

Briefing: Department for Transport's updated guidance on the use of section 19 and 22 permits

In March, the Department for Transport launched its response to their 2018 consultation on the use of section 19 and 22 permits. The response included updated guidance, a new Statutory Instrument and a final impact assessment. We've put together a briefing for members, exploring what this means for section 19 and 22 permit operators going forward, looking at what we know and what is still unclear.

As part of their response to the consultation, the Department released updated guidance explaining how they will treat two exemptions from EC1071/2009 which sets out the requirements that organisations must follow when operating vehicles carrying more than 8 passengers in return for payment. In Great Britain the default legal position is that all operators must hold a PSV 'O' licence and comply with the associated requirements unless they can claim an exemption.

Exploring the Exemptions

The updated guidance sets out the Department's views on the 'main occupation' exemption and the draft guidance on the government's intended approach to the 'short distance' exemption. **The 'non-commercial' exemption is currently under judicial review, following a challenge from a commercial operator, and the government has stated that they will be releasing further guidance in relation to this exemption once the outcome of the judicial review is known.** (For the latest updates on the judicial review, and CTA's role as an Interested Party, head to the 'News Brief and Important Updates' section of ctauk.org/members-area.)

The Regulation sets out three exemptions

- that 'not-for-profit' organisations can fall under. These are operators that are: "...engaged in road passenger transport services exclusively for non-commercial purposes" – the 'non-commercial exemption'; or
- "...which have a main occupation other than that of road passenger transport operator – the 'main occupation' exemption";
- or "...engaged exclusively in national transport operations having only a minor impact on the transport market because of...the short distances involved" – the 'short distance' exemption'.

Those that are exempt from the requirement to hold a PSV 'O' licence through one of these three exemptions are able to be granted a permit under section 19 or section 22 of the Transport Act 1985.

Main Occupation Exemption

The new guidance sets out the Government's position that "in order for a 'not-for-profit' organisation to satisfy the main occupation exemption their engagement in road passenger transport must be ancillary or complementary to another activity which must demonstrably be their main occupation."

This means that to claim this exemption, road passenger transport must be secondary to an organisation's main activity. The Department identifies an organisation's 'main occupation' as something that "consumes the majority of its time and resources, and generates the majority of its income" and is expected to continue to do so.

While many community transport operators may consider their main occupation according to their wider charitable aims and objectives, such as to reduce loneliness and isolation, if passenger transport is their main means of achieving this then the Department will consider transport to be the organisation's main occupation. The Department has provided some working examples of how operators may be able to claim this exemption, which you can view at: bit.ly/2YeyuRJ.

If an operator satisfies this exemption, then they do not need to satisfy any of the regulation's other exemptions. This exemption will be able to provide clarity to many organisations, like schools, Scout groups and Age UK branches, who operate transport under section 19 and 22 permits as an ancillary service to their main activity.

Short Distance Exemption

EU Regulation EC1071/2009 sets out that not-for-profit operators may fall under the short distance exemption if their operations have "only a minor impact on the transport market because of...the short distances involved."

In determining 'minor impact', the Department has set out a specified distance which will automatically be considered a 'short distance.' Routes that fall within this 'short distance' will be exempt from the Regulation as it will be judged to have a minor impact on the market.

A 'short distance' will be recognised as either:

- Any service **within a radius of 10 miles**, with the radius being measured from a specified central point; or
- A distance of **10 miles measured in a straight line** from the first point at which passengers are able to embark to the last point at which passengers are able to disembark.

10 mile radius

Organisations who wish to use the 10 mile radius to claim an exemption will be required to pick the central point of their chosen radius. This is a central point of your choosing and does not have to be your operating depot. For example, if it makes more sense to use your local town hall or town centre, you are able to do so as long as there is a clear rationale for your choice of central point.

Once the central point has been chosen, you will then have an operating radius of 10 miles (as the crow flies) from the central point outwards in a circle.

For example, if the CTA operated transport services and used our office in Manchester as our central point, the shaded circle below is the radius within which we would be able to operate our services.



10 miles in a straight line

The information we have about how organisations can claim this element of the exemption is less clear. Due to the fact that the guidance mentions that the distance is only applied once the first passenger is picked up, it would appear that this element of the exemption would suit organisations or services that require an element of dead mileage at the beginning or end of the journey.

The Department have stated that this dual approach of allowing an operator to choose between a radius and a straight line measurement is intended to enable operators to select the option which best suits its operating practices and which can therefore best enable them to continue to run their services.

However, the Department have stated that the specified ‘short distance’ does not apply to ‘occasional special services (e.g. day trips)’. It is not yet clear how the Department is defining an ‘occasional special service.’ Those operating in less densely populated areas will also be able to make the case to the permit issuer of a need to extend the automatic short distance due to the increased distances between settlements in their operating area. Again, it is not yet clear how organisations will be able to apply for the extension or what evidence will be required at the point of application.

You can find further FAQs on the Short Distance Exemption at bit.ly/2McDR2X

A new Statutory Instrument

The Department have also issued a Statutory Instrument (SI) which amends the 1985 Transport Act to make clear that a permit can only be applied for, and held by, an organisation that is exempt from the directly applicable EU regulation setting out the PSV operator licensing requirement.

This will give legislative effect to the 'short distance' exemption in October 2019. The UK is the first Member State to give effect to the 'short distance' exemption, meaning that there is no previous precedent set for the Government to follow or from which we can better understand how the exemption will work. As a result, our understanding of some of the detail involved in the application of the exemption is not yet clear.

Given that the SI has now passed the parliamentary process, there is no flexibility to extend the specified automatic distance of ten miles. However, the changes will not apply until October 2019, which means that operators will not need to make any changes to their service until that time. It enables us to use that time to seek further clarification from the Department on how you can best apply the exemption to your services.

We can understand that the lack of clarity on how the exemption will apply may feel frustrating for community transport organisations who just want to be able to continue to do the work that they do best. However, a positive to take from this is that there seems to be some flexibility with which the exemption can be applied, and this flexibility is something that we should welcome. We will therefore be working hard to understand how community transport organisations can make the best use of that flexibility so that you can continue operating services and helping the disadvantaged in our communities.

How you can help?

Between now and October 2019, when the exemptions will become directly applicable, we have some work to do to understand the exemptions better and how they will be applied in a practical way to community transport organisations and the services which you operate. If your organisation has done some work to understand how the exemptions relate to your services, we would love to hear from you to help us help other organisations make the greatest use of the flexibility contained in the new exemption. You can get in touch with us via hello@ctauk.org.

As ever, if you need support or advice you can get in touch with the CTA advice service by calling 0345 130 6195 or emailing advice@ctauk.org.