



DVSA / Traffic Commissioners already changing interpretation

In the DfT's submission to the Transport Select Committee, they state:

Since the 31 July DfT letter, the OTC has actively assisted CT organisations using permits in a number of ways. OTC has revised the application forms for section 19 and section 22 permits to take into account the principles set out in the DfT letter and provide prompts to assist applicants to show how they fall within the derogations. To spread awareness of the derogations, OTC has sent applicants for permits a supplementary letter explaining what is required and why, particularly in the South East and East Anglia.

The two official gov.uk web pages providing the gateway to the Permit application forms now include the following:

Organisations that provide passenger transport exclusively for 'non-commercial' purposes or which have a main occupation other than that of a road passenger transport operator can apply for permits under Section 19 or Section 22 of the Transport Act 1985.

I think that the 'exclusively for non-commercial' has been added. Note that the standard DfT Guidance on s19/s22 Permits has not been altered – there is no mention of 'non-commercial'.

<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>

Nor has the OTC Guidance changed on how to fill out the application forms:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555778/pgn19-guidance.pdf Again, no mention of 'non-commercial'

However, the new Application Forms for s19 and s22 Permits contain the same question which I think is new (I don't have a copy of the previous application form to compare) – this is consistent with the link history (e.g. for s22) which states:

29 September 2017

Form updated with alterations to questions 6, 7, 8 9 and 10 and additional permit, completion and payment guidance.

The new/additional question is:

6a. Are you engaged in any commercial road transport services?

YES NO

6b. Are you engaged in road passenger transport exclusively for non-commercial purposes?

YES NO

Only organisations that provide passenger transport exclusively for 'non-commercial' purposes or which have a main occupation other than that of a road passenger transport operator can apply for permits under Section 19 or Section 22 of the Transport Act 1985. Additionally the vehicle must not be used with a view to profit, nor incidentally to an activity that is itself carried on with a view to profit. If you have yes to either of the above questions please provide details below of how you meet these exemption criteria. You should enclose any relevant evidence with your application.

The declaration now includes:

I am authorised by the body applying for this permit to make this declaration on behalf of its members (or members of the local branch or group named in this application)

- The body will operate under this permit within the terms of sections 19 and 21 of the Transport Act 1985 and any regulations made under these sections, and that the vehicle will only be used in circumstances where:-
- the operator has a main occupation other than that of a road passenger transport operator; or
- it is engaged in road passenger transport for exclusively for non-commercial purposes;
- and that the laws relating to the driving and operation of vehicles used under this permit shall be observed.

This reference to 'exclusively for non-commercial purposes' is not in the CTA's current Permit Application Form which I understood was based on the previous (i.e. before 29 September 2017) Traffic Commissioner version with some additions to it.

http://www.ctauk.org/UserFiles/DocumentsSecure/Registered_Users_Area/Legal/S.19_Permit_Guidance_Application_Form_Questionnaire_13.08.15.pdf

That this is now being enforced is evidenced by:

- XX CT (requested not to be named) applied in August for additional Permits but had a letter in September asking for more information. Following formal advice (including reference to DfT) they responded but in October their application was refused on the 'grounds that they were not 'exclusively non-commercial'. They do undertake contracts for their local authority, which is supportive.
- Correspondence from Flittabus (a s22 Community Bus):

It may be of interest that we had two of our three S22 permits due for renewal in September and despite an early application and continuous

chasing we have only just got them renewed. The Leeds permits Office said they have a 6 week delay.

Having received the following statement sometime after our application

You must demonstrate to the Traffic Commissioner that you meet one of the following criteria;

- a) The applicant is engaged in road passenger transport exclusively for non-commercial purposes*
- b) The applicant has a main occupation other than that of road passenger transport operator*

We made a submission stating we had never tendered for contracts etc. This was rejected by the Traffic Commissioner (TC) who required "evidence". This was the request/demand.

Whilst I appreciate you do not bid for any commercial services, are you aware if there has ever been any tendering process for the routes you provide. You may need to speak to the councils concerned and provide evidence from them.

Central Bedfordshire council quickly provided a letter stating that their records only go back to 2011 and in that time we had never tendered and none of our routes had ever been tendered. This satisfied the TC.

In respect of Minibus Driver Licensing, the current gov.uk web advice is vague and unhelpful: <https://www.gov.uk/driving-a-minibus>

The use of the term 'might' is an example of this unhelpfulness:

You might be able to drive a minibus with up to 16 passenger seats using your current car driving licence as long as there's no payment from or on behalf of the passengers (it's not for 'hire or reward').

Following up the driving licence codes <https://www.gov.uk/driving-licence-codes> gives this for D101

101 - not for hire or reward (that is, not to make a profit)

However, the position taken by Department for Infrastructure's unit in Northern Ireland is very clear (from their Minibus-10b-FAQs issued 6 November) <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/minibus-10b-faqs.pdf>

Note that (nfhr) is the same as 101, and the legislation is effectively identical.

Q I received my licence before 1 January 1997 and hold a Category D1 (nfhr) licence. Can I drive a minibus?

A If you hold the D1(nfhr) category on your full driving licence you may be entitled to drive a minibus where the following conditions are met:

- you do so on a voluntary basis;
- you are driving for a non-commercial organisation;
- you are driving for social purposes;

Q What does (nfhr) mean on my licence?

A This means “not for hire or reward”. It generally means that you cannot accept any payment, either in cash or in kind, made by or on behalf of the passengers that gives them the right to travel in that vehicle.

It also means that you cannot be paid to drive the minibus, other than payment of out of pocket expenses.

Q Can I be paid to drive a minibus with a Category D1(nfhr) or Category B Licence?

A A Category D1(nfhr) or Category B driving licence can only be used in relation to voluntary or social activities.

If you are paid to drive or drive a minibus as a consequence of your employment you will need a full Category D1 driving licence

If you drive a minibus for a passenger transport organisation which is not “exclusively non-commercial” then you will require a full Category D1 driving licence. This is the case even if you are not paid to drive.

The above is consistent with previous communications from the Driver & Vehicle Agency (Northern Ireland): e.g. statement in DVA email 19 June 2017 to Tom McQuillan (Insurance Company) that “*Category D1 (not for hire or reward) gained as a result of passing a category B (motor car) test prior to 1st January 1997, is not a suitable entitlement for driving in connection with employment.*”

The above is contrary to DVA’s previously issued guidance on minibus driving in Northern Ireland (Fact Sheet issued in 1996 as the EU Driving Licence Directive was introduced:

BUS PERMITS FROM 1 JANUARY 1997

If you have entitlement to drive cars prior to 1 January 1997 you will continue to be able to drive mini-buses with a maximum of 16 passenger seats under the Bus Permit Scheme.

It is also inconsistent with the Briefing Paper issued in GB by the Driving Standards Agency when Directive 2003/59 (Driver CPCs) was introduced which stated this in respect of s19 and s22 permits:

"We believe that drivers of such buses are likely to be either outside the scope of Directive 2003/59/EC or covered by one of its exemptions. In those circumstances where the driver must hold a category D (or D1) licence, we consider it would be difficult to argue that they are operating commercially in the normal sense of that word. Whilst they may, in certain situations, carry passengers for hire and reward, the operation as a whole must be "without a view to profit." That does not easily fit with the usual interpretation of commercial activity. Consequently, we believe that these drivers would be covered by the exemption provided at Article 2(f) of the Directive ("vehicles used for non-commercial carriage of passengers..."). However, we must stress that it will be for the courts to decide whether our interpretation is correct. We would strongly recommend anyone in doubt as to whether they need a CPC to take independent legal advice."

It is inconsistent with DfT guidance on driving school minibuses, issued in September 2013 (i.e. well after 2003/59 was brought in):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494266/Driving_school_minibuses_and_advice_for_schools_and_local_authorities.pdf

- a** **If you passed your category B (car) driving test before 1 January 1997**, you can drive a minibus that is not being used for hire or reward as these licences automatically include category D1 (101) (not for hire or reward) entitlement³. This means school staff with such a licence can drive a minibus carrying up to 16 passengers with no maximum weight restriction on the vehicle. Drivers with a D1 + E (101) (not for hire or reward) entitlement can tow a trailer over 750kg.

I am concerned that DVSA **may** already be mirroring the new NI interpretation in GB in informal guidance. This would be consistent with the report we have had at Mobility Matters from a nature conservancy group which went to hire a minibus from its usual hire company but this time met a different response:

I have come up against something with regards to D1 when hiring a minibus and I want to check out what they are telling me is correct?

They are telling me that none of our staff who have D1 on their licence via grandfather rights can drive a hire minibus because they have D1 with restrictions and because they are staff that are being paid it is not allowed? Is this correct? They also told me that we could get a volunteer to drive a minibus and whilst they would not be getting paid, if we gave them lunch that would be classed as a reward, therefore that is not acceptable and would nul and void any insurance?

We are following this up to understand what guidance the minibus hire company's Head Office was basing their new rule on.

This approach would be consistent with the guidance since 28 June 2016 on Driver CPC Exemptions: <https://www.gov.uk/guidance/driver-cpc-exemptions-examples#history> In particular:

Example 3: transporting farm labourers around a farm

A driver has a category D1 driving licence and drives a minibus (category D1) with a '101 - not for hire or reward' [driving licence code](#). They transport farm labourers between fields, using public roads.

They need Driver CPC, as it's not non-commercial carriage of passengers.

Example 7: farm labourer transporting other workers

A farm labourer drives a minibus (with a D1 driving licence) twice a day to take other farm workers from the local town to various fields on the farm. The driving takes up a small part of their day - most of their time is spent picking crops.

They need Driver CPC, as they're transporting other labourers - they're not carrying materials or equipment.

This would also be consistent with the article in RouteOne http://www.route-one.net/articles/Driving/DfT_changes_online_minibus_guidance which shows the screen capture below from DfT guidance that was apparently altered on 30 March/2nd April [BUT which I cannot now find! which suggests that they altered it again.]

You can drive a minibus if you have category D1 entitlement on your licence

Check if you have a [D1 entitlement on your licence](#) online.

You may still be able to drive a minibus with your car licence (category B) as long as all the following apply:

- you're 21 or older
- you've had your driving licence for at least 2 years
- the maximum weight of the minibus is 3,500kg (or 4,250kg including specialist equipment for disabled passengers, eg a wheelchair ramp)
- you're not towing a trailer
- the minibus is used by a non-commercial body for social purposes
- you don't get paid except for expenses, eg fuel, parking costs
- you provide the service on a voluntary basis

You can't drive for 'hire or reward' (you can't be paid to drive). You may have restriction code 101 on your licence.

Note in particular the last point – 101 = not for hire or reward – this means you can't be paid to drive.

My concern is that there is a movement 'by stealth' towards a new interpretation that would prevent paid drivers with a pre-1997 licence with D(101) from driving Permit minibuses – regardless of whether they are for CTs or not.