



Department for

Infrastructure

An Roinn

Bonneagair

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This letter is for the attention of:

- (i) Section 10B permit issuers;
- (ii) Holders of Section 10B Permits; and
- (iii) Minibus drivers

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THE ISSUE AND USE OF SECTION 10B PERMITS FOR ROAD PASSENGER TRANSPORT AND MINIBUS DRIVING IN NORTHERN IRELAND

This letter is addressed to the issuers of permits under Section 10A of the Transport Act (NI) 1967. It should also however be read by holders of section 10B 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 provide copies of it to holders to whom they expect the contents of this letter to be relevant. This letter is also relevant to anyone who drives a minibus. To that end permit holders are asked to ensure that the contents of this letter are drawn to the attention of relevant drivers.

References to a minibus in this letter is to a motor vehicle included in sub-category D1 that is to say, a motor vehicle constructed or adapted for the carriage of passengers having more than 8 but not more than 16 seats in addition to the driver's seat with a maximum length not exceeding 8m and including such a vehicle drawing a trailer with a maximum authorised mass not exceeding 750Kg.

In Northern Ireland, the Department for Infrastructure is responsible for safe and sustainable travel, a key element of the Programme for Government. An important part of this remit is ensuring that drivers and operators are correctly licensed and qualified in line with legislative requirements.

Following pre-consultation with key stakeholders, on 22 September the Department issued two consultation documents covering section 10B permits and minibus driver licensing guidance which is intended to clarify the licensing and qualification framework for bus passenger transport under the existing legislation as it currently applies.

The Department has however also received correspondence threatening a legal challenge against the current arrangements with regards to section 10B permits and minibus driving and is aware of correspondence issued by the Department for Transport dated 31st July 2017 addressing similar issues. In advance of the completion of the said consultation

process and the implementation of new guidance, the Department therefore wishes in the meantime to clarify the position on driving licensing for minibuses and on the services which now require a bus operator licence rather than a section 10B permit.

Bus Operations

The Transport Act (NI) 1967 requires anyone who provides bus passenger transport for hire or reward to hold a bus operator licence. However, a section 10B permit provides exemption from the requirement to hold an operator licence, where the service is provided for education, religion, social welfare or any activity which benefits the community on a non-profit basis.

Having considered the current domestic provisions, the applicable provisions of European law as contained in EC regulation 1071/2009, the Department considers that it is necessary to clarify the following:

- a Section 10B permit must only be issued, and should only have been issued, in circumstances meeting both:
 - a) the conditions set out in section 10B of the Transport Act (NI) 1967; and
 - b) one of the derogation criteria set out in Article 1(4) of EU Regulation 1071/2009.
- It is for the organisation applying for such a permit to make its case to the relevant permit issuing body as to how it meets these conditions and criteria, based on the nature of its passenger transport activities and the reason for them.
- 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 10B 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, a scout group or church organisation) 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).

In considering this it is particularly important to distinguish between not-for-profit and non-commercial.

Not-for-profit means operating without a view to making a surplus of income over expenditure for distribution to the members or owners of an undertaking. A charity would

normally be considered to be a not-for-profit undertaking. In Northern Ireland charities may be registered with the Charity Commission for Northern Ireland. However, not all charities are registered and an undertaking does not have to have charitable status to comply with the not-for-profit requirement. Many societies and clubs, (whose primary purpose is the provision of services for their members or for the local community and not to make a profit), will also satisfy the requirement.

Non-commercial is a different concept. As a general rule, if a transport service is provided by an undertaking, including a not-for-profit undertaking, in return for remuneration, that service should be treated as commercial.

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 10B permit, since it falls outside the scope of the derogation.

The vast majority of licensed bus operators and transport providers in the voluntary and community sector will be unaffected by the proposed changes. Compliance with these principles is more likely to be an issue principally for larger operators who are essentially acting as bus companies. By contrast, the Department expects that many (perhaps the overwhelming majority of) smaller and more traditional section 10B permit holders are unlikely to have any compliance difficulties.

However, all permit holders should assess periodically their continuing compliance with all applicable legal requirements. Permit holders should seek independent legal advice as necessary. Any permit holder currently operating under a section 10B permit whose activities do not meet one of the derogation criteria should take immediate steps to ensure compliance with the Act and the EC Regulation whether by way of application for the necessary permit, by adjustment of operations or howsoever considered appropriate.

Minibus Drivers: Licensing and Qualification

The Motor Vehicles (Driver Licences) (NI) Regulations 1996 (the 1996 Regulations) and the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (the 2007 Regulations) respectively implement Directive 2006/126/EC on driving licences and Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers.

These Regulations set out the licensing and qualification requirements for driving certain categories of motor vehicle and trailer, in particular vehicles constructed/adapted or used for the carriage of passengers.

- **Licensing**

In accordance with the 1996 Regulations, a driver who holds a sub-category D1(nfhr)¹ licence, or Category B licence issued from 1 January 1997, may drive a minibus where the following circumstances are met:

- they do so on a voluntary basis;
- for a non-commercial organisation;
- for social purposes;

The holder of a category B driving licence is further restricted as follows:

- they must be over 21 years and have held a category B licence for more than 2 years;
- the minibus maximum [weight] [mass] is not more than 3.5 tonnes (4.25 tonnes if including any specialist equipment to carry disabled passengers);
- they do not tow a trailer.

Where a minibus driver is driving other than on a voluntary basis it is unlikely that they will be able to avail of the exemptions contained in the 1996 Regulations even if they are driving for a non-commercial organisation. Similarly anyone driving for a commercial organisation cannot avail of the exemptions.

- **Qualification**

A Certificate of Professional Competence (DCPC) is required by a driver [of a minibus] unless they can avail of the exemptions contained in Article 2 of Directive 2003/59/EC, as transposed by regulation 3(2) of the 2007 Regulations. The only exemption likely to be available to minibus drivers is the exemption in Article 2(f)/regulation 3(2)(f) which applies to a *vehicle “being used for non-commercial carriage of passengers or goods for personal use”*.

We expect the vast majority of minibus drivers in the voluntary and community sector will not be affected by the conditions set out above and should be able to continue to drive. However, minibus drivers should periodically assess their continuing compliance with all applicable legal requirements.

Insofar as it may now be apparent to any organisation that is relying on a section 10B permit inappropriately or whose drivers are not meeting the requisite obligations (even if in good faith) those operators and drivers 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 as quickly as possible to compliance with the legislative requirements.

¹ nfhr is defined as “not for hire or reward”

General queries on this matter should be referred to freightandbuspolicy@infrastructure-ni.gov.uk. However, **the Department cannot give legal advice to individual permit issuing bodies or permit holders and it will remain for those operating and driving minibuses to continue to do the appropriate due diligence into their own responsibilities and liabilities.**

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tom Reid', written in a cursive style.

TOM REID