

**DERBYSHIRE COUNTY COUNCIL**

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND  
INFRASTRUCTURE**

**26 April 2018**

Report of the Strategic Director – Economy, Transport and Environment

**RESPONSE TO THE DEPARTMENT FOR TRANSPORT'S  
CONSULTATION ON THE USE OF SECTION 19 AND 22 PERMITS FOR  
ROAD PASSENGER TRANSPORT**

(1) **Purpose of Report** To update the Cabinet Member on the recent consultation issued by the Department for Transport, DfT, on proposed changes in guidance on the use of sections 19 and 22 permits for road passenger transport and to seek approval on the proposed response to this process.

(2) **Information and Analysis**

**Background**

In February 2018, the DfT launched a consultation on future guidance on the use of sections 19 and 22 permits for road passenger transport. These permits are used by a variety of different organisations, mostly voluntary sector or charitable companies, to operate transport services and include Community Transport Organisations, (CTOs).

Under the current arrangement, the majority of the transport services CTOs provide on a contractual basis to the County Council are provided under a permit in accordance with Section 19 of the Transport Act 1985 (“a Section 19 permit”). This exempts organisations from the need to hold an Operator’s Licence (known as “O licence”) which is the licence used by commercial bus companies.

The same Section 19 permit is also used by schools, care homes and day centres, church groups, scout troops and other groups where transport is ancillary to their main activity. In all these cases, the County Council is a designated body to issue the permits and this is administered by the Fleet Services Team in the Council’s Economy, Transport and Environment (ETE) Department.

'O' licence operation is widely viewed as a higher standard and a more stringent regulatory regime than Section 19 permits. It requires each operator to have designated transport managers with appropriate qualifications and all the drivers to have a Passenger Carrying Vehicle (PCV) licence and a Certificate of Professional Competence (CPC). Inspection schedules would be dictated by the Traffic Commissioner and operators would need to be tachograph compliant for Driver's Hours Regulations purposes. Companies must also be able to evidence that they are of good repute and financial standing.

Commercial operators have consistently argued that the same passenger transport regulations should apply to all transport providers regardless of their legal status, so that there can be a level playing field when competing for local authority contracts. However, the understanding and application of the Section 19 regulations has been unclear and open to interpretation for some time, not least by the DfT by its own admission. For their part CTOs nationally, under the leadership of their national body, the Community Transport Association (CTA) have argued that the charitable nature of their activities justifies a different, 'lighter touch' regime to that of commercial bus operators.

### **Developments**

The Driver and Vehicle Standards Agency (DVSA), which is responsible for vehicle and driver licensing and enforcement along with the DfT, has come to the view that the charitable status of the CTOs is not sufficient, by itself, to justify a derogation of the O licence requirement that applies to other operators.

A letter from the DfT dated 31 July 2017, addressed to all Section 19 permit issuing authorities, indicated that if CTOs wish to compete for local authority contract work they will need to do so under an O licence and meet all the standards associated with this. If they do not wish to do this, they remain free to pursue their non-contract related charitable objectives using Section 19 permits.

In February 2018, the DfT issued a consultation on potential changes in the use of sections 19 and 22 permits in the future. This follows considerable discussion in the Community Transport sector nationally on the topic and the issue being the subject of a Transport Select Committee inquiry in November 2017. Also in November 2017, the DfT issued two updates to local authorities on the use of Section 19 permits by CTOs on Council commercial contracts.

It appears from these updates and the contents of the consultation that the position taken in the DfT letter of 31 July 2017 is unlikely to alter significantly.

On 16 November 2017, Cabinet agreed to help alleviate some of the problems associated with the change from a section 19/22 by providing funding as part

of the Passenger Transport Driver Training Initiative to pay for the costs associated with drivers gaining their O licence qualification (Minute No. 332/17 refers).

### **Implications**

Should the changes suggested in the DfT consultation be introduced, they will have far reaching implications for the Community Transport sector across Derbyshire and potentially other users of sections 19 and 22 permits, as well as the Council, particularly in terms of increased costs as a result of higher operating overheads.

Whilst some of the CTOs within Derbyshire already hold O licences to operate a limited number of services, such as the Derbyshire Connect shopping bus, others do not currently have such licences in place. The impact on CTOs in Derbyshire is likely to be particularly significant as they are generally mature organisations and the sector is a significant provider of transport services to the County Council. The Authority will need to give further consideration to its future requirements for passenger transport services and the need to ensure the continuation of a healthy market for the provision of this type of service. To become fully O licence compliant and, therefore, able to continue to operate Council contract services, will require considerable effort and resource from the Community Transport operators.

### **Proposed Action**

The DfT consultation is called, 'Consultation on the use of section 19 and section 22 permits for road passenger transport in Great Britain. It asks a series of very specific question on the proposed changes in guidance. Some of these are specifically aimed at CTOs, however, the first six questions are relevant for other organisations, such as the local authorities, to respond to. The questions and proposed responses are shown in Appendix 1.

The consultation is due to end 4 May 2018 and, at the moment it is not clear, nor are any timescales given, when the DfT will come to any conclusion on outcome of this process and any potential changes to the current Section 19 permit arrangements.

(3) **Financial Considerations** The Council currently has 109 contracts with the CTOs worth approximately £1.6m annually. It is anticipated that moving from Section 19 permit operation to an O licence arrangement will increase the costs of providing the service for the CTOs. This is likely to result in the Council having to pay a higher price for the contract services it currently provides. The cost will impact adversely on Adult Care budgets as the CTOs operate approximately 50% of this Department's services and, to a much lesser extent, it will impact on Childrens' Services budgets. Although it is likely that the costs will increase at this stage, it is difficult to forecast the amount.

(4) **Legal Considerations** Section 19 permits are issued under the Transport Act 1985. The DfT letter, dated 31 July 2017, clarified the DfT's interpretation of this part of the legislation. Section 19 permits had been used by CTOs across the country to provide contract services for local authorities for many years. The DfT letter acknowledged that there has *"historically been guidance that may have provided an inaccurate indication of the conditions and criteria for operating services under Sections 19 and 22 permits and that, as a result, there may be some organisations that are relying on such permits inappropriately"*. However, the DfT makes it clear that *"Such operators will now need to take action to bring their services into compliance with legal requirements."*

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property, social value and transport considerations.

(5) **Key Decision** No.

(6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(7) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Chris Hegarty, extension 36721.

(8) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member:

8.1 Notes the Department for Transport's consultation on the proposed changes in the interpretation of the sections 19 and 22 permit system.

8.2 Agrees to the proposed response to the consultation questions shown in Appendix 1.

**Mike Ashworth**  
**Strategic Director –Economy, Transport and Environment**

## Appendix 1

### Suggested Sections 19/222 Department for Transport (DfT) Consultation Response

#### Consultation Questions

**Q1 Do you have any comments on how the proposed guidance clarification in respect of organisations “engaged in road passenger transport services exclusively for non-commercial purposes” could be further improved or clarified? In particular do you believe there are further examples of “non-commercial” which we should include?**

**Response** – Whilst table A of the consultation document, entitled ‘Outline of proposed guidance’, sets out a number of different explanations against which the “non-commercial” test can be judged, it may make it clearer still if there was a statement included such as:

*“If the section 19 operator is providing any transport service such as to a local school or day centre under contract, which they have won in open competition with at least one commercial PSV operator, then they would fail the “non-commercial” test.”*

It also needs to be made clear that in-house local authority providers of transport services who use Section 19 permits (such as schools and day centres) are not affected by the proposed changes in the interpretation of the regulations and can continue to operate.

**Q2 Do you have any comments on how the proposed guidance clarification in respect of organisations “which have a main occupation other than that of road passengers transport operator” could be further improved or clarified?**

**Response** – It would be helpful if more examples of the type of organisation and activities which fitted into this category were provided in table B of the consultation document, entitled ‘Undertakings which have a main occupation other than that of road passenger transport operator; Outline of proposed guidance’.

Whilst we appreciate it is difficult to include all the potential organisations, if this could cover more examples, such as the Scout group minibuses, mentioned in Section 3.2, would give more certainty, for example, local authority schools, college and university minibuses, community volunteer services vehicles, church groups minibuses, local amateur sports clubs vehicles, local authority minibuses to day centres, etc.

**Q3 Do you have any views on whether and how the category “minor impact on the transport market because of the short distances involved” could be used in practice**

**Response** - It is difficult to see how this could be used in a practical way. Many of the contract services currently provided by the Community Transport Organisations CTOs for Derbyshire County Council (DCC) operate within a radius of 15-20 miles from their home base, so setting some kind of a mileage limit as an exemption could potentially lead to difficulties, particularly with enforcement, e.g. if a service is 19 or 21 miles radius from a home base? It would also be very hard to frame for Council's tendering processes if only Section 19 operators were subject to this type of clause. If there are any contract variations such as new passengers joining the service who live over the limit, it could also make it difficult to administer and monitor, as it could mean the service would have to be retendered on a non-section 19 basis, or it could be operating illegally and expose the operator to prosecution.

Setting a mileage limit could also be a particular issue for CTOs that operate in more rural areas which are likely to provide services over a larger area than those in more urban locations. It would also add an additional administrative burden on CTOs to constantly record and monitor mileage levels to ensure compliance.

**Q4 Based on how the Department proposes to apply the exemption for organisations “engaged in road passenger transport services exclusively for no commercial purposes” does your organisation fit into this exemption?**

**Response** – The current services provided by DCC's own in-house fleet would fit into the exemption, however, none of the current services provided by CTO operators for DCC on a contractual basis would be exempt. It also appears very unlikely that any of the other services CTOs operate independent of DCC contracts would be exempt either.

**Q5 Based on how the Department proposes to apply the exemption for organisations “which have a main occupation other than that of road passenger transport operator” does your organisation fit into this exemption?**

**Response**– DCC's own in-house fleet services and local authority school and adult day centre services would fit into this exemption as their own main occupation is not road passenger transport.

**Q6 Based on how the Department proposes to interpret the exemptions to the Regulations, do you think that there could be impacts for specific groups in society?**

**Response** - CTO operators run a considerable number of services in Derbyshire, however, the vast majority of these are provided on a contractual basis to DCC following an open tender process. There are few occasions when no commercial operator takes part in these tenders, so it seems likely that the vast majority of existing contracts could be re-let to other providers if CTOs operators were unable to continue to run these services due to a change in the interpretation of the regulations.

Whilst DCC accepts that there is a need to clarify the guidance related to the use of sections 19/22 permits following the Driver and Vehicle Standards Agency (DVSA) investigation last year, we are concerned at the impact these may bring. For many years the DfT has encouraged the growth of CTOs into local authority contract work through the previous long-standing interpretation of the regulations. As Council funding has become increasingly constrained, the importance of CTO operators has increased as they have been able to provide the services required at a competitive price. There is, however, a distinct possibility that the change proposed would lead to an increase in the cost of providing these services, due to higher operational costs, which would place additional financial burdens on DCC and other local authorities across the country.

At a wider level, the loss of contract income to CTOs this change would bring, is likely to have a significant impact on finances of these organisations. This may result in them having to scale back their other non-contractual services activities and could, in some cases, lead to the closure of the organisation altogether.

DCC is seeking to help alleviate some of these problems caused by this potential change in the interpretation of the regulation by providing funding to help organisations (both commercial and those operating under section 19), undertake training to move from the current sections 19/22 arrangement to an O license operation. All the CTOs in Derbyshire have taken up the funding opportunity offered by the County Council.

Therefore, any new guidance on the regulations needs to be measured and proportionate and ensure vulnerable service users are protected from any adverse impacts. The guidance also needs to be clear on any transitional arrangements during a possible interim period between the current and any future arrangements. This would allow any new contractual processes to be put in place, without the need to re-tender at a future date, which would further undermine the tendering processes and in addition, impact on continuity of service for vulnerable children and adults. We would therefore ask that the new guidance includes at least a 12 months transition period before any proposed will come into effect.