?

SPT response:

Community transport organisations deliver essential services, on a charitable basis, to people in need, often some of the most vulnerable groups in society. Any significant changes arising from this consultation could therefore have a significant social, economic or health impact on those groups.