

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

Thursday, December 7, 2017

Dear Sir/Madam

Re: Consultation guidance on minibus driving licence requirements and 10B permits for road passenger transport

The Controlled Schools' Support Council was set up in September 2016 to represent and support the controlled sector in Northern Ireland.

The controlled sector is:

- Large - the largest education sector in Northern Ireland, accounting for 48% of all schools and catering for over 140,600 children.
- Diverse – providing education across all school types – nursery, primary, secondary, grammar and special schools.
- Inclusive – providing education for children of all faiths and none (66% of pupils define as Protestant, 10% Catholic, 18% no religion and 6% 'other') and over a third of newcomer pupils in Northern Ireland. The controlled sector includes a number of integrated and Irish speaking schools.

CSSC welcomes this opportunity to respond to the consultation on changes to the guidance on minibus driving licence requirements. Our comments are outlined below.

1. Interpretation of the legislation

CSSC does not agree with the Department for Infrastructure's interpretation of the legislation upon which the guidance is based. Many teachers who drive school minibuses do so as volunteers, particularly during evenings and weekends, not as a specific requirement of their job role.

CSSC understands the definition quoted below (from page 19 of the consultation document) is to apply to teachers and other school staff who drive school minibuses:

“Drivers who have been issued with a D1(nfhr) category on their licence may drive a minibus on behalf of a non commercial body as long as the minibus is being used for social purposes, provided that the minibus is not being used for hire or reward and

they receive no payment other than out of pocket expenses. There is no requirement to hold a DQC as a volunteer driver for a non commercial body.”

In this context we are disappointed with the Department’s interpretation that teachers and other staff are deemed to be paid drivers and are therefore ineligible to drive their own school minibus. This interpretation completely undermines the voluntarism of school staff that is part of the fabric of our education system.

Further CSSC understands, the 10B permit will still be available to schools for educational purposes, as stated in the associated consultation document:

“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 means that schools may consider bringing in outside volunteers to drive their vehicles. This all adds to the confusion around driving licence requirements for schools.

2. Clarity of the guidance

CSSC does not agree that the guidance provided on this change in interpretation is clear. Indeed CSSC asked the Department in its meeting on Thursday 9 November with DfI officials to issue specific guidance to schools. Although we acknowledge that the Department subsequently provided information for schools, which the Education Authority circulated, there are many areas where the guidance is still unclear and confusing. For example:

- DfI states that under the current legislative framework a teacher driving a school minibus will need a full D1 licence. They will also need the Driver Certificate of Professional Competence (CPC) and school minibuses will need to be fitted with tachographs where paid drivers are being used. To date schools rarely use paid drivers. The vast majority of trips being carried out by teachers and other school staff in the evening and weekends are as volunteers. This implies that drivers are or could be paid above their basic pay.
- There is uncertainty relating to the interpretation of volunteerism; teachers cannot drive on behalf of schools in which they are employed, but it seems the law still allows non-employees to drive minibuses for these schools not for hire or reward. Indeed, it is perceived that the same teacher could volunteer to drive a minibus for a different school employer. Principals and Governors have been left to apply due diligence in what is a very confusing environment. There is also confusion amongst schools regarding teachers and other staff driving at weekends as schools may still perceive staff to be volunteers at that time. CSSC would highlight the need for further clarity from DfI on these issues.
- DfI also emphasised that for drivers who received their licence after 1997 there is an additional complication as buses manufactured after 2010 and built for 12 or more

passengers, are likely to exceed a specific weight limit of 3.5 tonnes. That the majority of minibuses will exceed the 3.5 tonne limit means that virtually no one having received their licence after 1997 will be eligible to volunteer to drive such a minibus. This clause must also have implications wider than schools.

CSSC formally requests that further clarity regarding all of these issues is published by DfI immediately. Furthermore, the additional information that was sent directly to schools on 14 November 2017 by the Education Authority on behalf of DfI should be incorporated into the final guidance.

3. Conclusions

CSSC is disappointed with the Department's interpretation of this legislation and the guidance provided. Teachers in Northern Ireland may well now be subject to different rules than their counterparts in the other regions of the UK. It is our understanding that no similar consultation has taken place in England, Scotland or Wales.

Indeed, it is reported that the last known Ministerial direction on this issue in Northern Ireland was from Department for the Environment Minister Mark H Durkan in 2015, indicating that there should be no action taken in Northern Ireland unless there is corresponding action from the Department of Transport in England.

We would ask DfI to clarify the view of the Executive prior to it dissolving and set out clearly under what authority the decision was made to change the interpretation of volunteerism as applied to schools.

The Department made reference to legal challenge on this matter. For clarity, was this legal action initiated by a private sector interest?

It is devastating for schools that teachers and other staff, who previously volunteered to drive pupils, are now unable to do so and many school activities have ceased abruptly.

The losers in this situation are the children and young people who may now miss out on a wide range of learning experiences, including educational outings, sporting fixtures, Duke of Edinburgh activities and other events which they normally undertake via school minibuses, facilitated until now by volunteer teachers and school staff in their own time.

CSSC would like to know what considerations DfI give to any mitigation, particularly in respect of timeframes for implementation, the capacity of the system to train drivers, the unnecessary cost to school budgets and the impact on educational programmes?

CSSC would be willing to discuss its response to this consultation with you. I would also be grateful if you would advise when the final guidance will be available.

I can be contacted on 028 9531 3030 or by email barry.mulholland@csscni.org.uk

Yours faithfully

Barry Mulholland

Chief Executive