05 March 2018

FREEDOM OF INFORMATION REQUEST – 237/18

Dear Sir/Madam

Your request for information has now been considered and the information requested is provided below.

Request/Response:

I wish to apply for the following information under the Freedom of Information Act 2000.

Following this letter to all local authorities “please see attachment” from the Department for Transport dated the 9th November 2017.

1. Please provide a copy of all letters and emails to all the Community Transport Providers who work for the local authority under a section 19 permit and 22 permit and also their responses.

   Answer: See attached email from Rutland County Council provided informing of the community permit consultation. Response was verbal confirmation of receipt and thanks only.

2. Please supply details of all the road transport contracts currently undertaken by these groups to include special education needs, home to school, social services contracts and Dial-a-Ride, I do not require the cost of the contracts or the contract number, just the route and the description and or destination.

   Answer: Transporting 2 service users into an adult social care day centre.

You are free to use any documents supplied for your own use, including for non-commercial research purposes. The documents may also be used for news reporting. However, any other type of re-use, for example by publishing the documents or issuing copies to the public will require the permission of the copyright owner, where copyright exists. Such a request would be considered separately in accordance with the relevant Re-use of Public Sector Information Regulations 2005 and is not automatic. Therefore, no permission is implied in the re-use of this information, until such a request to re-use it has been made and agreed, subject to any appropriate conditions. Any request to re-use the information should be made to me at the address below.

If you are dissatisfied with the handling of your request please contact the Head of Corporate Governance, Rutland County Council, Catmose, Oakham, Rutland LE15 6HP

You can also complain to the Information Commissioner at:
Yours faithfully

FOI Administrator
Corporate Support Team, Rutland County Council
Have you seen a copy of the email below from the DFT regarding the consultation? Thought I would send in case you haven’t received it direct as yet.

Regards.

Rutland County Council, Catmose, Oakham, Rutland. LE15 6HP
t: 01572 720923 | 07973 855492 | e: eodabas@rutland.gov.uk
www.rutland.gov.uk

From: BUSES [mailto:BUSES@dft.gsi.gov.uk]
Sent: 08 February 2018 14:35
To: BUSES <BUSES@dft.gsi.gov.uk>
Subject: Consultation on Section 19 and 22 permits: how to apply EU Regulation 1071/2009

Colleagues,

Further to the Department’s update to Local Authorities on 9 November, we are writing to inform you we have today launched our consultation on detailed changes to guidance and legislation for issuers and users of the Transport Act 1895 s19 and s22 permit users in Great Britain.

We would like to reassure you that the Government’s commitment to this sector remains as strong as ever. Part of the purpose of the consultation is that operators and the general public have the opportunity to respond to the consultation and share ideas.

The most important point to stress is that we expect that many CT operators will remain unaffected. It is important to be clear that the rules only apply to vehicles with more than eight passenger seats and that operators of larger vehicles are exempt if their primary purpose is not transport or if they operate services that cannot be properly considered commercial, for example:

- Where there are no alternative non-community transport providers who offer journeys to or from similar destinations;
- Where alternative providers are content to provide confirmation that they do not regard the community transport operator as a competitor;
- Where the service is an occasional activity, organised on a voluntary basis with an unpaid driver for a specific group of people; or
- Where the service is either free of charge or the charge is substantially less than the cost of providing the service.
The consultation document can be found using this link:

We hope the 12 week consultation will provide enough time for you to have your say.

Yours sincerely,

Buses and Taxis

Department for Transport

The information in this email may be confidential or otherwise protected by law. If you received it in error, please let us know by return e-mail and then delete it immediately, without printing or passing it on to anybody else. Incoming and outgoing e-mail messages are routinely monitored for compliance with our policy on the use of electronic communications and for other lawful purposes.
COMMUNITY TRANSPORT (CT) PERMITS

Update for Local Authorities

We have been asked by a number of local authorities to clarify some of the issues raised by our letter of 31st July 2017. These are addressed in the Q&A below.

The most important point to stress is that we expect that many CT operators will remain unaffected by this clarification. It is most likely to be an issue for larger CT groups who undertake some work which is similar to that of bus companies. CT organisations will be entirely unaffected if they:

- are not primarily a passenger transport provider (such as a youth or social care body like the Scouts or Age UK); or
- operate exclusively non-commercially.

Will the section 19 and section 22 permit system end?

No.

What does operating “non-commercially” mean?

A wide range of services operated by CT groups which could be considered “non-commercial”. In our view this includes situations where:

- any charge made to passengers is substantially less than the cost of providing the service and no other payment is made by any other person in exchange for the service. This could include CT services whose fares are heavily subsidised by fund raising activity undertaken by the CT group concerned.
- the service consists of an occasional (rather than regular) activity, organised on a voluntary basis (with an unpaid driver) for a specific group of people - even if the passengers share the costs. This could include day trips undertaken on an ad hoc basis.
- where the use of a vehicle is for the purpose of providing transport for persons who have paid charges for services other than transport and the transport provided is merely incidental to the provision of those other services. This could include transport provided as part of a day centre or lunch club.
- where there is no commercial market for that service – even if the payment made by passengers or another party might exceed the costs of providing the service. This could include:
  - where there were no bids received for a local authority contract from commercial operators\(^1\); and

\(^1\) Such as taxi or PHV firms or operators holding a PSV operating licence
o where a CT group is running a registered bus service and there are no
alternative providers who hold a PSV O licence for journeys to and from similar
destinations.

What happens if some of an operator's CT services are non-commercial and others
are not?
The legal position is that the same “undertaking” can’t undertake both commercial and
non-commercial work. So CT operators may wish to consider establishing a separate
undertaking to carry out commercial work which then applies for a PSV operator’s licence,
whilst keeping their non-commercial work in the existing organisation. A Traffic
Commissioner has recently approved the grant of a PSV licence to a CT operator on this
basis.

Is there a grace period for operators to comply?
DVSA have not yet taken any immediate enforcement action (such as prosecution or
referral to a Traffic Commissioner) against any CT operator who currently runs commercial
services under a permit but has demonstrated that they are taking urgent steps to adjust
their operating model. DVSA’s proportionate approach is determined by each operator’s
individual circumstances.

Should a local authority cancel any current contracts it holds with CT operators?
The Department’s letter of 31st July was sent to local authorities as permit issuing bodies,
not because of their role in awarding contracts. We have not asked any local authority to
cancel any contracts and do not expect that they should have to do so.

There may be opportunities for unsuccessful bidders to challenge a decision to award any
local authority contract at the point at which the award decision is taken. The avenues for
further challenge from other operators during the life of a contract are likely to be limited
and to focus on whether an authority is acting reasonably in deciding whether or not to
continue with the contracts concerned.

All CT groups that are operating on a not-for-profit basis have, since 1985, been able to
apply for permits to carry passengers in a bus or minibus without first holding the Public
Service Vehicle (PSV) operator’s licence that would otherwise be required. This has been
the legal position that, until recently, was set out in all guidance to local authorities and
operators. Both local authorities and operators have therefore been awarding and bidding
for contracts in good faith.

Whilst it is ultimately for authorities to take their own advice, we do not expect authorities
to be at significant risk of successful legal challenge if they continue with their existing
contracts whilst affected operators transition to a new operating model. A template letter
which authorities may wish to send to affected operators is attached at Annex A. The letter
includes four questions which we suggest are asked of each CT operator (including any in-
house operators) who may be running a contracted service using a permit.

On receipt of a response from a CT operator authorities should be able to continue with
the relevant contracts if they satisfy themselves that:
- the responses received about the commercial or non-commercial nature of the
organisation’s services are accurate and consistent with the advice in this note; and
- the operator concerned is taking appropriate action to adjust their operating
arrangements. Authorities should bear in mind: that DVSA expect operators who need
to do so to take urgent steps to become compliant; and the experience and resources available to the CT group involved.

In our view this would be a proportionate response, which recognises the potential impacts of alternative approaches on the passengers who rely on these important services.

What are the road safety reasons for some CT operators needing to change their operating model?

Under the previous legal understanding, two minibus or bus operators, one of which was a non-profit-making CT group using a permit and the other a profit-making PSV licence holder, would have been treated quite differently. Even if both operators won the same local authority transport contracts, used similar vehicles and employed their drivers (rather than using volunteers) the vehicle operated by a CT group may have had a less stringent MOT test and the driver needed fewer road safety qualifications.

Why did the Department issue at letter on 31st July instead of just consulting this autumn?

The timing of the letter was influenced by potential legal action against the Department, and the enforcement activity taken by DVSA. Our judgment was that it was better to explain the situation actively to permit issuers than for rumours of the DVSA action to circulate around the sector without any clarification from central Government.
Annex A – Draft letter to CT groups under contract to the authority who may be using permits to operate services

COMMUNITY TRANSPORT PERMITS AND COMMERCIAL CONTRACTS

I am writing to you in relation to the contracts that you hold with [name of authority] for providing transport [and related] services.

As you may be aware, the Department for Transport issued a letter to all issuers of section 19 and section 22 permits on 31st July 2017. This clarified that under existing law (which has been in force since 2011 but previously interpreted incorrectly in guidance) community transport (CT) operators undertaking commercial work will need to hold a PSV operator's licence, and use drivers who have specific driving entitlements and qualifications.

On 9th November 2017 the Department issued a further note to all permit issuers which addressed some of the most significant questions that had been raised on their earlier letter. This note provided further guidance on the handling of contracts with CT operators and the circumstances in which an operator's service might not be considered to be commercial (attached at Appendix 1).

[If steps have already started to cancel contracts - Following receipt of DfT's latest note we are reconsidering our initial expectation that contracts could need to be cancelled].

I should be grateful if you could provide answers to the four questions below for each of the contracts that you hold with us by [insert date – suggest a minimum of 28 days]. This will allow us to determine whether or not you are likely to need to adjust your operating model and, if so, satisfy ourselves that you are taking appropriate action.

1. Does the organisation which holds the contract use section 19 or 22 permits to provide the service?
2. If you answered “yes” to question 1, do you think all of those services are operated on a non-commercial basis (as defined in the appendix)?
3. If you answered “yes” to question 2 please explain why you think that is the case?
4. If you answered “no” to question 2, it is likely that you will need to make some changes to your operating model. Please explain what steps you have already taken, or plan to take, to adjust.

If you are unsure of your position, including what steps you might want to take to adjust your operating model in the most effective way, you may wish to seek independent advice. The Community Transport Association’s Advice Service may be able to help and are available on: 0345 130 6195 between 10:00 - 16:00 Monday to Friday.

We recognise the vital important role that you, and other, CT operators in [name of authority area] and are committed, whilst ensuring fair competition for tenders, to working with you to minimise the impacts of any transition on your passengers, existing contracts and wider services.
Appendix – Services that could be considered “non-commercial”

A wide range of services operated by CT groups which could be considered “non-commercial”. The Department for Transport considers that this includes situations where:

- any charge made to passengers is substantially less than the cost of providing the service and no other payment is made by any other person in exchange for the service. This could include CT services whose fares are heavily subsidised by fund raising activity undertaken by the CT group concerned.

- the service consists of an occasional (rather than regular) activity, organised on a voluntary basis (with an unpaid driver) for a specific group of people - even if the passengers share the costs. This could include day trips undertaken on an ad hoc basis.

- where the use of a vehicle is for the purpose of providing transport for persons who have paid charges for services other than transport and the transport provided is merely incidental to the provision of those other services. This could include transport provided as part of a day centre or lunch club.

- where there is no commercial market for that service – even if the payment made by passengers or another party might exceed the costs of providing the service. This could include:
  - where there were no bids received for a local authority contract from commercial operators; and
  - where a CT group is running a registered bus service and there are no alternative providers who hold a PSV O licence for journeys to and from similar destinations.

2 Such as taxi or PHV firms or operators holding a PSV operating licence