



Department for

**Infrastructure**

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# **Consultation on the use of section 10B permits for road passenger transport in Northern Ireland**

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# Foreword

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 those providing road passenger transport services are correctly licensed.

In accordance with the Transport Act (NI) 1967 anyone who provides bus passenger transport for hire or reward is required to hold a bus operator licence. 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.

This consultation is intended to seek your views on a potential change to the eligibility to hold section 10B permits and to align the licensing system, with the requirements set out in Regulation (EC) No 1071/2009 of the European Parliament (21 October 2009).

Although policy development in relation to the bus operator licensing regime has been ongoing for a number of years recent Driver and Vehicle Standards Agency investigations into the activities of an English section 19 permit holder highlighted the need for the Department to clarify the obligations for all those seeking to provide bus passenger transport in Northern Ireland.

The Department in developing policy proposals contained in this document has aimed to support the following key objectives:

- (i) The need to regulate for a safe, fair and fit for purpose sector;
- (ii) The need to allow a vibrant and innovative community transport sector to continue to flourish;
- (iii) The need to ensure a level regulatory playing field, with rights and duties for the various groups within the sector being kept in appropriate balance;

The proposals are aimed at promoting road and passenger safety by ensuring that the operation is properly managed, vehicles properly maintained and tested and the drivers appropriately trained and tested.

The vast majority of licensed bus operators and transport providers in the voluntary and community sector will be unaffected by the proposed changes.

Peter May

Permanent Secretary

Department for Infrastructure

22 September 2017

# 1. Summary

- 1.1. The proposals contained within this consultation are aimed at clarifying the licensing requirements for all those who are seeking to provide bus passenger transport.
- 1.2. Currently the Transport Act (NI) 1967 (the Act) sets out the regulatory requirements; for a bus operator licence required for hire or reward. A section 10B permit, provides an exemption from all licensing requirements, for those who provide services for education, religion, social welfare or any activity which benefits the community, on a non profit basis
- 1.3. These provisions are not fully aligned with EU Regulation 1071/2009, which establishes common rules to be complied with by road passenger transport operators. It explains that only undertakings that are “*exclusively non-commercial*”, “*which have a main occupation other than road passenger transport operator*” or “*...operators engaged exclusively in national transport operations having only a minor impact on the transport market because of...the short distances involved.*” are not in scope.<sup>1</sup>
- 1.4. The Lundberg case ([Lundberg Case](#)) makes it clear that “non-commercial” involves no payment of any kind, in contrast to “not for profit” as contained in the Act and we need to amend our section10B permit system to correctly explain which transport operators are eligible. New legislation is proposed which will align the section10B exemption with those contained in EC Regulation 1071/2009.
- 1.5. The proposed changes are unlikely to have any impact on holders of full operator licences. However, the changes to section10B may impact organisations which currently operate under the permit regime.

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<sup>1</sup> There are other exemptions not relevant here: e.g. relating to carriage of goods.

1.6. If you think that your organisation will be affected by the proposed changes we would like to hear from you. Information about your organisation, the transport services you provide and the likely impacts would be welcomed.

## 2. Glossary

In this document, these terms have the following meanings:-

**"community transport stakeholder"** - a permit-holder or an organisation to which a permit-holder provides passenger transport services;

**"permit"** - a section 10B permit

**"PSV"** - Public Service Vehicle;

**"bus operator licence"** - a bus operator's licence issued pursuant to the Transport (NI) Act 1967

**"public service vehicle"** - the meaning given by Article 2 of the Road Traffic (Northern Ireland) Order 1981;

**"Regulation 1071/2009"** - 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;

**"section 10B permit"** - a permit issued pursuant to section 10A of the 1967 Act;

**"the 1981 Order "** - Road Traffic (Northern Ireland) Order 1981

**"the 1967 Act"** - the Transport Act (Northern Ireland) 1967;

**"undertaking"** - the meaning given by Article 2(4) of Regulation 1071/2009.

**"the Department"** – the Department for Infrastructure

**"DVA"** – the Driver & Vehicle Agency

## 3. Introduction

3.1. The purpose of this consultation is to seek your views on a potential change to the use of section 10B permits for road passenger transport in Northern Ireland in order to better align activities with the requirements set out in Regulation (EC) No 1071/2009 of the European Parliament (21 October 2009).

3.2. This will require amendments to the following:

- Legislation and guidance about who can operate PSVs without a bus operator licence, using the system of permits that is set out in section 10A of the 1967 Act. The proposals affect the operating model that many community transport stakeholders rely upon; and
- Guidance on training requirements for drivers of vehicles operated under s10B permits.

3.3. The proposals only apply to Northern Ireland. The Department for Transport will issue a separate consultation for England, Wales and Scotland. We are asking for views on the proposed guidance changes, and any way in which we could further clarify them.

3.4. This consultation is one of a package, the other entitled *Consultation on minibus driving licence requirements* deals with revised guidance in relation to minibus driving.

3.5. The Department and the former Department of the Environment has carried out significant pre consultation with public authorities, the voluntary and community sectors and representative organisations. The Department has undertaken an EQIA screening assessment which has shown no significant impact on any section 75 group.

3.6. The consultation closes on 17 November 2017.

## Who should read this document?

3.7 The consultation is primarily aimed at:

- permit-holders;
- applicants or potential applicants for permits;
- other community transport stakeholders who may rely on services provided by permit-holders (including local councils, sports clubs and other recreational associations, health trusts, universities, schools and other educational or charitable bodies);
- the drivers of PSVs operating under permits;
- the holders of PSV licences; and
- their respective representative organisations.

3.8 However, we welcome responses from any individual or group with an interest in the area of passenger transport.

## Further information we are seeking

3.9 Alongside the consultation questions, we are asking respondents who are community transport stakeholders to provide some information about how they operate.

3.10 Responses are particularly welcomed from section 10B permit holders, volunteer and community organisations.

## 4. Background to existing legislation and guidance

- 4.1 The provision of road passenger transport is a regulated sector, with licensing and training requirements. These requirements promote safety, professionalism and fair competition.
- 4.2 On 23 June 2016 the UK voted to leave the European Union. Until exit negotiations are concluded all the rights and obligations of EU membership remain in force. During this period the Department will continue to engage with the Department for Transport as they negotiate, implement and apply EU legislation.

### Regulation (EC) No 1071/2009 of the European Parliament (21 October 2009)

- 4.3 The road passenger transport sector is regulated across the EU. In particular, Regulation 1071/2009 sets the standards that operators throughout the EU have to meet. These are the standards that apply to holders of bus operator licences (vehicles with a designed maximum capacity of more than eight passengers). The Regulation defines the categories of undertaking that are exempt from its requirements. The relevant derogations that relate to passenger transport are:
  - 1. **Article 1(4)(b):** "undertakings 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"
  - 2. **Article 1(5)(b):** "...those road transport operators engaged exclusively in national transport operations having only a minor impact on the transport market because of ...the short distances involved".

- 4.4 Any national systems for authorising road passenger transport operators must operate within those boundaries and Member states cannot adopt additional exemptions to the Regulation.
- 4.5 The rules on who requires a Bus Operator Licence in Northern Ireland are set out in the 1967 Act. Section 4 of the 1967 Act requires the operator of a bus to hold a Bus Operator Licence.

## Bus Operator Licence Northern Ireland

- 4.6 There are two types of Bus Operator licence; standard licences and restricted licences. A standard licence authorises the use of any bus. A restricted licence only authorises the use of minibuses, provided the vehicle is not used in the course of a business of carrying passengers, by a person whose main occupation is not the operation of buses adapted to carry more than eight passengers, or by Education Authority buses when carrying out their statutory duties.
- 4.7 Currently the Transport Act (NI) 1967 sets out the regulatory requirements for a bus operator licence which is required for hire or reward. A section 10B permit provides an exemption from all licensing requirements, for those who provide services for education, religion, social welfare or any activity which benefits the community, on a non profit basis.
- 4.8 In relation to 10B permits, section 10A of the 1967 Act provides that section 4 of the 1967 Act does not apply to the use of vehicles under section 10B permits. It also exempts the vehicles from the requirements of Articles 59 and 60 of the 1981 Order. Hence permit-holders do not have to comply with the requirements applicable to either type of bus operator licence, nor are the vehicles classed as public service vehicles.
- 4.9 The key requirements that must be met in relation to the use of a vehicle under a section 10B permit are that the vehicle;
- is being used by a body to whom a section 10B permit has been granted;

- is not being used for the carriage of members of the general public nor with a view to profit nor incidentally to an activity which is itself carried on with a view to a profit;
- section 10B permits may only be issued to bodies which are concerned with education, religion, social welfare, recreation or other activities of benefit to the community; and
- a not for profit requirement applies to all 10B permit services.

4.10 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.

4.11 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. Remuneration includes any fares levied on passengers (either individually or in groups) and any other payments obtained from any third party (e.g. a local authority, under a contract or conditional grant arrangement) in exchange for the provision of the relevant service. It is possible therefore, for a permit-holder to be operating on a not-for-profit basis but nevertheless commercially. By contrast, gratuitous payments (e.g. grants, donations or gifts which are not conditional upon or made in exchange for the provision of any transport service) may be ignored.

4.12 However, in some circumstances it may be possible to treat the service as non-commercial even if payment is made in exchange for the service. This may be where, for example, the charge made for the service is nominal and does not cover the cost of providing the service (i.e. the service provider is subsidising the cost of service provision from its own funds). Another example is where volunteers are involved in providing a service for their own community; in that situation the service may fall to be treated as a social activity rather than a commercial one. But the concept is not

defined in the legislation and whether a service is commercial or non-commercial must be assessed on a case by case basis in light of all the circumstances. A key consideration is whether or not there is a market for the service in question.

4.13 This means that the permit provisions in the 1967 Act and the licence exemptions in Regulation 1071/2009 are not aligned. This mis-alignment is not new - the broad wording of a non-commercial exemption was used in the 1974 and 1996 EU Directives that preceded Regulation 1071/2009 - but the practical impact has increased over time.

## 5. The need for change

- 5.1 In the past, it was assumed by the Department that all permit-holders would fall within Article 1(4)(b) of Regulation 1071/2009 because they would constitute undertakings which are either "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". For this purpose, it was assumed that the term "non-commercial" was synonymous with "not for profit"; and it was not anticipated that permit-holders would compete with bus operator licence-holders for commercial purposes.
- 5.2 It was therefore assumed that the standards and conditions imposed by the Regulation did not apply to permit-holders. However, it has become apparent to the Department that these assumptions are no longer sustainable. In particular, it is no longer possible to assume that all permit-holders are "engaged in road passenger transport services exclusively for non-commercial purposes" for the purpose of Regulation 1071/2009 merely by virtue of compliance with the not-for-profit requirement applicable to section 10B permits.
- 5.3 Since the 1967 Act was enacted, the profile of the community transport sector has changed significantly. We are now in a position where some not-for-profit permit-holders have expanded their operations and may wish to undertake services which were traditionally delivered by profit making organisations. The resulting competition between permit-holders and bus operator licence-holders is not consistent with the current licensing regime.
- 5.4 The permit system recognises the value of not-for-profit undertakings that provide services of social/charitable benefit where profit-making undertakings would not; often to the isolated or vulnerable. Permits provide a lower cost regulatory regime for not-for-profit undertakings, enabling them to function where full licensing requirements and costs might not. We firmly believe this way of operating should

continue, but this reasoning does not apply where a not-for-profit permit holder is competing with a profit-making bus operator licence holder to provide the same services. In those circumstances, there ought to be a level playing field so that not-for-profit undertakings do not have an unfair competitive advantage.

## 6. The Proposals (Summary)

6.1 The Department proposes to:

- amend the 1967 Act to clarify that permits may only be granted and held by undertakings that meet one of the derogations set out in Article 1(4) of Regulation 1071/2009; and
- update relevant guidance issued by the Department or its agencies to reflect current market practice and better illustrate the circumstances in which those derogations may apply and hence in which permits may be granted.

6.2 Both of these points are described in detail below. We also propose to clarify guidance in respect of driver training requirements; those updates are described at section 7 of this consultation.

6.3 Please see Annex A for the specific questions to which we are inviting responses.

### Amending the 1967 Act

6.4 We propose to amend section 10A of the 1967 Act to align those provisions directly with the derogations set out in Regulation 1071/2009. We would insert wording into section 10B which would provide that permits may only be awarded to undertakings that are "exempt bodies" because they satisfy one of the derogations set out in Regulation 1071/2009. The proposed amendment would not constitute a substantive change to the law because Regulation 1071/2009 already has direct effect in Northern Ireland. The amendment would merely clarify the current legal position for the benefit of permit-holders, applicants for permits and issuing authorities.

6.5 This change may be made through secondary legislation (i.e. Statutory Regulation) relying on the enabling power in section 2(2) of the European Communities Act 1972,

which allows Ministers to amend Acts of Parliament to make them compatible with EU law.

- 6.6 We would use guidance to illustrate the circumstances in which the derogations may apply, in a more detailed and helpful way than would be possible by means of legislation.

## 7. Updating relevant guidance

- 7.1 Currently the DVA provide guidance for applicants and holders of a 10B permit on request. New guidance will be published once the consultation process is complete.
- 7.2 The Department proposes to restructure the guidance around the relevant derogations set out in Regulation 1071/2009 in order to clarify that an undertaking must satisfy one of the derogations in order to apply for and hold a permit.
- 7.3 Paragraphs 7.5 to 7.18 of this document explain what we think about the meaning of each of the derogations. We cannot provide exhaustive guidance that covers all possible circumstances. However, the Department aims to provide potential applicants for permits with as clear a description as possible of what the exemption categories may mean in practice. All cases will still need to be treated on their individual merits. Neither the current nor proposed revised guidance carries any legal weight; only the Courts can provide a definitive interpretation of the legislation.

### Proposed guidance – general principles

- 7.4 For the first two parts of Article 1(4)(b) of Regulation 1071/2009, we outline how we propose to explain them in guidance. The third derogation set out in Article 1(5)(c) is less straightforward and we would welcome any views before we consider further whether we should adopt it.
- 7.5 The proposals will change the operating framework for permit holders in Northern Ireland by removing the restrictions in terms of carrying non-members and allowing them to undertake some services where there is no commercial market for them.

**Table 1: Article 1(4)(b) "Undertakings engaged in road passenger transport services exclusively for non-commercial purposes"**

### *Outline of potential guidance*

*As a general principle, the use of a vehicle for the provision of a passenger transport service (whether on its own or as part of a wider service) in exchange for any remuneration provided either by the passengers or under a contract or conditional grant arrangement with a third party (such as a local authority) should be treated as the use of that vehicle for commercial purposes. Voluntary contributions (e.g. grants, donations or gifts which are not conditional upon or made in exchange for the provision of any transport service) may be ignored.*

*This is regardless of the fact that the undertaking concerned may be a registered charity or have some other not-for-profit status. The fact that an activity is being carried on without a view to profit is not of itself sufficient to justify a conclusion that the use of the vehicle is non-commercial.*

*This is not to say that all circumstances in which payment is made in exchange for a service fall to be treated as commercial. A not-for-profit undertaking may be granted a permit based on this derogation:*

*(a) if any charge made to passengers is merely a token payment which 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.*

*(b) where the service consists of an occasional (rather than regular) activity, organised on a voluntary basis (i.e. by an unpaid driver) for a specific group of people, in circumstances that most people would recognise as being non-commercial, albeit that the passengers may share the costs;*

*(c) where the use of a vehicle is for the purpose of providing transport for persons who have paid charges for services other than transport (e.g. training or testing of drivers) and the transport provided is merely incidental to (rather than a fundamental part of) the provision of those other services (analogous circumstances may also fall within the second limb of the Article 1(4)(b) exemption);*

*(d) even if a payment is made by passengers and/or a third party which might exceed the cost of providing the service, if there is no market for that service, meaning that no profit-making undertaking would provide the service.*

- In order to demonstrate this, the undertaking that applies for the permit should provide to the permit-issuing authority, at the point of application, appropriate evidence which demonstrates the absence of a market.*
- The nature of that evidence may vary depending on the circumstances. For example:*
- It may be evident that there is no market for a proposed service because no equivalent local service is operated by a profit-making undertaking.*
- It may also be evident, in the case of a bus service proposed to be operated under a contract to be entered into with a local authority after an open competition if no tender was received from any other operator or if the only bidders were not-for-profit undertakings. In these*

*circumstances, the applicant for the permit may be able to obtain appropriate evidence from the relevant local authority or ask the relevant local authority to supply appropriate evidence to the permit-issuing authority.*

*In every case, the relevant permit-issuing authority should satisfy itself that the applicant for the permit is (or will be) engaged in road passenger transport services exclusively for non-commercial purposes.*

*The exclusivity test must be applied to each and every service provided by the operator. Hence, for example, an undertaking which uses a vehicle primarily to provide a community service funded by charitable donations and operated by volunteers may nonetheless fail to satisfy the test if it also raises income through occasional private hire of the vehicle.*

*An undertaking which also operates or intends to operate services under a bus operator licence should not be treated as operating exclusively for non-commercial purposes. An undertaking that wishes to rely on this derogation must operate all services using permits. The same undertaking should not operate services using a mixture of permits and bus operator licences.*

*As it is an offence to operate a vehicle without a bus operator licence in circumstances in which a licence is required, and there may also be other serious consequences (e.g. as to the validity of insurance cover), operators would be well advised to err on the side of caution when deciding whether or not to operate without a bus operator licence.*

- 7.6 The Department wishes to draw out in guidance a clear description of what it means to be operating exclusively for non-commercial purposes in this context.
- 7.7 The operation of transport services which profit-making undertakings are unwilling to provide should not be considered commercial. We believe that a lack of a market for a service should enable a not-for-profit permit-holder to perform that service, whether or not money changes hands between the operator and passengers or a funding body.
- 7.8 We also propose that the guidance should state that the same undertaking should not operate using both a bus operator licence, or licences, and section 10B permits. Operating with a bus operator licence is an indicator of commercial activity, and by extension, an indicator that an undertaking is not operating exclusively for non-commercial purposes.

7.9 The Department does not propose to issue exhaustive or rigid guidance as to how it should be determined that there is no market for a service. It does not want to introduce a burdensome process for this decision; it should be appropriate and proportionate to the situation. For example, the Department believes that if a not-for-profit undertaking applies for a section 10B permit to operate a bus service in circumstances in which no local service is being operated by any profit-making undertaking with which the proposed service would compete, it should be sufficient for that fact to be confirmed.

7.10 If a not-for-profit undertaking applies for a section 10B permit to operate a service under a contract entered into with a local authority following an open competition in which no profit-making undertaking tendered to provide the service, it should be sufficient for that fact to be confirmed.

7.11 Fair and transparent competition in any market is important. These revised guidelines would mean that a not-for-profit undertaking would need to obtain a Bus Operator Licence in order to compete with a profit-making undertaking for a service contract (for example, a school transport contract with the Education Authority). All not-for-profit undertakings who wish to compete with profit-making undertakings for the same contracts would have the same regulatory requirements and regulatory costs; they would also have exactly the same opportunities for service excellence and growth, on a level playing field.

**Table 2: Article 1(4)(b) “Undertakings engaged in road passenger transport services exclusively for non-commercial purposes” Article 1(4)(b)**

*Outline of potential guidance*

*A permit may continue to be awarded to a not-for-profit undertaking whose main occupation is not road passenger transport.*

*The constitutional documents of an undertaking may be sufficiently prescriptive to justify a determination that the operation of road passenger transport is not the main occupation of that undertaking. This may include charities whose objectives are not primarily about transporting passengers.*

*In other cases, the main occupation of an undertaking should be clear by reference to that undertaking's day-to-day activities.*

*In any case where an undertaking's main occupation is unclear, the permit-*

*issuing authority should consider the case on its own merits.*

- 7.12 Undertakings whose main occupation is not passenger transport will continue to be able use permits to operate transport that is a 'sideline' or incidental to their main activities. For example, this derogation will continue to cover vehicles operated by a wide variety of educational, religious, social, sporting and recreational bodies (e.g. voluntary youth group minibuses) for the purpose of providing transport which is merely ancillary to their primary activities.
- 7.13 A generally-applicable threshold for the meaning of "main occupation" cannot be provided. Considering the wide diversity of uses for permits, any rigid threshold or measure would be arbitrary. All cases should be determined on their individual merits by the relevant permit-issuing authority.

**Article 1(5)(b) - " engaged exclusively in national transport operations having only a minor impact on the transport market because of.... the short distances involved"**

- 7.14 This potential exemption differs from the others because EU Member States have an option as to whether or not to apply it, however we are not aware of examples of other Member States doing so.
- 7.15 Insufficient information is available to enable the Department to form any view about how this exemption might be implemented by secondary legislation or elaborated in guidance. We do not hold, for example, information about average service distances, or about the extent to which services operate within specific geographical areas or administrative boundaries.
- 7.16 It is unlikely that any distinction may be made on the basis that services operated by not-for-profit undertakings are by their nature shorter than services operated by profit-making undertakings (particularly in rural areas), but the questionnaire attached to this consultation asks for some information from respondents to help us confirm this.

7.17 There may be more potential in exploring whether we could define this by reference to services that operate within specific geographical areas or administrative boundaries, particularly local council areas. It could be of particular relevance to isolated rural areas. There may also be potential in defining this by reference to services that operate within a specified distance from the principal office of the relevant not-for-profit undertaking or the operating centre at which the relevant vehicle is located.

7.18 We would welcome any views on whether and how respondents think this exemption could be applied. Any proposals as to how the derogation could be applied must be accompanied with evidence that services of particular types or operating in particular circumstances have only a minor impact on transport markets because of the short distances involved.

## 8. Impacts

- 8.1 Compliance with Regulation 1071/2009 may require some permit-holders to change the kinds of services they provide, or to obtain bus operator licences.
- 8.2 Permit-holders who operate exclusively for non-commercial purposes (as described in the proposed guidance) will continue to be able to operate non-commercially using permits rather than bus operator licences if they wish. They will, for the first time in Northern Ireland, be able to carry out contract work using permits but only in circumstances where there is no competition with profit-making undertakings.
- 8.3 Alternatively, obtaining a bus operator licence will allow not-for-profit undertakings to engage in competition with profit-making undertakings and expand their opportunities. Not-for-profit undertakings have just as much potential to operate successful, quality services as profit-making undertakings. A wider holding of bus operator licences within the not-for-profit sector could have the positive impact of allowing them greater opportunities to provide services.
- 8.4 We do not expect there to be any impact on undertakings who use permits to operate transport that is a 'sideline' or incidental to their main occupations. No change is proposed to how these undertakings (e.g. voluntary youth groups) can operate their minibuses using section 10B permits.
- 8.5 The Department has undertaken an EQIA screening assessment which has shown no significant impact on any section 75 group.

## 9. Driver training requirements

- 9.1 Driving a lorry, bus or coach also usually requires a Driver Certificate of Professional Competence (DCPC) qualification. To obtain the qualification you must pass four tests – a theory test, a case studies test, a driving ability test and a practical demonstration test. All DCPC holders must take 35 hours of periodic training every five years to stay qualified. Further details are available through the following link; <https://www.gov.uk/topic/transport/driver-cpc>
- 9.2 The aim of the DCPC is to raise the standards of new drivers and to maintain and enhance the professionalism of existing lorry and bus drivers through a continuous update of their capabilities.
- 9.3 The requirements are set out in the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007. These Regulations do not apply in a variety of circumstances including the use of any vehicle for “non-commercial carriage of passengers or goods for personal use”.
- 9.4 The Driver and Vehicle Standards Agency (DVSA) provide guidance on [GOV.UK](https://www.gov.uk) which sets out example scenarios against each of the exemptions. The Department for Transport proposes to expand the list of examples relating to the "non-commercial carriage of passengers "for personal use" exemption, to better clarify how this applies to permit-holders. As with the current examples, new examples would not carry legal weight - only the Courts can provide a definitive interpretation of the legislation.
- 9.5 The following table contains the current and proposed additional examples. Examples of DCPC requirements in scenarios related to "non- commercial carriage of passengers...for personal use".

## Current example relevant to carriage of passengers

### Driver C

Driver C drives a minibus under a D1 (101 - Not for Hire or Reward) driving licence, transporting farm labourers around a farm on public roads between fields. They need DCPC as it's not non-commercial carriage of passengers for personal use.

## Our proposed additional examples

### Driver X

Driver X drives a minibus for the purpose of transporting family, friends or members of an amateur sports club or similar body of which the driver is also a member (e.g. a cricket club or a church). The driver does not receive any payment but fuel and other costs may be shared between the driver and the passengers. DCPC is not required because it is non-commercial carriage of passengers for personal use.

### Driver Y

Driver Y is a school-teacher who drives the school minibus to take pupils on a field trip or to a sporting event. The driver is doing so in the course of employment as a teacher. Even though no extra payment is made to the driver and no costs are charged to the pupils, DCPC is required because it's not non-commercial carriage of passengers for personal use.

### Driver Z

Driver Z drives a minibus voluntarily for the purpose of providing a "Dial-a-lift" service for members of the general public who are neither relatives nor friends of the driver. The driver receives no payment of any kind. Even if the service is free-of-charge to the passengers, DCPC is required because it's not non-commercial carriage for personal use. The driver has no personal connection with the passengers

9.6 The Department believes that whether any specific activity can be classed as "non-commercial carriage of passengers for personal use" requires a judgement call considering in the round a number of issues such as;

- the relationship between the driver and passengers (for example, the degree of social connection)
- the purpose of the journey
- whether money changes hands, and in what form.

9.7 Where a driver is paid anything more than out of pocket expenses, it is difficult to envisage a circumstance where they would not need a DCPC. However, this does not mean that a volunteer driver is exempt from the need to have a DCPC. The "personal use" element of the exemption differentiates this from the consideration of

what "non-commercial" means for the issue of permits, as discussed in paragraph 4.11 of this document.

9.8 This means it is possible for a permit to be issued for a "non-commercial" service but for an unpaid driver of that service to need a DCPC. For example, there may have been no market for a local authority contract service, but if that service nevertheless carries members of the public (including, for this purpose, members of a specific scheme such as a Dial-a-Lift), this is unlikely to constitute "personal use" on the part of the driver even if the passengers are carried free of charge and driver is an unpaid volunteer. The service has been procured and is being paid for by the local authority. Driving a Scout group or amateur sports club minibus, on the other hand, by an unpaid volunteer who is a relative or friend of a member of the relevant association ought to constitute "personal use".

# 10. Responding to the Consultation

10.1 This consultation is available on the Department for Infrastructure website at

[www.infrastructure-ni.gov.uk/consultations](http://www.infrastructure-ni.gov.uk/consultations)

10.2 Comments using the Response form available on the weblink above can be sent by email or posted to the address below. Responses should be submitted to arrive no later than **5pm on 17 November 2017**.

Email to: [Freightandbuspolicy@infrastructure-ni.gov.uk](mailto:Freightandbuspolicy@infrastructure-ni.gov.uk)

By post to:

Freight and Bus Policy Branch  
Department for Infrastructure  
Room 3.01  
Clarence Court  
10-18 Adelaide Street  
Town Parks  
Belfast  
BT2 8GB

10.3 Please note that all responses will be treated as public, and may be published on the Department for Infrastructure webpage. If you do not want your response to be used in this way, or if you prefer for it to be used anonymously, please indicate this when responding.

10.4 Consultation Questions

For each of the questions in Annex A, if you have any suggestions for changes or additions to our proposed guidance, please provide as much detail as possible about your suggestions and your reasons for them.

## Closing Date

10.5 This consultation started on 22 September 2017. The deadline for responding is 17 November 2017.

# 11. Questions

In considering the proposals contained in this consultation the Department would particularly like your comments on specific questions which are contained in a answer booklet available at Annex A. Any additional comments or information should be provided on separate accompanying documents.

When responding, please state whether you are an individual or representing the views of an organisation. If responding on behalf of an organisation, please clarify who the organisation represents, and where applicable, how the views of members were assembled.

## 12. Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot assure that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## 13. Next Steps

Once it has considered all of the responses to this consultation, the Department will produce a summary report setting out how it now intends to move forward. This will be published on the NIdirect website.

## Annex A: Questions

<b>Name</b>	
<b>Address</b>	
<b>Organisation represented</b>	
<b>Date</b>	
<b>Signature</b>	

<b>Question 1</b>	Do you think that the Department's guidance clarification in respect of "undertakings engaged in road passenger transport services exclusively for non-commercial purposes" is sufficiently clear? If not, please describe how you think the guidance could be improved. In particular if you have any further examples of "non-commercial" activity that you believe we could use please describe and explain these
Answer	

<b>Question 2</b>	Do you think that our guidance clarification in respect of “undertakings that are not primarily road transport operators” are sufficiently clear? If not, please describe how you think the guidance could be improved.  .
Answer	

<b>Question 3</b>	Do you have any views on whether and how the category "minimal impact on the market due to the short distances involved" could be used in practice?
Answer	

<b>Question 4</b>	Do you think that our guidance clarification for Driver CPC requirements is sufficiently clear? If not, please describe how you think the guidance could be improved.
Answer	

<b>Question 5</b>	Can you provide any additional data which would allow us to make a more detailed assessment of impacts?
Answer	