

Joint Consultation on s10B permits and minibus driving guidance

Summary Report
February 2018

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The joint consultations on s10B permit and minibus driving guidance: Public Consultation – Summary of Responses can be read in full on the Department's website via the following link.

<https://www.infrastructure-ni.gov.uk/publications/.....>

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Executive Summary

The Department for Infrastructure (the Department) conducted a joint public consultation between 22 September 2017 and 8 December 2017 seeking the views of the public and stakeholders on proposed revised guidance on the eligibility to hold a section 10B permit and on minibus driving requirements.

The Department recognises that the existing legislative framework covering minibus operations is complex and confusing. The revised guidance does not propose changes to the legislation as it currently applies but rather is intended to update the Department's interpretation of that legislation. In this context the revised guidance is aimed at providing clarity for minibus operators and drivers; allowing them to make informed decisions about their legal obligations.

The Department received 719 responses from individuals, voluntary and community organisations and commercial bus operators. Few substantive comments were received in relation to the clarity and application of the guidance. Respondents expressed a wide range of concerns in terms of the underpinning policy and the potential impact of the guidance. The responses have been distilled into a number of key themes, including, concerns about the loss of Dial a lift and Disability Action Transport because of the impact of the guidance on the Rural Community Transport Partnerships (RCTPs), the rationale behind the consultations and potential costs for minibus owners and drivers.

Over 600 responses were received from the users of RCTPs transport. These responses highlighted the importance of the transport provided by the RCTPs in allowing people to access services and to socialise.

Next Steps

The Department has carefully considered the responses and has amended the guidance on minibus driving requirements to provide greater clarity on issues raised. The equality screening exercise has also been reviewed in light of comments received and additional analysis of the impacts has been conducted. The amended guidance is available on the “minibus driving” page of NIDirect.

Key Findings

Respondents raised a wide range of issues in relation to the consultations all of which are dealt with in the body of the report. The key recurring themes were:

- Rationale behind the consultations – many questioned the reason for consulting on guidance rather than the underlying policy.
- Equality Impact Assessment – a significant number of responses indicated that the impact assessment did not consider all of the affected section 75 groups.
- Impact on incidental drivers – there was considerable disagreement that incidental drivers required minibus driving licences.
- Scoping and engagement – respondents considered that the Department had not been rigorous in its pre-consultation engagement.
- Costs/Mitigation – respondents indicated that the Department should provide funding or compensation to those affected.
- Guidance – many queried the veracity of the guidance and others suggested that it was difficult to understand.
- Safety and improving standards for minibus users – some questioned the assertion that the licensing requirements would improve safety.
- Concerns about the continued provision of Dial a lift and Disability Action Transport Schemes – many responses sought re-assurance that these schemes would continue
- Self-drive hire – there was interest in allowing operators to also provide self hire minibuses

The consultation aimed to clarify the requirements placed on drivers and operators as a result of the existing legislation as it applies and did not propose any changes to the legislative framework. However, a number of respondents suggested that the consultation process was flawed since the outcome of the consultation appeared to have been pre-determined.

Responses, particularly from the voluntary sector, suggested that the Equality Screening process had not properly addressed all the potential impacts. The schools sector, expressed concern about the impact of the

minibus driving guidance on teachers with many suggesting that it should not be introduced. A number of respondents also expressed concern about the lack of pre-consultation engagement and suggested that the Department did not correctly scope, and therefore, mitigate the impacts.

The consultation process gathered some useful information on how minibuses are used under a section 10B permit, who uses the buses and the circumstances in which minibuses are being driven. Comments on the clarity and usefulness of the proposed guidance have also been taken into account. This data has allowed us to update the guidance and to produce a more detailed equality screening assessment.

Consultation Process

The Department launched an 11 week joint public consultation on 22 September seeking views on changes to section 10B permit eligibility and revised minibus driving guidance.

Through this consultation the Department sought views from the general public and key stakeholders, especially those in the voluntary and community sector who are most likely to be affected by the revised guidance.

To inform the consultation process the Department carried out an extensive pre-consultation exercise which included detailed engagement with the Community Transport Association, the Rural Community Transport Partnerships, Education Authority and NICVA. This provided an opportunity to identify and take into consideration the potential impacts of the implementation of the proposed guidance.

The Department completed an Equality Impact Screening Assessment in order to identify the impact of the proposed policy on section 75 groups.

This initial screening reported no direct impacts on section 75 groups arising from the revised guidance in relation to changes to section 10B permit eligibility, nor were there any direct impacts in relation to the revised guidance on minibus driving.

Minor, indirect impacts on the younger and older people and those with a disability were identified as the changes proposed are likely to impact on the Rural Community Transport Partnerships who deliver Dial a Lift and Disability Action Transport schemes using minibuses with section 10B permits. These schemes are specifically aimed at providing transport for people with a disability and reducing rural and social isolation. However, in providing reassurance of the intention to continue funding for these services the Department sought to further mitigate any impacts.

In addition, the Department completed a Rural Issues Statement to identify disproportionate impacts on rural areas. This process identified that whilst the guidance could indirectly impact on the delivery of section 10B services by the RCTPs and Disability Action, the potential impact is no more likely in rural areas than urban areas.

The equality screening documents will be updated to reflect the comments received in response to the consultations. The revised screening documents will be made available on the Department's website.

Document Distribution

The consultation documents were distributed to a range of stakeholders and individuals on the Department's list of consultees, section 10B permit holders and organisations who provide bus passenger transport.

The consultation documents are available using the following link:

<https://www.infrastructure-ni.gov.uk/consultations/consultations-proposed-changes-section-10b-permits-and-guidance-minibus-driving>

Summary of the proposals in the joint consultation

On 22 September 2017 the Department issued a joint consultation on the proposals to revise the guidance in relation to section 10B permits and minibus driving.

The *Consultation on the use of section 10B permits for road passenger transport in Northern Ireland* was intended to seek views on a proposed 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.

In the past, the Department considered that all permit holders would fall within the derogations afforded by Regulation (EC) No 1071/2009 as it was assumed that “exclusively non-commercial” (as set out in Article 1(4)(b) of the Regulation) was synonymous with the “not for profit” requirements in the Transport Act. However, over time and with changes in the way permit holders are providing services this position was no longer sustainable and the Department proposed a revision of legislation and guidance around who can operate a bus or minibus without a bus operator licence, using the system of permits as set out in section 10A of the Transport Act (NI) 1967.

The *Consultation on minibus driving licence requirements* whilst not proposing any changes to the existing legislation in relation to minibus driving, sought views on whether the revised minibus driving guidance was clear, easily understood and covered all the circumstances in which minibuses are driven.

Driver licensing and training requirements, including for those who drive or operate a minibus, are enshrined in legislation with strict rules concerning their application. This legislation aims to promote safety, professionalism and fair competition and largely derives from EU law.

Previous guidance has indicated that car licence holders could be paid to drive a minibus if they had passed their driving test prior to 1997 and the organisation held a section 10B permit. It also suggested that people who were driving for their employer, but who were not contractually required to do this, could drive a minibus on their car licence. These drivers were also considered to be exempt from the requirement to have a Driver Certificate of Professional Competence (DCPC).

It has become clear that this interpretation was not sustainable and that under existing legislation those driving a minibus for hire or reward would require a full minibus driving licence and DCPC.

Consultation Summary

Who responded?

There were 719 responses received by the Department from a range of stakeholders.

- Over 600 were received, mainly from individuals but also from some groups who use community transport.
- 88 responses made specific comments on the proposals contained in the two consultations. As most respondents merged their responses the Department will respond to the issues as if they formed part of a single consultation. In order to better collate and address concerns the 88 responses were categorised into a number of stakeholder groups.

The table below shows the number of responses per stakeholder group.

Table 1: Responses by Stakeholder

<i>Stakeholder</i>	<i>Number of responses</i>
Churches and church based organisations	5
Schools and school representative groups	17
Licensed bus sector	3
Councils and public representatives	7
Voluntary and Community Organisations	20
Consumer representatives	4
Community transport providers	10
Private individuals	22

In addition to the written responses received, a number of meetings were held with various groups representing older people and people with a disability as well as those providing Dial a Lift and Disability Action Transport to listen to their views. Issues raised were documented and have been reflected in this response summary

A number of organisations who responded to the consultation indicated that their responses reflected views, expressed through their own engagement with older people and those with a disability, on how they could be affected by the change in guidance.

What did they say?

The Department welcomes all comments provided and the valuable advice and recommendations on how the guidance might be amended to provide greater clarity to the guidance.

It is clear from both the written responses and the Department's direct stakeholder engagement that many were concerned about the impact of section 10B permit changes in relation to the potential impact on Dial a Lift and Disability Action Transport schemes. Most comments in regards to the minibus guidance document were around the impact on, teachers and the loss of pupil transport, and paid youth and voluntary sector workers and the impact on the delivery of their objectives.

As a very limited number of responses directly answered the questions contained in the consultations, this document will focus on addressing the main concerns raised by those who responded to the consultation.

The responses have been considered individually and collated into key themes to make it easier to set out and address the issues.

Consultation Responses about the Rural Community Transport Partnerships and the services they provide

422 responses were received from individuals and community groups who use the Rural Community Transport Partnerships (RCTPs) minibuses. The responses expressed support for the vital work of the RCTPs and asked the Department to withdraw proposals to introduce the guidance. These respondents thought that the guidance would lead to the end of transport provided by the RCTPs.

209 responses were in the form of a questionnaire which had been developed by the RCTPs for their service users. These responses highlighted the importance of Dial a lift and Disability Action Transport schemes to these individuals, many of whom have no access to any other form of transport.

88 responses were received from private individuals, consumer groups, community transport providers, public representatives, church organisations and schools. These respondents raised a wide range of issues in relation to the impact on the provision of minibus transport, with many expressing concern that valuable services would be lost. These are considered in more detail in the following section.

Key Themes

Most of the 88 respondents who provided specific comments either provided a single joint response or merged comments across both consultation documents.

Most registered objections to some or all of the guidance. Only the Consumer Council, IMTAC and the licensed operators indicated any degree of support for the guidance documents.

The 88 respondents raised a wide range of issues in relation to the consultations. To make the information easier to understand the Department has identified a number of key themes which have been repeatedly raised. These themes are considered in detail. Where sector specific comments have been made these are dealt with in the appropriate section.

Theme 1: Rationale behind the consultations

Nearly all the 88 respondents who provided substantive comments sought clarification on the rationale behind the consultation exercise, particularly as the decisions on the application of the law seemed to have already been made. These respondents did not consider it appropriate to consult on settled policy.

All three responses from the licensed bus sector, including from the Federation of Passenger Transport, questioned the need for consultation on guidance when the law had been in place for many years.

20 respondents went on to raise concerns that the Lundberg Judgement in relation to passenger transport was inappropriate and resulted in too narrow an interpretation of the meaning of “non-commercial”. These respondents considered that “non-commercial” and “not for profit” could be interpreted as having the same meaning, particularly as the European Commission had not defined “non-commercial”.

27 respondents raised concerns that the Department had brought forward the guidance ahead of changes in Britain and without a functioning Executive being in place. A number of these respondents indicated that previous Ministers had decided not to bring forward any

proposals in advance of the changes being introduced by the Department of Transport. These respondents asked that the guidance was put on hold until:

- A Minister was in place, or
- The Department for Transport had introduced the changes in Britain, and/or
- The Westminster Transport Select Committee has reviewed the impact of changes to community transport in Britain.

A number of respondents indicated that they believed the law in relation to EC Regulation 1071/2009 was not settled and that the Department has acted inappropriately in bringing forward the changes in guidance.

The Community Transport Association and some of the Rural Community Transport Partnerships (RCTPs) indicated that the community transport sector was not competing with licensed operators for work, whilst the licensed bus sector suggested that the RCTPs were developing substantial portfolios of work.

Table 2: Department's response to comments in relation to rationale

Department's response in relation to rationale
<ol style="list-style-type: none">1. Rationale: The Department decided to consult on proposals to introduce new guidance in relation to section 10B permits and minibus driving requirements for two main reasons. Firstly to gather information on the guidance documents. The requirements in relation to minibus operations and driving are complex and it is important that any guidance developed is fit for purpose and as comprehensive as possible. The second objective was to provide those likely to be affected with the information they needed to move into compliance before the rules had to be implemented on the ground (this aim was later negated by the Department's letter of 6 November 2017).2. On 6 November, while the consultations remained ongoing, as a result of fresh legal advice the Department published a letter clarifying the position in Northern Ireland. That letter, which remains extant, confirmed that under the existing legislation paid drivers and some volunteer drivers undertaking commercial passenger transport activities would require a full D or D1 driving licence. The letter also clarified that organisations, including not-for-profit bodies, undertaking commercial passenger transport services could not do so under a section 10b permit and would require a Bus Operator Licence.

3. Lundberg and the definition of “non-commercial”: The proposed new guidance in relation to eligibility to hold a section 10B permit reflects the out workings of the European Commission who cited this case when it began infringement action against the UK. The UK agreed with the Commission’s view and therefore Lundberg has formed the basis of policy development in this area. Since that time the Commission has proposed the following definition of non-commercial carriage¹:

'non-commercial carriage' means any carriage by road, other than carriage for hire or reward or for own account, for which no remuneration is received and which does not generate any income.

4. Delaying the introduction of guidance: the Department has been unable to delay the introduction of guidance as the legal position has been clarified by the European Commission, the Departmental Solicitors’ Office and in Senior Counsel Opinion. Since the close of the consultation the Transport Select Committee has published its findings and whilst it is critical of the DfT handling of the situation in Britain, it has not changed the way the exemptions contained in EC Regulation 1071/2009 should be applied. The Department’s guidance therefore remains valid.
5. EC Regulation 1071/2009 came into operation in December 2011 and is directly applicable, taking precedence over national law. This law is settled and Northern Ireland is bound by it. The Commission began infringement action in June 2014 because of the UK’s failure to properly apply the “exclusively non-commercial” derogation.
6. Although the government triggered Article 50 of the Treaty on the European Union on 29 March 2017 to begin the process of exit, until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of the EU remain in force.
7. Licensing requirements: Regulation 1071/2009 requires all road passenger transport operators to hold a bus operator licence regardless of whether they are providing private hire, stage carriage or grant funded passenger transport. Only organisations which are “exclusively non-commercial” are

¹ NB. This definition is currently being consulted on as part of a proposal to amend EC Regulation 561/2006 – concerning drivers’ hours

exempt (other exemptions are available for transport which is ancillary or for short distances neither of which apply).

8. On 8 February 2018 on DfT published issued a consultation on “The use of section 19 and section 22 permits for road passenger transport in Great Britain”. The proposals set out in the DfT consultation largely mirror those set out in the Northern Ireland consultation on section 10b permits. However, the DfT document sets out a commitment to explore the potential for organisations to have separate corporate entities to deliver commercial and non-commercial services. The potential for separate corporate entities relates to the interpretation of EU law. In finalising guidance on 10b permits, the Department will reflect on any solutions DfT may identify in this regard.

Theme 2: Equality Impact Assessment (EQIA)

More than 70% of respondents indicated that the Equality Impact Screening Assessment did not fully address the impacts and provided additional information.

Churches and church based groups highlighted that the minibus driving requirement would reduce their ability to deliver transport to elderly parishioners who relied on the minibus to go to church and socialise.

The school sector highlighted that the minibus driving requirement for teachers would impact on children and young people, particularly those with a disability. Children and young people rely on school minibuses driven by teachers to enhance their learning experience through extra-curricular activities. It was emphasised that the additional opportunities that this transport provides is of particular importance for children in areas of social deprivation as it gave them greater access to personal development opportunities. Some of the responses suggested that children with disabilities would be more adversely impacted as they rely on specialist minibus transport to access the ordinary school curriculum, and suitable minibuses are less readily available.

Responses from the voluntary sector highlighted that the minibus driving requirement would also impact on people recovering from mental ill health. The guidance could also jeopardise the work of local charities and especially those working in areas of social deprivation where there is a dependence on minibus transport to augment services.

A number of respondents suggested that the Department had not adequately considered the requirements of the UN Convention on the Rights of Persons with Disabilities.

NICCY indicated that proper consideration should be given to the UN Convention on the Rights of Children.

Some respondents referred to the need to consider the impact in rural areas where people, because of the lack of mainstream public transport provision outside the major towns and cities, relied on the Dial a Lift scheme to access services.

A significant number of responses including from Councils and public representatives, CTANI, the Consumer Council, IMTAC and the RCTPs highlighted that the impact on the users of Dial a Lift or the Disability Action Transport Scheme delivered by the RCTPs was not fully considered. It was suggested that this was particularly important as the RCTPs have been affected by both sets of guidance which will impact on their ability to receive grant funding and on the availability of minibus drivers. Loss of this type of transport would have a significant detrimental impact on older people and those with a disability.

IMTAC and the licensed bus sector suggested that the proposed changes would have a positive impact in terms of equality of opportunity, as the users of Dial a Lift and the Disability Action Transport Schemes would be afforded the same legal protections as the users of other public transport services.

Table 3: Department's response to comments in relation to the Equality Impact Assessment

Department's response in relation to the Equality Impact Assessment
The Department recognises that the EQIA screening documents did not take full account of the section 75 groups who are affected by the impact of the guidance on the availability of qualified drivers and the ability of the RCTPs to continue to deliver the Dial a Lift and Disability Action Transport Schemes.
The equality screening document will be updated to reflect the comments and data received.
Impacts in relation to rural needs and human rights obligations will also be explored.

Theme 3: Impact on incidental drivers

60% of the 88 respondents disagreed with the requirement that teachers, and youth workers and other incidental drivers require a full minibus driving licence and Driver Certificate of Professional Competence simply because they are driving as a consequence of their employment.

Most of the 17 responses from the school sector indicated that teachers should be considered to be volunteers as their contract of employment does not include driving and they are not compelled to drive. They considered that this interpretation was too narrow and not in the public interest to apply professional driving standards to teachers who only drive occasionally.

Respondents from the school sector and from the voluntary and community sector suggested that the new requirements would impact in terms of the continued delivery of vital services.

Some responses highlighted that the increased requirements for drivers would limit their availability as many incidental drivers would be unwilling to become qualified.

Table 4: Department's response to comments in relation to impact on incidental drivers

Department's response in relation to impact on incidental drivers
<p>The law in relation to minibus driving licence requirements has been in place for a number of years. Senior Counsel opinion has highlighted the need to give clear advice as to when a driver can avail of the "voluntary" driver exemptions contained in the legislation.</p>
<p>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.</p>
<p>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.</p>
<p><u>Minibus Driver Licensing</u></p>

In accordance with the 1996 Regulations, a driver who holds a sub-category D1(nfhr) 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 is not more than 3.5 tonnes (4.25 tonnes if including any specialist equipment to carry disabled passengers);
- they cannot tow a trailer.

Where a minibus driver is driving other than on a completely 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. Senior Counsel opinion has confirmed that anyone driving a minibus for their employer cannot be considered to be a volunteer even if they are not contractually obliged to drive. Similarly anyone driving for a commercial organisation cannot avail of the exemptions as all the criteria for exemption must be met.

Driver Certificate of Professional Competence

A Certificate of Professional Competence (DCPC) is required by a minibus driver unless they can avail of the exemptions contained in Article 2 of Directive 2003/59/EC where a vehicle “being used for non-commercial carriage of passengers or goods for personal use”.

The legislation makes no allowance for how often a person drives a minibus as its main focus is to ensure that anyone who receives payment for a job that includes any degree of bus passenger transport is able to drive to an established standard.

Theme 4: Scoping and engagement

Almost half of the 88 respondents commented that the Department had not properly scoped the range of impacts or engaged effectively with those who would be affected by the guidance.

They indicated that the Department's assessment that the guidance would not impact on volunteers was incorrect and this had led to a significant underestimate of the impact.

All 17 responses from the schools sector suggested that the conflicting messages from the Department had exacerbated the confusion and uncertainty in relation to minibus driving. Concerns were also raised as to a lack of awareness of the proposals before the consultation issued.

Table 5: Department's response to comments in relation to scoping and engagement

Department's response in relation to scoping and engagement
<p>The Department recognises that there were inadequacies in the scoping of the impact, particularly in regards the voluntary and community sector. Despite engagement with representative organisations the extent to which the voluntary sector relied on paid youth and development officers to deliver their core objectives was not fully clarified.</p> <p>Although impacts were identified, in the health sector where care workers are also undertaking driving duties and in education where youth workers and teachers were driving, no direct engagement took place at that operational level.</p> <p>The Department intends to review the process of scoping and pre-consultation engagement to ensure that as many people are aware of proposals in advance of a consultation issuing. This is particularly important where the proposal is likely to impact on the delivery of services to section 75 groups.</p>

Costs/Mitigation

Around half of the respondents raised concerns in relation to the cost of driver training and qualification while 64% thought that the Department should take action to mitigate the impacts. In terms of cost it was suggested that the additional costs would have a significant impact on the voluntary sector which is already struggling with funding pressures.

Some of the responses on behalf of schools suggested that it was not value for money to train teachers who drove only occasionally.

Responses from the licensed bus sector indicated that safety should be the only consideration and that cost should not be used as a reason for non-compliance.

Most of the those who commented on the cost of training drivers indicated that the Department should mitigate the impact by making funding available to train drivers or alternatively providing compensation for organisations who had bought minibuses that they could no longer use.

Other suggestions for mitigation including allowing drivers up to a year to comply.

Some respondents referred to a scheme launched by the Scottish Government to increase numbers of minibus drivers and driver trainers in the community transport sector who hold a minibus driving licence.

Table 6: Department's response to comments in relation to costs and mitigation

Department's response in relation to costs and mitigation
<p>The Department recognises that many of the drivers who have been impacted by the minibus driving guidance have been driving in good faith and in accordance with previously published guidance. However, Counsel advice has been clear that the previous guidance did not reflect the law and needed to be replaced.</p>
<p>The Department has no capacity to allow minibus drivers a grace period to allow them to obtain their qualifications. However, the Department has been actively engaging with organisations affected by the change to provide advice and support as they transition into the licensing regime.</p>
<p>Options for mitigation will be included in the revised Equality screening.</p>
<p>The Department is aware of the funding provided by the Scottish Government in 2016, which is providing £150,000 over 3 years to training around 60 drivers and trainers. Unfortunately, the Department is unable to provide any financial assistance or compensation to organisations or drivers who have been affected by the guidance. The Department intends to engage with Department for Communities to consider how voluntary organisations could be supported in preparing for continuing minibus driving in the future.</p>

Guidance

Around 70% of responses included comments on the proposed guidance. A number of respondents commented that the guidance was not clear and was contradictory in places particularly in relation to teachers and incidental drivers. Some respondents considered that the guidance lacked sufficient clarity to allow for effective enforcement. Specific comments in relation to the minibus driving guidance and the section 10B guidance are considered below.

Comments on minibus driving guidance

Volunteer Now and a number of other respondents commented that the minibus driving guidance was at odds with the Volunteering Strategy and, because of the complexity of requirements that need to be considered, would create a barrier to volunteering.

A number of responses on behalf of schools and the voluntary sector suggested that it would be beneficial to have sector specific guidance.

Specific comments were received suggesting that more detailed guidance be provided in relation to the terms “out of pocket expenses” and “personal connection”.

Some respondents from the voluntary sector suggested that the guidance should also include information on how to access training.

A small number of responses from the schools and voluntary sector raised concerns that drivers with post 1997 driving licences were unable to drive the heavier minibuses, suggesting that this would present difficulties for the future sustainability of minibus transport.

Table 7: Department’s response to comments in relation to the minibus driving guidance

Department’s response in relation to the minibus driving guidance
The requirements for minibus driving are complex and the Department recognises that some aspects of the guidance document are not clear. The guidance document will be updated and further examples will be added with a view to making the document easier to understand for operators, drivers and enforcement agencies.
New guidance aimed at volunteers will be developed in conjunction with the Department for Communities, as the Department recognises

the importance of supporting volunteer minibuss drivers and ensuring that barriers to volunteering are minimised. This specific guidance will aim to provide greater clarity on out of pocket expenses and personal connection.

The Department will work with Volunteer Now and the Department for Communities to develop guidance which covers volunteers who are “recruited” by a voluntary and community group.

Although the Department cannot recommend training providers it will consider how the guidance could be improved to make it easier to access training.

The Department has for a number of years been highlighting the issue that drivers with a post 1997 driving licence cannot drive modern 16 seater minibusses because they are too heavy. Although this position has been highlighted by the guidance it is not a new interpretation of the law. However, the Department recognises that it is an issue that needs to be addressed to future proof minibuss driving in the voluntary sector.

This matter will be considered as part of wider engagement with Department for Communities.

Comments on section 10B permit guidance

CTANI requested greater clarity in relation to what could be considered “exclusively non-commercial” as the interpretation of this definition impacted on charities providing transport.

Some responses requested clarity on what could be considered a “nominal payment” in relation to continuing to avail of the “exclusively non-commercial” exemption, with CTANI suggesting that the definition contained in the guidance was too narrow in scope.

Responses from FPTNI and other licensed bus operators disagreed that there could be any charging by an organisation which is availing of the exclusively non-commercial exemption. They quoted the Commission’s proposed definition of non-commercial carriage (this is detailed in the rationale section above) as evidence that there can be no remuneration. These respondents also disagreed that the derogation in relation to short distances was viable stating that most organisations do a lot of short distances and that safety standards should be the same regardless of

how far passengers are travelling. However, a response on behalf of Lisburn and Castlereagh Council suggested that the short distance derogation could work as RCTPs were restricted to council boundaries.

Table 8: Department's response to comments in relation to the section 10B guidance

Department's response in relation to the section 10B guidance
<p>The Department intends to develop comprehensive guidance reflecting the contents of the consultation. This guidance will take account of the outcome of the DfT consultation on section 19 and section 21 permits in addition to the following key policy issues.</p> <p>As detailed in the section on rationale the European Commission has proposed a definition for non-commercial carriage and this will be reflected in the guidance document.</p> <p>The Department considers that it is appropriate to continue to allow a nominal contribution to be allowed under certain circumstances and intends to include the following example to illustrate this contribution:</p> <p><i>A church with a minibus which is run for the benefit of church organisation but is a liability on church funds as the contributions from organisations using it do not cover its running expenses.</i></p> <p>Under circumstances similar to this a nominal charge will be allowed.</p> <p>The Department for Transport is currently consulting on changes to the permit regime in Britain and the Department intends to consider the outcome of that consultation process in finalising the guidance on section 10B permits.</p>

Safety and Improving standards for minibus users

60% of the responses included comments on safety and improving standards for minibus users.

A number of respondents including those from the RCTPs indicated that there was no evidence that section 10B permit operators were unsafe. They suggested that MIDAS training offered a high level of training that was more appropriate to the community transport sector than the driver licensing and Driver Certificate of Professional Competence process.

Responses from the schools and the voluntary sector questioned the safety benefits of allowing volunteers to drive rather than teachers who had years of experience driving a minibus.

The licensed operators considered that safety and compliance should be the most important consideration when delivering passenger transport services.

Some respondents raised concerns that the increased requirements, costs and complexity in relation to minibus driving would force people to work outside the law, jeopardising road safety.

Table 9: Department's response to comments in relation to safety and improving standards

Department's response in relation to safety and improving standards
<p>The legislation in relation to driver and operator licensing and driver qualification has been in place for a long time. The Department has a statutory obligation to ensure that those affected are given sufficient guidance to enable them to understand their obligations when undertaking minibus passenger transport.</p>
<p>The Department believes that compliance with the guidance and the law will improve standards, including safety standards, by increasing the numbers of people who are trained and qualified to internationally recognised standards.</p>
<p>The Department is aware of MIDAS training and has engaged with CTAUK, one of the main providers of this training with a view to having the scheme recognised as a Drivers Certificate of Professional Competence module.</p>
<p>The Department has, and will continue to provide information and support to ensure that people understand the rules in relation to minibus passenger transport and continue to meet their obligations.</p>
<p>In terms of schools using volunteers, whilst it would be in line with the legislation that a volunteer does not require a minibus licence, it is for the school to decide if this meets their safeguarding responsibilities.</p>
<p>The Department accepts that the CT sector has been promoting safer driving for a number of years through the MIDAS scheme and would support the continuation of this type of scheme where there is no statutory requirement for driver qualification.</p>

Concerns about the continued provision of Dial a lift and Disability Action Transport Scheme

IMTAC and the Consumer Council, amongst others, raised specific concerns around the continued provision of the Dial a lift and Disability Action Transport Scheme seeking reassurance that these services would still be funded and delivered irrespective of the impact of the guidance.

The RCTPs indicated that they would not be able to deliver the same level of specialist service if they were required to tender for the services.

The licensed bus sector indicated that they agreed with the objectives of the Rural Transport Fund and the Dial a lift and Disability Action transport schemes but suggested that the services should be delivered by operators who were appropriately regulated and using appropriately licensed vehicles and drivers as are all other public passenger transport services. These respondents pointed out that the UK is the only Member State allowing exemptions from bus operator licensing and that despite this there are still demand responsive and rural transport services across Europe, including in Ireland.

Table 10: Department's response to comments in relation to Dial a Lift and Disability Action Transport Scheme

Department's response in relation to Dial a Lift and Disability Action Transport Scheme
<p>The Department remains committed to the support and funding for these services. We are actively seeking to establish a mechanism to continue to fund the RCTPs to deliver the Dial a lift and Disability Action schemes when they have transitioned to holding full bus operator licences.</p>
<p>The Department recognises that many people depend on and value the services provided by the RCTPs and that the people delivering the services are committed to improving the lives of their clients. There is no intention that these services will cease.</p>

Self-drive hire

The RCTPs and the licensed operators mentioned the continued provision of self-drive minibuses to local community groups by the RCTPs.

The licensed sector suggested that the Department should give guidance to the self-drive industry so that they understood the requirements for the drivers of the hired minibus.

The RCTPs queried their continued ability to hire out their buses on a self-drive basis.

Table 11: Department's response to comments in relation to self-drive hire

Department's response in relation to self-drive hire
The Department will share the minibus driving guidance document with self-drive hire companies to allow them to make informed decisions on the suitability of drivers. Previous engagement with this sector indicated that they already had some checks and controls in place but these may benefit from the Department's guidance document.
The section 10b regime does not cover the provision of self-drive hire minibuses.

Responses from Rural Community Transport Partnerships (RCTPs) users

The Department received 422 standard format letters which expressed concern that the RCTPs would lose their funding. The letters stated that the law is identical to that in GB and asked that the Department withdraw the guidance.

In addition the RCTPs developed a questionnaire for their users, 209 of these were returned to the Department. These responses, from older people, those with a disability or those in rural areas with no other access to transport, highlighted that the users depended on the services provided by the RCTPs to access medical appointments, shopping, socialising and, in the case of vulnerable adults, work.

The consultations did not reflect any change in the legislative framework and were intended to ensure that guidance provided a clear interpretation of the legal position. However, clarifying the existing legislative requirements as to the eligibility to hold a section 10B permit and the confirmation that paid minibuses drivers required a minibus driving licence does impact on the operating framework for the RCTPs. Since the RCTPs are the main providers of Dial a Lift and Disability Action Transport schemes this raised concerns for these organisations and their users around their continued provision.

Early in the consultation process the Department recognised that confusion around the consultations and their implications was causing unnecessary concern in the sector and took action to provide reassurance.

In October, the Department met with an Assembly all party group to discuss concerns regarding community transport services. During the meeting officials explained the existing legislative requirements reflected in revised guidance and efforts being made to minimise the impact on those using community transport services.

The Department provided reassurance that its priority is to protect the interests of service users and work with community transport providers to ensure the sector is in the best position it possibly can be.

Since that time the Department has worked closely with the RCTPs and will continue to support them to ensure vulnerable and isolated people can continue to access important services.

Sector Specific Responses

Churches and church based organisations

The Department received 5 responses from this grouping. The respondents emphasised that minibuses were an essential part of church life and the change in minibus driving guidance could potentially impact on services. Some respondents expressed concern about the impact on elderly parishioners who relied on the minibus to access church activities.

Schools and school representative bodies

The Department received 17 substantive responses from schools and from representative bodies including the Controlled Schools Support

Council, the Association of School and College Leaders, the Governing Bodies Association and the Northern Ireland Bursars Association. All comments have been accounted for in the key theme section.

Licensed Bus Sector and Representatives

Three responses were received from the licensed bus sector, including one from the Federation of Passenger Transport (FPT) which reflected the views of 55 operators who are members of FPT. In addition to the comments which have been incorporated into the key theme section. This sector commented that changes were required to the current licensing regime to make provision for proper enforcement of noncompliance. They recommended the Department conclude the review of bus operator licensing which was commenced 15 years ago as this would deal with a wide range of issues impacting on the sector.

In addition they indicated that the current system of designated bodies issuing section 10B permits did not work as there were no controls or monitoring or enforcement powers.

They also asked that the Department include guidance which highlights that a section 10B permit cannot be used outside Northern Ireland

Table 12: Department's response to the licensed bus sector and representatives

Department's response
The Department plans to conclude the review process once the section 10B permit guidance has issued. This will consider the changes needed to address the issues around enforcement and designated bodies.
The new section 10B permit guidance will cover the use of minibuses outside Northern Ireland.

Councils and public representatives

Responses were received from a number of Councils, from a number of political parties and from the Northern Ireland Local Government Association. All their comments have been taken account of in the key theme section.

Voluntary and Community Sector

Included in this grouping are voluntary organisations who use minibus transport to enhance and facilitate their main activities or those who

provide advice and guidance to voluntary groups. Respondents included Volunteer Now, Action Mental Health and the Sports Forum. All comments have been taken account of in the key theme section.

Consumer Groups

Included in this grouping are consumer representative organisations who provide no transport and are replying on behalf of the people they represent. Responses were received from a number of organisations including CTA, the Consumer Council, IMTAC and NICCY. All comments have been taken account of in the key theme section.

Rural Community Transport Partnerships (RCTPs) and Disability Action

Responses were received from the RCTPs and Disability Action. These organisations receive grant funding from the Department to deliver the Dial a Lift and Disability Action Transport schemes. All comments have been taken account of in the key theme section.

Private Individuals

22 responses were received from private individuals. Their comments ranged from concern about the impact of the loss of Dial a lift and Disability Action Transport, the impact on teachers who now require minibus driving licences and the impact on drivers for the RCTPs who now also required driving qualifications. Like the comments from the other grouping these comments have been accounted for in the key themes section.